

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

LICENSEE: Orwill Pty Ltd

PREMISES: Wycliffe Well Store

LICENCE NUMBER: 80802878

PROCEEDING: Complaint Pursuant to Section 48(2) Breach of:
Section 110 – Failure of Licensee to Comply with a
Condition of Liquor Licence

HEARD BEFORE: Mr Richard O’Sullivan (Chairman)
Ms Brenda Monaghan (Legal Member)
Ms Helen Kilgariff

DATE OF HEARING: 17 June 2009

APPEARANCES: Mr Irwan Lewis Farkas, Nominee
Inspector Tony O’Donohoe for the Director of Licensing
Inspector Andrew Cross

BACKGROUND

- 1) On 17 June 2009 at Tennant Creek, the Commission conducted a hearing into a complaint laid by Inspector Andrew Cross pursuant to Section 48(2) of the *Liquor Act* (“the Act”). The complaint alleged that the Nominee of Wycliffe Well Store was guilty of a breach of a special condition of his licence relating to takeaway. The relevant condition states:

“All liquor sold for consumption away from the premises is restricted to beer only, and is limited to a maximum quantity of six (6) 375ml bottles or cans of beer per person. Under no circumstances is wine or spirits to be sold for consumption away from the premises.”

- 2) The circumstances relating to the alleged breach are that on the evening of 5 February 2009 at approximately 19:30, Licensing Inspector Cross was present when the sale of a carton of thirty (30) Victorian Bitter Beer (VB) to two (2) customers at the Wycliffe Well store. Inspector Cross was positioned outside the store at the time. He saw an Indigenous male and female enter the store together and re-emerge shortly thereafter with the carton. Inspector Cross’ evidence was that the carton was placed in a vehicle in which an intoxicated man was already seated and they departed in the vehicle soon

after. Inspector Cross, accompanied by two (2) Police officers who happened to be passing by, entered the roadhouse and spoke to Mr Farkas. Whilst he did not deny the sale, he initially tried to excuse his behaviour by alleging that they had all come into the store – which was untrue. Mr Tony O’Donohoe on behalf of the Director of Licensing sought a suspension of the stores takeaway liquor licence for two (2) days for the breach.

- 3) In a written response to the complaint and again at the hearing, Mr Farkas fully admitted the breach but sought some mitigation because of the challenging circumstances he was facing at the time. He gave evidence of the events that he had had to cope with in the week leading up to the breach. It appears that a group of unruly Indigenous people who were camping under the nearby bridge had been causing havoc. The group were stranded because of flooding in the region and had on several occasions picked fights with various customers, humbugged them for food or alcohol or stolen goods from them. Mr Farkas himself had had little sleep all week because there had been several attempts to break into his store at night. He had also faced difficulties in obtaining sufficient Police backup when he needed it.
- 4) On the day in question, Mr Farkas had also received personal news which was most upsetting to him. He advised the Commission that he sold the carton to two (2) people because he was exhausted and wanted to get rid of them as soon as possible. Customers were still dining at the roadhouse at the time. He asserted that the same carload had in fact visited his premises an hour before and at that time he had checked the sobriety of all five (5) of them. At Hearing Mr Farkas demonstrated a good recall of events and was able to name the individuals who had presented at his licensed store at around 18:30 hours. He had not sold them liquor at that time, however, because their vehicle had driven off, due largely to humbugging from another group of Indigenous people who had been camped near the store area.
- 5) When they returned an hour later, two (2) of the group came inside and he sold them a carton. This was done Mr Farkas said to speed up the sales process and avoid the potential for humbugging by the group camped nearby. He did not want the people in the vehicle to begin drinking in the vicinity of the store, so he sold the carton in the expectation that the five (5) people in the vehicle would drive away with the purchase. He suggested that the intoxicated man that Inspector Cross saw in the vehicle was not one of the family group that he had been serving. Inspector Cross in evidence agreed that the intoxicated person referred to in his statement as being in the vehicle and receiving the carton of beer may have been the person taken into protective custody by Ali Curung Police. It was therefore unlikely that this intoxicated person was a recipient of the carton of beer purchased or a member of the party to whom Mr Farkas sold the alcohol.
- 6) Mr Farkas does not deny that he breached his licence condition by agreeing to the sale. He fully acknowledges that he must sell no more than six (6) takeaway beers to each customer present before him at the counter - and only once he has satisfied himself of their sobriety. He fully accepts the recommended penalty put forward on behalf of the Director, which is for a

licence suspension for takeaway sales of two (2) days.

- 7) The Commission accepts that Mr Farkas had had an extremely challenging week leading up to the breach. There can be no excuse however for breaching the six (6) pack Special Condition in his licence. The condition was originally imposed after consultation with surrounding Aboriginal communities and other stakeholders in an attempt to control alcohol-related antisocial behaviour and violence in the area. On the day of the breach, Mr Farkas was exhausted by unruly, unacceptable behaviour around his premises. It would have been a better response for him to have self imposed a ban on takeaway sales of alcohol to all customers rather than breach his licence conditions in the way he did.
- 8) The Commission notes that Mr Farkas fully accepts the recommended penalty put forward by the Director in this matter.

DECISION

- 9) The takeaway component of the liquor licence for Wycliffe Well Store is suspended for two (2) days – on 6 and 7 August 2009. A sign is to be displayed on the door of the premises advising of the suspension.

Richard O'Sullivan
CHAIRMAN

20 July 2009