# Northern Territory Licensing Commission

## Reasons for Decision

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| **Premises**: | The Victoria Hotel<br>Smith Street Mall<br>Darwin NT 0800 |
| **Licensee**: | MINKIE (NT) Pty Ltd |
| **Licence Number**: | 80300989 |
| **Nominees**: | Mr Russel Wilkes and<br>Mr Andrew Chigwidden |
| **Proceedings**: | Pursuant to Section 48(2) of the *Liquor Act*<br>Breach of Section 102-Service Intoxicated Person (2 x Counts)<br>Breach of Section 110-Licensee to Comply with Conditions-Failure to Display Prominent Notice (Condition 2 of the Liquor Licence) |
| **Heard Before**: | Ms Merran Short (Presiding Member)<br>Mrs Jane Large<br>Mr John Brears |
| **Date of Hearing**: | 10 July 2008 |
| **Appearances**: | Mr Rex Wild QC with Mr D Crowe for Licensee<br>Mr P Timney for Director of Licensing |

## Background

1. On 2 May 2008 the Licensing, Regulation and Alcohol Strategy Division of the Department of Justice ("Licensing and Regulation") participated in a joint inter-agency operation ("the Operation") with Northern Territory Emergency Services including Northern Territory Police ("the Police"), and Northern Territory Fire Service ("NTFS") as well as the Office of Work Health and Safety ("Work Health"). The purpose of the Operation was to have all agencies visit a number of licensed premises in the one night to audit compliance with the various legislative requirements for each agency.

2. As part of this Operation, Inspectors from Licensing and Regulation attended at licensed premises to undertake inspections as to compliance with inter alia the *Liquor Act* ("the Act") the *Gaming Machine Act* and the *Private Security Act.* During the audit undertaken at the Vic Hotel Inspectors noted two (2) breaches of the Act and subsequently laid a Complaint to the Northern Territory Licensing Commission in respect of same ("the Compliant").

**3. Component 1 of the Complaint**

1.1 At approximately 23.00 hours, as part of the Operation, Licensing Inspectors observed two (2) patrons at the downstairs bar area of the Victoria Hotel ("the Hotel"). Both patrons demonstrated signs of significant intoxication.

1.2 A short time later, the Inspectors observed a female bar person serve one of the patrons with a premix bottle of Jim Beam.

1.3 An Inspector then observed one of the patrons take a swig from the bottle.

1.4 Sometime later, the female barperson admitted to the Inspectors that she had served liquor to the patron.

1.5 The patron was subsequently detained by Police due to his level of intoxication.

**Component 2 of the Complaint**

2.1 On 2 May 2008, at approximately 22.50 hours, Inspectors from Licensing and Regulation observed that a Prominent Notice required to be displayed in accordance with condition 2 of their Licence was not displayed on the front of the Hotel premises.

Condition 2. provides:

"*2. The Licensee shall erect and maintain a prominent notice the size and type satisfactory to the Director specifying:*

- *The Full name of the Licensee, the Nominee (where the licence is held*
- *by a body corporate) and the licence number;*
- *The hours between which liquor shall be sold;*
- *Subject to the conditions of this licence, liquor will not be sold to*
- *persons under the age of 18 years of age;*
- *That the licence and its conditions are available for inspection."*

2.2 The Duty Manager, Mr Oliver Herber, accompanied Inspectors outside and advised that he did not know the whereabouts of the Prominent Notice.

4. By letter dated 27 May 2008 the Licensee of Liquor Licence Number 80300989 ("the Licence") of licensed premises known as the Victoria Hotel ("the Vic") was notified of the complaint pursuant to Section 48(2) of the Act. On 27 June 2008 Mr Des Crowe on behalf of the Vic advised the Director that the Licensee wished the matter to proceed to Hearing before the Northern Territory Licensing Commission ("the Commission") as soon as possible.

## Submissions

5. At Hearing Mr Wild QC ("Mr Wild") appeared for the Vic instructed by Mr Crowe. Mr Wild submitted on behalf of his client that the facts as alleged were not disputed but he did have submissions in mitigation. Mr Wild said that one of the impacts of the Operation was that senior staff were taken away from managing the bar area to deal with the Officers involved in the Operation and their requests to audit the Hotel. This in turn meant that there was no senior staff watching the bar staff and the bar area generally for a period of time. Although it was not specifically stated it is apparent from the statements that Inspectors observed the service to the intoxicated person during the operation so the Commission can surmise that the timing of the incident was during the time senior staff were away from the bar, although this in no way excuses the actions of the bar staff in serving the intoxicated patron.

6. The bar person responsible was a Dutch National who was backpacking in Australia and who had worked at the Vic for approximately two (2) weeks and she had moved on by the time of Hearing. However the Licensee had the foresight to at least seek a statement from her to present to the Commission, Exhibit 1. The Commission heard that the bar person did have approximately one (1) year's prior bar work experience and when interviewed by Inspectors she told them that she thought the intoxicated patron was "blind". When asked to explain she clarified that she thought he *"couldn't see, and that's what I thought was wrong with him"*. She went on in the interview and said she had not received any training when she commenced at the Hotel however this statement was made clearer by her further statement, exhibit 1, in which she states that:

> *"On the Friday night, I read the running sheet and a portion of it explained the importance of not serving intoxicated patrons and my last week at the Vic, I read several running sheets that talked about this subject."*

7. The running sheet referred to by the bar person was tendered by Mr Wild and is Exhibit 2. Exhibit 2 is a one page flyer that the Commission heard is given to all staff every night before their shifts, the page is written in fun somewhat light language, however the message is clear, it gives directions to staff including senior staff, called 'captains' to ensure customers are dealt with in a friendly manner and the Hotel standard of service is maintained as well as other directions not relevant to these proceedings however what is relevant is the warning that:

> *"Intox is an ongoing issue at the Vic, bartenders need to take notice of who they are serving and how drunk they are. Again captains need to be monitoring your room and the patrons in it and their level of intoxication…"*

   It goes on to warn of the possible consequences of serving intoxicated patrons. What is of interest to the Commission is the focus of the flyer on the responsibility of the captains to oversee their areas and keep an eye out for levels of intoxication. On this occasion due to the Operation, it is Mr Wild's submission that senior staff or 'captains' were away from their posts or areas dealing with the audit that was being undertaken as part of the operation. The Commission, whilst not excusing the service of intoxicated patrons does on this occasion, accept that this may well have impacted upon this particular incident and had the 'captain' been at their post they may well have spotted this patron as being intoxicated and prevented the service of alcohol to them. This is an assumption by the Commission but given the Vic's prior unblemished record the system they had in place appeared to work.

8. Nonetheless, following this incident the Vic introduced a new document that they now require to be signed by all bar staff, old and new, called the "Vic Hotel Intoxicated Patrons Agreement" ("the agreement"). This agreement sets out inter alia, that there are "strict laws" in the Northern Territory, that all staff must complete a Responsible Service of Alcohol ("RSA") course within three (3) months of commencing work at the Vic (RSA courses are only conducted every three months in Darwin), the signs of intoxication and what to look for, not to serve if the patron looks intoxicated either with alcohol or any other substance, that the responsibility lies with the bar person to monitor every patron to ensure they are in "good condition" while they are at the Vic, and how to deal with the situation when it arises. It is also written in bold that if staff are not sure "do not serve the patron." It even goes so far as to encourage all staff to look out for each other and if they spot anything that concerns them to contact security or bar captains. An offer is made for any queries regarding the responsible service of alcohol to be directed to management of senior staff. Finally, bar persons must sign and date the agreement acknowledging that they have read and understood.

9. As stated this has been put in place as a result of this incident and the Commission commends the Vic for taking such action, in particular the Commission considers the fact that the focus of this flyer is aimed at the bar persons as a positive step. That is not to say that bar persons working at the Vic were devoid of responsibility but rather the new flyer emphasises the important role they have in ensuring that licence conditions and relevant laws of the Northern Territory are met.

10. As to Component 2 of the Complaint the failure to display the Prominent Sign, Mr Wild said that it was not a trivial offence however he did point out to the Commission that there were in fact five (5) signs out the front of the Hotel leaving no doubt to those that entered that it was a public hotel that they were entering and indeed the only information not displayed were the opening hours as required to be included in the Prominent sign.

11. Mr Wild also submitted that the Hotel is a premier place for young persons to go, in particular it is popular with backpackers. The number of staff on the books at any one time varies between 35 and 40, but over the last six months the total number of staff employed has been between 270 and 300 in total, so staff turnover is a problem. This in turn makes it

difficult to have all staff complete an RSA course prior to beginning work because as stated above it is only conducted every three months. Mr Burns is the sole Director of the Licensee Company and has been involved with the Vic and other licensed premises in Darwin since 1993. Prior to that Mr Burns had the Daly River Hotel, despite this long involvement Mr Burns has an unblemished record so as the Commission is concerned and the Licensee also has a clean record under this Licensee. In addition Mr Burns has been the President of the Australian Hoteliers Association for ten (10) years and has a long record of cooperation and support with Licensing and Regulation, the Commission and other community groups or committees whose focus is to improve the liquor industry in general. In addition Mr Burns has made a significant contribution to the Northern Territory and was the Northern Territory/South Australian Entrepreneur of the Year in 2008.

12. As a final matter Mr Wild advised the Commission that the Vic was up for sale and in fact the incident leading to this Complaint took place three (3) days prior to the settlement date for the transfer of the Vic and as such the transfer has been delayed which in turn has lead to significant financial loss to Mr Burns. Whilst this is not a matter that is necessarily relevant to these proceedings it is a matter that the Commission may have regard to when considering an appropriate penalty.

13. In conclusion Mr Wild submitted that the Commission ought to take into account the following matters in mitigation of the offence –

    - Mr Burns' prior unblemished record;
    - The Licensees prior good record;
    - Mr Burns' contribution to the community;
    - The admission of the breach at the first possible opportunity;
    - The nature of the offence, which is to be distinguished from sale of takeaway which is a far more dangerous offence;
    - The steps taken since;
    - That senior staff were otherwise involved at the time dealing with the various requests of the officers as part of the Operation;
    - That all senior staff and Directors appeared before the Commission indicating that they took this matte seriously.

14. In light of the above Mr Wild submitted that an appropriate penalty was a formal letter of reprimand by the Commission.

15. Mr Timney, on behalf of the Director, confirmed the unblemished record of the Vic and Mr Burns personally, he accepted that Mr Burns and the Licensee had been cooperative, the guilty plea at the first opportunity that the licence was to be transferred shortly and was only delayed pending the outcome of this Hearing. Additionally, Mr Timney advised the Commission that court proceedings would likely result from the breach and a financial 'penalty' would likely be imposed. Overall Mr Timney supported the submissions of Mr Wild and agreed that a formal letter of reprimand was appropriate in the circumstances.

16. The Commission bearing in mind that the transfer of the Vic Hotel was being delayed pending the outcome of this Hearing determined to hand down an oral finding on the day of the Hearing with full reasons for the decision to be published in due course.

## Consideration of the Issues

**Component 1 of the complaint:**

17. The Commission in recognition of:

- the unblemished record of the Licensee;
- Mr Burns' unblemished record;
- the steps taken since the breach in recognition that the Vic could improve on the procedures they were doing before the breach;
- that the Vic did have procedures in place which have obviously held the hotel in good stead up until this breach and contributed to the unblemished record since 1993, however that in light of this breach they have implemented an improved system to place more responsibility on the bar staff rather then relying on the senior staff;
- the unusual circumstances of senior staff being away from the bar area dealing with officers involved in the Operation;
- the nature of the offence itself;
- distinguishing this sale from a sale of takeaway which is a far more dangerous option;
- that all senior staff and Directors appeared before the Commission indicating that they appreciated the seriousness of the breach;
- the admission at the first opportunity.

**Component 2 of the Complaint:**

18. As to the Prominent Notice not being displayed the Commission is of the view that in circumstances where there were five (5) other signs displayed at the front of the Hotel that provided all the information necessary to advise persons entering that it was a public bar, except the opening hours, the Commission finds that whilst the failure to display the Prominent Notice was a technical breach no harm ensued.

## Penalty

19. Mr Wild submitted that a formal letter of caution was an appropriate penalty in the circumstances and Mr Timney agreed with that submission.

20. The Commission determines to impose no penalty regarding Component 2 of the complaint.

21. As to the Component 1 of the Complaint the Commission took into account the factors set out in paragraph 17 above, the fact that Court proceedings are still likely to proceed against Minke (NT) Pty Ltd and the submissions of both Mr Wild and Mr Timney and determined to impose a penalty in the form of a letter of reprimand.

## Decision

22. The Commission directs the Director to send a formal letter of reprimand to the Licensee and Nominee the wording of the letter to be left to the Director's discretion.

23. That the letter of reprimand be placed on the Licensee's file to be considered by the Commission if there be any further breaches by the Licensee.

Merran Short
Presiding Member

24 July 2008