

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE AND REASONS FOR DECISION

CITATION: *COMPLAINT AGAINST RAM MEDICAL PROPERTY NOMINEES PTY LTD* [2024] NTLiqComm 23

FILE NUMBER: LC2024/013

LICENSEE: RAM Medical Property Nominees Pty Ltd

PREMISES: Rosebery IGA
Unit 4, 164 Forrest Parade
ROSEBERY NT 0832

LICENCE: FLL1009

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

DECISION OF: Ms Jodi Truman (Deputy Chairperson)
Professor Phillip Carson (Health Member)
Ms Katrina Fong Lim (Community Member)

DATE OF HEARING: 12 June 2024

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Decision

1. For the reasons set out below the Northern Territory Liquor Commission (**the Commission**) heard a complaint against RAM Medical Property Nominees Pty Ltd (the licensee) that 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)(c) of the Act, the licence be cancelled forthwith.

Reasons

Background

3. RAM Medical Property Nominees Pty Ltd (**the licensee**) is the holder of liquor licence number FLL1009 for premises formerly known as “Rosebery IGA”

situated at Unit 4, 164 Forrest Parade, Rosebery NT 0832 (**the premises**). The Commission uses the term “formerly known as” on the basis the licence was initially granted to OMG Retail Pty Ltd on 16 October 2015 who then ceased trading at the premises on or about 30 May 2017. OMG Retail Pty Ltd was then placed into administration on 1 June 2017.

4. The licence was subsequently transferred to the lessor Elias Investments Pty Ltd with a view to seeking a third party to reopen and operate the premises. On 10 June 2022, pursuant to another application to transfer, the licence was approved by the Director of Liquor Licensing (**the Director**) for transfer to the current licensee. The premises themselves however have not traded since their closure in 2017.
5. The licence held by the licensee dated 31 May 2023 names Mr Andrew Hank Rojek (**Mr Rojek**) as the nominee. The licence includes a Grocery Store Authority.
6. Although not relating to the **current** licensee, the Commission considers the following facts to also be relevant:
 - a. Since late 2018 the Director-General (as then known) and subsequently the Director have written to the previous licensees in relation to the cessation of trade, and the premises no longer being used for the sale, supply service or consumption of liquor.
 - b. The *Liquor Act 1978* (the 1978 Act) included provisions relating to, *inter alia*, circumstances where the licensee’s inability to conduct the business of the licence is, or is expected, to be permanent.
 - c. Section 47(5) of the 1978 Act required the Director-General to cancel the licence in circumstances where satisfactory arrangements had not been made to conduct the business of the licence.
 - d. The 1978 Act also contained a ground for a complaint provision namely section 67(3)(g), similar to the current provisions under the 2019 Act.
 - e. Action was in fact commenced in 2018 and 2019 by the Director-General with respect to such a complaint. During those times, discussions were ongoing (albeit sporadic) with counsel for the previous licensee from which the then Director-General and later, the Director formed the opinion they were satisfied not to take further action at those times.
7. It is clear the current licensee was aware of this issue when it purchased the property in May 2022. The Commission received correspondence from the Director to the licensee advising that time with respect to any abandonment action would be extended to 17 November 2022¹.

¹ See page 21 (of 39) of the Hearing Brief.

8. In addition, the Commission has also received as part of the evidence at this hearing, which leads the Commission to be satisfied of the following facts²:
- a. On 7 October 2022, Mr Crowther on behalf of the licensee wrote to the Director seeking an extension of time beyond 17 November 2022 on the basis they were "...close to finalising a deal...that will...be completed in the next few months".
 - b. Following a request for particulars, Mr Crowther requested an extension to 28 February 2023.
 - c. The Delegate of the Director (the Delegate) granted an extension to the licensee to 30 November 2022 only.
 - d. On 22 November 2022 Mr Crowther again wrote on behalf of the licensee to the Director seeking an extension beyond 30 November 2022 and providing a signed Heads of Agreement (HOA) with IGA together with draft and unsigned leases.
 - e. On that same date the Delegate wrote to Mr Crowther and noted that due to the lack of certainty, there would be no extension granted and the matter would be referred back to the Director. The Delegate noted that this would not mean that "action will immediately commence" and recommended "work to have something more concrete" provided to the Director "as soon as practicable".
 - f. On 2 February 2023, the matter was referred to compliance for action.
 - g. On 15 February 2024, e-mail correspondence was sent by the Director to Mr. Crowther referring to the abandonment provisions under the Act and seeking information in relation to the licensee's intentions with respect to the licence. It was noted that there were two options:
 - i. surrender the licence by returning it to the Director; or
 - ii. lodge submissions as to why the Director should approve the continuation of the licence even though the premises were no longer trading in the sale of liquor.

A request was made that a response be provided by 29 February 2024 or action would be taken under section 67 of the Act.

- h. On 23 February 2024, Mr. Crowther contacted the Delegate by telephone to discuss the letter from the Director. The Delegate noted that the annual fee again had not yet been paid and further that no materials had been provided on behalf of the licensee.

² See Chronology at pg. 16-17 (of 39) of the Hearing Brief together with the relevant Attachments relating to the same

- i. On 27 February 2024 the annual fee for 2024 was paid and Mr. Crowther wrote to the Director and noted that leasing of the premises had “proven difficult” and that they had “now engaged in a capital works program to amalgamate and improve existing tenancies with the intention of selling the asset in the near term”. As a result they were “unable to utilise the liquor licence” however wished to “retain it to maintain the saleability of the asset by providing flexibility to an incoming owner”. No further information or materials were provided.
- j. On 29 February 2024 the Delegate accepted a complaint pursuant to section 160 of the Act on the grounds that the premises were no longer being used for sale or supply. On that same date notice was sent by the Delegate to the licensee pursuant to section 162 of the Act and advising of the right to respond with such response to be received within 14 days.
- k. On 4 March 2024 correspondence was sent to the Delegate by Mr. Lewis Sears (**Mr Sears**) stating that they had “now entered into an exclusive agency agreement to sell the property” and requesting that the license be retained in the meantime.
- l. On that same date the Delegate wrote to Mr. Sears noting that the matter had progressed, and complaint proceedings had commenced and inquiring whether further submissions would be made.
- m. Following a phone call on that very same day, Mr. Sears again emailed the Delegate and advised there would be no further submissions as it was felt that their previous letter was “concise in this respect”.

The Hearing

9. The matter proceeded as a public hearing on 12 June 2024. Mr Mark Wood (Mr Wood) appeared on behalf of the Director. There was no appearance on behalf of the licensee. Mr Crowther had in fact written to the Commission on behalf of the licensee on 6 June 2024 advising he would not be attending the hearing. As a result, the Commission wrote to Mr Crowther that same date advising that the hearing would be conducted in his absence.
10. It is clear the licensee is well aware of the hearing and the disciplinary action available to the Commission, including cancellation of the licence, and has chosen not to attend at the hearing. That is the right of the licensee.

The Facts

11. The facts providing background to this matter are set out above. It is clear the licensed premises are no longer being used for the sale, supply, service or consumption of liquor. It is clear this has been the case since trade ceased at the premises on or about 30 May 2017.
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.
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 principle of parity, this is only the second occasion 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. The first occurred only a matter of approximately 4 months before this application was referred to the Commission with respect to the Darwin RSL (the RSL matter)³.
17. In the RSL matter, the submissions made on behalf of the Director were that the licence should be suspended given certain actions that had been taken by the licensee. On this occasion, the submission made on behalf of the Director is that the licence should in fact be cancelled. Mr Wood highlighted the following:
 - a. The RSL matter involved a not-for-profit licensee conducted predominantly by volunteers.
 - b. In contrast, the licensee in this matter was a large commercial entity with commercial sophistication and several properties operating for profit. Emphasis was placed upon the Commission's findings at paragraphs 26 to 28 of the decision in the RSL matter.
 - c. Darwin RSL Incorporated had taken numerous steps to obtain alternative premises to be able to continue to operate its licence whereas there was little to no evidence of any such steps being taken by this licensee.
18. The Commission notes reference in some items of correspondence where the licensee has alleged there have been certain actions taken to have the premises leased and/or negotiations with respect to the same. However, no evidence has been provided to support those assertions and certainly not relating to any recent negotiations. The Commission accepts the submission that there are distinctions to be made between this licensee and the licensee in the RSL matter.

³ See *Complaint against Darwin RSL Incorporated* [2024] NTLiqComm 19

19. In relation to the application of the principle 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.
20. 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...”⁴.

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”⁵ (emphasis added).

21. The Commission notes that this finding has also been recognised by the Government many times.
22. In light of those findings the Commission considers it 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”.
23. In this matter, that is effectively what the licensee seeks to do and relies upon its desire “to maintain the saleability of the asset” as the basis of the same. This is not a proper basis for a licence remaining in the hands of a licensee who is not utilizing the licence and has not done so for considerable time.
24. With respect to the principle of proportionality, 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 and this has occurred despite several efforts by the Director to convey the seriousness of such conduct.
25. The Commission wishes to deter both this licensee and other licensees from contraventions of this nature.
26. In weighing all these factors and the submissions made on behalf of the Director, the Commission has determined that the only “appropriate” disciplinary action to be taken is cancellation of this licence immediately.

⁴ See para 2.1 of the Riley Review

⁵ Ibid, at para 2.6

27. As stated in the RSL matter, 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.

NOTICE OF RIGHTS

28. 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.
29. 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.



JODI TRUMAN
DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
12 June 2024

On behalf of Commissioners Truman, Carson and Fong Lim