

Director-General of Licensing

Decision Notice

PREMISES:	Opium
LICENSEE:	Fuel Venues Pty Ltd
LICENCE NUMBER:	80317973
MATTER:	<i>Liquor Act</i> – Complaint relating to alleged breach of section 106B(1)
DECISION OF:	Director-General of Licensing
DATE OF DECISION:	11 July 2017

Background

1. Fuel Venues Pty Ltd is the licensee of Liquor Licence number 80317973 (the licence) issued pursuant to the *Liquor Act* (the Act) which authorises the sale and supply of liquor to persons on the premises known as Opium, located at 52 Mitchell Street, Darwin.
2. The licence is subject to a Certificate of Declaration issued on 24 September 2015 pursuant to section 106(1)(a) of the Act (the Declaration) which prohibits a person who has not attained the age of 18 years entering or remaining on the premises.

Current Situation

3. On 2 November 2016 and in accordance with section 68(3) of the Act, the licensee was notified that a complaint had been accepted by the Director-General of Licensing (the Director-General) in relation to a possible breach of the Act in that a child had been permitted to enter and remain inside Opium in breach of the licensee's obligations under the Act.
4. The substance of the complaint was that on 3 September 2016, the licensee permitted a child to enter and remain on its licensed premises which is subject to a declaration issued pursuant to section 106(1)(a) of the Act, contrary to section 106B(1) of the Act.
5. In accordance with section 68(4)(c) of the Act, an investigation was conducted into the matters raised in the complaint.
6. I have had opportunity to consider information from various sources including statements from attending police officers, the Crowd Controller employed by the licensee to monitor entry to Opium and the licensee. Additionally, I have viewed CCTV footage provided by the licensee which provided clear depiction of matters relevant to the complaint.

7. I have also had regard to the submissions made on behalf of the licensee in a Public Hearing conducted on 11 July 2017.

Assessment of Matter

8. The evidence available to me establishes that the subject child, approached a Crowd Controller at the entry to Opium at about 00:15 hours on 3 September 2016 and presented a driver's licence which was in the name of another person and which indicated a date of birth of 16 April 1998.
9. The Crowd Controller examined the identification card and can be seen in the relevant CCTV footage to be making assessment of the child with reference to the identification produced. He actively engaged with the child and provided evidence to the investigation which suggests that he made efforts to conduct a proper assessment of her demeanour and conduct in addition to her identification details.
10. In addition to the matters about which he could make objective observations, the Crowd Controller noted that at the time of seeking entry to Opium and prior, the child was in the company of a male known to him as a police officer which lent weight to his acceptance that the child was over 18 years of age.
11. The child was then permitted to enter Opium where she remained until about 00:40 hours at which time the child was physically removed from the premises due to her involvement in an altercation with other patrons inside the venue.
12. Between 00:40 and 00:43 hours, the child made efforts to re-enter the premises and according to the evidence, became argumentative, abusive and irrational. Police then arrived at the scene and arrested the child, placing her in the rear of a police vehicle for conveyance to the Darwin watch-house.
13. Whilst at the watch-house, Police discovered that the child was 16 years of age, with a date of birth 1 January 2000.
14. The licensee properly conceded the factual matters reported here but noted that section 106B(3) of the Act provides a defence to a contravention of section 106B(1) if it is established that:
 - (a) the child permitted entry to the licensee's premises was at least 16 years of age; and
 - (b) the licensee was provided with a form of identification that may reasonably be accepted as a form of identification in relation to the person indicating that she was an adult.
15. In establishing those matters the licensee pointed to the evidence of the child's age, specifically that her date of birth was 1 January 2000 and also, that the Crowd Controller's actions and subsequent acceptance of the driver's licence produced was reasonable in the circumstances.

Consideration of the Issues

16. I have considered all of the evidence obtained in the course of the investigation, including additional evidence adduced and submissions made in the Public Hearing and

I am satisfied that the licensee permitted a child to enter and remain in Opium in the early hours of 3 September 2016.

17. Such conduct is *prima facie* contrary to section 106B(1) of the Act.
18. However, I accept that the child produced an identification card to the Crowd Controller which stated her date of birth to be 19 April 1998. I also accept that the physical likeness between the photograph on the licence and the child, as evidenced by what can be seen in the CCTV footage and a photograph taken of the child following her arrest was such that it was not unreasonable to form the view that they were the same person.
19. Having reached that view, I am satisfied that the licensee established a defence in accordance with section 106B(3) of the Act, noting that in the circumstances of this case, it was reasonable for the Crowd Controller, working on the licensee's behalf to accept the driver's licence presented by the child as confirmation of her own identity

Decision

20. Taking all of these matters into account, I have determined to dismiss the complaint in accordance with section 68(5)(a)(ii) noting that although a ground exists for making the complaint, it does not warrant any further action to be taken.

Review of Decision

21. Section 120ZA of the Act provides that a decision of the Director-General, as specified in the Schedule to the Act, is a reviewable decision. A determination to dismiss a complaint pursuant to section 68 of the Act is specified in the Schedule and is a reviewable decision.
22. Section 120ZC of the Act provides that a person affected by this decision may seek a review before the Northern Territory Civil and Administrative Tribunal. Any application for review of this decision must be lodged within 28 days of the date of this decision.
23. For the purpose of this decision, and in accordance with section 120ZB(1) of the Act, the only affected person is the licensee.



Cindy Bravos
Director-General of Licensing

Date: 11 July 2017