

# Northern Territory Licensing Commission

## Reasons for Decision

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<b>Licensee:</b>	Gove Yacht Club Inc
<b>Premises:</b>	Gove Yacht Club
<b>Nominee:</b>	Steven Paul Westley
<b>Licence Number:</b>	81401564
<b>Proceeding:</b>	Consideration of Additional Penalty Pursuant to Section 124AAA of the <i>Liquor Act</i>
<b>Heard Before:</b>	Ms Merran Short (Presiding Member) Ms Kerri Williams Mr Paul Costigan
<b>Date of Hearing:</b>	8 November 2007
<b>Appearances:</b>	Mrs Asha McLaren for the Licensee Mr Greg Lye for the Director of Licensing

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1) This was a Hearing to whether an additional penalty ought be imposed pursuant to Section 124AAA of the *Liquor Act* ("the Act") following a guilty plea in the Court of Summary Jurisdiction by Mr Walker, a barman and Mr Westley, the Manager of Gove Yacht Club ("GYC") the Licensee ("the Licensee") of the GYC.

2) Section 124AAA of the Act provides as follows:

### **124AAA Additional penalty**

(1) *Notwithstanding anything in this Act, the Commission may, in relation to the finding of guilt of a Licensee for an offence against Section 102, 105, 106B, 106C or 121, by notice in writing served on the Licensee and for a period specified in the notice, not exceeding that prescribed by subSection (2) –*

*(a) suspend the Licensee's licence; or*

*(b) vary the licence so that the licence applies to and in relation to part only of the premises to which it previously applied,*

*or, where the offence is a third or subsequent offence, instead of suspending or varying the licence, cancel the licence.*

(2) *For the purposes of subSection (1), the following are the prescribed periods:*

*(a) where the offence is the first offence by the Licensee against any of the Sections referred to in that subSection – 24 hours;*

*(b) where the offence is a second offence – 7 days; and*

*(c) where the offence is a third or subsequent offence – 28 days.*

(3) *For the purposes of subSection (2)(b) or (c), an offence is a second, third or subsequent offence if the previous offence was an offence, or the previous offences were offences, against any of the Sections referred to in subSection (1), whether committed before or after the commencement of this Section.*

- 3) Ms McLaren argued that the Director had not satisfied the requirements of Section 124AAA of the Act on two grounds:
  - a) That there was no proof of a “finding of guilt” of the Licensee of the GYC before the Commission; and
  - b) That Section 124AAA of the Act ‘requires a finding of guilt of “a Licensee” and in this instance the Northern Territory Police had proceeded against Mr Walker a barman of GYC and Mr Westley the Manager of GYC neither of whom are the Licensees.
- 4) Ms McLaren submitted that if the Commission was with her on either argument then the Commission had no power to proceed to additional penalty under Section 124AAA of the Act.
- 5) In the event that the Commission was not with Ms McLaren then she further submitted that Section 124AAA of the Act was discretionary and she asked that the Commission exercise that discretion in favour of the GYC and not impose any further penalty upon the GYC.
- 6) Broadly the facts of this matter are that Mr Westley as the Manager of the GYC and Mr Walker as an employee of the Licensee were charged on complaint by Police on the 19 August 2006 of selling liquor to an intoxicated person contrary to Section 102 of the Act. A Licensee is liable for the actions of their employees and may be charged for breaches of the Act pursuant to Section 123A of the Act.
- 7) Section 102 of the Act provides:

***102 Liquor not to be sold to intoxicated person***

*A Licensee or a person employed by a Licensee shall not sell or supply liquor to a person unless the person to whom it is sold or supplied is not intoxicated at the time (the onus of proof of which lies with the defendant).*

- 8) In Ms McLaren’s submission neither Mr Westley nor Mr Walker is the Licensee of the GYC and therefore additional penalty cannot be imposed upon the GYC pursuant to Section 124AAA because there has been no “finding of guilt “ against the GYC, as outlined in 1 and 2 above.
- 9) The Commission suggested to Ms McLaren that Section 25(3) applied to just this situation. In response Ms McLaren argued firstly, that 25(3) only goes so far as to say the Manager, in this case Mr Westley is deemed to be the person licensed in respect of the “premises” that is, the building itself not the Body Corporate of the GYC. And, secondly, the fact that the Act refers to Manager’s 25(3) and Directors and Officers 25(6) as separate and distinctive supports her view.
- 10) Dealing with Ms McLaren’s first submission regarding Section 25 of the Act, that Mr Westley is the Manager only of the “premises”, the building itself, not the GYC. Respectfully this submission cannot be correct - see the definition of premises in Section 4 of the Act which includes land. Licensed premises need not be a building; it can include an “enclosure, place, area of land vessel or vehicle”, where the licence conditions apply. For example, paddocks in the desert or an area near a river with no buildings. Licensed premises as contemplated by the Act can and do include a variety of licensed drinking areas that do not include buildings. Accordingly, the Commission does not accept this aspect of Ms McLaren’s argument.
- 11) Nor does the Commission accept Ms McLaren’s submission that as ‘manager’, ‘director’ and ‘officer’ are referred to separately and distinctly in the Act they must be treated as such. A proper construction of Section 25 is to read the Section as a whole.
- 12) The primary object of the Act is to “regulate the sale, provision promotion and consumption of liquor so as to minimize the harm associated with the consumption of liquor see Section 3(a). Section 25 (3) begins “For the purposes of this Act...” In the Commission’s view when

read as a whole the proper interpretation of Section 25(3) is that a manager of the body corporate is deemed to be the Licensee of the licensed premises and that is not limited to being the manager of “the building” as submitted but rather the ‘space’ to which the license applies. In this case the GYC.

- 13) It follows that Mr Westley is a joint Licensee with the body corporate pursuant to Section 25(3) of the Act and is therefore Licensee within the definition of Section 4 of the Act.
- 14) Section 4 “Licensee” means a person who holds a licence which is in force for the time being.”
- 15) As such it was proper for the Police to charge Mr Westley as a Licensee for breaching Section 102 of the Act and it must therefore follow that the Commission is satisfied that Mr Westley is a Licensee for the purposes of Section 124AAA of the Act and the Commission is able to impose an additional penalty.
- 16) Having established that Mr Westley is a Licensee within the meaning of the Act we turn now to consider the first leg of Ms McLaren’s argument that there has been no “finding of guilt” against the Licensee.
- 17) Mr Lye on behalf of the Director has provided the Commission with copies of the Certificate of conviction against Mr Westley and in those circumstances it is not necessary to consider this issue further.

## Penalty

- 18) Turning to the issue of sanction, Section 124AAA of the Act prescribes a maximum sanction of twenty-four (24) hours for the first offence. It is a matter for the Commission whether to impose such a sanction. Mr Lye on behalf of the Director advised the Commission that this court conviction is a first offence.
- 19) Mr Lye submitted that the intoxicated patron came to the attention of Police as having “glazed eyes that were heavily bloodshot, had difficulty talking in coherent sentences and was unsteady on his feet.” In other words Mr Lye submitted he showed obvious signs of intoxication which was confirmed by Police with a ‘breath analysis which gave a reading of .175%. That married with the fact that the intoxicated patron was seen by Police getting into a car, it is not clear whether he was intending to drive or not, and the fact that the reading was so high the maximum suspension is appropriate.

## Decision

- 20) The Commission agrees with Mr Lye and intends to exercise its discretion and impose an additional sanction against the GYC.
- 21) The Commission took into consideration Ms McLaren’s submissions in mitigation against maximum suspension including: -
  - The GYC’s impeccable record;
  - That the GYC viewed events seriously and have appointed a new manager following the event;
  - That the intoxicated patron did not appear intoxicated;
  - That there has been re-training with an aim to have all employees complete the Responsible Service Alcohol;
  - That the GYC is a social hub of the community, providing a place for children to wait for the school bus;

- That there are no other social hubs in Gove.
- 22) The Commission does not accept that in all the circumstances the intoxicated patron would not have shown at least some sign of intoxication and believes that if more time had been spent by Mr Walker to determine whether or not the patron was intoxicated this breach may have been avoided.
- 23) It is the Commission's view that this was a serious breach easily avoided if proper attention had been made regarding the sale. AND, although changes have now been implemented to ensure the responsible service of alcohol there was no evidence from anyone from the GYC as to what was in place prior to this incident. It may be that the "impeccable record" referred to by Ms McLaren is due to good luck rather than good management. Finally the Commission does not accept that the GYC is the only "social hub" in Gove.
- 24) In all the circumstances whilst the changes implemented by the GYC since this breach are commended they appear to be in reaction to this incident. In the absence of any evidence the Commission is not aware of what procedures were in place to prevent the incident.
- 25) For these reasons the Commission imposes the maximum penalty sanction of twenty-four (24) hours suspension. As has become the habit the Commission directs that the suspension be on the same day of the week that the incident occurred, being a Saturday, as determined by the Director.

Merran Short  
Legal Member

3 January 2008