Northern Territory Licensing Commission

Reasons for Decision

Premises:	Lazy Lizard Caravan Park
Licensee:	Jan Bruce
Licence Number:	80316511
Proceeding:	S 48 Complaints
Date of Hearing:	28 April 2004
Date of Decision:	28 April 2004
Decided By:	Mr John Withnall (Presiding Member)
Appearances:	Ms Jan Bruce in person

1. By Commission decision published on 30 August 2003 the hearing of complaints made against the Lazy Lizard Caravan Park by the nominee of the Pine Creek Hotel was adjourned sine die. The Commission subsequently met on 18 December 2004 to consider relevant investigative material furnished by the Director of Licensing in pursuance of the Commission's request made within that decision. As an outcome of that meeting a letter dated 14 January 2004 was despatched by the Commission to the licensee of the Lazy Lizard in the following terms:

> Ms Jan Bruce
> Lazy Lizard Caravan Park
> P.O. Box 186
> Pine Creek NT 0847
>
> Dear Mrs Bruce
>
> **Re: Adjourned hearing of complaints**
>
> On 30 August 2003 the Commission by written decision adjourned the hearing of a number of complaints against the operation of your liquor licence pending further investigation and possible resolution without the need to reconvene the hearing.
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> The Commission through the Director of Licensing subsequently received a detailed letter from solicitor David Francis on your behalf, and on 1st December 2003 received a letter from yourself with two attachments, one of which was a letter from Mr Rod Haines as to his role in the cane toad racing that was in part the subject of the complaint.
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> At its meeting on 18th December 2003 the Commission considered the correspondence before it and came to the conclusion that
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> - there was no case to hear on the complaints as to signage and your predominant trading appearance, and no further action by the Commission was warranted in that respect;
> - no further action by the Commission was currently warranted on the complaint as to the involvement of Mr Rod Haines in the operation of the licence; and
> - on the material received from Mr Francis and on the personal account of Mr Haines as to his role in the toad racing events complained of, there was a case

to answer on one of the toad racing events having been in breach of the restriction in your licence against raffles and gambling events.

Your liquor licence restricts gambling, gaming, wagering or raffling facilities or events. The only permitted exceptions are raffles conducted by charitable, sporting or other non-profit organisations so long as such raffles are run directly by members of the non-profit organisations for whose benefit they are being conducted. Even if the toad racing can be categorised as the conduct of a raffle, it is clear on the material provided to the Commission that Mr Haines was not a member of the Pine Creek Sports & Social Club. Being *authorised* to conduct the event on behalf of an organisation is not the same as being a *member* of it.

In the expectation that any future toad racing events will be conducted, if at all, in a manner that will not contravene the restrictive licence condition, the Commission is prepared to resolve and finalise this matter without further hearing by simply recording the breach should you be prepared to formally admit that the breach has occurred. That is, if you write back to the Commission acknowledging that the toad racing event conducted on behalf of Pine Creek Sports & Social Club was in breach of the trading conditions of your licence, the Commission will take no further action other than recording the occurrence of the breach. That will then be the end of the matter.

The recording of the breach means that no penalty is imposed, but in the event that sometime in the future some other complaint against you were to be upheld, you will not be able to claim at that time an unblemished prior record. (This is said only in explanation of the process; the Commission has no knowledge or expectation of any further complaint being made against you).

If you should wish to defend this one aspect of the complaint that is still on foot, the Commission will reconvene the hearing, and the foregoing offer to record the breach without penalty is without prejudice to the outcome of any such hearing.

2. Following the submission of some further material by Ms Bruce, she indicated that she was not prepared to accept a “black mark” on her record, and sought a hearing as invited.

3. At the hearing Ms Bruce relied largely on minutes of a meeting of the Pine Creek Sports and Social Committee Inc. recording the attendance of Mr Haines, and on a letter from the President of the Association. That letter is now reproduced verbatim:

Pine Creek Sports and Social Committee Inc.
P.O Box 180 Pine Creek
Northern Territory, 0847
13-02-2004

To whom it may concern,

I Micheal Tranter, president of the Pine Creek Sports And Social Committee Inc, would like to clarify current constitution requirements of elected and non-elected

members. Pine Creek Sports And Social Committee Inc, is a non-profit Incorporation.

There are five elected members ,and all adults over the age of 18 that reside in the Pine Creek community are also members. Rod Haines and Jan Bruce are members of the committee but are not elected members and can support/contribute/volunteer and donate there time to help Pine Creek Sports and Social events throughout the calendar year.

In regards to the Lazy Lizard, Rod Haines attends many of our meetings to contribute and discuss ideas for community events. His input to the Pine Creek Sports And Social Inc is very valuable, as rod has many ideas to help fundraise

money, as we are a non-profitable Incorporation and a small community town who depend on one another to make Sports and Social Events happen. This is why we depend on the whole community for there input/ideas/donations for survival, without these members we would be obsolete.

Kind Regards

Micheal Tranter
President.

4. In order for the licensee to be able to establish the cane toad racing events as falling within the permitted exemption from the licence condition prohibiting "gambling, gaming, wagering or raffling facilities or events", Mr Haines the organiser needed to have been a member of the Pine Creek Sports and Social Committee Inc., the "charitable, sporting or other non-profit organisation" conducting the event, and the event itself needs to be able to have been characterised as a raffle rather than any other type of gambling or gaming event.

5. Ms Bruce maintains that she genuinely believed that both she and Mr Haines were members of that Association, and in light of the above letter from the President of the Association I accept the truthfulness of her evidence in that regard. The second paragraph of Mr Tranter's letter, although confusing, certainly provides a foundation for Ms Bruce' belief. In the circumstances, the licensee should be allowed the benefit of any doubt.

6. I also note with approval that Ms Bruce and Mr Haines have now formally become "elected" members of the Association in order to dispel all doubt in the future.

7. As to whether the events are in the nature of being raffles rather than any other sort of gambling gaming or wagering events, I am told that the system is that participants "buy" a toad for the event from a pool of the animals collected by the organiser. The total of the "purchase" prices forms the entirety of the pool of prize money. The participation of the new toad owners thereafter is restricted to watching the "race" as the toads are released from under a bucket in the centre of a marked circle and head for the circumference. After several heats and a final, owners of winning and tailender toads receive half the prize pool, the organising non-profit Association gets the other half. No other opportunity exists for anybody to make money on or from the event in any other way. No betting or wagering takes place with or through the organiser, or on the side. I accept Ms Bruce's evidence that she has never seen any betting take place, and would put a stop to it if she did.

8. Toad racing is thus difficult to categorise. It is probably more a sweepstakes than anything else. A raffle is basically a type of lottery where the prizes are normally goods rather than money, but this need not always be the case.

9. I note too that a lottery constitutes "gaming" for the purposes of the *Gaming Control Act.* However, whether or not toad racing is gaming for purposes of that *Act* is irrelevant to determining whether it is in breach of a liquor licence condition that prohibits all gaming unless it can be categorised as a particular type of gaming.

10. In terms only of the liquor licence conditions, on the basis of what Ms Bruce has put to me toad racing seems to have been closer to the concept of a raffle than to the types of commercial operations intended to have been caught by the general prohibition, and certainly at an acceptable remove from such commercialism. If not technically a raffle by strict definition the toad racing in my view has nevertheless been the sort of amateur event run by a local non-profit Association that can fairly allow it the benefit of the exemption, and on balance I find that the toad racing events complained of should not be held to have constituted a breach of the liquor licence conditions.

11. I therefore conclude the matter by dismissing the complaint.

12. In conclusion I carefully emphasise that I have ruled only on the complaint issue that was before me. All I have determined is that the licensee will not be held in breach of the conditions of the liquor licence for having allowed the conduct of the toad racing events. That is all. I sound this caution because in between delivering this decision ex tempore and recording these reasons some twenty four hours later my attention has been directed to several media items which give the impression that this decision amounted to a declaration of the legality of toad racing at the Lazy Lizard. I personally overheard Mr Haines on ABC Radio agreeing with an interviewer's prompt that the decision "clears the way" for toad racing to re-start.

13. I have had neither the brief nor the jurisdiction to declare cane toad racing at the Lazy Lizard to have been lawful. I have simply held that the liquor licence conditions did not prohibit it. The conduct of toad racing may well require further legitimation under legislation other than the *Liquor Act*. I particularly speculate whether the events might constitute calcuttas or sweepstakes requiring the conducting association to have the approval of the Director of Licensing under s.52 of the *Gaming Control Act,* an issue not within the jurisdiction of the Commission.

14. The broader legal implications of staging toad races must remain a matter for the licensee and the conducting Associations.

John Withnall
Presiding Member

29 April 2004