

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Crossways Hotel
Licensee:	Liquid Management Pty Ltd
Licence Number:	80100963
Proceeding:	Show Cause Notice Against Gaming Machine Licence
Heard Before:	Ms Merran Short (Presiding Member) Ms Jane Large Mr Wally Grimshaw
Date of Hearing:	12 May 2008
Appearances:	Mr John Lawrence for the Licensee Mr Phil Timney for Director of Licensing

Background

- 1) This was a penalty hearing following the issuing of a Show Cause Notice Against Gaming Machine Licence. Liquid Management Pty Ltd the Licensee (“the Licensee”) of Crossways Hotel Motel (“Crossways”) was issued a Show Cause Notice by the Director of Licensing for failing to have a licensed Gaming Machine Manager on site as required pursuant to Section 60 (3) of the *Gaming Machine Act* (“the Act”).

Section 60. Machine managers

(1) Subject to subsections (4) and (6), duties that are prescribed shall be carried out only by a licensed machine manager employed under subsection (3) to carry out the duties in respect of the licensee's licensed premises.

(3) Subject to subsection (4), a licensee shall ensure at all times in respect of each of the licensee's licensed premises that there is at least one licensed machine manager employed by the licensee to carry out the duties prescribed for the purposes of subsection (1).

Penalty: \$10,000 or imprisonment for 2 years.

- 2) On 14 February 2007 during a routine inspection by Licensing Inspectors (“the Inspectors”) from Licensing and Regulation it was discovered that Crossways did not have a licensed Gaming Machine Manager (“Gaming Manager”) on site as required by the Act. On the evidence put by Mr Lawrence on behalf of the Licensee, the Gaming Manager had “nicked out” for dinner with his wife at about 8.00pm and it was expected he would be absent for about one (1) hour. As it turned out the Inspectors arrived at about 8.10 pm on that date to discover the absence of the Gaming Manager.
- 3) The Gaming Manager returned to Crossways at about 8.40 pm so the period of absence was approximately thirty (30) minutes.
- 4) It is relevant to this matter that Crossways had similarly breached the Act some seven (7) months prior, on 14 July 2006, for the same offence, namely failing to have a licensed Gaming Machine Manager on site. Following that breach Mr Steven Reed the Nominee and General Manager of Crossways was sent a letter of warning by the Director of Licensing dated 24 July 2007 stating among other things, *“that if a further breach occurs*

you and the Licensee may be summoned for the offence of "Fail to Have a Gaming Machine Manager on Premises". And they were told that a conviction may lead to the "cancellation of the gaming machine licence..."

- 5) Prior to the Commission hearing this matter the matter was heard before Mr Carey SM in the Local Court at Katherine and the Licensee entered a plea and was found guilty without proceeding to conviction and fined \$500.00. A copy of the Certificate of Conviction was included in the Commission brief.

Submissions

- 6) Mr Lawrence submitted the facts in this matter were akin to the circumstances of an earlier case involving the Airport Hotel. In that matter the licensed Gaming Machine Manager was also off site for a period of time. The difference being that in the Airport Hotel matter the Manager had left early for the day not intending to return whereas in this case it was only for dinner. It is the view of the Commission that each case must be dealt with on its own facts and whilst some guidance can be taken from similar matters it is not the deciding factor in determining a matter.
- 7) Further, it is relevant that the Airport Hotel does not have any prior breaches of any kind; the same cannot be said for Crossways. Crossways has a history of various breaches and cannot be said to come before the Commission with clean hands.
- 8) It was frankly acknowledged by Mr Lawrence that Mr Reed, the General Manager of Crossways, admitted that at the time of the first breach in July 2006 he was not completely across his obligations as the licensed Gaming Machine Manager. However, following the breach it was submitted that Mr Reed took steps to educate himself and his staff about the requirements of the Act and was fully aware of his responsibilities by the time the second breach occurred in February 2007. Mr Reed is to be commended for this frank and honest admission and the Commission is of the view that Crossways is entitled to benefit from such admission.
- 9) Unfortunately at the time of the second breach, the subject of this hearing, Mr Reed was away on leave and was not able to ensure the Act was complied with as required. That said, it is the duty of the Licensee to make sure that all aspects of legislative requirements are met at all times.
- 10) Mr Lawrence's final submission was that the Commission ought to take into account Crossways plea at the earliest opportunity, that no conviction was recorded in the Local Court, that the Gaming Manager's absence was for a limited period of time and that he was reprimanded by his employers for the lapse in judgement and other staff members were counselled.
- 11) It is also relevant that since the last breach Crossways now has five (5) licensed Gaming Machine Managers some of whom live on site, thus alleviating the risk of such a circumstance arising again. In addition, Crossways is now able to rope off the gaming area if it should be the case that no licensed gaming machine manager is on site. Although it was submitted by Mr Timney that the preferred option in the absence of a Gaming Manager was to telephone Licensing and Regulation and have the machines shut down altogether.
- 12) Mr Timney on behalf of the Director of Licensing accepted this was a lesser offence than that which occurred at the Airport Hotel. Although this may be true in one sense it does nothing to excuse Crossways from the breach and does not in the opinion of the Commission make the breach more acceptable or tolerable.

Matters taken into Consideration

- 13) The Commission took into account the following matters in making its decision:

- that this was a second breach regarding Gaming Machines by the Hotel in seven (7) months;
- that Crossways has a number of prior breaches;
- that the staff in the absence of Mr Reed, seemed unable to ensure compliance with the Act;
- that the absence was for a limited period of time (ie to eat dinner);
- that Crossways took immediate steps to rectify the breach by increasing the number of licensed Gaming Machine Managers, some of whom now live on site;
- that Counselling of the staff that took place following the breach; and
- the early admission of the breach by Crossways.

Decision

- 14) The Commission determines to suspend the Gaming Machine licence of Crossways for a period of 1 (one) day suspended for twelve (12) months subject to any further breaches of any kind under the Act.
- 15) In accordance with past policy the day of the suspension should be the same day that the breach occurred at the discretion of the Director of Licensing should it be necessary.

Merran Short
Presiding Member

30 May 2008