

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Larrimah Wayside Inn
Licensee:	Barry James Sharpe
Licence Number:	81300518
Proceeding:	Complaint Pursuant to Section 48(2) of the <i>Liquor Act</i> -Conduct Contrary to Section 110 of the Act
Decision Of:	Mr Richard O'Sullivan (Chairman)
Date of Decision:	17 August 2010

Background

- 1) By report received from the Director of Licensing on 9 August 2010 a number of anomalies in respect of the operation of the Larrimah Wayside Inn have been brought to the attention of the Chairman of the Licensing Commission.
- 2) The current liquor licence for the Larrimah Wayside Inn was approved by the Chairman on 20 April 2005 following an application by a partnership of three individuals, namely Barry James Sharpe, Lesley Ann Jacobus and Peter John Rowland. Those individuals were, at the time, the registered proprietors of Lots 4, 5 and 6 Township of Larrimah, the land on which the Larrimah Wayside Inn is situated. All 3 members of the partnership were assessed by the Commission as being fit and proper persons to hold a liquor licence.
- 3) The land and the premises were the sole assets of the partnership and the sole reason for the existence of the partnership was the operation of the Larrimah Wayside Inn. The partnership was evidenced by executed Partnership Agreements submitted by the Partnership's solicitor and nominating Mr Sharpe as the reference point for all issues concerning the liquor licence and the licensed premises. The licence issued at the time noted Mr Sharpe as the sole licensee.
- 4) The Director now advises that the nomination of Mr Sharpe as sole Licensee was in error in that the real intent was that the partnership hold the licence, that is the licence issued should have named the 3 members of the partnership as joint Licensees.
- 5) By transfer instrument registered in the Land Titles Office on 12 February 2007, the land and the licensed premises were transferred to Barry James Sharpe and Lesley Ann Jacobus. On 21 March 2007 a transfer was registered in the Land Tiles Office transferring the interest held by Ms Jacobus to Ms Jean Helen Hammond.
- 6) The following condition appears in the Licence for the Licensed Premises:

Changes in Corporate Structure

- (a) *Where the Licensee is a corporate entity it shall notify the Director in writing, no later than fourteen days after the relevant event, whenever a person assumes a position of authority or ceases to hold a position of authority.*
- 7) The Director of Licensing was not notified of the transfer of ownership of the land and the licensed premises on 12 February 2007 or of the transfer registered on 21 March 2007. Ms Hammond, as an owner of the land on which the licensed premises are situated, is a person who is able to influence the conduct of the business under the liquor licence. Ms

Hammond is unknown to the Director or the Commission and her bona fides as a person able to influence the business of the licensee is to date untested.

- 8) A failure by a licensee to notify the Director to the changes to the corporate structure of the licensee potentially constitutes breaches of section 110 of the *Liquor Act*, being a failure to comply with a condition of the liquor licence. The Director has recommended that the Commission conduct a hearing in respect of the alleged breaches.

Decision

- 9) I, in my capacity as Chairman of the Licensing Commission and in pursuance of section 14(2) of the *NT Licensing Commission Act*, determine that the Commission shall conduct a hearing in respect of the complaint lodged by the Director of Licensing against the licensee of the Larrimah Wayside Inn in his report dated 9 August 2010. The hearing will be conducted at the Katherine Court House at 11.00 am on Thursday 26 August 2010.
- 10) The power of the Commission to suspend the licence pending the conduct of the hearing is not presently being pursued for the following reasons. It is considered that there is a very low risk of the licensee committing a breach of the *Liquor Act* between the date of the decision and the conduct of the hearing given its past record of trading and the fact the licensee has not been the subject of any prior breaches of the Act or the licence conditions over many years of trading. The premises are currently trading and a suspension of licence has the potential to impact significantly on the amenity to the residents of the community, tourists and people travelling through Larrimah on the Stuart Highway.
- 11) Finally, the period between the publication of this decision and the conduct of the hearing would in normal circumstances allow time for the licensee to get paperwork in order and to lodge the appropriate notifications to the Director of the changes in the corporate structure of the Licensee.
- 12) The Licensee is advised that, should it not lodge the appropriate notifications with the Director prior to the hearing date there is a very real prospect that the hearing will be adjourned and the licence will be suspended until such time as that occurs.

Richard O'Sullivan
Chairman

17 August 2010