

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Complainant: Commissioner of Police
(represented by Ms Leanne Atkins of WA Police)

Respondent: 100 Mile Pty Ltd
(represented by Mr Stephen Butcher of Dwyer Durack)

Commission: Mr Jim Freemantle (Chairman)
Mr Greg Joyce
Dr Eric Isaachsen

Matter: Complaint for disciplinary action pursuant to Section 95 of the *Liquor Control Act 1988*

Date of Hearing: 17 May 2011

Date of Determination: 24 June 2011

Premises: Williams Hotel

Determination:

- (1) Pursuant to Section 96(1) (m) of the *Liquor Control Act 1988* ("the Act"), 100 Mile Pty Ltd is to pay a monetary penalty of \$ 7,500.
- (2) The Licensee is to ensure that the CCTV system currently in place is operating in accordance with the policy of the Director of Liquor Licensing on "Minimum Standards Closed Circuit Television (CCTV) Security System".
- (3) The following conditions are imposed on the licence:
 - liquor is not to be sold or supplied for consumption on the premises in any of the following ways-
 - a) in any vessel with a measurement capacity exceeding 750ml and no spirit based beverages are to be supplied in vessels with a measurement capacity exceeding 375ml.
 - b) in either –

- (i) any non-standard measure; or
 - (ii) presented in such a way that would encourage the rapid consumption of liquor (for example, but not limited to, unadulterated spirit or liqueur in a shot glass); or
 - (iii) by virtue of their emotive title, such as 'laybacks', 'shots', 'shooters', 'test tubes', 'jelly shots', 'blaster' or 'bombs'; or
- c) mixed with energy drinks (for the purpose of this condition "energy drink" has the same meaning as 'formulated caffeinated beverage' within the Australia New Zealand Food Standards Code with a composition of 145 mg/l of caffeine or greater).

Background

1. On 11 January 2011 the authorised delegate of the Commissioner of Police made a complaint pursuant to Section 95 of the *Liquor Control Act 1988* ("the Act") against 100 Mile Pty Ltd, the Licensee of the Williams Hotels, Williams.
2. A hearing into the matter before the Liquor Commission as constituted in accordance with Section 95(7a) of the Act was held on 17 May 2011.

Submissions by the Commissioner of Police

3. It is alleged pursuant to Section 95(4) of the Act that there is proper cause for disciplinary action against the licensee on the following grounds:
 - i) business is not properly conducted in accordance with the license (section 95 (4)(a))
 - ii) business is not properly managed in accordance with the Act (section 95 (4)(b))
 - iii) licensee has contravened a requirement of the Act and a term and condition of the license (section 95 (4)(e)(i))
 - iv) the safety, health and welfare of persons reporting to the licensed premises is endangered by an act or the neglect of the licensee (section 95 (4)(k))
4. On 9 September 2010 the Narrogin Magistrates Court issued an Extended Trading Permit ("ETP") authorising the sale and supply of liquor until 11pm on

12 September 2010, the day of the local football Grand Final. Mrs Kjellgren, a director and shareholder of the licensee company was named as the person in charge of the sale and supply of liquor.

5. In respect of grounds i, ii and iv, it is alleged the CCTV footage supports the contention that the bar assistant served patrons who were quite apparently drunk.
6. Two patrons were involved in an altercation which led to the intervention of Mrs Kjellgren but neither patron was evicted but left to consume further alcohol.
7. After the expiry of the ETP a patron purchased packaged beer and handed it to other patrons who then consumed it. No record of sales to lodgers was kept – nor is there a paper till receipt and it cannot be ascertained whether the liquor was purchased by a genuine lodger and consumed by lodgers and their guests.
8. CCTV footage from the early hours of 13 September (Monday) shows patrons in various stages of undress, including full nudity, persons walking across the bar and of patrons helping themselves to liquor from fridges.
9. In respect of ground iii (partially conceded by the Respondent) it is apparent that the Respondent permitted drunken persons to remain on the premises and supplied further alcohol to them and allowed them to consume it. Additionally the Respondent permitted indecent and disorderly behaviour and traded beyond the time specified in the ETP.
10. The sale of liquor to lodgers exceeded what could be reasonably expected to be consumed by lodgers on the particular day in contravention of section 41(3) of the Act.
11. Deeming orders against Mr and Mrs Kjellgren are not to be pursued.

Submission by the Respondent

12. The essence of the complaint is trading outside permitted hours contrary to the provision of section 111(1) of the Act and permitting drunkenness on licensed premises contrary to Section 115(1)(a) of the Act.
13. Section 98 (2) of the Act permits the sale of liquor to lodgers at any time and section 106 provides that liquor sold to lodgers must be consumed by them or their guests (limited to the number specified by the Director of Liquor Licensing).

Section 41(3) requires that packaged liquor sold to a lodger must be restricted to what can reasonably be consumed by the lodger on the day of sale.

14. It is not sufficient for the Complainant simply to allege drunkenness being permitted. There must be evidence on which such an allegation is founded.
15. It is conceded that trading continued beyond 11pm but not beyond 11.47pm in contravention of section 111(1) of the Act. Following cessation of the ETP liquor was supplied only to lodgers and their guests within the provisions of Section 106 of the Act.
16. It is denied that the patron caught in CCTV approaching the bar at 9.33pm was drunk as alleged by the Complainant as he was not displaying signs of intoxication.
17. It is further denied that incidents relied on by the Complainant in making out Grounds 1 and 3 relate to patrons who were drunk for the same reason.
18. The alleged altercation between two patrons was simply punches thrown in jest rather than anger.
19. The Respondent denies that the packaged beer distributed by a patron was other than a lodger distributing drinks to his guests.
20. Allegations of hostility and a poor attitude of Mr and Mrs Kjellgren towards the Police are unfounded and it is denied Mr Kjellgren was "heavily intoxicated" and footage obtained by Police Officers does not support the contention that he was.

Determination

21. The Commission may, on a complaint lodged under section 95 of the Act, take disciplinary action.
22. Pursuant to section 96 of the Act, if the Commission is satisfied, on the balance of probabilities, that the grounds upon which the complaint was, or the complaints were, made has been made out so that a proper cause for disciplinary action exists, the Commission may take action under section 96(1).
23. On 9 September 2010, the Narrogin Magistrates Court granted an ETP to the Respondent to trade from 10.00pm to 11.00pm on Sunday, 12 September 2010 to cater to members of the local football team and their supporters after their win at the Grand Final. The evidence presented relates to a single evening where a special event took place in the town.

24. At the outset, the Commission notes that the Respondent in its written submissions conceded that drunkenness was permitted in the licensed premises.

25. Ground (i) of the complaint alleged that there was proper cause for disciplinary action as the business under the licence was not properly conducted in accordance with the licence. It was alleged that that the provisions of section 111(1) and section 41(3) of the Act had been contravened by allowing trading following the cessation of the ETP and sale of packaged liquor to lodgers in quantities which could not be reasonably expected to be consumed by the lodger on that day.

This allegation was denied by the Respondent, but it was conceded that trading continued past 11:00pm until 11:47pm but liquor was only served to lodgers and consumed by lodgers and their guests past 11:00pm. At the hearing it was conceded by the counsel for the Respondent that the Respondent was unable to prove pursuant to section 112(d) of the Act that liquor was only sold to and consumed only by lodgers and their guests. The Commission is of the view that the evidence does not support a conclusive finding that the licensee breached the provisions of section 111(1) of the Act in respect of the sale and consumption of liquor to persons other than lodgers. Notwithstanding that the Commission is of the view that there was insufficient evidence to prove a breach of section 111 (1) of the Act, on the basis of the evidence including CCTV footage, the Commission is satisfied that the Licensee breached the provisions of section 41(3) of the Act in that packaged liquor was permitted to be sold to lodgers which could not be reasonably consumed by the lodger on that day.

26. The Complainant further asserted, in support of grounds (ii), (iii) and (iv) that the CCTV footage supports its contention that patrons were served alcohol despite being quite apparently drunk. As stated at Para 15 this allegation was conceded by the Respondent. It was also alleged that Mr Allan Kjellgren, husband of the approved manager, Ms Maree Kjellgren was heavily intoxicated on the night of the incident. However, in his statement, Mr Kjellgren denies this allegation and states that during the course of the evening and over a 12 hour period he had consumed only 4 Carlton cold beers and had been drinking water throughout the evening. It was acknowledged that his limp was a result of an injury sometime ago and could not be attributed to intoxication.

After viewing the entire CCTV footage the Commission on balance of probabilities is of the view that Mr Allan Kjellgren was showing signs of intoxication on the night of 12 September 2010.

27. It is accepted that not all of the events captured by the CCTV would have been known to, or witnessed by, the staff. However there is ample footage demonstrating staff were present when patrons were showing signs of drunkenness to come to this conclusion.

28. Notwithstanding that this was a special event, in viewing the evidence as a whole, the Commission accepts the contention that the licensed premises were not properly managed in accordance with the Act, or consistent with one of the primary objects, being the minimisation of alcohol-related harm. There was a permissive attitude by the licensee and its staff to drunkenness coupled with poor judgement in the overall management of this occasion.
29. Having considered the evidence of the applicant and respondent, the Commission is satisfied on the balance of probabilities that the grounds of the complaint have been made out.
30. Submissions were made by the Complainant and the Respondent as to the appropriate penalty, under section 96(1) of the Act, in the event that the grounds of complaint were made out. These covered monetary penalty, imposition of conditions relating to the supply of liquor, and imposition of conditions requiring compliance with the Director's policies on CCTV and Security.
31. The Commission noted that the Complainant did not pursue 'deeming orders' in relation to Mr & Mrs Kjellgren as no ground of complaint was laid against them personally nor was any ground made out as required by section 96 (1) of the Act.
32. The Commission is of the opinion that seriousness of the breaches will be adequately reflected in the penalty imposed in the following orders pursuant to section 96(1) of the Act:
 1. that the licensee pays a monetary penalty of \$7,500;
 2. the Licensee is to ensure that the CCTV system currently in place is operating in accordance with the policy of the Director of Liquor Licensing on "Minimum Standards Closed Circuit Television (CCTV) Security System";
 3. the following conditions are imposed on the licence:
 - liquor is not to be sold or supplied for consumption on the premises in any of the following ways-
 - d) in any vessel with a measurement capacity exceeding 750ml and no spirit based beverages are to be supplied in vessels with a measurement capacity exceeding 375ml.
 - e) in either –
 - (iv) any non-standard measure; or

- (v) presented in such a way that would encourage the rapid consumption of liquor (for example, but not limited to, unadulterated spirit or liqueur in a shot glass); or
- (vi) by virtue of their emotive title, such as 'laybacks', 'shots', 'shooters', 'test tubes', 'jelly shots', 'blaster' or 'bombs'; or
- (f) mixed with energy drinks (for the purpose of this condition "energy drink" has the same meaning as 'formulated caffeinated beverage' within the Australia New Zealand Food Standards Code with a composition of 145 mg/l of caffeine or greater).

A handwritten signature in black ink, appearing to read 'Jim Freemantle', written over a horizontal line.

JIM FREEMANTLE
CHAIRPERSON