

Northern Territory Licensing Commission

Reasons for Decision

Licensee:	Deemat Pty Ltd
Premises:	Katherine Hotel
Licence Number:	80101789
Proceeding:	Complaint Pursuant to Section 48(2) of the <i>Liquor Act</i> . Section 31A(5)(a) of the <i>Liquor Act</i> - Failure to Scan an Approved Identification Prior to the Sale of Liquor
Heard Before:	Mr Richard O'Sullivan Mr Philip Timney Mr Walter Grimshaw
Date of Hearing:	4 October 2011
Appearances:	Mr Michael Whelan for the Licensee Inspector Mark Wood for the Director of Licensing

Background

- 1) The Commission has determined to conduct a Hearing in relation to a complaint laid pursuant to Section 48(2) of the *Liquor Act* ("the Act") against the Licensee of the Katherine Hotel in that conduct or business was carried out contrary to Section 31A(5)(a) of the Act.
- 2) Particulars of the alleged breach are that on Sunday 3 April 2011 Licensing Inspector Wood witnessed a female patron purchasing a bottle of wine without proper ID. In the purchase exchange Inspector Wood observed the woman producing defence personnel ID which the bottleshop attendant advised was not acceptable. The bottleshop attendant then used an identification card from the counter, placed it in the scanner and completed the sale.
- 3) Section 31A(4) and (5)(a) of the Act states:

*"(4)The identification must be one of the following (an **approved identification**):*

 - (a) the individual's passport;*
 - (b) the individual's driver licence;*
 - (c) any other identification approved by the Director.*

(5)Each of the following requirements is a condition of the licence:

 - (a) an authorised seller must not sell liquor to an individual without scanning an approved identification of the individual with the scanner."*
- 4) In response to the advice that a complaint had been laid the Licensee informed the Director of Licensing (undated) that staff meetings are held on a regular basis to remind staff of their duties and responsibilities in regard to the sale of alcohol. This correspondence also advised that a staff meeting had been held just five days prior to the incident. Further, this correspondence outlined that there is prominent display of a notice stating "No ID No Service" and that such a notice was positioned next to where this purchase was made.

- 5) Finally, the Licensee also advised that the staff member was dismissed from his job in the bottleshop because of his actions on 3 April 2011. The Licensee's response to the complaint attached a letter from the staff member involved, Mr Shaun Clark which stated:

"On the 3rd of April 2011 at approx 6pm a RAAF vehicle came into the drive thru and a very well dressed middle aged woman entered the bottleshop to purchase a bottle of wine.

I asked for her photo ID and she then produced a Defence ID. She was told the Defence ID was not suitable and I was asked why? I told her that it had to be a driver's licence or 18+ Card and she stated that the Defence ID had the same information that a driver's licence had on it and she had left her driver's licence at work at Tindal RAAF Base.

I identified the woman as the same person as on the Defence ID and then scanned a licence that was sitting on the counter which was not hers but of another customer who left their ID behind and completed the sale. The woman then got back in her car and left the bottleshop.

I did this because I believed her to be an upstanding member of the community and it was only an \$8.00 bottle of wine."

The Hearing

- 6) At the outset Inspector Wood advised the Commission that the complaint would proceed by way of a plea that on 3 April 2011 an employee of the Katherine Hotel did not scan ID as required for the purpose of takeaway alcohol.
- 7) Mr Whelan, on behalf of the Licensee, advised that the breach was acknowledged.
- 8) Inspector Wood then outlined the facts of the breach incident which in brief are :
- Employee Mr Clark served a female patron who supplied ID not recognised under the Act;
 - Mr Clark, after advising the patron that this ID was not acceptable, then produced another ID from the counter area and scanned it enabling the purchase to be completed;
 - The purchase was an \$8.00 bottle of wine;
 - The entire transaction was observed by Inspector Wood;
 - Following the incident Inspector Wood confirmed that the ID placed in the scanner was that of a Swiss National;
 - Inspector Wood also advised the Commission that Police took action against Mr Clark through the Courts over his illegal use of ID and that on 18 August 2011 Mr Clark was fined \$100.00 without a conviction being recorded and ordered to pay a \$40.00 into the Victim's Levy account.
- 9) Mr Whelan elaborated on the circumstances under which the bottle of wine was purchased. He advised the Hearing that the woman arrived at the bottleshop in a RAAF vehicle and produced Defence issued photo ID. The ID produced was government issued and has the same information as a Northern Territory Driver's Licence. She asked the attendant (Mr Clark) why it was not acceptable. Mr Clark identified that the woman whose photo image was on the Defence ID, was the woman at the counter. As she was only purchasing a single bottle of wine, the attendant used a Swiss National's ID, which had apparently been left behind at the bottleshop counter some time previously.

Submissions on Penalty

- 10) Inspector Wood outlined that the Licensee is a Body Corporate and is liable for the actions of its staff. Under the matter before the Commission the vicarious liability provisions of the Act under Section 123A are activated. He outlined that the Licensee, when spoken to in regard to the alleged breach, was stunned by the actions of an employee. Mr Clark's actions were unauthorised but the actions of the employee become the actions of the Licensee.
- 11) Inspector Wood tabled previous decisions of the Commission in relation to breaches of Section 31A(5)(a) of the Act. These were:
 - A Decision of 5 November 2008 (Todd Tavern) in relation to several ID breaches on separate occasions with the Licensee incurring a two day suspension at the bottleshop;
 - A Decision of 1 December 2009 (Macs Liquor Alice Springs) following a finding that seven sales were made without obtaining or scanning authorised forms of ID, the penalty imposed by the Commission was a one day's suspension.
 - Commission Decision of 17 June 2010 (Stuart Hotel) in relation to a breach of the Act where a person presented false ID in order to purchase takeaway. Commission issued a reprimand to the Licensee.
- 12) In relation to the degree or severity of the breach, Inspector Wood acknowledged that no harm arose from Mr Clark's action. Additionally he advised that this was a first offence of this nature by the Licensee and there is mitigation in relation to the breach due to the acknowledgement and plea by the Licensee.
- 13) Inspector Wood referred the Commission to a series of other breaches in recent times by the Licensee relating to serving intoxicated and minor on the premises. Taking all matters into account his submission was that the Licensee be given a two day suspension of the bottleshop and for the two days to be fully served.
- 14) Mr Whelan informed the Commission that the Licensee was "*stunned*" by the actions of the staff member in using another person's ID to complete the transaction. A staff meeting had been convened five days earlier over staff responsibilities in conforming with the *Liquor Act* requirements, including warning staff of the repercussions of failing to comply with the scanning requirement.
- 15) He advised the Licensee took this matter most seriously and as a result of required procedures not being followed the staff member had been dismissed, as he had been warned would happen in such a circumstance. The customer who was served had produced ID inclusive of photograph but under the Act this ID was not valid, even though it contained the same information as a driver's licence.
- 16) He submitted the sale was only for a single \$8.00 bottle of wine. A sale without ID authorisation was also out of the ordinary and an isolated breach of procedure where, under testing conditions, the employee took it upon himself to complete the sale.
- 17) He advised that the previous penalties referred to by Inspector Wood related to repeated actions in breach of ID requirements by Todd Tavern and Mac's Liquor Alice Springs were far more serious and the frequency of breach in those matters represented a frolic.
- 18) He added these previous breaches referred to are far more significant than the one breach which has occurred in this instance which was based on a customer presenting a government issued ID not authorised under the Act. He referred to a media statement by the Minister in relation to use of ID for the recently introduced Banned Drinkers Register where advice to bottleshop attendants was to use common sense. He referred to the reprimand imposed on the Stuart Hotel over the misuse of a KRALAS card. He added that

the Licensee did all they could to make this ID requirement work and that a Licensee never has 100% control over its employees 100% of the time.

- 19) He submitted that a two day served penalty was too severe in the circumstances and that a reprimand was a more appropriate warning and penalty.

Consideration of the Issues

- 20) The offence occurred on 3 April 2011 before implementation of the Banned Drinkers Register introduced on 1 July 2011 and the related ID scanning requirements. It was a breach of an ID scanning requirement which government introduced to help enforce a Katherine Liquor Supply Plan which places restrictions on alcohol product and volume able to be sold as takeaway. The ID scanning requirement also enabled persons not authorised to purchase alcohol to be excluded from the ability to purchase alcohol.
- 21) The Commission has been presented with an instance where a person has presented at a bottleshop with a government issued ID for the purchase of a single bottle of wine. Evidence presented to the Commission was that the Defence ID photograph matched that of the patron. On this basis the staff member took it upon himself to complete the transaction by scanning in an authorised ID, but not one belonging to the patron presenting at the bottleshop.
- 22) The Commission is mindful of the necessity to comply with the ID conditions of the Act. It is also mindful that the integrity of the use of ID underpinned to a considerable degree the success of a government programs to deny alcohol to non-authorised persons, and restrict the product and volume, especially in relation to cask wine, to comply with an Alcohol Supply Plan operative in the Katherine region.
- 23) However, in assessing this matter which appears to have occurred in isolation and as a one off incident, the Commission can understand how a person might be sympathetic to the plight of a customer who has produced genuine government photo ID, but an ID which is not authorised under the Act for the purchase of alcohol.
- 24) The staff member could experience some duress in such circumstances, particularly when the intended purchase is for a limited amount of alcohol, in this case one \$8.00 bottle of wine.
- 25) In recognising the breach the Commission is also aware that the Licensee has undertaken very strong endeavours to minimise the potential for any breach of the ID requirements. The staff member in question, Mr Clark, has suffered double jeopardy in regard to his penalty as he has not only lost his employment at the Katherine Hotel but has also been prosecuted in the local Court and been fined \$100.00 without a conviction being recorded. This action alone would present a deterrent to other staff members from selling alcohol without lawful ID.
- 26) Under these circumstances the Commission is not minded to impose the penalty suggested by Inspector Wood but rather is more inclined to the penalty submission by Mr Whelan which was that a reprimand would be an appropriate penalty in the circumstances.

Decision

- 27) The Commission determines a reprimand is the appropriate penalty in the circumstance of this breach by the Katherine Hotel. This reprimand will be issued under separate cover by the Chairman of the Licensing Commission.

Richard O'Sullivan
Chairman

2 November 2011