

CITATION: *Foundation for Alcohol Research and Education Ltd v Northern Territory Liquor Commission & Ors* [2019] NTSC 45

PARTIES: FOUNDATION FOR ALCOHOL RESEARCH AND EDUCATION LTD (ACN 096 854 385)

v

NORTHERN TERRITORY LIQUOR COMMISSION

and

DIRECTOR-GENERAL OF LICENSING

and

WOOLWORTHS GROUP LTD (ACN 000 014 675)

TITLE OF COURT: SUPREME COURT OF THE NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory jurisdiction

FILE NO: 53 of 2019 (21921631)

DELIVERED: 31 May 2019

HEARING DATE: 31 May 2019

JUDGMENT OF: Grant CJ

CATCHWORDS:

ADMINISTRATIVE LAW – JUDICIAL REVIEW AT COMMON LAW

Whether application and referral invalid because no extant licence – effect of licence condition that disciplinary proceedings may be brought where premises no longer used for sale or supply of liquor or consistently with business of licence – licence not automatically surrendered or cancelled – whether consideration of substitution application in breach of the statutory moratorium – operation of power of substitution contingent on determination of facts by Liquor Commission – challenge contending breach of moratorium premature – application dismissed.

Liquor Act 1989 (NT) s 24, s 46A, s 47F, s 50, s 67

REPRESENTATION:

Counsel:

Plaintiff:	M Crawley SC with P McIntyre
First Defendant:	S Brownhill SC, Solicitor-General for the Northern Territory with T Moses
Second Defendant:	S Brownhill SC, Solicitor-General for the Northern Territory with T Moses
Third Defendant:	A Wyvill SC with GM Slattery

Solicitors:

Plaintiff:	HWL Ebsworth Lawyers
First Defendant:	Solicitor for the Northern Territory
Second Defendant:	Solicitor for the Northern Territory
Third Defendant:	Squire Patton Boggs

Judgment category classification:	B
Judgment ID Number:	GRA1913
Number of pages:	5

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

*Foundation for Alcohol Research and Education Ltd v
Northern Territory Liquor Commission & Ors* [2019] NTSC 45
LCA 53 of 2019 (21921631)

BETWEEN:

**FOUNDATION FOR ALCOHOL
RESEARCH AND EDUCATION
LTD (ACN 096854385)**
Plaintiff

AND:

**NORTHERN TERRITORY
LIQUOR COMMISSION**
First Defendant

AND:

**DIRECTOR-GENERAL OF
LICENSING**
Second Defendant

AND:

**WOOLWORTHS GROUP LTD
(ACN 000 014 675)**
Third Defendant

CORAM: GRANT CJ

EDITED REASONS FOR JUDGMENT

(Delivered *ex tempore* 31 May 2019)

- [1] This is an application brought by originating motion filed on 29 May 2019 seeking declaratory, prerogative and injunctive relief. The relief

relates to an application made by the third defendant pursuant to s 46A of the *Liquor Act 1979* (NT) for substitution of other premises for the premises specified in Liquor Licence No 81000242.

- [2] The application was referred to the first defendant by the second defendant pursuant to s 50 of the *Liquor Act* and is scheduled to be heard by the first defendant over five days between 4 and 11 June 2019. The plaintiff is an organisation which has lodged an objection in accordance with s 47F of the *Liquor Act*.
- [3] The grounds of challenge pressed by the plaintiff may be summarised as follows.
- [4] The first ground is that the licence contains a special condition, described as the “Licence Concept”, which provides: “This licence shall remain in force only for so long as the licenced premises shall be operated as a bottle shop.” The licenced premises were the BWS store at Shop 1, 27 Stuart Highway, Darwin. The licensee ceased trading from those premises on 24 October 2018. The plaintiff contends that the second defendant's purported referral of the application to the first defendant on 17 January 2019 was invalid as there was no extant licence which could be the subject of such an application and referral.
- [5] The second ground concerns the operation of s 24(2) of the *Liquor Act*. That section provides that no new takeaway liquor licences may be issued during the moratorium period of five years from the

commencement of the *Liquor Legislation Amendment (Licencing) Act 2018* (NT). That legislation commenced on 28 February 2018. The plaintiff contends that the issue of a licence to the third defendant would be in breach of that statutory moratorium. The contention is that s 46A of the *Liquor Act* only contemplates the substitution of new premises for the conduct of a business of similar nature, size and scale as conducted under the existing licence and in the existing premises. The plaintiff says that this proposal far exceeds the scope and nature of the business previously conducted under the licence. On that characterisation, any substitution would in fact be the grant of a new takeaway licence in breach of the statutory moratorium.

[6] It is necessary to make a preliminary observation about the first of those grounds. The first defendant has made programming directions for the filing and service of submissions in relation to preliminary issues, which include the two grounds I have just identified. Those submissions have been filed. The first defendant's present indication is that it will consider those matters in its consideration of the application generally. The question of whether there is a valid application is not a question of whether facts exist to bring the matter within the first defendant's jurisdiction which only the first defendant is authorised to make. The first defendant is not a court of justice. The plaintiff seeks to have that jurisdictional issue determined in advance of the hearing by the first defendant. This is not to say that had the first

defendant gone on to find that it did have jurisdiction, and subsequently made a determination, that the decision in that respect would not have been amenable to an application for judicial review. It is only to say that the plaintiff's application to this Court in relation to the currency of the licence should not be dismissed as premature.

[7] I turn then to the question of the licence. Section 30 of the *Liquor Act* provides that a licence remains in force until surrendered, suspended or cancelled under the Act. None of those events have transpired in the present case. A number of matters may be noted about the operation of the condition.

[8] First, the licence condition is subordinate to the operation of the legislation and does not control that operation.

[9] Secondly, the licence is granted in respect of premises. The relevant condition in this case operates only so that the licence in respect of those premises is not in force during any period in which they are not operated as a bottle shop. The operation of the condition does not extend beyond that effect.

[10] Thirdly, the breach of a licence condition may give rise to a disciplinary action. Section 67(3)(g) of the *Liquor Act* contemplates that such action may be taken in circumstances where the premises are no longer being used for the sale or supply of liquor or consistently with the business of the licence. That is the consequence of a breach

of this condition. It is not that the licence is automatically surrendered or cancelled.

[11] For these reasons, this ground of challenge must fail.

[12] That leaves the plaintiff's contention that the issue of a licence to the third defendant would be in breach of the statutory moratorium. The limitation on the power of substitution which the plaintiff seeks to make out does not find express voice in the legislation. Nor can I see that it is implicit in the operation of the legislation. But the operation of the provision in that respect is contingent on the determination of certain factual issues which the first defendant is authorised to make. In making that determination, the first defendant may or may not take itself outside jurisdiction. If it does, the plaintiff may bring an application for review at that time. At this point in time, however, the application on this ground is premature.

[13] For these reasons, the plaintiff's application brought by originating motion on 29 May 2019 is dismissed.

[14] The following orders are made:

1. The plaintiff's application brought by originating motion on 29 May 2019 is dismissed.
2. The question of costs is reserved.
