

## Delegate of the Director-General of Licensing

### Decision Notice

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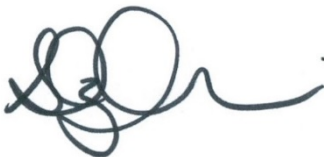
<b>MATTER:</b>	Mataranka Supermarket Pty Ltd
<b>LEGISLATION:</b>	<i>Liquor Act</i> - section 110
<b>DECISION OF:</b>	Delegate of the Director-General of Licensing
<b>DATE OF DECISION:</b>	5 September 2017

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1. Mataranka Supermarket Pty Ltd (the supermarket) is the licensee of Liquor Licence number 80900058 (the licence) issued pursuant to the *Liquor Act* (the Act).
2. The licence provides authority to sell and supply liquor to persons for consumption away from the premises.
3. The licence contains a Special Condition titled *Sales of Cask and Fortified Wine* which provides as follows:
  - (i) *No cask or fortified wine is to be sold in containers larger than two (2) litres.*
  - (ii) *Take away purchases of cask wine and fortified wine (including Stones Green Ginger Wine) is to be limited to the hours of 14:00 and 18:00 only.*
  - (iii) *Take away purchases of cask wine and fortified wine is to be limited to one (1) two (2) litre cask or one (1) bottle of fortified wine per person per day.*
4. On 3 October 2016 Remote Sergeant Thomas Chalk reported that he had become aware whilst conducting Point of Sale Intervention (POSI) duties on 1 October 2016 at the supermarket that a cask of wine had been sold prior to 14:00 hours. The matters reported were subsequently adopted in a statutory declaration.
5. The investigation conducted by liquor inspectors produced sales records from the supermarket and CCTV footage which depicted the relevant transaction inside the supermarket at the relevant time.
6. On 2 December 2016, in accordance with section 68(3) of the Act the licensee was notified that a complaint had been accepted in relation to a possible breach of section 110 of the Act.
7. Specifically, notice was given that it was alleged that at about 12:46pm on 1 October 2016 an employee of the licensee supplied a person with a cask of wine contrary to clause (ii) of the Special Condition of the licence and that a breach of section 110(1) of the Act may have occurred.
8. On 5 December 2016 by way of response, the licensee acknowledged that an employee had permitted a customer to purchase a two litre cask of wine prior to 14:00 hours.
9. The licensee further acknowledged that the casual employee of the supermarket (who was no longer employed) had permitted a customer to obtain a two litre cask of wine noting that:

- A more senior member of the staff had noted after the incident of supply that a two litre cask was on the supermarket's 'sold' list prior to 14:00 hours;
  - The senior staff member had reprimanded the casual employee at the time;
  - The incident was not brought to the attention of the licensee until 3 October 2017;
  - The licensee had viewed its CCTV footage in order to investigate the matter and noted that the casual employee did not charge the customer for the cask of wine;
  - That measures were immediately taken to ensure that a similar incident did not happen again.
10. The licensee submitted that the transaction was a mistake and not an intentional breach or disregard for the conditions of the licence.
  11. On 10 August 2017 and in accordance with the Director-General Guideline relating to Public Hearings, a public hearing was conducted at Mataranka. The reporting police member and the licensee attended.
  12. The CCTV footage was viewed in the course of the hearing which clearly depicted a male customer taking a cask of wine from the liquor storage area and conveying it to the counter service area at 12:46pm where a female customer is standing.
  13. The footage showed the cask of wine being placed on the service counter with two other bottles of wine. The female customer could be seen taking the cask of wine from one side of the service area, showing it to the clerk and then moving it to the other side of the service counter. The service clerk could be seen briefly placing her hand on the cask before the male customer placed the cask into a box.
  14. It is apparent from the footage that the cask of wine was not 'rung up' on the till.
  15. At that point remote Sergeant Chalk could be seen to enter the supermarket through the front doors. The female customer then handed the clerk what appears to be an identification card and the clerk could be seen writing on a piece of paper.
  16. The licensee did not dispute any of the matters reported by Remote Sergeant Chalk and confirmed acknowledgement of a breach of the licence conditions as depicted in the footage.
  17. Having considered all of the evidence and taking into account the appropriate concessions made by the licensee, I am satisfied that a breach of clause (ii) of the Special Conditions of the licence did occur and that such breach amounts to a contravention of section 110(1) of the Act.
  18. With reference to section 123A of the Act, I find that the licensee did contravene a condition of the licence.
  19. In determining an appropriate penalty I have considered the submissions made by the licensee.
  20. I accept the licensee's submission that the transaction was an error made by an inattentive employee. The submission is corroborated by the absence of any evidence to suggest that some benefit was derived from the early sale of a restricted product. In fact, the evidence indicates that the employee failed to ring up or take payment for the cask of wine at all.
  21. The licensee advised the investigation that the employee who supplied the cask of wine is no longer employed at the store. As a result of the incident, it had immediately implemented measures within the store to ensure that the opportunity for similar mistakes to occur in the future were minimised.

22. Such measures include:
- Inclusion of matters pertaining to restricted liquor products being specifically included in staff training;
  - the requirement for store employees to manually record each sale of cask wine, including the time at which the purchase is made;
  - the inclusion of a 'pop up' box which appears on the point of sale device when a cask of wine is scanned and which requires the employee to enter the date of birth of customers before a sale can proceed; and
  - the addition of signage in the liquor area of the store and covering liquor fridges containing wine which states "Cask Wine Sales After 2pm" which are only removed from fridges after 14:00 hours.
23. Whilst I accept that the licensee did not deliberately set out to breach the Special Condition of its licence, it is incumbent on licensees to ensure that it, and employees who operate under authority of a liquor licence do so in accordance with the Act.
24. Taking into account all of those matters and the public interest in ensuring that licensees comply with such conditions, I have determined to issue an infringement notice pursuant to section 68(5)(b)(i) of the Act and with reference to Regulation 7A(2) of the *Liquor Regulations*.
25. Accordingly, a penalty of five (5) penalty units is imposed.
26. Section 8 of the *Licensing (Director-General) Act* prescribes a delegate decision is a decision, under any Act, of the Director-General that is made by a delegate of the Director-General.
27. The Director-General delegated the determination of matters and exercise of functions under the *Liquor Act* by instrument to the person from time to time holding, acting in or performing the duties of the position of Deputy Director-General (Operations), Licensing NT.
28. Section 10 of the *Licensing (Director-General) Act* provides that an affected person for a delegate decision may apply to the Director-General for a review of the decision. This application for review must be made within 28 days after written notice of the delegate decision is given to the affected person, or within any additional time that the Director-General allows.



**Sally Ozolins**  
Deputy Director-General (Operations)

5 September 2017