

Northern Territory

LIQUOR COMMISSION

DECISION NOTICE

MATTER: VARIATION OF THE CONDITIONS OF THE FOLLOWING LICENCES

LICENSEE	PREMISES NAME	LICENCE NO.
Victoria Daly Shire Council	Warnkurr Sports and Social Club	81416090
Peppimenarti Club Association Incorporated	Peppimenarti Club	80304129
Milikapiti Sports and Social Club Incorporated	Milikapiti Sports and Social Club	80803649
Pirlangimpi Indigenous Corporation for Community Development	Pirlangimpi Community Club	80801281
Wuduluk Progress Aboriginal Corporation	Beswick Community Store	80818505
Mabunji Malandari Pty Ltd & Mawa Malandari Pty Ltd	Malandari Store	80903761
Strugln Enterprises Pty Ltd	Heartbreak Hotel	81201932
Nguiu Club Aboriginal Corporation	Nguiu Club	80303731

LEGISLATION: Section 113, *Liquor Act 2019*

CONSIDERED BY: Mr Richard Coates (Chairperson)
Prof Phillip Carson (Health Member)
Ms Amy Corcoran (Community Member)

Decision

1. The Northern Territory Liquor Commission (the Commission) determines to vary the conditions of the above named liquor licences in the following manner:
 - a) to allow for cans of mid-strength liquor products, that being products with an alcohol/volume percentage not greater than 3.5 %, to be an alternative to the mid-strength can beer in restricted liquor sales to residents of remote Indigenous communities;
 - b) this varied condition will come into effect 90 days after the date of this Decision;
 - c) in the week preceding Christmas, to allow takeaway trading hours for the Milikapiti Sports and Social Club, Licence No. 80803649 to take place on an alternative day between 16:30 hours and 18:00 hours, that has been approved by the Director, at least 7 days earlier, when Christmas Day falls on a Saturday as will be the case this year;
 - d) in the week preceding Christmas, to allow takeaway trading hours for the Pirlangimpi Community Club, Licence No. 80801281 on an alternative day between 16:00 hours and 18:00 hours, that has been approved by the Director, at least 7 days earlier, to members of the Club holding a current restricted area permit, where Christmas Day falls on a Thursday;
 - e) no later than 30 days after this Decision, or such later time as the Director of Liquor Licensing (the Director) might permit the Licensee shall provide to the Director details of the number of beer sales and pre-mixed spirits sales for the preceding month in a format specified by the Director and continue to provide those details on a monthly basis thereafter, until such time as the Director advises the licensee that these reports are no longer required.

Reasons

Background

2. On 3 November 2021, in accordance with section 113(2) of the *Liquor Act 2019*, the Commission issued the written notice comprising proposed variations of licence conditions together with reasons for the proposed variations (“the notice of proposed variations”) to the above mentioned licensees (“the licensees”) in remote Indigenous communities and invited them to submit a response to the proposed variations within 28 days. See notice dated 3 November 2021.

3. The notice was copied to the following stakeholders:
 - Commissioner of Police;
 - Director, Mental Health, Alcohol and Other Drugs Branch, Department of Health;
 - Minister for Indigenous Australians.
4. The Commission received no responses from the licensees.
5. On 5 November 2021, the Director Harm Minimisation, Mental Health, Alcohol and Other Drugs Branch, Department of Health provided comment recommending that section paragraph 10.1 be amended to “not greater than 3.5%” being one standard drink and removal of the reference to 3.99%.
6. On 19 November 2021, the Commissioner of Police provided comment for the Commission’s consideration. In summary:
 - NTPF supports in- principal the availability of alternative mid-strength spirit (pre-mix) drinks but expresses concern that that pre-mix drinks may appeal to young people which could be of community concern;
 - the changes to restricted sale days, due to public holidays, are an understandable request and should be monitored for any increase in alcohol-related offending and consultation should occur with NTPF to ensure that community members are aware of any trading day changes;
 - the proposed changes are in line with contemporary community expectations regarding liquor consumption and are supportive of licensed premises service delivery.

Consideration

7. Section 113(3) of the Act provides that 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;
 - b) the results of any hearing;
 - c) the public interest and community impact requirements.
8. Prior to issuing the notice referred to in paragraph 2, the Commission met on 28 October 2021 to consider whether it would proceed in accordance with section 113 to vary the conditions of these licences.

9. These proposed variations of licence conditions were brought to the attention of the Commission via the Director by Mark Wood, Manager Licensing – Liquor, Gambling and Racing. Mr Wood has extensive experience in liquor licensing issues and has worked closely with a number of remote indigenous communities to assist them comply with their obligations under the Act with regard to their licensed community clubs. Having consulted with the community clubs, specified in this Decision, as well as the Malandari Store and Heartbreak Hotel, both of which have restrictions on takeaway sales to local residents, Mr Wood prepared a detailed Memorandum for the consideration of the Commission recommending changes to the current licence conditions. See notice dated 3 November 2021.
10. Most of the community clubs have licence conditions which restrict sales for on- premise consumption to mid-strength beer with an alcohol volume content of 3.99% or less. Both the Malandari Store and Heartbreak Hotel are subject to restrictions which limit the sale of takeaway alcohol to Borroloola and Mara Camp residents to no more than 18 cans of beer, with an alcohol content of not more than 3.5%, per person, per day.
11. In his Memorandum, Mr Wood stated:

“It has become a consistent call in many of the remote communities that whilst they do not want full strength liquor overall, they do wish for options for those who do not drink beer.

As written earlier, my personal experience in these communities is that those who would otherwise unlawfully obtain and drinks hard spirits, as they do not drink beer, are more likely to drink mid strength spirits if they are a lawful option.

It would be naïve to suggest this would eradicate the unlawful consumption of hard liquor, it will however provide a viable option and make some positive impact on the communities”.
12. Mr Wood was available to assist the Commission at the hearing held on 28 October 2021. He was asked if he was aware of a body of research that emerged over 10 years ago which warned of the risks associated with the popularity of pre-mixed spirit drinks commonly referred to as “alcohol pops”, amongst young people, particularly women. Mr Wood told the Commission that limiting the cans of pre-mixed spirits to 3.5% would allow the consumption of the more traditional spirit drinks of Bourbon and Cola or Bundaberg Rum and Cola but not the sweeter and higher alcohol content “alcho-selzer” range of pre-mixed spirits which were more likely to be attractive to young consumers. Accordingly, the Commission has determined to limit the option of cans of pre-mixed spirits to those with an alcohol by volume content of less than 3.5%.
13. The Commission is most grateful for the assistance provided by Mr Wood in this matter and has appended his comprehensive Memorandum detailing the history of these licences to the section 113 notice.

14. While the Northern Territory Police Force is generally supportive of the alternative option of mid strength pre-mixed spirits it also expressed some concern over the risk that these may appeal to young consumers.
15. In order that any adverse consequences associated with these changes might be monitored, the Commission has decided to delay the commencement of the variation allowing the option of cans of mid strength pre-mixed spirits, for 90 days. During this period, the licensees will be required to start providing the Director with monthly returns detailing the total number of alcohol sales for the preceding month. Although the returns for the first three months will only involve beer sales, it will provide a fairly reliable base from which to assess the current consumption within these communities.
16. Once the condition commences allowing the option of pre-mixed spirits the returns will also include the mid strength cans of pre-mixed spirit. The data extracted from these returns will then enable some assessment to be made as to whether there has been any significant change in the total level of alcohol consumed. However, the Commission is mindful of the fact that other data such as Police incident reports and the number of alcohol related medical attendances will also need to be considered because an increase in liquor sales at the clubs may be associated with a decrease in problematic “illegal” consumption of hard liquor within a particular community.
17. The Commission hereby requests that the Director arrange for the available data to be gathered and analysed and the Commission provided with a report on the impact, if any, of this change of conditions. This report may have wider application within the Northern Territory, particularly as the Stronger Futures legislation comes up for review. The information gleaned in relation to alcohol consumption patterns within different remote indigenous community clubs could assist identify best practice in relation to the operation of these clubs and guide the future aspirations of other communities.
18. The variation of conditions in relation to takeaway trading hours to allow trading on an alternative day in the week before Christmas for those two licensees which sell takeaway liquor on one day of the week is not controversial. The Milikapati Sports and Social Club is only allowed to sell takeaway liquor to permit holders on a Saturday between 16:30 and 18:00 hours. This year Christmas Day falls on a Saturday so that club is seeking a variation to enable sales to occur on another day in the week prior to Christmas.
19. Although not as pressing, the Pirlangimpi Social Club is also restricted to takeaway sales on one day a week – Thursday. It would seem reasonable to amend the condition of both these licences so that the licensees can each make arrangements with the Director for takeaway sales to occur on another day of the week when Christmas Day falls on their usual takeaway trading day.

20. Having been guided by the Purposes of the Act in section 3 of the Act and the considerations specified in section 49 of the Act, the Commission has determined that it is appropriate to vary the conditions of these licences in the manner detailed in paragraph 1.

Notice of Rights

21. 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
- in all cases – the Director;
 - in the case of a decision regarding a licensee or a licensee's licence, authority or licensed premises – the licensee.
22. 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



CHAIRPERSON

PRESIDING MEMBER

2 December 2021

On behalf of Commissioners Coates, Carson and Corcoran