

Northern Territory Licensing Commission

Review of a Decision to Dismiss and Objection

Objector:	Shenannigans Irish Pub Pty Ltd
Applicant for Licence:	Value Inn Pty Ltd
Premises:	Melaleuca on Mitchell
Relevant Legislation:	Sections 47F, 47G, 47H, 47I, 47J of the <i>Liquor Act</i> Section 29 of the <i>Licensing Commission Act</i>
Members:	Jill Huck (Presiding Member) Annette Smith Alan Clough
Appearances:	Susan Porter for Shenannigans Irish Pub Pty Ltd
Observer:	Des Crowe for Value Inn Pty Ltd, applicant for the liquor licence

1. Section 47F of the *Liquor Act* (the Act) states, among other things, that a person, group or organisation may make an objection to an application for the grant of a liquor licence. At the time the application in respect of the Melaleuca on Mitchell premises was lodged, subsection 47F(2) restricted the grounds for such objections to concerns that the grant of the licence may or will adversely affect the amenity of the neighbourhood where the premises the subject of the application, were or would be, located.
2. Section 47I of the Act requires the Chairperson to select a member of the Commission to determine whether each objection to an application should be dismissed or referred to hearing. The member is required to dismiss an objection if that member is satisfied that the objection is of a frivolous, irrelevant or malicious nature or does not describe circumstances that may or will adversely affect the amenity of the neighbourhood (see section 47I(3)(c)(i)). In such circumstances the member must provide written reasons for their decision.
3. A person whose objection has been dismissed under section 47I(3)(c)(i), has the right to seek a review of that decision under section 47J. Provided that the review application complies with certain requirements, “the Commission must review the member’s decision in a manner that is fair and expeditious and must give proper consideration to the issues” and either affirm the member’s decision to dismiss the objection or “revoke the member’s decision and conduct a hearing in relation to the objection”.
4. In this particular case, Ms Susan Porter, a solicitor, had lodged a written letter of objection to an application for a liquor licence for the Melaleuca on Mitchell premises on behalf of her clients, who she referred to as “Justin Coleman and Shenannigans Pty Ltd”.
5. The letter of objection on behalf of Justin Coleman and Shenannigans Pty Ltd, along with other letters of objection and the applicant’s response, was allocated to a Commission member for determination in accordance with section 47I. It was that Commission member’s decision that the objection lodged on behalf of Mr Justin Coleman must be referred to a hearing. In doing so, he made a specific finding that the objection “describe[d] circumstances that may or will adversely affect the amenity of the neighbourhood”. However, he decided that the objection from “Shenannigans Pty Ltd” was “irrelevant pursuant to S.47I(3)(c)(i)(A) of the Act” because no such corporate entity existed. The Commission member had reached his conclusions on this matter after conducting a series of company searches at the Australian Securities and Investments Commission (ASIC), as well as business name searches at the Territory Business Centre. Given his conclusions that the objection from Shenannigans Pty Ltd was irrelevant, the member was obliged to

dismiss the objection. An explanation of the dismissal decision is contained in a written statement of reasons dealing with the objections to the Melaleuca on Mitchell application dated 4 August 2004.

6. On 20 August 2004 the Commission received an application from Ms Porter for a review of the decision to dismiss the objection. Three members of the Commission were appointed to consider the review.
7. On 3 September 2004 we met with Ms Porter to discuss the decision. Mr Des Crowe, the legal representative for the applicant for the licence also attended the meeting as an observer with Ms Porter's consent. We had before us the following written material:
 - Ms Porter's 14 May 2004 letter objecting to the licence application on behalf of Justin Coleman and Shenannigans Pty Ltd;
 - Mr Crowe's letter of 18 June 2004 responding on behalf of Value Inn Pty Ltd to the various objections;
 - A statement of reasons in respect of the objections dated 4 August 2004 from the Commission Member, John Withnall, which included the decision to dismiss the "Shenannigans Pty Ltd" objection; and
 - Ms Porter's written application for a review of the decision dated 20 August 2004, with various attachments including: a statutory declaration signed by Ms Porter on 20 August 2004 explaining the circumstances in which the error occurred; a copy of a 2002 letter to the Director of Racing Gaming and Licensing in which a similar error had occurred; and a copy of a letter to the Director a few days later correcting the error.
8. Ms Porter's presentation to the Commission, could be summarised as follows:
 - the description of her client as "Shenannigans Pty Ltd" in the 14 May 2004 objection letter was an error of description attributable, in part, to workload pressures she was experiencing at the time;
 - the error was made by the person drafting the objection letter who used, as a precedent, a copy of a letter sent to the Director of Licensing in 2002 which had also inadvertently used the descriptor "Shenannigans Pty Ltd". On that earlier occasion, Ms Porter had noticed the error and corrected it within a few days of dispatch. On the more recent occasion which is the subject of this review, in her haste to finalise and lodge the objection letter, Ms Porter had failed to notice and rectify the error;
 - notwithstanding the error in description of the business name of her client, the letter of objection was clear in its intent as to the identity of the objector in that the letter provided very specific information about the location and nature of the business;
 - the error was not so great as to refer to an entirely unrelated entity. It was a matter of common sense who the objector was;
 - the incorrect name of her client appeared to have been the only basis for the dismissal of the objection, with the objection apparently otherwise considered to be complying with the Act;
 - Part 4 of the Liquor Act could be described as remedial legislation and should be interpreted in a manner favourable to those who benefit from the legislation, in this case, potential objectors;
 - it would not be fair or equitable for her client to lose its right to object as a result of an error made by its legal representative;

- there was no prejudice to the applicant by accepting the objection given that identical grounds of objection have been referred to hearing in the form of Mr Justin Coleman's objection;
 - the Supreme Court allows a party to litigation, which has been filed in that Court, to amend the name of a party where an error has been made in a name, whether that error was made by the party's legal representative or otherwise. It would be odd if such an error could be rectified in legal proceedings instituted in a Court, but not an objection under the Liquor Act; and
 - the Commission, in reviewing this matter, is not limited to simply considering the letter of 14 May 2004. Section 47I(3)(b) of the Act allows the Commission member considering an objection to inquire into any circumstances relating to the objection as he or she considers appropriate. Therefore the Commission, in reviewing the member's decision, can take into account the issues set out in Ms Porter's submission and the statutory declaration. The limitations imposed by section 47H only apply to the facts specified in the objection as the facts constituting the ground on which the objection is made. The matter that is the focus of this review is not such a fact.
9. By agreement, and subsequent to the meeting with Ms Porter, we received further correspondence on this matter:
- a letter dated 3 September 2004 from Mr Crowe advising that his client, Value Inn Pty Ltd, had consented to the amendment to the objection letter sought by Ms Porter; specifically for the words "Shenannigans Irish Pub Pty Ltd" to be substituted for "Shenannigans Pty Ltd". Mr Crowe further stated that his client would not be taking issue with Shenannigans Irish Pub Pty Ltd having standing as an objector or being out of time to object. He went on to say that, at the hearing of the matter, his client would be opposing the factual grounds on which the Shenannigans Irish Pub Pty Ltd objection was based;
 - A written submission from Ms Porter dated 13 September 2004 addressing some of the legal issues raised at the hearing, in particular those arising around the wording of section 47J(4) of the Act. Ms Porter submitted that it was the Commission's role "to stand in the shoes of the original decision maker and form its own view as to the objection" when conducting a section 47I review. She stated that, when doing so, the Commission can consider new information and can make findings regarding all aspects of the objection including, in this case, the grounds of the objection. She stated that the restriction of the Commission's power in section 47J (4) to either affirming a decision to dismiss an objection or revoking the decision and hearing the objection could lead to an anomalous situation in this case (for example, having a hearing with an objector which didn't technically exist). She went on to suggest three options for progressing the matter, including affirming the decision and then rehearing it under the Licensing Commission Act. She indicated that her client would request a review under that Act if necessary.

Findings of Fact and Application of the Law

10. There is no dispute about the facts in this case. It is clear on the evidence provided by Ms Porter that an error was made in the letter of objection in describing the identity of the corporate objector. In that letter Shenannigans Irish Pub Pty Ltd was wrongly referred to as Shenannigans Pty Ltd. We accept Ms Porter's explanation of how that error occurred. It is also clear on the evidence that the error was not noticed by Ms Porter or her client and that there was therefore no attempt to correct the error before the objection was considered by the Commission member under section 47I of the Act and subsequently dismissed. The information that an error was inadvertently made is therefore new information not previously considered.

11. There is also no dispute that the original objection letter lodged on behalf of Justin Coleman and, what we now know to be, Shenannigans Irish Pub Pty Ltd, did not differentiate between the factual grounds for the objections of the two entities; that is, the grounds set out in the letter were identical. The Commission member considering Justin Coleman's objection found that these grounds met the statutory test of being based on concerns about the amenity of the neighbourhood. We agree that this is the case, therefore there is no issue that the grounds of the objection which we are currently reviewing, would also meet the statutory test.
12. There is also no dispute that the original objection letter complied with the criteria set out in 47F(4), that is, that it was lodged in time, was signed on behalf of the "objectors", set out the facts to be relied on and was correctly addressed.
13. There is no suggestion that the objection letter was of a frivolous or malicious nature and, absent the error in the name of the objector, there is nothing about the objection letter that would have otherwise made it irrelevant.
14. If the correction of the descriptor of the objector's identity is to be allowed in this case, the remaining factual issue which would need to be established is whether the objector was a "person" working in the neighbourhood of the applicant premises. There is no dispute that the objector's business is situated in the relevant neighbourhood. Section 19 of the Interpretation Act provides that a corporate body is a "person" for the purposes of legislation and there is nothing in the Liquor Act that excludes this interpretation for the purposes of section 47F. Shenannigans Irish Pub Pty Ltd would therefore appear to be "a person...working in the neighbourhood" as required by section 47F(3)(a) of the Act.
15. Much of the discussion in this case centred around the Commission's powers when conducting a section 47J review of a dismissal decision, specifically the fact that section 47J(4) does not explicitly state that the Commission can substitute or vary a decision. The only options for a Commission decision are to "affirm the member's decision to dismiss the objection" or to "revoke the member's decision and conduct a hearing in relation to the objection". This is in contrast to the Commission review powers under section 29 of the Northern Territory Licensing Commission Act which does provide these options.
16. A possible explanation for this discrepancy is that section 47J only needs to cover the two decision options of section 47I, which are to dismiss an objection or refer it to hearing. Alternative explanations are: that the wording is deliberate and designed to restrict options; or that it simply constitutes a drafting error. Whatever the explanation, the situation is ambiguous, and has required us, in the circumstances of this case, to closely consider the nature of the Commission's powers of review under section 47J. In doing this, we considered that there were three possible approaches to such a review:
 - a. To limit the review to a consideration of the legal correctness of the original decision, akin to a judicial review;
 - b. To limit the review to a consideration of the merits of the specific reason for dismissal (in this case, the identity of the objector) with no ability to make findings on other relevant issues;
 - c. To conduct a full merits review of a dismissal decision, with the Commission "standing in the shoes of the original decision maker" to consider the matter de novo.
17. After some debate, it was the view of the majority that the third option was the correct approach. In practical terms, this approach means that the Commission can seek and take into account new information and that it can make findings on all the issues that are relevant to a section 47I decision, regardless of whether they were explicitly considered and/or dealt with by the original decision maker. This approach also leaves open the possibility that the Commission could affirm a decision to dismiss an objection, but for different reasons than the original decision maker. In reaching this view of the Commission's review powers under section 47J, we noted that this interpretation of the

Commission's role and powers in conducting a section 47J review would seem consistent with the section 47J(3) requirement that the Commission must "review the member's decision in a manner that is fair and expeditious and must give proper consideration to the issues". The approach is also consistent with the approach taken by a wide range of administrative review tribunals.

18. Having reached this view of our role in this matter, we went on to consider whether the 14 May 2004 objection letter complied with the requirements of section 47F. As is clear from our findings set out above that, if a correction is allowed to the name of the corporate objector in this case, the objection letter would meet all the necessary requirements of section 47F and none of the requirements for dismissal under 47I and must therefore be referred for hearing. The only issue remaining is therefore whether we should allow the correction of the error in the description of the corporate objector.
19. In considering this issue we have been conscious of the Commission member's power under section 47I(3)(b) to inquire into the circumstances relating to the objection, as he or she considers appropriate. The Commission member who made the original decision to dismiss the objection had utilised this power to establish that the company as named in the objection letter did not exist. It is clear that the Commission at the point of review had obtained information that the original member did not have. This includes the fact, which we accept, that the use of the descriptor "Shenannigans Pty Ltd" was a simple error, rather than an attempt to mislead or gain some type of advantage.
20. We also agree with Ms Porter that section 47H of the Act does not provide a barrier, in this case, to correcting the error.
21. Although it is arguably not strictly relevant to the section 47J review process, we note that the error in the name of the objector was not something commented on by the applicant in its original response, and remains a non-issue to that applicant. In fact, the applicant company has now advised in writing that it is agreeable to the technical barrier to the objection being removed through the amendment of the objection.
22. We note Ms Porter's arguments that the Supreme Court allows corrections where an error has been made in a name and, that it would be somewhat odd if a tribunal took a stricter approach in the absence of any statutory requirement to do so.
23. Taking all of this into account, it is our decision that the correction to the name of the corporate objector should be allowed and that the objection can therefore be considered under its correct corporate name of Shenannigans Irish Pub Pty Ltd.
24. Given that the objection letter, as corrected, meets all the requirements of section 47F and is not considered to be of a frivolous, malicious or irrelevant nature, the application of section 47I(3)(c)(ii) would have required an original decision maker to forward the objection to the Commission for the hearing of the objection. Although the wording of section 47J(4) is somewhat different, the outcome of our review decision is essentially the same; the objection must be dealt with in a hearing.

Decision

25. For the reasons set out above, we have decided, pursuant to section 47J(4) of the Act, to revoke the member's 4 August 2004 decision in respect to Ms Porters' letter of objection on behalf of Shenannigans Irish Pub Pty Ltd and to conduct a hearing in relation to the objection.

30 September 2004