

Decision Notice

Matter:	Contravention of the <i>Liquor Act</i>
Premises:	Monsoons
Licensee:	Tropics Holdings Pty Ltd
Legislation:	Section 121(1) of <i>the Liquor Act</i>
Decision of:	Delegate of the Director-General of Licensing
Date of Decision:	9 September 2016

Background

1. On Sunday, 3 July 2016, at approximately 20:20hrs, whilst conducting a licenced premises check at Monsoons, a Senior Compliance Officer (SCO) observed a male (*'the male'*) appearing drowsy and unsteady while seated where he required the assistance of a friend to steady himself.
2. The SCO, upon making his observations, brought the matter to the attention of the Monsoons' Duty Manager.
3. The Duty Manager alerted Security and the male was escorted from the premises. During this time, two SCO's observed the male to be unbalanced on his feet and his coordination was noticeably impaired.
4. Based on observations of behaviours exhibited by the male, SCO's formed the view that the male was drunk.
5. SCO's commenced an investigation in relation to the matter noting the obligations of the Licensee pursuant to the *Liquor Act*.
6. On 26 July 2016 a complaint was lodged with, and accepted, by the delegate of the Director-General of Licensing NT against the Licensee of Monsoons, Tropics Holdings Pty Ltd (Liquor Licence 80315790).

Legislative Provisions

7. Section 121 of the *Liquor Act* (*'the Act'*) provides that a licensee or employee of the licensee must exclude or remove a person from the licensed premises if the person is drunk, violent, quarrelsome, disorderly or incapable of controlling his or his behaviour.
8. Section 7 of the Act provides that a person is 'drunk' if;
 - (a) the person's speech, balance, coordination or behaviour appears to be noticeably impaired; and
 - (b) it is reasonable in the circumstances to believe the impairment results from the person's consumption of liquor.
9. Section 123A of the Act deals with the prosecution of a Licensee for the actions of an employee. Section 123A of the Act provides;

Where the actions of a person employed by a licensee would constitute an offence against this Act, the licensee may be prosecuted for the offence (whether or not the person employed is also prosecuted) as if the licensee had personally performed those actions.

Investigation

10. In the course of the investigation SCO's obtained CCTV footage from Monsoons for one (1) hour prior to the male being observed seated at the table and leaving the premises.
11. On 26 July 2016 a Complaint Letter was issued to both the Licensee and Nominee of Monsoons detailing the grounds of the complaint.
12. On 29 July 2016 a submission in response to the Complaint Letter was received from Andrew Binns, Nominee of Monsoons.

CCTV Footage

13. At 19:30 hours the male patron can be seen seated at a table inside the premises in the company of four (4) patrons. The male patron is dressed in a grey short sleeve shirt (s/s/s).
14. At 19:33 hours the male consumes an unknown beverage from an open glass.
15. At 19:35 hours Crowd Controller walks by male, locates himself three (3) metres away, looks in male's direction for 30 seconds and leaves immediate area.
16. At 19:41 hours an unknown male attends the bar, purchases six (6) alcoholic beverages and two (2) alcoholic shooters.
17. At 19:43 hours the unknown male places two (2) of the alcoholic beverages on the table in front of the male (grey s/s/s).
18. At 19:43 hours the male consumes an unknown beverage from an open spirit type glass.
19. At 19:45 hours employee attends the table where the male is located, collects glasses and departs.
20. At 19:46 hours a Crowd Controller walks past male shortly before the male consumes an unknown beverage from an open glass.
21. At 19:52 hours the male consumes an unknown beverage from an open spirit type glass.
22. At 19:53 hours the male is seen to stand up, stumble backwards, appears to be unbalanced on his feet and places his right hand on a stool to steady himself.
23. At 19:55 hours the male consumes an unknown beverage from an open spirit type glass.
24. At 19:57 hours D/M Shane Mackey and another employee walks past male several times.
25. At 20:01 hours the male is handed a schooner of beer (type & strength u/k) and consumes the beer.
26. At 20:02 hours the male is standing at the table with his arms around a male's shoulder and appears unbalanced and unsteady of feet.
27. At 20:06 hours a Crowd Controller positions himself directly behind male, looks around immediate area before departing area.
28. At 20:07 hours a Crowd Controller and employee walks past male.
29. At 20:08 hours a Crowd Controller looks in direction of the male as he walks past.
30. At 20:10 hours two Crowd Controller's walk past the male.
31. At 20:11 hours employee walks past the male.
32. At 20:13 hours a Crowd Controller walks past the male.
33. At 20:16 hours a Crowd Controller walks past the male.
34. At 20:17 hours D/M Shane Mackey walks past male, approaches the table and picks up an empty glass from ground.
35. At 20:18 hours the male is seated at the table, tilts his head down and while leaning on the table his right arm slips off the table.
36. At 20:19 hours employee and a Crowd Controller walk past the male.

37. At 20:21 hours the male consumes an unknown beverage from an open spirit type glass.
38. At 20:23 hours the male is seated and unsteady before consuming an unknown beverage from an open glass.
39. At 20:24 hours SCO can be seen entering the premises and positions himself at a nearby table and observing the male. Shortly after the male is noted to tilt his head down for several seconds and appears drowsy.
40. At 20:25 hours, the male while seated falls forward and is unsteady where he required the assistance of another patron to steady himself.
41. At 20:28 hours the male is approached by a Monsoons employee and in the company of a Crowd Controller and D/M Mackey is escorted from the area.
42. At 20:28 hours the male is escorted through the alfresco area, to the front entrance (Mitchell Street) with the assistance of a Monsoons employee and a male patron. The male is noted to have his right arm around the Monsoons employee to steady himself.
43. The male is positioned on the walkaway and appears disorientated, is swaying side to side and is unbalanced as he leaves the area on foot.

Licensee Response to Complaint

44. On 29 July 2016, Andrew Binns, Nominee of Monsoons provided a written response to the Complaint submitting the following;
 - After reading the complaint letter and viewing CCTV footage, there was no doubt the patron was intoxicated when removed.
 - While Security and the Duty Manager made observations, Andrew Binns suggests (speculates) the male was aware he was being observed and controlled his actions during this time.
 - Based on the CCTV footage, the male was not served by, nor did he purchase a drink from Monsoons bar staff.
 - Management undertaken training for Monsoons staff with the assistance of Licensing NT to prevent the re-occurrence of these circumstances.
 - Management has made all staff and Security aware of their responsibilities.
 - Management take a serious approach to intoxication however, a fine line exists between having a social time and going that little too far.
 - Management encourage patrons to consume water where possible and remove patrons from the premises when necessary.

Facts Established on the Evidence or in Dispute

45. Evidence obtained in the course of the investigation together with submissions made by Monsoons' Nominee, Andrew Binns, indicates that none of the matters are in dispute.
46. It is not in dispute that the incident which gives rise to the complaint occurred inside Monsoons at or about 19:30hrs on Sunday 3 July 2016.
47. It is not in dispute that the male was consuming liquor whilst located in the premises.
48. It is not disputed that the male inside the licensed premises was drunk and that Monsoons' staff failed to remove him from the premises.
49. It is not disputed that Monsoons' staff, on multiple occasions, were in close proximity to the male, but fail to assess the male's state of intoxication.
50. It is not disputed that Monsoons' employees have an obligation, under the Act, to remove a drunk person from licensed premises.

Consideration of the Issues

51. Monsoons' Nominee, Andrew Binns, has acknowledged the failure on the part of his staff to detect and remove a person from the licensed premises who, based on CCTV footage, was drunk.

It is apparent from the SCO's observations and footage that the male in question was drowsy, having difficulty maintaining his balance and that his co-ordination was noticeably impaired. In my view, the behaviour and manner of the male depicted in the footage including the SCO's observations, is clearly indicative of a person who is drunk.

52. In the footage, Monsoons' staff are seen in line of sight and in close proximity of the male during the time he was drowsy and unsteady while seated and on his feet. Despite this, no employee approached the male to ascertain his level of intoxication.

53. In my view, the conduct of the male, as seen in the footage, was such that it should have alerted staff, or at minimum, raised some concerns.

Decision

54. Having considered the evidence and taken into account the submissions made by the Nominee of Monsoons, Andrew Binns, I am satisfied that the Licensee, Tropics Holdings Pty Ltd, contravened section 121 of the Act in failing to exclude or remove a person from its premises who was drunk and incapable of controlling his behaviour.

55. I find that the male who was the subject of the complaint was drunk as defined by the *Liquor Act* whilst a patron at Monsoons on the evening of 3 July 2016.

56. Despite being in close proximity to the male no, action was taken by Monsoons' staff to assess his condition or to have him removed from the licensed premises.

57. Having made the determination, I have considered the following matters in deciding an appropriate penalty.

58. The Licensee, Tropics Holdings Pty Ltd, has recently been subject to a substantiated offence under the *Liquor Act*.

59. Monsoons' Nominee, Andrew Binns, actively sought assistance, in the form of a training session presented by Licensing NT, to indoctrinate staff on the responsible service of alcohol and the adoption of effective screening practices.

Having considered all the above matters I have determined to issue an infringement notice penalty of \$770 to Tropics Holdings Pty Ltd pursuant to section 68(5)(b)(i) of the *Liquor Act*.

Review of Decision

1. Section 11 of the *Licensing (Director-General) Act* provides that a person affected by this decision may apply to the Director-General for a review of the decision. Any application for review of this decision must be lodged within 28 days of the date of this decision.



Malcolm Richardson
Delegate of the Director-General

Dated: 9 September 2016