

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: 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 113, *Liquor Act 2019* (NT)

INTRODUCTION

1. On 6 January 2021, in accordance with section 113(2) of the *Liquor Act 2019* (**the Act**), the Northern Territory Liquor Commission (**the Commission**) issued written notice comprising proposed variations of licence conditions together with reasons for the proposed variations (**the notice of proposed conditions**) to the above-mentioned licensees (**the licensees**), and invited them to submit a response to the variation within 28 days.

2. Section 113(3) of the Act provides:

The Commission may vary the conditions of the licence or authority as proposed in the notice or in another way the Commission considers appropriate after considering:

- (a) Any response of the licensee submitted within the 28-day period; and
- (b) The results of any hearing; and
- (c) The public interest and community impact requirements.¹

3. As it is required to do by section 3(4) of the Act, in considering this matter the Commission has also had regard to the primary and secondary purposes of the Act.

4. For reasons explained at paragraph [32] of the notice of proposed conditions, the Commission determined not to hold a public hearing before issuing that notice, but in the notice the Commission indicated that it was open to conducting a hearing if it formed the view that there was significant support for taking that course.

¹ The Commission view of the construction of section 113(3)(c) of the Act is set out at [24] to [26] of the notice of proposed conditions.

5. The notice of proposed conditions attracted widespread media commentary, leading the Commission to form the view that it was appropriate to conduct a hearing. Accordingly, on 19 January 2021, the Commission issued a notice that it would conduct a public hearing in Tennant Creek on 2 February 2021.
6. The hearing proceeded on that date. Ms Chalmers appeared as counsel assisting, and Mr Anderson appeared on behalf of two of the licensees; the Tennant Creek Hotel and the Goldfields Hotel; and for Hospitality NT. Counsel provided the Commission with oral and written submissions.
7. Due to the unexpectedly large number of people in attendance, the hearing was relocated from the arranged venue to the Barkly Regional Council Chamber, the only facility in Tennant Creek large enough to accommodate fifty people without breaching social distancing requirements. The Commission extends its thanks to Mayor McLaughlin and Council staff for making their facilities available without notice.
8. The following witnesses gave oral evidence at the hearing:
 - Police Superintendent, Kylie Anderson
 - Mr Phillip Timney, Director of Liquor Licensing
 - Mr Jeffrey McLaughlin, Mayor, Barkly Regional Council
 - Ms Linda Turner, Chairperson, Julalikari Council Aboriginal Corporation
 - Mr Steven Baldwin, proprietor, Tennant Creek Caravan Park
 - Ms Shirley Lewis, Tennant Creek resident
 - Mr Jason Groves, Goldfields Hotel licensee
 - Mr Jon Jenkins, Tennant Creek Hotel licensee
 - Ms Penelope Cowin, Headframe Bottle Shop licensee

9. At the conclusion of the hearing, as requested by several parties, the Commission extended time for further written submissions to be lodged by 23 February 2021.

10. In the notice of proposed conditions, the Commission identified the submissions it had received prior to the issue of that notice. Those submissions, together with the data collected by the Commission for the purpose of preparing the notice of proposed conditions, as well as the submissions received following the issue of the notice, have been published by the Commission on its website.² The Commission received written responses following the issue of the notice from:

- Aboriginal Medical Services Alliance of the Northern Territory (**AMSANT**)
- Barkly Regional Council
- Mr Colin Blair
- Ms Penelope Cowin
- The Hon Steve Edgington MLA, Member for Barkly
- The Hon Natasha Fyles, Minister for Alcohol Policy
- Julalikari Council Aboriginal Corporation
- Ms Karen Harlan
- The Hon Robyn Lambley MLA, Member for Araluen
- Peoples Alcohol Action Coalition (**PAAC**)

11. The Commission thanks the individuals and organisations who contributed submissions to the inquiry, the members of the Barkly community who attended the hearing, and those individuals who came forward to give evidence at the hearing. The Commission

² <https://industry.nt.gov.au/boards-and-committees/liquor-commission/proposed-variations-of-conditions-of-liquor-licence-barkly-region>

also acknowledges the considerable assistance it received from Ms Mary Chalmers and Mr Tom Anderson of counsel.

THE PROPOSED CONDITIONS

12. At paragraphs [107] to [109] of the notice of proposed conditions, the Commission proposed four variations, which for convenience will be referred to in this decision notice as:

- a. The proposed CCTV surveillance condition
- b. The proposed PALI condition
- c. The proposed on-premises BDR condition³
- d. The proposed household limit condition⁴

DECISION

13. For the reasons that follow, the Commission has determined to vary the licences by inserting the proposed CCTV surveillance condition (with minor modification) and the proposed PALI condition, but not the proposed on-premises BDR condition or the proposed household limit condition.

14. At paragraph [86] of the notice of proposed conditions, the Commission stated that it was “not currently satisfied that extending trading hours or lifting product restrictions would be in the public interest and that it would not have a significant adverse effect on the community.” Having now considered the further evidence and submissions it has received since publishing that notice, the Commission confirms that tentative view. However, the Commission has determined to vary the existing product limit condition by

³ It was proposed that this condition only apply to the Tennant Creek Hotel, the Goldfields Hotel and the Elliott Hotel.

⁴ It was proposed that this condition only apply to the Tennant Creek Hotel, the Goldfields Hotel and the Headframe Bottle Shop.

permitting it to be applied more flexibly, subject to the modification of the information technology system that supports this condition, as explained below.

15. The Commission confirms the tentative view it expressed at paragraph [92] of the notice of proposed conditions that the current takeaway trading hours should remain in place: the Commission is not satisfied that moving the trading window, which was fixed having particular regard to working hours, school hours and rostered police shifts, would be in the public interest.
16. The Commission also confirms the tentative view it expressed at paragraph [93] of the notice of proposed conditions that additional product limits would not be in the public interest, and should not be imposed.

EVIDENCE

17. It is unnecessary to summarise in detail the written responses referred to at paragraph [10] above, as these have all been published on the Commission's website. In considering this matter, the Commission has had regard to all of these submissions. It is sufficient for present purposes to note that the submissions from Julalikari, AMSANT and PAAC were generally supportive of the measures set out in the notice of proposed conditions, whereas the submissions from licensees, the Barkly Regional Council and the Member for Barkly were not. Notably, in their written submissions none of the licensees opposed the maintenance of the current hours of takeaway trading, or, apart from supporting more flexibility in their application, a relaxation of the current product limit condition.
18. The Commission summarises the oral evidence given at the hearing as follows.

19. Police Superintendent Kylie Anderson: Superintendent Anderson gave evidence that supported the Commission's view at paragraph [77] of the notice of proposed conditions that an unintended consequence of various COVID-19 measures has likely been to increase the amount of liquor being consumed in the Barkly, with a correlative increase in alcohol-related harm. In particular, Superintendent Anderson testified that while restrictions on movement were in place from March to July 2020, domestic violence rates increased in the Barkly, and across the Northern Territory.
20. Superintendent Anderson stated that in recent months there had been a spike in Tennant Creek property offending, mainly by youth, and in particular an increase in "smash and grab" type offences targeting motor vehicles. She attributed this to school holidays, the recent wet weather and COVID restrictions, which had resulted in more families from bush communities getting stuck in Tennant Creek.
21. Superintendent Anderson agreed that secondary supply is a problem that is difficult to detect, to prevent and to prosecute, but that the low number of confirmed reports of secondary supply received by police do not support a conclusion that it is a particularly significant problem. Although 37 intelligence reports of grog-running had been received by police in the last 12 months, police had only been able to secure a single conviction for secondary supply. The Commission accepts that unless such offenders are "caught in the act" by police, it is most unlikely that they will be able to secure sufficient evidence to successfully prosecute these offences. The Commission also accepts that given the size, geography and road system of the Barkly, grog runners who operate in the region have a reasonable prospect of evading detection by police.

22. Superintendent Anderson gave evidence that out of approximately 1350 residences in Tennant Creek, 46 are currently declared (under section 188 of the Act) as restricted premises, as are nine common areas. Although more households could be added to the list of restricted premises, Superintendent Anderson was of the view that the number should not be greatly increased. Police have observed that anti-social behaviour is directly linked to residences where multiple purchases have been transacted. There are no current plans by police to apply under section 172 of the Act for the declaration of any general restricted areas in Tennant Creek. (The Commission notes that section 171(1)(e) of the Act prohibits the consumption of liquor in a public place in Tennant Creek, and that police are empowered to search for, seize and destroy liquor from persons reasonably suspected of breaching this law).
23. In relation to PALI staffing levels, Superintendent Anderson informed the Commission that of the ten dedicated PALI positions allocated to Tennant Creek, four were currently vacant, but that constables are used to perform PALI duties when required to maintain full coverage of the Tennant Creek Hotel, the Goldfields Hotel and the Headframe Bottle Shop during takeaway trading hours. Police do not have enough personnel to station more than one officer at premises to carry out PALI duties in Tennant Creek, even when the existing vacancies are filled. PALIs receive 14 weeks of standardised training. Superintendent Anderson acknowledged that there are variations between them in how they discharge their duties, which she attributed to their different personalities, but stated that police would work to achieve a more consistent and systematic approach to the performance by PALIs of their duties.

24. Police support the imposition of a household limit on takeaway sales “to give PALIs more clarity in using their powers” under section 250(4) of the Act, which confers power on a PALI to prevent the sale of takeaway liquor if he or she “suspects on reasonable grounds that a liquor offence (sic) is likely to occur”.⁵
25. When asked about the use of a liquor permit system in the Barkly, Superintendent Anderson said that it would not be practicable in Elliott, because it is an alcohol protected area (imposed by the *Stronger Futures in the Northern Territory Act 2012* (Cth)); and that it is not an issue that has been talked about in Tennant Creek in her two years in the town.
26. Superintendent Anderson told the Commission that any increase in takeaway trading hours would impose an additional burden on police resources, and for that reason was not supported by police.
27. Superintendent Anderson expressed the view that it would be impracticable to implement a condition that permitted sales to bona fide travellers outside standard takeaway trading hours, because of the difficulty in identifying who was a bona fide traveller.
28. Mr Phillip Timney, Director of Liquor Licensing (the Director) In relation to the proposed CCTV surveillance condition, the Director said that CCTV “is probably the best enforcement tool my inspectors have”, and expressed the view that it should be mandated for all takeaway outlets.

⁵ The term “liquor offence” is not defined in the Act. This appears to be a drafting error, and should be “liquor related offence”, which is defined in section 249(c) of the Act.

29. The Director said that most major regional centres in the Northern Territory have various restrictions on takeaway liquor sales, and that the Barkly has the most restrictions of any region in the Northern Territory.
30. The Director informed the Commission that it is estimated that adjusting the Banned Drinker Register (**BDR**) parameters to include the recording of addresses (which, he explained, had never been a feature of the BDR as originally designed and established) would cost between \$500,000 and \$1,500,000.
31. If BDR scanners were to be installed to monitor on-premises liquor sales, there would be an additional annual cost to government of about \$30,000 per venue. The Director said that he could “see a lot of practical and technical difficulties” with the extension of BDR-based surveillance to on-premises drinking. He gave as examples the unfairness that would result if such an extension effectively prevented persons on the BDR from going to the football (where liquor is sold) or to a licensed restaurant. He also expressed the view that drinkers would find ways to get around a measure such as the proposed on-premises BDR condition, rendering it ineffective.
32. Mr Jeffrey McLaughlin, Mayor, Barkly Regional Council (Mayor McLaughlin) adverted to practical difficulties and unfairness that would attend the imposition of the proposed household limit condition.
33. Mayor McLaughlin also strongly complained that the current takeaway trading conditions are unfair because: they force people to queue and be quizzed; they prevent people from buying a mixture of drinks; they don't permit shift workers to buy liquor; and Darwin residents aren't subject to similar restrictions. Mayor McLaughlin said that the Liquor Commission has defamed the Barkly community by focussing on its drinking problems.

34. Ms Linda Turner, Chairperson, Julalikari Council Aboriginal Corporation (Chairperson Turner) said that there are “huge concerns in the community” about grog, and that drinkers humbug non-drinkers to buy grog for them or to let them use their addresses when buying grog. She said “We need programs to treat the illness of alcohol”.
35. Mr Steven Baldwin, proprietor, Tennant Creek Caravan Park (Mr Baldwin) advocated against the current restrictions, which he said deter tourists from stopping overnight in Tennant Creek, and which have caused an increase in property offending, with an increasing rate of break-ins to steal alcohol, cigarettes and money, which in turn has forced property owners to spend large sums on fortifying their property. He complained that the whole community was being punished because of the harmful drinking by a small group of people.
36. Ms Shirley Lewis, Tennant Creek resident (Ms Lewis) told the Commission that it was confusing and intrusive for takeaway customers to be subject to repeated surveillance, questioning and checking, firstly by a PALI, and then by a bottle shop attendant.
37. Mr Jason Groves, Goldfields Hotel licensee (Mr Groves) drew the attention of the Commission to disparities in the performance of different officers carrying out PALI duties. His evidence was that when a “slow PALI” is on duty at a particular outlet, patrons tend to choose another outlet at which to purchase liquor. On the other hand, he also stated that when a “slow PALI” is on duty, this can lead to long lines of waiting customers, resulting in waiting times of as long as 35 minutes.
38. Mr Groves gave evidence that if the proposed on-premises BDR condition were imposed, additional staff would be required to enable screening to be undertaken at each of the four doors to the premises, and that the additional cost to the licensee might make trading financially non-viable.

39. Mr Groves said that during the day 95% of his on-premises patrons were Indigenous, that 99% of his customers leave the bar shortly before takeaway trading commences and line up to purchase takeaway liquor, that most takeaway customers purchase the maximum allowed, and that drinkers congregate at the front of his hotel to negotiate who is going to pay for the takeaway they purchase, and to discuss which address they will use when questioned by the PALI.
40. Mr Jon Jenkins, Tennant Creek Hotel licensee (Mr Jenkins) gave evidence that his staff only rarely complete a sale of takeaway liquor before the PALI on duty has completed their screening of a customer.
41. Mr Jenkins said that on-premises screening of patrons “just can’t work” because patrons would be ashamed to be subjected to the screening process.
42. Mr Jenkins said that it was unfair that takeaway trading hours are restricted to 18 hours a week, and unfair that licensees are not permitted to sell takeaway liquor to bona fide travellers, who, he said, are easy to identify from their numberplates.
43. Mr Jenkins’ evidence regarding trading patterns was strikingly similar to Mr Groves’: 90% of on-premises drinkers at his establishment are Indigenous, they leave the bar just before takeaway trading commences at 4 pm, and 90% of takeaway customers purchase the maximum allowed.
44. Mr Jenkins reported technical problems with the BDR scanners: they don’t read the new drivers licences, the screens scratch and they are “antiquated”.
45. Ms Penelope Cowin, Headframe Bottle Shop licensee (Ms Cowin): Like Mr Jenkins, Ms Cowin adverted to technical problems with the BDR scanners. Like Mr Groves, Ms Cowin adverted to the varying performance of PALIs. Like Mr Baldwin, Ms Cowin adverted to the prevalence of break-ins to steal alcohol in Tennant Creek.

DISCUSSION

46. The proposed CCTV surveillance condition: There was no substantial opposition to the fixing of this proposed condition, which mirrors that imposed on Alice Springs licensees trading with a takeaway authority.⁶ The Commission accepts the evidence of the Director that point of sale CCTV is the best enforcement tool his inspectors have, and the submissions of NT Police that such a condition would be of assistance in detecting and investigating breaches of the Act.
47. The Director informed the Commission that he is in the process of issuing revised guidelines regulating the installation, maintenance and operation of CCTV surveillance by licensees. The Director referred the Commission to the CCTV condition of the licence of the Douglas Street Supermarket (LL 80901579) as reflecting current best practice for this purpose.
48. Accordingly, the Commission has determined to adopt the proposed CCTV surveillance condition, supplemented by the following words, which are taken from the equivalent condition in the Douglas Street Supermarket licence:

The licensee must maintain a register of the CCTV including a daily log of the date and time check, as well as any use of the system by the licensee, an employee of the licensee, inspector or police officer. The system is to be protected from unauthorised use and the register must be produced to the Director on request.

⁶ Northern Territory Liquor Commission, *Second Variation of the Conditions of Licences*, 13 January 2020

49. The proposed PALI condition; The Commission is satisfied that, as was conceded by the licensee of the Tennant Creek Hotel, on occasion takeaway sales of liquor are conducted before the PALI on duty has completed their screening of customers. The Commission accepts the submission by police that this frustrates the intended operation of the PALI scheme.
50. Submissions were made on behalf of Tennant Creek licensees opposing this measure on the ground that some PALI officers conduct screening of customers slowly, leading customers to choose to take their business elsewhere. As a result, it was submitted, trade at the affected venue can be so poor that the licensee closes the bottle shop for the day. The Commission is not satisfied that this has occurred more than occasionally, or that it affects any particular Tennant Creek outlet more than another. The Commission accepts the evidence of Superintendent Anderson that NT Police are aware of this problem and will seek to address it by providing further training to PALIs with the aim of achieving greater consistency amongst them in the discharge of their duties.
51. The Commission is satisfied that:
- The establishment and maintenance of the PALI scheme is of key importance in preventing alcohol-related harm in Tennant Creek from escalating;
 - The fixing of this proposed condition is an appropriate and proportionate measure to support and enhance the effectiveness of PALI operations;
 - The fixing of this condition is in the public interest; and
 - The fixing of this condition will not have a significant adverse impact on the community.

52. The proposed on-premises BDR condition: This condition was proposed by police, and supported by the Barkly Regional Council, Julalikari and PAAC. It was vigorously opposed by licensees and Hospitality NT. Significantly, it did not attract support from either the Director or the Minister for Alcohol Policy. The Minister wrote to the Commission stating that “the Government’s position is that the BDR, particularly in its current form, was intended for takeaway liquor sales only and not for on-premises consumption”.
53. The proposal to extend the BDR to on-premises drinkers is not new. Recommendation 3.3.3 of the 2017 *Alcohol Policies and Legislation Review (the Riley Review)* recommended it be extended to deny entry for those on the BDR to all licensed premises trading under an extended trading authority. However, that proposal related only to late-night venues, so is not directly applicable to the situation now under consideration by the Commission.
54. The use of the BDR for on-premises drinkers was further considered in the 2018 *Process Evaluation of the Banned Drinker Register in the Northern Territory (the BDR process evaluation)* commissioned by the Minister of Health and undertaken by the Menzies School of Health Research. The authors of the BDR process evaluation noted that there was some interest amongst stakeholders, including some licensees, in expanding the BDR to on-premises drinking, and recommended that the NT Government “consider trialing BDR scanners at on-premises venues in Alice Springs, Katherine and Tennant Creek where PALIs are deployed”. In its Response to the BDR process evaluation, the Northern Territory Government gave in-principle support to this recommendation, and stated:

Further policy work and industry engagement will be required to assess the legislative changes that may be required to achieve the intention of this recommendation.⁷

55. The Commission has not been informed whether any such further policy work and industry engagement has been undertaken since the Government's Response was published in July 2018. However, the Minister's communication to the Commission referred to at paragraph [52] above suggests that over the last three years the NT Government's "in-principle support" has weakened, if not evaporated.

56. The Commission considers that it is logical to expand the BDR to on-premises drinking. A banned drinker order (**BDO**) prohibits a person from "purchasing, possessing or consuming alcohol during the period for which the order is in force."⁸ People subject to a BDO, as well as others who are prohibited from "purchasing or consuming liquor" by a court order, a bail condition or various prescribed supervision orders, are placed on the BDR.⁹ Arguably, if those prohibitions are to be effective, they should be enforced at venues that supply liquor for consumption both off and on the premises. Conversely, to permit people to drink at a pub when they have been banned from drinking alcohol undermines the effectiveness of the BDR scheme.

57. On the other hand, the Commission was impressed by the evidence of several witnesses, and in particular, the Director, regarding the significant practical, technical and financial hurdles that would arise if the proposed on-premises BDR condition were imposed, as well as witnesses' concerns that it would be neither fair nor effective.

⁷ Accessed at https://alcoholreform.nt.gov.au/data/assets/pdf_file/0006/564207/Response-to-BDR-Evaluation-Report_WEB.pdf

⁸ Section 7(1)(b), *Alcohol Harm Reduction Act 2017*

⁹ Section 128(1), *Liquor Act 2019*; Regulation 105, *Liquor Regulations 2019*

58. Ultimately, the Commission is not satisfied that it would be in the public interest to impose the proposed on-premises BDR condition.

59. On behalf of some of the licensees, counsel foreshadowed submissions that the Commission lacks power to impose this condition, and that to do so would also be unlawful by operation of the *Racial Discrimination Act 1975* (Cth). In the course of the hearing, the Commission indicated that it had formed the view that it would not impose the proposed on-premises BDR condition, and accordingly, counsel did not develop these submissions. In these circumstances, it is unnecessary for the Commission to consider or determine these two legal issues.

60. The proposed household limit condition; This proposal, which emanated from NT Police, was supported by Julalikari and PAAC, and opposed by the licensees and others. The Commission accepts that this proposal is aimed at:

- Restricting access to liquor by drinkers who reside in a place where it is unlawful to possess liquor and who, when screened by a PALI, give an address that is not their own, even though they intend to drink at their residence; and
- Restricting the amount of liquor consumed at “party houses” frequented by drinkers for the purpose of consuming liquor.

61. In the view of the Commission, achieving these aims would be in the public interest.

62. However, the Commission acknowledges that there are significant impediments to achieving these aims. The Commission accepts the evidence given by the Director that it would be prohibitively costly to modify the BDR scanners used by licensees so as to screen patrons’ addresses. It appears that the only practical way for the proposed household limit condition to operate would be by PALIs using databases accessed on their iPads.

63. The Commission considers that the proposed household limit condition could be lawfully applied and enforced within the scheme of the Act. PALIs are empowered to require a customer to:

- State their name and address;
- State where they intend to consume the liquor they intend to purchase; and
- Provide other associated information.¹⁰

A PALI has power to prevent the sale of takeaway liquor by directing the licensee's employee not to sell liquor to a customer if the PALI "suspects on reasonable grounds that an offence against [the] Act is likely to occur in relation to the customer".¹¹

64. A licensee commits an offence if the licensee intentionally engages in conduct and the conduct results in a contravention of a condition of the licence and the licensee is reckless in relation to that result.¹²

65. If the proposed household limit condition were in force, a PALI could ask a customer where they intended to consume the liquor they intended to purchase. On the basis of the response received, the PALI might then reasonably form a suspicion that such a purchase would result in a breach of the household limit condition. The PALI could then inform the licensee or their employee that if the sale proceeded, this would place the licensee in breach of the household limit condition. Having taken these steps, the PALI could then direct that the sale not proceed.

¹⁰ Section 250(2), *Liquor Act 2019*

¹¹ Section 251(1), *Liquor Act 2019*

¹² Section 293, *Liquor Act 2019*

66. In his submission to the Commission, Mr Edgington MLA, the Member for Barkly and former Mayor of Tennant Creek, stated:

Over the last twelve months there has been an increase in the number of drinkers providing false or misleading information to the police and the PALIs so they are not prevented from purchasing alcohol. Residents from Tennant Creek and around the Barkly that may live in a Town Camp, Restricted Area or in Restricted Premises are now asking and begging other residents to allow another person's address to be used so that they may satisfy the requirements or questions being asked about the location the person intends to consume the alcohol before purchasing.

67. Although the Commission has not been provided with sufficient evidence to be make a finding that this problem has increased over the last twelve months, it otherwise accepts this account by Mr Edgington, which was supported by the brief but cogent oral evidence given by Ms Turner (the Chairperson of Julalikari) and the evidence given by Mr Groves (the licensee of the Goldfields Hotel).

68. It is readily apparent that when asked by PALIs where they are going to drink the liquor they intend to consume, some customers give a false answer. This is an offence,¹³ but it is easy to commit, and easy to get away with. It would also be a simple and effective means of thwarting the intended effect of the proposed household limit condition.

69. Various witnesses adverted to the unfairness that would result if the condition were imposed, for example to customers attending an innocuous social gathering at a friend's home, or to customers who are occupants of a share house. The Commission accepts these submissions, but, notwithstanding the inconvenience and unfairness the condition

¹³ See sections 250(2), 253 and 288 of the *Liquor Act 2019*

would cause, the Commission doubts that if the condition were imposed this would have a significant adverse impact on the community.

70. As stated above, the Commission is satisfied that achievement of the aims of the proposed household limit condition would be in the public interest. However, the Commission is not satisfied that the condition is capable of achieving those aims. Furthermore, the Commission considers that the imposition of the condition would be apt to lead to unfairness.

71. Having considered these matters, the Commission has determined not to impose the proposed household limit condition.

72. The product limit condition: One issue canvassed over the course of this inquiry did not attract controversy. Several witnesses advocated for the current product limit condition to be varied so as to permit customers to purchase a variety of types of liquor on a single day. The current condition operates so as to limit customers to purchase either, for example, 24 cans of heavy beer or two bottles of wine. Why not allow a customer to buy 12 cans of beer and one bottle of wine? The Commission received no evidence or submissions contrary to this proposal, which the Commission agrees is sensible.

73. The Commission has therefore determined to vary this condition accordingly, subject however to a qualification that, regrettably, may prevent this variation from coming into effect, at least for the time being. The product limit condition is underpinned by a Northern Territory Government information technology system linked to the BDR scanners operated by licensees. This system records takeaway liquor transactions, and sends an alert to the vendor if the daily limit for an individual would be exceeded by a proposed sale. To accommodate the variation the Commission seeks to make, the system settings would need to be changed. The Commission has no power to impose

such a change, the cost of which may be substantial, and which would be borne by the Northern Territory Government.

74. Doing the best it can in the circumstances, the Commission has determined to vary the product limit condition, subject to approval as detailed below.

VARIED CONDITIONS

75. The Commission orders that each of the licensees' licence conditions be varied as follows:

- a. The licensee must install, maintain and operate a camera surveillance system in compliance with the requirements and guidelines prescribed by the Director, including CCTV camera surveillance at the point of sale designed and operated so as to record information regarding the items purchased, the use of the BDR scanner, interactions between the purchaser and the salesperson, the appearance of the purchaser and the appearance of the salesperson. The licensee must retain all data captured by the camera surveillance system for not less than 14 days. The licensee must maintain a register of the CCTV including a daily log of the date and time check, as well as any use of the system by the licensee, an employee of the licensee, inspector or police officer. The system is to be protected from unauthorised use and the register must be produced to the Director on request.
- b. If a PALI or POSI officer is in attendance at the premises, the licensee must not conduct the sale of liquor for consumption off the premises until the PALI or POSI officer has completed checking the customers' credentials and indicated they do not intend to prevent the customer from entering or remaining on the premises, and do not intend to direct the licensee or the licensee's employees not to sell liquor to the customer.

c. The condition set out at paragraph 38C of the Commission's decision dated 12 June 2018 (**the product limit condition**) is varied as set out below.¹⁴ The Commission directs that the varied product limit condition not commence unless and until the Director notifies the Commission that the settings of the information technology system used to monitor and enforce compliance with the product limit condition have been modified in accordance with the varied condition.

Sale of the following products will be limited to no more than one of or a combination 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.

Provided that no more than 30 standard drinks as defined by section 117 of the *Liquor Act 2019* (NT) are sold on one day to a person who purchases a combination of the above-mentioned products.

The sale of port, wine in a glass container larger than 1 litre and beer in bottles of 750ml (subject to the special condition at paragraph 43B below) or more remains prohibited.

¹⁴ The variation is indicated by the underlined words

NOTICE OF RIGHTS

76. Section 31(1) read with section 113(4) of the Act provide that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal (**NTCAT**). Section 94(3) of the *NTCAT Act 2014* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.

77. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Director, the licensees, and the persons who made submissions in the course of the Commission's inquiry the subject of this decision.



Russell Goldflam

ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION

28 May 2021

On behalf of Members Goldflam, Dwyer and McFarland