

DECISION OF THE DIRECTOR OF LIQUOR LICENSING

LICENSEE: DKN MANAGEMENT GROUP PTY LTD
PANCHOS MT LAWLEY PTY LTD

PREMISES: PANCHO'S MEXICAN VILLA RESTAURANT

PREMISES ADDRESS: 885 ALBANY HIGHWAY, EAST VICTORIA PARK
550 BEAUFORT ST, MT LAWLEY

NATURE OF MATTER: IMPOSITION OF CONDITION PURSUANT TO SECTION 64 OF THE ACT

DATE OF DETERMINATION: 21 AUGUST 2015

- 1 On 15 July 2015, I received a report from Detective Superintendent Jim Migro of the Police Licensing Enforcement Division (police report) concerning the advertising and promotional practices in respect of Panchos Mexican Villa Restaurant East Victoria Park and Panchos Mexican Villa Restaurant Mt Lawley.
- 2 Although each premise is operated by a separate licensee company, each company has common directors. Therefore, for ease of reference, I will simply refer to the licensees collectively as "the licensee" and to the premises collectively as 'the premises'.
- 3 On 30 July 2015, I wrote to the licensee indicating that, in my view, some of their advertising and promotional activity was not consistent with the harm minimisation object of the Act or the nature of a restaurant licence. Consequently, the licensee was provided with a copy of the police report and provided an opportunity, pursuant to s 64(2a) of the *Liquor Control Act 1988* (the Act), to show cause why the following condition should not be imposed on its restaurant licence:

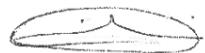
"The licensee is prohibited from advertising cheap or discounted liquor or using alcohol as an enticement for the public to attend the premises. This restriction, however, does not prohibit the licensee from advertising the fact that the premises are licensed premises under a restaurant licence and liquor is therefore available to the public ancillary to a meal".

- 4 In response, the licensee submitted that its premises are well managed and these promotions have been running for a considerable period without incident. It was also submitted that the owners, management and staff have a positive, proactive and ongoing approach to the Responsible Service of Alcohol and at all time it is ensured, through proper practices and management, that liquor is sold and consumed in a responsible manner therefore minimising harm and ill-health caused to people through the consumption of liquor. According to the licensee, food and beverage promotions are limited to Tuesday, Wednesday (from 5 p.m. To 6 p.m. only), Thursday and Sunday; all of its promotions are only sent to its internal database and loaded in its

Facebook page; and any discounted drinks are limited to a ‘glass size’ or the equivalent of one standard drink.

- 5 Some of the licensee's promotional activity includes:
 - every Tuesday and Wednesday 1/2 price frozen cocktails;
 - every Thursday \$6 SOL beer and \$6 frozen cocktails;
 - Uni Hangout Sundays where students who show a valid student card can purchase 1/2 price tap beer and 1/2 price frozen cocktails; and
 - ladies night with 1/2 price cocktails.
- 6 The policy of the Director of Liquor Licensing on the *Responsible Promotion of Liquor* provides a guideline for licensees on unacceptable advertising practices. The policy indicates that licensees should ask themselves a simple question"Does my promotion involve cheap or discounted drinks as an enticement to attract people to my premises, or is it likely to encourage the irresponsible consumption of liquor?" If the answer is yes, then it is likely that the promotion is not in accordance with the guideline.
- 7 According to the police report, police brought the Director's guideline to the attention of the approved manager at the premises, however the advertising practices continued.
- 8 Minimising alcohol-related harm is one of the primary objects of the Act. Section 64 of the Act provides that the licensing authority may impose conditions which it considers to be in the public interest, or which it considers desirable in order to:
 - ensure that liquor is sold and consumed in a responsible manner;
 - minimise harm or ill-health caused to people, or any group of people, due to the use of liquor;
 - prohibit promotional activity in which drinks are offered free or at reduced prices, or limit the circumstances in which this may be done; or
 - prohibit any practices which encourage irresponsible drinking.
- 9 Whilst I accept the licensee's submission that the discounted drinks are only provided ancillary to a meal, nonetheless, I am of the view that the licensee is using the promotion of cheap or discounted drinks to attract patrons to its premises and that these offers are not consistent with the harm minimisation provisions of the Act. This promotional activity must also be viewed in the context of the type of licence that operates at the premises. In this case, the licensed premises operate under a restaurant licence where the primary and predominant purpose of persons entering the licensed premises is to obtain a meal and the sale of liquor is subordinate and incidental to the service of food. Cheap or discounted liquor features prominently in the licensee's promotions to attract patrons to its premises.

- 10 Consequently, I am satisfied that it is in the public interest to prohibit promotional activity in which drinks are offered at a reduced price at the premises and the condition, as outlined above, shall be imposed on the restaurant licence.
- 11 Parties to this matter dissatisfied with the outcome may seek a review of the Decision under s 25 of the Act. The application for review must be lodged with the Liquor Commission within one month after the date upon which the parties receive notice of this Decision.
- 12 This matter has been determined by me under delegation pursuant to s 15 of the Act.



Peter Minchin
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING