

Alcohol licensing infosheet

Complementary sales

What is it?

Complementary sales refer to sales of alcohol made via an off-licence, outside of the generally accepted parameters of what type of premises might be granted an off-licence.

Generally, an off-licence may only be issued to the holder of an on-licence for a hotel or tavern on the same site; for a retail premises where the primary business is the sale of alcohol for consumption elsewhere; or for a supermarket or grocery store. See s32 for detail.

However, there are exceptions (s35). ARLA or the DLC may direct that an off-licence be issued for premises not described in s32, if it is satisfied that –

- (a) *the premises are a shop, but not a shop where the principal business carried on is the sale of food (whether food of a particular kind or kinds, or a range of food); and*
- (b) *alcohol would be an appropriate complement to goods of the kind sold (or to be sold) in the shop.*

ARLA or the DLC can issue an off-licence for a shop that is not selling food, if the sale of alcohol may be considered complementary to the goods that are being sold. For example: a florist selling wine in a gift basket or a manufacturer of a product (including food products if the main business is sale of those food products elsewhere).

However, s36 provides that an off-licence must not be issued for:

- petrol stations
- garages where the principal business is the sale of automotive fuels or the repair and servicing of motor vehicles
- dairies or convenience stores
- conveyances (eg, buses, boats, trains)
- a shop within a shop; or
- premises where the public can reach them directly from petrol stations or automotive garages (eg, where they may share a forecourt or sit adjacent to each other).

ARLA ruled in the decisions of *Gem Office Supplies Limited* [2014] NZARLA PH 704 that the test for whether a licence can be granted or renewed is not convenience or service, it is the kind of goods that is relevant (paras [13] and [14]). The application for renewal was refused. ARLA relevantly recorded:

[13] The argument for the appellant in that case was similar to that of the applicant here. Both argued that the sale of alcohol would constitute a convenience or service to customers. The High Court confirmed that in terms of s.36(2)(b) convenience or service is not the test. It is the kind of goods that is relevant. See also The Warehouse Limited [2008] NZLLA 1673.

[14] In this case, the sale of alcohol has nothing to do with the kind of goods sold by the applicant. Non-alcoholic drinks constitute a very small part of the overall business of the applicant. The vast majority of products sold by the applicant have nothing to do with alcohol.

[15] Accordingly, the application cannot be granted because the applicant's business does not qualify for an off-licence. The application is refused.

Te Whatu Ora/ Health New Zealand

Call: 04 917 0060

Email: enquiries@hpa.org.nz

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