

# NORTHERN TERRITORY LICENSING COMMISSION

## Statement of Reasons for Decision

<b>Applicant:</b>	Adrian Alexander Todd on behalf of the Todd Development Group Pty Ltd.
<b>Premises:</b>	Outback Bar and Grill
<b>Licence Number:</b>	80604707
<b>Objector:</b>	Jenny Deveraux, Policy Officer/Drug Diversion Coordinator, Northern Territory Police
<b>Matter under consideration:</b>	Whether an email dated 5 June 2003 sent to the Deputy Director of Licensing is an objection under section 47F of the <i>Liquor Act</i> and, if it is an objection, whether it should be dismissed or should proceed to hearing.
<b>Relevant legislation:</b>	Sections 47F, 47G and 47I of the <i>Liquor Act</i>
<b>Date of decision:</b>	5 September 2003

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### Background:

1. On 29 April 2003 and 6 May 2003 Mr Adrian Todd placed advertisements in the *Centralian Advocate* notifying the public of the Todd Development Group's application for a variation of the conditions of the liquor licence for the premises known as Outback Bar and Grill, Todd Mall, Alice Springs. The variation sought was an extension of trading hours to permit trading until 2.00 am seven (7) days per week. The current licence allows trading until 11.59 pm Sunday to Thursday and 1.00 am on Friday and Saturday nights. The advertisement specified that objections to the application were to be lodged with the Deputy Director of Licensing within 30 days of the date of the second advertisement.
2. On 5 June 2003 Ms Jenny Deveraux, Policy Officer/Drug Diversion Coordinator for the Northern Territory Police sent an email to Chris McIntyre, the Deputy Director of Licensing. The email thanks Mr McIntyre for "the opportunity to comment on the proposed variation of trading conditions" and goes on to discuss the merits and shortcomings of the application.
3. Ms Deveraux's email appears to have been treated as an objection and forwarded to the applicant for a response. There was a further exchange of correspondence before the matter was referred to the Commission for consideration of the standing of the objection.

## Legislation:

4. Section 47F of the *Liquor Act* (the Act) states that a person, group or organisation may make an objection to an application for the grant of a liquor licence in particular circumstances. This section reads in part:

- (1) *Subject to this section, a person, organisation or group may make an objection to an application for the grant of a licence.*
- (2) *An objection under subsection (1) may only be made on the ground that the grant of the licence may or will adversely affect the amenity of the neighbourhood where the premises the subject of the application are or will be located.*
- (3) *Only the following persons, organisations or groups may make an objection under subsection (1):*
  - (a) *a person residing or working in the neighbourhood where the premises the subject of the application are or will be located;*
  - (b) *a person holding an estate in fee simple in land, or a lease over land, in the neighbourhood where the premises the subject of the application are or will be located;*
  - (c) *a member of the Police Force;*
  - (d) *a member of the Fire and Rescue Service within the meaning of the Fire and Emergency Act;*
  - (e) *an Agency or a public authority that performs functions relating to public amenities;*
  - (f) *a community-based organisation or group (for example, a local action group or a charity)...*

5. Subsections 47F(2) and 47F(3) therefore place limitations on both the grounds for objections and the types of people, groups or organisations that can object.

## Findings

6. As the member considering the status of this objection I make the following findings of fact:
- Ms Jenny Deveraux is employed by the NT Police as a policy officer;
  - she is based in Darwin;
  - her email of 5 June 2003 comments on the application to extend the hours of the Outback Bar and Grill, raising concerns about whether the extension has been sufficiently justified, but does not specifically state that it is an “objection” to the licence application; and
  - the email refers, in closing, to a Police view, but does not purport to have been written on behalf of a specific member of the Police Force.

**Application of the law:**

7. A threshold issue in this matter is whether Ms Deveraux has standing to lodge an objection under subsection 47F(3) of the *Liquor Act*. The Act provides for “a member of the Police Force” to have the right to lodge such objections (subsection 47F(3)(c)). However, Ms Deveraux is employed by the NT Police as a policy officer. She is not a member of the Police Force as described in the *Police Administration Act* (member is someone appointed by the Commissioner to a rank in the Police Force) and therefore has no standing as an objector under subsection 47F(3)(c), unless she lodges the objection on behalf of a named member of the Police Force.
8. In considering this matter I also looked at whether Ms Deveraux would have standing under one of the other categories, in particular, as someone who lives or works in the neighbourhood (47F(3)(a)), or as an Agency or a public authority that performs functions relating to public amenities (47F(3)(e)), and concluded that neither of these other provisions apply. The former is not applicable on the facts; the latter does not apply because of, among other things, the rules of statutory interpretation which provide that the general gives way to the particular (subsection 47F(3)(c) provides a specific mechanism for objections from the Police therefore someone representing the Police cannot take advantage of the more general Agency provision).
9. Given the problems with Ms Deveraux’s standing as an objector in this matter, I have no option but to dismiss the “objection”. In doing so, I should point out that a further issue of concern is the wording of Ms Deveraux’s email. The email takes the form of a comment on the application rather than an objection and therefore its place in the pre-hearing objection process is unclear.

**Decision:**

10. As the member of the Commission appointed to consider the standing of objections to the Outback Bar and Grill application, I have decided that the email dated 5 June 2003 is not an objection under section 47F of the *Liquor Act* because the author does not have standing to lodge an objection under subsection 47F(3) of the Act. On this basis it must be dismissed. I therefore direct the Director of Licensing to advise Ms Deveraux of my decision and of the reasons for the decision. A copy of this statement of reasons should be provided to her. Ms Deveraux should also be advised of her right to seek a review of my decision under section 47J of the Act.

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Jill Huck

Member selected by the Chairman pursuant to subsection 47I(2) of the *Liquor Act*.