

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE AND REASONS FOR DECISION

CITATION: *COMPLAINT AGAINST THESE CLOWNS PTY LTD* [2024]
NTLiqComm 33

FILE NUMBER: LC2024/028

LICENSEE: These Clowns Pty Ltd

PREMISES: Monte's Lounge
95 Todd Street
ALICE SPRINGS NT 0870

LICENCE: 80818730

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

DECISION OF: Ms Jodi Truman (Deputy Chairperson)
Professor Phillip Carson (Health Member)
Mr Denys Stedman (Community Member)

DATE OF HEARING: 24 July 2024

DATE OF DECISION: 30 July 2024

Decision

1. For the reasons set out below the Northern Territory Liquor Commission (**the Commission**) heard a complaint against These Clowns 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. These Clowns Pty Ltd is the holder of liquor licence number 80818730 for premises formerly known as "Monte's Lounge" situated at 95 Todd Street,

Alice Springs NT 0870 (**the premises**). The Commission uses the term “formerly known as” on the basis that the premises had ceased trading as “Monte’s Lounge” since approximately 24 December 2022. At that time, the lease over the premises had been relinquished back to the owner of the premises, “Annie Mulga Venture Pty Ltd” (**the owner**).

4. The licence held by the licensee dated 31 May 2023 names Mr Kyle Pearson (**Mr Pearson**) as the nominee. The licence includes the following authorities:
 - a. Restaurant Bar Authority.
 - b. BYO Authority.
 - c. Late Night Authority from 12 midnight to 2am.
5. As part of the hearing, the Commission has received the following evidence, which leads the Commission to be satisfied of the following facts:
 - a. The licence relating to these premises provided to the Commission is dated 1 July 2020 and refers to Mr Pearson as the nominee¹.
 - b. In about December 2022, Licensing NT confirmed information that the licensee had ceased trading at the premises and that the premises had remained closed since that time².
 - c. Following closure of the premises in December 2022 the lease had transferred back to the owner of the premises. There had not however been a transfer of the liquor licence at that time³.
 - d. On 23 December 2022, the licensee provided written confirmation of forfeiture of its bank guarantee to the owner of the premises and left plant and equipment relating to the premises within the premises transferring those to the owner as part of resolving monies owing⁴.
 - e. In addition, a Deed of Release (**the Deed**) was entered into between the licensee, the nominee (as guarantor) and the owner with respect to the premises and all monies owing on that same date⁵.
 - f. Part of the terms of the Deed included that the licensee⁶:

“(iii) execute and give to the Owner a signed notice of transfer of the Liquor Licence leaving the transferee of the Liquor Licence blank”.

¹ See exhibit 1, pg. 6-8 (of 22)

² See pg. 3 (of 22)

³ Ibid

⁴ See Exhibit 3

⁵ Ibid

⁶ Ibid, clause 3.1(d)(iii) of the Deed of Release

- g. In accordance with that term, an Application to transfer a liquor licence was signed by the licensee and was dated 21 December 2022⁷.
- h. That signed Application to transfer a liquor licence has therefore been held by the owner of the premises since on or about 23 December 2022.
- i. On 6 February 2023, correspondence was sent by Licensing NT to the licensee noting that the annual liquor licence fee for the premises due for payment on 1 February 2022 remained outstanding⁸.
- j. On 7 February 2023, following confirmation as to which premises were being referred to, the nominee (Mr Pearson) wrote to Licensing NT stating that the premises “has ceased trading” and that there was “no relation to this entity”⁹. The Commission notes that “this entity” appears to be a reference to “Alice Springs Brewing Co” which Mr Pearson is also involved in.
- k. On that same date Licensing NT again wrote to Mr Pearson noting that the email utilised by Licensing NT was the one recorded as “the contact email for Monte’s Lounge” and sought advice as to “whether the license has been transferred and an updated contact email” provided¹⁰.
- l. No response was provided to Licensing NT to that inquiry.
- m. On 7 March 2023, e-mail correspondence was sent by Licensing NT to Mr Pearson¹¹ noting that contact had been made on 6 March 2023 and confirming that the licence fees for the 2022 year remained outstanding “and as such still needs to be paid”. The correspondence also relevantly noted as follows:

“... it is highly recommended to prevent incurring further licence fees and other responsibilities, that **section 1** of the attached transfer of licence form is completed, signed, dated and then provided to Mat [sic] Mulga with a copy Bcc’d into (*email address given*) so as to create a record of your action/s.”
- n. No response was provided to Licensing NT to that correspondence.
- o. On 12 October 2023, e-mail correspondence was sent by Licensing NT to Mr Pearson with a cc to Mr Mulga “as an interested party to the licensed premises”¹². The correspondence noted that the fees remained

⁷ See Exhibit 3

⁸ See pg. 11 (of 22)

⁹ See pg. 9 (of 22)

¹⁰ Ibid

¹¹ See pg. 12 (of 22)

¹² See pg. 13-14 (of 22)

outstanding and that “(a)s the liquor licence is currently suspended, a licence transfer is not possible until the fee has been paid”.

p. Of note, that correspondence also stated very clearly as follows¹³:

“Failure to pay the outstanding fee within 28 days of receiving this letter will result in a referral to the Liquor Commission with a recommendation to cancel the licence associated with the premises for failure to comply with Section 69 of the Act”.

q. On 23 October 2023, Mr Mulga responded to Licensing NT and requested a copy of “the invoice and I will organise the payment”¹⁴. In addition, Mr Mulga noted:

“We have several parties looking at the site and hopefully a transfer application will be submitted.”

r. On 25 October 2023, a copy of the invoice was sent to Mr Mulga in response to his request for the same¹⁵. That correspondence again noted that the licence was “currently still” with the licensee and would “either need to be transferred to yourself, or the new purchaser of the premises”. A transfer application was also attached to assist Mr Mulga.

s. No response was provided to Licensing NT to that correspondence, however the Commission notes that the licence fee was paid.

t. On 25 March 2024, a liquor inspector lodged a complaint with the Director on the ground that the licensee’s licensed premises were no longer being used for the sale, supply, service or consumption of liquor, contrary to section 160(1)(g)(i) of the Act¹⁶.

u. On that same date the Delegate of the Director (**the Delegate**) wrote to the nominee, Mr Pearson, with Mr Mulga in copy, providing a copy of the complaint and advising complaint proceedings had commenced and inviting a response¹⁷.

v. No response was received from either the licensee, the nominee or Mr Mulga as the interested party to that correspondence.

The Referral

6. On 4 July 2024 the Delegate referred the complaint to the Commission. Following receipt of that referral, the Commission listed the matter for hearing

¹³ See exhibit 2

¹⁴ See exhibit 1, pg. 15-16 (of 22)

¹⁵ See pg. 15

¹⁶ See pg. 17-19

¹⁷ See pg. 20-22

on 24 July 2024 and informed the Director, the licensee and Mr Mulga as an interested party of the hearing date.

The Hearing

7. The matter proceeded as a public hearing on 24 July 2024. Mr Mark Wood (**Mr Wood**) appeared on behalf of the Director. Mr Pearson appeared in person as the nominee still listed on the licence. Mr Mulga also attended as an interested person.
8. With respect to the licensee, Mr Pearson wrote to Licensing NT via Mr Wood on 14 July 2024 advising that¹⁸:

“Since the lease ended, These Clowns Pty Ltd has gone into administration. Deloittes are running it. Here is a current company search showing that. Even though I am the nominee under the licence, I can’t say really do anything on behalf of the licensee. I have given Deloittes notice of the hearing and a copy of this response. Whether or not they want to be involved in this process I don’t know.”
9. At the hearing, the Commission also received into evidence the Company Extract for the licensee which confirmed the licensee was indeed in administration and that although Mr Pearson was the Director and Secretary of the licensee company, it was Deloitte Touche Tohmatsu (**Deloitte**) who was the administrator. The Commission inquired of Mr Pearson as to the notice he had given to Deloitte. Mr Pearson advised he had attempted contact with one of the identified practitioners, namely Mr Nathan Schwarz (**Mr Schwarz**) concerning the hearing. He stated he had attempted to make contact with Mr Schwarz on 14 July 2024, but without success. Mr Wood also informed the Commission that after receiving the email from Mr Pearson advising of administration, he too had attempted to contact Mr Schwarz by way of “3 to 4 calls and one email without success”.
10. The Commission considers 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. As a result, the hearing proceeded.

The Facts

11. The basic 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 since approximately 23 December 2022.
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.

¹⁸ Exhibit 3

13. As earlier noted, in paragraph 8 above, after receiving notice from the Commission advising of the hearing date, correspondence was sent by Mr Pearson to Mr Wood dated 14 July 2024 providing a copy of the lease “and the documents that were signed with Matt Mulga’s company at the end of the Montes lease”¹⁹.
14. In addition to the matters noted in paragraph 8, Mr Pearson also relevantly advised as follows:
 - a. “... we were working on the understanding that Mulga was going to find another licensee to go in as he had told us there was someone ready”.
 - b. “He was given a signed transfer of licence for that purpose, and this was also a legal requirement of the deed that was drawn and the lease.”
 - c. “I had always understood we had to let him do that and not do anything with the licence that would cause a problem.”
 - d. “I did not think I could or should have said anything more to licensing given the requirement under lease etc. to allow Matt Mulga to transfer the licence. If that was the wrong thing to do I apologise.”
 - e. “I have tried to speak to Matt Mulga about this, because I think that he is the one most concerned about what might happen to the licence. I have not yet been able to catch him but will send him a copy of this letter. I think he is aware of the matter any way and expect he is likely to attend the hearing.”
15. As noted, Mr Pearson attended the hearing and confirmed the above as his evidence. The Commission accepts this evidence and accepts that Mr Pearson was acting under what he understood to be the terms of the Deed which included the licensee being required to sign a transfer of liquor licence which was then held by the owner of the premises and to take no action “with the licence that would cause a problem”.
16. Mr Mulga also attended the hearing on behalf of the owner of the premises and requested leave to provide information to the Commission as an interested party. That leave was granted, and Mr Mulga relevantly informed the Commission as follows:
 - a. He had paid the licensing fees relevant to the licence as required by Licensing NT and believed it “unjust” that the licence now be taken away.
 - b. “I was well aware I should transfer the licence. I possibly could have transferred it to myself, and I didn’t because I thought I had a purchaser”.

¹⁹ See Exhibit 3

- c. He had a number of occasions where people were interested in purchasing and on one occasion one of the interested purchasers “didn’t want the licence”.
 - d. “I guess I could have informed Licensing ... but I didn’t”.
 - e. He “now” had a buyer for the premises.
 - f. He believed businesses in Alice Springs were “being punished quite severely”. When asked to what he was referring to by way of that reference to punishment, Mr Mulga confirmed that he was referring to the current social problems being experienced in that community.
17. In relation to the potential “buyer”, Mr Mulga provided the Commission with two (2) email trails:
- a. The first was an email trail between Mr Sahaj Preet (**Mr Preet**) and Ms Holly Sowerby (**Ms Sowerby**) who is a Licensing NT officer²⁰. That email trail:
 - i. Commenced at 9.31pm on 2 July 2024 from Mr Preet to Ms Sowerby advising he was “currently in negotiations” with Mr Mulga “in regards to purchase his premises” and inquired as to the status of the liquor licence.
 - ii. Mr Preet specifically requested an application form for transfer of the licence and made various other inquiries about the licence.
 - iii. Mr Mulga was cc’d into that email.
 - iv. At 3.45pm on 3 July 2024 Ms Sowerby responded and advised that “the licence is currently inactive in our system as the licensee has not engaged in the sale or supply of liquor for over 12 months”.
 - v. A transfer application was provided, and information provided about the process.
 - b. The second was an email trail between Mr Preet and Mr Mulga dated 23 July 2024²¹.
 - i. It stated that they “are in talks ... from last 3 weeks” in relation to the premises and that an “informal offer” had been made which had “been accepted”.

²⁰ Exhibit 7

²¹ Exhibit 8

- ii. It noted the emails about that informal offer were “attached” but they were not attached to the email provided by Mr Mulga to the Commission.
 - iii. The email detailed Mr Preet’s “understanding of our deal” which included “successful transfer or approval of liquor licence”.
 - iv. It noted that Mr Preet was “aware” of the hearing before the Commission and noted as follows:

“... about which I am not 100% what it is about as Kyle Pearson is still the nominee on Liquor Licence and not Matt”.
 - v. There is **no** reference to any apparent awareness of Mr Mulga holding a signed transfer since approximately 23 December 2022 from Mr Pearson.
 - vi. That “we would like to support Matt, so that he can maintain that licence and we can purchase the entity from him”.
18. As earlier noted, it is clear that the licensed premises are no longer being used for the sale, supply, service or consumption of liquor and that this has been the case since trade ceased at the premises in approximately December 2022.
19. It is further clear that the owner of the premises has held a signed transfer of the liquor licence dated 21 December 2022 since approximately 23 December 2022 and has done nothing with that transfer in relation to this licence.

Disciplinary Action

20. Having considered the facts as outlined above, the Commission is satisfied that grounds for disciplinary action exist as required under section 165(1)(a) of the Act.
21. 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”.
22. As part of this exercise the Commission considers it should apply the principles of proportionality, parity and deterrence.
23. In relation to the principle of parity, this is only the third 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 and second of these types of referrals occurred only this year with respect to the Darwin RSL

(the RSL matter)²² and the premises formerly known as the Rosebery IGA **(the Rosebery IGA matter)**²³.

24. 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.
25. On this occasion, just as in the Rosebery IGA matter, the submission made on behalf of the Director is that the licence should in fact be cancelled. Mr Wood again 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 is a commercial entity with sophistication and several properties operating for profit and many of which hold licences under the Act.
 - c. Emphasis was placed upon the Commission's findings at paragraphs 22 to 24 of the decision in the Rosebery IGA matter.
 - d. Darwin RSL Incorporated had taken numerous steps to obtain alternative premises to be able to continue to operate its licence whereas in this matter the owner had held a signed transfer of the licence and not executed any duties in relation to it.
26. The Commission of course notes the emails provided about a current “informal offer” and the Mr Preet’s understanding of “the deal” and also reference made by Mr Mulga of other buyers on previous occasions. The Commission accepts the submission that there are distinctions to be made between this licensee and the licensee in the RSL matter.
27. Mr Mulga is very familiar with his obligations under the Act and as he stated to the Commission, he was “well aware I should transfer the licence” and that he “possibly could have transferred to myself”, but he made a decision not to.
28. It is clear that Mr Mulga made a choice. He made that choice in the context of being aware since 25 March 2024 of this complaint and he made a further choice at that time of not informing the Director that he had a signed transfer of licence. Indeed, he did not respond at all to that notice.
29. 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. Mr Mulga knows very well these obligations given his experience as a licensee.

²² See *Complaint against Darwin RSL Incorporated* [2024] NTLiqComm 19

²³ See *Complaint against Darwin RSL Incorporated* [2024] NTLiqComm 19

30. 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...”²⁴.

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”²⁵ (emphasis added).

31. The Commission notes that this finding has also been recognised by the Government many times.
32. As was said by the Commission in the RSL matter and the Rosebery IGA matter, the Commission again consider that in light of the findings made in the Riley Review, 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”.
33. The Commission finds in this matter, that is what the licensee has done and what Mr Mulga did when he said to the Commission he was “well aware I should transfer the licence. I possibly could have transferred to myself, and I didn’t because I thought I had a purchaser”.
34. It is clear from the information provided by Mr Mulga that the owner now seeks for the licence to be maintained as part of its desire to maintain the saleability of the premises, however this is not a proper basis for a licence remaining where it is not being utilised and has not been for a considerable period of time in circumstances where there was clearly an intentional choice made by Mr Mulga not to effect a transfer.
35. Further, there is nothing preventing either the current potential buyer or any future buyer of the premises from applying for a liquor licence. Cancellation of this licence does not prevent that from occurring.
36. With respect to the principle of proportionality, the Commission considers this contravention to be serious. There has been no action taken by the licensee with respect to the operation of its license for a considerable period.
37. In addition, it is noteworthy (given the unusual factual circumstances of this matter) that the very entity that held the signed transfer of licence and a Deed

²⁴ See para 2.1 of the Riley Review

²⁵ Ibid, at para 2.6

requiring the licensee do nothing with respect to the licence also has taken no action with respect to the operation of this licence, even to the extent of taking no action to cause a transfer which Mr Mulga knew could be made to himself.

38. As was stated in both the RSL and Rosebery IGA matters, the Commission wishes to deter licensees from contraventions of this nature and 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.
39. As stated in the RSL matter, a message needs to be sent to all licensees that a liquor licence is a privilege, not a right, and licences must be utilised for the purpose upon which they are granted – not for holding ad infinitum. Nor should transfers of licences as has occurred in this matter.

NOTICE OF RIGHTS

40. 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.
41. Section 31(2) of the Act states that the persons who may apply to NTCAT for a review of the decision are:
 - the Director
 - the licensee and
 - in the case of a submission, complaint or objection that was the subject of a decision
 - the person who made the submission, complaint or objection.



JODI TRUMAN
DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
30 July 2024

On behalf of Commissioners Truman, Carson and Stedman