

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: DISCIPLINARY ACTION PURSUANT TO THE LIQUOR ACT

REFERENCE: LC2020/002

LICENCE NUMBER: 81401108

LICENSEE: Jabiru Sports and Social Club Incorporated

PREMISES: **Jabiru Sports and Social Club**
Lakeside Drive
JABIRU NT 0886

LEGISLATION: Section 121 and Part VII of the *Liquor Act 1978*

HEARD BEFORE: Mr Russell Goldflam (Acting Deputy Chairman)
Ms Elizabeth Stephenson (Health Member)
Ms Sandra Cannon (Community Member)

DATE OF HEARING: 18 February 2020

DATE OF DECISION: 27 February 2020

DECISION

1. On 18 February 2020, the Northern Territory Liquor Commission ("the Commission") heard and upheld a complaint against the Jabiru Sports and Social Club Incorporated ("the licensee"), and decided to take disciplinary action against the licensee.
2. The Commission has determined to take the following disciplinary action:
 - a. Imposing an additional condition on the licence that the licensee:
 - i. install, maintain video surveillance equipment for the licensed premises;
 - ii. keep the licensed premises under video surveillance during the hours of operation; and
 - iii. keep a record of that surveillance for at least 14 days.
 - b. Suspending the licence for a period of 24 hours from 11:00 am on a Thursday "pension day" not later than 26 March 2020.
 - c. Directing the licensee to take the following actions as soon as practicable:
 - i. Take all reasonable steps to achieve compliance with the condition set out at paragraph 2(a) above.

- ii. Take all reasonable steps to ensure that on entering the licensed premises, all patrons are monitored to ascertain whether they are permitted to purchase or consume liquor on the premises.
- iii. Take all reasonable steps to prevent the supply of liquor by the licensee's patrons to persons on or in the vicinity of the licensed premises who are not permitted to consume or purchase liquor on the premises.
- iv. Inform the Director of Liquor Licensing ("the Director") of the actions taken in compliance with these directions.
- v. If the Director is not satisfied that all reasonable steps have been taken in accordance with these directions, comply with any further reasonable directions given by the Director for the purpose of achieving compliance with these directions.

REASONS

BACKGROUND

3. Jabiru is a town with a population of about 1,000 people located in the Kakadu National Park approximately 5 km west of the Ranger Uranium Mine, 60 km south-west of the Gunbalanya (Oenpelli) community (which also has a population of about 1,000) and approximately 250 km east of Darwin. Known as "the gateway to Arnhem Land", Jabiru is a significant service and supply centre for Arnhem Land Indigenous communities, for visitors to the world heritage Kakadu National Park, and for Ranger Uranium Mine employees and their families.
4. The availability of liquor to residents and visitors to Arnhem Land is highly restricted. The country around Jabiru comprises prescribed areas under the *Stronger Futures in the Northern Territory Act 2012* (Cth), and no liquor may be possessed or consumed in those areas. The licensee is one of two licensed clubs in Jabiru, the other being the Jabiru Golf Club. The only other licensed premises in Jabiru at which locals can consume liquor without having to purchase a meal is the Crocodile Hotel. Although the licensee is authorised to sell liquor to club members for consumption away from the premises, its management committee has resolved not to do so. The only licensee in Jabiru that sells takeaway liquor is the Golf Club, with a daily limit of up to one carton of beer and one bottle of wine or spirits per customer. In Gunbalanya, light and mid-strength beer can be purchased and consumed on the premises at the Gunbalanya Sports and Social Club four days a week for three hour periods.
5. An important measure of alcohol-related harm is the incidence of alcohol-related assaults, which according to NT Police declined by 21.56% across the Northern Territory in the twelve months to 30 November 2019 compared to the previous 12 months.¹ Although the statistics for individual communities such as Jabiru and Gunbalanya are not easily available, historically, Gunbalanya has had a per capita alcohol-related assault rate some 44% higher than the Northern Territory average.²

¹ NT Police, *Northern Territory Crime Statistics* accessed at <https://pfes.nt.gov.au/police/community-safety/nt-crime-statistics>

² Shaw, Brady and d'Abbs, *Managing Alcohol Consumption: A review on licensed clubs in remote Indigenous communities in the NT* (2015). Data for the period 2006 to 2012 is provided at pp 82 – 83.

6. Having regard to the above circumstances, it can be observed that the licensee conducts its business in a particularly sensitive and challenging environment. The Commission considers that in these circumstances, it is particularly important that the licensee strictly comply with the liquor laws and the conditions of its licence.
7. The licensee is well patronised by members of the local Indigenous community. The licensee's busiest trading day is the fortnightly Thursday "pension day". In addition, a substantial segment of the licensee's trade is to Ranger mine workers and their families.
8. Another circumstance of relevance to these proceedings is that the authority of Energy Resources Australia ("ERA") under the *Atomic Energy Act 1953* (Cth) to mine uranium at Ranger expires in January 2021, following which ERA will be required to rehabilitate the mine site within a five year period. ERA owns the land on which the licensee's premises are located. In conjunction with the closure of the Ranger mine, ERA has informed the licensee that in early 2021 it plans to demolish the licensee's current premises. The licensee is in discussion with the Gundjeihmi Aboriginal Corporation, the Jabiru Golf Club and ERA regarding the future of the licence and of the club.
9. On 27 June 2019, two Police Officers stationed at Jabiru attended the premises at about 2100 hours in response to a report of disorderly patrons at the club. The Police observed four drunk patrons on the premises, and two others outside the front door of the premises. They removed two drunk patrons and asked others to leave. The Police reported these incidents to Licensing NT, which, following an investigation, made a complaint against the licensee on 20 August 2019 on the grounds that the licensee had contravened a provision of the Act, and that the licensee had contravened a licence condition. The complaint was referred by the Director to the Commission on 14 January 2020.

THE HEARING

10. The matter proceeded as a public hearing on 18 February 2020. Mr Wood appeared on behalf of the Director. Mr Whiting, the Chairperson of the licensee's management committee, appeared by telephone from Jabiru on behalf of the licensee. The Commission thanks them both for their attendance and assistance. As the licensee was unrepresented, the hearing was conducted with a minimum of formality.
11. In accordance with Regulation 133 of the *Liquor Regulations 2019*, the complaint, which had been made under s68(1) of the Act but not determined before the commencement of the *Liquor Act 2019*, proceeded and was determined under the *Liquor Act 1978*.

THE FACTS

12. The licensee indicated that it did not intend to contest the complaint. Accordingly, the hearing proceeded by a recital of the following facts relied on by the Director in support of the complaint, which alleged four breaches of section 121(1) of the Act.

Police were called to attend the premises after being called by the licensee to attend to assist in removing two patrons. Those two patrons upon arrival by Police had already decamped the actual premises themselves, and upon entry to the premises the Police noticed there was an Aboriginal female wearing a red top at a table, falling from her stool [the first breach]. The female was unable to speak clearly when asked to supply

her details. Acting Senior Sergeant O'Neill³ directed her companions to remove her from the premises. Acting Senior Sergeant O'Neill formed the opinion that the female was drunk. Upon Police returning to premises around half an hour later that lady was still on the premises and had not been removed.

Acting Senior Sergeant O'Neill was directed by a staff member to a male known as Malcolm, due to humbugging his partner and drunkenness. The male was swaying in his chair, unsteady on his feet, whereby his co-ordination was noticeably impaired and his speech was slurred [the second breach]. Police directed him to leave the premises and he refused to do so, becoming belligerent. As a result the male was physically escorted from the premises by Acting Senior Sergeant O'Neill.

Acting Senior Sergeant O'Neill noticed an Aboriginal male who was observed swaying and yelling at the television who appeared to be drunk [the third breach]. The male was removed from the premises by Police and asked for his details. The male's partner advised Police he had hearing difficulties. During this time the male was incoherent, slurring his words, unsteady on his feet whereby his co-ordination was noticeably impaired.

Acting Senior Sergeant O'Neill approached an elderly Aboriginal male, positioned near the TAB register. The male was swaying and his speech was slurred [the fourth breach]. The male was instructed to leave. As he did so, he was noticeably unsteady on his feet, swaying from side to side and his co-ordination was noticeably impaired.

13. The licensee admitted the truth and accuracy of the recited facts, and the Commission, which had viewed the body-worn camera footage recorded by Police and supplied by the Director with the referral of the complaint to the Commission, finds the recited facts to be proved.
14. Mr Whiting informed the Commission that he is a project manager at the Ranger Uranium Mine and had been asked by the General Manager of the mine to join the licensee's management committee because of significant concern in the Jabiru community and by ERA management about the licensee's conduct. According to Mr Whiting, at that time "there were constantly drunks in there, falling off chairs." He expressed the view that the licensee's then management "had the attitude that their money would be made by getting Aboriginal people drunk". In a similar vein, Sergeant O'Neill informed the Commission that in the weeks prior to the incident the subject of this complaint, he had been called on two occasions to deal with drunken disturbances and violence at the premises.
15. Mr Whiting further informed the Commission that he joined the licensee's management committee in June 2019, that there had been a substantial change in membership of the committee since then, that the committee has replaced the club manager and two duty managers (one of whom had been the licence nominee), and that the licensee has applied to have Ms Louisa Bain, the recently appointed club manager, approved to be the licensee's nominee. Mr Whiting informed the Commission that Ms Bain is a highly regarded member of the Jabiru Aboriginal community with a strong personal commitment to preventing alcohol abuse.

³ As he then was: his current rank is Sergeant.

16. Mr Whiting also informed the Commission that the licensee has paid a substantial sum in legal fees incurred in the course of resolving a legal dispute between the club and its former managers referred to above arising from the cessation of their employment. That dispute has now been settled. In addition, the licensee was required to close its doors for a week in September 2019 when the licence nominee left, and before an acting nominee could be appointed.
17. Although the licensee has a CCTV surveillance system, it is not fully functional, and Licensing NT was unable to obtain any footage of the events the subject of the complaint. Mr Whiting informed the Commission that the licensee is planning to install a new CCTV surveillance system, and has applied for a grant from the Northern Territory Department of Trade, Business and Innovation's Biz Secure program for that purpose.
18. The above information provided to the Commission by Mr Whiting was not disputed at the hearing.
19. Sergeant O'Neill informed the Commission that following the incident the subject of the complaint there were "no incidents at all, they've been toeing the line. No issues at all until the last two weeks." In the last two weeks there have been two incidents of concern. On the first occasion, the licensee requested police to attend to assist to remove a violent patron. When police attended, they were assaulted. From his observations of the person, Sergeant O'Neill formed the strong belief that this patron had been affected by an intoxicating drug other than alcohol. On the second occasion, Police attended following an incident involving a former employee of the licensee, who the Police removed. The Commission makes no findings adverse to the licensee in relation to these two recent incidents.

THE LAW

20. Section 7 of the Act provides:

Meaning of *drunk*

A person is ***drunk*** if:

- (a) the person's speech, balance, coordination or behaviour appears to be noticeably impaired; and
- (b) it is reasonable in the circumstances to believe the impairment results from the person's consumption of liquor.

21. Section 121(1) of the Act relevantly provides:

Power to exclude or remove persons

A licensee or employee of the licensee must... remove a person... from the licensed premises if the person is drunk, violent, quarrelsome, disorderly or incapable of controlling his or her behaviour.

22. It is a condition of the liquor licence that:

A breach of the *Liquor Act 1978* by any person employed by or on behalf of the Licensee, shall constitute and be deemed to be a breach of the licence conditions by the Licensee.

FINDINGS

23. The Commission finds that on the evening of Thursday 27 June 2019 employees of the licensee failed to remove from the premises four patrons who were drunk, contrary to s 121 of the Act.
24. The Commission upholds the complaint on the ground specified in the complaint that the licensee breached a condition of its licence. It is unnecessary to decide whether the additional ground specified in the complaint and the sole ground specified by the Director pursuant to s 69(2)(b) of the Act, namely, that the licensee breached s 121 of the Act, is also made out.
25. The Commission notes that s 69(5)(a) of the Act confers power on the Commission to take disciplinary action against a licensee if it is satisfied that “a ground for taking disciplinary action exists”. In the view of the Commission this power is not fettered by a requirement that a ground of which it is satisfied be the same ground or one of the same grounds specified by the Director.

DISCIPLINARY ACTION

26. The Commission considers that the ground of complaint it has upheld is no less serious than the ground the Director specified, and that the disciplinary action recommended by the Director to suspend the licence is appropriate in relation to the ground the Commission has upheld.
27. The Commission accepts the submission of Mr Wood that in imposing disciplinary action, the Commission should apply the principles of proportionality, parity and deterrence. Although the licensee has previously been found to have committed similar breaches in 2003 and 2009, the Commission does not consider that specific deterrence is an important factor in this case, having regard to the age of those matters and the significant steps taken by the licensee since June 2019 to change its business practices, as outlined above. However, the Commission considers that disciplinary action should be taken that sends a message to other licensees.
28. In considering what disciplinary action to impose, the Commission has had regard to the following circumstances that are adverse to the licensee:
 - a. This occurrence was not isolated or exceptional, but part of a pattern of irresponsible management by the licensee of its liquor licence.
 - b. The licensee permitted so many drunk patrons to remain on the premises.
 - c. For the reasons explained at paragraphs 4 to 6 above, the standard required to discharge the licensee’s duty to trade responsibly is elevated by the context within which the licensee conducts its business.
29. In considering what disciplinary action to impose, the Commission has had regard to the following circumstances that are favourable to the licensee:
 - a. At the hearing the licensee did not contest the allegations made by the complainant. (That said, the Commission notes that the evidence provided by the Director in his referral of the complaint to the Commission, including statements by attending police and their body worn video, was strong.)
 - b. Since the incident the subject of the complaint, the licensee has taken drastic, responsible and effective action to adopt and maintain responsible trading practices.

c. The licensee has already incurred substantial expense, as well as a self-imposed suspension of trade, as a direct result of the measures it has taken to address the problems underlying the incident the subject of the complaint.

30. The Commission considers that the seriousness of the contravention requires that a period of actual suspension be imposed pursuant to s 67(2)(c) of the Act. However, having regard to the significant mitigating circumstances, the Commission has determined to substantially reduce the period of suspension, to one day.

31. Mr Wood submitted that the Commission may impose more than one type of disciplinary action, and the licensee did not contend otherwise. Section 67(2) of the Act provides that “**Disciplinary action** means any of the following actions against a licensee”, followed by a list of six types of action. Neither conjunctive (“and”) nor disjunctive (“or”) terms are used to link the items in the list. After conducting a hearing for deciding a complaint, the Commission must either dismiss the complaint or, as s 69(4)(b)(ii) of the Act provides, “uphold the complaint and take specified disciplinary action (whether or not it is the disciplinary action recommended by the Director-General)”. Section 69(5) of the Act provides:

The Commission may take disciplinary action against the licensee only if the Commission is satisfied:

- (a) a ground for taking the disciplinary action exists; and
- (b) the disciplinary action is appropriate in relation to that ground.

32. The Commission has considered these provisions and, having regard to their context and their apparent purpose, the Commission has come to the view that its power to impose disciplinary action is not limited to a single type of action. There is no express provision limiting the exercise of the Commission’s power in such a way. Neither is the Commission able to identify any necessary implication in the Act that would so limit the exercise of the Commission’s power.

33. The Commission has determined that two additional types of disciplinary action are appropriate in this case, namely a variation of the conditions of the licensee’s licence pursuant to s 67(2)(b), and a direction that the licensee take specified action pursuant to s 67(2)(f).

34. The details of the disciplinary action taken are set out at paragraph 2 above.

35. In formulating the variation to conditions and the direction set out at paragraph 22.c.i) above, the Commission has had regard to the circumstances described at paragraph 17 above, and the provisions in the *Liquor Regulations 2019* dealing with video surveillance equipment.

36. In formulating the direction set out at paragraph 2.c.ii) above, the Commission has had regard to information provided by Sergeant O’Neill and Mr Whiting that there is a distance of some 10 metres between the front door of the premises and the “sign-in” counter, which facilitates entry by the premises of persons who are not club members or their guests, or who are otherwise not permitted to consume liquor at the premises. The Commission notes that the licensee intends to erect railings to “draft” persons who enter the premises to the sign-in area. The Commission also notes that on request, Police will provide the licensee with the names of persons resident in the locality who are on the Banned Drinkers Register. In the view of the Commission these measures are likely to assist in addressing this problem.

37. In formulating the direction set out at paragraph 2.c.iii) above, the Commission has had regard to information provided by Sergeant O'Neill that Police are concerned about the problem of "secondary supply" by patrons to persons in the vicinity of the premises. Sergeant O'Neill suggested that the licensee engage a crowd controller on the premises, but the Commission accepts the information given by Mr Whiting that no qualified crowd controllers are currently available in Jabiru, and that the cost of engaging one from Darwin would be prohibitive. However, the licensee's staff can be tasked to patrol the premises with a view to detecting and discouraging secondary supply.

NOTICE OF RIGHTS

38. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the Act. Any application for review of a reviewable decision must be lodged within 28 days of the date of the decision.

39. The Schedule specifies decisions made pursuant to s 68 ("Decision to dismiss complaint" and s 69(3) ("Decision to take disciplinary action against licensee") as reviewable decisions. Section 68 confers power on the Director-General to dismiss complaints against licensees, and accordingly has no application to this decision. Section 69, which is headed "Commission's power to take disciplinary action" confers on the Commission both the power to uphold a complaint and take disciplinary action (s 69(4)(b)(ii)), and the power to dismiss a complaint (s 69(4)(b)(i)).

40. However, s 69(3), the provision in the Schedule, does not in its terms refer to a decision to uphold a complaint and take specified disciplinary action. It provides:

The Director-General must give the licensee details about the referral when referring the matter to the Commission.

41. In this matter, the Commission has decided to uphold the complaint and to take disciplinary action. It is unnecessary for the Commission, which has not had the assistance of argument on this issue, to determine whether or not this decision is a reviewable decision, and the Commission expresses no view on the issue.

42. If this decision is a reviewable decision, in accordance with section 120ZB(1)(a) and (c) of the Act, the affected persons would be the licensee and the person who made the complaint, namely Jeffrey Paull, Compliance Officer, Licensing NT.



RUSSELL GOLDFLAM
ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION

27 February 2020

On behalf of Commissioners, Goldflam, Stephenson and Cannon