

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Palmerston Sports Club also known at "The Hub"
Licensee:	Palmerston Sports Club Inc
Licence Number:	81416300
Nominee:	Mr Andrew Hay
Proceeding:	Complaint pursuant to section 48 of the <i>Liquor Act</i> alleging breach of licence conditions
Complainant:	Licensing Inspector Graham Tribe
Heard Before:	Ms Jill Huck
Date of Hearing:	11 August 2005
Appearances:	Ms Sally Fielke for the licensee Mr Greg Lye for the Director of Racing, Gaming and Licensing

1. This hearing arose from a complaint lodged by Licensing Inspector Graham Tribe. Inspector Tribe stated that at approximately 11:00 on Thursday 26 May 2005 he was sold takeaway liquor in the form of a 750 ml bottle of wine at the Palmerston Sports Club Inc bottle shop. Mr Tribe is not a member of the Palmerston Sports Club and he was not asked whether he was a member or for any kind of identification at the time of sale. Inspector Tribe complained that the sale of takeaway liquor to a non-member is a specific breach of the Club's licence conditions.
2. The factual basis of the complaint was not disputed by the Club, which to its credit, quickly admitted the breach, expressed its regret, and took remedial action including taking formal disciplinary action against the staff member concerned. The Club stated that this was an isolated incident and also furnished copies of a range of documentation demonstrating the Club's consistent efforts, over a period of five years, to communicate with both members and staff the "members-only" condition of the licence for takeaway liquor. The Club also provided before and after photographs of the bottle shop; these photographs showing signage indicating that the bottle shop was for members only and advertising the availability of membership for \$5. Information was also provided that bottle shop staff members were able to access the Club's membership data base to check the financial status of members. The Club indicated that, in addition to the measures already in place, the Club would be upgrading its membership cards to incorporate photographs. This would assist the Club in further reducing the risks of non-members purchasing liquor.
3. At the hearing a copy of a letter dated 31 May 2005 from the staff member in question explaining the circumstances of the sale, was provided to the Commission. The staff member stated that what he had done was not the standard practice of the Club and he apologised for the breach. He said that his only excuse was that he had spent nine years working in bottle shops where membership was not required and "old habits die hard".
4. The Commission was also advised that the Palmerston Sports Club had just signed up to the Palmerston Licensees Accord, aimed at improving standards of patron behaviour in the area.
5. At the hearing, Ms Fielke made it clear that the facts of this matter were not contested and the main submissions were about mitigating circumstances that should be taken into

account in the setting of any penalty. Ms Fielke argued that in setting the penalty, the Commission should have regard to the following factors:

- this is the first breach to have occurred at these premises in 6 years of operation;
 - there are strict policies in place to prevent any breaches occurring;
 - as soon as the Club received notification of the complaint, the employee in question was immediately disciplined;
 - the incident was of a “one off” nature; and
 - the Licensee had pleaded “guilty” to the complaint.
6. Ms Fielke argued that an appropriate penalty would be a written warning or, in the alternative, for the Commission to defer imposing any penalty for three months, with the penalty only being decided should there be a further breach.
7. Mr Lye for the Director said that the sale of liquor to non-members was a serious breach of the Club’s licence conditions. However, he considered that: since this was the first such breach in six years; there had been an early admission of guilt; and the Club already had safeguards in place and had taken further action, a penalty at the lower end of the scale may be appropriate.

Discussion of the evidence and application of the law

8. The facts in this matter are not in dispute. Nor is there a dispute that the facts constitute a clear breach of the Club’s licence conditions. Club licences give clubs certain privileges, including Sunday takeaway trading, which are not available to some other types of licences. The sale of takeaway liquor to members of the general public, who are not members of the Club, is therefore a matter for serious concern.
9. Sections 49, 66 and 72 of the *Liquor Act* allow the Commission a wide discretion with regards to the outcome of a hearing into a complaint where a breach is found. Options include varying licence conditions, issuing directions to the licensee, suspending the licence, cancelling the licence or deferring consideration of the complaint on specified conditions.
10. In considering an appropriate outcome for this particular matter, I considered the circumstances of the breach. I agreed that it was appropriate to take into account the matters set out in paragraph 5 of this statement of reasons. I was favourably impressed by the evidence that the Palmerston Sports Club had a range of mechanisms in place to reduce the likelihood of such a breach. These included signage, written policies, manuals, memorandums and a system of staff performance appraisal. I was also favourably impressed by the prompt action the Club took upon being notified of the breach. That said, I was also conscious that this was a breach of a core condition of the Club’s licence and that any penalty should send a clear message that such a breach was unacceptable. In such circumstances I did not consider that a written warning would be sufficient.

Decision

11. After considering all the evidence in this case and the applicable case law, I decided to impose a penalty that would provide suitable incentives for the Club to prevent future breaches of this nature.
12. I decided that the takeaway liquor part of the Palmerston Sports Club’s liquor licence should be suspended for one day. In line with a range of previous Licensing Commission decisions, this penalty is to be suspended for a period of twelve (12) months from the date of this decision. If no further breaches of this particular licence condition occur in that time, the “suspended suspension” will wink out of existence. If another breach occurs within this

period of twelve months, the one day suspension will apply at a date to be determined by the Commission in addition to any other penalty imposed by the Commission at that time.

Jill Huck
25 August 2005