

Northern Territory Licensing Commission

Reason for Decision

Premises:	Top Springs Hotel
Licence Number:	81203330
Licensee:	Jones Cattle (NT) Pty Ltd
Nominee:	Ms Pauline Haseldine
Proceedings:	Request for Hearing Pursuant to Section 33(2) of the <i>Liquor Act</i> – Objection to Variation of Licence Conditions
Heard Before:	Mr Richard O’Sullivan (Chairman) Mr Philip Timney (Legal Member) Mrs Jane Large
Appearances:	Mr Alan Woodcock for the Licensee Inspector Mark Wood for the Director of Licensing Senior Constable Charles Drury Constable Kim Wyles Constable Jonathon Dennien Mr Peter Clottu Superintendent Daniel Bacon Sergeant Greg Huddleston Mr Michael Pawelski Mr Alan Everett Ms Roslyn Frith Mr Sonny Smiler Ms Jenny Lindsay Ms Georgina McLoud Mr Alfred Rose Ms Pauline Haseldine
Date of Decision:	10, 11, 12 and 20 December 2012

Background

- 1) A meeting of the full Northern Territory Licensing Commission (“the Commission”) on 8 August 2012 determined to issue a Section 33 Notice pursuant to the *Liquor Act* (“the Act”) to the Licensee of the Top Springs Hotel (“the Hotel”). This Notice advised of a variation to the takeaway sales conditions of the Hotel liquor licence.
- 2) The Commission Decision stated:

Commission determined to issue a Section 33 Notice to the Licensee of the Top Springs Hotel as follows:

The sale of takeaway liquor is restricted to twelve heavy beers or thirty light or mid-strength beers per person not being bona fide residents of the premises per day with a maximum of three individual purchases per vehicle only.

Sale of liquor on purchase order to nearby cattle stations must be pre ordered on account and is exempt from the takeaway liquor restriction.

- 3) The Decision by the Commission on 8 August 2012 followed its consideration of a comprehensive submission by a Licensing Inspector and supported by the Director of Licensing, on the harm being caused by the sale of large volumes of takeaway alcohol from the Hotel. This submission also outlined problems being created through the sale of full strength beer at the Warnkurr Sports & Social Club (“the Club”). In respect to the Club, on 8 August 2012, the Commission made the following Decision:

Commission also determined to issue a Section 33 Notice to the Warnkurr Sports and Social Club to add the following condition restricting the sale of alcoholic products to the Authority.

Restricted Sales

- (b) Authority restricted to mid strength and light alcohol beer sales only, with an alcohol per volume content of 3.99% or less.
- 4) Following the issue of a licence variation Notice by the Commission pursuant to Section 33, a Licensee has twenty-eight days in which to lodge a request for a Hearing into the variation of licence conditions. Counsel for Top Springs Hotel, Mr Alan Woodcock, on 23 August 2012 advised that the Hotel sought a Hearing pursuant to Section 33(2) of the Act.
- 5) The Licensee of the Club, on 11 August 2012, also sought a Hearing into the proposed conditions of the Club licence. Subsequent to this the Commission received advice on 28 November 2012 from Clayton Utz, on behalf of the Club, that the Club would be willing to withdraw from the scheduled Hearing and implement a restriction on sales to mid strength and light beer only for a period of twelve months subject to there being a Review of this alcohol sales restriction.
- 6) This advice stated:
- “Our client has determined to withdraw its opposition to the proposed condition on the basis that the proposed condition is reviewed after twelve months. If the Commission is amenable to this, our client wishes to withdraw from the hearing”.*
- 7) The Commission responded by advising it would accept the proposal for a Review of the alcohol sales restrictions on the Club noting that the Commission frequently imbeds in its Decisions a requirement for Review of conditions it has imposed. Such Reviews allow time for variations to be implemented and for an impact assessment to be undertaken.
- 8) The Hearing was set down to commence on 10 December 2012 to therefore solely deal with the application by the Hotel.
- 9) During the Hearing legal argument was presented by Mr Woodcock to the effect that the Commission had exceeded its powers in imposing additional licence conditions. The submission by Mr Woodcock in essence was that, while the Commission had powers to vary licence conditions, it did not have the power to add conditions.
- 10) At the time it was determined to continue the Hearing and to subsequently fully consider and make a ruling on Mr Woodcock’s submission.

- 11) By Decision of 28 February 2013 the Legal Member of the Commission determined that the Commission was not:

“..... acting beyond the scope of its powers in considering the insertion of a licence condition limiting the amount of takeaway alcohol that may be sold by the Top Springs Hotel”.

Further:

“It is recommended that the Commission now consider the substantive matter for determination, namely whether or not to proceed with the foreshadowed variation of the Licence conditions attached to the liquor licence for the Top Springs Hotel”.

- 12) The Hotel is located at the junction of the Buntine Highway and Buchannan Highway. It is located approximately three hundred kilometres by road to the south of Katherine. The hotel has a Roadside Inn licence enabling it to trade from 07:00am to 11:00pm seven days per week.
- 13) The premises is able to be open beyond 11:00pm where the other services of the Hotel are available to the travelling public upon request, ie fuel, food and accommodation. Liquor takeaway sales are allowed from 10:00am to 10:00pm each day with the exception of Saturday and Public Holidays when the takeaway hours are from 09:00am to 10:00pm.
- 14) There is no resident population at or around the Hotel other than staff and management. The Hotel provides its services to the surrounding pastoral stations and to a number of Indigenous communities in the Victoria River region. These communities include Yarralin which is 100 kilometres from Top Springs; Pigeon Hole located 145 kilometres from Top Springs; the adjoining communities of Kalkarinji and Daguragu approximately 170 km from Top Springs; and the Lajamanu community which is 266 kilometres to the south of Top Springs.
- 15) Police are present at Lajamanu with two officers, Kalkarinji has two officers and Yarralin had three officers stationed at the community at the time of the Hearing.
- 16) Requests for alcohol trading restrictions, on the Hotel as outlined in the Licensing Inspector's submission on which the Commission based its Section 33 Decision, date back to 1997 when the then President of the Daguragu Community Government Council, Mr Wardle wrote to the Commission seeking intervention by way of takeaway alcohol sales at the Hotel to lessen the violence and alcohol related attendances at the Health Clinic and serious domestic violence injuries.
- 17) Specifically the Council expressed concern over the sale of alcohol to intoxicated people who then drove back to Kalkarinji and Daguragu endangering their lives and other lives of people travelling on the Buntine Highway. Nothing appears to have transpired from this correspondence and again in 2003 and 2004, further correspondence from the Daguragu, Lajamanu and Yarralin Community Government Councils and the Katherine West Health Board was sent to the Commission and Licensing Inspectors requesting limitation of sales from the Hotel due to alcohol related health, injury and safety problems. An outcome of these submissions appears to be the cessation of cask wine sales at the initiation of the Licensee.
- 18) More recently in May 2011 following an assault on Police and damage to a Police vehicle by intoxicated persons at the Kalkarinji Grid (“the Grid”), which is at the boundary of a Prescribed Area and the Wave Hill pastoral station, the Commission

under Section 48A(1) of the Act, temporarily suspended takeaway liquor sales from the Hotel for a six day period.

- 19) On 16 September 2011 a fatality occurred following a motor vehicle collision forty kilometres north of Lajamanu on the Lajamanu Road. Large amounts of takeaway alcohol had been purchased at the Hotel by occupants and drivers of the three vehicles at the accident scene. The driver of the vehicle which caused the accident and fatality was subsequently tried and pleaded guilty of dangerous driving, causing death and dangerous driving causing serious harm before his Honour Justice Mildren who made the following remarks:

“This is just appalling, that such an enormous amount of alcohol can be supplied.”

“... There should be restrictions placed on them. The number of cartons that people can buy at one time.”

- 20) The above history was considered by the full Commission at the time it made its Decision to issue a Section 33 Notice restricting sales at the Hotel.

The Hearing

- 21) At the outset the status of three documents before the Commission was discussed and the views of Counsel for the Hotel and Inspector Mark Wood, on behalf of the Director of Licensing, were obtained. These documents were:
- a written submission by the Department of Families, Housing, Community Services and Indigenous Affairs (“FaHSCIA”) provided by Mr Mark Coffey, State Manager, Northern Territory Office;
 - a submission from Mr David Ross, Director, Central Land Council and an attached submission by Kurdiji, Lajamanu Law and Justice Group; and
 - correspondence from Clayton Utz of 28 November 2012 on behalf of the Club.
- 22) The latter document sought the withdrawal of the request for a Hearing by the Club, conditional on the Club accepting the trading restrictions to that of the on premise sale of mid strength and light beer only, with a Review by the Commission to take place in twelve months time. The Commission advised the Hearing that it had accepted this approach as it was disposed to a review of the impact of the new restrictions, allowing time for their implementation and evaluation.
- 23) In relation to the submission by FaHSCIA, a Directions Hearing on 15 October 2012 established that given FaHSCIA’s role it did have a special interest in the matter before the Commission and FaHSCIA was therefore granted the right to make submission and to be cross examined on this evidence if it so wished. The Commission subsequently noted that FaHSCIA would not be appearing to give evidence relating to their submission but would rely on its contents.
- 24) In relation to the submission by the Director of the Central Land Council, Mr Woodcock raised the issue that it was a submission from a non party to the Hearing. He objected to the proposal of Inspector Wood to call Mr Ross and hear evidence from him on the grounds that Mr Ross had no standing to appear and give evidence at the Hearing. Following this Inspector Wood acknowledged that the submission was from a non party. The Commission’s consideration then turned to the attachment to the letter of Mr Ross which was a petition letter from members of the Lajamanu Kurdiji Group.

- 25) After some discussion it was determined that Mr Ross would not be called to give evidence and that the Commission would allocate appropriate weight and relevance to the submission as enabled by the Section 51(3) of the Act.

51 Procedure at hearing

(3) *At a hearing under this Act:*

(a) *the procedure shall be within the discretion of the Commission; and*

(d) *the Commission shall not be bound by the rules of evidence but may inform itself in such manner as it thinks fit.*

- 26) Parties agreed that as it was proposed to undertake site visits to the Hotel and communities in the area, including Lajamanu, that it would likely receive the views of the Kurdiji Group when at Lajamanu.

Witnesses for Director

- 27) By way of proceedings, although it was the Hotel which had sought the Hearing, Mr Woodcock was agreeable to Inspector Wood leading with his witnesses and evidence in support of restrictions being imposed on the Hotel. Inspector Wood then called Senior Constable Charles Drury.
- 28) Senior Constable Drury is currently attached to Traffic Operations at the Katherine Police Station and advised he had previously worked at Kalkarinji for three years from 2007 to 2010. Senior Constable Drury outlined an incident which had occurred at Kalkarinji in May 2011 which resulted in a call for assistance at Kalkarinji following serious alcohol related violence and social unrest.
- 29) Senior Constable Drury informed the Commission that he was one of the officers who attended Kalkarinji and that by the time he arrived at the community things were relatively quiet as there had been takeaway alcohol sales restrictions placed on the Hotel. His understanding of the particular incident was that the Police vehicle was damaged and an assault perpetrated on a Police Officer. He explained that this took place at the Grid which was at the border of the Prescribed Area, some four kilometres from the community and the boundary of the Daguragu Land Trust and Wave Hill Cattle Station.
- 30) He outlined that the Grid was “*very primitive*”, a rock covered area without trees, shade or water where people parked and drank prior to re-entering the Prescribed Area.
- 31) In response to a question from Inspector Wood Senior Constable Drury advised that the takeaway alcohol brought back to the Grid largely came from the Hotel. He advised that 90% of takeaway comes from this premises.
- 32) He outlined the impact of drinking on families in the community and children who would be placed in the care of their aunty, uncle or grandmother. He stated that “*the idea to drink is to get drunk*”. He also outlined the general practice where a large number of community numbers would attend the Club, which opened at 5:00pm and traded until 8:00pm, and that when the Club closed there would be a procession of many of the drinkers to the Grid to consume further alcohol.

- 33) When questioned on what type of alcohol people were drinking at the Grid, Senior Constable Drury advised that it was largely cans of Victoria Bitter beer that were purchased, generally several cartons at a time, from the Hotel.
- 34) He advised that the Police rapport with Ms Haseldine, Nominee of the Hotel, was good and that she was responsive in providing advice and acceding to Police requests on restrictions to takeaway when asked.
- 35) In response to a question from the Commission, Senior Constable Drury ventured that Kalkarinji had more Grid parties than occurred at the drinking area of Lajamanu and attributed this to people having got the taste for alcohol at the Club early in the evening.
- 36) He advised the Commission of an investigation into a fatal motor vehicle accident he was involved with, being a single vehicle rollover between Kalkarinji and Daguragu in October 2012, where a fourteen year old girl was the driver and the casualty. The car she was driving had been to the Hotel where beer and rum were purchased. The occupants travelled to Pigeon Hole where much of the alcohol was consumed and then were returning to Daguragu when the accident occurred. Senior Constable advised that the girl had 0.06% alcohol content in her blood.
- 37) Under cross examination from Mr Woodcock, Senior Constable Drury confirmed that the Licensee took measures in compliance with Police requests when there were funerals, royalty payment periods and so on "*every time I asked*".
- 38) Mr Woodcock advised of the Katherine Court list for that day which contained forty-five matters, largely assaults and breaches of Domestic Violence Orders and sought Senior Constable Drury's opinion on whether the type of alcohol related crime in the community was also reflected in Katherine to which the response was "yes". In response the Senior Constable confirmed that a proportion of the crime in Katherine was committed by persons from communities outside Katherine such as Kalkarinji and Lajamanu.
- 39) The Senior Constable also advised that since the Club had restricted sales to mid and light strength, some of the Kalkarinji drinkers had moved to Katherine.
- 40) In response to a further question from Mr Woodcock in relation to the Hotel, Senior Constable advised that it was well run and that Police had a close rapport with the Nominee.
- 41) Constable Kim Wyles then gave evidence. He advised the Commission that he was currently a Field Intelligence Officer based in Katherine and that he had provided a report into the operation of the Hotel and its link to alcohol and anti social issues in the nearby communities. He stated he was asked to do the Intelligence Report due to Police concern over alcohol related issues and incidents in the Western Desert Regions.
- 42) Constable Wyles stated that his report generally concluded that the majority of alcohol related problems in the region were attributable to takeaway alcohol purchased from the Hotel. He advised that he had obtained much of his information through use of the Police PROMIS system of incident reports.
- 43) He cited his experience with cases involving takeaway alcohol and stated that the amounts of alcohol were substantial and particularly involved Victoria Bitter beer and spirits. He referred the Commission to a file before him alleging that

approximately eighteen to twenty-one cartons of beer were found to be in a single car.

- 44) Mr Woodcock in cross examination noted that Constable Wyles had been a Police Officer for just under four years and that he was not a qualified statistician or sociologist. Mr Woodcock submitted to the Commission that Constable Wyles was trained as a graphic designer and was therefore not an expert witness but he did concede that the information extracted in the report provided factual information which the Commission could properly consider.
- 45) Constable Jonathon Dennien, who is currently attached to the Katherine Police Prosecutions Unit, then gave evidence. He advised the Commission he had been a Police Officer for nine years and had wide experience in general Police duties. He expressed familiarity with alcohol related issues in the region currently under consideration through the Hearing.
- 46) Constable Dennien advised that matters he had prosecuted in Court had an overwhelming common factor, being the offences were alcohol related. The Constable attributed the alcohol supply to the larger extent to the Hotel and stated that matters coming to his attention largely stemmed from multiple purchases of cartons of Victoria Bitter shared amongst various community members.
- 47) Mr Woodcock again referred to the Katherine Court List for the day citing forty-five counts of breaches of Domestic Violence Orders, aggravated assault, reckless endangerment of life. Under cross examination Constable Dennien admitted that the rates of alcohol related charges in Katherine were comparable with those occurring at Kalkarinji.
- 48) Mr Peter Clottu was introduced as the Drug and Alcohol Coordinator for the Katherine West Aboriginal Health Board, based in Katherine. He stated that he was a clinician and that people were usually referred to him from the Department of Health or the Courts. He cited thirty-two years experience as an occupational therapist dealing with drugs and alcohol.
- 49) He advised the Commission of the high number of problem drinkers throughout the region and referred to a pattern of binge drinking, at its worst at the boundaries of alcohol Restricted Areas, with the alcohol usually sourced from the Hotel.
- 50) Mr Clottu advised that with binge drinking, there is a very large amount of alcohol drunk in a very short time, with the consequences being death, people run over at drinking spots, fights, domestic violence, drink drive accidents and family issues where children are neglected. He stated this was in addition to the longer term health and social issues arising from this behaviour.
- 51) With regards to the health issues Mr Clottu referred to liver problems, raised liver enzymes, cirrhosis of the liver, kidney issues, pancreatitis and high rates of chronic diseases such as diabetes which would be exacerbated and complicated by high alcohol consumption.
- 52) From his client contact Mr Clottu stated that most of the alcohol caused problems appeared to originate from alcohol purchased at the Hotel.
- 53) In response to questioning from the Commission Mr Clottu stated that in his observations if restrictions were put in place a hard core of drinkers would travel longer distances or actually move to a township to access alcohol. However, the majority in his opinion would live with the restrictions imposed.

- 54) The Commission queried whether the existence of a club at Kalkarinji created a culture of drinking on a regular basis in contrast to Lajamanu where drinking was described as being on a binge basis, Mr Clottu advised that he thought there would be a minority who, once they had commenced drinking, would seek to consume further alcohol, and this was likely achieved through driving the long distance to the Hotel.
- 55) Superintendent Daniel Bacon then entered the witness box and advised his role extends through the Katherine and wider Top End region. He outlined that he had been twenty-five years in the Police with ten years in remote communities. He stated that the common thread of issues that Police dealt with in these regions was alcohol related violence, assaults and domestic violence and other disturbances.
- 56) Superintendent Bacon estimated that 80% to 90% of Police work in the Kalkarinji / Lajamanu areas was alcohol related. He stated that this alcohol related harm arose through the consumption of alcohol purchased from the Hotel.
- 57) Superintendent Bacon outlined to the Commission major issues confronting Police and instances where remote Police stations had called for assistance. He stated that Officers are often sent out to the communities when it is known that there are large sums of money becoming available, generally around pay periods or when royalty payments are being distributed. In his experience royalty payments distributed in Lajamanu generally flowed to purchases of large quantities of alcohol from the Hotel,
- 58) Superintendent Bacon referred to recent incidents where Katherine Police Officers had been sent out to communities. He specifically referred to the fatal accident between Kalkarinji and Daguragu, and a self harm matter at Pigeon Hole, both of which were before the Coroner. He also referred to the fatality about forty kilometres from the Lajamanu community and an incident at Kalkarinji where a Police vehicle was damaged and an Officer assaulted.
- 59) Superintendent Bacon, in response to questioning from Inspector Wood, advised that matters were now relatively quiet at Kalkarinji, in part due to the Club in recent times only selling mid strength beer. He also outlined to the Commission that some community members, following the death of a fourteen year old girl who was the driver in a motor vehicle accident, had recently turned to religion and this had also lessened alcohol consumption in the community.
- 60) Superintendent Bacon expressed the view that if alcohol sales restrictions were imposed, then some drinkers would merely move on to other outlets, travelling for longer periods on the road. He stated there would always be a relocation of drinkers but this would largely be a hard core and overall most community members would accept restrictions, resulting in a net reduction in the consumption of alcohol.
- 61) Superintendent Bacon outlined the current Police presence in the communities impacted on by the current Hearing and stated that there were two Officers present at Lajamanu, two at Kalkarinji and three, but soon to be four, at Yarralin.
- 62) Sergeant Greg Huddleston of the Kalkarinji Police Station was then introduced as a witness by Inspector Wood. He advised that he had been in the Police Force for nearly seven years and was currently based at Kalkarinji and he had previously served for two years at Lajamanu. He advised that most of his work in this area was dealing with drunk people and generally these people had consumed Victoria Bitter beer with some consuming spirits, principally rum.

- 63) Sergeant Huddleston outlined a series of car accidents over recent years, all contributed to by the consumption of alcohol. When queried if personnel from cattle stations in the area had the same issues as the Indigenous communities, Sergeant Huddleston advised that they did not. He informed the Commission that most of the stations had controlled Wet Canteens. He stated that at Kalkarinji, with the Club consenting to the Section 33 Notice issued by the Commission and introducing light and mid strength beer, the result was that problems in the community had significantly decreased.
- 64) Sergeant Huddleston ventured that the unrestricted sales from the Hotel were the cause of most issues. He stated "*I do not want to see Top Springs closed down, it is the furthestest thing from my mind, because it is a necessary part of the structure out that way*". It is an essential hub for "*up to twenty stations in the total area from the Victoria Highway right through to the WA border*".
- 65) Sergeant Huddleston expressed concern that the open slather approach to selling alcohol to community people caused the incidents which Police have to attend to. He referred to a recent incident when he was on leave where a vehicle travelling to Lajamanu was pulled over and contained thirteen cartons of alcohol.
- 66) He outlined to the Commission that the Club at Kalkarinji had a set of rules with penalties and that people were often banned from the Club for breaching these rules. He stated further that in the last few months Police had rarely been called out to incidents at the Club since alcohol sales had been restricted to mid and light strength beer only. He advised that the number of people going to the Grid on a regular basis had now reduced to half a dozen "*die hards*".
- 67) In responding to a question from Inspector Wood Sergeant Huddleston advised that based on his experience with the Club, if the Hotel was to go to mid and light strength alcohol, it would dramatically reduce alcohol related problems. He advised the Commission that alcohol could not be taken away completely and his suggestion was that measured controls need to be applied.
- 68) In response to questions under cross examination from Mr Woodcock, Sergeant Huddleston agreed that some hard core drinkers from Kalkarinji had moved to Katherine as a result of Club restrictions. He also agreed that there was a strong possibility that people might travel to Katherine or Dunmarra to get alcohol if restrictions were imposed at the Hotel. He agreed to the suggestion that the Hotel was a well run premises and that his dealings with the Hotel were always courteous and co-operative.
- 69) Inspector Wood then introduced Mr Michael Pawelski, a relief Store Manager, for Arnhem Land Progress Association Stores. Mr Pawelski advised that he and his wife managed the Kalkarinji Store ("the Store") for just under two years. Mr Pawelski referred to a letter he wrote to the Commission in May 2011 when a free for all atmosphere had developed with a lot of community drunkenness. He stated this situation was relieved by the Commission putting a prohibition on takeaway sales at the Hotel for a six day period, following which matters calmed and food sales at the Store increased with a considerable amount of healthy food purchased.
- 70) He advised that there was an ATM at the Store and that some weeks there was up to \$100,000 withdrawn with around 25% returning back into the cash registers at the Store. He stated the rest of the monies were likely spent at the Hotel or the Club.

- 71) Mr Woodcock cross examined Mr Pawelski over the period when the Commission's suspension of takeaway sales was in place. Mr Pawelski agreed that coinciding with the Commission issued Suspension Notice there was also a greater Police presence in the community.

Witnesses for Top Springs Hotel

- 72) Mr Alan Everett, Station Manager, of Montejinni Station ("Montejinni") was sworn in to give evidence on behalf of the Hotel. He advised that Montejinni is approximately thirteen kilometres south of the Hotel. He advised he had been at Montejinni for approximately one year and he was familiar with the Hotel. He described the Hotel as well run and a community base where people met and congregated for social activities.
- 73) In response to a question from Mr Woodcock on the impact of restrictions at the Hotel, Mr Everett stated more people would travel to town to purchase alcohol, thus making any restrictions at the Hotel less effective.
- 74) Under cross examination from Inspector Wood, Mr Everett advised that staff at Monejinni purchased alcohol for their personal use from the Hotel and advised that people might purchase one carton or if they were going to a camp draft they might purchase up to three cartons from the Hotel.
- 75) Following a question from the Commission Mr Everett advised that Montejinni had a Social Club which purchased alcohol on its own account and which enabled a limited amount of alcohol able to be consumed daily through the Social Club.
- 76) Ms Roslyn Frith was introduced and advised that she was a Human Services Community Agent at Kalkarinji and Daguragu, employed by the Victoria Daly Shire Council and that she lives at Kalkarinji. She advised the Commission that the proposed restrictions for the Hotel were wrong and discriminatory. She outlined that her and her partner travelled to the Hotel fortnightly to get several cartons of beer, which they then hide and consume over a two to three week period.
- 77) Ms Frith outlined that a number of non Indigenous persons had permits to bring alcohol into Restricted Area communities. She stated "*that as Aboriginal people we live here, we die here, it is our community, but only 'visitors' have permits, not us*".
- 78) In response to cross examination from Inspector Wood, Ms Firth advised that Police issued the permits and if people have had alcohol related offences in the past it was difficult as Police would not issue permits. In clarifying the permit issue Inspector Wood advised that the Director of Licensing, under delegation, was ultimately responsible for the issue of permits to bring, possess and consume alcohol in a Prescribed or General Restricted Area.
- 79) The Commission queried whether a Permit Committee was in existence at the communities under scrutiny. The Commission sought Inspector Wood provide details of the numbers of permits on issue in Daguragu, Kalkarinji and Pigeon Hole. Inspector Wood had advised the Commission that no permits were on issue at Yarralin.
- 80) Inspector Wood drew the witness' attention to a letter she signed in May 2011 seeking a limit to takeaway sales from the Hotel. Ms Firth conceded she had signed the letter but since that time she had changed her mind on the issue. Inspector Wood put it to Ms Firth that her opposition to the proposed restrictions for the Hotel was purely out of self interest and not in the wider interest of the

community. Ms Firth responded by stating that she was at the Hearing as a community member. The Commission sought clarification as to her general practice in relation to purchase and consumption of alcohol and the witness responded by advising that she did not drink alcohol at the Grid, but had other locations where she and her partner hid, stored and consumed alcohol over an extended period.

- 81) Mr Sonny Smiler was sworn in and advised that he was a mechanic and lived at Kalkarinji and was the partner of the previous witness, Ms Roslyn Firth. His evidence confirmed that of Ms Firth's in relation to buying quantities of alcohol on a fortnightly basis from the Hotel, hiding it in the scrub and drinking it over a period of time.
- 82) He advised that he no longer went to the Club since the imposition of the limit to mid strength and light beer only, although he was a member of the Club committee and continued to attend meetings in this capacity. He informed the Commission that he would go to Katherine to buy beer if the Hotel was limited and did not enable him to buy full strength beer.
- 83) In response to a question from Inspector Wood he informed the Commission he had previously held a Liquor Permit which was revoked by Police following an allegation that he had given beer to a non Permit holder.
- 84) Inspector Wood also put to the witness that he had previously signed a petition letter in support of restrictions at the Hotel in May 2011. The witness was provided with a copy of that document. Mr Smiler responded that he could not recall signing the request for restrictions.
- 85) Mr Smiler also referred to liquor coming into the area from Western Australia. Inspector Wood then drew the attention of the Commission to takeaway restrictions in place in both Kununurra and Halls Creek and questioned the veracity of the witness' assertion in regards to alcohol coming from those areas.
- 86) Ms Jenny Lindsay was introduced and advised that she currently lived in Katherine and worked as an Alcohol and Other Drug Nurse Counsellor, but had previously worked as the Clinic Manager at the Health Centre at Lajamanu for four years.
- 87) She advised that in her opinion the proposed limit under the Section 33 Notice issued by the Commission was quite restrictive and would result in more vehicles being on the road and more people driving to maximise the opportunity to purchase alcohol, thereby creating a potential for more road accidents and trauma.
- 88) Ms Lindsay ventured that drinkers would spend more time in Katherine living in the long grass and having access to more alcohol than is currently available to them when living in their community areas. When community people stayed in Katherine and consumed alcohol she believed they were likely to make poor life choices, indulge in unsafe sex, not take their medication and drink more regularly to harmful levels. Health workers in the communities undertook interventions to advise of hygiene requirements, the need for the consumption of quality food and provided more regular care and pastoral oversight. In her view the same care and intervention is not provided in Katherine despite there being sobering up shelters and a greater Police presence.
- 89) Ms Lindsay stated that the extended family available at the community had some influence on drinkers and the pattern on the communities for such drinkers was generally to binge and have a respite period whereas in Katherine they are able to

drink more without respite. In Katherine she advised you could tell the time by the queue outside bottleshop opening times.

- 90) Inspector Wood questioned Ms Lindsay in her role with Alcohol and Other Drugs and her familiarity with harm minimisation principles. She advised that in her view harm minimisation included advice to people to start to drink later, to drink water when consuming alcohol, to have alcohol free days, to maintain hygiene and maintain medical appointments and treatment.
- 91) She advised Inspector Wood that she had previously said alcohol restrictions in the area were needed and should be tried. With the proposed limit of twelve cans of full strength per person she expressed concern that there would be more travelling to maximise the amount able to be purchased. She also stated that in her experience people frequently travelled in cars and purchased large amounts as they were buying for a large number of people and if this could not be done more people would be on the road.
- 92) In response to a question from the Commission in relation to her training she advised that she had also run a clinic at Beswick for three and half years and was currently doing a Certificate IV in Alcohol and Other Drugs.
- 93) She also stated that if restrictions were imposed some people would “cop” restrictions and live with it while others would pursue alternatives and there would be a displacement of supply to other outlets such as Katherine.
- 94) She described that during her period in the area the Hotel was a key focal centre.
- 95) While Ms Lindsay admitted to there being a considerable amount of alcohol related domestic violence at Lajamanu, she stated that in her experience she had never been scared to leave her home or felt in any danger when she was called to attend after accidents. She stated that during her period at Beswick the Community Store sold limited amounts of alcohol at a Club where there would be discos, sausage sizzles and other social activities and this supply satisfied a number of the residents, but that the heavy drinkers would still bring in more alcohol from Katherine.
- 96) Ms Georgina McLoud was introduced and advised that she was self employed and had lived at Kalkarinji for thirty years and brought up her family in the township. In response to questions on the proposed Commission restrictions she advised Mr Woodcock that many of the people would just drive further to gain the amount of alcohol that they wanted.
- 97) She also stated that the proposed restrictions may make the Hotel unviable and that this outlet provided a life line and played a highly important role for local communities, stations and travellers. She advised that the Hotel has a telephone in an area where there is no mobile service and people frequently contacted the Hotel for advice on traffic matters, river levels, accidents and whereabouts of family members. She advised that she used the Hotel for a break in her travels to Katherine and had used accommodation and had social functions at the premises.
- 98) She described her life at Kalkarinji as privileged and recounted to the Commission that she had just left Kalkarinji for one month and left her home unlocked and when she returned, nothing had been stolen and there were no issues with leaving the premises unlocked. She stated that while she had always felt safe, she realised that men when intoxicated can be very violent, *“there is no denying that. No denying that at all”*.

- 99) The Commission advised that one of the triggers for issuing the Section 33 Notice was a request from a Supreme Court Judge following a death, that alcohol needed to be restricted. Ms McLoud stated that this did not surprise her as she had seen up to thirty cartons of beer in a vehicle. She then queried if action was going to be taken to restrict the Hotel why wasn't action taken in Katherine where pubs sell similar amounts of takeaway. She advised the Commission that any time takeaway alcohol was limited many people would find a new way and place to source it. In her experience the people in the communities have the practice of collecting money from many and then driving a car or cars to bulk purchase for a large number.
- 100) Mr Alfred Rose was sworn in and advised he was from Kalkarinji and unemployed. He provided evidence that most people at Kalkarinji drink and prefer heavy beer and would prefer to purchase the alcohol from the Hotel rather than going to Katherine. He advised the Commission that people would drink drive in such cases.
- 101) When specifically questioned by Mr Woodcock about what he would do if the Section 33 restrictions came into force for the Hotel, Mr Rose advised that he would travel to Katherine to purchase his alcohol.
- 102) Mr Woodcock then referred to an incident at the Grid which took place in May 2011. Mr Rose advised that he was present at the Grid and that he protected the Police Officer (Lucas) from the melee "*I had to put him behind my back, I had to protect him*". Mr Rose gave evidence that on the evening at the Grid, some of the alcohol was Moselle and that this wine had come from Katherine. He also stated that alcohol comes to the Grid from Katherine "*all of the time*".
- 103) Mr Rose described his habit of purchasing cartons of beer from the Hotel and drinking it over a period of time. He stated that he would drink some forty kilometres from the community where there was mobile reception and that he would telephone his father-in-law as a Sober Bob to bring him back home.
- 104) Ms Pauline Haseldine then took the witness box and advised that she was the Nominee of the Hotel and had been in that position for five and half years. She advised that Police had often asked for takeaway restrictions when there were community disturbances or occasions such as funerals and that she complied with such requests by introducing restrictions or ceasing sales for a period.
- 105) She stated she worked extremely well with both the Lajamanu and Kalkarinji Police. She stated that she enforced the no drinking within two kilometres of the licensed establishment law and if people broke this law she would bar them, generally for a period of three months.
- 106) She outlined the events which the Hotel had sponsored and was to sponsor in the future. She also stated that the Hotel provided a source of information on the status of the road, the whereabouts of travellers and similar matters. She outlined that the Hotel stocked food and other essential items as well as fuel and select spare vehicle parts.
- 107) She advised that since the issue of the Section 33 Notice by the Commission and media coverage of the proposed restriction that many people thought that the restrictions had already come into operation and as a consequence people were now purchasing around fifty percent of the volume of alcohol that was purchased prior to the Notice being issued.
- 108) Inspector Wood raised the issue of duty of care and the need to consider peoples' health and safety with alcohol playing a significant part in community unrest and

recent road accidents. Ms Haseldine responded that when she made sales of large quantities of alcohol, that the sales were not to that one person to whom she may have directly sold the alcohol, but that the sale was for either several people in the vehicle or frequently for other members of the community.

- 109) She advised the Commission that because community members bulk buy for themselves and others she does not know how much alcohol is being purchased for individuals and she does not know how many individuals may be responsible for raising the money for the purchase.
- 110) Inspector Wood drew Ms Haseldine's attention to a fatal accident at Lajamanu when large volumes of alcohol were sold two days in a row involving cartons of Victoria Bitter and spirits. She responded that she was not always at the point of sale and reiterated that when vehicles arrived and purchased alcohol, it was difficult to determine how much alcohol was being purchased for each individual.
- 111) She reiterated that since the Section 33 Notice had been issued more people were going to Katherine to purchase alcohol supplies.

Site Inspection

- 112) Following adjournment of the Hearing in Katherine on 12 December 2012, Commission Members O'Sullivan and Timney in the company of Inspector Wood and Mr Woodcock then undertook an inspection of the area on 13 and 14 December 2012, including conducting a community meeting at Lajamanu.
- 113) It was evident during the community meeting that most members present were of the view that some restrictions on takeaway sales needed to be imposed at the Hotel but community members were divided in suggesting any quantities or parameters of such limits. There appeared to be a divide between many of the male members present and the women present over what would be an advisable or acceptable limit, with reference by the women to a lesser supply than indicated by the men folk.
- 114) Members of the community advised the Commission that if the conditions were too restrictive, that many people from Lajamanu would adjust to this by travelling longer distances to Katherine to purchase alcohol. Community members expressed as a reality that this would inherently bring dangers through travelling large distances while drinking or intoxicated.
- 115) The meeting concluded with the Commission to be advised of the community's attitude as to takeaway alcohol restriction limits and related conditions of sale supported by them. With the agreement of Counsel for the Hotel and Inspector Wood, the Commission determined to extend time for such a response, allowing for the Christmas period, to 13 January 2013.

Summary Submissions

- 116) The Hearing resumed in Darwin on 20 December 2012 to hear final submissions by Inspector Wood and Counsel for the Hotel, Mr Woodcock.
- 117) Inspector Wood at the commencement of his submission advised the Commission that fifty-eight permits were on issue for the Lajamanu community for persons to possess and consume alcohol with the Kalkaranji and Dagurgu communities having

a total of fifty such permits. He advised that there were no permits on issue at Yarralin.

- 118) Inspector Wood outlined the history of requests for restrictions at the Hotel based on past submissions by Police, the Daguragu Community and Health bodies. He stated that Mr Milton Jones, as a Director of the Jones Cattle NT Pty Ltd company, had been aware of the call for restrictions as far back as 1997 and that these requests had been repeated in 2003 and 2004. The only discernible result was the cessation of cask wine takeaway sales.
- 119) He submitted that the Licensee had a largely unfettered ability to sell takeaway alcohol. Community people could therefore purchase large quantities of alcohol with nowhere to drink it, other than places such as the Grid which present as barren and rocky landscapes without water or shade.
- 120) Inspector Wood referred the Commission to remarks by Justice Mildren in the Supreme Court of the Northern Territory on 20 June 2012, where Mr Russell Sampson presented as the Defendant following a fatality on the Lajamanu Road. His Honour advised that he intended to forward a transcript of the Supreme Court proceedings to the Commission for their consideration and stated "*this is just appalling, that such an enormous amount of alcohol can be supplied. Absolutely appalling.*" His Honour then stated that restrictions should be placed on the Hotel.
- 121) Inspector Wood also submitted to the Commission an outline of the various incidents that had occurred in recent years, including information on the large number of cartons of beer and bottles of spirits purchased in relation to and contributing to these incidents.
- 122) In relation to witnesses Inspector Wood submitted that Mr Rose was an alcoholic and his evidence should be disregarded. He advised that Mr Smiler was motivated by self interest, not the community interest and the Commission should therefore disregard his evidence. Inspector Wood drew the Commission's attention to the petition signed by Mr Smiler and his partner, Ms Frith, calling for limits on takeaway alcohol able to be sold by the Hotel. Their change of heart in the matter he submitted was further evidence of self interest applying above community interest. He also suggested that Ms Lindsay's evidence was tainted by her friendship with the Nominee of the Hotel and the Katherine based wholesale supplier to the Hotel.
- 123) Inspector Wood drew the Commission's attention to the Objects of the Act, being the minimisation of harm associated with the consumption of alcohol and taking into account the public interest in the sale and consumption of liquor. He advised the Commission that the large scale purchase and consumption of large amounts of beer and spirits as enabled currently was not consistent with the Objects of the Act.
- 124) Inspector Wood referred to the epiphany which had apparently occurred at Kalkarinji in taking on religion and adapting to the availability of mid and low strength alcohol at the Club. He referred the Commission to a recent article in the Australian newspaper of 13 December 2012 by Indigenous advocate, Mr Warren Mundine, where he stated that individual rights should not be put ahead of community rights when dealing with alcohol issues.
- 125) At the outset Mr Woodcock put to the Commission that it should rely upon for its Decision only the information that has been put before it as evidence. He recognised that the Commission, under its powers at Hearing, could inform itself in

a manner it sees fit, but submitted that it should be witnesses who have been called and cross examined and their evidence that should be accorded most weight.

- 126) Mr Woodcock objected to evidence in submission from Inspector Wood in raising commentary by Mr Warren Mundine in the Australian newspaper.
- 127) He submitted that the Licensee is noted for, unlike the majority of licensed premises in the Territory, for "*going the extra mile in terms of helping the community*". He referred to assisting communities and travellers with callouts, accidents and the provision of food. "*It is the only facility of its kind for hundreds of kilometres; in a remote, sparsely serviced part of the Northern Territory.*"
- 128) In relation to Police evidence, Mr Woodcock cited Police agreement that the rates and types of alcohol problems in the region in question are analogous to those in Katherine. He recalled that at the commencement of the Hearing in Katherine he submitted a court list of forty-five offences, largely relating to alcohol, and this was evidence that the level of alcohol related offending in Katherine was similar to that of the communities under consideration at this Hearing.
- 129) He drew attention to evidence by Police of the serious alcohol related road accidents in the region but submitted to the Commission that there was no evidence to conclude that such accidents were occurring at a higher rate than in the rest of the Territory.
- 130) He mentioned that Inspector Wood had referred to Mr Rose as being an alcoholic and advised that Mr Rose had made no such submission or admission. He reminded the Commission that Mr Rose's evidence was that on the night of 24 May 2011, at the Grid in Kalkarinji, the trouble makers were drinking cask wine likely purchased from Katherine as this product is not sold at the Hotel.
- 131) He also reminded the Commission that Mr Smiler had given evidence about alcohol being consumed at the Grid coming from the Kununurra region.
- 132) Mr Woodcock referred to evidence provided by Ms Haseldine wherein she stated that she sees car loads of people regularly bypassing the Hotel to travel to, purchase and bring back alcohol from Katherine.
- 133) He referred to Police and other witnesses called by Inspector Wood, who conceded that people living in communities who wished to purchase more alcohol if the Hotel was restricted, would do so by travelling to purchase alcohol, with many drinking and intoxicated when returning to their homeland.
- 134) Mr Woodcock referred to evidence provided by Ms Lindsay, describing her as a person who had lived a long time in communities during which time she had provided health and respite care. He raised the fears expressed by Ms Lindsay that stiff restrictions on takeaway at the Hotel may have the opposite effect to that intended by the Commission. He referred to more drinkers driving further for alcohol, particularly the heavy drinkers, who could remain in Katherine away from "*family support and the watchful eye of health care providers from small communities that have flagged the person for extra help*".
- 135) He reminded the Commission of the evidence presented during the Hearing that with the cessation of the sale of full strength beer for the Club, alcohol problems in the community had already abated significantly.

- 136) At the conclusion of Mr Woodcock's submission, the Hearing was reminded that the Lajamunu community had been afforded the opportunity to make submission and they had been given one calendar month from the date of that meeting to make submissions. The Commission concluded that such submissions would be required to be submitted by 13 January 2013.

Consideration of the Issues

- 137) Since the Hearing the Legal Member, in a Decision of 28 February 2013, has determined that the Commission has power to issue the Section 33 Notice, imposing a new licence condition, as was issued on 14 August 2012.
- 138) While the Commission in January 2013 has received communication on behalf of the Lajamanu community, there has been no submission from this community on takeaway restrictions for the Hotel. The Commission therefore must rely on the existing material before it on which to base its Decision. This material is comprehensive and includes:
- Background and a substantive body of information on incidents, sales data through tabling of the 239 page Hearing Brief (Exhibit 2);
 - Several days of witness evidence;
 - Exhibits and written submissions;
 - Information gained during the site inspection.
- 139) On being advised of a series of alcohol related incidents and levels of overall alcohol caused harm, the Commission in August 2012 determined to restrict takeaway trading of the Hotel to that of twelve cans of full strength alcohol or thirty cans of light or mid strength alcohol per person with sales capped at three purchases of the above per vehicle.
- 140) This Decision was reached following consideration of a report provided by the Director of Licensing, dealing largely with the harm resulting from current takeaway alcohol sales from the Hotel. It could be said that the Decision was based on evidence from parties in favour of some measure of alcohol sale restrictions, without contestability or input from the Hotel or other parties not in favour of restrictions or the level of restrictions imposed by the Commission.
- 141) The Act, for a very good reason, provides that where a Section 33 Notice is issued, the Licensee may request a Hearing in order to put counter views and argument to the Commission. Under the Act such a request must be referred to Hearing if the request is made within twenty-eight days of the issue of the Notice.
- 142) Given the body of information referred to in paragraph 138) above the Commission now has before it information and evidence balancing the case put by the Hotel and the Director of Licensing.
- 143) In relation to the evidence provided at Hearing, it is noted that one witness for the Hotel has since provided qualifying remarks regarding her stance on opposing the Section 33 restrictions on the Hotel. This change of attitude has been brought about in response to a death of a woman, who after drinking in the company of her husband and others, was killed on returning from the Grid to her home. Ms Frith has since the Hearing advised media that she now wished to see restrictions on the sale of takeaway alcohol imposed at the Hotel to lessen violence in affected

communities. As the Commission was still seized with determining a Decision following the Hearing and was not functus officio, it is able to take appropriate regard of these more recent comments by Ms Frith and determined an appropriate weight to her evidence during the Hearing.

- 144) The Hotel is licensed as a Roadside Inn with requirements to have facilities and services available on request. In this regard the Hotel must provide for after hours servicing of travellers. The Hotel is located in a remote area and has no resident or close by population, other than staff and management, from which to draw custom. Patronage and trade therefore relies on people travelling for the use of its services. There are unique challenges for the operation of such businesses in remote communities, such as the provision and maintenance of its own power, its requirement to house all staff and an inherent or moral obligation to meet the needs of passers by, including when accidents and break downs occur. The Hotel also deals with people stranded through flooding of the Victoria River and its tributaries.
- 145) Police witnesses have attested to the cooperation of the Hotel in dealing with requests for takeaway restrictions and in dealing with emergencies, extending to the regular provision of road conditions and other traveller information. Police evidence in total has described a civil and functioning relationship with the Nominee of the Hotel. Police have also recognised the pivotal role the Hotel plays in the physical and social infrastructure of the area; a role which Police have said they would not wish to place in jeopardy through making the premises unviable.
- 146) Other witnesses called by Inspector Wood such as Mr Pawleski, former Manager of the Store and Mr Clottu of the Katherine West Health Board, have vividly described the decline in the social welfare, health and safety of the community, when members were binge drinking or drinking to excess, usually through alcohol supplied by the Hotel.
- 147) All of these witnesses have to an extent agreed with the proposition that if restrictions are imposed, there will be an element of displacement with people driving longer distances to source alcohol, endangering the lives of drivers, occupants and other road users. Such alcohol, if purchased at locations where there are no restrictions, could be in greater volumes and cause greater harm as a consequence.
- 148) Mr Clottu, in particular, through forty years experience, was able to say the level of displacement would be the harder core of drinkers which he estimated at around ten percent.
- 149) Police evidence tended to support the conclusion that restrictions at the Hotel would likely result in a minority of people travelling to access alcohol elsewhere. The weight of evidence of Police was that there would be a lessening of alcohol consumption overall, but that a minority through their behaviour would create greater risk and harm to themselves and others through their pursuit of alcohol some greater distance from the communities. The net impact would result in lesser harm through the region.
- 150) It is apparent that bulk and the more harmful volumes of alcohol are purchased following pay periods and especially following payment of royalties to community members who have a traditional tie to lands around the Tanami and Granites Gold Mines area to the northwest of Alice Springs. Many of the incidents and the frequent reference in Police evidence to large quantities of beer being found in motor vehicles outlined during the course of the Hearing coincided with and were

contributed to by royalty payments being distributed throughout the Lajamanu community and Warlpiri peoples in other communities.

- 151) Mr Woodcock has submitted that the Hotel has done nothing wrong, apart from a blemish to its licence in 2009 when the Hotel was found to have not removed an intoxicated person from the premises, and has been operating within its licence conditions. He queried whether there were any rulings over Licensee responsibility or duty of care for customers who purchased alcohol at a premises but who generally consumed the alcohol and caused harm up to hundreds of kilometres distant from the place of purchase.
- 152) Responding to the query by Mr Woodcock the Commission referred to the Beachfront Hotel Decision of 12 January 2012 wherein the Commission gave guidance in relation to Licensees responsibility for off premise matters. Paragraph 143 of that Decision states:
- “It is unreasonable to expect Licensees to attempt to control behaviour that occurs outside the boundaries of their licence and to do so would impose an unacceptable burden on Licensees and an unacceptable shifting of responsibility for individual choice. The options available to a Licensee in dealing with patrons are limited to controlling their activities whilst on the licensed premises . The Licensee cannot do anything in response to unruly behaviour of patrons once they exit the premises with the result he cannot be held responsible for the behaviour of those patrons who cause disturbances in the neighbourhood.”*
- 153) The Nominee, Mrs Haseldine, has advised that she frequently does not know how much alcohol is being purchased and for whom when cars pull up and drivers or passengers purchase alcohol. However, it is evident from the consistent evidence presented at the Hearing that most of the incidents fuelled by alcohol are caused following takeaway purchase and consumption of alcohol from the Hotel.
- 154) The Commission considers it unreasonable to attach blame to the Hotel for these incidents, with the people purchasing alcohol bearing some responsibility for their behaviour. Some may be chronic alcoholics or alcoholics of a lesser degree and regardless of whether they have an illness or addiction there still must be some personal responsibility sheeted home to those involved. Many are opportunistic binge drinkers who take advantage of Royalty monies to engage in excessive and binge drinking until the money runs out.
- 155) While the Hotel may not be breaching its current licence conditions or the law in selling large volumes of alcohol to non intoxicated persons, the Commission must be guided by the Act in relation to such matters. As Inspector Wood pointed out during the Hearing, the Objects of the Act clearly directs the Commission to minimise harm.

3 Objects

- (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.*

(3) *When the Commission exercises a power or performs a function under this Act, the Commission must have regard to the objects of this Act and must exercise the power and perform the function in a way that is consistent with those objects.*

6 Public interest criteria in respect of licence or licensed premises

(1) *When the Commission has regard to the objects of this Act in:*

- (a) *considering or determining an application under this Act in respect of a licence or licensed premises; or*
- (b) *determining the conditions of a licence,*

the Commission must, when taking into account the public interest in the sale, provision, promotion and consumption of liquor, consider any of the criteria specified in subsection (2) that are relevant to the application or conditions.

(2) *For subsection (1), the criteria are the following:*

- (a) *harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised;*
- (c) *public order and safety must not to be jeopardised, particularly where circumstances or events are expected to attract large numbers of persons to licensed premises or an area adjacent to those premises;*
- (d) *the safety, health and welfare of persons who use licensed premises must not be put at risk.*

- 156) The Commission, while not attaching any direct blame to the Licensee, must have regard for the requirement to minimise alcohol related harm and risk brought about by large scale purchase of alcohol and excessive consumption.
- 157) In considering what action the Commission is able to take, which largely relate to alcohol supply measures, it needs to carefully weigh up both the options available and the potential consequences. To impose draconian restrictions likely to cause financial hardship to the Hotel is to jeopardise the ongoing existence of what has been termed as an integral part of the social infrastructure of the area. Equally or arguably more importantly, the Commission also needs to be mindful of the circumstances of the communities in the area being impacted on by the large scale purchases of alcohol.
- 158) The Commission has heard from witnesses such as Senior Constable Drury, following cross examination from Mr Woodcock, that alcohol linked criminal and anti social activity in Katherine is similar to that occurring on the communities.

- 159) Constable Dennien also agreed that the rates of alcohol linked crime in Katherine and the communities under consideration at the Hearing were comparable. There was also no evidence given at the Hearing as to whether alcohol caused road incidents and fatalities were worse in the area than for the rest of the Territory. Therefore the question in the mind of the Commission is whether social conditions in the area are worse than elsewhere and whether they warrant particular intervention through imposition of licence conditions.
- 160) The plight of communities and the impact on children from excessive consumption has been graphically relayed at the Hearing. The road death of a fourteen year old girl, who was not only driving intoxicated family members but also returned a BAC above the legal limit, had particular impact in this regard. Combining the health impacts, social consequences and death and injury impacts of alcohol in the region, leads to a set of circumstances which the Commission is obliged to attempt to remedy through its powers under the Act. It is the matter of this area and the particular Hotel licence and trading environment that have been brought to the Commission's attention, and whether the circumstances are better, worse or comparable to other areas or towns is therefore of diminished relevance.
- 161) Under these circumstances the Commission needs to carefully consider supply measures likely to bring about a lessening of harm. The circumstances described by witnesses such as Mr Pawelski, a former Store Manager in the area, of conditions of drunkenness and disorder creating a "war zone" are intolerable. The soul destroying drinking environment of the Grid or the drinking area to the north of Lajamanu are unedifying locales with little comfort or convenience and where drinkers are likely to drink to get drunk rather than enjoy a social outing.
- 162) Considerable evidence has been produced over the risk of imposing restrictions which are too stern. Police evidence indicates that cars are regularly pulled over containing ten or more cartons of beer and quantities of spirits purchased from the Hotel. Superintendent Bacon conceded that there is a risk, as previously where a car may have purchased ten cartons of beer following a royalty payment or pay period, restrictions could see three cars travelling on the road for the same purchase and quantity of alcohol.
- 163) Sergeant Huddleston and others conceded that with restrictions placed on the ability to purchase alcohol the hard core drinkers would travel to Katherine or elsewhere. In such circumstances there is a danger of people having unrestricted access to alcohol, including cask wine, a product which provides more bang for your buck in terms of the cost of pure alcohol.
- 164) Ms Lindsay, an experienced Health Worker, gave compelling evidence that people were likely to be at greater harm when in Katherine rather than their home communities. She stated that nursing and respite care in Katherine was more problematic than in the drinkers usual place of residence. There is more known about the person, their health care needs and more oversight and care provided at a community level.
- 165) There is a degree of conjecture as to the likely outcome of alcohol supply restrictions under consideration by the Commission. The majority of evidence points to a minority of people travelling further to access alcohol if unacceptable restrictions (to them) are imposed. However, the Commission has also heard that the majority of people would ultimately adapt to restrictions and accept the reality without major displacement through seeking alcohol elsewhere. The Commission received no guidance or advice from witnesses nor the Hotel on appropriate sales

limits, although Mr Mark Coffey, NT State Manager, FaHCSIA has in submission sought takeaway sales be restricted to light and mid strength beverages “*up to a maximum of one thirty can pack per person day and limited to three transactions per vehicle*”.

- 166) On balance, the Commission is persuaded that supply measures could be expected to result in a decline in the alcohol purchased and consumed by residents of Yarralin, Pigeon Hole, Kalkarinji, Daguragu and Lajamanu. Stations in the area would be less affected by any measures as most provide limited volumes of alcohol through a canteen or social club. Additionally, the Commission has been informed that station people use the Hotel as a hub, frequently for functions and accommodation and are therefore more likely to consume on the premises rather than rely on takeaway.
- 167) Many hotels have the ability to sell directly to Pastoral Stations, including their social clubs or wet canteens, which usually operate with strict time and sales limits. Alcohol for such purposes is pre-ordered and this sales opportunity ought not be denied to the Hotel.
- 168) The Commission has also heard that at both Lajamanu and the Kalkiarinji / Daguragu communities, there are permit holders who are able to purchase, store and consume alcohol on the communities. The Commission has been advised that these permit holders are largely white workers on the community and that oversight of the issue of permits is largely in the hands of Police. It is the Commission’s view that there should be more opportunities for community members to possess such permits as an encouragement to the responsible consumption of alcohol.
- 169) The Communities of Lajamanu and Kalkiarinji / Daguragu could give consideration to reviewing their current Liquor Permit System and introducing a community based Liquor Permit Committee comprising community leaders, male and female, and other stakeholders such as Police, health workers, storekeepers and club managers. In other Territory communities similar Committees have been established which accept the responsibility for governing the use of alcohol in their community. These Committees not only recommend approval or rejection of an application for a permit but also set the conditions for the granting of permits which are specific to their community needs. These can include imposing limits on quantities and types of alcohol allowed under a permit and identifying the type of behaviour by permit holders which will result in recommendations for the revocation of their permits and the period of such a revocation. The introduction of a Community Liquor Permit Committee in Lajamanu and Kalkiarinji / Daguragu could overcome the perceived discrimination in the current arrangement, provide more respect for and by the holder of a permit which has been recommended by their peers, and, hopefully, lessen the need for community members to travel to the unhygienic and soul destroying drinking areas such as the Grid.
- 170) The validity of assumptions underpinning the Commission Decision will need to be tested. For this reason the conditions imposed in this Decision are to be evaluated and reviewed after twelve months operation and for the results of this review to be placed before the Commission to determine if the takeaway licence conditions are to remain or to be further adapted to reflect an evidence based approach.
- 171) The Commission has heard of a decline of problem drinking at Kalkarinji since the Club commenced selling only mid and light strength beer. There appears from the evidence of community members such as Mr Smiler and Mr Rose a strong preference for the purchase of full strength beer, usually Victoria Bitter. The

Commission is of the view that there would be a lessening of harm if people in the region were encouraged to lessen reliance on full strength beer and to adopt the practice of purchasing and consuming lower strength alcohol.

- 172) Therefore the Decision of the Commission will focus on restricting full strength beer and other high alcohol products such as spirits and wine while not placing the same restriction on mid and light strength beer and other alcoholic beverages of a lower alcohol content.
- 173) The harm caused by spirits, which appear to be used as a complement to beer when monies are available, is indicated through evidence before the Commission where people sculled spirits in an evident attempt to maximise the potential for getting intoxicated. Spirits, when used in this way, can generate considerable harm and have an impact in a very short time. Bottles of spirits are also easily hidden when attempting to grog run and bring alcohol into communities. Based on the use of spirits in such a harmful way, the Commission has determined to restrict takeaway spirit sales.
- 174) Station workers and others who have a preference for rum and coke or other spirit mixers will be able to continue to purchase these products for on premise consumption at the Hotel. The right of bona fide guests to purchase and consume alcohol within the licensed premises remains unaltered, however on such guests leaving the premises they will be subject to the same restrictions as all other takeaway customers. To do otherwise could result in persons securing accommodation for the sole purpose of purchasing unrestricted quantities of alcohol.
- 175) The Hotel has previously agreed not to sell cask wine as takeaway and the Commission deems it appropriate to imbed this ban formally in the Hotel licence. Wine products sold in glass containers could be substituted if restrictions on beer sales apply. Wine in bottles has a higher alcohol by volume level than beer and substitution to such products is an inherent possibility and a danger, including that of broken glass at the known drinking areas. Due to these reasons the takeaway sales of bottled wine, including fortified wine are to be restricted.
- 176) In striking the balance to prevent a wholesale exodus of community members seeking the product of their choice, the Commission will allow the takeaway sale of full strength alcohol from the Hotel to continue, but in limited quantities.
- 177) The Section 33 Notice issued provided for a limit of twelve cans of heavy beer per person or thirty-six cans of heavy beer per car. While the Hotel, and a number of witnesses on behalf of the Hotel, have stated this is too restrictive, no one has advised the Commission of an appropriate amount which should be allowed for takeaway purchase. The wisdom of Solomon would be needed to come to the exact supply limits that would minimise general harm in the area and on the communities while minimising the likelihood of there being displacement and more cars on the road and more people moving to townships such as Katherine.
- 178) Notwithstanding this, the Commission in weighing up the circumstances with which it is confronted, has determined to limit the takeaway to
- one twenty four can carton of full strength alcohol, being beer, cider, premix or similar beverage per person per day, or
 - one bottle of spirits per person per day, or

- one bottle of wine per person per day,

with a maximum of three purchases per vehicle. In effect a person can elect to purchase either one 24 can carton of full strength beer or one bottle of spirits or one bottle of wine. The vehicle limit is three of any of these products only. To foster a change in drinking habits, the Commission leaves the unrestricted ability of the Hotel to sell mid strength and light beer and similar products under 3.5% alcohol by volume.

- 179) Experience with applying alcohol sales restrictions in the Northern Territory is that whenever one product is prohibited or sales restricted, demand shifts to the cheapest and highest alcohol level alternative. The Commission must therefore be mindful of potential product substitution in the matter before it. Restricting full strength beer only will give rise to demand for other high alcohol products. Witnesses at Hearing have described the damaging use of spirits, including as added intoxicant to beer when people are binge drinking. Therefore it is the Commission's view that complementary restrictions need to apply to other alcohol products in a suite of measures designed to lessen harm in the area but without being so draconian as to drive a large proportion of community members to other outlets and townships to secure alcohol. The restrictions imposed in this Decision may, or have the potential to, result in unanticipated substitution practices and therefore generate a need for review as provided for in this Decision.

Decision

- 180) The Commission determines takeaway sales conditions for the Hotel licence as follows:

- The takeaway hours of the Hotel are to remain unaltered, that is from 10:00am to 10:00pm Sunday to Friday and 09:00am to 10:00pm on Saturday and Public Holidays and no trading on Good Friday or Christmas Day.
- Pre-ordered station purchases on account are allowed and are unrestricted providing pick up of such supplies is within takeaway licensing hours.
- The takeaway sale of cask wine is prohibited.
- The takeaway sale of
 - takeaway beer, cider, premixed drinks and other similar products greater than 3.5% by volume is restricted to one sale of twenty-four 375 ml cans per person per day, or
 - one bottle of spirits per person per day, or
 - one bottle of wine per person per day,

with a maximum of three such purchases per vehicle.

- The takeaway sale of beer, premixes and similar products below 3.5% alcohol by volume in containers of 375ml cans or less is unrestricted.

- 181) These conditions are to come into effect from 31 July 2013 to enable the Hotel to adjust its wholesale purchases and clear stocks as commercially necessary in conformity with this Decision.

- 182) The Commission is mindful that there needs to be an effective method of monitoring and controlling the alcohol sales limits imposed. The Commission instructs the Director of Licensing and the Licensee work together and mutually agree on a practical and implementable method for controlling the maximum daily alcohol sales limits imposed through this Decision.
- 183) This Decision is to be reviewed following twelve months of operation of the above licence conditions and their impartial evaluation. Results of the evaluation are to be put before the Commission to enable it to alter or adjust supply measures on an evidence based approach, to minimise alcohol caused personal and community harm in the area.

Richard O'Sullivan
Chairman

24 May 2013