

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: VARIATION OF THE CONDITIONS OF LICENCES

LICENSEES	LICENCE NUMBER
Liquorland (Australia) Pty Ltd (Liquorland Alice Springs)	80901729
Stuart Highway Investments Pty Ltd (Milner Road Foodtown)	80902951
Woolworths Group Limited (BWS Alice Springs)	80902856

LEGISLATION: Section 113, *Liquor Act 2019*

CONSIDERED BY: Mr Richard Coates (Chairperson)
Mr Russell Goldflam (Legal Member)
Ms Pauline Reynolds (Health Member)
Mr Blair McFarland (Community Member)

DATE OF HEARING: 16 November 2020

DATE OF DECISION: 19 November 2020

DECISION

1. The Northern Territory Liquor Commission (the Commission) has determined to vary the special conditions imposed by its Decision Notice of 13 January 2020 as follows:
 - a) The date from which the variations referred to in paragraphs 15 and 16 of the Decision Notice are to take effect is from the date of this decision for a 12 month trial period; and

- b) The reportable transaction condition set out in paragraph 16 of that Decision Notice is replaced by the following:

Reportable Transactions Condition

- (1) For the purposes of this condition, “reportable transactions” are defined as the sale or supply of liquor for consumption away from the premises comprising:
 - (a) the sale on a single occasion to an individual in excess of any of the following: three cartons of full strength beer, twelve 750ml bottles of wine, four 750ml bottles of spirits or forty eight cans or bottles of Ready to Drink mixes;
 - (b) a third or subsequent occasion on which liquor is knowingly sold to the same individual on the same day; or
 - (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.
- (2) Subject to sub-clauses (3) and (8), reportable transactions must be reported to NT Police as soon as practicable having regard to the circumstances, including the safety of staff and customers.
- (3) A reportable transaction only needs to be reported to NT Police if:
 - (a) a Police Officer, PALI or Liquor Inspector is not on duty; or
 - (b) a Police Officer, PALI or Liquor Inspector is on duty, but they have notified the licensee’s staff that, until notified again, reportable transactions must be reported.
- (4) Reports to NT Police must include such details as are prescribed by the Director.
- (5) The licensee must provide an email address to the Director for the purpose of reporting reportable transactions. All reports by the licensee to NT Police of reportable transactions must be made by email from that email address. The licensee must retain the email reports of reportable transactions for at least twelve months.
- (6) The email reports must be made available at any time on request by NT Police and the Director.
- (7) The licensee must display on the premises signage approved by the Director notifying customers of the reportable transactions

conditions, including notification that a condition of sale of liquor constituting a reportable transaction is provision by the purchaser to the licensee of identifying information and an explanation for the purchase, details of which will be provided by the licensee to NT Police.

- (8) A reportable transaction does not need to be reported to NT Police if it is a bona fide order from a bush community, cattle station or work camp remote from Alice Springs. To establish their bona fides for the purchasing of 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 a Liquor Inspector upon request.

2. All other conditions, including the Camera Surveillance Condition that was also imposed by the Decision of 13 January 2020 continue to apply to these Licences.

BACKGROUND

3. On 16 October 2020, in accordance with section 113(2) of *the Liquor Act 2019* (the Act), the Commission issued the written notice to each of these three (3) Licensees in the form set out at Attachment 1 proposing the variation of the previously imposed Reportable Transactions Condition in the terms set out in the letters.
4. The only response received was from Endeavour Drinks on behalf of BWS Alice Springs who wrote the following letter:

*“We refer to your letter dated 15 October 2020 regarding the proposed Reportable Transactions Conditions which would apply to BWS Alice Springs, and thank you for the opportunity to respond. We refer to our previous letters to the Commission dated 27 March 2019, 24 June and 18 December 2019 (our **Previous Letters**).*

As the Commission would know, we have consistently sated our support for addressing the issues being faced in and around Alice Springs and are supportive of the Commission’s intent to address these issues. We have also shown willingness to work with authorities to develop and implement strategies to do this. The Commission would also know that we have been reporting suspicious transactions, on a best endeavours basis, and BWS Alice Springs also implements various voluntary measures to minimise the risk of alcohol-related issues.

In our Previous Letters we raised practical concerns we believed needed to be addressed before the proposed licence conditions were imposed, to ensure that licensees would be able to realistically comply, the safety of store team would be

maintained, and customer information would be managed appropriately. We are pleased that the Commission has decided to address a number of these concerns including replacement of the term “suspicious transactions” with “reportable transactions”.

We note that paragraph (3) of the Reportable Transactions Condition only requires reportable transactions to be reported if a Police Officer, PALI or Liquor Inspector is not on duty, or one of the same are on duty but they have notified the licensee’s staff that, until notified again, reportable transactions must be reported. We also note that we made a commitment to Alice Springs Police that the BWS Alice Springs store would not trade unless a PALI was on duty. We have and will continue to adhere to this commitment, and to that extent we do not expect that reportable transactions are likely to be reportable by BWS Alice Springs.

However, in the event that PALIs are no longer available to BWS Alice Springs at some point in the future or a PALI on duty notifies staff that reportable transactions must be reported for a period of time, some of our prior concerns (as outlined in our Previous Letter) – focused on practical difficulties and the enforcement of the condition – may become relevant. For these reasons, we outline below our outstanding concerns with the Reportable Transactions Condition:

- *Certain assessments required of store team members (in a busy store environment) will be difficult and there will be room for subjectivity where the views of our team members may differ from those of PALIs, Police and licensing authorities. These assessments include:*
 - *In relation to paragraph (1)(b) of the Condition, identifications of the “third or subsequent occasion” in a day: this is more difficult in circumstances where our staff start or finish a shift during the course of a day, though we do welcome the introduction of the awareness requirement via the term “knowingly” and*
 - *In relation to paragraph (1)(c), identification of liquor sales “arousing suspicion on the part of the salesperson”.*
- *As with other relevant requirements, our store team members will receive appropriate training and will apply best efforts to meet the requirements of the conditions. We hope these efforts and positive intent will be supported by PALIs, Police and licensing authorities, and enforcement of the conditions will be fair and reasonable taking into account the difficult and multiple requirements placed on store team members”.*

5. In the course of the Northern Territory Civil and Administrative Tribunal (NTCAT) proceedings *Various Alice Springs Liquor Licensees v NT Liquor Commission* (File No 2020-01764-CT) the Applicants asked that the Commission write to the Minister with a request that the Banned Drinkers Register (BDR) be enhanced so that it could record details of the reportable transactions and the licensees staff would not need to do this manually.
6. On 21 October 2020, the Chairperson the Commission wrote to the Minister for Alcohol Policy in the following terms:

Dear Minister

RE: ENHANCEMENT OF THE BANNED DRINKERS REGISTER

In September 2018, the Northern Territory Liquor Commission commenced an inquiry into the takeaway conditions of liquor licences in Alice Springs, as well as two roadhouses in the region, Erdunda and Kulgera.

The Commission determined to establish a “suspicious transactions reporting scheme” in order to assist police to detect, prosecute, deter and prevent the illegal secondary supply of liquor. In its Decision Notice published on 27 May 2019, the Commission stated:

22. The Commission notes the proposal by the Central Australia Liquor Accord and others that the identification system established by s31A of the Liquor Act be enhanced so as to instantaneously flag suspicious transactions and alert police. The Commission considers that this proposal has merit. Although there are privacy issues to consider before adopting this proposal, it would seem clear that an expanded use of the Banned Drinkers Register could make it easier to target both problem drinkers and covert secondary suppliers. This would relieve the burden on licensees, and provide significant benefits in turn for law enforcement. The Commission recommends that the Northern Territory Government review this proposal with a view to implementing it.¹

Some of the affected licensees appealed against the Commission’s decision to the Northern Territory Civil and Administrative Tribunal (NTCAT), which invited the Commission to reconsider the matter. The Commission accepted that invitation, and on 11 November 2019 conducted a public hearing for that purpose. In its Decision Notice issued on 13 January 2020, the Commission confirmed its decision to establish a transactions reporting scheme with some modifications, and renamed it the “reportable transactions” scheme. At paragraph 12 of that Notice, the Commission, as requested by the affected licensees, reiterated the recommendation set out above.²

Following this decision, the appellant licensees maintained their appeal, which I am pleased to advise was settled by way of consent orders made by NTCAT on 2 October 2020, which confirmed, with some further variations, the Commission’s decision of 13 January 2020.

In reaching this settlement, the Commission agreed to a request from the appellant licensees that the Commission write again to you recommending the Banned Drinkers Register (BDR) be modified so that it can be used to detect reportable transactions. I now do so.

The Commission notes that it received no response from the Northern Territory Government to either its recommendation of 27 May 2019, or its recommendation of 13 January 2020.

On this third occasion, rather than merely repeat the Commission’s previous brief recommendations, I consider it is appropriate to provide some elaboration.

¹ Accessed at https://justice.nt.gov.au/_data/assets/pdf_file/0010/697816/alice-springs-s33-decision-notice-final.pdf

² Accessed at https://justice.nt.gov.au/_data/assets/pdf_file/0006/784086/Decision-Notice-Alice-Springs-s33-second-variation-130120.pdf

Firstly, the Commission notes that it was the licensees themselves who took the initiative to establish a reportable transactions scheme. In its submission to the Commission's inquiry, the Australian Hotels Association (NT) stated:

We believe that ensuring a better link from venues to the NT Police, including a requirement to report 'suspicious behaviour' may go some way in addressing the situation where a legally appropriate transaction has occurred as all the criteria have been met yet there is a suspicion that the alcohol purchased may be heading to a restricted area or person.

We can also see it working alongside the Police Auxiliary activities occurring at venues in Alice Springs. If through their behaviour or what they are seeking to purchase once in a store the venue forms the view that their purchase, whilst not illegal, is suspicious, there could then be a requirement to link back up with the Police Auxiliary to take appropriate action.

We are in the Liquor Commission's hands as to whether they wanted to engage with licensees in Alice Springs about including a 'suspicious reporting' standard condition of licence. Included in this work would be the need to develop appropriate guidelines for triggering suspicious reporting.³

Since then, the licensees have repeatedly impressed on the Commission their strong desire that if a reportable transactions scheme is established, it should be incorporated into the BDR. The Commission readily accepts that this would significantly lighten the administrative load on licensees and their staff in operating the scheme.

Furthermore, the Commission considers that modifications to the BDR would improve the effectiveness of the scheme, resulting in improved detection and prevention of secondary supply.

The scheme defines "reportable transactions" for Alice Springs licensees as follows:

"...the sale or supply of liquor for consumption away from the premises comprising:

- a. The sale on a single occasion to an individual in excess of any of the following: three cartons of full strength beer, twelve 750ml bottles of wine, four 750 ml bottles of spirits or forty eight cans or bottles of Ready to Drink mixes;*
- b. A third or subsequent occasion on which liquor is knowingly sold to the same individual on the same day; or*
- 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".*

In certain circumstances, the scheme requires licensees to report reportable transactions to NT Police by email, including such details as are prescribed by the Director of Liquor Licensing (the Director).

The Commission's recommendation, if adopted, would enable licensees to file their report by the simple and discreet expedient of single additional key-stroke executed in the course of the existing BDR screening procedure.

³ Accessed at https://justice.nt.gov.au/_data/assets/pdf_file/0009/585522/AHA-NT-submission-to-the-Liquor-Commission-280918.pdf, p.9

I am advised that the BDR system currently records the name, date of birth and form of identification provided by the customer, and that the salesperson is required to enter a code that identifies whether the identification proffered by the customer is a drivers licence, passport or other. The Commission proposes that the system be modified by the insertion of a prompt to the operator designed to elicit one of two responses: "Reportable transaction" or "Non-reportable transaction". If the operator flags a reportable transaction, the BDR would instantly generate an email alert to NT Police identifying the name and date of birth of the customer, and the location of the premises where the purchase has been made.

An additional modification that I also raise for your consideration would substantially enhance the effectiveness of the second category of reportable transactions, namely those conducted by "shop-hoppers". The BDR could be modified, in a manner similar to measures already in place in Alice Springs and Tennant Creek to detect and prevent attempted prohibited purchases of restricted items, so that an alert would automatically be raised when a customer who has purchased takeaway liquor on at least two occasions that day, makes a subsequent purchase. I acknowledge that this may entail a more complex and expensive software development task than the "single key-stroke" modification discussed above. Nevertheless, the potential benefits may justify the outlay.

As far as I am aware, the last significant modification to the BDR system was in 2018, following the introduction of product restrictions for takeaway purchases in Tennant Creek. I acknowledge that this was a complex undertaking that incurred considerable expense and effort.

The modifications now proposed (and in particular, the first of these two measures), by contrast, would, if submitted, be substantially simpler and cheaper to effect. They would not, in the view of the Commission, unlawfully infringe on the privacy of members of the public.⁴ In addition, I submit that they would bring the following benefits:

- Increased efficiency of takeaway liquor sales at Alice Springs outlets, which already operate at quite restricted hours, and are often crowded and busy.*
- Reduced risk of customers becoming impatient, agitated, abusive or quarrelsome.*
- Fewer reportable transactions would slip through the net and go unreported.*
- Increased deterrent to persons contemplating engaging in secondary supply.*
- Capacity to be rolled out, if deemed appropriate, to other localities.*

I look forward to your considered response to the proposals set out above.

7. The Minister has since responded to the effect that Government will give careful consideration to the Commission's request for the proposed changes.
8. The proposed variation of conditions is less onerous to these licensees than that which had previously been imposed. No reasons have been advanced by these licensees as to why they should not be subject to the same Reportable Transaction

⁴ See Northern Territory Liquor Commission, *Second Proposed Variation of the Conditions of Licences*, 29 November 2019 at [39] to [44] accessed at https://justice.nt.gov.au/_data/assets/pdf_file/0010/762409/Alice-Springs-s33-proposed-variation-Nov-19.pdf

Conditions as the other affected Alice Springs Licensees. The letter from Endeavour Drinks, referred to in paragraph 4 above only raises the same concerns that were considered by the Commission prior to its decision in January earlier this year.

9. Accordingly, the Commission has determined that it is appropriate to vary the conditions of the licences for Liquorland Alice Springs, BWS Alice Springs and Milner Road Foodtown in the terms outlined in paragraph 1 of this Decision Notice.

NOTICE OF RIGHTS

10. Section 31 of the Act provides that any decision of the Commission for which a decision notice is required is reviewable by NTCAT and the following persons (relevantly) may apply to NTCAT for a review:

- a. in all cases – the Director;
- b. in the case of a decision regarding a licensee or a licensee's licence, authority or licensed premises – the licensee.

11. In accordance with the substance of section 31 of the Act any application for review of this decision must be lodged within 28 days of the date of this decision.



RICHARD COATES, CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
19 November 2020
On behalf of Commissioners Coates, Goldflam, Reynolds and McFarland

ATTACHMENT 1

Commission letter to Liquorland Alice Springs, BWS Alice Springs and Milner Road Foodtown

Dear Nominee

RE: NOTICE PURSUANT TO SECTION 113 OF THE LIQUOR ACT 2019

On 13 January 2020, the Northern Territory Liquor Commission (the Commission) determined to vary the conditions of your licence by imposing a Camera Surveillance Condition and the following Reportable Transactions Conditions:

"This condition will apply to the following licensees:

*Gap View Holdings Pty Ltd (Gapview Resort Hotel)
LAE Supermarkets Pty Ltd (Eastside IGA)
LAE Supermarkets Pty Ltd (Flynn Drive IGA)
LAE Supermarkets Pty Ltd (Northside IGA)
Liquorland (Australia) Pty Ltd (Liquorland Alice Springs)
M & J Pascoe and Daughters Pty Ltd, Pepity Pty Ltd, Wrigm Pty Ltd, GRJP Pty Ltd, Stewie Pty Ltd, Maniel Dark Pty Ltd and MTRadloffe Pty Ltd (Todd Tavern)
Stuart Highway Investments Pty Ltd (Pigglys)
Tancor Nominees Pty Ltd (Milner Road Foodtown)
Woolworths Group Limited (BWS Alice Springs)*

1. *For the purposes of this condition, "reportable transactions" are defined as the sale or supply of liquor for consumption away from the premises comprising:
 - a. *The sale on a single occasion to an individual in excess of any of the following: three cartons of full strength beer, twelve 750ml bottles of wine, four 750 ml bottles of spirits or forty eight cans or bottles of Ready to Drink mixes;*
 - b. *A third or subsequent occasion on which liquor is knowingly sold to the same individual on the same day; or*
 - 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.**
2. *Unless a Police Officer, PALI or Liquor Inspector is in attendance and has a reasonable opportunity to observe the customer either conduct the transaction or exit the premises, reportable transactions must be reported to NT Police as soon as practicable having regard to the circumstances, including the safety of staff and customers.*
3. *Reports to NT Police of reportable transactions must include such details as are prescribed by the Director.*
4. *The licensee must provide an email address to the Director of Liquor Licensing for the purpose of reporting reportable transactions. All reports by the licensee to NT Police of reportable transactions must be made by email from that email address. The licensee must retain the email reports of reportable transactions for at least twelve months.*

5. *The email reports must be made available at any time on request by NT Police and the Director of Liquor Licensing.*
6. *The licensee must display on the premises signage approved by the Director-General of Licensing notifying customers of the reportable transactions conditions, including notification that a condition of sale of liquor constituting a reportable transaction is provision by the purchaser to the licensee of identifying information and an explanation for the purchase, details of which will be provided by the licensee to NT Police”.*

Subsequent to the Commission delivering that decision, 6 of the affected licensees appealed the decision to the Northern Territory Civil and Administrative Tribunal (NTCAT).

In the course of those proceedings Various Alice Springs Liquor Licensees v NT Liquor Commission File No: 2029-01764-CT, the Applicants raised for the first time the issue of bush orders and also suggested a more straightforward requirement for reporting reportable transactions to Police or a Police Auxiliary Liquor Inspector (PALI) when they were present at the premises.

The Commission agreed to vary the reportable transactions condition in the terms sought by those licensee Applicants and that variation has now been sanctioned by NTCAT.

As the variation is beneficial to licensees, the Commission has determined that it is appropriate that it should also apply for the benefit of those other Alice Springs Licensees who were not party to the NTCAT proceedings. Accordingly, it is proposed that the reportable transactions condition imposed by the Commission in its decision notice of 13 January 2020 be deleted and replaced with the condition set out at Annexure A.

On behalf of the Commission, pursuant to section 113(2) of the Liquor Act 2019 (the Act), I give written notice of the proposed variation of the conditions of your liquor licence and reasons for the proposed variation. You are invited to submit a response to the proposed variation within 28 days of this notice by email to liquor.commission@nt.gov.au.

On receipt of submissions, the Commission will make a final determination and provide written notice as required by section 113(4) of the Act.

Yours sincerely



Richard Coates
Chairperson
16 October 2020