

Northern Territory

LIQUOR COMMISSION

REASONS FOR PROPOSED VARIATION OF LICENCES

MATTER: PROPOSED VARIATION OF THE CONDITIONS OF LICENCES

LICENSEES

LICENCE NUMBERS

Aileron Roadhouse	81204578/FLL
Banka Banka Station	80817000
Barkly Homestead	81203263
Bluestone Motor Inn	80201870
Devils Marbles Hotel	81202869
Eldorado Motor Inn	80202797
Elliott Hotel	80104969
Goldfields Hotel	80102583/FLL
Headframe Bottle Shop	81002243
Outback Caravan Park	81117302
Renner Springs Desert Hotel/Motel	81202669
Sporties Club Inc	81402780
Tennant Creek Golf Club	81402752
Tennant Creek Hotel	80102044
Tennant Creek Memorial Club Inc	81402774
Tennant Creek Police Social Club	81403239
The Elliott Store	80902117
Threeways Roadhouse	81202764
United Wycliffe Well	80802878

LEGISLATION: Section 33, *Liquor Act*.

INTRODUCTION

1. The Northern Territory Government publishes data annually on the volume of alcohol supplied to liquor licensees by wholesalers. This data is used to estimate the amount of alcohol consumed around the Territory. In the two years to the end of 2014, the amount of alcohol supplied, and, it may be inferred, consumed, in Tennant Creek fell by 26%. Over the next two years it rose by 13%. No supply data has yet been made available to the Northern Territory Liquor Commission (“the Commission”) since 31 December 2016. As at that date, the estimated per capita consumption of the drinking-age (ie persons aged 15 years and above) residential population in Tennant Creek was 24.5 litres of pure alcohol per year, more than twice the Northern Territory average of 11.9 litres,¹ more than two and a half times the national average of 9.7 litres,² and more than two and a half the National Health and Medical Research Council’s guidelines of a lifetime average two standard drinks per day.³ With a drinking-age residential population of 2,342 persons according to the 2016 Census, this corresponds to a 24 can carton of full strength beer per person per week. If the recent upward trend has continued, the town now drinks the equivalent of more than 60,000 cans of Victoria Bitter every week.
2. The harm associated with these extraordinarily high levels of alcohol supply and consumption is similarly extraordinary. As the Alcohol Policies and Legislation Review Final Report (“the Riley Review”) states:

¹ Department of the Attorney-General and Justice, *Northern Territory Wholesale Alcohol Supply 2009 to 2016*

² Australian Bureau of Statistics, *4307.0.55.001 - Apparent Consumption of Alcohol, Australia, 2015-16* (1 September 2017)

³ National Health and Medical Research Council, *Australian Guidelines to Reduce Health Risks from Drinking Alcohol* (Commonwealth of Australia, February 2009), p. 39

alcohol related harm, both to the individual drinker and the broader community... continues to have a devastating effect throughout the Northern Territory.⁴

In Tennant Creek alcohol related assaults increased by 24.6% between 2016 and 2017.⁵ At the average 2016 Tennant Creek levels of 5.3 standard drinks per person per day, males are 7 times more likely to die of alcohol-caused disease or injury than the average Australian; females are 10 times more likely to die of disease, and 4.5 times more likely to die of injury. The average Tennant Creek drinker has a one in four chance of being hospitalised over their lifetime as a result of alcohol-caused injury.⁶

3. In its Reasons for Decision delivered on 15 May 2008 of a Review of the Tennant Creek Liquor Supply Plan, the Northern Territory Licensing Commission made similar observations, and concluded that there was “an intolerable level of alcohol abuse in the township”. Tragically, ten years on, notwithstanding the very substantial gains made in 2014, the burden on government, the community, families and individuals of managing alcohol-related harm in Tennant Creek has again become intolerable, and is now unsustainable.

⁴ T Riley, P Angus, D Stedman, *Alcohol Policies and Legislation Review Final Report* (October 2017), p. 8

⁵ Northern Territory Police, Fire and Emergency Services, *Submission to the Northern Territory Liquor Commission*, 16 April 2018, p. 3

⁶ National Health and Medical Research Council, *Australian Guidelines to Reduce Health Risks from Drinking Alcohol* (Commonwealth of Australia, February 2009), Figures 5, 6, 7, 8, 9

BACKGROUND

4. On 27 February 2018, the Director-General of Licensing issued a Decision Notice pursuant to s 48A of the *Liquor Act* (“the Act”) varying conditions for seven days commencing on 28 February 2018 of the following licences:

Tennant Creek Hotel	(Liquor Licence 80102044)
Goldfields Hotel	(Liquor Licence 80102583)
Headframe Bottle Shop	(Liquor Licence 81002243)
Sporties Club Inc	(Liquor Licence 81402780)
Tennant Creek Golf Club Inc	(Liquor Licence 81402752)
Tennant Creek Memorial Club Inc.	(Liquor Licence 81402774)

5. The varied conditions imposed the following restrictions (“the restricted conditions”):
- A. takeaway liquor will only be available for sale Monday through to Saturday between the hours of 3pm and 6pm;
 - B. takeaway sales on Sunday is prohibited; and
 - C. sale of the following products will be limited to no more than one of the following per person per day:
 - i. 30 cans or stubbies of mid-strength or light beer; or
 - ii. 24 cans or stubbies of full strength beer; or
 - iii. 12 cans or bottles of Ready to Drink mixes; or
 - iv. One two litre cask of wine; or
 - v. One bottle of fortified wine; or
 - vi. One bottle of green ginger wine; or
 - vii. Two x 750 ml bottles of wine; or
 - viii. One 750 ml bottle of spirits.

The sale of port, wine in a glass container larger than 1 litre and beer in bottles of 750ml or more remains prohibited.

6. On 6 March 2018, the Director-General issued a Decision Notice continuing the restricted conditions for a further seven days.
7. On 6 March 2018, the Chairperson of the Northern Territory Liquor Commission requested Commissioners Goldflam and McFarland to conduct consultations with the Tennant Creek community with a view to proposing a variation of the conditions of Barkly region liquor licences pursuant to s 33 of the *Liquor Act*.
8. On 13 March 2018, the Northern Territory Attorney-General and Minister for Justice, the Hon. Natasha Fyles (“the Territory Minister”) issued a Determination pursuant to s 33AA of the Act continuing the restricted conditions for a further three months, to 13 June 2018.
9. During the period of the restricted conditions, the Director-General wrote to licensees of licensed premises outside Tennant Creek in the Barkly region (“the regional licensees”), requesting them to voluntarily impose restrictions in similar terms to those applicable in Tennant Creek. With one exception (the Elliott Hotel), the regional licensees agreed to substantially comply with this request. The Commission commends this co-operative response.
10. On 20 April 2018, the Chairperson appointed Commissioners Goldflam, McFarland and Douglas to determine whether to issue a notice under s 33 of the *Liquor Act* and if so to determine the new licence conditions following receipt of the licensees’ responses. The Commission, comprising Commissioners Goldflam, McFarland and Douglas, met on 3 May 2018 to determine the licence variations it proposes.

CONSULTATIONS

11. By way of newspaper notices and letters to affected agencies and individuals, the Commission sought submissions and issued invitations to attend public consultations in Tennant Creek on 4 April 2018, so that members of the public, stakeholders and licensees could share their views on whether they believed the restricted restrictions should be removed, relaxed, retained or made more restrictive, and to provide any other information or insights they had on reducing the Territory's harmful drinking culture as it is manifested in the Barkly Region.
12. On 4 April 2018, a total of approximately 90 people, including residents of Tennant Creek, Elliott and Ali Curung, as well as several licensees, participated in two consultation meetings conducted by Commissioners Goldflam and McFarland. The Commissioners consulted separately with the Officer in Charge of the Tennant Creek Police Station, and Commissioner McFarland also met a group of young people attending the Barkly Regional Council Youthlinx Night Drop-in Centre.
13. The Commission offered licensees of all licensed premises located outside Tennant Creek on the Stuart Highway between Threeways and Aileron the opportunity to meet Commissioners Goldflam and McFarland. Three licensees responded, and consequently the Commissioners consulted with the licensees of Threeways Roadhouse, Desert Marbles Hotel and Ti Tree Hotel.
14. The Commission requested key service providers in Tennant Creek to provide information indicative of alcohol-related harm during the first month of the restricted conditions (March

2018), and for comparison purposes, the previous month (February 2018), as well as the same two months in the previous year (March and February 2017).

15. The Commission received written submissions and information from:

- Australian Hotels Association (Northern Territory Branch)
- Barkly Education Office
- Barkly Region Alcohol and Drug Abuse Advisory Group (“BRADAAG”)
- Barkly Regional Council
- Combined Aboriginal Organisations, Tennant Creek (“CAO”)
- Devils Marbles Hotel
- Northern Territory Police, Fire and Emergency Services
- St John Ambulance Australia (NT)
- Hon. Senator Nigel Scullion, Minister for Indigenous Affairs (“the Commonwealth Minister”)
- Tennant Creek Hotel
- Tennant Creek Local Reference Group for Domestic, Family and Sexual Violence
- Tennant Creek Women’s Refuge
- Four private individuals

16. The Commission has noted and considered the views expressed and information received during the consultations and by way of the submissions received. The Commission acknowledges with thanks all persons and organisations who contributed.

17. In the Decision Notices of 27 February 2018 and 6 March 2018 referred to above, the Director-General refers to consultations she undertook prior to and for the purpose of

making those Decisions. The Commission has regard to these two Decision Notices, the consultations described therein, and the reasons set out therein.

THE APPLICABLE LEGAL PROVISIONS

18. These Reasons for Proposed Variation are issued pursuant to s 33 of the Act, which empowers the Commission to vary licence conditions on the Commission's own initiative. Section 33(2) requires the Commission to give affected licensees 28 days within which to respond to the proposed variation of licence conditions.

19. Pursuant to s 3(1) of the Act:

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.

Section 3(2)(a) provides that a further object of the Act is:

to protect and enhance community amenity, social harmony and wellbeing through the responsible sale, provision, promotion and consumption of liquor.

20. Section 6(1) of the Act provides:

When a person (a decision maker) has regard to the objects of the Act in... determining the conditions of a licence, the decision maker must apply the ***public interest and community impact test***...

Section 6(2) provides that the public interest and community impact test requires consideration of 15 listed objectives, the first of which is:

- (a) Harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised.

In its submission to the Commission, BRADAAG cited this passage from the Royal Australian College of Surgeons response to the Riley Review:

In the Northern Territory harm minimisation is currently mentioned as one of several statutory objects of equal standing... However, to be effective harm prevention and minimisation must be recognised as the primary objective of the legislative framework.

The Commission agrees with this observation, and, having regard to s 3(1)(a), considers the objective expressed in s 6(2)(a) to be of primary importance.

21. Section 6(3)(a) provides that the decision maker must consider the potential impact on the community in the area that would be affected by the outcome of changing the conditions of a licence and, in doing so, must have regard to six identified matters, the first (and, in the view of the Commission, having regard to s 3(1)(a) and s 6(2)(a), the primary) of which is:

- (i) The harm that might be caused (whether to the community as a whole or a group within the community) due to the excessive or inappropriate consumption of liquor.

22. When determining the conditions of a licence, the decision-maker must apply the community impact assessment guidelines (s 6(3)(b)). On 6 March 2018, the Minister gazetted community impact assessment guidelines (“the guidelines”) pursuant to s 6A(1) of the Act. In considering the conditions of the affected licences, the Commission has had regard to the guidelines.

23. Section 6B establishes an onus on an applicant licensee to satisfy the Commission that the approval of the application meets the public interest and community impact test. The Commission considers that s 6B has no application to determinations made pursuant to s 33.
24. Section 16(2) of the *Liquor Commission Act* ("the Commission Act") provides that "the Commission is required to convene public hearings to make decisions under the *Liquor Act*". In accordance with this provision as read on its face and in isolation, when Members of the Commission conducted consultations in the Barkly on 4 and 5 April 2018, they indicated their intention to conduct a public hearing in due course. However, following further consideration of the applicable statutory provisions, the Commission, for the reasons which follow, considers that it is not required to conduct a hearing before making a decision pursuant to s 33(3), doubts that it has the power to conduct a public hearing, and has determined not to do so.
25. Section 33 of the Act establishes a procedure without reference to the conduct of a public hearing. The Commission's view is that s 16(2) of the Commission Act, properly construed, provides that the Commission is required to convene public hearings only in circumstances where public hearings are required by the *Liquor Act*. That is, the words "under the *Liquor Act*" should be read, not as qualifying the word "decisions", but as qualifying the requirement to convene public hearings. This construction is open on the terms of the section. By this means, the two statutes can operate consistently as the intended legislative scheme. To read them otherwise would thwart the legislative intention and the sensible operation of the scheme.

26. Section 27 of the *Stronger Futures in the Northern Territory (Cth)* (“the SFNT Act”) empowers the Commonwealth Minister to declare any area in the Northern Territory an “Alcohol Protected Area” (APA). In exercising this power, the Commonwealth Minister must have regard to matters including:

- To enable special measures to be taken to reduce alcohol-related harm to Aboriginal people in the Northern Territory;
- the wellbeing of people living in the area;
- whether there is reason to believe that people living in the area have been the victims of alcohol-related harm;
- the extent to which people living in the area have expressed their concerns about being at risk of alcohol-related harm;
- the extent to which people living in the area have expressed the view that their wellbeing will be improved if this Part applies in relation to the area; and
- any other matter that the Minister considers relevant.

27. Part 2 Division 3 of the SFNT Act empowers the Commonwealth Minister to determine the licence conditions of licences in relation to premises in an APA.

THE EFFECT OF THE RESTRICTED CONDITIONS TRIAL

28. The Commission, within the available timeframe, has been unable to obtain as much data regarding the impact of the restricted conditions as is desirable. The Commission undertook its consultations in Tennant Creek after the restrictions had been in place for only a little over a month. Within such a brief period, it was unlikely that statistically significant trends could be reliably identified, even if all of the relevant data had been provided.

29. Nevertheless, the anecdotal impressions of a broad range of service providers were consistent: the restricted conditions appear to have been associated with a noticeable decrease in alcohol-related harm. For example, the Commission has been informed that after the restricted conditions came into effect:

- Demand for Women’s Refuge services decreased by 60% against the same period for 2017.⁷
- Domestic, family and sexual violence presentations to the Tennant Creek Hospital Emergency Department reduced from 37 in January 2018, before the restricted conditions commenced, to 12 in March 2018.⁸
- School attendance has gone up, students have been less hungry, and conduct and performance has improved, with reportable serious behavioural issues on Mondays declining from 18 to 5.⁹
- The number of young people staying out on the street at night has declined, and more young people are engaging with Night Patrol services.¹⁰
- The Watch House is less busy, the town is “quiet”, public areas are free of heavily intoxicated people at night, children have ceased attending the police station to request food, more families are shopping for groceries on weekends, and there is noticeably less litter.¹¹

⁷ Report from Tennant Creek Women’s Refuge, 23 April 2018

⁸ Report from Tennant Creek Local Reference Group for Domestic, Family and Sexual Violence, 19 April 2018

⁹ Report from Principal, Tennant Creek Primary School, 5 April 2018; Northern Territory Police, Fire and Emergency Services submission, p. 10

¹⁰ Report from Tennant Creek Local Reference Group for Domestic, Family and Sexual Violence, 19 April 2018; Alba Brockie, Barkly Regional Council (BRC) Youthlinx Night Drop-in Centre, 5 April 2018; Northern Territory Police, Fire and Emergency Services submission, p. 10

¹¹ Northern Territory Police, Fire and Emergency Services submission, p. 10

- St Johns Ambulance callouts for alcohol-related assaults have dropped substantially since the restricted conditions commenced.¹²

30. Police provided the Commission with data in relation to offending rates for various offence categories, for the months before and during the operation of the restricted conditions, in the corresponding months for 2017, and over the previous ten years. The Commission is unable to find that this data clearly or reliably establishes that harm has decreased in association with the trial of restricted conditions. The following table is illustrative. It indicates that when the restricted conditions commenced in March 2018, offences against the person declined from the previous month, whereas in the corresponding months of the previous year, the reverse had occurred. However, the datasets are small, and the reference periods are short.

Tennant Creek District (Offences by category, alcohol and DV involvement)

	Offences Against The Person					Offences Against Property				
	Total No of Offences	Total No of Alcohol Related Offences	Percentage of Offences Alcohol Related	Total No of DV Related Offences	DV & Alcohol Related	Total No of Offences	Total No of Alcohol Related Offences	Percentage of Offences Alcohol Related	Total No of DV Related Offences	DV & Alcohol Related
Feb 2017	20	16	80.0%	13	10	69	3	4.3%	1	1
Mar 2017	32	22	68.8%	22	16	43	8	18.6%	1	1
Feb 2018	48	31	64.6%	34	24	107	18	16.8%	2	1
Mar 2018	23	15	65.2%	12	10	66	4	6.1%	3	

	Active Policing					Traffic Offences				
	Total No of Offences	Total No of Alcohol Related Offences	Percentage of Offences Alcohol Related	Total No of DV Related Offences	DV & Alcohol Related	Total No of Offences	Total No of Alcohol Related Offences	Percentage of Offences Alcohol Related	Total No of DV Related Offences	DV & Alcohol Related
Feb 2017	94	57	60.6%	14	12	66	42	63.6%		
Mar 2017	91	59	64.8%	26	20	50	33	66.0%	1	
Feb 2018	129	84	65.1%	31	29	78	53	67.9%		
Mar 2018	134	90	67.2%	30	24	63	30	47.6%		

¹² Report from Michelle Goff, St John's Ambulance, 5 April 2018

31. The Commission notes that at around the time the restricted conditions commenced, the police, for operational reasons, discontinued regular Point of Sale Interventions (POSIs) at Tennant Creek takeaway liquor outlets.¹³ The longer-term datasets provided by police show that the introduction of POSIs coincided with a “dramatic” decrease in assaults from 705 in January 2014 to 228 by mid-2015.¹⁴ (This appears to closely correlate with the 26% reduction in consumption during this period referred to above.¹⁵) It is reasonable to infer that the discontinuation of POSIs in March 2018 tended to have the opposite effect.

32. The Commission considers that had “full lock-down” POSIs been maintained during the trial of restricted conditions, it is likely that alcohol-related harm would have been clearly and substantially reduced, and to a significantly greater degree than has now been observed.

RESTRICTED CONDITIONS: ESSENTIAL BUT NOT SUFFICIENT

33. The Commission notes the following comments by police in their submission in relation to this issue:

While the POSI strategy appears to have been effective, it incurred a significant, and ultimately unsustainable resource impost on police. There now appears to be an emerging willingness across government to work collectively and collaboratively toward redressing the alcohol supply issues. The appropriate limiting of takeaway licencing provisions, such as is currently and temporarily in place in Tennant Creek is considered an essential and complementary element to redressing the issues there. The continuation of the restrictions will go towards complementing the POSI strategy and

¹³ Report from Don Eaton, OIC, Tennant Creek police, 5 April 2018

¹⁴ Northern Territory Police, Fire and Emergency Services submission, p. 9

¹⁵ See paragraph 1

ensure, by way of limiting opening hours and liquor purchases, the sustainability of full lockdowns. In turn, full lockdowns, along with the Banned Drinker Register will maximise the intended outcomes of the NT Alcohol Harm Minimisation Action Plan 2018-2019, which has at its core changing the NT relationship with alcohol.¹⁶

34. The Commission agrees that restricted conditions alone are unlikely to be effective in reducing consumption and associated harm. During the Commission's consultations with the community, a prominent theme was that restrictions have previously been tried and failed. Given the tortuous history of restricted conditions in Tennant Creek over the last two decades, this view is unsurprising. The 1996 "Thirsty Thursday" package of restrictions was independently evaluated in 2000 and found to have had "a sustained positive effect on reducing per capita alcohol consumption and levels of violence and injury".¹⁷ However, by 2006, the Licensing Commission concluded that the ban on takeaways and front bar sales on Thursdays had ceased to be effective in reducing harm, and removed that restriction.¹⁸

35. The Riley Review stated that "the Northern Territory needs a comprehensive, coordinated and sustained approach to reducing alcohol related harm".¹⁹ The Commission notes that the Northern Territory Government has responded to the Riley Review by committing to implement almost all of the recommendations in the Riley Review,²⁰ publishing the Northern Territory Alcohol Harm Minimisation Action Plan 2018-2019, and establishing an Alcohol Review Implementation Team within the Department of the Chief Minister. The Commission also notes the passage of the *Liquor Amendment (Point of Sale Intervention) Bill*

¹⁶ Northern Territory Police, Fire and Emergency Services submission, p. 9

¹⁷ Northern Territory Licensing Commission, *Decision: Series of Hearings conducted pursuant to Section 33(3) of the Liquor Act 1978* (17 December 2001), p. 2

¹⁸ Northern Territory Licensing Commission, *Final Liquor Supply Plan for Tennant Creek and Threeways* (31 May 2006), p. 1-2

¹⁹ T Riley, P Angus, D Stedman, *Alcohol Policies and Legislation Review Final Report* (October 2017), p. 8

²⁰ *NT Government's Response on Alcohol Policies and Legislation Review Final Report's Recommendations* (March 2018)

2018 on 3 May 2018 and the announcement by the Minister for Health on the same day that Police Auxiliary Licence Inspectors will be recruited to restore POSIs in Tennant Creek (among other communities). In the context of these developments, the Commission is optimistic that future restrictions on conditions will be supported and complemented by other measures that will prove to be effective.

36. In summary, the Commission's view is that although restricted conditions are by themselves insufficient to address Tennant Creek's alcohol problems, they are a necessary part of the solution, and that there is a reasonable prospect that the problems can be effectively addressed by imposing appropriate restricted conditions in conjunction with other measures.

COMMUNITY VIEWS: DRINKER'S PERMITS FOR TENNANT CREEK?

37. Formerly, s 32 of the Act required the Licensing Commission to have regard to "the needs and wishes of the community". That requirement was removed by legislative amendment which came into force on 5 May 2004.²¹ Nevertheless, the Commission considers that the views of the community are of relevance, having regard to s 3(2)(a) of the Act, which establishes as an object of the Act the protection and enhancement of "community amenity, social harmony and wellbeing", and s 6(3) of the Act, which requires the Commission to "consider the potential impact on the community" when making a decision to change licence conditions.

38. Accordingly, in its consultations the Commission invited members of the community to express their wishes, and they did so, presenting a broad range of views in relation to

²¹ *Liquor Act Amendment Act 2014* (Act No. 14, 2004)

takeaway licence conditions, ranging from no restrictions to extreme restrictions. The Commission finds that there is no consensus in the Tennant Creek community on this issue. In these circumstances, the Commission does not accord substantial weight to any one in particular of the various competing views expressed to it by members of the public.

39. Nevertheless, reference should be made to an issue that was raised by many Tennant Creek residents who participated in the consultation, namely the suggestion that a Permit System be introduced in Tennant Creek. Part VIII of the Act (“General and public restricted areas”) allows for permits to be issued relating to a restricted area. In 2008 Tennant Creek was declared a public restricted area (“Dry Town”).²² This restricts drinking in public places within the township. Permits can be issued for the consumption of alcohol in Tennant Creek public places by application to the Director-General of Licensing.

40. For a more general permit system to be implemented, Tennant Creek, including private residences, would have to be declared a general restricted area either in response to an application under s 76 of the Act or on the initiative of the Commission under s 76AA of the Act. Permits could then be applied for and granted pursuant to s 87 of the Act by the Director-General to residents of a general restricted area allowing holders to bring liquor into, possess liquor in and consume liquor in a general restricted area.

41. The Commission apprehends difficulties with this approach, including the administrative burden of issuing permits to tourists, the challenge of determining who would be invested with the authority to issue permits and by what procedure, and the impracticability of establishing a general restricted area on a major arterial road, the Stuart Highway. The

²² Northern Territory Licensing Commission, *Reasons for Decision: Application by Tennant Creek Council for a Public Restricted Area and Review of the Tennant Creek Liquor Supply Plan* (15 May 2008)

Commission acknowledges the apparent success of permit systems in other, more remote Northern Territory communities, but considers that on the limited material before it in relation to establishing a permit system for Tennant Creek, there is currently an insufficient basis to make a s 76AA own initiative proposal for Tennant Creek to be declared a general restricted area.

42. The Commission notes that the ongoing operation of the Banned Drinkers Register (BDR) acts as an inverse “good drinkers register” and produces many of the positive effects that a permit system would bring.

SUBMISSIONS FROM KEY STAKEHOLDERS

43. The Commission has given careful consideration to submissions from three key stakeholders, namely the Minister for Indigenous Affairs, Northern Territory Police, Fire and Emergency Services, and the Combined Aboriginal Organisations, Tennant Creek.²³ The police supported “maintaining (or enhancing)” the current restricted conditions. The Commonwealth Minister called for “much stronger takeaway alcohol restrictions”. The CAO advocated for tighter restrictions, with a proposed limit of one 6 pack of full strength beer per day. Both the Commonwealth Minister and the CAO supported the continuation of the current prohibition on takeaway trading on Sundays (as had also been recommended by the Riley Review²⁴). The Commission accepts these submissions.

²³ Comprising Anyinginyi Health Aboriginal Corporation, Julalikari Council Aboriginal Corporation and Papulu Aparr-Kari Aboriginal Corporation

²⁴ Riley, P Angus, D Stedman, *Alcohol Policies and Legislation Review Final Report* (October 2017), Recommendation 2.5.6

FURTHER CONSIDERATIONS

44. The Commission has also had regard to all the submissions it has received from affected licensees. At this stage, and noting that pursuant to s 33(2)(c) of the Act, the Commission is required to invite all affected licensees to respond within 28 days following the publication of these Reasons for Proposed Variation, the Commission proposes to defer detailed discussion of licensees' submissions until that period has expired.

45. In the course of the Commission's inquiry, it has become apparent that the trading hours and conditions of licensees in the Barkly region vary widely, presumably because they were fixed on a case by case basis. In the interest of promoting consistency, the Commission proposes to fix uniform takeaway licence conditions with appropriate allowance for the different conditions in the town of Tennant Creek and out of town.

46. The Commission has regard to the risk that the intended beneficial effect of restricted conditions may be undermined by counter-measures including:

- unlawful secondary supply ("sly-grogging")
- the relocation of problem drinkers to communities where the availability of liquor is less restricted
- the ordering of liquor on-line and delivered through the post
- the manufacture and consumption of home brew
- break-ins of licensed premises after hours to steal liquor

47. Having regard to these risks and the paucity of data made available to the Commission referred to at paragraph 28 of these Reasons for Proposed Variation, the Commission

proposes to conduct a further s 33 inquiry into takeaway trading in Tennant Creek and the Barkly 12 months after its pending decision. The Commission notes Recommendations 1.3.1 to 1.3.11 (“Research/Data/Evaluation”) of the Riley review, which, when implemented, will be of substantial assistance to the Commission in making decisions firmly premised on a base of reliable evidence.

48. In the course of conducting its consultations for this matter, the Commission has received and notes with interest the following recommendations from stakeholders for measures that either lie outside the powers of the Commission, are outside the scope of this inquiry, or both:

- Revamping the BDR to allow the registration of local restricted conditions (Australian Hotels Association)
- Empowering police to seize and destroy liquor found in the possession of a person subject to an order that they not possess liquor (Police)
- Automatic BDR system recording of takeaway purchases, as distinct from the manual recording of purchases by the retailer (Police)
- Improve the amenities offered by licensees for drinking on the premises in pubs and clubs (CAO)
- Re-establishment of the Alcohol Reference Group and implementation of the Alcohol Management Plan (Barkly Regional Council)

49. In his submission, the Commonwealth Minister reminded the Commission of his interventionist powers under the SFNT Act, as set out at paragraph 26 and 27 of these Reasons for Proposed Variation.

PROPOSED TAKEAWAY TRADING HOURS

50. The Commission proposes that the prohibition on Sunday takeaway liquor trading remain in force throughout the Barkly.

51. The Commission proposes that in Tennant Creek, takeaway liquor only be available for sale Monday through to Saturday between the hours of 4 pm and 7 pm. Currently, the trading hours are from 3 pm to 6 pm. The reasons for the proposed change are:

- To avoid exposing children on their way home from school at 3 pm to drinkers congregating at the entrance to takeaway outlets at opening time.
- To provide employees who do not finish work until 6 pm with an opportunity to purchase takeaway liquor when they knock off.
- To enable police POSIs to be maintained without having to relieve officers when shifts change at 3 pm.

52. The Commission proposes that in the wider Barkly region, takeaway liquor only be available for sale Monday through to Saturday between the hours of 12 noon and 7 pm. The Commission considers that the proposed longer hours for roadside traders are justified because:

- The affected licensees depend largely on the custom of tourists, travellers and commercial drivers.

- The limits on the quantity of liquor that can be purchased set out at paragraphs 53 and 54 below will effectively prevent local drinkers from undermining the intended effect of the restrictions by “double-dipping”.

PROPOSED TAKEAWAY LIMITS

53. The Commission proposes that the sale of the following products will be limited to no more than

one of the following per person per day:

- i. 18 cans or stubbies of light beer (not more than 2.7% alcohol by volume); or
- ii. 12 cans or stubbies of mid-strength beer (not more than 3.5% alcohol by volume); or
- iii. 6 cans or stubbies of cider or full strength beer; or
- iv. 6 cans or bottles of Ready to Drink mixes; or
- v. One bottle of fortified wine; or
- vi. One bottle of green ginger wine; or
- vii. Two x 750 ml bottles of wine; or
- viii. One 750 ml bottle of spirits, unless one such bottle has been purchased within the previous 24 hours.

54. The Commission proposes that the sale of the following products be prohibited:

- i. wine or fortified wine in a container larger than 750 ml
- ii. beer in bottles of 750 ml or larger, subject to the Special Condition at paragraph 57(ii) of these Reasons for Proposed Variation
- iii. high strength Ready to Drink mixes (not less than 7% alcohol by volume) in a container larger than 440 ml

55. The Commission proposes that notwithstanding anything contained in the conditions proposed at paragraphs 53 and 54 above and paragraph 57 below, where a licence contains an existing condition which is more restrictive than the conditions proposed herein, the existing condition prevails.

56. The Commission considers that these more stringent conditions are appropriate for the following reasons:

- The current restricted conditions allow, depending on which product the purchaser elects to buy, the daily purchase of up to between approximately 8 (one bottle of green ginger wine) and 43 (twelve 660ml bottles of high-strength Ready to Drink mix) standard drinks. The Commission considers that this range is too broad, and that its top end is too high.
- Instead, the Commission proposes a smaller range with a lower top end, namely approximately 8 (one bottle of green ginger wine) to 15.4 (two bottles of red wine) standard drinks.
- The proposed restrictions, while still permitting the purchase of up to almost eight times the recommended average number of daily standard drinks per day,²⁵ will nevertheless very substantially reduce the amount of alcohol currently able to be purchased.
- The proposed conditions allow the continued purchase of standard bottles of full-strength spirits, by restricting their purchase to one every two days. The Commission is informed that the existing scanning system by which takeaway purchases are tracked

²⁵ See footnote 3 of these Reasons for Proposed Variation

and controlled on a daily basis can be readily modified to accommodate this proposal.

In this manner, moderate drinkers who prefer to consume spirits will not be penalised.

- The proposed limits will align the daily amount of takeaway liquor that can be purchased at roadhouses with the daily amount that can be purchased from licensed premises in Tennant Creek. This will remove any incentive to drinkers to drive to another location in the Barkly region where the conditions are less restrictive.
- The proposed restrictions substantially replicate, complement and support local limits on the supply of takeaway liquor to residents of remote communities, such as the long-standing agreement between the Devils Marbles Hotel not to sell more than six cans of full-strength beer to members of the Alekerenge community.
- The proposed restrictions are non-discriminatory, and will apply equally (with limited exceptions) to all purchasers who are not on the Banned Drinkers Register.
- The proposed restrictions will not give regional takeaway outlets an unfair competitive advantage over Tennant Creek licensees, or vice versa.
- The proposed restrictions are in accord with the submissions of key stakeholders, as discussed at paragraph 43 of these Reasons for Proposed Variation.

SPECIAL CONDITIONS FOR BONA FIDE LODGERS

57. The Commission proposes that bona fide lodgers of licenced premises be permitted to purchase between 12 pm and 11 pm:

- i. Liquor not subject to the restrictions referred to at paragraph 53 above, for consumption by the lodger or invited guests of the lodger during the lodging period in the room, caravan site or camping site occupied by the lodger

- ii. Darwin Stubby Souvenir packs, provided they are sold at room temperature and in the presentation box provided, for consumption away from the premises

58. "Lodger" means a person staying in accommodation provided by the licensee and includes a properly established caravan park or camping area maintained by the licensee at or near his premises. To establish their bona fides for the purpose of purchasing liquor pursuant to these special conditions, lodgers must produce personal identification plus proof that they have paid for their accommodation.

SPECIAL CONDITION FOR BUSH ORDERS

59. The Commission proposes that people placing bush orders, being bona fide orders from bush communities, cattle stations or work camps remote from Tennant Creek, be permitted to purchase up to seven "days worth" of liquor as set out in paragraph 53 above. To establish their bona fides for the purpose of purchasing liquor pursuant to this special condition, orders must be placed on accounts and received by telephone or email at least one day in advance. All documentation must be retained for each order and made available to Liquor Inspectors on request.



Russell Goldflam

Acting Deputy Chairperson

Northern Territory Liquor Commission

8 May 2018