

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

LICENSEE:	Arcvan Pty Ltd as Trustee for the ARC Van der Zalm Trading Trust
PREMISES:	Wycliffe Well Store
LICENCE NUMBER:	80802878
PROCEEDING:	Complaints pursuant to Section 48(2) Breaches of: Section 110 – Failure of Licensee to comply with a Condition of Liquor Licence
HEARD BEFORE:	Mr Richard O’Sullivan (Chairman) Mr Phil Timney (Legal Member) Mr Paul Fitzsimons
DATE OF HEARING:	29 March 2011
APPEARANCES:	Mr Anthony Van der Zalm, Nominee Inspector Wayne Sanderson for the Director of Licensing Inspector Andrew Cross

BACKGROUND

- 1) A complaint has been laid pursuant to Section 48(2) of the *Liquor Act* (“the Act”) against Arcvan Pty Ltd as Trustee for the ARC Van der Zalm Trading Trust, the business trading as Wycliffe Well Store, alleging breaches of Section 110 of the Act in the Takeaway Licence Conditions of the Licensee.
- 2) The complaint as outlined is that on 17 November 2010 two staff members of the Department of Justice purchased on separate occasions two six packs of beer each in contravention to the Takeaway Licence Condition. Further, on 23 November 2010 Inspector Andrew Cross obtained copies of the Wycliffe Well Store alcohol sales register, in which there is evidence that there were multiple cases of people purchasing more than the six cans per person per day allowable.

- 3) Section 110 of the Act states:

110 Licensee to comply with conditions

A licensee shall not contravene, or fail to comply with, a condition of his licence.

- 4) The licence of the Wycliffe Well Store contains the following Special Condition relating to alcohol sales.

“All liquor sold for consumption away from the premises is restricted to beer only, and is limited to a maximum quantity of six (6) 375ml bottles or cans of beer per person per day. Under no circumstances shall any other type of liquor be sold as takeaway.”

- 5) The complaint as laid was admitted by the Licensee through an email on 3 January 2011 to the Deputy Director South, Mr Chris McIntyre. Following the laying of the complaint the Commission determined to undertake a Hearing pursuant to Section 49(2)(c) of the Act.

HEARING

- 6) Senior Inspector Wayne Sanderson appeared on behalf of the Deputy Director and advised he would be calling two witnesses, Ms Veronica Thorpe and Mr Matthew Hopwood, both Department of Justice staff members.
- 7) The Nominee, Mr Van der Zalm advised he would be representing Wycliffe Well Store.
- 8) Senior Inspector Sanderson outlined the complaint which included the purchase by Ms Thorpe and Mr Hopwood of two lots of six cans of beer on the same day and the multiple purchasing of six cans by persons over a period extending from September through November 2010, as evidenced by the alcohol sales register.
- 9) Senior Inspector Sanderson drew the Commission’s attention to the Hearing Brief which contained evidence of multiple purchases on the one day by up to forty-one people over the three month period. He also tabled further copies of the register.
- 10) He outlined that this register, not only provided evidence of multiple purchases on the one day, but also provided evidence of non genuine names being provided such as Sid Vicious, Geelong Cats, Rod Stewart, Johnny Rotten, Charlie Brown etc. In his submission this was evidence that the bona fides of purchases was not being established through use of the register.

- 11) Ms Veronica Thorpe gave evidence that the supply of alcohol from the Wycliffe Well Store and other accessible outlets was responsible for excessive alcohol consumption of Ali Curung community members, causing major problems to the community and the outstation on Murray Downs, including domestic violence, health and physical injury, diminished school attendance and presentations for work.
- 12) She outlined the main activity of residents at Ali Curung was drinking and gambling, with little emphasis on sport and other beneficial activities. The result of this situation in her evidence, was that children are gambling, parents are too drunk to take their children to school and there is little or no work force available on pay days.
- 13) Ms Thorpe informed the Commission that on the morning of 17 November 2010 she purchased a six pack of Melbourne Bitter 375ml cans. Her Statutory Declaration states:

"I asked for Melbourne Bitter as they only had six packs of Victoria Bitter made up in white plastic bags in the fridge, so I wanted them to have to specially get me a different type so as to increase their chance of remembering that purchase."
- 14) Ms Thorpe testified that she went back to the premises on the afternoon of the same day and purchased a six pack of Victoria Bitter 375ml cans as takeaway. Her testimony was that the same person served her on both occasions when she was not asked to produce ID or fill in the alcohol sales register.
- 15) Mr Hopwood gave evidence that he had lived in the Barkly Region for fifteen years and was familiar with alcohol problems at Ali Curung and the wider region. He outlined that on 17 November 2010 he was able to purchase on separate occasions two six packs of Victoria Bitter 375ml cans. Mr Hopwood testified that he was not asked to produce ID or fill in the alcohol sales register.
- 16) Mr Van der Zalm outlined that he had held the licence since April 2010 and he understood the practice of people devising ways to purchase alcohol beyond that enabled through his licence had been going on for some years. He advised he did not know which staff served Mr Hopwood and Ms Thorpe as it was difficult recruiting and holding the staff, most of whom only stayed for days or weeks.
- 17) He added that he presumed Mr Hopwood and Ms Thorpe had been served by staff who considered them to be guests of the establishment. He could consider no other reason why staff would not have them fill out the register.
- 18) In relation to the tendering of the alcohol sales register which indicated forty-one instances of people being able to purchase more than one six pack

per day, he advised that people desperately seeking alcohol can be deceitful, use another person's identity or even a false identity.

- 19) Mr Van der Zalm drew attention to his letter of response to the complaint where he acknowledged that there is a problem and where he sought assistance in establishing a better ID system and improved means of utilising the sales register. This email of 3 January 2011 includes an apology and an undertaking to improve the situation.
- 20) He stated that in this regard he had instituted a system where staff determine the identity of the person and fill out the register on their behalf so as to minimise the likelihood of false entries.
- 21) He outlined that the staff situation at Wycliffe Well was difficult and that when new staff members commenced work they were given a copy of the licence and requested to view an induction DVD, together with a booklet, and then questioned on their knowledge of licence conditions. He advised that staff also obtained their Responsible Service of Alcohol accreditation on line when they commenced employment.
- 22) He also advised the Hearing that on a number of occasions at the request of Police or after alcohol fuelled incidents, he would close his takeaway alcohol sales and he also had barred persons who were known to cause trouble from purchasing from his premises. He maintained that a lot of the alcohol issues around the Wycliffe Well Store, Ali Curung and nearby outstations were not due to alcohol sold by his premises.
- 23) Mr Van der Zalm outlined that his main sales items were fuel and accommodation, food and alcohol. He stated he sold around thirty cartons of beer per week broken down to 120 six packs.

PENALTY SUBMISSIONS

- 24) Senior Inspector Sanderson outlined alternative penalties being:
- a) the amendment variation of the licence condition to remove entitlement to sell takeaway alcohol; or
 - b) to require camera surveillance in the alcohol sales area; and further that the licence contain the requirement that a register be maintained and filled in by the Licensee or representative after production of suitable ID.
- 25) Mr Van der Zalm responded that an amendment to his licence to disallow takeaway sales would cripple his business. He did advise the Commission that he was willing to install CCTV cameras but that some time would need to be extended for this to occur. He accepted the recommendation that ID be required but did note that many people who present at his store, do not currently have ID.

CONSIDERATION OF THE ISSUES

- 26) The Commission considers the use of a staff maintained and filled in alcohol sales register is a necessary step, along with the production of valid ID, in ensuring the identity of the purchaser to avoid multiple daily purchases.
- 27) The Commission is mindful that in around July 2011 the Territory Government will require the adoption of an electronic ID system as a means to establish the probity of customers wishing to purchase alcohol, ie that they are not on a Banned Persons Register or a Court or Corrections Order prohibiting the purchase of alcohol. Therefore the Commission realises the imposition of the requirement for staff to maintain a register and receive ID will only be an interim measure until the Territory Government's electronic system is established.
- 28) The installation of camera surveillance over the alcohol storage and sales counter would be of great assistance in monitoring alcohol sales activity at the store and detecting any breaches should they occur in the future.
- 29) The Commission notes that Mr Van der Zalm through his Trust, has only owned the Wycliffe Well Store for a short period of time and that he and his staff have been presented with a situation where people often try to get away with making multiple takeaway alcohol purchases. Indeed, with the alcohol sales register information contained in the Hearing Brief and tabled during the Hearing, where there is evidence of a name appearing more than once on the same day as purchasing alcohol, there is no assurance that that entry is a valid one. The person whose name appears on the register may, or may not, have been the person presenting at the counter and this likelihood is increased when new staff are present, who do not know the identity of the customers.
- 30) The Commission accepts there is a major problem with alcohol abuse in the area but it also accepts that not all the alcohol consumed by people at Ali Curung and nearby areas is purchased at Wycliffe Well Store.
- 31) The Commission notes with some serious concern that the Licensee has effectively acknowledged that it breached the licence condition restricting the sale of take away alcohol on 43 identified occasions. The Commission notes that whilst the Licensee may have had a register of alcohol sales in place it did very little, if anything, to ensure the register was properly and accurately maintained.
- 32) The Commission notes the submission by Mr Sanderson that the frequency and seriousness of the breaches are sufficient to warrant cancellation of the licence condition allowing the sale of take away alcohol. However, the Commission is not prepared to impose such a severe penalty against this Licensee for complaints that have brought him before the Commission for a first offence.


33) Normally, in circumstances where there is evidence of ongoing and systematic breaches of licence conditions the Commission would be inclined impose a penalty involving a suspension of licence. In this case however the Commission is of the view that a requirement to install a CCTV system, at significant expense to the Licensee, will provide a more effective deterrent and enforcement outcome than a period of actual suspension of licence for premises that sell relatively low quantities of alcohol by way of take away sales.

DECISION

34) The Commission determines to impose a requirement that camera surveillance be installed at Wycliffe Well Store to cover the alcohol display area and service counter to the satisfaction of the Deputy Director.

35) Given the remoteness of Wycliffe Well Store the Commission extends the timeframe for the installation of the CCTV system to a period of ninety days from the date of this decision.

36) The Commission also determines that the Wycliffe Well Store is to implement an alcohol sales register, to be completed by staff of the Licensee, and that this register also enters details of the ID provided by the purchaser as well as the quantity of alcohol purchased. Again, this system is to meet the requirements of the Deputy Director.



Richard O'Sullivan
CHAIRMAN

18 April 2011