

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: DISCIPLINARY ACTION PURSUANT TO THE LIQUOR ACT (2019)

REFERENCE: LC2021/014

LICENCE NUMBER: FLL1048

LICENSEE: OMAD (NT) Pty Ltd

PREMISES: Coolalinga Tavern
Pad 6, 425 Stuart Highway
COOLALINGA NT 0839

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

HEARD BEFORE: Ms Jodi Truman (Deputy Chairperson)
Mr Bernard Dwyer (Health Member)
Ms Amy Corcoran (Community Member)

DATE OF HEARING: 28 April 2021

DATE OF DECISION: 2 June 2021

Decision

1. For the reasons set out below, Northern Territory Liquor Commission (“the Commission”) heard and in part upheld and in part dismissed a complaint against OMAD (NT) Pty Ltd (“the licensee”).
2. The Commission is satisfied that on:
 - a. 1 August 2020;
 - b. 10 October 2020;
 - c. 24 October 2020;
 - d. 31 October 2020;
 - e. 5 December 2020; and
 - f. 12 December 2020;

the licensee intentionally engaged in conduct that resulted in a contravention of a condition of the licensee's licence; specifically:

- i Allowing adult entertainment, namely "Babes on Bulls" on premises.
- ii Allowing entertainment to be provided that was not consistent with the concept of the premises, namely a family friendly tavern offering quality meals and drinks in a safe and comfortable environment.
- iii Allowing amplified night club or disco-style music or entertainment.
- iv Continuing entertainment past 12 midnight.

Contrary to section 293 of the *Liquor Act 2019* ("the Act").

3. The Commission is satisfied that disciplinary action should be taken against the licensee and pursuant to section 165(2)(d) of the Act imposes a monetary penalty of 22 penalty units to be paid by the licensee within 28 days after notice of this decision in accordance with section 167 of the Act.
4. The Commission is not satisfied that on 17 July, 25 July, 1 August, 9 August 2020 or 1 January 2021 the Licensee continued to allow undue and unreasonable noise on or in the licensed premises that affected the amenity of the neighbourhood contrary to section 93 of the Act and the Commission therefore dismisses that part of the complaint.

Reasons

Background

5. OMAD (NT) Pty Ltd is the Licensee for Liquor Licence FLL1048 ("the licence"), trading as Coolalinga Tavern ("the premises"), situated at 425 Stuart Hwy Street, Darwin NT 0839. On 8 August 2018, the Director-General at the time granted the applicant a "Tavern" liquor licence pursuant to the *Liquor Act 1978*. On 20 April 2020, the liquor licence was converted to a "Public Bar/Late Night" authority pursuant to the *Liquor Act 2019*. The Nominee is Mr Damien O'Brien ("Mr O'Brien").
6. On 20 July 2020, Licensing NT received a complaint (via e-mail) from "Michael", residing at an address on M Road (address known to the Commission). The Commission has determined that for the purposes of these reasons it is not relevant to publicise Michael's full name and address and has determined not to do so. Such details however are well known to the Commission, Licensing NT and to the Licensee should any matters arise in the future requiring such details to be further considered.
7. The complaint received alleged that on 17 July 2020 noise (specifically a bass beat from both live and recorded music) was emanating from the premises and was continuing past 12 midnight.
8. On 22 July 2020 Senior Compliance Officer ("SCO") Holehouse emailed the licensee's nominee, Mr O'Brien advising him of the complaint and asked that he assess noise levels emanating from the tavern.

9. On 24 and 25 July 2020 Michael provided a further email advising SCO Holehouse that noise emanating from the premises was still causing him disturbance. On 27 July 2020 SCO Holehouse emailed Mr O'Brien reminding him of Michael's concerns and inviting him to meet with SCO Holehouse. Such a meeting subsequently occurred at a later date.
10. On 1 August 2020 at 23:45 hours SCO Holehouse attended Michael's premises and determined that noise by way of a heavy bass beat could be heard from within the residence and the bass beat was originating and emanating from the Coolalinga Tavern. SCO Holehouse attended the premises that same night and spoke with Mr O'Brien advising him of the noise concern. During that meeting Mr O'Brien gave a verbal agreement he would remedy the situation.
11. At that same time SCO Holehouse identified other practices that were being conducted at the tavern which contravened the liquor licence conditions, specifically:
 - a. "Babes on Bulls" which sees both male and female patrons ride a mechanical bull and remove part or all clothing to other patrons.
 - b. Amplified nightclub style music provided either by a DJ or pre-recorded, accompanied by the dimming of white lighting which is replaced by strobed coloured lighting.
 - c. Entertainment past 12:00 midnight on any trading day.
12. A discussion took place with Mr O'Brien where it was explained that such practices were not in accordance with the current conditions of the licence. Mr O'Brien assured SCO Holehouse he would address the issues of non-compliance.
13. On 5 August 2020 SCO Holehouse emailed Mr O'Brien and confirmed the discussion points from the evening of the 1 August 2020, namely noise from the tavern is not allowed to emanate and cause a disturbance to the neighbourhood. Further, entertainment is not to continue past midnight and entertainment in particular that of a night club or disco-style style is in contradiction to liquor licence conditions and finally patrons removing their clothing during "Babes on Bulls" is to cease all as per licence conditions.
14. On 9 August 2020 Michael again emailed SCO Holehouse advising of a bass noise pumping at 12:30am causing him to lose sleep. On 10 August 2020 SCO Holehouse again emailed Mr O'Brien advising him of the complaint and reminding him of the email sent on the 5 August 2020.
15. On 31 August 2020 an audit was conducted at the tavern in the company of Mr O'Brien. The tavern was found to be mostly compliant administratively with only the smoking area requiring further work to correct. At that time a request was made for copies of the Incident Registers to be provided between; 25 September 2020 to 28 November 2020. Entries within the register highlighted a significant number of assaults, patron removals and patron bad behaviour along with an excessive number of crowd controllers having to be employed particularly on the Friday and Saturday nights.

16. On 25 September 2020 SCO Holehouse emailed Mr O'Brien requesting CCTV footage of the tavern and again reminded him of his obligation to adhere to the Entertainment condition within his licence and that the tavern is to operate as a family friendly tavern offering quality meals and drinks in a safe and comfortable environment as per liquor licence conditions.
17. On 24 November 2020 SCO Holehouse attended the tavern and in the company of Mr O'Brien and several Duty Managers conducted a training/education session in relation to compliance with liquor licence conditions.
18. On 1 December 2020 SCO Holehouse received from NT Police a snapshot of Police attendances at or near the tavern. A number of documents were provided. On 1 December 2020 at the request of Mr O'Brien, a meeting was conducted between the Principal Compliance Officer, Director of Liquor Licensing and Mr O'Brien in relation to compliance with the tavern liquor licence conditions. During this meeting Mr O'Brien stated he understood the failure to comply with the conditions relating to "Babes on Bulls" and that he would cease "Babes on Bulls" and its advertising.
19. On 5 December 2020 at 23:40 hours to 00:15 hours a general inspection was conducted of the tavern. Points of concern were that loud amplified music could clearly be heard off premises, Babes on Bulls was being conducted and continued after midnight along with music and the announcer on the PA system was clearly heard to state; "Sexy Round" would commence at "1.00am".
20. On 12 December 2020 an email was received from Michael who explained he was doing his best to ignore the noise as it had improved but as he lay in bed, he could still hear the bass thump and any noise abatement that had been put in place by the licensee was insufficient.
21. On that same date SCO Holehouse attended the tavern for a further general inspection at 23:50 hours. Points of concern on that occasion were persons in the car park displaying extreme symptoms of drunken behaviour, 150 patrons inside with staff busy at the bar with patrons 2-3 deep in places. The main entertainment was again "Babes on Bulls". At approximately 00:20 hours the announcer on the PA system was clearly heard to state; "Sexy Round" was to commence at 01:00 hours. It was noted that "Babes on Bulls" takes place within 5 metres of the glass frontage walls and door of the tavern. Further, the DJ had set up strobe lighting as part of the entertainment.
22. It was further alleged that on 1 January 2021 a further email was received from Michael stating that "thumping bass" emanating from the premises was "beyond a joke". That email was not tendered before the Commission and Mr Holehouse gave no evidence to the Commission relating to that email.
23. On 6 January 2021 a complaint was lodged and formally accepted by a Delegate of the Director of Licensing NT ("the Delegate") under section 161(2)(a) of the Act. That same day, the Delegate notified the licensee in accordance with section 162(1) of the Act that a complaint had been received in relation to possible breaches of sections 93 and 293 of the Act. The substance of the complaint was particularised, and the licensee was invited to comment, with such comments to be considered as part of the Director's investigation. On 5 February 2021, the licensee responded.

24. Upon completion of the investigation the Director was empowered under section 163(1) of the Act to exercise certain powers, including referring the complaint to the Commission for disciplinary action¹. On 30 March 2021, in accordance with section 163(1)(f) the Director referred the complaint to the Commission for disciplinary action.
25. Pursuant to section 166 of the Act, upon receipt of such a referral, the Commission must conduct a hearing and decide whether to take disciplinary action against the licensee. Upon completion of the hearing the Commission must dismiss the complaint or take disciplinary action against the licensee. Pursuant to section 165, the Commission may take disciplinary action against the licensee only if the Commission is satisfied:
 - a. A ground for disciplinary action exists; and
 - b. The disciplinary action is appropriate in relation to that ground.

Public Hearing

26. The matter was listed for hearing on 28 April 2021. At the hearing, the Director appeared via his Delegate, Mr Bernard Kulda. The licensee was represented by counsel, namely Mr Michael McCarthy and Mr O'Brien was present at the hearing. It was clear from the outset of the hearing that the significant issue for determination was whether the complaints concerning breaches of section 93, i.e., the "undue and unreasonable noise" complaints could be established. Mr McCarthy also agreed on behalf of the licensee that "Babes on Bulls" had occurred on each of the occasions alleged (noting amendment was made to one of the dates to read 24 October 2020).
27. During the course of submissions at the conclusion of the evidence Mr McCarthy also informed the Commission that the breaches alleging music after midnight were admitted and were "unacceptable". Further that "taking off of clothes" during the "Babes on Bulls" "should not have happened". The Commission could not agree more.

Alleged breaches of section 93

28. At the conclusion of the evidence, although the Commission was satisfied that Michael was affected by "noise", the Commission indicated to both parties that it could not be satisfied that it was the licensee who had caused or permitted its employees or patrons to cause *undue* and *unreasonable* noise on or in the licensed premises that *affected the amenity of the neighbourhood* (emphasis added).
29. This was particularly in light of the following evidence:
 - a. Michael was the only person who had made a complaint about the noise in this period.
 - b. Michael lived approximately 1.5kms from the premises and there were 140 apartments that were closer to the premises than Michael, none of whom had made a complaint.

¹ Section 163(1)(f) of the Act

- c. There were 80 residents located in the same direction of Michael and who were all closer in proximity to the premises and had not made a complaint.
 - d. One of the incidents complained of with respect to noise had been confirmed by Licensing NT as noise coming from the Howard Springs Tavern and not these premises.
 - e. SCO Holehouse admitted in evidence that he had struggled to hear the noise being complained of by Michael when he attended at Michael's residence during the course of his investigation.
30. As a result, the Commission was not satisfied of the breaches alleged against section 93 of the Act and they were dismissed.

Alleged breaches of section 293

31. The evidence in relation to the breaches alleged against section 293 however was very different. As noted earlier, Mr McCarthy agreed on behalf of the licensee that "Babes on Bulls" had occurred on each of the occasions alleged (noting an amendment was made to one of the dates to read 24 October 2020). It was therefore clear that each of the dates alleged were admitted.
32. The Commission notes that Mr McCarthy then attempted to suggest that the Commission "could not be satisfied" about the dates of photographs that were tendered into evidence which gave the Commission a (most unfortunately) *stark* visual of what would occur at "Babes on Bulls" when occurring at the premises.
33. The Commission also notes the evidence of two (2) officers of Licensing NT (including SCO Holehouse) who each saw and heard the manner in which this "event" was conducted at the premises. It is not to the licensee's credit that such an approach of cavilling with the date of the photographs was taken.
34. Given the evidence the Commission is satisfied of what is depicted in the photographs as relevant to what was occurring at the premises on the dates alleged.
35. The Commission notes that the complaint referred to it by the Director did not refer to 1 August 2020. However, on the evidence it is clear that "Babes on Bulls" was occurring at that time and that such entertainment continued past midnight. It would have been **patently obvious** to the licensee that this was in breach of his licence conditions from the outset and yet it appears he chose to perhaps chance his luck and see if he could get away with such breaches. Perhaps this is due to the location of these premises and hoping licensing officers would be unlikely to travel out to the premises on a regular basis. That hope fortuitously was unfounded.
36. In these circumstances, and due to the evidence provided, the Commission has determined (in accordance with its power under section 166(4)) to find a breach of section 293 also occurred on 1 August 2020 and this date is included.
37. As stated earlier, the Commission is satisfied that on the dates set out at the commencement of these reasons the licensee intentionally engaged in conduct which resulted in a contravention of conditions of the licensee's licence and the licensee was

reckless in relation to that result. The Commission therefore upholds that part of the complaint.

Disciplinary action to be taken

38. Having upheld the complaint in relation to six (6) breaches of section 293, the Commission has determined it is appropriate that disciplinary action be taken. The Commission also notes that there were no submissions made that this should not be the case.
39. In terms of the action to be taken, Mr Kulda submitted to the Commission that the Director considered that three (3) penalty units for each breach was appropriate in all the circumstances but noted it was for the Commission to determine. Mr Kulda also submitted that it was “of concern” that there had been a number of visits required at the premises to ensure such breaches had ceased and that despite attempts made by Licensing NT to resolve the matter by “education”, the licensee had continued to breach the conditions.
40. In relation to this submission, the Commission agrees. The licensee had been given numerous opportunities to cease what were **clearly** breaches of the licence conditions and still they continued. The manner in which the “entertainment” of “Babes on Bulls” was being conducted at the premises was clearly beyond the conditions of the licence both in terms of:
 - a. The lingerie and/or nudity involved,
 - b. The entertainment past midnight and
 - c. The amplified nightclub or disco-style style music.
41. The attempts on behalf of the licensee to suggest this was not “nightclub style or disco-style” music was further evidence of the complete and utter disregard by the licensee to the conditions of the licence. It also lessens the weight that can be placed by the licensee on any suggested “remorse” for such breaches. The Commission does not accept the licensee was remorseful for the breaches in light of the fact he continued to breach despite regular contact by SCO Holehouse and meetings with Licensing NT including one on 1 December 2020 involving the Director.
42. The Commission does not consider that the licensee has taken these breaches seriously and although “action” was eventually taken by the licensee the Commission finds that such action was more likely than not taken in an attempt by the licensee to ready the premises for his application to permanently vary the conditions of the licence which was lodged in December 2020.
43. The difficulty for the licensee is that compliance with the conditions of his licence in relation to entertainment was not difficult. In fact, the licensee is the **only** one responsible for the entertainment conducted at the premises and the licensee continued on a number of occasions to conduct such entertainment (which was so obviously in breach) and utilised its popularity to further advertise the premises.

44. Thereafter, when it was obvious that Licensing NT would continue with the complaint, it was then and only then that the licensee removed such images from its social media. Such conduct is extremely disappointing and shows a cavalier attitude towards the conditions of this licence. The licensee should have done more, much more, from the moment these issues were drawn to his attention in August 2020 and instead he chose to allow such breaches to continue for months afterwards.
45. As earlier noted, the Director submits that a monetary penalty is appropriate for these breaches. The Commission notes that the licensee has no disciplinary priors. This is to the credit of the licensee and has been taken into account. The Commission has determined however that for the breaches after the training on 24 November 2020 and the meeting with the Director on 1 December 2020, there should be an increased monetary penalty.
46. As a result, the Commission has determined to accept the submission from the Director and imposes three (3) penalty units on each of the four (4) breaches before December and imposed five (5) penalty units on the two (2) breaches on 5 and 12 December 2020.
47. The Commission therefore imposes a total monetary penalty of 22 penalty units. In accordance with section 167 of the Act; the licensee must pay such monetary penalty within 28 days of notice of this decision.

Notice of Rights:

48. Section 31(1) read with section 166(7) of the Act provides that the decision set out in this decision notice is reviewable by 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.
49. 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, the licensee and the persons who made the complaint (namely Michael who shall also be given notice of this decision).



JODI TRUMAN
DEPUTY CHAIRPERSON, NORTHERN TERRITORY LIQUOR COMMISSION
2 June 2021

On behalf of Commissioners Truman, Dwyer and Corcoran