

ENFORCEABLE UNDERTAKING

Liquor Act 2019
Section 159(3)

The commitments in this undertaking are offered to the Director of Liquor Licensing by:

DAVID SZYMCZAK
CHIEF EXECUTIVE OFFICER
For and on behalf of
SILVEY PTY LTD
ACN: 110 322 882
13040 Stuart Highway, Davenport NT 0872

BACKGROUND:

1. The Director of Liquor Licensing (the Director) is charged with various functions under the *Liquor Act 2019* (the Act), including entering into an enforceable undertaking with a licensee in relation to a complaint.
2. Silvey Pty Ltd is the Licensee of the premises known as United Wycliffe Well, 13040 Stuart Highway, Davenport (the premises).
3. The Licensee holds liquor licence 80802878, with restaurant, takeaway and lodging authorities.
4. On 25 December 2022, the premises was inundated by flooding stormwater damage necessitating the cessation of operations, with a subsequent flooding in December 2023.
5. The premises have not operated since 25 December 2022.
6. The damage to the premises requires significant civil and capital works to enable to the Licensee to resume operations.
7. The Licensee submitted on 3 April 2024 they intended to recommence trade at the premises by 31 May 2025.

THE DIRECTOR'S CONCERNS

8. Section 67(1) of the Act prescribes a licensee is taken to have abandoned the licence if the licensee ceases to operate the licensed premises for more than 6 months without the prior approval of the Director.
9. Licensing NT personnel were aware of the damage and cessation of operations at the licensed premises, however no approval had been sought from the Director by the Licensee as prescribed in section 67(1) of the Act.
10. Section 67(2)(b) of the Act allows the Director to cancel the licence in circumstances where the licence is taken to have been abandoned.
11. The Director wrote to the Licensee on 8 March 2024 notifying them of their intention to cancel the licence under the provisions of section 67 of the Act, and provided the licensee with an opportunity to show cause as to why this action should not be taken.
12. On 3 April 2024 counsel for the Licensee responded to the Director advising of their intention to restore the premises to operational order and recommence trade not later than 12 months from the date of execution of this Enforceable Undertaking.
13. The Licensee has requested the Director refrain from taking the action described in the notice, and submitted they would be open to providing consistent communication with the Director in relation to the staging of the works.
14. It is the Director's belief the submissions of the Licensee's intentions notwithstanding, they must be certain as to the works being carried out and the recommencement of trade at the premises.
15. A licence cannot be sustained *ad infinitum* in circumstances where it is unlikely to be operated within a reasonable period of time with reference to the circumstances which may apply to each situation.
16. The Director acknowledges the need for time for this licensee to undertake what is accepted as significant works, coupled with a mechanism to ensure the works will be undertaken and the licence become operational in a reasonable period of time.
17. It is the further belief of the Director that suitable reporting of progress in relation to this matter be provided by the Licensee to the Director no later than the 28th day of each calendar month, so that the approval described in section 67(1) of the Act may be provided.

18. Section 160(1)(g)(i) of the Act prescribes a grounds for a complaint against a licensee to be where the licensee's licensed premises are no longer being used for the sale, supply, service or consumption of liquor.
19. Section 163(1)(e) of the Act provides for the Director to refer a complaint made under section 160(1)(g)(i) of the Act to the Northern Territory Liquor Commission for disciplinary action.

ACKNOWLEDGEMENT OF CONCERNS

20. Silvey Pty Ltd acknowledges the Director's concerns and believes that they are reasonably held.

UNDERTAKING:

21. Under section 159(1) of the Act, Silvey Pty Ltd has offered, and the Director has agreed to accept, as an alternative to disciplinary action, the undertaking set out in this Enforceable Undertaking.
22. Silvey Pty Ltd undertakes to provide a report to the Director by no later than the 28th day of each calendar month, detailing the progress of works at the licensed premises allowing for the recommencement of operations not later than 12 months from the date of execution of this Enforceable Undertaking.
23. Silvey Pty Ltd also undertakes to provide any other written information requested by the Director, relating to the licence and the conduct of the business, that the Director may from time to time reasonably request.
24. Silvey Pty Ltd undertakes to comply with all requirements of the *Liquor Act 2019* in relation to the business of the licence, specifically but not limited to, those matters prescribed in section 76 of the Act and Part 4, Division 4 of the Act.

NON-COMPLIANCE

25. Should the Director believe that either party has failed to materially comply with the Enforceable Undertaking as described in clauses 21 to 24 inclusive, she will write to the parties setting out the concerns regarding non-compliance.
26. The parties will have 14 days from the date of the Director's letter referred to in clause 25 to provide evidence satisfactory to the Director that it has remedied such non-compliance.

27. The provisions of clause 21 notwithstanding, the Commission and the Director reserve the right to take disciplinary action against the licensee in accordance with the Act for any non-compliance with this undertaking.

ACKNOWLEDGEMENTS

28. The parties acknowledge that the Director, in accordance with section 159(6) of the Act, will record this Enforceable Undertaking in the Register of Enforceable Undertakings.
29. The parties also acknowledge, in accordance with section 159(7) of the Act that it may vary or withdraw this Enforceable Undertaking only with the consent of the Director.

COMMENCEMENT DATE:

30. This Enforceable Undertaking will commence operative force from the date it is accepted by the Director.

PROVISION OF DOCUMENTS:

31. The address for providing the Director with any document or notice is:

The Director of Liquor of Licensing
GPO Box 1154
DARWIN NT 0801
DirectorLiquorLicensing.DITT@nt.gov.au

32. The addresses for providing Silvey Pty Ltd with any document or notice is:

C/- General Counsel
Silvey Pty Ltd
600 Glenferrie Road
HAWTHORN VIC 3122
amclean@unitedpetroleum.com.au

SIGNED BY:



David Szymczak
Chief Executive Officer
For and on behalf of Silvey Pty Ltd (ACN 110 322 882)

Dated this 28 day of June 2024.

Accepted by the Director of Liquor Licensing under section 159(5) of the *Liquor Act 2019*.



Melissa Jane Garde
Director of Liquor Licensing

Dated this 01 day of July 2024.