

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER:	DISCIPLINARY ACTION PURSUANT TO THE <i>LIQUOR ACT 2019</i>
REFERENCE:	LC2022/005
LICENCE NUMBER:	80900058
LICENSEE:	Mataranka Supermarket Pty Ltd
PREMISES:	Mataranka Supermarket 42 Roper Terrace MATARANKA NT 0852
LEGISLATION:	Part 7 Divisions 3 and 4 of the <i>Liquor Act 2019</i> and Regulation 53(2) of the <i>Liquor Regulations 2019</i>
HEARD BEFORE:	Ms Jodi Truman (Deputy Chairperson) Mr Bernard Dwyer (Health Member) Ms Amy Corcoran (Community Member)
DATE OF HEARING:	23 February, 6 April 2022 and 5 May 2022
DATE OF DECISION:	5 May 2022

Decision

1. On the basis that the Director has withdrawn the referral of this matter to the Commission for disciplinary action, the Commission pursuant to section 166(6)(a) of the *Liquor Act 2019* (“the Act”) dismisses the matter and cancels the hearing listed for 30 March 2022.

Reasons

Background

2. The licensee is the holder of Liquor Licence 80900058, trading as Mataranka Supermarket (“the premises”) situated at 42 Roper Terrace, Mataranka. The nominee is Ms Toni Kutschki.
3. In March 2017, the Northern Territory Government (“the NTG”) commissioned the Alcohol Policies and Legislation Review (“the Review”). The NTG stated

it commissioned this Review “to deliver a cohesive approach to alcohol reduction”¹. Importantly the NTG noted that:

“The review was conducted under the *Inquiries Act*, reflecting how seriously the Government views the misuse of alcohol in the community”.

4. On 19 October 2017, the Alcohol Policies and Legislation Review Final Report was delivered to NTG (“the Report”). It provided 220 recommendations on reforms.
5. Part of those recommendations included what was referred to in the Report as “key recommendations²” which included:

“addressing significant issues including the density of alcohol retail outlets ... implementing an immediate moratorium on takeaway liquor licences and phasing out store licences to **reduce the number of corner grocery stores that sell alcohol**” (emphasis added).

6. Within the Report, it was noted by the panel that:

“There is universal agreement that there are far too many licences to sell alcohol issued in the Northern Territory ³...”

The Referral

7. On 21 December 2021, a complaint was formally lodged with the delegate of the Director of Liquor Licensing, Mr Bernard Kulda (“the Delegate”) pursuant to section 160 of the Act in relation to the alleged breach of regulation 53 of the Regulations by the licensee. For the purposes of these reasons, it is not necessary to go into the facts of that complaint.
8. On 21 December 2021, the complaint was accepted by the Delegate with the licensee being informed of the complaint via email on the same day.
9. In the usual course; having accepted the complaint and the investigation commencing, upon completion of the investigation the Delegate was empowered under section 163(1) of the Act to take several actions, including referring the complaint to the Commission.
10. On 25 January 2022, the Delegate referred the complaint to the Commission for disciplinary action to be taken against the licensee. Pursuant to section 166(2) of the Act, upon receipt of such a referral, the Commission must conduct a hearing and pursuant to section 166(1) decide whether to take disciplinary action against the licensee.

Public Hearing

11. Following receipt of the referral the Commission listed the matter for a hearing at the next available date being 23 February 2022. On that date, the Director

¹ Response to the Alcohol Policies and Legislation Review Final Report (“The Report”)

² The Report, pg.9

³ The Report, pg.34

appeared via his Delegate, Mr Bernard Kulda. The licensee appeared via solicitor, Ms Alana Grimster and its nominee, Ms Kutschki (“Ms Kutschki”) appeared remotely.

12. At the commencement of the hearing, the Chairperson raised matters relating to the further conduct of the matter and the ability of the Commission to properly hear the referral without certain evidence being provided. As a result, the solicitor for the licensee sought an adjournment to obtain further instructions and provide relevant evidence for the consideration of the Commission. The adjournment was not opposed on behalf of the Director.
13. The adjournment was granted, and the matter listed for hearing at 10.00 am on 6 April 2022. On that date material had been lodged late by the solicitor for the licensee with the Commission. As a result, neither the Commission nor the Delegate had sufficient opportunity to consider the materials provided.
14. As a result, the solicitor for the licensee sought an adjournment to enable the Delegate of the Director and the Commission to consider the material provided. The adjournment was not opposed on behalf of the Director.
15. The adjournment was granted, and the matter listed for hearing at 10.00 am on 6 May 2022.
16. On 4 May 2022, the Director formally wrote to the Commission advising that he had determined “to now withdraw the referral to the Commission”. This was because of further material having been provided by the licensee to the Director. The Commission notes that section 166(6) of the Act clearly contemplates the Director’s power to withdraw a “matter” after it has been referred to the Commission.
17. That section however also makes clear that it is in the Commission’s discretion as to whether it dismisses a matter referred to it after it is withdrawn by the Director.
18. The Commission notes a similar approach was taken by the Director in relation to another licensee with respect to a similar complaint⁴. On that occasion the matter returned to the Commission and further materials were provided to the Commission and submissions made.
19. On that occasion, the Commission (constituted by the same Panel as this one) did not consider it appropriate to “review” the exercise of the Director’s discretion. It appears the Director has complete discretion to withdraw and is not required to provide reasons to the Commission. It is apparent that the Director has scrutinised the information provided to him by the licensee and is satisfied in relation to that information and further that the licensee would be under *no* misapprehension that the Director will be carefully monitoring the licensee’s compliance with regulation 53 into the future. As much has in fact been said.

⁴ Northern Territory Liquor Commission *Disciplinary action pursuant to the Liquor Act 2019: Deckmar Pty Ltd* (LC2022/004, 30 March 2022)

20. The Commission also notes that relevant monitoring of the changes stated to have been made by the licensee will in fact take place in a few short months with the next declarations from grocery store licensees due to be filed in July 2022. The licensee's various actions taken, and their success or otherwise, will likely be carefully scrutinised at that time.
21. Pursuant to section 21(2) of the Act, any hearing conducted by the Commission must be conducted in public unless the Commission is of the opinion that it is not appropriate to do so in certain circumstances. One of those circumstances is where "conducting the hearing in public would not be worthwhile"⁵.
22. Given the matters outlined above, the Commission has determined that it is not appropriate in the circumstances to conduct the hearing in public and has determined to deal with the matter in private based on the written materials already provided⁶.
23. Based on the materials provided, in particular the correspondence received from the Director dated 4 May 2022; in all these circumstances and without making any determination whether disciplinary action should be taken against this licensee, the Commission has determined to exercise its discretion and dismiss this matter and cancel the hearing pursuant to section 166(6)(a) of the Act.
24. Whilst it is questionable whether this is in fact a decision requiring a Decision Notice pursuant to section 166(1) and (7) of the Act, the Commission has issued this to the parties to avoid any doubt.

Notice of Rights:

25. Section 31 read with section 166(7) of the Act provides that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal ("NTCAT"). Section 94(3) of the *NTCAT Act 2014* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.
26. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for review of this decision are the Director and the licensee.



JODI TRUMAN
PRESIDING MEMBER
DEPUTY CHAIRPERSON

On behalf of Commissioners Truman, Dwyer and Corcoran
5 May 2022

⁵ Section 21(2)(d) of the *Liquor Act 2019*

⁶ Section 21(3) of the *Liquor Act 2019*