

Northern Territory Licensing Commission

Reasons for Decision

Licensee:	Jabiru Golf Club Inc.
Premises:	Jabiru Golf Club
Licence Number:	81403051
Proceeding:	Complaint Pursuant to Section 48(2) of the Liquor Act Four Breaches of Section 110 of the Liquor Act, being Licence Conditions 15, 12, 11 and 10
Heard Before:	Mr Richard O'Sullivan (Chairman) Mr Philip Timney Mr Walter Grimshaw
Date of Hearing:	19 January 2011
Appearances:	Inspector Peter Cookson for the Director of Licensing

Background

- 1) On the evening of 21 October 2010 Licensing Inspector John Burdett and First Class Constable Paulo Fernandes attended the Jabiru Golf Club and purchased alcohol and remained on premises for the consumption of this alcohol without being asked to sign the Visitors' Book.
- 2) On the evening of 22 October 2010 Inspector Burdett and First Class Constable Fernandes again entered the premises and again purchased alcohol without being asked to sign the Visitors' Book.
- 3) Further, on the night of 22 October 2010 Inspector Peter Cookson also entered the premises and was served alcohol without being asked to sign the Visitors' Book.
- 4) It is a condition of the Jabiru Golf Club liquor licence that persons who are not members of the Club are to sign the Visitors' Book on entry to the premises. Failure to comply with this licence requirement constitutes a breach of Section 110 of the *Liquor Act* ("the Act") which provides that:

A Licensee shall not contravene, or fail to comply with, a condition of his licence.

- 5) On being appraised by Inspector Cookson of the fact that persons who were non-members of the Club had been served alcohol on 21 and 22 October 2010 without signing the Visitor Register on entry, the Nominee Mr Robert Hay-Hendry admitted to those breaches.
- 6) A complaint has been lodged by Inspector Cookson which the Director of Licensing who put the complaint to the Commission. On 9 December 2010 the Commission "determined to conduct a Hearing in relation to the complaint".
- 7) The complaint alleged breaches by the Licensee of the following Licence Conditions:

- Condition 15:

"The Licensee shall keep and maintain a Visitors' Book in a prominent and accessible place on the licensed premises at all times during which those premises are open for the sale of liquor."

- Condition 12

“Unless authorised by a Special Licence, liquor sold on the licensed premises for consumption thereon shall not be sold to any person other than a member of the Club or a visitor in the presence of such a member.”

- Condition 11:

“Unless authorised by a Special Licence, liquor shall not be consumed on the licensed premises except by a member of the Club or a visitor in the presence of such a member.”

- Condition 10 of the Licence provides that;

“The Management Committee of the Club shall:

- (a) exercise effective supervision and control over the Club’s Manager to ensure that no breaches of the Act or the conditions of this licence occur;”*

- 8) The term “visitor” is defined in condition 9 of the Licence as a bona-fide guest of the Club whose:
- *Name and address have been entered in the visitor’s book next to the signature of the member whose guest he is, and*
 - *Presence is permitted by the Club’s rules.*
- 9) In his formal written response to the complaint, Mr Hay-Hendry admitted to the breaches of Licence Conditions 11 and 12. He submitted however that the Club did in fact maintain a Visitors’ Book, located on the bar of the premises as required by Licence Condition 15. Mr Hay-Hendry also advised of the measures in place so far as the Management Committee’s control and supervision of his activities is concerned, as required by Licence Condition 10. He submitted that he attended the monthly meetings of the Committee and that he liaises directly with the President on a daily basis to discuss issues that may require immediate attention.

The Hearing

- 10) In view of the admission of the breaches in respect of Conditions 11 and 12 by the Nominee it was determined that the Hearing would be conducted in Darwin on the papers (Hearing Brief) provided to the Commission. Mr Hay Hendy was invited to attend the hearing via telephone however that offer was declined. The Commission draws no adverse inferences from Mr Hay-Hendry’s non-attendance at the Hearing given the content of his formal written response to the complaints. The Commission also noted that all four alleged breaches of licence conditions relate to the one series of incidents, namely the service of alcohol to the Inspectors and First Class Constable Fernandes without the requirement for them to sign the Visitors’ Book.
- 11) At the Hearing Inspector Cookson outlined the complaint relating to the service of alcohol at the Jabiru Golf Club on 21 and 22 October 2010 to Inspectors Burdett, himself (Inspector Cookson) and First Class Constable Fernandes.
- 12) Inspector Cookson advised the Commission that on both these occasions when non-members were able to enter the licensed premises and be served the alcohol without signing the Visitors’ Book, the Nominee, Mr Robert Hay Hendry was present.
- 13) It is evident that Mr Hay-Hendry cooperated fully with Licensing Inspectors and gave frank admission to the licence breaches which he stated in response to the Director of Licensing advice of the complaint on 3 December 2010: “I do accept that breaches have occurred under liquor licence conditions 11 and 12, however I would like to reiterate that this is the

‘exception rather than the norm’ and not through a gross or wilful negligence of our obligation under all licence conditions”.

- 14) The Commission was provided with copies of entries into the Visitors’ Book which indicated a number of visitors had signed the Visitors’ Book on the days of 21 and 22 October 2010. On viewing the extracts, the Commission is satisfied that the Licensee did maintain a Visitors’ Book and was in fact compliant with Licence Condition 15. The Commission determined that the complaint alleging a breach of Licence Condition had not been proven.
- 15) The Commission was also satisfied with the Nominee’s response concerning the arrangements in place in respect of the Management Committee’s supervision and control of his activities. The Commission determined that the complaint in respect of the alleged breach of Licence Condition 10 was not made out.
- 16) The Commission also accepted that the production of the extract from the Visitors’ Book for 21 and 22 October 2010 corroborated the statement by the Nominee that the breaches admitted to in respect of Licence Conditions 11 and 12 were the exception rather than the norm.

Consideration of the Issues

- 17) In relation to penalty, the Commission sought from Inspector Cookson the instruction of the Director as to his view of appropriate penalty for the breaches of Licence Conditions 11 and 12.
- 18) Inspector Cookson advised the Commission that on the basis of:
 - the full admission to breaches by the Nominee;
 - the Nominee’s cooperation in relation to the breaches;
 - the recruitment of a new and experienced Duty Manager from interstate to help the Club in governing the operations of its licence; and
 - attempts to remedy the likelihood of such breaches by the Club which Inspector Cookson advised included the positioning of new signage advising of membership requirements, the need for all visitors to be signed in and the licence condition that only members may purchase takeaway alcohol;

the Director has sought a formal reprimand be applied to the Jabiru Golf Club.

- 19) On consideration of the penalty sought by the Director of Licensing, and taking into account evidence that the Visitors’ Book had been signed by several visitors on each of the days the breach of licence condition occurred, the Commission considered the appropriate penalty was that of a reprimand.

Decision

- 20) The Commission has determined that the Licensee be issued with a reprimand for the breaches of Licence Conditions 11 and 12 which occurred on the evenings of 21 and 22 October 2010.
- 21) This reprimand is to be issued by the Director of Licensing and maintained on the file of the Jabiru Golf Club for future reference and to be taken into account should any further breaches of licence conditions of the Jabiru Golf Club come before the Commission.
- 22) The Commission also finds that the complaints in respect of alleged breaches of Licence Conditions 10 and 15 were not proven and determined that those components of the complaint are dismissed.

Richard O'Sullivan
Chairman

28 January 2011