

**NORTHERN TERRITORY LICENSING COMMISSION**  
**OFFICE OF THE CHAIRMAN**  
**Decision**

Liquor Act 1978 – Section 101. Disposal of forfeited things - Vehicle Application by Registered Owner -  
Ms Nellie Marks

**Appearances**

Senior Sergeant Don Eaton for the Northern Territory Police  
Mr Kim Kilvington for the Applicant, Ms Nellie Marks

1. Police seized Ms Marks' vehicle, a Toyota Landcruiser, registration number 621-433, on 7 January 2002. It is agreed that Ms Marks is the owner of the vehicle.
2. Also seized were five (5) five-litre casks of wine and one (1) carton of VB beer. Police located two of the casks in the rear of the vehicle, in the area behind the back seat. Three casks and the carton of beer were concealed under a blanket, on the floor of the vehicle, in the area behind the passenger-side front seat.
3. Ms Marks was a passenger in the vehicle at the time of seizure. Other persons in the vehicle included Ms Marks' daughter, her son-in-law and her husband, Mr Jimmy Jabaltjari.
4. Mr Jabaltjari, who from the evidence in this hearing, concealed the three casks and the carton under a blanket and between his feet, was convicted in the Papunya CSJ on 19 February 2002 for the offence of controlling liquor in a restricted area and fined \$500. Mr Jabaltjari was convicted for a similar offence some twenty years previously on 13 August 1981.
5. Section 101 of the *Liquor Act 1978* provides: *All things forfeited under this Part may be destroyed or otherwise disposed of in such a manner as the Chairperson thinks fit, including, with the approval of the Minister where, in the case of a vehicle, vessel or aircraft, the Minister is of the opinion that the person was not knowingly involved in the act constituting the offence as a result of which it was forfeited and had no reason to suspect that it might be used in connection with such an offence, by selling or otherwise returning it to a person who, immediately before the forfeiture, had a legal or equitable interest in the vehicle, vessel or aircraft.*
6. The words "as the Chairman thinks fit" were inserted into s101 by amendment in 1998. The section provides a discretion as to how vehicles forfeited under s96 of the Act can be disposed of and does not fetter that discretion except where the Chairman decides to dispose of the vehicle to its owner. On any such occasion, the Chairman must first obtain the approval of the relevant Minister.
7. The respective roles and powers of the Minister and the Chairman are contained in *Ninnal v Minister for Racing, Gaming & Licensing & Anor (2001) NTSC 68*.
8. In this decision His Honour, Chief Justice Martin ruled that: *Under s101 it is only the Chairperson who has the power to destroy or otherwise dispose of a forfeited vehicle, and that, as he or she thinks fit. In my opinion it is plain that the decision to sell or otherwise return a forfeited vehicle after it has been forfeited falls within the discretion of the Chairperson and can only be made by the Chairperson. The implementation of the decision, however, is conditioned upon the Chairperson first obtaining the approval of the Minister. The Ministerial approval is conditioned upon the Minister forming the requisite opinions going to the state of mind of the owner.*

9. The Chairman's opinion as to the state of mind of the owner can be regarded as irrelevant, for as His Honour makes plain: *The opinion of the Chairperson on the question of the owner's state of mind is of no effect in the statutory scheme.*
10. Nevertheless the Chairperson is able to present material to the Minister that can be used by him to form the requisite opinion of the owner's state of mind prior to his approval or otherwise of the Chairperson's decision to dispose of the vehicle to its owner.
11. His Honour ruled to this effect as follows: *In the ordinary course of public administration, however, it is not likely that the Chairperson would be precluded from gathering and presenting to the Minister material, including any representations from the owner, upon which the requisite opinion of the Minister could be formed. But the only opinion countenanced by the legislature is that of the Minister.*
12. On the balance of the evidence presented in this hearing I have decided to return the vehicle to Ms Marks and pursuant to the requirements of s101 will seek the approval of the Minister.
13. Consistent with His Honour's ruling I will gather and present such material to the Minister as may assist him to form the opinions required by s101.
14. The material to be presented to the Minister will include a summary of the evidence presented in this hearing and the conclusions and inferences drawn from that evidence that have led to my decision. The full transcript of these proceedings will be attached to and form part of the material placed before the Minister.

**Peter R. Allen**  
**Chairman**  
**11 November 2002**