

Northern Territory Licensing Commission

Reasons for Decision

Date of Decision: 11 April 2011

Licensee: Richard O'Sullivan (Chairman)
Philip Timney (Legal Member)
Helen Kilgariff
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Background

- 1) At its meeting of 13 September 2010 the Alice Springs Alcohol Reference Panel ("the Reference Panel") adopted the following recommendations in respect of alcohol consumption issues in Alice Springs:
 1. *Trialling of electronic identification systems for on premises purposes at the Todd Tavern, The Heavitree Gap Hotel and at the Gapview Hotel.*
 2. *Development of a Premises Amenity Guideline by the Northern Territory Licensing Commission.*
 3. *The NTLC to review licence conditions in Alice Springs, to establish supply controls that would limit sales of alcoholic beverages (>3.5%) between 11.30 am and 2.00 pm, while protecting the legitimate demand for such beverages in the presence of a meal. (In effect to limit the sale of full strength alcohol on licensed premises before 2.00 pm only to patrons consuming a meal).*
- 2) On 11 October 2010 the Minister for Alcohol Policy, the Hon Delia Lawrie MLA, referred the recommendations from the Reference Panel to the Northern Territory Licensing Commission ("the Commission") for consideration.
- 3) As further background, on 18 August 2010 the ABC's Lateline program presented a report entitled "*Grog Still Flows in Alice Springs*". This report has given rise to considerable community and political focus and debate on the issues of alcohol consumption and abuse in Alice Springs. The Lateline report focused on three Alice Springs hotels with Public Bars (namely, the Gapview Hotel, Todd Tavern and Heavitree Gap) and who have a high indigenous client base presenting at these bars on a daily basis.
- 4) The report portrayed these premises as serving indigenous persons in very basic surrounds until 2.00 pm and implied that they were then tipped out into the street where they would be sold takeaway alcohol at bottleshops of these same Licensees.
- 5) The three hotels identified for the trialling of electronic identification systems have agreed to the use of the ID systems in their public bars until 2.00 pm each day with the Northern Territory Government ("the Government") agreeing to fund the provision of the necessary electronic equipment. This equipment has since been put in place and is now operational.
- 6) At the full Commission meeting on 27 October 2010 procedures were established for consultation and review of the matters referred to it by the Minister, in particular the recommendation relating to the limitation of sales of alcohol beverages of >3.5% alcohol content at licensed premises between 11.30 am and 2.00 pm, unless accompanied with a meal. It determined to conduct the review with the participation of the Chairman, Legal Member and the two Alice Springs members.

Consultation

- 7) Letters advising of the three recommendations of the Reference Panel were forwarded to twenty Alice Springs organisations having involvement with alcohol issues, including industry bodies and Licensees, seeking written submissions by 15 December 2010 and advising that the Commission would be conducting a public meeting on 30 November 2010. Advertisements were placed in the media advising of the public meeting and seeking written submissions from members of the public. In addition, arrangements were also put in place to meet with key industry groups and organisations in Alice Springs, many of whom also provided written submissions.
- 8) The public meeting convened by the Chairman of the Commission was attended by approximately 140 Alice Springs residents, where parties put a wide variety of often opposing views. Speakers included the Australian Hotels Association (“AHA”) with its President Mick Burns being their spokesman and the People’s Alcohol Action Coalition (“PAAC”) represented by Russell Goldflam and Jonathan Pilbrow.
- 9) Due to the widespread public interest and the approaching Christmas holiday period, the timeframe for receipt of submissions was extended to 15 January 2011. In all the Commission has received 26 written submissions from industry bodies, concerned citizens, not for profit groups and Aboriginal entities.

Views put forward in Consultation

- 10) At the public meeting convened on 30 November 2010 the vast majority of people present appeared to be supportive of the trialling of electronic identification systems for on-premise sales at the Todd Tavern, Heavitree Gap and Gapview Hotel and for the development of a Premise Amenity Guideline as recommended by the Reference Panel. A view expressed by members of the audience was that these measures should be put in place and monitored prior to consideration of the other Reference Panel recommendation, that is the restriction on full strength alcohol purchase at all Alice Springs licensed premises before 2.00 pm where a meal is not consumed.
- 11) Also discussed at the public meeting was the Government’s “Enough is Enough” initiative which include an integrated series of measures involving a banned drinker register, mandatory alcohol treatment orders, Alcohol Court reforms and increased rehabilitation services. There was a widespread view that the “Enough is Enough” measures would target problem drinkers, whereas a ban on full strength alcohol purchased before 2.00 pm (unless purchased in conjunction with a meal) would impact on the community as a whole and tourists.
- 12) Under the proposed reforms legislation would be introduced to enable Police to issue problem drinkers with a ban from drinking and purchasing takeaway alcohol for up to six months. A trigger for being placed on the banned drinkers’ register could be through being placed in Protective Custody three times in three months, the committing of an alcohol-related offence or domestic violence involving alcohol.
- 13) A number of identically worded signed petitions opposing Recommendation 3 were forwarded by the Alice Springs Chamber of Commerce and the AHA, with a total of 3,984 signatures to these petitions. The overwhelming majority of signatories identify themselves as Alice Springs residents, with a smaller number coming from outlying areas and an even smaller interstate and international number of petitioners. A proforma copy of the Petition is provided in Attachment A.
- 14) Individual consultations were conducted from 29 November 2010 to 1 December 2010 and included meetings with Mr Matt Conlan MLA, Alice Springs Police, AHA, Alice Springs Town Council, Town Camp Chaplain, NT Legal Aid and PAAC.
- 15) Views presented during these consultations were varied. There was general support for the introduction of an ID system for on-premise consumption at the Public Bars at the identified

hotels so as to enforce the withholding of alcohol to persons on court orders and orders prohibiting alcohol as part of rehabilitation and Community Correction programs. Most thought it was a targeted measure aimed at the venues with the greatest problem, being the three premises identified in the ABC Lateline program.

- 16) Similarly, the development of a Premises Amenity Guideline was generally supported on the basis that it may provide a model for the setting of standards, including furniture, fittings and fixtures and provide a guidance for an improved level of ambience conducive to drinking and mixing in a more social environment.
- 17) Industry groups were concerned over the no full strength alcohol without a meal proposal due to its impact on tourism and overall unmanageability. The difficulties of determining who has and who has not consumed a meal, at premises with several serving outlets, was raised. Also raised was the issue of unfairness towards people who may have consumed lunch in their office or a café, or indeed another licensed outlet, and then moved on to another licensed premises prior to 2.00 pm. Its widespread application was viewed as an unfair hindrance on well managed restaurants and licensed premises whose operations do not cause or result in alcohol related crime or anti-social behaviour.
- 18) A number of organisations consulted expressed the view that to impose further supply restrictions ahead of the *"Enough is Enough"* alcohol reforms announced by the Minister for Alcohol Policy was inappropriate and would confuse the monitoring of outcomes of that program. This view point held that measures should be introduced discreetly so as to enable targeted monitoring and assessment of the success or otherwise of such measures.
- 19) Those who expressed support for the Reference Panel recommendations outlined the gravity of excessive alcohol consumption in Alice Springs and its grave consequences to the individuals concerned, their families and the wider community. This view held that further restricting the availability of full strength alcohol on licensed premises would create only a small inconvenience and, with a lessening of pure alcohol consumption, there would be widespread community benefit. Lessening of supply to problem drinkers was an outcome which justified such measures.

Submissions

- 20) Twenty-six submissions were presented to the Commission. Attachment B lists the authors and organisation who made submissions. Outlined in summary point below, without reference to their authorship, are the arguments and positions put in these submissions.
 - The three licensed premises named in the Reference Panel recommendations do not push patrons out of the bars at 2.00 pm, rather patrons choose to leave, with a great number purchasing takeaway alcohol in order to get a "greater bang for their buck".
 - The named premises have not been found to be breaching the law or their licence conditions with their bar service.
 - Licensing Inspectors have closely monitored the three premises since the Lateline program and have not laid any complaints before the Commission over Licensee conduct.
 - Any alcohol restriction to be imposed by the Commission should only apply to the three named venues.
 - What constitutes a "meal", how would it be defined?
 - Purchase of "supper" or a "substantial meal" were abused requirements for entry into many late night venues in other jurisdictions in the 1970's – a condition which failed and has generally been dropped.

- Effectively controlled canteens on communities should be pursued as a means of lessening Alice Springs as being a centre for alcohol supply.
- Further restrictions on alcohol sales/supply in Alice Springs will increase the tension and division in the township.
- Other government reforms are being proposed therefore why implement Reference Panel recommendation (3) now.
- Only the two Reference Panel measures with widespread support should be applied (and these will be implemented by Licensees voluntarily).
- Do not want to drive people out of pubs and licensed premises. Here there are some controls on money spent and purchases at pubs leave less money for the more harm producing takeaway.
- If the named hotels are targeted for implementing all three recommendations, people are likely to move on to other premises, merely resulting in displacement.
- The origin of Reference Panel recommendations was the Lateline program on “animal bars” which unfairly portrayed the venues’ activities/practices in a sensational way.
- The voluntary and Government supported ID system for entry into the three named premises is targeting the problem.
- Restrictions for on-premise consumption of alcohol does not target the cause of the problem; off premises consumption accounts for 75% of alcohol related incidents.
- Requirement to purchase a meal will be hard to regulate.
- Recommendation 3 unfairly targets Alice Springs residents and visitors and requires them to change their way of life; it misses targeting the problem drinkers.
- Recommendation 3 impacts on shift workers who socialise after coming off work.
- The Reference Panel recommendations are a knee jerk reaction to a sensationalised TV program.
- The hospitality industry are stakeholders in solving alcohol problems and should not be treated as merely the cause of the problem.
- Education is needed to change perception of what bars are there to provide ie a venue for relaxation and social interaction while having a drink.
- A greater emphasis needs to be placed on education and other influences on problem drinkers’ behaviour.
- Drinking on premise should be considered a privilege and be an enjoyable experience and should not occur along racial or cultural lines.
- Premises amenities guidelines need to be accompanied by education.
- Commend those premises in Alice Springs which are upgrading the physical environment.
- What are the consequences for special events, champagne lunches, weddings, Melbourne Cup festivities etc?
- With mixed drinks who determines those under or over 3.5% alcohol by volume?

- If all recommendations implemented at the named venues, there will be displacement to other premises and increased on-selling (secondary supply).
- Tightening of alcohol sale controls will increase break-ins.
- Authorities have difficulty in enforcing current laws, further restrictions will increase lack of enforcement.
- How can it be determined if a person has had a meal when seeking to purchase drinks with over 3.5% alcohol content by volume?
- The distress, fighting and accidents due to alcohol that occur in and around the township demands a response, even if the majority of people are inconvenienced.
- Responsible Service of Alcohol is not the problem, but irresponsible consumption is.
- 75% of the drink problem is attributable to takeaway consumption.
- Morning trading impacts on school attendance, where parents, grandparents and siblings are drinking. This impact is particularly evident with town camp residents.
- There is no alcohol free space allowing alcoholics to sober up or purchase food and non-alcoholic drinks.
- It is not unreasonable to require consumption of a meal when consuming full strength alcohol.
- The proposed Reference Panel measures do target and impact on the heaviest drinkers.
- Medically alcohol is a product of harm and addiction.
- Curtailment of alcohol supply is unjustly resented by some who are fuelling a racial divide.
- A minimum floor price would have a uniform impact and lessen consumption, particularly of cheaper, high alcohol products.
- The community is living with an alcohol fuelled catastrophe with indicators that the situation is not improving; something needs to be done.
- Drastic measures are required as the NT has four times the imprisonment rate of the Australian average and it is growing at double the national rate.
- 70% of offences are committed under the influence of alcohol.
- Why should a restriction be rejected just because people do not like it.

21) The above summaries do not include all matters raised in the twenty-six submissions but are generally indicative or representative of the vast majority of comment.

Consideration of Issues

Recommendation 1:

22) *Trialling of electronic identification systems for on premises purposes at the Todd Tavern, The Heavitree Gap Hotel and at the Gapview Hotel”.*

23) The use of the ID system received widespread endorsement as a practical measure prohibiting those on court orders and parole conditions from the consumption of alcohol and from entering bars at the three named venues. There was some concern that persons so

restricted from entering these bars would attempt to gain entry at other pubs and clubs in the township. This concern was mitigated in the eyes of the Commission by other Licensees in the township advising that this cohort of the population was unlikely to be systematically admitted and served at these premises due to dress and department codes. Additionally, local knowledge would provide general awareness of many who are subject to prohibition orders or restrictions and allow for security or staff to identify them and exclude them from their premises.

- 24) Evidence was provided of the voluntary compliance of the affected Licensees with the application of electronic ID for entry up until 2.00 pm, after which the bars may close. The Commission was informed that Government supported the introduction of the electronic ID hardware through the funding of installation costs and that the electronic ID system has been operational in all three venues since December 2010.
- 25) The Commission endorses the use of the ID system which seeks to deny alcohol to persons on various alcohol orders. Persons on such orders are also not able to purchase takeaway alcohol through the requirement in Alice Springs to produce ID which is scanned to determine if there are any orders or restrictions on the purchase of alcohol.
- 26) Production of valid ID to allow on-premise purchase of alcohol is already in existence for the Nguiu Social Club and the Borroloola Hotel. In these cases the Commission imposed the requirement to produce ID as a means to prevent banned persons from purchasing alcohol and in an even more controlling manner, to regulate the quantity of alcohol allowed to be purchased on any one day. (The imposed limit is six cans of mid strength or light alcohol at Nguiu and ten cans of mid strength or light beer at Borroloola.)
- 27) While the Reference Panel recommendation seeks a trialling of the use of ID, the Commission is of a view that such a measure is a viable and effective means of controlling alcohol consumption of problem drinkers. The "Enough is Enough" legislative reforms include the need to produce ID when purchasing takeaway alcohol to give effect to the banned persons register. The system to be put into place to check that a person has no prohibiting order preventing the purchase of takeaway alcohol can readily be applied to on-premises alcohol purchase.

Recommendation 2:

- 28) *"Development of a Premises Amenity Guideline by the Northern Territory Licensing Commission" also received support during the Commission's consultations.*
- 29) When presented with very basic or substandard surroundings it is not unreasonable for patrons to have lowered behavioural expectations. Where a bar or premise presents as a drinking den or what has been described in the Lateline program as an "animal bar", behaviour will likely match. Universal support for the Amenities Guideline was largely based on this reasoning.
- 30) It is the Commission's experience that the lack of socialised drinking practices with many Indigenous persons (and a significant number of non-indigenous drinkers) is often aligned with being presented with only the most basic of premise standards and ambience. The codifying of standards of presentation, including improving fittings and furniture requirements, would assist with creating a more ambient social environment at a number of licensed outlets across the Northern Territory, as well as in Alice Springs.

Recommendation 3:

- 31) *"The NTLC to review licence conditions in Alice Springs, to establish supply controls that would limit sales of alcoholic beverages (>3.5%) between 11.30 am and 2.00 pm, while protecting the legitimate demand for such beverages in the presence of a meal."*
- 32) The Commission was advised by the Reference Panel that it is seeking to limit the availability of alcohol above 3.5% alcohol by volume on licensed premises until 2.00 pm to

those consuming a meal. This measure has been recommended by a body comprised of well-informed health and alcohol treatment specialists, Government officials, Town Council and social advisory groups in Alice Springs. This body is charged, amongst other things, with putting forward proposals to mitigate the harm caused by alcohol. The suite of proposals forwarded to the Minister for Alcohol Policy has been put to the Commission for consideration.

- 33) As outlined above, Recommendations 1 and 2 have evident widespread community and industry support. Noting this support and the merit of these proposals they are endorsed by the Commission.
- 34) Recommendation 3 is more problematic, both in terms of lack of community support and likely consequences should it be implemented. While it is manifest that this measure would lessen alcohol consumption and resultant harm, there would be other likely undesirable consequences. Due to lack of community support, it is highly probable that its introduction would be received with rejection and resentment by a large proportion of the population, causing increased friction in the community and a wider social and cultural divide.
- 35) Also impacting on consideration of this measure is the Government “Enough is Enough” program to be introduced in mid 2011. This program provides a targeted approach to problem drinkers by denying them access to alcohol and requiring them to undergo treatment and rehabilitation. Throughout consultation there was majority support for this program and it that it should be implemented, monitored and evaluated before applying further alcohol sale restrictions.
- 36) Constant reference during consultation was made to the restrictive alcohol supply conditions already applying in Alice Springs, including:
- No full strength alcohol served until 11.30 am Monday to Friday;
 - A ban on sale of 4 and 5 litre casks of wine;
 - Restricted takeaway hours with purchases commencing at 2.00 pm on weekdays and closing at 9.00 pm;
 - 2 litre wine casks sales commencing at 6.00 pm and closing 9.00 pm seven days a week.
 - Sale on any given day is restricted to one litre of fortified wine or one cask of wine per person.
- 37) Given the already restricted availability of alcohol purchases for the whole township, the Commission was informed that future measures needed to impact on the individual problem drinker or Licensee, should there be breaches of their licence conditions, rather than further restrictions that impact on the whole community.
- 38) The Menzies School of Health 2009 report *“Moving Beyond the Restrictions: The Evolution of the Alice Springs Alcohol Management Plan”* recommended maintenance of alcohol restrictions in their current form. Before any stronger measures are introduced, the report recommended *“that extensive community consultation, education and social marketing be conducted”*.
- 39) Future measures need a platform of credibility and community acceptance to be tenable. Strong opposition could compromise the effectiveness of any enforcement of unpopular measures, undermining their validity.
- 40) The Commission therefore does not endorse Recommendation 3 and is of the view that the “Enough is Enough” program appears a more effective way of tackling problem drinker and alcohol harm issues in Alice Springs, as well as across the Territory.

Decision

- 41) The Commission supports and endorses the trialling of an ID system as a means of prohibiting entry of problem drinkers into the three nominated licensed premises prior to 2.00 pm. The Commission notes the production of ID to gain entry may achieve the linked objectives of improving patron behaviour and the barring of persons with a history of harmful alcohol abuse.
- 42) While it is yet to be determined how long the trial use of ID will be in place, the Commission recommends its continuance for at least twelve months, with ongoing monitoring by Licensing Inspectors and Police. Following twelve months operation the outcome of the trial should be reviewed to determine:
- its impact on the licensed premises involved;
 - the degree of displacement of problem drinkers to other venues; and
 - whether the use of ID at the nominated premises should become a permanent licence condition.

The latter could be applied through powers vested with the Commission which also provides Licensees with an appeal process, determined by the Commission through a formal Hearing.

- 43) Throughout the Commission's consultations there was strong support for the development of a Premises Amenity Guideline. The framing of such a Guideline is endorsed and the Commission has been advised that the Draft Guideline will be available for release for consultation purposes at the time of handing down the Commission decision in relation to the Alcohol Reference Panel Recommendations. While the Guideline would be expected to apply to the three licensed premises under scrutiny in Alice Springs, it would also have wide relevance and potential application to licensed premises throughout the Territory. The Commission is of the view that the nature and quality of appearance and presentation of a venue is critical to the degree of ambience provided to encourage a social atmosphere. The layout, fittings, furniture and other décor can be conducive to socialised drinking as opposed to the provision of austere space which is more likely to produce a beer swilling environment.
- 44) Considerable community opposition was evident over the Reference Panel recommendation to limit the on-premise sale of full strength alcohol prior to 2.00 pm to those purchasing a meal. The presentation to the Commission of a petition, with an apparent legitimate 3,984 signatures, all strongly opposed to this measure, is indicative of community feeling. At the public meeting and through individual consultations the Commission was made further aware that there was lack of widespread community support for the proposal.
- 45) Proponents of the limit of full strength alcohol sales present the argument that it would reduce overall alcohol consumption and lessen alcohol related harm. Advocates of this measure advised the Commission that they understood it would not be popular but it would be a small price to pay for improvement in alcohol related problem behaviour.
- 46) In weighing up the pros and cons of the proposed restrictions of on-premise full strength alcohol sales the Commission is persuaded that the potential (albeit untested) benefits do not justify imposing such a restriction. It is evident that its application could generate considerable community resentment, particularly as applied to restaurants, event, festivities and well managed clubs.
- 47) The Commission on reaching this decision is also influenced by:
- The Menzies School of Health recommendation to maintain the current alcohol restrictions for the present time.

- The Government intention (under the “Enough is Enough” banner) to introduce Territory wide alcohol reforms in mid 2011, including Banned Drinker Register (enforced through ID presentation), Mandatory Alcohol Treatment Orders, Alcohol Court Reforms, increased rehabilitation facilities and services and public awareness campaigns.
- 48) The Commission has formed the view that imposition of further on-premise alcohol restrictions would likely increase the social divide in the township. Widespread community opposition to the measure would also likely undermine any will to enforce adherence to such measures.
- 49) For the present the Commission considers that the “Enough is Enough” program, which includes a targeted approach to dealing with problem drinkers, should be given time to operate and be evaluated before further all-embracing Alice Springs alcohol supply restrictions as proposed by the Reference Panel are considered.

Richard O’Sullivan
Chairman

11 April 2011