

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE AND REASONS FOR DECISION

CITATION: *COMPLAINT AGAINST DARWIN RSL INCORPORATED*
[2024] NTLiqComm 19

FILE NUMBER: LC2024/002

LICENSEE: Darwin RSL Incorporated

PREMISES: Darwin RSL
27 Cavenagh Street
DARWIN NT 0800

LICENCE: 81401558

LEGISLATION: Part 7, Divisions 3 and 4 of the *Liquor Act 2019*

DECISION OF: Ms Jodi Truman (Deputy Chairperson)
Mrs Ebony Abbott-McCormack (Health Member)
Mrs Rachael Shanahan (Community Member)

DATE OF HEARING: 14 February, 3 April and 20 May 2024

DATE OF DECISION: 24 May 2024

Decision

1. For the reasons set out below the Northern Territory Liquor Commission (**the Commission**) heard a complaint against Darwin RSL Incorporated (the licensee) that for a period exceeding five (5) years the licensee has not used the licensed premises for the sale, supply, service or consumption of liquor contrary to section 160(1)(g)(i) the *Liquor Act 2019* (**the Act**).
2. The Commission is satisfied that grounds for disciplinary action exist and that the following disciplinary action is appropriate to be taken against the licensee:
 - a. Pursuant to section 165(2)(b) of the Act, suspend the licence for a period of 12 months from the date of this Decision Notice.
 - b. Direct that during the period of the suspension, the licensee provides a report to the Director on the 24th day of each month (or the next business day should that date fall on a weekend) commencing on 24 June 2024 with respect to the following matters:

- i. Compliance with any and all obligations the licensee has under the *Liquor Act* pursuant to its licence and/or the conditions of its licence.
 - ii. The progress of any negotiations with respect to any premises to which the licensee is considering using for the purposes of the sale, supply, service or consumption of liquor.
 - iii. Any changes to the membership of the management committee (aka Board¹) appointed in accordance with its Constitution at the general meeting of the licensee on 14 April 2024, with the first report made on 24 June 2024 to include the names of those members who were appointed on that date and their role within that committee (aka Board).
 - iv. Any other matters that the Director reasonably requests the licensee report upon.
- c. Direct that the licensee provide a copy of the report provided on 24 March 2025 to the Commission and the licensee is to include in that report details of the premises that have been secured by the licensee to re-commence the sale, supply, service or consumption of alcohol and confirmation that the licensee shall be ready to re-commence operating at those premises immediately upon the expiration of the 12 month period of the suspension.
 - d. That should the licensee not be ready to re-commence operations as and from the expiry date of the 12-month suspension period, the licence is cancelled immediately.

Reasons

Background

3. Darwin RSL Incorporated (**the licensee**) is the holder of liquor licence number 81401558 for premises previously known as “Darwin RSL” which were once situated at 27 Cavenagh Street, Darwin NT 0800 (**the premises**). The Commission uses the term “once situated” due to the admitted facts that on Sunday 4 June 2018 those premises were destroyed by fire. In December 2020 what remained of those premises were bulldozed and as at the date of these reasons that location remains an empty block.
4. The licence held by the licensee dated 18 August 2020 names Mr John Riordan (**Mr Riordan**) as the nominee and the licence includes the following authorities:
 - a. Club Authority.

¹ The Commission utilises the reference to “Board” in deference to Part 4 of the licensee’s Constitution tendered as part of exhibit 2 at page 212-213 (of 223 pages).

- b. Takeaway Authority.
 - c. Late Night Authority.
5. Before addressing any facts, it is necessary to provide some background as to the how this complaint proceeded by way of hearing before the Commission:
- a. The complaint was originally listed for hearing on 14 February 2024. At that time it was **extremely** unclear as to who had the authority to appear on behalf of the licensee. Two (2) persons attended the hearing in person, namely Mr Aaron McMahon and Ms Andrea Rice, who identified themselves to the Commission as the Chair and General/Committee Member respectively of the licensee.
 - b. Mr McMahon informed the Commission at that time that he had in fact resigned his position effective from 23 February 2024 and that the licensee was scheduled to have its Annual General Meeting (**AGM**) on 24 February 2024.
 - c. As a result an adjournment application was made on behalf of the licensee until after the AGM. The application was for three (3) months.
 - d. That application was opposed on behalf of the Director of Liquor Licensing (**the Director**) given the significant delays that had already occurred.
 - e. The Commission granted an adjournment to 3 April 2024.
 - f. Prior to that date, Mr Paul Maher (**Mr Maher**) wrote to the Commission and stated:
 - i. "I act for the licensee, Darwin RSL Sports & Social Club Inc ..."
and that he would be appearing at the hearing.
 - g. In addition, Mr Maher provided submissions for the Commission's consideration.
 - h. It is important to note that what the Commission had before it at that time was a complaint against the licensee who was named on the license as "Darwin RSL Incorporated" and **not** "Darwin RSL Sports & Social Club Inc".
 - i. In addition, the Commission had been informed at the initial hearing date on 14 February 2024 that there were a number of differently named associations that related to the RSL in Darwin who were **not** the licensee. It was therefore not clear to the Commission whether the entity that Mr Maher was appearing for was in fact the licensee.
 - j. As a result, when the matter came back before the Commission on 3 April 2024, a request was made of Mr Maher to clarify **who** he was acting for and **how** that entity related to the named licensee.

- k. Unfortunately, this was not able to occur on that date and an application was again made for the hearing of the complaint to be adjourned.
 - l. Given the Commission could not establish whether the licensee was in fact represented at the hearing, an adjournment was granted to 20 May 2024.
 - m. In advance of that date, the Commission received from Mr Mark Wood (**Mr Wood**) on behalf of the Director evidence that established the following:
 - i. The association was originally incorporated on 23 May 1966 as “Darwin Sub Branch RSL Services Club”.
 - ii. The association then changed its name on 4 September 1995 to “Darwin RSL Services & Social Club Incorporated”.
 - iii. On 13 January 2016 there was a Special General Meeting held at which point “Darwin RSL Services & Social Club Incorporated” unanimously carried a motion to change its name to “Darwin RSL Incorporated”.
 - iv. An application was then made by the association on 26 January 2016 to change the name on the license to “Darwin RSL Incorporated”. That application was certified on 4 February 2016 and confirmation was provided on 5 February 2016 noting as follows:

“Please note that the correct name of the association is **“Darwin RSL Incorporated”**. This name must not be shortened, lengthened or used in any form except that the word “INCORPORATED” may be shortened to “INC”.
 - n. It is clear therefore on the evidence that has been provided on behalf of the Director that the licensee is **“Darwin RSL Incorporated”**, as named on the license and not “Darwin RSL Sports & Social Club Inc”.
 - o. It is on this basis that the hearing recommenced before the Commission on 20 May 2024.
 - p. On that date, Mr Maher confirmed that he now appeared for **“Darwin RSL Incorporated”**, as named on the license. Mr Maher was therefore permitted to appear, and the hearing was able to be conducted.
6. In advance of the hearing recommencing on 20 May 2024, Mr Maher filed submissions on behalf of the licensee which stated as follows²:

² See Exhibit 2, pg. 198-223 Submissions of Darwin RSL INC dated 17 May 2024, in particular paragraph 7

“Darwin RSL admits the facts set out in the Summary of Facts at pages 3 and 4 of the hearing book and the facts as set out in the statutory declaration of Holly Catherine Sowerby at page 5 and following of the hearing book”.

7. With that admission made, the Commission finds the following relevant facts:
- a. The licensee has not used the licensed premises named on its license for the sale, supply, service or consumption of liquor for a period exceeding 5 years.
 - b. On Sunday 24 June 2018, the licensee’s premises located at 27 Cavenagh Street, Darwin, were destroyed by fire. The remainder of the building was bulldozed in December 2020. The building has not been re-built and the licensee has not relocated to an alternative venue.
 - c. In February 2021, Licensing NT notified the licensee via email that they had failed to pay their annual Risk Based Licensing (**RBL**) fee and that it was noted by Licensing NT that the premises were currently not operational. The fee was subsequently paid however the licensee did not indicate their intentions with regard to the liquor licence.
 - d. In September 2021 Licensing NT contacted the licensee to advise that as the premises were still not operational, the licensee could either surrender the licence or submit a request to the Director to keep the licence ‘dormant’ for a period of time. The licensee subsequently requested to keep the licence dormant for a period of 2 years, citing the Committee were considering various options available to re-establish the premises.
 - e. The request was approved by the Delegate of the Director, Andrea Allen, with an expiration date of 30 June 2023. During this period, the licensee continued to pay their annual RBL fees.
 - f. Given the extension to retain the licence was due to expire, the licensee met with the Senior Director of Liquor, Michelle Ganzer, on 31 May 2023 to discuss the current status of the liquor licence. The licensee advised they had made no progress during the 2-year extension and claimed investigations were continuing into various avenues to re-establish the premises.
 - g. On 28 September 2023, the Senior Director of Liquor again met with the licensee whereby the Darwin RSL Committee submitted they have made no further progress, noting external issues such as the Association’s proposed separation from the South Australian RSL Branch. The licensee could not indicate that any of the proposals were near finalisation or would result in the imminent re-establishment of the liquor licence.

- h. On 14 November 2023, a complaint letter was emailed to the Licensee informing them of the complaint and advising them they had 14 days to respond to the allegations set out in the complaint particulars.
 - i. To the date of the referral to the Commission on 15 January 2024 the Licensee had not provided a response to the particulars of the section 160 complaint.
8. The Commission notes that in fact it was not until 28 March 2024 that a response was provided on behalf of the licensee and that was made by way of written submissions provided by Mr Paul Maher, who filed such submissions **on instructions** on behalf of an association who was **not** the licensee.
9. It was therefore not until 17 May 2024 that the actual licensee provided a response to the complaint when Mr Maher's submissions were received.

The Hearing

10. The Commission notes the various attempts to hear this matter as identified earlier. The matter recommenced as a public hearing on 20 May 2024. Mr Wood appeared on behalf of the Director (throughout). Numerous persons attended the hearing dates and finally on 20 May 2024 Mr Maher appeared on behalf of the licensee, together with its **very recently** appointed nominee, Mr Paul Winter.

The Facts

11. The facts providing background to this matter and those admitted on behalf of the licensee are set out above. It is clear that the licensee's licensed premises are no longer being used for the sale, supply, service or consumption of liquor. It is clear that this has been the case since 24 June 2018.
12. This is the ground of the complaint pursuant to section 160(1)(g)(i) of the Act and the basis upon which the Director has referred the matter to the Commission for disciplinary action pursuant to section 163(1)(f) of the Act.

Disciplinary Action

13. Having considered the facts as outlined above, the Commission is also satisfied that grounds for disciplinary action exist as required under section 165(1)(a) of the Act. The Commission also notes that Mr Maher agreed on behalf of the licensee at the hearing that there was a ground for disciplinary action to be taken.
14. Upon making such a finding, the Act requires under section 165(1)(b) that the Commission "may" only take such action that it is satisfied "is appropriate in relation to that ground".
15. As part of this exercise the Commission considers it should apply the principles of proportionality, parity and deterrence.

16. In relation to the application of parity, this is the first occasion that this panel is aware that the Director has referred a licensee to this Commission for disciplinary action on the basis that the licensee's licensed premises are no longer being used for the sale, supply, service or consumption of liquor.
17. There are therefore no other decisions of this Commission to consider in terms of equal or equivalence of disciplinary action.
18. In relation to the application of deterrence, it is not just specific deterrence but general deterrence that must be considered. As this Commission has said many times, it is not a right to have a liquor license, it is a privilege. Licensees have significant obligations placed upon them under the Act and the conditions of their licence.
19. The Commission also considers it relevant when determining the disciplinary action to be taken to consider what was said within the "*Alcohol Policies & Legislation Review Final Report*" (aka the Riley Review):

"There is universal agreement that there are far too many licences to sell alcohol issued in the Northern Territory..."³.

And further:

"... we agree with the majority of the submissions received, **including from industry**, that there are currently too many outlets' people can purchase takeaway alcohol from, and in some areas, such as the Darwin central business district, there are too many on-premises outlets"⁴ (emphasis added).

20. The Commission notes that this finding has also been recognised by the Government many times.
21. It is in light of those findings that the Commission considers it somewhat flies in the face of those findings for it to be the case that licensees could effectively "hold on" to licenses indefinitely without utilising them for the purpose upon which they have been issued, i.e. "for the sale, supply, service or consumption of liquor".
22. On this occasion however both the Director's representative and the solicitor for the licensee submitted to the Commission that the "appropriate" disciplinary action to take under section 165 is to impose a period of suspension pursuant to section 165(2)(b). The Commission is somewhat surprised by the submission made by the Director given it was the Director that referred this complaint to the Commission for disciplinary action to in fact be taken. Effectively what has occurred since the fire in 2018 has been, for all practical purposes, a suspension of the licensee's licence given they are

³ See para 2.1 of the Riley Review

⁴ Ibid, at para 2.6

not trading in any way. Nevertheless the Commission notes that this was the submission made.

23. The Commission notes that an additional submission was made on behalf of the Director to the effect that the action taken by the Director was “trying to assist the licensee to deal with their own licence”. It was suggested that the action taken in “recent times” by the licensee indicated that the licensee was **now** doing that and that reporting to the Director during the period of the suspension would effectively reinforce the need for that action to continue to be taken.
24. In this regard, the Commission notes that there has been action taken in recent weeks by the licensee that lend support that the licensee is more likely to now treat its licence with the deference which it deserves. The Commission considers the following to be relevant:
 - a. On 14 April 2024 a general meeting of the Darwin RSL was held. A new committee was appointed, and the Commission was informed that this committee appeared to be working more closely together and effecting change. This is in stark contrast to the information the Commission received about the pre-existing committee both in the referral from the Director and from the persons who attended the very first day of this hearing.
 - b. A new nominee had been appointed (and the Director had approved) who has an understanding of the responsibilities of a liquor licence holder and is already a shareholder and director of another company which holds a liquor licence with respect to another premises in Darwin.
 - c. Negotiations had recommenced on 1 May 2024 with respect to particular premises.
 - d. Assistance had also been sought (and meetings arranged to discuss the same) from the NT Government with initial discussions being positive.
 - e. If those negotiations were successful member approval could be granted as early as late June 2024, settlement a few months thereafter and trading to commence following any necessary fit out work.
25. The Commission considers this contravention to be serious. There has been little to no action taken by the licensee with respect to the operation of its license for a considerable period of time and this has occurred despite several efforts by the Director to convey the seriousness of such conduct. There is also evidence before the Commission that shows how dysfunctional the licensee has been and how very little appears to have been understood about the importance and privilege it is to hold a liquor licence. The Commission has serious misgivings in light of that history.

26. In forming this decision and considering the principle of proportionality, the Commission has also given consideration to the fact that the licensee is part of a not-for-profit association, the objects of which are, in part:

"... providing aid, comfort and encouragement to serving and former defence personnel and their families."
27. This is a different situation therefore to a "for profit" licensee. It should be understood that a very different decision is likely to have been made by this Commission had this been a "for profit" licensee with the licence likely to have been cancelled.
28. The Commission also notes that despite the conduct leading to this complaint, the Director has recommended that the licence be suspended, rather than cancelled. Evidence has also been provided of changes put into effect by the licensee and their pursuit of other premises to operate from.
29. The Commission however is anxious to deter this licensee and other licensees from contraventions of this nature.
30. It has been a difficult exercise for the Commission to weigh all these factors in determining the "appropriate" disciplinary action to be taken. It is based on what appears (on the information provided to the Commission) of the very real negotiations for new premises that the Commission has determined to suspend rather than cancel this licence. The licensee, however, should be under no misapprehension that its past conduct which led to this disciplinary action will no longer be tolerated.
31. It is on this basis that the Commission has determined to suspend the licence for 12 months to provide the licensee sufficient time to finalise premises and do all things necessary to have those premises ready to commence business on completion of the suspension period. If that, however, cannot be done within those 12 months (which the Commission notes it was assured extensively by the licensee many times that it could and if not sooner) then this licence is cancelled immediately upon the expiration of those 12 months.
32. A message needs to be sent to this licensee and all other licensees that a liquor licence is a privilege not a right and they must be utilized for the purpose upon which they are granted – not for holding ad infinitum.
33. To ensure that the licensee is taking all the action necessary to obtain premises, the Commission has also imposed directions with respect to reporting to the Director (and in ten months' time to the Commission) to ensure that this licensee does not once again fall into the same conduct that led to the referral of this complaint.

34. Therefore in addition to the 12-month suspension the licensee is directed as follows to:
- a. provide a report to the Director on the 24th day of each month (or the next business day should that date fall on a weekend) commencing on 24 June 2024 with respect to the following matters:
 - i. Compliance with any and all obligations the licensee has under the *Liquor Act* pursuant to its licence and/or the conditions of its licence.
 - ii. The progress of any negotiations with respect to any premises to which the licensee is considering using for the purposes of the sale, supply, service or consumption of liquor.
 - iii. Any changes to the membership of the management committee (aka Board⁵) appointed in accordance with its Constitution at the general meeting of the licensee on 14 April 2024, with the first report made to the Director on 24 June 2024 to include the names of those members who were appointed on that date and their role within that committee (aka Board).
 - iv. Any other matters that the Director reasonably requests the licensee report upon.
 - b. provide a copy of the report provided on 24 March 2025 also to the Commission and the licensee is to include in that report details of the premises that have been secured by the licensee to re-commence the sale, supply, service or consumption of alcohol and confirmation that the licensee shall be ready to re-commence operating at those premises immediately upon the expiration of the 12 month period of the suspension.
35. The Commission has also determined it is appropriate that should the licensee not be ready to re-commence operations as and from the expiry date of the 12-month suspension period, the licence is to be cancelled immediately.

NOTICE OF RIGHTS

36. Section 31(1) read with section 166(7) of the Act provide that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal (**NTCAT**). Section 94(3) of the *NTCAT Act* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.

⁵ The Commission utilises the reference to “Board” in deference to Part 4 of the licensee’s Constitution tendered as part of exhibit 2 at page 212-213 (of 223 pages).

37. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Director and the licensee.

A handwritten signature in black ink, appearing to read 'Jodi Truman', with a long horizontal flourish extending to the right.

JODI TRUMAN
DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
24 May 2024

On behalf of Commissioners Truman, Abbott-McCormack and R. Shanahan