

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

- PREMISES:** **GOVE YACHT CLUB INC**
Drimmie Head Road
Inverel Bay
NHULUNBUY NT 0880
- LICENSEE:** GOVE YACHT CLUB INC
- LICENCE NUMBER:** 81401564
- PROCEEDINGS:** Hearing to Consider Complaints Alleging that the Licensee Breached the Conditions of Liquor Licence Number 81401564, namely:
- (1) Selling Takeaway Alcohol after 8.00 pm;
 - (2) Failing to use the Approved Mechanisms for identifying a holder of an East Arnhem Liquor Permit; and
 - (3) Failing to maintain the quality of the Gove Yacht Club Visitors Book
- MEMBERS:** Mr P Timney (Presiding Member)
Mr D Brooker
Mrs J M Large
- ATTENDEES:** Mr S Holehouse, Licensing Inspector for the Director of Licensing
Mr N Baker, Acting General Manager, Arnhem Club
Ms J Lamaitre, Acting Nominee Gove Yacht Club
- DATE OF HEARING:** 17 March 2011
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BACKGROUND

- 1) On 24 October 2010, Licensing Inspectors attending the Nhulunbuy Police Station became aware, after sighting Gove Yacht Club till receipts and CCTV footage that had been obtained by the Police in a separate incident, of anomalies in the procedures regarding a carton of take away VB being supplied to a patron.

- 2) Further investigation revealed that in breach of the conditions of the Liquor Licence for the Gove Yacht Club on 25 August 2010 at 8.22 pm Mr David (Lalambarri) Yunupingu had been supplied a carton of VB beer to take off the premises. No action was taken at the time to check Mr Yunupingu's identification against the East Arnhem Land Alcohol Management System to certify whether Mr Yunupingu was a holder of an East Arnhem Liquor Permit. Also, a check of the Visitor's Book of the Gove Yacht Club showed that it was not being properly maintained in that throughout the months of August and September 2010, members had not been signing in visitors.
- 3) The Director of Licensing sent details of the complaints to the Licensee of the Gove Yacht Club on 17 November 2010 and a response was received from Mr P McKelson, General Manager of the Gove Yacht Club and the Arnhem Club, dated 25 November 2010.
- 4) In his response Mr McKelson stated that, although the carton of VB beer was handed over to the member after 8.00 pm, payment for the carton had been made at 5.35 pm on that day. Mr McKelson also stated that the electronic permit system was not operating on that day. This problem had been reported to Licensing Inspectors on previous occasions but it had not been rectified. He admitted that the Visitors Book was not always signed by a member he asked that consideration be given to:

“ the fact that a large number of our members are indigenous and do not have a complete comprehension of the requirements to follow certain procedures”
- 5) The Commission determined on 7 February 2011 that a Hearing into the complaints would commence on Thursday 17 March 2011 at Nhulunbuy and notification of the Hearing was sent to Mr S Moran, Nominee of the Gove Yacht Club. The Commission notes from the Hearing Brief that a management agreement is in place the Arnhem Club and the Gove Yacht Club.

THE HEARING

- 6) On the morning of the Hearing the Commission received a letter from Mr David Sweet, CridlandsMB, stating that he was acting for the Gove Yacht Club Inc and had been instructed to seek to adjourn the Hearing based on the fact that Mr McKelson had been suspended and then dismissed from duties and Ms Lamaitre, who was recently appointed acting Nominee of the Gove Yacht Club, was unaware of the complaint until 10 March 2011.
- 7) At the commencement of the Hearing Inspector Holehouse explained, that as a courtesy, he had contacted CridlandsMB on 8 March 2011 to enquire whether they had been engaged to represent the Gove Yacht Club. He had

been advised that CridlandsMB were not aware at that time of the Gove Yacht Club issues.

- 8) On behalf of the Director of Licensing, Mr Holehouse strongly opposed any adjournment of the Hearing stating that the Director considered the matter serious and one that needed to be dealt with as expeditiously as possible. Further, he had received a phone call from Mr McKelson, the previous Nominee, to say that the Acting Nominee of the Gove Yacht Club and the Treasurer of the Arnhem Club would be present at the Hearing to represent the Licensee.
- 9) Mr Baker, Acting General Manager of the Arnhem Club, advised the Commission that there were problems with the management agreement Management Agreement with the Gove Yacht Club which had an affect on that club. It was not until Tuesday 15 March 2011 that he finally obtained the Hearing Brief from Mr McKelson. He requested that the adjournment be granted to allow time for the Licensee to obtain legal advice.
- 10) The Commission considered both submissions in regards to the adjournment and took into account the fact that the Commission members and the Licensing Inspector had travelled from Darwin for this matter, that the Licensing Inspector had personally brought the matter to the attention of Mr Sweet of CridlandsMB on 8 March 2011 (nine days before the scheduled Hearing) and that, apart from CridlandsMB, all parties were represented at the Hearing. The Commission determined, in balancing the submissions of both parties and the significant expense that an adjournment would cause to the Commission and the parties, to commence the Hearing with the proviso that if at any time it was felt that the Licensee needed legal representation then the Hearing would be adjourned part heard.
- 11) Inspector Holehouse stated the facts of the case drawing the Commission's attention to the following:
 - The Management Agreement between the Gove Yacht Club Inc and the Arnhem Club Inc whereby the Arnhem Club undertook the management of the Gove Yacht Club for a payment of \$4,000 per month and 5% - 10% of the net profits per annum, to be negotiated.
 - A Tax Invoice showing that there was a cash sale to an unidentified person by the Gove Yacht Club at 5.35 pm on the 25 August 2010 and that the sale was in respect of a carton of VB beer..
 - A copy of East Arnhem General Restricted Area Liquor Permit Number 30357 in the name of David Lalambarri Yunupingu.
 - A Statutory Declaration from Verity Louise Cobb stating that the permit for Mr Yununpingu had been revoked on 1 February 2010.

- A Statutory Declaration from Inspector Holehouse detailing an interview between Mr Holehouse and Mr Yununpingu whereby Mr Yunupingu admitted that he did not have a permit to purchase liquor in the East Arnhem Restricted Area; that someone else bought a carton of beer for him and that at 20:23 hours Jake had given the carton to him without asking about a permit or any other identification. Further, Mr Yununpingu when asked if it was easy to buy takeaway without a permit responded:

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

- Digital Record Interview between Inspector Holehouse and Mr Jake Adams, barman at the Gove Yacht Club, whereby Mr Adams identifies himself on the CCTV footage and agrees that at 20:23 hours on 25 August 2010 he supplied David Yunupingu with a carton of beer and did not check his permit or punch the number from the driver’s licence . Mr Adams stated that the Club had a log system with permit numbers in it for convenience of those members who don’t have their cards with them. He thought Mr Yunupingu paid for the carton prior to passing it to him. He also stated that he had received no training on how to assess if people have a permit or not.
- An Alcohol Permit Schedule which shows a David Lamabari and a David Yunupingu both with a Permit Number 00055 which is not the permit number held by David Lalambarri Yununpingu prior to it being revoked.
- A schedule of AMS Permit Restricted Alcohol Purchases Report which shows that on 25 August 2010 there were seven purchases made at terminal 9 (the Gove Yacht Club Terminal) and checked through the system between 4.24 pm and 7.47 pm but none relating to Mr David Lalambarri Yunupingu.

12)Inspector Holehouse then showed the CCTV footage from the Gove Yacht Club for the time and date of the incident.

13)Mr Baker admitted the breach of the licence condition relating to the Visitors Book. He did not dispute the fact that alcohol had been handed over to Mr Yunupingu outside of the permitted take away trading hours but he queried whether that constituted a “sale”. Mr Baker refuted the statement made by Mr Adams that he had received no training in permit holder identification and produced documents signed by Mr Adams that show he was trained in the use of the Permit Identification System.

CONSIDERATION OF THE ISSUES

14) The liquor licence for the Gove Yacht Club contain the following conditions:

Takeaway Hours to Financial Members Only: *Liquor shall be sold only for consumption away from the premises to financial members only during the following hours:*

- (i) *Sunday to Friday inclusive between the hours of 14:00 and 20:00;*
- (ii) *Saturday and Public Holidays between the hours of 10:00 and 21:00; and*
- (iii) *No trading on Good Friday OR Christmas Day.*

Permit Identification Requirement: *The Licensee shall comply with such requirements for and in relation to the authorised Permit Identification System as the Commission shall at any time notify to the Licensee in writing as being thereafter applicable to the licensed premises.*

Visitor's Book To Be Kept: *The Licensee shall keep and maintain a Visitors' book in a prominent and accessible place on the licensed premises at all times during which those premises are open for the sale of liquor.*

Definitions *In this licence unless the contrary intention appears:*

- (e) *"member " means a member of the Club presently entitled under the rules to exercise the rights and privileges appropriate to his class of membership of the Club*
- (f) *"visitor" means a person who is a bona-fide guest of a member of the Club whose*
 - *name and address have been entered in the visitors' book next to the signature of the member whose guest he is; and*
 - *presence on the Club premises is permitted by the Club's rules.*

15) It is clear from the evidence that there was a supply of alcohol by the Gove Yacht Club to a member after the takeaway trading hours. When and to whom the actual sale of that alcohol occurred is difficult to ascertain. There is an invoice of sale for a carton of VB earlier in the evening but the buyer is not identified; Mr Yunupingu says someone else, he did not remember who, bought it earlier in the evening; and Mr Adams appeared to think Mr Yunupingu paid for the carton.

16) The Commission in considering whether the supply of the carton of beer constituted a breach of the takeaway condition of the licence has taken notice of the fact that all liquor licences are issued in accordance with Section 24 of the *Liquor Act* and the definition of "sale" under the Act states:

“sell includes:

- (a) offer or expose for sale; and
- (b) keep or have in possession for sale; and
- (c) supply for or in expectation of any reward or benefit paid or provided, or to be paid or provided by the person supplied or another person, whether or not any person was or is under an obligation to pay or provide a reward or benefit.“

- 17) The Northern Territory *Sale of Goods Act* sets out when an Agreement to sell becomes a sale:

Part II Formation of the contract

Division 1 Contract of sale

6 Sale and agreement to sell

- (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price.
- (2) There may be a contract of sale between one part owner and another.
- (3) A contract of sale may be absolute or conditional.
- (4) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale; but where the transfer of the property in the goods is to take place at a future time, or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.
- (5) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled, subject to which the property in the goods is to be transferred.

- 18) The Commission has found that even if the payment was made earlier in the evening the supply of the carton of VB beer by the Gove Yacht Club to Mr Yunupingu after the takeaway trading hours is a sale and a breach of the Club’s licence condition.

- 19) The suggestion that that Permit Identification System was not working at the time is contradicted by the fact that during the evening of the 25 August 2010 seven purchases from the terminal attributed to the Yacht Club were recorded on the system. The Commission accepts that the scanner may not have been working but the system was working. The time recorded on the system and the receipt may be ‘out of synch’ so it is impossible to ascertain whether any of those purchases relate to the carton of VB beer supplied to

Mr Yunupingu. It is clear from the CCTV footage and the interviews between Inspector Holehouse and Mr Yunupingu and Mr Adams that no check whatsoever was made to establish whether he was a permit holder and is in breach of the Permit identification requirement licence condition.

20) Gove Yacht Club representatives have admitted that the Visitors Book has not been properly maintained and there is a breach of the Visitors Book licence condition. The Commission does not consider Mr McKelson's excuse for the lapse acceptable as it is the Licensee who is responsible for ensuring that all conditions of its licence are met.

DECISION

21) The Commission has found that the Gove Yacht Club has breached three conditions of its liquor licence, namely:

- (a) Selling and/or supplying take away alcohol after 8.00 pm;
- (b) Failing to use the approved mechanisms for identifying a holder of an East Arnhem Liquor Permit; and
- (c) Failing to maintain the quality of the Gove Yacht Club Visitors Book.

22) Prior to deciding on the penalty for these breaches the Commission has requested written submissions on penalty from both parties which allows the Gove Yacht Club the opportunity to contact its legal representative, namely CridlandsMB. The submissions are to be received by the Commission within fourteen days of the date of this decision, namely by close of business on Friday 22 April 2011.

Philip Timney
PRESIDING MEMBER

8 April 2011