

# Northern Territory

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## LIQUOR COMMISSION

### NOTICE OF PROPOSED VARIATION OF THE CONDITIONS OF LICENCES

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#### MATTER: PROPOSED VARIATION OF THE CONDITIONS OF LICENCES

#### LICENSEES

#### LICENCE NUMBER

<b>Erlunda Desert Oaks Resort Pty Ltd (Desert Oaks Motel)</b>	<b>80100446</b>
<b>Gap View Holdings Pty Ltd (Gapview Resort Hotel)</b>	<b>80102399</b>
<b>Kulgera Trading Company Pty Ltd (Kulgera Hotel)</b>	<b>81202158</b>
<b>LAE Supermarkets Pty Ltd (Eastside IGA)</b>	<b>80902628</b>
<b>LAE Supermarkets Pty Ltd (Flynn Drive IGA)</b>	<b>80902945</b>
<b>LAE Supermarkets Pty Ltd (Northside IGA)</b>	<b>80902690</b>
<b>Liquorland (Australia) Pty Ltd (Liquorland Alice Springs)</b>	<b>80901729</b>
<b>M &amp; J Pascoe and Daughters Pty Ltd, Pepity Pty Ltd, Wrigm Pty Ltd, GRJP Pty Ltd, Stewie Pty Ltd, Maniel Dark Pty Ltd and MT Radloff Pty Ltd (Todd Tavern)</b>	<b>80102200</b>
<b>Silvery Pty Ltd (United Heavitree)</b>	<b>80902567</b>
<b>Stuart Highway Investments Pty Ltd (Pigglys)</b>	<b>80902640</b>
<b>Tancor Nominees Pty Ltd (Milner Road Foodtown)</b>	<b>80902951</b>
<b>Woolworths Group Limited (BWS Alice Springs)</b>	<b>80902856</b>

**LEGISLATION:** Section 33, *Liquor Act 1978*.

**CONSIDERED BY:** Mr Richard Coates (Chairperson)

Mr Russell Goldflam (Legal Member)

Ms Pauline Reynolds (Health Member)

Mr Blair McFarland (Community Member)

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1. Pursuant to s33 of the *Liquor Act 1978* ("the Act"), the Northern Territory Liquor Commission ("the Commission") proposes to vary on its own initiative the licence conditions of licensees authorised to sell or supply takeaway liquor to the general public in Alice Springs and the surrounding district in the manner set out below, for the reasons that follow.

## THE NEED FOR AN INQUIRY

2. In its Decision Notice dated 12 June 2018 varying takeaway liquor licence conditions in the Barkly ("the Barkly Decision"), the Commission stated:

The Commission has received representations from the Alice Springs community that restricted conditions similar to those now in force in Tennant Creek should also be imposed in Alice Springs.<sup>1</sup>

3. Those representations, which comprised correspondence from Tangentyere Council Aboriginal Corporation ("Tangentyere Council")<sup>2</sup> and public comments by then Acting Assistant Commissioner of Police (South) Michael White,<sup>3</sup> were made in the context of community concern amidst signs that alcohol-related harm in Alice Springs was on the rise. In the six months to 31 March 2018, the prevalence of both assault offences and alcohol-related assault offences in Alice Springs substantially increased over the equivalent periods in each of the three previous years.<sup>4</sup> In the 12 months to 30 April 2018, the Alice Springs Hospital (which services about 16% of the population of the Northern Territory) accounted for almost half of the Northern Territory's Emergency Department assault presentations, 45% of the Emergency Department alcohol-related presentations, and over half of the domestic and family violence presentations.<sup>5</sup> The Northern Territory rate of deaths due to harmful alcohol consumption in 2017 was more than three times the national average, and the "Rest of NT" rate was more than three times the "Greater Darwin" rate.<sup>6</sup>
4. On 3 July 2018, the Peoples Alcohol Action Coalition ("PAAC") wrote to the Commission expressing concern about the apparent increase in alcohol-related harm in Alice Springs, and advocating for the imposition of restrictions on takeaway liquor sales in Alice Springs.
5. The Commission considered these matters at its full meeting held on 14 August 2018. It formed the view that there was an evidentiary basis to support

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<sup>1</sup> Northern Territory Liquor Commission, *Variation of the Conditions of Licences* (12 June 2018), at [30]

<sup>2</sup> Correspondence to Attorney-General and Minister for Justice, referred to the Commission 23 May 2018

<sup>3</sup> ABC interview, 27 April 2018

<sup>4</sup> Data provided to Commission by NT Police, May 2018

<sup>5</sup> Health Department data obtained by FOI request, and provided to Commission by the Peoples Alcohol Action Coalition, July 2018

<sup>6</sup> Australian Bureau of Statistics, *Report 3303.0 - Causes of Death, Australia, 2017*, accessed at <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/3303.0~2017~Main%20Features~Deaths%20due%20to%20harmful%20alcohol%20consumption%20in%20Australia~4>

community concerns that alcohol-related harm in Alice Springs was disproportionately high compared to the Northern Territory as a whole, and that the level of harm was increasing. Accordingly, the Commission resolved to commence an inquiry (“the inquiry”) pursuant to s33 of the Act to consider varying takeaway liquor licence conditions in Alice Springs and the surrounding district.

## THE INQUIRY

6. On 3 September 2018, the Commission commenced consultations with the Central Australian community by notifying 33 potentially affected licensees<sup>7</sup> and inviting submissions. The Commission also sought data indicative of alcohol-related harm from a range of service providers. In October 2018 the Commission met with a number of licensees, as well as with NT Police, the Alice Springs Town Council, Tangentyere Council, Santa Teresa community members and PAAC. Twenty four submissions were received, eighteen of which were non-confidential and posted on the Commission’s website.<sup>8</sup> In February 2019, the Commission met with the licensees of the Kulgera Hotel and the Desert Oaks Motel (Erlunda).
7. In summary, the submissions received and views expressed to the Commission through its consultations fell into two main categories.
8. Government and non-government service providers, community organisations, health professionals and private individuals deplored the high levels of alcohol-related harm in Alice Springs, and supported supply restrictions.
9. On the other hand, licensees and liquor, hospitality and tourism industry bodies opposed the imposition of supply restrictions, and submitted that no such restrictions should be imposed at a time when numerous other alcohol harm-minimisation measures are being tried out (as detailed at paragraph 11 below). They did however propose the introduction of “suspicious transaction” reporting.
10. The Commission has considered the information, views and suggestions it has received through the consultation process and extends its thanks for the contributions to the inquiry by licensees, government agencies, non-government organisations and members of the community.

## FURTHER MEASURES

11. Since the establishment of the inquiry, several significant alcohol policy measures have been undertaken in accordance with the Northern Territory Alcohol Harm Minimisation Action Plan 2018-2019<sup>9</sup>, including:

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<sup>7</sup> Due to an administrative oversight, the Commission did not notify the Kulgera Trading Company Pty Ltd at that time

<sup>8</sup> Accessed at <https://justice.nt.gov.au/regulatory-services/licensing-boards-committees-and-advisory-councils/liquor-commission/review-of-takeaway-licence-conditions-in-alice-springs>

<sup>9</sup> Accessed at <http://apo.org.au/system/files/134976/apo-nid134976-608751.pdf>

- a. From August 2018, the Commissioner of Police commenced to utilise the power recently conferred on him by the enactment of s 48B of the Act, issuing warnings and immediate 48 hour licence suspensions to various Alice Springs licensees.
- b. In August 2018, the Northern Territory Government published a Progress Update<sup>10</sup> on its Response to the Alcohol Policy and Legislation Review (“the Riley Review”) recommendations, detailing a broad range of further alcohol harm minimisation measures that are being planned, including the establishment of a risk-based liquor license fee scheme, and consideration of the 2017 Riley Review recommendations that additional conditions be imposed on grocery store liquor licences.
- c. On 21 August 2018, the first squad of 18 Police Auxiliary Liquor Inspectors (“PALIs”) commenced active duties, with the result that a continuous police presence at all Alice Springs bottleshops during trading hours was established, and has apparently been generally maintained.
- d. On 1 October 2018, amendments to the Act came into force establishing a minimum retail price of \$1.30 for a standard drink (“the volume of a liquor product that contains 10 g of ethyl alcohol when measured at 20°C”<sup>11</sup>).
- e. On 21 November 2018, the Minister for Police, Fire and Emergency Services announced the installation of six mobile CCTV units to be placed in “antisocial hotspots and in front of bottleshops” in Alice Springs to “detect and deter secondary supply of alcohol”.
- f. On 28 November 2018, the Attorney-General and Minister for Justice introduced the *Liquor Amendment Bill 2018*, which, when enacted, will confer additional powers on police and PALIs to detect and prevent offences against the *Act*, with a focus on preventing illegal secondary supply of liquor.

## THE DATA

12. On 1 September 2017 the Banned Drinkers Register (“BDR”) was re-introduced. On 20 December 2018, the Menzies School of Research “Twelve-month Evaluation of the Banned Drinker Register in the Northern Territory” (“the BDR Evaluation”)<sup>12</sup> was published. For the BDR Evaluation, the authors compiled data which, when examined in conjunction with Northern Territory Crime Statistics Data,<sup>13</sup> enables the following observations to be made

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<sup>10</sup> Accessed at <https://alcoholreform.nt.gov.au/>

<sup>11</sup> Section 118B(1), *Liquor Act*

<sup>12</sup> Accessed at <https://hdl.handle.net/10137/7236>. See, in particular, Figure 81

<sup>13</sup> Accessed at <http://pfes.nt.gov.au/Police/Community-safety/Northern-Territory-crime-statistics/Statistical-publications.aspx>

regarding the average number of alcohol-related assault offences per month in Alice Springs:

- a. In the three months before police patrols outside bottle shops labelled as point of sale interventions (“POSIs”) in Alice Springs were introduced in January 2014, there were on average 113 alcohol-related assaults per month. Over the equivalent period in the following year, there were an average of 81 such assaults per month, a 28% reduction.
- b. Taking into account seasonal fluctuations, Alice Springs alcohol-related assault levels thereafter remained reasonably static until the second half of 2017, when they commenced to rise, reaching a record monthly high of 155 in December 2017. Alcohol-related assaults in the last quarter of 2017 were 37% higher than the corresponding quarter in 2016.<sup>14</sup>
- c. Following the December 2017 peak, the rate of increase of alcohol-related assaults declined in the first half of 2018, and in the second half of 2018 the number of alcohol-related assaults began to decline. Then, in the four months from 1 September 2018 to 31 December 2018 (the most recent data set currently available), the average monthly number declined by 44% from the equivalent four months in 2017, from 120 to 67. In December 2018, there were less than half as many alcohol-related assaults recorded by police as in December 2017.
- d. The incidence of assaults associated with alcohol as a proportion of total assaults in Alice Springs declined from 65.9% in the four months to 31 December 2017, to 54.6% in the equivalent four months in 2018.

13. There are credible anecdotal reports that in the months following the commencement of PALIs in Alice Springs, there was a major reduction in presentations to the Emergency Department of the Alice Springs Hospital, and in particular, domestic violence presentations.<sup>15</sup>

## DISCUSSION

14. The Commission has previously considered the legal provisions applicable to a s 33 inquiry.<sup>16</sup>

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<sup>14</sup> The Commission received submissions from PAAC, Central Australian Aboriginal Congress and Robyn Lambley MLA credibly asserting that this increase was associated with a reduction in POSI coverage of bottleshops in the second half of 2017. See also: Sara Everingham, “Alcohol-related harm in Alice Springs skyrocketing since police presence reduced, local health group says” (ABC Online report, 3 February 2018), accessed at <https://www.abc.net.au/news/2018-02-03/alcohol-harm-alice-springs-skyrocketing-since-police-reduced/9392238>

<sup>15</sup> J Boffa, “Much less drunken violence an early Christmas present” (letter to the editor), *Alice Springs News*, 12 December 2018, accessed at <http://www.alicespringsnews.com.au/2018/12/12/much-less-drunken-violence-an-early-christmas-present/>

<sup>16</sup> Northern Territory Liquor Commission, *Reasons for Proposed Variation of Licences* (8 May 2018), at [18] to [27]

15. Having examined the data made available to it, the Commission is satisfied that since the establishment of the inquiry, the concerning escalation of alcohol-related harm in Alice Springs in 2017 slowed in the first half of 2018, and was reversed in the last four months of 2018.
16. The Commission is also satisfied that the introduction in 2014 of POSIs, and in September 2018 of PALIs, substantially contributed to an immediate and significant reduction in alcohol-related violence in Alice Springs.
17. The Commission accepts the finding of the BDR Evaluation that the BDR has formed “part of the contribution in achieving a healthier and safer community by reducing alcohol-related harms”,<sup>17</sup> and that further evaluation is required to assess the impact of the BDR in the longer term.
18. Similarly, the Commission considers that more time is required to assess the impact of the further alcohol harm minimisation measures set out at paragraph 12 above.
19. In these circumstances, the Commission considers that it is currently neither necessary nor desirable to impose additional restrictions on the takeaway sale of liquor in Alice Springs, and that to do so may impede evaluation of the effects of the other harm minimisation measures that have recently been introduced.

## **REPORTING SUSPICIOUS TRANSACTIONS**

20. As suggested by licensees and the liquor industry groups that contributed to the inquiry, the Commission proposes to add conditions to takeaway licences requiring the reporting of suspicious transactions, in order to assist police to detect, prosecute, deter and prevent the illegal secondary supply of liquor.
21. It is proposed that “suspicious transactions” be defined as:
  - a. Sales to an individual in excess of any of the following: two cartons of full strength beer, six 750ml bottles of wine, two 750 ml bottles of spirits or twenty four cans or bottles of Ready to Drink mixes.
  - b. A third or subsequent occasion on which liquor is sold to the same individual on the same day.
  - c. Any other liquor sale arousing suspicion on the part of the salesperson that the purchaser intends to commit an offence by possessing, consuming or supplying liquor in a manner or place prohibited by law.
22. It is proposed that:
  - a. Suspicious transactions be reported immediately to a PALI or other police officer on patrol at the premises; or, if there is no officer at the premises, by email as soon as practicable to the Alcohol Policing Unit.

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<sup>17</sup> See fn 12 above, p 14

- b. Suspicious transaction details as prescribed by the Director-General of Licensing be recorded by the licensee or an employee of the licensee in a daily register, including time of transaction, type of suspicious transaction and time of report to police.
- c. The licensee be required to provide the day's register to the PALI or other police officer on patrol at the premises when trading ceases for the day; or, if there is no officer at the premises at that time, on the next occasion an officer attends the premises.
- d. The register be made available at any time on request by NT Police.
- e. The licensee be required to display on the premises signage approved by the Director-General of Licensing notifying customers of the suspicious transactions conditions.

23. The Commission notes the proposal by the Central Australia Liquor Accord and others that the identification system established by s31A of the Act be enhanced so as to instantaneously flag suspicious transactions and alert police.

## **AFFECTED LICENSEES OUTSIDE ALICE SPRINGS**

24. The following establishments authorised to sell liquor away from the licensed premises outside Alice Springs ("the roadside inns") fall within the compass of this inquiry:

- Aileron Roadhouse
- Curtin Springs Roadhouse
- Desert Oaks Motel (Erlunda)
- Kulgera Hotel
- Red Centre Farm (Ti Tree)

25. The Barkly decision imposed a condition on the Devils Marble Hotel licence that gave effect to a pre-existing agreement between the licensee and the local community. In a subsequent associated Decision Notice issued on 11 July 2018, the Commission imposed a similar condition on the Renner Springs Desert Hotel/Motel.

26. Likewise, the Curtin Springs Roadhouse licence includes a Special Condition that gives effect to an agreement between the licensee and the local community. That agreement is recited in full in its licence.

27. The Kulgera Hotel licence includes the following Special Condition:

It is noted that the Licensee and the Pitjantjatjara Council have reached an agreement concerning restrictions on the sale of alcohol for consumption away from the premises and that agreement has been recorded in writing.

The Licensee shall lodge that agreement with the Director-General. Any change to that agreement shall be similarly recorded in writing and, further shall be notified forthwith to the Director-General.

As part of that agreement, the substance of the agreement is to be exhibited by means of a sign prominently displayed on the licensed premises.

28. The Licensee of the Kulgera Hotel has provided the Commission with the following details of the current agreement, which has been in place since June 2018:

We do not sell takeaway alcohol to people travelling to, or living in dry communities. These communities are dry at the wishes of the aboriginal elders. Minimising alcohol products in a manner that minimises the potential harm that may be caused by alcohol consumption to individuals, their families and the community generally.

Kulgera pub requires identification and address checks before the sale of takeaway alcohol and may refuse service based on a postcode in accordance with the wishes of the community.

29. In order to give full and lasting effect to this agreement, the Commission now proposes to delete the condition set out at paragraph 27 above, and replace it with the one set out at paragraph 31 below.

30. Although the Desert Oaks Motel (Erlunda) licence contains no such Special Condition, its licensee also voluntarily restricts the sale of liquor to residents of local communities.

31. The Commission now proposes to impose a Special Condition on the Kulgera Hotel and the Desert Oaks Motel (Erlunda) similar in effect to the restrictions on the sale of takeaway liquor currently in force for the Curtin Springs Roadhouse, by adding the following Special Condition to the Kulgera Hotel and the Desert Oaks Motel (Erlunda) licences:

The licensee is not permitted to sell or supply liquor for consumption away from the premises to:

- a. any person who is unable to satisfy the licensee that they do not reside or normally reside in:
  - i. a general restricted area declared pursuant to s74(1)(a) of the *Liquor Act 1978* (NT);
  - ii. an alcohol protected area declared pursuant to s27 of the *Stronger Futures in the Northern Territory Act 2012* (Cth);
  - iii. any of the Communities or Homelands on the Pitjantjatjara Lands in South Australia; or

- iv. any of the Communities or Homelands on the Ngaanyatjarra Lands in Western Australia.
- b. any person who the licensee knows intends to supply the liquor to a resident of the areas set out in sub-condition (a) above.

The Licensee may at his or her discretion refuse service to any person whom he or she has reason to believe is attempting to purchase liquor on behalf of the persons described above.

Notes:

- (i) A list of residential areas subject to restricted area declarations pursuant to s74 of the Act is published at <https://nt.gov.au/law/alcohol/where-you-cant-drink-in-the-NT/list-of-restricted-areas>
  - (ii) As at February 2019, the residential areas declared to be alcohol protected areas also comprise the town camps prescribed by the *Northern Territory National Emergency Response (Town Camps) Declaration 2007 (No. 1) (Cth)*<sup>18</sup> and the *Northern Territory National Emergency Response (Town Camps) Declaration 2007 (No. 2) (Cth)*.<sup>19</sup>
  - (iii) “Pitjantjatjara Lands” means the lands described in the First Schedule to the *Pitjantjatjara Land Rights Act 1981 (SA)* but does not include any roads referred to or described in the Second Schedule to that Act or any road reserved within the meaning of Section 33 of the Act.
  - (iv) “Ngaanyatjarra Lands” means the lands contained in the Reserves (Use & Benefit of Aboriginals) Nos. 17614, 21471, 24923, 40783, 29452, 40787 and 40781 in Western Australia declared under Part 3 of the *Land Act 1933 (WA)* and the Leases which were granted to the Ngaanyatjarra Land Council (Aboriginal Corporation).
32. In addition, and at the request of the licensee, the Commission also proposes to amend the Desert Oaks Motel (Erdunda) licence by amending its registered address to PO Box 1017 CAMDEN NSW 25170.
33. The Commission does not propose to vary the Curtin Springs Roadhouse, Aileron Roadhouse or Red Centre Farm licence conditions at this time.
34. Notwithstanding anything contained in the proposed conditions set out above, where a licence contains an existing condition which is more restrictive than the proposed conditions, the Commission proposes that the existing condition prevails.

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<sup>18</sup> Accessed at <https://www.legislation.gov.au/Details/F2007L03684>

<sup>19</sup> Accessed at <https://www.legislation.gov.au/Details/F2007L04189>

## **INVITATION TO LICENSEES TO RESPOND**

35. Pursuant to s33(2) of the Act, the Commission invites affected licensees to submit a response to the proposed variations within 28 days of this notice.

A handwritten signature in black ink, consisting of a large, stylized initial 'S' followed by a series of connected loops and a final horizontal stroke.

CHAIRPERSON

NORTHERN TERRITORY LIQUOR COMMISSION

27 February 2019

On behalf of Commissioners Coates, Goldflam, Reynolds and McFarland