

Northern Territory Licensing Commission

Decision

Premises:	Malandari Store Robinson Road Borroloola
Licensee:	Malandari Partnership
Licence Number:	80903761
Complaints:	Complaint pursuant to Section 48(2) of the <i>Liquor Act</i> – Breach of Section 102 – Sale or Supply to an Intoxicated Person
Heard Before:	Mr Richard O’Sullivan (Chairman) Mr Philip Timney (Legal Member) Mr Wally Grimshaw
Date of Hearing:	5 October 2011
Appearances:	Mr John Stewart for the Licensee Inspector Mark Wood for the Director of Licensing

Background

- 1) In a Decision handed down on 7 November 2011 the Northern Territory Licensing Commission (“the Commission”) found Malandari Store had on 29 January 2011 breached Section 102 of the *Liquor Act* (“the Act”) through its sale or supply of alcohol to an intoxicated person. This Decision required parties to lodge submissions on penalty within fourteen days.
- 2) In the decision the Commission stated:

“The Commission adds that, given the particular circumstances of this breach, coupled with the commendable changes to practices implemented by the Store in recent times, it is not minded, subject to consideration of the submissions on penalty from the parties, to impose a penalty greater than a formal caution.”

Submissions on Penalty

- 3) Mr John Stewart, on behalf of the Licensee has made submission that the Commission preliminary view should stand and that if the Commission sees fit to impose the penalty *“it should be no greater than a formal caution”*. His submission highlights the candid admission by the Licensee to the supply of liquor to an intoxicated person, Ms Jody Evans.
- 4) Mr Stewart maintains that as Ms Evans did not exhibit noticeable indicators of intoxication at the time of supply, due to her evident ability to mask the effects of such intoxication, it would require more than the experience of Mr Scragg (who served Ms Evans at the Malandari Store on 29 January 2011) to detect her evident level of intoxication.
- 5) Mr Stewart’s submission contends that the sale or supply to Ms Evans was an honest mistake on the part of Mr Scragg who had obtained his Responsible Service of Alcohol Certificate. The Licensee had illustrated its determination to comply with its licence conditions through prior refusal of service to people showing clear signs of intoxication on the day of the breach, 29 January 2011.

- 6) Mr Stewart highlighted the measures adopted by the Malandari Store to ensure its compliance with licence conditions in a challenging trading climate such as the introduction of an ID system, breath testing of customers wishing to purchase alcohol and the maintenance of an Incident Register.
- 7) Inspector Mark Wood, on behalf of the Director of Licensing, has made submission appraising the Commission that the current offence of serving or supplying an intoxicated person was a second similar offence within five months. On 9 June 2011 the Commission handed down a penalty of one day served suspension in relation to a breach of Section 102 of the Act, that is sale or supply to an intoxicated person. In this Decision the Commission also requested the Director to issue a written reprimand to the Licensee in relation to the failure of the Licensee to comply with the Responsible Service of Alcohol requirements, which constitutes a breach of the licence condition under Section 110 of the Act.
- 8) Inspector Wood's submission outlined previous Decisions where the Commission had imposed suspensions on Licensees for serving intoxicated persons.
- 9) Inspector Wood's submission includes argument over the serious circumstances of the breach under question, including:
- *"The staggering reading of 0.343% BAC, regardless of masking or levels of functionality any person with this reading has no place being supplied further liquor. Again this in itself is not relied upon as a confirmation of intoxication however it must be considered in the totality of the events and is a substantial hurdle for the Licensee."*
 - *"The staff were aware Ms Evans had been involved in an altercation and was in an emotional state, the supply of liquor would only serve to heighten emotions and potentially enflame a volatile situation."*
 - *"Only five months between like offending."*
- 10) Inspector Wood's submission does admit that the Licensee should be credited with the number of changes made to its operation which were outlined during the complaint Hearing and in Mr Stewart's submission. His submission argues *"against a regressing penalty for a second like offences"* so soon after the earlier breach.
- "It is on this basis that it is respectfully submitted the appropriate starting point must be a suspension of trade, being one day with the mitigating factors allowing the Commission leeway to not enforce the operation of the suspension. Given the changes made by the Licensee if the Commission is minded they may place a short operational period upon the penalty such as six months rather than the traditional twelve months."*

Decision

- 11) While the Commission in its initial Decision of 7 November 2011 stated it was minded, subject to submissions, not to impose a penalty greater than a formal caution, this statement was in the absence of submissions from parties and in the absence of detailed consideration of prior breaches.
- 12) Taking into account that the Licensee had committed a breach of a similar nature some five months prior to the matter currently before the Commission, the Commission is inclined to a penalty of suspension. This suspension would normally be for a period of one day served, but due to the measures the Licensee has imposed to limit the likelihood of further breaches, such as the introduction of an ID system, breath testing and establishment of an Incident Register, the Commission has determined to suspend the suspension for a period of six months commencing from the date of this Penalty Decision.

Richard O'Sullivan
Chairman

6 December 2011