Northern Territory Licensing Commission

Reasons for Decision

Premises:	Gunbalanya Sports and Social Club
Licensee:	Gunbalanya Sports and Social Club Inc
Licence Number:	81401069
Nominee:	Mr Alex Seibert
Proceeding:	Complaint pursuant to section 48 of the *Liquor Act*
Complainant:	Brad and Rachel Sinclair
Originally Heard Before:	Mr Peter Allen (Presiding) Ms Jill Huck Mr Alan Clough
Reconvened Before:	Ms Jill Huck
Date of Hearings:	27 May 2003 and 1 March 2005

Background

1. This hearing arose from a complaint lodged in September 2002 by Brad and Rachel Sinclair, a pilot and nurse respectively. The complainants stated that the availability of alcohol through the Gunbalanya Sports and Social Club (the Club) was having a detrimental effect on the Gunbalanya community (the Community) including causing violence and anti-social behaviour and was also having a negative economic impact on families. They also complained that the lunch time session impacted adversely on afternoon flights out of the community, stating that such flights often needed to be cancelled because the passengers were intoxicated.

2. The complaint was investigated and set down for hearing on 27 May 2003, with the parties being notified accordingly. However, the complainants did not attend the hearing, as they were no longer residing at Gunbalanya by that time. Because of the serious nature of the complaint, and the concerns raised through Racing, Gaming and Licensing's investigation of the complaint, the Commission decided to continue with the hearing of the complaint. There are multiple precedents for such action, including a complaint against the Borroloola Inn (2002 p2) in which John Withnall writes:

> *a formal complaint does not lapse or determine by reason only that the complainant does not attend the hearing which is set down in relation to that complaint. It remains on foot as a matter to be addressed by the licensee, although of course the comparative weight of an unsworn and untested allegation will suffer in the face of sworn denials by and on behalf of the licensee*.

The first hearing

3. The Commission heard from a number of witnesses who gave evidence about the alcohol related problems in the Community and the functioning of the Club. The hearing process was a formal one, with participants giving evidence and being cross-examined. A significant number of general community members attended the hearing, although only a small number gave evidence. Most of the evidence was from employees of stakeholder

organisations and Club officials. The focus of much of the evidence was on the impact of the lunchtime session.

4. Evidence was heard from Anthony Murphy (Injalak Arts). He expressed concern about binge drinking during the lunchtime session at the Club and about the impact of the lunchtime session on employment and productivity in the Community. In particular he described how the lunchtime session impacted on the business of the Arts Centre. He suggested that profits from the Club should go to the provision of alcohol counselling services in the Community. He provided the Commission with an extract from a 1996 report prepared by Peter d'Abbs and Trish Jones for the Menzies School of Health Research. Among other things, the report raised concerns about the impact of the lunchtime session on employment at Gunbalanya and recommended that, pending a wider review, the lunchtime session at the Club be restricted to light beer, contingent on the Club providing a meal (for an entrance fee).

5. Sister Susan Ellis, the sister-in-charge of the community health centre, gave evidence that some of the clinic's operational problems are linked to the lunchtime trading of the Club. In particular, some health staff do not come back to work after lunch and the medical evacuation of some patients can be difficult after lunch. She gave the example of a child missing a flight out of the community for cardiac surgery because the parents were drinking at the Club. Sister Ellis also gave evidence of the poor levels of child health in the Community and her belief that this was partly a result of parental neglect associated with alcohol abuse.

6. Sister Ellis commented that, despite the health problems in the Community, there were comparatively few people presenting at the clinic for injuries related to violence. Sister Ellis put some of this down to the fact that the Club had a policy of banning members who were involved in alcohol related violence. While such banning was a powerful deferent to violence, it might also be resulting in some under-reporting of assaults to the clinic and other authorities.

7. Sister Ellis said that she thought that there might be an improvement in full-time employment opportunities on the Community if the lunchtime session was closed. However, she also pointed out that the Club played a positive role in the community because of the social events it organises for families (such as discos) and because of its large investments in community infrastructure and sporting activities, saying that "without the club, the community would be a poorer place."

8. Lothar Seibert, Committee member and brother of the nominee, said that there had been an improvement in alcohol related problems at Gunbalanya over the years, with people slowing down their drinking significantly. He thought that much of the violence and malnutrition was now related to petrol sniffing and cannabis use. He described recent changes the Club Committee had made to the rules for lunchtime sessions aimed at reducing the stockpiling of beer. He also described the structure, composition and operation of the Club Committee.

9. Esther Djayhgurrnga, Principal of the School, said that she was anti-alcohol but that the problems with school and work attendance at Gunbalanya were related to a range of problems, not just alcohol. She said that the heads of various agencies in the Community, including the Club, were working together to address community problems and needs and progress was being made. She did not see attendance at work after lunch as a problem because people could choose to work or not.

10. Colin Tidswell, the recently appointed CEO of Gunbalanya Council, said that Gunbalanya had fewer problems than many other Aboriginal communities in which he had lived. He said that there were more problems during the Dry Season when people could access liquor outlets across the river. He agreed that the community agencies were working constructively together through the Heads of Agencies meetings. He said that absenteeism after lunch is not viewed as a significant problem for the Council as they have a clear policy that people should not come back to work drunk. Mr Tidswell said that he was concerned

that if the lunchtime session was closed, people would travel elsewhere to obtain alcohol, with all the attendant safety risks that would entail.

11. Andy Garnarradj, Council Chairperson and a member of the Club, gave evidence that he did not think the lunch-time session should be closed. He said that there were greater road safety issues with people obtaining liquor elsewhere and driving back to the community, as opposed to people drinking at the Club. He said that, if the lunchtime session was abolished, people would drive to Jabiru and the Bark Hut for alcohol. He also said that taking the lunchtime session away would not improve employment as most workers were on CDEP, and therefore could only access part-time employment. He commented that the Club is very well run, that management and security staff work closely together, and patrons are very well behaved. He also said that the Club contributes significantly to the Community. Mr Garnarradj, who is also an Aboriginal Community Police Officer, made it very clear that his evidence was not given in that capacity.

12. Alex Siebert, Nominee of the Club for 21 years, said that the Club played an important role in the Community, making a significant contribution to the Community by building facilities such as the swimming pool and a basketball court, repairing the airstrip, providing funding for sports teams, providing money for funerals, lending money to people for hospital trips, lending money to the Arts Centre, and providing a variety of other services to the community. In addition he said that the Club provides a venue that people can be proud of; it is clean, well run, has facilities such as pool tables and a cinema, and is a place where people feel safe. He said that people from the Community can drink at the Club knowing that the profits stay in the town and are used for the community's benefit. In addition, the Club is one of Gunbalanya's biggest employers, with the Club employing people on proper award wages, rather than CDEP wages.

13. He said that the Club used to be a fairly rough place, however now it was well controlled. The Club employs a considerable number of security staff, there are clear rules around behaviour and there is a banning system which is used by both the Club Committee and the Police and relates to behaviour both on the premises and in the community. He said that there were chronic problem drinkers in the Community who had been banned from the club for many years. There were also others who recognised that they had a problem and sought a kind of self-exclusion from the Club.

14. Mr Siebert said that the Committee is elected at an AGM once a year, meets monthly and is very active. He offered to provide the Commission with copies of the Committee's minutes, the Club Constitution and various financial reports.

15. Mr Siebert said that, since receiving notification of the complaint, the Club had introduced initiatives to prevent binge drinking, including the stockpiling of drinks. This meant limiting the purchases of beer before 12.45pm to two (2) at a time and after 12.45pm to one (1) at a time and limiting the number of beers in front of a patron to three (3) at any one time.

16. These anti-stockpiling measures were in addition to existing harm minimisation strategies like providing free food for patrons on some days of the week and the voluntary restrictions on trading hours for the evening session (opening at 5:30pm instead of 4:30pm) which had been in place for about 18 months.

17. He said that there had been a lot of concern expressed about the lunchtime session over the years, especially by new people coming into the Community, and there had been a variety of things tried. He said that it was important that Aboriginal people made the decisions about what they wanted. He said that "light beer only" had been introduced at one stage, but this was not successful as people regarded it as a "woman's drink", and considered it humiliating for male drinkers. He said that, about ten years ago, the lunchtime session was stopped entirely for about six months. This had adverse consequences for the Community because a lot of people moved to Jabiru and Darwin as a result - "the drinkers and their wives left in droves"- and both the Club and the Shop started going broke. Within six months the Club was asked to reinstate the lunchtime session.

18. Mr Siebert said that it was important to understand that the alcohol and other problems at Gunbalanya were not just related to alcohol served at the Club. He said that illicit alcohol was regularly brought into the Community from elsewhere, and cannabis usage was a growing problem. He claimed that it was not uncommon to see drunks around first thing in the morning, well before the Club opened. He saw grog running as a major problem for the Community.

19. Jacob Ngayangul, Community Elder, said that problems on the Community were much better than they had been in the past. He said that people used to travel to the Border Store, Pine Creek and Cooinda to get alcohol and there were many deaths and accidents associated with people swimming across the river or driving to get alcohol. He also said that things were better on the community since there was no takeaway alcohol and that the Club was now very well controlled. He said that, although the lunchtime session was still a bit of a problem, it was important that individuals are allowed to make their own choices and live with the consequences of their own actions. He emphasised the importance of the Community making step by step improvements.

The meeting

20. During the lunchtime adjournment of the hearing, Commission members were approached by several women, who advised that they would like to talk to the Commission members about the matters being considered at the hearing. They said they felt extremely uncomfortable about giving evidence in the courtroom-like setting of the hearing and would not be prepared to do so. They asked that Commission Members meet with them as a group outside. After some discussion, it was agreed that such a meeting should only occur with the agreement of the nominee of the Gunbalanya Sports and Social Club and on the basis that a Commission member would take detailed notes of what was said at the meeting, that these notes would be provided to the Club, and that the Club would be given an opportunity to comment on the contents. The conditions were agreed to by the women and the matter was formally put to the Club nominee after the hearing recommenced. The nominee agreed to the proposed process. The meeting commenced after the conclusion of the formal hearing.

21. In making the decision to hold a separate meeting with these community members the Commission was cognizant of the need to provide procedural fairness but at the same time ensure that it was fully informed of the issues before it. Section 51 of the *Liquor Act* provides for the procedure adopted at hearings to be within the discretion of the Commission, that the Commission is not bound by the rules of evidence and may inform itself in such a manner as it thinks fit. Whilst this allows the Commission considerable flexibility in its approach to hearings, the need for procedural fairness is a well established requirement of the process. In this case, the Commission was at pains to ensure that the request by a group of community members to have a separate meeting with Commission members was handled in a manner which provided procedural fairness to the Club, including a full opportunity to be informed of the comments made during the meeting and to provide their own written comments on all the issues raised.

22. A type-written version of the notes taken at the meeting was subsequently sent to the Club for comment. As much as possible, given that the original notes were written in long hand, they represented a verbatim account of the comments made to Commission members by people at the meeting.

23. A summarised version of these comments is set out below:

- The main concern was the lunchtime session at the Club. The lunchtime session was seen as standing in the way of people getting proper full-time jobs and education. They wanted this session closed down;

- There was a great deal of concern that the drinkers were not looking after their own children, and that this meant that the non-drinkers ended up looking after the drinkers'

children and dealing with all the other problems created by the drinkers. They felt that the drinkers needed to realise that being a parent involved responsibility, including ensuring their children were getting enough sleep, good food to eat and adequate clothing. The drinking parents were seen as not doing this, spending most of their money and time at the Club;

- There was a concern that the drinkers only thought about their own rights, and not their responsibilities to others nor the impact of their actions on others;
- They said that they did not want to force people to stop drinking, only to drink less and more slowly, spend less money on alcohol and think about their families;
- They acknowledged the existence of a variety of other problems that impacted on the Community including petrol and glue sniffing, gambling, the smoking of cannabis, as well as the consumption of home brewed alcohol;
- The non-drinkers felt excluded from the decision-making at the Club and from the economic benefits from the Club (eg payment of funeral expenses) and did not feel that they were listened to;
- They were concerned that alcohol would destroy many of the men on the Community and that there would be only women and children left;
- They also raised concerns about the profit the Club made from the lunchtime session and wanted to see this information;
- They thought that the claims that people would leave the Community if the lunchtime session was stopped were exaggerated;
- They spoke of a time when the Club only operated from 4.00pm to 9.00pm and there was a six can limit per person. They said that, at that time, many people on the community worked full time and there were few problems.

24. The Club subsequently provided detailed written comments on the points made at the meeting, additional information about the Club's finances and a letter from Colin Tidswell, CEO, Kunbarllanjnja Community Government Council. The letter from the Mr Tidswell confirmed the evidence he gave at the hearing and commented favourably on the Club's contributions to the Gunbalanya community. The correspondence from the Club included an offer to impose voluntary restrictions on the lunchtime session on weekdays to attempt to address some of the perceived problems. The suggested restrictions were as follows:

> *a 6 can limit per person for one [1] month, if this approach does not work, then we reduce to a 4 can limit per person for 2 [two] months, if this approach does not work, then we resort the sale of light cans for three [3] months for the lunch time session*

25. The Commission was pleased to receive the Club's offer to trial voluntary restrictions, however, the Commission had some concerns about the proposed quantities and time periods and asked the Club whether they would consider starting with the 4 can limit and conducting the trial over a much longer period. This was agreed and the voluntary restrictions were subsequently put in place in late September 2003. It was noted, at the time, that the 4 can maximum was still higher than desirable, if the *National Health and Medical Research Council* (NHMRC) guidelines on low-risk levels of drinking were taken into account, however, it seemed reasonable to meet the Club half way on this issue.

Reconvened hearing/meeting

26. The hearing was reconvened on 1 March 2005 in the form of a public meeting at the new Gunbalanya Sports Centre. By that time Chairperson Peter Allen's appointment with the Commission had expired. Under the *Liquor Act,* complaints must be heard and decided by hearing panels of either three members or one member. Where the appointment of a

member of a three member panel ceases, the panel is reduced to one member. Jill Huck was nominated to be the one member to finalise this matter.

27. Members of the Community and other stakeholders arrived at the meeting over several hours in small groups. As a result, some people gave their views separately, and/or as part of the larger group. The Nominee, Alex Siebert, attended the early part of the meeting and also had an opportunity to respond to issues raised later in the meeting.

28. The evidence from the vast majority of those attending, including the nominee, was that the voluntary restrictions were working very well, and that there had been a reduction in alcohol related problems during the day at Gunbalanya, as well as at night. Mr Siebert said that sales of food, soft drinks and cigarettes at the Club during the lunchtime session had gone up since the restrictions and alcohol sales were down. Most people expressed a desire to continue with the four can restriction on weekdays, with the exception of Fridays and any public holidays. The rationale for an unrestricted Friday lunchtime was that most work places in Gunbalanya close for the weekend at midday on Fridays.

29. The bulk of the evidence was that the system of selling beer tickets at the front gate was working well. Mr Siebert said that there were few problems with patrons giving each other tickets or getting non-drinkers to buy them, because patrons knew they would be banned from the Club if caught. Two women at the meeting alleged that the ticketing system was being rorted but neither had any direct observational experience of this happening nor were they able to give hearsay details of any particular incident where this might have occurred.

30. A Police representative (John Mader) confirmed that the restrictions on the lunch time sessions seemed to be working, although he was careful to say that this didn't mean that there were no problems at all. He said that Police were supportive of the four can limit being continued. He also said that much of the trouble with alcohol at Gunbalanya was due to takeaway alcohol, including rum, being brought in from across the river.

31. Representatives from the Club Committee including the President and Secretary said that they would be happy for the restrictions, as modified by the exclusion of Fridays and public holidays, to be incorporated into the Club's licence conditions.

32. There was evidence from a small number of people that alcohol continued to be a problem at Gunbalanya. The concerns which had been expressed at the earlier hearing, about drinkers not taking responsibility for their children and the impact this had on non-drinkers, were repeated. There was also concern expressed that the Club was not shutting for deaths and funerals. While the latter was not directly relevant to the original complaint, it was discussed with the Club Nominee. He said that the Club was always smoked after the death of a member and, if a family approached the Club about closure, their wishes would normally be respected. Ultimately the decision about whether to close the Club was that of the Senior Traditional Owner who is President of the Club. Mr Siebert acknowledged that there had been a decline in traditional ceremonies at Gunbalanya but said this was due to a number of reasons, not just alcohol.

33. In conjunction with both hearings the Commission viewed the premises. The premises were pleasant, clean and tidy and contained significant community facilities such as a small movie theatre. The crowd on both occasions was well behaved. The Commission was shown large blackboards listing people variously banned from the Club by the Committee or the Police, people put on light beer only, or people on various other restrictions. The Commission was again advised that there were strict rules and procedures around the banning of individuals and that people could be banned for health reasons and for their behaviour both inside and outside the Club.

Discussion

34. The original complaint in this case raised general concerns about the impact of alcohol at Gunbalanya, including as a result of the Club's lunchtime sessions. While there were clearly problems associated with alcohol consumption at other times of the day and night,

the perceived problems associated with the lunchtime session quickly became the focus of much of the evidence at the hearing, the subsequent meetings and the proposed solutions.

35. It was clear from the evidence provided at the first hearing and the meeting subsequent to it, that the lunchtime session was perceived as impacting adversely on drinkers' employment opportunities and family responsibilities. It was also clear that opinions varied about the severity of the problems involved and appropriate solutions for them. However, something clearly needed to be done to address the problems in a way that balanced the competing rights and concerns of community members. The Commission accepted that various solutions had been attempted before with mixed results and was keen to find a solution that would be effective and also have support from the various sectors of the community.

36. The Commission was in no doubt that many people were in the habit of drinking heavily during the lunchtime session at the time the original complaint was lodged. The complaint was substantiated by much of the evidence at the first hearing and at the Commission's meeting with the non-drinkers. At the time of the first hearing, the Club had put some new rules in place around "stockpiling" at lunchtime to try to address the amount and speed of alcohol consumption. While these new rules may have been having some impact, it was clear that the quantum being consumed in the short lunchtime session was still likely to be at harmful levels, and the level of concern among stakeholders, including the non-drinkers, was still very high.

37. The trial restrictions that the Club volunteered after the first hearing were a very positive move on the part of the Club to reduce the consumption levels and therefore the social problems caused by the lunchtime session. The Club should be commended for its voluntary efforts to address the problems and particularly for agreeing to start the trials at a lower level than originally put forward (maximum of 4 cans rather than 6). There was little doubt that by the time of the reconvened hearing, these restrictions were working smoothly, with considerable community support and no unintended consequences. The only problem from the Club and the members' perspectives was that they would prefer the restrictions not to apply on public holidays and Fridays. Although there was still evidence of alcohol related problems at Gunbalanya, the specific angst around the lunchtime session seemed to have been greatly reduced.

38. In weighing up all the information that had been put to the Commission, including the apparent improvement brought about through the voluntary restrictions, I was satisfied that an appropriate outcome for the complaint was to formally vary the licence conditions of the Gunbalanya Sports and Social Club to incorporate the 4 can limit for patrons during the lunchtime sessions for Mondays to Thursdays, excluding public holidays. As requested by the Club and the large number of Club Members who attended the reconvened "hearing", and in acknowledgement of the employment practices in the Community, Fridays and public holidays have been excluded from the restrictions.

39. While this decision will not please some community members, who may have preferred the closure of the lunchtime session or more severe restrictions, it is a significant step towards harm reduction; one that we can be confident will work on the relevant days (as has already been demonstrated during the voluntary restrictions). To avoid further restrictions (times, days, quantum and alcohol type), it is in the Club's best interests to continue to be proactive in preventing and addressing problems.

Decision

40. The Commission's decision is to formally vary the licence conditions of the Gunbalanya Sports and Social Club to incorporate a restriction on the amount of alcohol that can be consumed by patrons during the lunchtime session on Mondays to Thursdays, excluding public holidays. Patrons will be restricted to a maximum of 4 cans of beer during the lunchtime session on each relevant day.

Jill Huck
Commission Member

22 June 2005