

# NORTHERN TERRITORY LIQUOR COMMISSION

## DECISION NOTICE

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**MATTER:** APPLICATION FOR A SPECIAL LICENCE

**REFERENCE:** LC2018/026

**VENUE:** Darwin Amphitheatre  
George Brown Botanic Gardens, Gardens Road  
THE GARDENS NT 0820

**APPLICANT:** Hamark Holdings Pty Ltd

**EVENT:** One Tropical Day – John Farnham

**LEGISLATION:** Section 58 of the *Liquor Act*

**DECISION OF:** Ms Amy Corcoran (Commissioner)

**DATE OF DECISION:** 17 May 2018

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### Decision

1. For the reasons set out below and in accordance with section 59(1) of the *Liquor Act (the Act)* I have determined to grant a special licence to sell liquor to the Hamark Holdings Pty Ltd (**the Applicant**) for the sale of liquor between the hours of:

Saturday, 14 July 2018 from 14:00 to 23:59 hours

2. The granting of approval is subject to the following conditions, namely:
  - a. The sale of liquor must be supervised by one or more persons nominated by the holder of the special licence (the Nominee/s), who each must hold a Responsible Service of Alcohol certificate, or equivalent qualification approved by the Director-General. A Nominee **MUST BE** present during all Trading Hours and must ensure compliance with these Conditions.  
**Nominee/s: MS LORRAINE PHELAN**
  - b. Persons under the age of 18 years must not be used in the sale or supply of liquor.

- c. The boundary of the premises must be clearly identified and access to the premises must be restricted in a manner that allows for effective supervision by the Nominee.
- d. Any person involved in Crowd Control, as defined under *the Private Security Act*, at the premises, must be licensed as required by that Act.
- e. Crowd Controllers are to be employed as per industry standards as follows:
  - Two licensed crowd controllers for the first 100 hundred patrons and one additional crowd controller for each 100 hundred patrons thereafter.
- f. All liquor must be sold in open containers.
- g. No more than four (4) alcoholic drinks must be sold to any one person at any one time.
- h. The holder of the special licence must ensure that water, soft drinks, low alcohol beverages and snacks are available during Trading Hours. Commercially bottled water may be sold, otherwise water must be supplied free of charge on request.
- i. Liquor must not be sold or supplied to a person who is drunk, or to a person under the age of 18 years.
- j. The holder of the special licence must comply with the “Industry Code of Practice for the Promotion of Liquor”, provide a safe drinking environment, prevent irresponsible or excessive consumption of liquor and ensure all staff are properly instructed to watch for and prevent drink spiking.
- k. The holder of the special licence must comply with all requirements and guidelines published by the Liquor Commission or Director-General, including guidelines related to the conduct of entertainment.
- l. Where the holder of the special licence is operating from enclosed premises, the holder must prominently display on the premises the “Maximum Patron Number” sign (if one has been issued by the Fire and Rescue Service) and must comply with maximum patron numbers as determined by the Northern Territory Fire and Rescue Service from time to time.
- m. The holder of the special licence must not do or permit or suffer any act, matter or thing whatsoever upon the premises or any part thereof, or permit noise at a level, which must or may be to the annoyance, nuisance, grievance or disturbance of the occupiers or owners for the time being of the adjoining properties or the residential neighbourhood.
- n. The holder of the special licence must comply with the requirements of the Liquor Commission or Director-General as specified in this condition,

and with the instructions of a Licensing Inspector, a Member of the Police Force, an authorised Member of the Northern Territory Fire and Rescue Service or a delegate of the Chief Health Officer upon production of an identity card or other authorisation.

- o. All liquor purchased for sale under the authority of this special licence **MUST** be purchased from a licensed retail outlet.
- p. The holder of the special licence must make a record of all liquor obtained for sale under this special licence that identifies the source of the liquor and the type and quantity of each type of liquor so obtained.
- q. The holder of the special licence must record all liquor sold, including the type and quantity of that liquor, and must record the manner of disposal of any unsold liquor.
- r. This special licence must be located at the premises during Trading Hours and must be produced on demand to a Licensing Inspector, a Member of the Police Force, an authorised Member of the Northern Territory Fire and Rescue Service or a delegate of the Chief Health Officer upon production of an identity card or other authorisation.
- s. The holder of the special licence must clearly display signage to delineate Non-Smoking areas from the Smoking Areas and the holder must comply with smoking requirements contained in the *Tobacco Control Act*.
- t. Food and drinks are not permitted to be taken into any designated smoking areas.
- u. The holder of a special licence or employee of a holder shall exclude or remove from the premises any person who is wearing the colours, insignia or emblems of an outlaw motorcycle gang (Bikie Gang).

**Commission's instructions in accordance with Condition (n):**

- No more than four (4) alcoholic drinks to be sold to any one person at any one time from 1400 hours to 2200 hours and then no more than two (2) alcoholic drinks sold to any one person at any one time from 2200 hours to 2359 hours. To the extent that this condition is inconsistent with Condition 2(g) above, this condition prevails.
- All alcohol will be sold as one standard drink or less per serve with the exception of pre-mix cans (**RTDs**) and wine.
- No provision of alcoholic drinks that:
  - 1. are designed to be consumed quickly and which are commonly referred to as a 'shot or shooters'; or

2. are a cocktail containing more than a 30ml nip of spirit or liquor.
- All patrons must be issued with colour coded wristbands upon entry clearly identifying patrons who are:
    1. 18+ years of age; and
    2. under 18 years of age.
  - All children 16 and under must be accompanied by a parent or guardian in order to enter the premises and should be supervised by a parent / guardian at all times;
  - Free water must be available to patrons;
  - Liquor or any other beverages must not be sold to patrons in glass containers;
  - Crowd control arrangements shall comprise of static and roaming crowd controller to diligently monitor and enforce all licensing requirements and regulations pertaining to the sale of alcohol;
  - At least 75% of crowd controllers employed must wear clothing that is readily identifiable. For example, high-viz vests with 'Crowd Controller', 'Security' or 'Safe Staff' or similar stated.

## Reasons

### **Background**

3. On 20 March 2018 pursuant to section 58 of the Act, Hamark Holdings Pty Ltd (**the Applicant**) lodged an application with the Director-General for the grant of a special licence to permit the sale of liquor to patrons attending an event known as 'One Tropical Day – John Farnham' ” on Saturday, 14 July 2018. The application was then referred to the Liquor Commission and to me pursuant to my delegation to deal with such special licence applications.
4. One Tropical Day is an all ages music festival held at the Darwin Amphitheatre. The Applicant estimates 6,000 persons will attend this year. It is a ticketed event with attendees encouraged to bring camp chairs and picnic rugs to the event for an afternoon and evening of musical entertainment. There will also be a limited premium reserved seating section located in front of the stage.
5. This year, One Tropical Day's entertainment line-up includes John Farnham, Daryl Braithwaite, The Black Sorrows and Taxiride with the event's target demographic being persons aged 45 years and over.
6. Specifically, the Applicant is seeking a special licence for the following hours of trade:

Saturday, 14 July 2018 from 14:00 hours to 23:59 hours.

7. The sale of liquor to patrons at One Tropical Day is proposed via six bars. Beer, cider, ready to drink spirits (**RTDs**), wine and cocktails are proposed to be available for sale throughout the licensed area. Additionally, the Applicant indicates beer is proposed to be offered for sale in light and mid-strength alcohol content varieties, as well as full-strength.
8. In relation to security and crowd control arrangements, the Applicant indicates there will be sufficient crowd controllers present at the event to adhere to the industry standard for crowd control. Specifically, this is two licensed crowd controllers for the first one hundred patrons and one additional crowd controller for each one hundred patrons thereafter.
9. The Applicant has confirmed qualified paramedics will be engaged and present throughout the event.
10. I have been informed by Licensing NT, that “nil compliance issues are evident on file in relation to this event from last year”.

## Consultation

11. As this is an application for a special licence there is no requirement under the Act for advertising of such an application, nor is there provision for formal objections to be made concerning such an application. Despite this, a “usual practice” has developed for the Director-General to consult with relevant stakeholders concerning the application, namely the Department of Health (**DOH**), NT Police, Fire and Emergency Services (**NT Police**) and NT Fire, Rescue Service (**NTFRS**), St John’s Ambulance (**SJA**) and seek their comment. With respect to this application:

12. DOH advised that:

*“The Department of Health is not able to support the aspect of the application that allows unaccompanied minors to attend the event. Health asks the Liquor Commission to consider patron and community safety & amenity when determining this application. Health provide the comment on the understanding the applicant is aware of their responsibility with regard to smoking compliance at the venue. In that regard Health provides a copy of the No Smoking sign and Smoking Area sign that is required to be displayed on site for the convenience of the applicant”.*

13. The NTFRS advised that:

*“The NTFRS has no objection to the Special Liquor Licence Application: One Tropical Day – John Farnham 14/07/2018. The NTFRS reserve the right to conduct Fire safety inspection on all the Food vendors, bar and stage areas the Friday before the event. Please ensure all stallholders have in date Dry Chemical Extinguishers and Fire Blankets. We will inspect 2:30pm Friday 13/07/2018”.*

14. The NT Police advised that they “...support this application contingent to:

- a. *Secure storage of alcohol at all times – any alcohol that is left overnight needs to be secured away*
- b. *Industry standard security for crowd numbers – security to ensure no alcohol is entering/exiting the event*
- c. *RSA for all staff handling alcohol*
- d. *Maximum 4 drinks per transaction with a staggered decline in drinks per transaction towards the conclusion of the event*
- e. *Alcohol volume to be one standard drink or less per serve*
- f. *Low to mid strength beer – no full strength*
- g. *No glass*
- h. *No BYO*
- i. *Commercial bottled water to be readily available for low-cost purchase”.*

15. SJA were contacted to provide comment in relation to this application yet did not do so by close of business 9 May 2018.

16. I will address these requests separately below.

### **Assessment of the Application**

17. As noted above, this is an application for a special licence under section 58 of the Act within Part VI of the Act. There are no specific criteria prescribed by the Act for consideration of an application for a special licence. Special licences exist under Part VI of the Act and are therefore not part of the definition of “licence” pursuant to section 4 of the Act, namely “a licence issued under Part III” of the Act.

18. As a result, it has previously been determined by this Commission that an application for a special licence is **not** a licence with respect to which I am bound to apply the public interest and community impact test under section 6 of the Act.

19. However, pursuant to section 3(3) of the Act, the Commission when “exercising a power or performing a function under (the Act) must have regard to the objects of the Act and must exercise the power and perform the function in a way that is consistent with those objects”.

20. Section 3 of the Act identifies the “objects” as follows:

- “(1) The primary object of this Act is to regulate the sale, provision, promotion and consumption of liquor:
  - (a) so as to minimise the harm associated with the consumption of liquor; and

(b) in a way that takes into account the public interest in the sale, provision, promotion and consumption of liquor.

(2) The further objects of this Act are:

(a) to protect and enhance community amenity, social harmony and wellbeing through the responsible sale, provision, promotion and consumption of liquor;

(b) to regulate the sale of liquor in a way that contributes to the responsible development of the liquor and associated industries in the Territory; and

(c) to facilitate a diversity of licensed premises and associated services for the benefit of the community.”

21. As a delegate of the Commission, I am also bound to have regard to the objects of the Act when determining this application.

22. In respect to the various conditions requested by NT Police, the Applicant has provided the following response:

*“Secure storage of alcohol at all times – Noted and will adhere to condition set*

*Industry standard security for crowd controllers - Noted and will adhere to condition set*

*RSA handling for all staff handling alcohol - Noted and will adhere to condition set*

*Maximum four drinks per transaction with a staggered decline per transaction towards the conclusion of the event – Noted and will adhere to condition set. May we request four alcoholic drinks per transaction up until 10pm and two drinks per person thereafter?*

*Alcohol volume to be one standard drink or less per serve - Noted and will adhere to condition set with the request for a minor increase to 1.2 standard drink for pre-mix cans which is a 4% alcohol drink and still considered a mid-strength. May we also request for wine to be served in the standard 150ml serve?*

*Low to mid-strength beer – We will continue to provide low and mid-strength products in all our bars. However, we request for full strength beer to be available in cans and vessels that adhere to the one standard drink condition*

*No glass – We would like to request that glass be allowed to serve wine bottles only. We feel the demographic of this event demands a range of quality wine to be available*

*No BYO - Noted and will adhere to condition set.*

*Commercial bottled water to be readily available for low-cost purchase – We will have free water stations in the venue.”*

23. In response to the concerns raised by DOH, the Applicant responded as follows:

*“Minors attending the event who are aged 16 and under must be accompanied with and under the supervision of a ticket holding parent or legal guardian.*

*We understand our responsibility with regard to smoking compliance. The amphitheatre is a non-smoking venue; however, we will have two smoking area’s that lie outside the boarder of the amphitheatre. No food or alcohol will be allowed in these smoking areas.”*

24. No comment was sought from the Applicant in regards to NTFRS comments given they has no objections and NTFRS are legally entitled to carry out their inspections as they wish.

25. The Applicant’s responses above display a strong willingness to work with NT Police to alleviate many of their concerns. This is especially commendable when many of the requests are above and beyond the conditions of the special licence granted for last year’s event however, no compliance issues or adverse comments regarding the running of the event or patron safety have been raised by Licensing NT or NT Police.

26. In regards to the conditions requested by the NT Police I comment as follows:

a. *Secure storage of alcohol at all times*

The Applicant has advised Licensing NT that alcohol will be stored securely at all times.

I am satisfied that the Applicant is fully aware of its obligations and the risks of storing alcohol and safeguarding it against theft and do not believe it necessary to make it an additional special condition.

b. *Industry standard security for crowd numbers – security to ensure no alcohol is entering/exiting the event*

The Applicant has confirmed it will engage crowd controllers at industry standard and I will insert a special condition accordingly.

Further, the Applicant advise there will be no BYO alcohol with screening of patrons and bag checks upon entry in place to prevent BYO alcohol, illicit drugs, weapons and already intoxicated persons from entry.

c. *Responsible Service of Alcohol (RSA) certificate for all staff handling alcohol.*

I note that the standard condition of a special licence requires that the sale of liquor must be supervised by one or more persons that hold a RSA certificate. This standard condition was imposed on the Applicant last year and not the requirement to have all staff handling alcohol RSA certified.



The Applicant has agreed to adhere to the requested condition if set. Their application states that designated crowd controllers will also be assessing patrons in the bar lines and experienced hospitality staff will be operating as “spotters and supervisors” at the bars.

Given there were no compliance issues reported from last year’s event, I see no need to impose an additional special condition requiring all staff be RSA certified and of the view the standard condition is sufficient in this circumstance. If the Applicant wishes to only employ RSA trained staff for handling alcohol, the conditions of the special licence do not prevent the Applicant doing so.

- d. *Maximum 4 drinks per transaction with a staggered decline in drinks per transaction towards the conclusion of the event*

A condition of 4 drinks per transaction was imposed last year, however, a staggered decline was not. As there are no compliance issues reported from last year’s event to me from either Licencing NT or NT Police along with the target age demographic of 45 years plus, a change to the status quo in my view would not have been necessary.

However, the Applicant has agreed to the requested condition and suggested a maximum of 4 drinks per transaction up until 10.00pm and 2 drinks per transaction after that. I think the Applicant’s suggestion is reasonable and I will impose such condition in the circumstances.

- e. *Alcohol volume to be one standard drink or less per serve*

This condition was not imposed under last year’s special licence. The Applicant, rather than challenging this condition, has indicated a willingness to meet the request of NT Police subject to a couple of exceptions for some RTD products and wine. The Applicant has advised that RTD mid-strength products they propose to sell will be 1.2 standard drinks and wine will be served in “the standard 150ml serve”.

It’s also noted that food, light and mid-strength beer and non-alcoholic beverages (including complimentary water) will be readily available during the event encouraging responsible consumption of alcohol.

Given there have been no adverse matters reported to me as a delegate of the Commission regarding the management and compliance of last year’s event I would be happy to accept the Applicant’s proposal that all alcohol be served as one standard drink or less with the exception of RTD and wine products.

- f. *Low to mid strength beer – no full strength*

This condition was not imposed under last year’s special licence. For the reasons outlined in (e) above and given the Applicant has agreed to sell most alcoholic products as one standard drink or less per serve including full strength beer, I decline to impose this condition.

g. *No glass*

Last year, the special licence included a condition that beverages must not be sold in glass containers. This year, the Applicant has asked that wine is able to be sold to patrons in bottles to ensure “a range of quality wine to be available” and advised Licensing NT that it is “*their intention is to be able to provide a ‘beer garden’ style area where patrons will be able to purchase bottles of wine and sit in that area only to consume with cheese plates and the like. The area is to be at the side of the stage.*”

The Applicant’s previous advice that wine will be served in 150ml serves is not consistent with this request. I also have considerable concerns in having glass or large glass vessels in a concert environment which may cause injury. Further, despite the intention that the bottles only be consumed in the beer garden area, there is risk that such bottles could be taken into other areas by patrons not wishing to line up more frequently for drinks.

To reduce the risk to patrons, staff and entertainers, beverages must not be served in glass to patrons within any area of the premises. Whether the wine sold to patrons in 150ml serve comes from a glass bottle is not relevant as long as the bottles do not get served to patrons are kept behind the bar or safely disposed of in bins away from public access.

h. No BYO – As discussed, the Applicant has confirmed there is no BYO to this event.

i. Complimentary tap water is available to patrons at the event.

27. In respect to DOH’s comments, I confirm that the Applicant is required to comply with the *Tobacco Control Act* under a special licence.
28. In relation to unaccompanied minors, the special licence granted last year required minors 12 years and under to be accompanied by a parent or guardian. This year, the Applicant has advised children 16 and under must be accompanied by a parent or guardian. Further, colour coded wrist bands are issued upon entry to all patrons identifying minors and 18 plus, minimising the risk of underage drinking occurring at the event. I will set a special condition stating that minors under the age of 16 must be accompanied by an adult / guardian.
29. On the basis that the event’s age demographic is 45 plus and I overall am satisfied that the sale of alcohol will be an ancillary feature for patrons and not the main attraction
30. It is as a result of the matters outlined above that I am, on balance, satisfied that the objects of the Act have been sufficiently addressed and for the reasons outlined I have decided to grant the special licence as set out at the start of this Decision Notice.

### **Notice of Rights:**

31. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the Act. A decision to issue a special licence subject to condition pursuant to section 59 of the Act is specified in the Schedule and is a reviewable decision.
32. Section 120ZC of the Act provides that a person affected by this decision may seek a review before the Northern Territory Civil and Administrative Tribunal. Any application for review of this decision must be lodged within 28 days of the date of this decision.
33. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected person is the Applicant.

A handwritten signature in black ink, consisting of a stylized, cursive 'A' followed by a long horizontal line extending to the right.

**AMY CORCORAN**  
Commissioner  
Northern Territory Liquor Commission