

Northern Territory Licensing Commission

Reasons for Decision

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| Premises: | Barkly Homestead |
| Licensee: | David Maybe Pty Ltd |
| Licence Number: | 81203263 |
| Proceeding: | Complaint Pursuant to Section 48(2) Breach of Section 110-Failure of Licensee to Comply with a Condition of Liquor Licence |
| Heard Before: | Mr Richard O'Sullivan (Chairman) Ms Brenda Monaghan (Legal Member) Ms Helen Kilgariff |
| Date of Hearing: | 16 June 2009 |
| Appearances: | Mr Andrew Mayne, Nominee Mr Tom Mayne Inspector Tony O'Donohoe for the Director of Licensing Inspector Andrew Cross |

Background

- 1) A complaint pursuant to Section 48(2) of the *Liquor Act* ("the Act") has been laid alleging Barkly Homestead Wayside Inn is guilty of a breach of Section 110 of the Act, relating to a breach of a licence condition.
- 2) The circumstances relating to the alleged breach are that on the afternoon of Sunday 21 September 2008 Inspector Cross purchased one (1) carton of Carlton mid strength stubbies from a female staff member. The Complaint states that at the time of the purchase, Inspector Cross' partner was standing nearby but was not identified as his wife, partner or travelling companion and therefore the twenty-four (24) stubbies purchased solely by him and entirely for his use.
- 3) At the time, the Barkly Homestead had a special condition of its licence relating to takeaway stating:

"No more than twelve (12) 375ml cans of beer per person per day for consumption away from the premises."
- 4) In correspondence of 29 October 2008 Mr Tom Mayne, Co-Manager of the Barkly Homestead, does not deny Inspector Cross was sold a carton of Carlton mid strength stubbies. The correspondence further states the reason a full carton of beer was sold was that Inspector Cross was in the company of a second individual, namely his wife, and therefore in effect each of the two had been sold twelve (12) stubbies of beer.

Hearing

- 5) Inspector Tony O'Donohoe, on behalf of the Director of Licensing, outlined the substance of the complaint. Evidence was presented that Inspector Cross, after purchasing the carton of beer and depositing it in his car, then returned to the counter and spoke to Mr Tom Mayne, the Co-Manager of Barkly Homestead outlining the transaction which had occurred in breach of the licence condition.

- 6) After initially expressing disappointment that the purchase had occurred, Mr Mayne then spoke to bar attendant Michelle Johnson who had sold the alcohol to Inspector Cross.
- 7) Following this discussion, Mr Mayne informed Inspector Cross that in his view there was no breach because the purchase of twenty-four (24) stubbies had occurred because Inspector Cross was with his wife. It was Inspector Cross' evidence however that at no stage did he give any indication that he was accompanied by anyone else and that apart from the fact that they arrived in the same vehicle and entered the roadhouse together, he and his wife made separate purchases independent of each other.
- 8) Evidence produced by Inspector O'Donohoe is that both Inspector Cross and Ms Johnson were of the understanding that the carton was sold as a single purchase to an individual.
- 9) In defence, Mr Mayne maintains that Inspector Cross entered the premises immediately in front of the female and that he indicated to her that he could pay for both their purchases on his key card. The Licensee maintains this gave a strong indication to Ms Johnson that the two were together and which therefore gave legitimacy to the sale of twenty-four (24) stubbies of mid strength beer, paid for by Inspector Cross.
- 10) Whilst she did not give evidence in person, Ms Johnson submitted a written statement confirming the above. Ms Johnson was described by Mr Mayne as an experienced and competent barperson who had worked for many years in remote licensed premises and whose judgement was trusted by management. Mr Mayne also described their policy at the time of the alleged breach when a customer wanted to buy takeaway liquor. Their policy was to refuse a sale to anyone who was not standing before them as they wanted to ensure the person was sober and that the correct amount was sold. If one person was at the counter, they would only get a maximum of twelve (12) takeaway beers and the carton would be halved. If two (2) persons were present and purchasing together, they would sell them a carton of twenty-four (24).
- 11) In relation to the sale of takeaway to two (2) individuals which would allow for a total of twenty-four (24) cans to be purchased, the Commission was advised that it was sold as a carton with the sale price being the carton unit price. While it would be slightly more expensive for a customer to purchase two (2) twelve (12) can units, the Commission was advised by the Licensee that a single carton transaction would occur for "economy of movement", ie not having to break up the carton.
- 12) Mr Mayne commented that he was not happy that Inspector Cross had conducted a covert operation to detect an alleged breach of licence condition. He advised that Barkly Homestead management have for years worked cooperatively with both police and licensing on liquor issues and that covert operations such as this risk damaging good relationships.
- 13) The Commission is aware that Avon Downs Police and the Epenarra Community had earlier expressed concerns over the amount of alcohol getting into Epenarra through grog running.
- 14) The covert operation taken by Inspector Cross was part of a wider operation being conducted in response to those concerns and was a means to ascertain which of the licensed premises in the region, including those as far as Tennant Creek, were selling large amounts of alcohol to Epenarra residents.
- 15) It was apparent to the Commission that regular contact was occurring between Avon Downs Police, the Deputy Director South and the Licensee over regional concerns regarding alcohol.
- 16) During the course of the Hearing it became evident that sometime immediately prior to Inspector Cross' visit, Barkly Homestead management had been advised by the Deputy Director South, Mr Chris McIntyre that the Licensee should be careful as there was a

football event over the weekend at Epenarra which could give rise to pressure for large scale alcohol sales.

Matters taken into Consideration

- 17) The Commission has given careful consideration to the perspective of the bar attendant Ms Michelle Johnson when asked by Inspector Cross if he could purchase a carton of beer. Inspector Cross has admitted that it is possible that Ms Johnson saw him and his wife getting out of the car or departing the car and entering the premises.
- 18) Inspector Cross had filled the car up with fuel at the petrol bowser and it is likely therefore that he spent some time outside giving rise to the likelihood that he (and possibly his wife) were seen by Ms Johnson prior to their entry into the roadhouse. Consistent with this Inspector Cross admitted that from areas behind the bar, including the area where fuel payments are made, there is a line of sight to the bowser area.
- 19) It is evident that in Inspector Cross' mind he was purchasing the alcohol as an individual without any association with his wife who happened to be in the vehicle with him when undertaking the covert operation on their return from holidays in Queensland. However, the Commission is not satisfied that it would have been as evident in the mind of Ms Johnson.
- 20) There is doubt in the Commission's mind that Ms Johnson viewed Inspector Cross' purchase of the alcohol as that of an individual. It is highly plausible that she assumed that the person he entered the premises with and who was standing beside him at the counter when he made the purchase was his wife and that the request for twenty-four (24) beer was therefore for both of them. Whilst a prudent and cautious barperson would have double checked whether the purchase was for Inspector Cross alone or was a joint purchase, the Commission is unable, on the balance of probabilities, to find a breach in circumstances where a reasonable assumption (albeit uncautious) could be made that the sale was being made to a couple.
- 21) A minor issue raised through the Hearing is that the licence Special Condition related to takeaway had stipulated the sale of cans, not stubbies as were sold. The problem associated with broken glass has given rise to the Commission stipulating the takeaway sales of cans only in a number of licences. It appears that in reality there has been a relaxation in requiring compliance with this requirement. This Commission intends to consider this matter more fully in the near future and either amend all such licence conditions to allow the sale of can and glass products or to reinforce the need for all sale to be in cans.
- 22) It is also worth noting that since the complaint was laid, there had been a change to the takeaway licence conditions of the Barkly Homestead and this was based on the joint approach of the Licensee and the Deputy Director South.
- 23) The new Special Condition relating to takeaway restrictions states:

"No more than one (1) carton of 375 ml mid strength or light beer per person per day for consumption away from the premises (bush orders exempt)."
- 24) This is considered a beneficial and responsible amendment as it prohibits full strength beer being sold for takeaway purposes and prevents residents from Borroloola travelling to the Homestead in order to purchase full strength beer.
- 25) The Licensee should also be commended for introducing camera surveillance at the Homestead, for implementing an ID system requiring all patrons to provide identification on purchasing takeaway liquor and for maintaining a register of takeaway purchases.

Decision

- 26) On the basis that bar attendant Ms Michelle Johnson could have had reasonable grounds to conclude on the balance of probabilities that the sale of one (1) carton of mid strength beer was for two (2) persons rather than one (1), the Commission dismisses the complaint . It warns the Licensee however that it must ensure that all staff are more assiduous in determining just how many of the people standing before them at the counter are involved in a “group purchase” prior to making the sale.

Richard O’Sullivan
Chairman

19 June 2009