

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER:	<i>DISCIPLINARY ACTION AGAINST UNITED WYCLIFFE WELL</i> [2024] NTLiqComm 51
REFERENCE:	LC2024/039
LICENCE NUMBER:	80802878
LICENSEE:	Silvey Pty Ltd
PREMISES:	United Wycliffe Well
LEGISLATION:	Part 7 of the <i>Liquor Act 2019</i>
HEARD BEFORE:	Mr Russell Goldflam (Chairman) Mr Bernard Dwyer (Health Member) Ms Katrina Fong Lim (Community Member) Ms Ebony Abbott-McCormack (Health Member)
DATE OF HEARING:	23 October 2024
DATE OF DECISION:	18 November 2024

DECISION

1. On 23 October 2024, the Northern Territory Liquor Commission (**the Commission**) determined to uphold a complaint against Silvey Pty Ltd (**the licensee**) and to take disciplinary action against the licensee under s 165(2)(c) of the *Liquor Act 2019* (NT) (**the Act**) by cancelling liquor licence 80802878 (**the licence**) at the premises of the United Wycliffe Well roadhouse (**the premises**).

STATEMENT OF REASONS

Background

2. The United Wycliffe Well roadhouse, a stopover 130 km south of Tennant Creek on the Stuart Highway, is a member of the United Petroleum Pty Ltd chain. United Petroleum has around 500 sites nationally, including 18 service stations in the Northern Territory. As well as being a United Petroleum franchisee, Silvey Pty Ltd is the holder of a liquor licence at the premises, with a restaurant authority, a takeaway authority and a lodging authority.

3. On 25 December 2022, the premises were flooded following significant rain, which caused the usually dry Wycliffe Creek to burst its banks, forcing the premises to close. Twelve months later the premises suffered a further flooding event. As a result, the premises have remained closed and the licensee has not operated the service station or the associated liquor licence since 25 December 2022.
4. In addition to the flood damage, the premises have since been subject to extensive vandalism and general deterioration. Significant capital works would be required to return the premises to an operable state.

The licensee enters into an enforceable undertaking

5. Section 67(1) of the Act provides:

A licensee is taken to have abandoned the licence if the licensee ceases to operate the licensed premises for more than 6 months without the prior approval of the Director.

6. On 8 March 2024, Ms Sowerby, a Principal Compliance Officer in the office of the Director of Liquor Licensing (**the Director**) wrote to the licensee inviting it to either surrender the licence under s 66 of the Act or lodge submissions as to why the Director should approve the continuation of the licence under s 67(1) of the Act. Previously, despite having ceased to operate the premises for in excess of 14 months, the licensee had not sought the Director's approval to continue to hold the licence.
7. On 3 April 2024 the licensee's solicitors wrote to the Director advising that the licensee intended to recommence trade at the premises by 31 May 2025.
8. On 28 June 2024, in accordance with s 159 of the Act, the licensee entered into an enforceable undertaking that the Director accepted on 1 July 2024 as an alternative to taking disciplinary action against the licensee. The undertaking included the following:

Silvey Pty Ltd undertakes to provide a report to the Director by no later than the 28th day of each calendar month, detailing the progress of works at the licensed premises allowing for the recommencement of operations not later than 12 months from the date of execution of this Enforceable Undertaking.

9. On 19 December 2023, 24 July 2024, 14 August 2024 and 17 September 2024, officers of the Director travelled to and inspected the premises, which on each occasion were observed to be in a state of serious disarray and apparently abandoned. One of these officers, Ms Sowerby, declared that "it was obvious no clean-up or repairs of the property had occurred from when I was at the property last, on 19 December 2023".

The complaint

10. On 15 August 2024, Ms Sowerby, a Delegate of the Director, accepted a complaint against the licensee laid by Ms Armour, an Inspector in the office of the Director. The ground for the complaint was, as provided by s 160(1)(e) of the Act, that the licensee had contravened a provision of an enforceable undertaking. In particular, the complaint alleged that the licensee had failed to provide a report to the Director by 28 July 2024 detailing the progress of works at the premises. On 16 August 2024 the Director notified the licensee of the complaint, and invited the licensee to respond to it.

11. On 30 August 2024, the licensee's solicitors responded, stating:

the Licensee has in fact progressed the matter and the Licensee is intent on resuming operations of the Premises not later than 12 months after the Enforceable Undertaking was accepted, being 28 June 2024.

12. Annexed to the solicitors' response was a document dated 28 July 2024 headed "Progress Report" and signed by Mr McLean, General Counsel, United Petroleum Pty Ltd. The Report, which was addressed to the Director and endorsed "By Email" under the letterhead of United Petroleum Pty Ltd, stated:

- The board decided (sic) engage Outback Maintenance Services Pty Ltd trading as Outback Solutions Darwin, to attend the Premises for a preliminary site visit as Outback Solutions Darwin was previously engaged after the initial floods in 2022.
- On or around 18 July 2024, Outback Solutions Darwin was contacted to arrange a quote and attend the Premises.
- By 28 July 2024, the Licensee was still waiting for the quote from Outback Solutions Darwin

13. The licensee's solicitors stated that the failure to provide the Report to the Director was "due to an oversight by the Licensee".

14. On 2 October 2024, Mr Wood, a Delegate of the Director, referred the complaint to the Commission, and submitted that the licence be cancelled, with a brief (**the brief**) including the following documents:

- a. Summary of alleged facts

- b. Liquor licence 80802878 for Silvey Pty Ltd t/as United Wycliffe Well
- c. Letter dated 8 March 2024, liquor licence considered abandoned Holly Sowerby, Principal Compliance Officer
- d. Enforceable undertaking signed by the Licensee on 28 June 2024 David Szymczak, Licensee; and Mel Garde, Director of Liquor Licensing
- e. Inspection notes, 24 July 2024, 14 August 2024
- f. Photographic image boards of inspections conducted on 19 December 2023, 14 August 2024 and 17 September 2024
- g. Complaint dated 15 August 2024 Lorraine Armour, Liquor Inspector
- h. Notification of complaint to Licensee dated 16 August 2024
- i. Statutory Declaration of Holly Sowerby, 16 August 2024
- j. Statutory Declaration of Lorraine Armour, 24 August 2024
- k. Licensee's response to complaint dated 30 August 2024
- l. "Progress Report" dated 28 July 2024

15. On 4 October 2024 the Commission notified the licensee and the Director that it would hear the complaint on 23 October 2024.

16. On 14 October 2024 the licensee's solicitors wrote to the Commission stating: "We continue to act for Silvey Pty Ltd. Our instructions are that Silvey Pty Ltd will accept the complaint and will not be attending the hearing."

The hearing

17. The Commission conducted the hearing on 23 October 2024. Mr Wood appeared for the Director. No appearance was made by or on behalf of the licensee.

18. The Commission admitted the brief into evidence, and in addition the letter dated 3 April 2024 from the licensee's solicitors to the Director's office.

19. Mr Wood informed the Commission that the Director had not received a monthly progress report from the licensee for the calendar months of August or September 2024.

Consideration

20. The Commission finds that the licensee breached the enforceable undertaking by failing to provide a monthly progress report to the Director in accordance with the undertaking for any of the three months that have elapsed since the licensee entered into the undertaking.
21. Accordingly, the Commission upholds the complaint on the ground stated in the complaint, that the licensee contravened a provision of an enforceable undertaking.
22. The Commission considers the explanation provided by the licensee's solicitors for the failure to provide a progress report for the month of July 2024 to be unsatisfactory. If the licensee had attended the hearing of the complaint, it would have had an opportunity to provide a further explanation. It chose not to do so. Having regard to the paucity of material provided by the licensee to the Director, the Commission is not satisfied that substantial steps have been taken since 22 December 2022 to undertake works for the purpose of recommencing the operation of the premises.
23. The Commission finds that the licensee has ceased to operate the licensed premises for more than 6 months. The Commission further finds that the Director has not given prior approval for this. In these circumstances, s 67(2)(a) of the Act provides that the abandoned licence has no effect, s 67(2)(b) provides that Director may cancel the licence, and s 67(2)(c) provides that the person who held the abandoned licence has no rights or privileges under it.
24. Section 166(4) provides that the Commission may hear a matter not referred to it but which arises from a matter that was referred to it.
25. Section 160(1)(g)(i) of the Act establishes as a ground of complaint that premises are no longer being used for the sale, supply, service or consumption of liquor. In addition to upholding the complaint on the ground stated in the complaint, the Commission finds that this further ground of complaint is made out.

DISCIPLINARY ACTION

26. The Commission's primary purpose in taking disciplinary action is deterrence. One of the factors that has been identified as relevant to the assessment of deterrent civil penalties is "whether the company has shown a disposition to co-operate with the authorities responsible for the enforcement of the Act in relation to the contravention."¹ In this case, the licensee's indications in July 2024 that it was disposed (albeit, belatedly) to co-operate with the Director were belied by its subsequent action (or rather, inaction).

¹ *Australian Building and Construction Commissioner v Pattison* [2022] HCA 13; (2022) 274 CLR 450 at [18]

27. The Commission considers that cancellation of the licence is required to deter other licensees doing as this licensee has done, and flouting s 67 of the Act. If the licence is not cancelled, the legislative intent of s 67 would be undermined.
28. The Director has recommended that the licence be cancelled. The Commission has received no submissions or representations from the licensee or anyone else that the licence should not be cancelled. By operation of s 67, the licence is taken to have been abandoned, and as a consequence, firstly, it has no effect, and secondly, the licensee has no rights or privileges under it. Furthermore, s 67 of the Act confers on the Director the power to herself cancel the licence.
29. In these circumstances, it may not be necessary for the Commission to take any disciplinary action at all to give effect to its view that the licence should be cancelled. However, in order to remove any possible doubt about the status of the licence, the Commission has determined to cancel it.
30. The Commission is satisfied in accordance with s 165(1) of the Act that two grounds for disciplinary action exist and that the disciplinary action the Commission has determined to impose is appropriate in relation to these grounds.


The purposes of the Act

31. Section 3(4) of the Act provides that in performing its function to decide whether to take disciplinary action, the Commission must have regard to the primary and secondary purposes of the Act. The Commission has had regard to the purposes of the Act. Section 3(3)(d) provides that to achieve its purposes the Act establishes offences and processes to enforce compliance with the Act.
32. The Commission considers that its implementation of the complaint process, its findings and the disciplinary action it has determined to impose are consistent with the purposes of the Act.

NOTICE OF RIGHTS

33. Section 31(1) read with s 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.

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



RUSSELL GOLDFLAM
CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
28 November 2024

On behalf of Commissioners Goldflam, Dwyer,² Fong Lim and Abbott-McCormack

² The term of appointment of Commissioner Dwyer expired on 5 November 2024. Before this date, Mr Dwyer attended the hearing of the application and endorsed the decision in the terms set out at the commencement of this notice.