Northern Territory Licensing Commission

Reasons for Decision

Premises:	Liquorland Casuarina
Licensee:	Liquorland (Australia) Pty Ltd
Licence Number:	80900175
Proceeding:	Complaint Pursuant to Section 48(2) of the *Liquor Act* Regarding Service of Liquor to a Minor
Heard Before:	Mr Richard O'Sullivan (Chairman) Ms Merran Short Ms Jane Large
Date of Hearing:	28 May 2008
Appearances:	Mr Phil Timney for the Director of Licensing Mr Peter Elliott for the Licensee

1) A complaint has been lodged by the an Inspector of Licensing and Regulation ("the Inspector") against Liquorland (Australia) Pty Ltd Casuarina Northern Territory ("Liquorland") alleging a breach of Section 106C of the *Liquor Act* ("the Act"). The substance of the complaint is that on 22 December 2007 at 19.18 hours a sixteen (16) year old (DOB: 27 June 1991) ("the Minor") was sold a 700ml bottle of Bundaberg Rum along with two 2 litre bottles of coke in breach of Section 106C.

2) Section 106C of the Act provides:

> *"106C Supply of liquor to minors*
>
> *A person who has attained the age of 18 years shall not sell or supply liquor on licensed premises to another person who has not attained the age of 18 years except where the first-mentioned person is the licensee of the licensed premises, or a person employed by the licensee, and –*
>
> *(a) the liquor is sold or supplied on licensed premises or any part of licensed premises that are the subject of a declaration for the purposes of section 106(1) (b);*
>
> *(b) the person to whom the liquor is sold or supplied is in the company of his parent, guardian or spouse (who has attained the age of 18 years); and*
>
> *(c) the liquor is sold in conjunction with or ancillary to a meal supplied on the licensed premises."*

3) This information was received from the mother of the Minor after he was found wandering the car park of the Casuarina Sports Club at 21.00 hours. In the statement accompanying the Complaint the Minor was described by his Mother as *"being delirious and so intoxicated that he fell onto the bonnet of his Mother's car and could not locate the door handle to enter the vehicle."*

4) Camera Surveillance footage was obtained from Liquorland ("the CCTV footage"). The matter was not prosecuted before the Courts as the mother was unwilling to participate in the prosecution. Therefore the Director of Licensing and Regulation ("the Director") proceeded by way of complaint before the Licensing Commission. ("the Commission").

5) On 25 January 2008 a letter setting out the substance of the Complaint was sent to Ms Alison Tehan ("Ms Tehan") the Licensing and Regulatory Manager of Coles Liquor, the parent company of Liquorland a copy of that letter was also sent to the then Nominee of Liquorland Mr Mark Forbes ("Mr Forbes").

6) On 11 February 2008 Ms Tehan sent a letter to the Director responding to the Complaint. Although, as Mr Timney correctly pointed out at Hearing, Ms Tehan does not technically admit a breach of Section 106C of the Act in her letter, Mr Elliott advised the Commission that the *"Licensee always admitted the breach and did so immediately upon making enquiries into the circumstances of the breach".* Mr Elliott advised the Commission on behalf of his client that Liquorland accepted without reservation that a breach of the Act had occurred.

Submissions of Mr Timney

7) Mr Timney submitted that as was apparent on the CCTV footage there was more than one (1) staff member at the counter, there were three (3), none of whom checked the ID of the Minor, in fact it emerged that the Minor was when he came to the counter with the 750 ml bottle of Bundaberg Rum and a two (2) litre coke was told there was a two (2) for one (1) deal on the coke and is seen on the CCTV footage to go back to the fridge and get another two (2) litre bottle of coke. Now that is not relevant to the Complaint except that it is clear that the Liquorland staff engaged in conversation with the Minor before he purchased his liquor, meaning they had a longer period of time over which to assess the Minor.

8) It was Mr Timney's submission that the aggravating factors in the case were that:

   - The Minor was only sixteen (16) years and six (6) months at the time of the breach and although he was a tall lad he did not look eighteen (18) years old;
   - The possible consequences could have been (and arguably was) very serious, the Minor was obviously very intoxicated when picked up by his mother and if he had not been picked up when he was the outcome could have been catastrophic;
   - Casuarina is notorious for anti-social behaviour which could have negatively impacted upon the Minor;
   - The Minor was advised of the special deal on the coke and therefore the staff had plenty of time to assess his age;
   - There has been a national push to prevent underage drinking.

9) In fairness, Mr Timney on behalf of the Director submitted that in Liquorland's favour they:

   - Had no priors;
   - Pleaded guilty at the first available opportunity;
   - Had counselled the staff following the breach;
   - Liquorland had commendable procedures in place, although staff training broke down here.

10) Mr Timney referred the Commission to prior cases and likened this breach closest to the decision of *Berrimah Supermarket.*

Submissions of Mr Elliott

11) Mr Elliott, on behalf of Liquorland, submitted that Liquorland had always admitted the breach and did so immediately upon making enquires with their staff and accepted without reservation the breach had occurred.

12) Mr Elliott advised the Commission that at the time of the breach it had been Liquorland policy to ask for identification if the patron looked younger than twenty-one (21) years of age but that policy had since been amended to patrons that looked twenty-five (25) or younger were to be asked for identification. In answer to the complaint Mr Elliott said that:

- Liquorland was really embarrassed,
- That they had a 100% turnover in staff since that time and that none of the staff involved in this breach were still there but not necessarily as a result of this breach;
- They try to ensure that Licence conditions are met at all times;
- There has never been a complaint against them before;
- Liquorland are responsible corporate citizens who have procedures in place to train staff for 6 hours some of that time is spent on the responsible service of alcohol;
- That despite their Licence not requiring Liquorland to do so they will require all Liquorland staff to undergo Responsible Service of Alcohol training from January 2008. This was a policy Liquorland planned to put into effect from 1 January 2008 and not as a result of this breach.
- Liquorland regularly co-operate with Government and Regulatory Authorities as well as attending meetings and sitting on committees regarding the responsible service of alcohol. They participate on the Victorian Liquor Advisory Council, the Northern Territory Liquor Consultative Committee and similar bodies in New South Wales and Queensland. As well as being heavily involved with the Federal Government at both a Federal and Northern Territory Government level.

13) In response to the submission regarding the two (2) for one (1) offer on the coke Mr Elliott submitted that although it lengthened the staffs' interaction with the Minor the interaction was limited to the coke and not reliant upon purchasing the liquor.

14) As to Mr Timney's submissions of the circumstances of aggravation, Mr Elliott says the outcome is not an aggravation but rather built into the Section of the Act in that Parliament recognises the social ill of underage drinking. Further, that this was not a case of a systemic or regular breach of licence but rather an ad hoc breach by a responsible license holder when it is considered the hundreds of thousands of customers they serve each year.

15) As to penalty, Mr Elliott submitted that suspension was not necessary because Liquorland has already made changes and said *"although there will never be a situation that staff will never get it wrong this licensee does a really good job in the circumstances."*

16) Finally, in responding to a submission made by Mr Timney, quoting from the Tiwi Supermarket case, that *"one of the Commission's main reasons for imposing sanctions is because they act as a deterrent to other Licensees in the industry and assist in emphasising that breaches will not be tolerated."* Mr Elliott contended that deterrence is not the only aim in sentencing and here the Commission ought to exercise its discretion and recognise that changes had been made and this was not a circumstance that attracted sufficient weight to attract a suspension.

Sale of Alcohol to a Minor

17) A former Chairman of the Licensing Commission previously advised the liquor industry that "Licensees who served minors or drunks or who are found to be blatantly breaching their licence conditions must accept the consequences of their actions". There is no evidence that this was a blatant breach and there is evidence before the Commission that procedures are in place including training and it is intended all Liquorland staff will be trained in the Responsible Service of Alcohol from 1 January 2008. Nevertheless, this breach occurred on the Saturday night before Christmas which Liquorland could well have

expected to be a busy time for them yet the staff on duty at that time were all young and relatively inexperienced. Further, the then Nominee of Liquorland was not on duty and although a Nominee is not required to be on duty at all times, it is the view of the Commission that the Saturday before Christmas would be recognised as a busy time and it might have been prudent that either the Nominee or someone experienced or more senior was available. Whilst the Commission accepts Liquorland's submission that getting and keeping experienced staff is difficult, the obligation to ensure the safety of the public, in particular minors, must outweigh such a concern. If that means that the Nominee is on site or greater emphasis is paid to training staff or making the positions more attractive then so be it. As stated above, this Commission has said previously that those premises that serve liquor to minors must accept the consequences of their actions. That is so irrespective of the reasons for the breach.

18) In this case the Minor was so intoxicated when collected by his mother that he could not find the door handle of her car. The bottle of Bundaberg rum was presented to the Commission and there was only about 3-4 centimetres left in the bottom. This Commission must assume that the remainder was consumed by the Minor between 19.18 hours when he purchased the liquor and about 21.00 hours when he was found wandering the car park, a period of one hour and forty minutes such consumption placed the Minor at extreme risk.

Matters Taken into Consideration

19) In reaching its decision the Commission considered the following matters:

- The age of the Minor;
- The procedures in place at the time at Liquorland and changes made since (although as acknowledged not due to this breach);
- The complete failure by staff to ask for identification despite the fact the Minor did not look eighteen (18) years of age and the interaction they had with him by offering the two (2) for one (1) deal on the coke;
- The danger posed to the Minor by being allowed to purchase liquor and consuming it alone in the Casuarina car park area;
- The Commission's public view on underage drinking;
- The active and positive steps taken by Liquorland including participation and contribution made by Liquorland to Governments in support of a safer liquor industry;
- Admission of the breach was made at the first opportunity;
- The unblemished record of Liquorland and the implementation of the programme to ensure all staff working in Liquorland stores have completed a Responsible Service of Alcohol course.

Submissions on Penalty

20) As stated above Mr Timney called for a suspension and Mr Elliott argued that in light of the changes made since the breach a suspension was not necessary and asked that the Commission exercise their discretion not to impose a suspension in the case.

Decision

21) The Commission was considering imposing a penalty of five (5) days suspension of the take away licence at Liquorland but discounted this due to the prior good history of Liquorland Casuarina, the positive changes made since the breach, that admission of the breach was made at the first opportunity and decided to impose a two (2) day suspension

for serving a minor, with one (1) day to be served and one (1) day to be suspended, and served should there be any breach of the Act or Liquorland Licence conditions within a period of twelve (12) months from the date of this decision. The date of the suspension to be served is to be determined by the Director.

Richard O'Sullivan
Chairman

16 July 2008