

Delegate of the Director of Liquor Licensing

Decision Notice

MATTER:	Complaint pursuant to section 160 of the <i>Liquor Act 2019</i>
LICENSEE:	Iris Todd Operations Pty Ltd
PREMISES:	Todd Tavern
LICENCE:	80102200
LEGISLATION:	Part 7, Division 3 of the <i>Liquor Act 2019</i>
DECISION OF:	Southern Region Manager – Licensing & Compliance
DATE OF DECISION:	28 February 2024

DECISION

1. For the reasons set out below as a delegate of the Director of Liquor Licensing (the Director), I upheld a complaint against the licensee, Iris Todd Operations Pty Ltd (the licensee) that between 4 October 2023 and 21 November 2023 had breached the *Liquor Act 2019* (the Act) by:
 - a. Contravening section 90 of the Act on four (4) occasions by failing to keep the licensed premises and all machinery, equipment, fittings, furniture, furnishings and any other items used in connection with operations under the licence maintained in good order and repair and in a safe and reasonably clean condition.
2. Upon completion of the investigation into the complaint, I am satisfied that the following action should be taken:
 - a. Pursuant to section 163(1)(b) of the Act give the licensee a formal warning in relation to the complaint.

REASONS

Background

3. Iris Todd Operations Pty Ltd (the licensee) is the holder of liquor licence 80102200 (the licence) for premises known as “Todd Tavern”, situated at 1 Todd Street, Alice Springs (the premises). The nominee is Mr Shayne Finnigan (Mr Finnigan).

4. The licence is issued with the following authorities:
 - restaurant authority
 - takeaway authority
 - lodging authority
 - public bar authority
 - late night authority (from 12 midnight to 4am)
 - adult entertainment R-rated authority
5. Section 90 of the Act provides that the licensee must keep the licensed premises and all machinery, equipment, fittings, furniture, furnishings and any other items used in connection with operations under the licence maintained in good order and repair and in a safe and reasonably clean condition.
6. On 7 October 2023, 20 October 2023, 31 October 2023 and 21 November 2023, inspectors attended the premises to conduct compliance activity as a part of daily compliance operations within the Alice Springs town precinct.
7. On each occasion inspectors, as a part of their activities made observations in relation to the state of repair of various areas of the premises, and the cleanliness, particularly in and around the female bathroom within the Maxim's Bar area of the premises.
8. The observations of the inspectors were of a large amount of water laying on the floor of the premises between the female bathroom and carpeted areas, and that the general cleanliness of the facilities were not in a safe and reasonably clean condition.
9. Inspectors spoke with Mr Finnigan at the time to alert him of their observations, his response being words to the effect the issues would eventually be rectified, and blamed patrons for damaging the fittings resulting in the water.

THE COMPLAINT

10. On 23 November 2023 Ms Takotohiwi, Senior Compliance Officer, Licensing NT lodged a complaint with the Director pursuant to section 160 of the Act, the grounds for the complaint being pursuant to subsection 160(1)(a) in that:
 - (a) The licensee contravened a condition of the licence or authority;
11. The complaint was in the approved form and specified the grounds for the complaint, was signed and lodged with the Director in compliance with the requirements of section 160(2) of the Act.

12. A delegate of the Director accepted the complaint on 23 November 2023 within the 14 day prescribed period, and the licensee was given a notice of the substance of the complaint in compliance with section 162(1) of the Act within the prescribed period, and invited them to provide a response to the complaint.
13. On 4 December 2023 Mr Finnigan wrote to the Director providing reasons for the issues, and asked the matter be dealt with by means of taking no further action pursuant to subsection 163(1)(a)(ii) of the Act or issue a formal warning pursuant to subsection 163(2) of the Act.
14. Although not specifically admitting to the allegations, it is reasonable to infer from the response of Mr Finnigan that they are not in dispute, and further, the licensee is investing in the upgrading of facilities at the premises and have implemented cleaning schedules for all relevant areas.
15. As a result of the assessment of several inspectors who separately formed the opinion the areas described in the complaint were not maintained in good order and repair and in a safe and reasonably clean condition, and Mr Finnigan has not specifically refuted these opinions, it is reasonable to believe the licensee has not complied with section 90 of the Act.
16. The substance of the non-compliance being the water damage and disrepair evident in and around the female bathroom at the premises, and the lack of cleanliness within that same bathroom on a number of occasions.
17. On considering this matter it is apparent an error was made in relation to the grounds for the complaint, which were made pursuant to section 160(1)(a) of the Act, a contravention of a condition of a licence or authority.
18. This matter relates to a contravention of section 90 of the Act, not a condition of the licence and therefore the grounds should have more correctly been, section 160(1)(b) of the Act:
 - (b) the licensee or the licensee's employee contravened another provision of this Act...whether or not it constitutes an offence.
19. The first requirement of natural justice is providing the licensee the nature of the accusation made, and providing them with the right to be heard in relation to the matter¹.
20. The licensee was provided with all the materials in relation to this complaint and worked with inspectors to rectify the issues, it may therefore be accepted they were not disadvantaged by the error in the grounds relied upon to make the complaint.
21. The investigation supported the consideration that grounds did exist for the complaint, those being section 160(1)(b) of the Act.

¹ Forbes, *Justice in Tribunals* 3rd ed at [10.2]; *Byrne v Kinematograph Renters Society Ltd* [1958] 1 WLR 762 at 784.

22. I am therefore satisfied the error is administrative in nature, and has not in any material way disadvantaged the licensee, who has been afforded the rights to specificity in the notification and their right to reply.

COMPLIANCE HISTORY

23. The licensee has been the subject of disciplinary action for unrelated matters prior to this, however not in relation to maintenance and cleanliness. Whilst not wishing to diminish the importance of such matters, this matter cannot be held to be at a similar level of seriousness and harm potential as a matter such as selling to an intoxicated person.
24. It is upon that basis I consider this to be a “first” issue of this nature for this licensee.

ACTION AFTER INVESTIGATION

25. On completion of the investigation, as a delegate of the Director I may do any of the following:
- Take no further action if satisfied that there are no grounds or evidence to justify taking further action, or the matter does not warrant taking further action;
 - Give the licensee a formal warning in relation to the complaint;
 - Mediate the complaint;
 - Issue an infringement notice in relation to the complaint;
 - Enter into an enforceable undertaking with the licensee; or
 - Refer the matter to the Commission for disciplinary action.
26. Section 90 of the Act does not have a prescribed penalty provision, and is not prescribed as a matter for which an infringement notice may be issued pursuant to schedule 6 of the *Liquor Regulations 2019* (the Regulations).
27. It necessarily follows, this limits the actions open in relation to this matter.
28. On considering the materials it is reasonable to believe, this matter may be taken to fall within the lower scale of seriousness and the licensee has taken suitable remedial actions to prevent further occurrences.
29. On the basis of the above and applying the principles of proportionality, parity and deterrence, the appropriate action to take is to issue a formal warning to the licensee in relation to the complaint.
30. It is accepted the nature of the operation of premises such as the Todd Tavern will result in maintenance and cleanliness issues, as most all high-traffic premises experience.

31. This is not expected and the licensee is obliged to deal with them in a timely and appropriate manner, it cannot be accepted by the Director that such circumstances are left without timely response.
32. It is comforting that the licensee has now put in place a regime that should appropriately deal with similar situations in a timely manner in the future.
33. The issuing of a formal warning serves to place the licensee on notice that although it is accepted maintenance of such premises is difficult, it is a requirement and it their responsibility to put measures in place to comply with the requirements.
34. This decision notice serves as the formal warning to the licensee, and will be placed on their file for future reference if required.
35. Within 14 days of making this decision the Act requires the complainant, licensee and the Commission to be given a copy of the notice.

REVIEW OF DECISION

36. As a decision of a delegate of the Director, this notice must state the decision and reasons for it, as well as advise an affected person of their right to seek a review of the decision and the manner in which it may be done.
37. Section 27 of the Act provides for a licensee or the complainant to seek a review of the decision within 28 days after the written notice is given to the person, and the application must be in the approved form and state the grounds for the review, and the facts relied upon to establish the grounds.
38. Accordingly, the affected persons in relation to this decision are Sound Knowledge Pty Ltd, Police, the Department of Health and the NTFRS.



Mark Wood
Southern Region Manager – Licensing & Compliance
Delegate of the Director of Liquor Licensing

28 February 2024