

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Mataranka Hotel Stuart Highway Mataranka NT
Licensee:	Mataranka Investments Pty Ltd
Licence Number:	80117506
Proceedings:	To undertake a Hearing of a Complaint Pursuant to Section 48(2) of the <i>Liquor Act</i> -Breach of Licence Conditions Pursuant to Section 121(1) of the <i>Liquor Act</i> , Namely, Allow an Intoxicated Person of Licensed Premises
Members:	Mrs J M Large (Presiding Member) Mr W Grimshaw Mrs K Williams
Date of Hearing:	6 November 2009

Background

- 1) On Thursday 17 September 2009 at approximately 8:40pm A/Sergeant Jason Dingle, S/Constable Samantha Donaghue, 1/Constable Andrew Dunne and S/ACPO Joseph Russell attended the Mataranka Hotel to conduct a licensed premises check. They observed a person known as Mr Robert Smiler sitting slouched over at a table, attempting to drink from an opened can of beer and spilling the contents in doing so. When the Police approached Mr Smiler they noticed that he speech was slurred and he smelt strongly of intoxicating liquor. They further observed a Mr Sandy who was showing signs of intoxication as his eyes were bloodshot and his speech slurred.
- 2) Both gentlemen were taken to the Police vehicle and driven to the Police station. It was recorded that Mr Smiler staggered while walking and had to be physically assisted into the rear of the Police van as he was too intoxicated to get in by himself. At the Police Station both gentlemen undertook a breath test with a hand held Alcoliser and registered the following readings – Mr Smiler 0.317% and Mr Sandy 0.24%.
- 3) On 22 October 2009 Mr Peer Schroter of Povey, Stirk Lawyers and Notaries, representing the Licensee, Mataranka Investments Pty Ltd advised that the Licensee did not propose to contest the matter of the breach and requested the Commission to not consider varying the terms of the licence. He explained that the Mataranka Hotel was in the process of being sold by Mataranka Investments Pty Ltd to Westbrick Pty Ltd and consideration of the transfer is now subject to resolution of the complaint.
- 4) Also, on 22 October 2009 a submission was sent to the Licensing, Regulation and Alcohol Strategy Office in Katherine from Mr Chris McManus, Manager/Nominee at the Mataranka Hotel. Mr McManus disputed the fact that Mr Smiler and Mr Sandy were intoxicated commenting on Mr Smiler as follows: *"I really think that this man has a medical condition as even before he buy's a beer...he will though without reason or warning just nod forward and appear to nod off to sleep"*. In relation to Mr Sandy, Mr McManus stated that he had a *"Whall"* eye which is bloodshot. Mr McManus strongly disputed the Police assessment that the two men were intoxicated.

The Hearing

- 5) Due to the notification that the Licensee was not contesting the complaint and the impending sale of the premises the Licensing Commission undertook a hearing based on all the papers that had been submitted on the matter.
- 6) The Commission considered Mr McManus' submission in detail but found that the declarations provided by the three (3) Policemen and the ACPO offered more compelling evidence and were supported by the alcoliser readings which were conducted some forty five (45) minutes later at the Police station. The breach of the Act was found proven.
- 7) The Director of Licensing provided detail on recent Licensing Commission decisions on similar breaches of the Act, in particular, Jones Cattle (NT) Pty Ltd where a penalty of two (2) days suspension of licence with the second day suspended for a period of twelve (12) months and the requirement of the Licensee to comply with the requirements outlined in the Camera Surveillance Requirements and Guidelines. He suggested that if a breach of the Act is found against this Licensee then the penalty should be to change the conditions of the licence and impose the requirement to implement the current Camera Surveillance Requirements and Guidelines as of June 2009.
- 8) Prior to considering penalty the Commission contacted the Licensee's lawyers and offered them an opportunity to make a submission on penalty whether it be the implementation of the Camera Surveillance Requirements or a suspension of licence. The response received from Mr Peer Schroter of Povey Stirk Lawyers & Notaries was as follows:

" a licence suspension is an appropriate and sufficient penalty, on the basis that: -

- *this is a first offence by our client*
- *our client did not contest the complaint*
- *our client has replaced the manager of the licensed premises, current at the time of the commission of the breach*

a variation of the licence would unfairly impact on the prospective transferee of the licence (should the Commission consent to the same) an application in respect of which is currently before the Commission."

Consideration of the Penalty

- 9) The Commission noted that this was a second similar breach of the Act by the Licensee within a relatively short period of time. The first breach resulted in a formal reprimand and, therefore, the Commission considered that a suspension of the licence was now warranted. In looking at consistency in penalties imposed, the Jones Cattle (NT) Pty Ltd breach was a first offence and involved an aggressive intoxicated customer. Although, there was no aggression or disturbance caused in this matter it was a second offence. The Commission decided that a two (2) days suspension licence without any part being suspended would be appropriate.
- 10) In relation to imposing the implementation of the Camera Surveillance Requirements the Commission was concerned that the Guidelines, which came into effect earlier this year, have not been widely disseminated to Licensees in remote localities and we were unable to locate any documentation that the Licensee of the Mataranka Hotel had previously been advised of the new Camera Surveillance Requirements We, also, take note of the submission by Mr Schroter that any variation of the licence would unfairly impact on the prospective transferee of the licence.

11) The current condition in the liquor licence for the Mataranka Hotel is:

“Camera surveillance is to be installed and operated in the alcohol service areas of all store licences and off licence.”

It is noted that the one camera in the bar has not been operational for over twelve (12) months.

12) Taking into account the Commission’s findings in 10) and 11) above it is proposed not to vary the licence condition or impose a requirement for immediate installation of Camera Surveillance in accordance with the Guidelines at this time . However, the current condition should be enforced and the camera in the bar should be made operational. In addition the future requirements in regards to Camera Surveillance in Licensed Premises should be fully disclosed to any purchaser of the property and the Liquor Licence.

Decision

13) The Commission imposes the following penalty:

- (a) The liquor licence shall be suspended for a period of two (2) days. The two (2) days suspension shall be served on a Wednesday and Thursday prior to any transfer of the liquor licence from the current Licensee, namely, Mataranka Investments Pty Ltd.
- (b) The requirements under the current licence condition for Camera Surveillance are to be met by immediately making the camera already installed on the premises operational.
- (c) There must be full disclosure to any prospective purchaser of the hotel of the new Camera Surveillance Guidelines which will need to be progressively implemented.

Mrs J M Large
Presiding Member

13 November 2009