Northern Territory Licensing Commission

Reasons for Decision

Premises:	Mac's Liquor Alice Springs
Licensee:	Woolworths (SA) Pty Ltd
Licence Number:	80202200
Dual Nominee:	Ms Dawn Sarah Bingham Mr Greg Testro
Proceeding:	Complaint Pursuant to Section 48(2) of the *Liquor Act*-Breach of Section 31A(5a) and Section 110
Heard Before:	Mr Richard O'Sullivan (Chairman) Ms Brenda Monaghan (Legal Member) Ms Helen Kilgariff
Date of Hearing:	15 July 2009
Date of Decision:	1 December 2209
Appearances at Hearing:	Mr Ray Murphy for the Director of Licensing Mr Tony Whitelum for Mac's Liquor
Written Submissions:	Mr Rob Jobson for the Director of Licensing Mr Tony Whitelum for Mac's Liquor

Background

1) In January 2009 a complaint was lodged with the Director of Licensing pursuant to Section 48(2) of the *Liquor Act* (the Act). The complaint was that the Licensee, Woolworths(SA) Pty Ltd had breached Section 31A(5)(a) of the Act when a staff member failed to obtain or scan the identification of seven (7) customers who purchased liquor at their Alice Springs store in the Yeperenye Shopping Centre. The hearing commenced on 15 July 2009 in Alice Springs. Detailed submissions were made by Counsel for the Director and the Licensee regarding the correct interpretation of Section 31A of the Act.

2) The Agreed Facts (summarised) are:

   a) From 15:45 to 17:00 hours on 18 December 2008, an employee of Mac's Liquor sold liquor to seventy-five (75) individuals whilst on duty at the outlet. Seven (7) of those seventy-five (75) sales were made without obtaining or scanning authorised forms of Identification from the customer as is required by Section 31A(5)(a) of the Act.

   b) When later questioned, the employee, Mr Paterson confirmed that he has received training in Responsible Service of Alcohol and in the procedure required to sell liquor from the licensed premise using the laptop/scanner provided. The employee acknowledged that he did not follow the correct procedure on the specified occasions and acknowledged that he had no reasonable excuse for failing to do so. He was later dismissed for his actions.

3) In the circumstances of the breach as outlined above, the Commission found on the balance of probabilities that there had been a breach of the Section 31A(5) of the Act and that there was no reasonable excuse to explain or justify the authorised seller's actions. A breach of the Act is also a breach of licence conditions for which the Licensee must accept

ultimate responsibility. The parties were given the opportunity to provide further oral or written submissions on penalty. These submissions have now been received and considered.

Submissions of Director

4) In summary, the Director's submissions were:

- The Licensee contested liability - albeit on interpretation of the law and not the facts. No credit can be given for an early plea or for contrition.
- The community has a legitimate interest in the electronic identification initiative for takeaway alcohol - a system designed to minimise harm caused by alcohol.
- Whilst the breach occurred as a result of the actions of an employee, the Licensee remains vicariously liable;
- This is only the second breach of these relatively new provisions in the Act. The earlier breach by another Licensee occurred some six (6) months before and the penalty imposed by the Commission on that occasion (ie a two (2) day suspension from trading in takeaway alcohol) is relevant, particularly as there is little difference between the two (2) cases.
- There is a need for a general deterrence message to be sent to Licensees generally on this issue.

Submissions of Licensee

5) In summary, the Licensee's submissions were:

- There is no evidence that the persons whose ID were not scanned we banned persons. No harm was done to the community.
- At hearing, the Licensee argued a valuable point of law only and should therefore be treated as if there were an admission at the first opportunity.
- Contrition on behalf of the Licensee was shown by the dismissal of the relevant employee and the further training required of staff in December 2008.
- The Commission should note the considerable training that the employee in question had undergone at the request of the Licensee prior to the breach including two specific training sessions on Responsible Service of Alcohol and one on ID requirements generally.
- As this is only the second breach of this section since its implementation in mid 2008, the offence is not prevalent.
- This case is distinguishable from the Todd Tavern decision as follows: Todd Tavern offended on two (2) separate days not one (1), involved two (2) separate staff not one (1), served cask wine, did not have an extensive staff training program and did not dismiss the offending staff.
- Section 31A(3)(a) and (6) contemplates a fine of up to twenty (20) penalty units to be imposed on the authorised seller. This should guide the Commission as regards the penalty to be imposed on the Licensee.
- The Liquor Regulations contemplate an infringement notice for a breach of $100. Thus the breach should be treated as minor, at least at first instance and the appropriate penalty is a fine.

Consideration of the Issues

6) The Commission notes the submissions made by both parties. There is no ability for the Commission to impose a fine and the only options available to it are licence suspensions, cancellations or licence variations. That being the case, the Commission considers that this is an appropriate case for a licence suspension to be considered. It takes account particularly of the following matters:

- The value of the electronic ID system to enforce the Commission's supply restrictions and to prevent banned people from purchasing alcohol is undeniable. The Liquor Supply Plan in Alice Springs requires the sale of only one of certain alcohol products and the electronic ID system when properly used can identify any earlier purchases of restricted products by that person during the day and alert the authorised seller to refuse the sale. The Commission must take seriously any breach of the Act and licence conditions that undermine this system. The Commission also notes the potential general deterrent value of any penalty imposed.

- There are some differences between the earlier Todd Tavern breach and the current breach being considered. The most significance difference is that the Todd Tavern breaches occurred on two (2) separate days (a Saturday and a Sunday) and involved two (2) employees whereas the Mac's Liquor breaches occurred on a single day (Thursday) and involved a single attendant.

- There are also similarities between the two (2) matters. Both premises had trained their staff in the use of the electronic ID machines and Responsible Service of Alcohol - although the training at the Todd was not as formal or extensive as that supplied by Mac's Liquor. Both premises responded when breached and arranged for extra staff training. Both premises dismissed the staff involved. Only one of Todd Tavern's employees was dismissed as it is understood that the other staff member involved in the breach had already left their employment.

- The Licensee gains no advantage or disadvantage from the fact that Mac's Liquor proceeded to hearing on questions of law rather than fact. Neither is it prejudiced.

- The Commission gives credit for the fact that Mac's Liquor provided appropriate staff training both before and after the breach and their actions in dismissing the staff member involved and instigating retraining generally showed a responsible attitude towards their duties under the Act. If the electronic ID system is to remain an effective tool however, Licensees must do more than just train their staff. It may be worthwhile for them to randomly audit the CCTV footage of takeaway liquor purchases or to undertake more visual oversight to ensure that staff are properly scanning cards etc. That is a matter for individual Licensees but the Commission's view remains that it would be a shame to see such an effective tool discredited because of the actions of lazy or inattentive staff.

Decision

7) A suspension of the Licensee's takeaway licence is imposed for one (1) day – such suspension to be served on the same day as the breach occurred being a Thursday. The suspension is to be served within the next month on a date to be advised.

Richard O'Sullivan
Chairman

1 December 2009