

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES: **STUART HOTEL**
Cnr Katherine Terrace and Warburton Street
KATHERINE NT 0850

LICENSEE: TAD (NT) PTY LTD

LICENCE NUMBER: 80100963

PROCEEDINGS: To undertake a Hearing on the Papers to Consider Complaints that allege that the Licensee Breached Sections 45, 54, and 56(1) of the *Private Security Act*

MEMBERS: Mr Richard O'Sullivan (Chairman)
Mr David Brooker
Mrs Jane Large

DATE OF HEARING: 3 November 2011

- 1) During an inspection of the Stuart Hotel licensed premises in Katherine in December 2010 Licensing Inspectors recorded breaches of the *Private Security Act* (the Act) by the Licensee. Complaints were lodged before the Licensing Commission (the Commission) in May 2011 which included alleged breaches of the *Liquor Act*, together with the alleged breaches under the *Private Security Act* and a Hearing into the alleged breaches was scheduled for August 2011. However, at the commencement of the Hearing, the security related complaints were withdrawn due to procedural inconsistencies with the Commission advised that they were likely to be re-laid at a later date.
- 2) The same complaints were relaid in September 2011 and at a Special Commission meeting the Commission determined to conduct an Inquiry in the form of a Hearing into the complaints on the papers before it. The Hearing was undertaken on 3 November 2011.
- 3) The complaints to be considered by the Commission were:

Complaint 1 – two breaches of Section 45 of the Act in that the entries for 17 December and 18 December 2010 in the security register, which was seized on 19 December 2010, were different to the copies of the same pages of the register provided by the Licensee in February 2011.

Complaint 2 – two breaches of Section 54 of the Act by not ensuring all licensed controllers were wearing prescribed identification.

Complaint 3 – eleven breaches of Section 56(1) of the Act, in that copies of registers, seized by Inspectors on 19 December 2010, were missing prescribed information.

- 4) Mr Whelan, Counsel on behalf of the Licensee, provided written submissions on the complaints on 24 May 2011, 27 June 2011 and 19 September 2011. In the latter response Mr Whelan queried the liability of the Licensee for the breaches in complaint one, stating that the Licensee was not the security provider, admitted the breaches in complaint two and offered the defence that breaches in complaint three were due to a computer glitch. He further submitted that complaints two and three were of a minor technical nature. He stated that the Licensee had been ready to have them dealt with at the August 2011 Hearing and if that had happened they would have been included in the reprimand received on that date for other breaches. He suggested that now no further action should be taken against the Licensee in regard to this matter.
- 5) In undertaking the Hearing on the Papers the Commission has before it Statutory Declarations from the two Licensing Inspectors conducting the inspection of the licensed premises on 19 December 2010 and copies of the evidence they gathered in support of the complaints. The Hearing was conducted in accordance with the concepts of Procedural Fairness as the Licensee has full knowledge of the complaints made and has taken advantage of the right to respond to the complaints.
- 6) In addition, there is legal precedent for administrative decisions to be made without a face to face Hearing. Kirby J remarked in *Re Minister for Immigration and Multicultural Affairs; ex parte PT* (2001) 75 ALJR 808 at 813 that there was no universal rule that administrators making a decision affecting a person were bound to hold a Hearing and conduct a face to face interview;

“Most administrative decisions are made without such a facility. To impose it unnecessarily would inflict a rule of inflexibility as well as one having significant cost.”

- 7) Martin CJ in *Malupo v Minister for Racing, Gaming and Licensing* (2002) NTSC 51 when noting that the applicant had twice sought to be heard personally by the Minister, or his delegate, and it was clear that no such opportunity had been afforded her, quoted the Kirby J. decision above and decided :

“It is not necessary for me to consider this further.”

- 8) In relation to Mr Whelan’s submission on liability of the Licensee the Commission takes cognizance of Section 55 (3) of the Act which states:
“Where a crowd controller or a security officer commits an offence against this Act , the employer of the person at the time of the offence is, in addition to the crowd controller or security officer, deemed to have committed the offence.”
- 9) In reaching its decision on these matters the Commission has considered in depth the evidence provided and the submissions made on behalf of the Licensee.

10) Complaint Number 1 – Breach of Section 45 of the *Private Security Act*

“45 False or misleading documents

- (1) A person shall not give to the licensing authority or an inspector a document containing information the person knows is false, misleading or incomplete in a material particular.*

Penalty: In the case of a natural person – 100 penalty units or imprisonment for 6 months. In the case of a body corporate – 500 penalty units.

- (2) Subsection (1) does not apply to a person who, when giving the document:*

(a) informs the licensing authority or inspector of the extent to which the document is false, misleading or incomplete; and

(b) gives the correct information to the licensing authority or inspector if the person has, or can reasonably obtain, the correct information.”

- 11) When considering the complaint under Section 45 of the Act the Commission had before it evidence that the Inspectors were provided copies of the security register for 17 December 2010 and 18 December 2010, by the Hotel’s Duty Manager, an employee of the Licensee. These copies showed that on 17 December Ms Natasha Assan and Mr Adam Buzzo, who were on duty that night, were not allocated crowd controller numbers in the security register. The subsequent copy of the register for the same dates, which were provided by the Licensee in February 2011, showed numbers 21 and 27 had been allocated to the crowd controllers.

- 12) Again, on 18 December 2010 Mr Alan Buzzo was on duty and no crowd controller number was entered on the original copy of the register but on the later version of the register he was shown as being allocated number 07. Also, an incident relating to the removal of a patron on 17 December 2010 was not recorded originally but was entered into the register at a later date.
- 13) The Commission has reached the conclusion that incomplete and misleading information in the security register was given to the Licensing Inspectors and that no information was provided at the time to advise the inspectors of the situation. Mr Whelan's submission that the Licensee was merely correcting the register has been given little weight as later in the submission he advises that there were insufficient tags available to allocate to crowd controllers. The Commission has determined that a breach under Section 45 of the Act is made out.

14) Complaint Number 2 – Breach of Section 54 of the *Private Security Act*

“54 Identification to be worn by crowd controller

When acting as a crowd controller, a licensed crowd controller shall wear such identification, if any, as is prescribed, so that the identification is clearly visible.

Penalty: 50 penalty units.”

- 15) The complaint lodged under Section 54 of the Act is admitted and in accordance with Section 55(3) of the Act the Licensee could be found liable. However, the penalty for breaches under this Section relates to crowd controllers and unlike Section 45 there is no penalty listed for a body corporate. The Commission has no complaint before it against any particular crowd controller and if it did the Commission would have to take into consideration the submission made on behalf of the Licensee where it was admitted that there were *“no more identification tags for the crowd controllers to wear”*. The Commission agrees with the Director of Licensing that the reminders about identification tags that were sent to Crowd Controllers Mr Kaester and Mr Buzzo are sufficient warnings and no further action is required.

16) Complaint Number 3 – Breach of Section 56 of the *Private Security Act*

“56 Employers to keep incident registers

(1) Subject to this Section, the employer of a crowd controller shall ensure that a register of crowd controllers, containing accurate records of prescribed information, is kept in a manner approved by the licensing authority.

Penalty: In the case of a natural person – 100 penalty units.

In the case of a body corporate – 500 penalty units.”

- 17) In regards to this complaint, which alleges eleven breaches under Section 56(1) of the Act, the Commission has clear evidence that that on 17 and 18 December 2010 the register did not include prescribed information for six different crowd controllers. This Section of the Act requires the employer of a crowd controller to accurately maintain the register. Of the six crowd controllers there is evidence of pay slips which shows that TAD (NT) Pty Ltd, the Licensee, was the employer of two of the crowd controllers during the period 12/12/2010 to 18/12/2010. There is no evidence provided on the employers of the remaining four crowd controllers.
- 18) It is submitted on behalf of the Licensee that the reason for the lack of prescribed information in the register was a computer “glitch” which meant that the information could not be displayed and then recorded in the register. To enter details on the computer and then manually write them into a register appears a very inefficient process and prone to mistakes. After taking into account this explanation and the fact that there is only evidence that two crowd controllers were employees of the Licensee the Commission has decided to impose one penalty for all Section 56(1) breaches.

CONSIDERATION OF THE ISSUES

- 19) The Commission notes that it is a Condition of the licence for the Stuart Hotel that the Licensee maintains a record of all licensed crowd controllers employed on the premises. The failure to meet this condition brings a liability for a breach under the *Liquor Act*. In this case no complaint has been laid under the *Liquor Act* and it has not formed part of the Commission’s deliberations.
- 20) It is submitted on behalf of the Licensee that the complaints 2 and 3 are of a minor technical nature and a reprimand should be considered. The Commission views any breach of the Act as serious. The legislature has considered the identification of Crowd Controllers and the accurate maintenance of security registers important enough to include in the legislation and impose a penalty. As stated above the maintenance of the full details of crowd controllers is also in the Conditions of Liquor Licences.
- 21) Security officers in licensed premises perform an essential two-fold role in the premises. Firstly, as protection for the Licensee and the community by ensuring that the premises is operated in a safe environment and that no breaches of the *Liquor Act* and any other Territory legislation are committed and secondly, that patrons have an identifiable, authorised person on the

premises to whom they can turn if they experience any problems. Failure to have proper identification and records of crowd controllers on duty at a licensed premises could have major consequences if a serious incident happens on the premises.

- 22) In considering what penalty to apply for the admitted and found breaches of Sections 45 and 56(1) of the Act, the Commission is minded to deal with them in totality as they are related. If the maximum penalty were to apply it would amount to 1,000 penalty units, being 500 for each breach, totally \$13,700, or \$137 per penalty unit.
- 23) However, the Commission is bound to take into account the circumstances and mitigating factors in determining the severity of penalty. In this regard the Commission notes:
- a) The breaches are the first of this type for the Licensee.
 - b) The Licensee has admitted to the breaches.
 - c) The Licensee has made remedy to the circumstances under which the breaches occurred ie it has modified / rectified its systems to prevent reoccurrence.
 - d) There was no assessed harm resultant from the breaches.
 - e) The breaches were inter-related (and in such cases one or other count are often dropped when a plea is entered).
- 24) The Commission has given some weight to these mitigating factors. It has also taken into consideration that it is not disposed to fine security staff (which was a potentiality) for personal breaches that were the result of failures of the Stuart Hotel, adding some measure of severity to the penalty. On this basis the Commission finds that the breaches warrant a fine of \$3,000.

DECISION

- 25) The Commission has made the following determinations in regards to the breaches of the *Act* by the Licensee of the Stuart Hotel.
- a) Breaches against Sections 45 and 56(1) of the Act are proven and a penalty of \$3,000 is imposed on the Licensee TAD (NT) Pty Ltd.
 - b) Breaches against Section 54 of the Act are proven but, as the crowd controllers involved in the breaches have already received warning letters from the Director of Licensing, no further action is required.

- c) The fine of \$3,000 is payable to the Receiver of Territory Monies within twenty-eight days of this Decision and the Director is to ensure full payment within the stipulated time.

Richard O'Sullivan
CHAIRMAN

29 November 2011