

**NORTHERN TERRITORY LIQUOR COMMISSION**  
**VARIATION OF LICENCE CONDITIONS**

---

**MATTER:** *OWN INITIATIVE VARIATION TO CONDITIONS OF ALICE SPRINGS BREWING CO. [2024] NTLiqComm 38*

**LICENSEE:** Alice Springs Brewing Co Pty Ltd

**PREMISES:** Alice Springs Brewing Co  
39 Palm Circuit  
ROSS NT 0873

**LICENCE NUMBER:** FLL1051

**NOMINEE:** Kyle Pearson

**LEGISLATION:** Section 113 of the *Liquor Act 2019* (NT)

**CONSIDERED BY:** Russell Goldflam (Chairperson)  
Ms Ebony Abbott-McCormack (Health Member)  
Mr Denys Stedman (Community Member)

**DATE:** 25 September 2024

---

**DECISION**

1. Pursuant to s 113 of the *Liquor Act 2019* (**the Act**), the Northern Territory Liquor Commission (**the Commission**) has determined on its own initiative to vary the conditions of liquor licence FLL1051 (**the licence**) held by Alice Springs Brewing Co Pty Ltd (**the licensee**) over its premises at 39 Palm Circuit ROSS, NT 0873 (**the premises**), as follows:

- a. Vary the condition imposed by operation of s 20(3) of the Act that the licensee comply with the code of practice for CCTV system in licensed premises, by including the following:

The CCTV system operated by the licensee must record information regarding the items purchased for consumption off the premises, the use of the BDR scanner, interactions between the purchaser and the salesperson, the appearance of the purchaser and the appearance of the salesperson.

- b. Vary the condition headed “Trading hours” by including the following:

The operating hours for the sale or supply of liquor for consumption off the premises shall be between:

Sunday 12:00 and 19:00  
Monday 15:00 and 19:00  
Tuesday 15:00 and 19:00  
Wednesday 15:00 and 19:00  
Thursday 15:00 and 19:00  
Friday 15:00 and 19:00  
Saturday: 11:00 and 20:00

2. The Commission requests the licensee to give enforceable undertakings to the Director of Liquor Licensing (**the Director**) pursuant to s 159 of the Act, as follows:

- a. To use the patron identification system operated by the licensee in accordance with its enforceable undertaking given on 10 March 2024 so as to ensure compliance with reg 98B of the *Liquor Regulations 2019* (**the Regulations**), which prohibits the sale or supply of liquor for consumption off the premises to a customer who has already been sold or supplied liquor on that day by the licensee or another licensee authorised to sell or supply liquor for consumption off the premises.
- b. In the event that the licensee establishes or operates a home delivery service for the supply of liquor, that it complies with reg 97 of the Regulations, which applies in relation to a licensee who delivers liquor to a person off the licensed premises.

3. The Commission recommends that the Northern Territory Minister for Tourism and Hospitality make regulations in accordance with s 47(1)(j) of the Act prescribing the amount of liquor a licensee with a producers’ authority may sell for consumption off the premises.

## REASONS

4. The background to this decision is set out in the Notice of Proposed Variations issued by the Commission to the licensee on 19 August 2024 (**the Notice**).<sup>1</sup>
5. Specifically, the Notice proposed the following variations to the conditions of the licence:
- a. Vary the “Trading Hours” condition by inserting after the words “**Alice Springs Brewing Co**” the heading “**Public bar authority trading**”; and, at the end of the condition, by adding:

---

<sup>1</sup> [https://cmc.nt.gov.au/\\_data/assets/pdf\\_file/0004/1443676/LC\\_OMV\\_2024-00-proposed-variation-of-conditions-alice-springs-brewing-co.pdf](https://cmc.nt.gov.au/_data/assets/pdf_file/0004/1443676/LC_OMV_2024-00-proposed-variation-of-conditions-alice-springs-brewing-co.pdf)

### **Producers' authority trading**

The days and hours as prescribed by regulation 95 and Schedule 3 of the *Liquor Regulations 2019* (NT) as currently in force and as may be varied from time to time.

- b. Vary the conditions under the heading "CONDITIONS" by inserting, after the first sentence ("This liquor licence is subject to the conditions on licences and authorities in Part 4 of the *Liquor Act 2019*; and the standard operating conditions on authorities and other conditions set out for each of the above authorities in Part 4 of the *Liquor Regulations 2019*."):

This liquor licence is subject to a condition that the licensee use and maintain an identification system in accordance with sections 130 and 131 of the *Liquor Act 2019*. This liquor licence is subject to the conditions set out at regulations 97 and 98B of the *Liquor Regulations 2019* as currently in force and as may be varied from time to time. This liquor licence is subject to the Code of Practice for CCTV System in Licensed Premises issued by the Northern Territory Liquor Commission on 26 April 2023, as currently in force and as may be varied from time to time.

6. In summary, the effect of these proposed variations would have been to subject the licensee's sale and supply of liquor for consumption off the premises to the same days, hours and conditions as apply to Alice Springs local government area licensees who trade with a takeaway authority or a grocery store authority.
7. The Commission commenced its inquiry in response to a request from the Alice Springs based Peoples Alcohol Action Coalition (**PAAC**), which had raised a concern with the Commission that by supplying takeaway liquor on Mondays and Tuesdays, the licensee was undermining NT Government restrictions prohibiting all other Alice Springs outlets from supplying liquor for consumption off the premises on those two days of the week.
8. The Commission invited the following persons to submit a response to the Notice within 28 days:
  - The licensee
  - The Director
  - PAAC
  - NT Commissioner of Police
  - All licensees in the Alice Springs local government area who operate with a takeaway licence or a grocery store licence.
9. The Commission received responses to the Notice from the licensee, the Director, PAAC and NT Police. No responses were received from other licensees. However, the peak industry body in the Territory for the hospitality industry, Hospitality NT, responded to the Notice. Hospitality NT stated that the Notice had been brought to its attention, but identified neither its informant or which (if any) of its members it was responding on behalf of.

10. Section 115 of the Act provides that the Commission may convene a hearing about whether to vary the conditions of a licence if the Commission considers it appropriate to do so. In this matter, the Commission has determined that it is not appropriate to convene a hearing, for the following reasons. Firstly, the Commission considers that it has received sufficient information from the responses to the Notice to enable it to properly determine this matter, and that accordingly a hearing would be unnecessary. Secondly, the Commission considers that its decision in this matter involves no findings adverse to the licensee, that compliance with the decision will not unduly inconvenience the licensee, and that accordingly, the licensee will not be prejudiced by having this matter determined without a hearing. Thirdly, the Commission considers that it has accorded interested persons procedural fairness by inviting them to respond to the Notice. Fourthly, none of those who responded to the Notice submitted that the Commission should conduct a hearing. Fifthly, the Commission considers that a significant portion of the material provided to it in response to the Notice comprises commercial-in-confidence information that it would not be appropriate to ventilate at a public hearing.
11. Having regard to this last reason, the Commission does not consider that it is appropriate to publish the responses it has received to the Notice. Instead, the Commission now summarises the responses it received.

#### The licensee's response

12. A summary of the licensee's submissions, together with the Commission's remarks, now follows.
  - a. The licensee opposed the proposed changes, and stated, "we would vigorously challenge any adverse decision handed down". The licensee, as stated at the conclusion of this decision notice, is entitled to seek a review of this decision by the Northern Territory Civil and Administrative Tribunal (**NTCAT**).
  - b. The licensee challenged the standing and credentials of PAAC, "a self-appointed lobby group", to request the Commission to inquire into this matter. Any person or group can approach the Commission with a view to commencing an inquiry under s 113 of the Act. In addition, s 61(4)(h) confers on a "community-based organisation or body" the standing to make an objection to an application for a liquor licence. The Commission accepts that PAAC is such a body.<sup>2</sup>

---

<sup>2</sup> In 2018 PAAC objected to the licensee's initial application for the licence. At the commencement of the hearing of that application Mr Goldflam declared that prior to his appointment as a member of the Commission in March 2018, he had been a member of PAAC, and provided the applicant with an opportunity to apply for him to withdraw from hearing the matter. The applicant, then represented by Mr Kyle Pearson, declined to make such an application (Northern Territory Liquor Commission, *Application for a licence* (2018/124, 30 October 2018) at [34]). Mr Pearson, who has been the licence nominee ever since, and who authored the licensee's response to the Notice, has made no application that Mr Goldflam withdraw from the current inquiry.

- c. The licensee submitted that the proposed variations were beyond the power of the Commission to impose. In the view of the Commission, this submission is misconceived, and the Commission does not accept it. In the Notice, the Commission stated at paragraph 11 that it considers that “a licence condition fixed by the Commission is invalid to the extent of any inconsistency between that condition and a condition prescribed by the Regulations.” In other words, in the view of the Commission the Act does not authorise the Commission to impose conditions that exempt a licensee from compliance with restrictions prescribed by regulation. That view is supported by s 87 of the Act, which confers on the Commission powers to impose “conditions that the Commission considers are necessary or appropriate”, subject to the limitation that this power is exercised “in accordance with the regulations”. It does not follow, however, that the Commission lacks power to impose conditions that are *more* restrictive than those prescribed by regulation. The Regulations establish the minimum requirements for licences and authorities, and the Commission has the power, which it frequently uses, to add to those baseline requirements. This view is supported by s 49(4) of the Act, which expressly confers on the Commission the power when issuing a licence or authority to impose a broad range of conditions to “mitigate a possible adverse impact on the community”. If the Commission, as the licensee submits, has no power to impose conditions that are more restrictive than the conditions prescribed in the Regulations, s 49(4) would have no work to do. Indeed, the Commission itself would have very little work to do.
- d. The licensee complained that the Commission was targeting it for operating with more than one authority. This submission is also misconceived. As the licensee correctly states, it is one of numerous licensees operating with multiple authorities. The Commission has not suggested and does not now suggest that there is anything untoward about this.
- e. The licensee noted that “we voluntarily restrict our takeaway sales inside of the hours [set out at paragraph 12 of the Notice] except for Sundays where we sell from 12 – 7pm”.<sup>3</sup> The Commission has varied the hours of operation for the licensee’s takeaway trade accordingly, as set out at paragraph 1(b) above.
- f. The licensee agreed to “expand our undertaking to ensure only 1 take-away sale per person per day can be made.” The Commission has requested the licensee to enter into an enforceable undertaking accordingly (see paragraph 2(a) above).
- g. In relation to paragraph 17 of the Notice, the licensee denied receiving a “formal request” to enter into a further enforceable undertaking. Neither s 159(3) of the Act nor the Regulations prescribe a form or procedure for the

---

<sup>3</sup> See Table headed “Alice Springs region: only Alice Springs local government area”, Schedule 3 of the Regulations. This Table prescribes that bottle shops are closed on Mondays and Tuesdays. It is common ground that the licensee sells takeaway liquor on Mondays and Tuesdays. The Commission considers that although the licensee stated that it sells liquor “inside the hours” in Schedule 3, this was not intended as a representation that it does not sell takeaway liquor on Mondays or Tuesdays.

Director to invite a licensee to enter into an enforceable undertaking. The Commission is satisfied that the Director issued such an invitation, and the licensee declined it.

- h. In relation to paragraph 19 of the Notice, the licensee submitted that whether the licensee has obtained an unfair competitive advantage over other licensees by trading on Mondays and Tuesdays is an irrelevant consideration for the Commission. Section 113(3)(c) of the Act requires the Commission to consider the public and interest and community impact requirements. Those requirements include an assessment of the impact of its decision on the people or community who would be affected and the impact on recreation, employment or tourism. In addition, s 3(4) of the Act requires the Commission to exercise its powers in a way consistent with the purposes of the Act. Those purposes include the regulation of trade in liquor “that contributes to the responsible development of the liquor industry and associated businesses” and which “stimulates the tourism and hospitality industries”. Another statutory purpose is “to facilitate the diversity of licensed premises and associated services for the benefit of communities”. Having regard to these provisions, it is the tentative view of the Commission that obtaining an unfair competitive advantage may be a relevant consideration. However, as no other licensees responded to the Notice, it is unnecessary for the Commission to determine this issue in the circumstances of this matter, as the Commission has received no evidence that the licensee has in fact obtained an unfair competitive advantage over other licensees. In issuing the Notice, the Commission afforded procedural fairness to other potentially affected licensees by notifying them of these proceedings, and giving them an opportunity to be heard.
- i. The licensee submitted that it trades with an unfair competitive disadvantage because it incurs substantial costs to produce all the products it sells. This submission does not sit easily with the licensee’s previous submission that competitive disadvantage is an irrelevant consideration. The Commission accepts that the licensee’s business model is quite different from the business model of a licensed grocer or a bottleshop. However, in the absence of evidence of how critical the licensee’s takeaway trade is to the viability or profitability of the entire enterprise, the Commission is unable to make any specific findings in relation to this submission.
- j. The licensee submitted that in considering whether the licensee’s sales of takeaway liquor on days when all other local takeaway outlets are closed, the Commission’s primary concern should be based on the volume of the licensee’s sales compared to the sales of other outlets in the Alice Springs market, and that on this measure, the licensee’s sales on Mondays and Tuesdays are not “substantial”. As will be discussed below, the Commission accepts both these submissions.
- k. The licensee submitted that its sales in June and July 2024 were “skewed heavily by tourist sales from the surrounding caravan parks”. The Commission accepts this submission, although it also notes that a further contributing factor

to the licensee's sales spike in July may have been the receipt by welfare recipients of the lump sum family tax benefit at the end of the financial year.<sup>4</sup>

- l. In response to paragraph 24 of the Notice, the licensee stated that "we do not provide delivery to home based customers". This assertion is on its face inconsistent with the licensee's on-line sales facility, which offers a free home delivery service to retail customers anywhere in Australia.<sup>5</sup> It is unnecessary for the Commission to resolve this apparent inconsistency. If or when the licensee operates a home delivery service, it should be subject to the same prescribed conditions as other licensees who provide that service, namely the conditions set out at reg 97 of the Regulations. The Commission has determined to request that the licensee enter into an enforceable undertaking to that effect, as set out at paragraph 2(b) above.
- m. The licensee submitted that to implement the CCTV requirements applicable to takeaway outlets would entail significant cost to the licensee. The Commission rejects that submission. The licensee trades with both a producers' authority and a public bar authority. Effective from 1 August 2023 the Commission issued a Code of Practice for CCTV System in Licensed Premises (**the CCTV Code**)<sup>6</sup>. Clause 4 of the CCTV Code provides that it applies to all licensees trading with a public bar authority. Pursuant to 20(3) of the Act, it is a condition of the licence that the licensee comply with the CCTV Code. By operation of clause 6.3.1(c) of the CCTV Code, the licensee is already required to have cameras at sales points. The only additional requirement proposed by the Commission is that the licensee also comply with Clause 6.3.3 of the CCTV Code, the specific clause applicable to takeaway authority licensees. The Commission is satisfied that the cost of doing so will not be significant, and may indeed be negligible. Accordingly, the Commission has varied the conditions of the licence as set out at paragraph 1(a) above.

### The Hospitality NT response

13. Hospitality NT's submission was in substance similar to the licensee's submission discussed at paragraph 12(c) above. Hospitality NT submitted that in particular, the Commission is not empowered to prohibit the licensee from supplying liquor on Mondays and Tuesdays by operation of s 114(3) of the Act. It is convenient to set out s 114 in full. It provides:

The following cannot be varied by the Commission:

- (a) a condition added by the Minister under section 88;
- (b) the days on which a licensee is prohibited from selling, supplying or serving liquor;

---

<sup>4</sup> See <https://www.dss.gov.au/families-and-children/benefits-payments/family-tax-benefit>

<sup>5</sup> <https://www.alicespringsbrewingco.com.au/>

<sup>6</sup> [https://cmc.nt.gov.au/\\_data/assets/pdf\\_file/0008/1145591/code-practice-cctv-system.pdf](https://cmc.nt.gov.au/_data/assets/pdf_file/0008/1145591/code-practice-cctv-system.pdf)

- (c) the requirements to provide information on liquor purchases and sales to the Director.
14. Mondays and Tuesdays are *not* days on which the licensee is prohibited from selling, supplying or serving liquor. Accordingly, s 114(3) does not restrain the Commission from varying the licensee's hours of operation so as to prohibit it from selling liquor on those days. Conversely, however, if the Commission were engaged in an inquiry into the hours of operation of an Alice Springs licensee with a takeaway or grocery store licence, the Commission would not be permitted to vary those hours by permitting that licensee to operate on Mondays and Tuesdays, contrary to the restrictions that have been prescribed by regulation.
15. Section 114 clearly sets the limits of the Commission's power to vary licence conditions: it can not permit licensees to avoid the effect of conditions imposed by the Minister (s 114(a)), by the Regulations (s 114(b)) or by the Act (s 114(c)). Had the legislature intended that the Commission not be permitted to impose conditions more restrictive than those prescribed by regulation, it could have expressly so provided. It has not, and s 114, read as a whole, implies that the legislature did not intend the Commission's powers to be so limited.
16. In its submission, Hospitality NT candidly stated:
- As much as is possible our long-standing position is for the Act and the Regulations to be the framework utilised for broader policy considerations and special licence conditions only be used upon complaint/licensee application away from those standard policy settings.
17. It is unsurprising that this is the position of the peak industry body. The liquor and hospitality industries have long advocated for self-regulation. The Act, however, requires the Commission to balance a complex and sometimes competing array of considerations when fashioning licence conditions, and not merely default to the minimum standards prescribed by the Regulations.

### The PAAC response

18. In its letter dated 29 May 2024 requesting the Commission to vary the conditions of the licence, PAAC stated "all licensees who are allowed to sell take-away liquor, no matter where it is produced, should be subject to the same rules". In its response to the Notice, however, PAAC adopted a more stringent position: "we now believe the Authority should be amended so that takeaway sales are no longer permitted".
19. It is unsurprising that this is the position of PAAC, whose website banner states "Turning down the tap to bring down the harm". PAAC has long advocated for supply reduction measures. There is a strong and powerful body of evidence that supply reduction measures are effective to reduce alcohol consumption and alcohol-related harm. However, as previously stated, the Act requires the Commission to balance a complex and sometimes competing array of



considerations, as indeed is apparent from a reading of the primary purpose of the Act, which is “to minimise the harm associated with the consumption of liquor in a way that recognises the public’s interest in the sale, supply, service, promotion and consumption of liquor”. The Act does not direct or even permit the Commission to default to imposing licence conditions calculated to restrict the supply of liquor.

20. A summary of PAAC’s arguments in support of its submission that the licensee not be permitted to supply takeaway alcohol at all, together with the Commission’s remarks, now follows.
  - a. PAAC contended that the licence as originally issued in 2018 under the *Liquor Act 1978* did not authorise takeaway trade, and the licensee has benefitted from a “windfall” following the conversion of the licence under the *Liquor Act 2019* to one with a producers’ authority. This allowed the licensee to commence to supply liquor off the premises, without having to go through the process of applying for a licence that allowed for takeaway trade, and at a time when there was (and still is) a moratorium on the issue of new takeaway and grocery store authorities. The Commission accepts that the licensee benefitted in the manner PAAC has submitted, but does not accept that this was improper, unlawful, unintended or otherwise a basis for now depriving it of that benefit, which was bestowed by an Act of Parliament. PAAC submits that this outcome was “never intended”, but that bare submission is unpersuasive. It is a fundamental canon of statutory construction that in order to discern what the legislature intended, one must look to the text of the statute. The text of s 47(1)(j) of the Act is clear: a “producers’ authority...authorises the licensee to sell... liquor... produced by the licensee for consumption on *or off* the premises” (emphasis added). That is what the legislature said, and by enactment, what it did. The Commission finds that it is also what the legislature intended to say and do.
  - b. PAAC submitted that the licensee declined to voluntarily submit to the same restrictions as apply to other takeaway outlets. This is partially correct, although the licensee voluntarily operates a BDR scanner, and has agreed to participate in the one transaction per person per day scheme. However, recipients of an invitation made under s 159 of the Act are, like the recipients of any invitation, not obliged to accept it, and should not be penalised for exercising their right to decline.
  - c. PAAC pointed to the absence of stationary police patrols at the entrance to the licensee’s premises as an additional reason to prohibit the licensee from selling takeaway liquor. The Commission discusses this issue below.
  - d. PAAC submitted that there are already too many takeaway outlets in Alice Springs, and that “the last thing the town needs is another take-away outlet”. In fact, the licensee has been operating as a takeaway outlet since 3 December 2019, when the Director issued the licensee with a licence with a producers’ and public bar authority that had been converted from the *Liquor Act 2018* licence the Commission had issued on 30 October 2018. The

licensee has now been a takeaway outlet for nearly five years. PAAC's submission may have had more force had it been made five years ago.

#### The NT Police response

21. NT Police supported the variations proposed in the Notice:

It provides law enforcement and the local community the ability to balance wider community safety and wellbeing strategies, appreciating the most efficient and effective way to regulate the physical availability of alcohol is through the reduction of opportunity for bulk supply of the product.

22. The Commission gratefully acknowledges data provided by police of recorded events in the vicinity of the premises in the 6 months to 23 August 2024. During this period there was an average of one recorded event every three days. The busiest days in the area for police were Thursday, Friday and Saturday, and the busiest months were May and June. Police recorded no disturbances in July or August.

23. Police stated that the funding allocation for point of sale interventions (**POSIs**) does not allow for POSIs to operate at the premises on a regular basis, although police had stepped up their patrols on "grog free" days in the area in response to information received that takeaway alcohol was being purchased on those days.

24. The Commission considers that the data provided by the police, which the Commission accepts is accurate, does not support a finding that the licensee's takeaway trade on Mondays and Tuesdays is associated with more disturbances or other incidents resulting in callouts to police.

#### The Director's response

25. The Director submitted that there was insufficient evidence to support the variation as proposed in the Notice. For the reasons given below, the Commission accepts this submission.

26. The Director provided the Commission with very helpful data based on the number of transactions recorded on BDR scanners all Alice Springs takeaway outlets, including the licensee's. (The Director and the licensee also obtained and provided sales data, but the Commission accepts the Director's submission that the data of how many takeaway transactions were conducted is more useful for the purposes of this inquiry.)

27. On the basis of the transactions data, the Commission finds:

- a. In the months of April, May, June and July 2024, the average number of takeaway sales transacted by the licensee was 44% higher on Mondays and Tuesdays than on the other days of the week.

- b. The licensee's share of the takeaway alcohol market in Alice Springs from Wednesday to Saturday is about 2.5%. On each of those days, on average 2,000 such sales are transacted in Alice Springs. About 50 of these sales are transacted by the licensee. Only one other takeaway outlet in Alice Springs has comparably low transaction levels.

## Consideration

28. At paragraph 20 of the Notice, the Commission stated that it would not vary the licence conditions to prohibit the licensee from selling takeaway liquor on Mondays and Tuesdays "unless and until it receives evidence that justifies a finding that the licensee has engaged in the sale of substantial quantities of takeaway liquor on days when all other local takeaway outlets are closed".
29. The licensee conducts about 70 takeaway liquor sales per day on Mondays and Tuesdays. That is about 3.5% of the town's daily takeaway liquor sales each week between Wednesday and Saturday. It is likely that some of the licensee's transactions on Mondays and Tuesdays do lead to harmful consumption. Indeed, in his response in behalf of the Director, Mr Wood, the Southern Regional Manager – Licencing and Compliance, reported that licensing officers have detected customers of the licensee apparently engaging in the unlawful secondary supply of liquor. On the other hand, many of the transactions are no doubt innocuous, and do not lead to alcohol-related harm. The licensee is authorised only to sell liquor it produces itself, and that liquor is sold at a higher price than big brewery brand products. On balance, the Commission finds that the licensee has not engaged in the sale of substantial quantities of takeaway liquor on Mondays and Tuesdays.
30. Section 113(3)(c) of the Act requires the Commission to consider the public interest and community impact requirements. The Commission is satisfied that with the conditions it has determined to vary, and the enforceable undertakings the licensee has been requested to enter into, the licensee's takeaway trade on Mondays and Tuesdays does not have and will not have a significant adverse impact on the community. In making that finding, the Commission has had regard to all of the community impact matters set out at s 49(3), and in particular:
  - a. The risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of, or who pass by the premises.
  - b. The effect on culture, recreation, employment and tourism.
  - c. The effect of the volume of liquor sales on the community.
31. The Commission is also satisfied that it is in the public interest to allow the licensee to continue to sell takeaway liquor on Mondays and Tuesdays. In reaching that state of satisfaction, the Commission has considered how the licensee's trade advances all of the objectives set out at s 49(2), and in particular:

- a. Minimising the harm or ill-health caused to people, or a group of people by the consumption of liquor.
  - b. Increasing cultural, recreational, employment or tourism benefits for the local community area.
  - c. Promoting compliance with this Act and other relevant laws of the Territory.
32. In its consideration of whether it is in the public interest to vary the licence conditions by prohibiting takeaway sales on Mondays and Tuesdays, the Commission has also had regard to the fact that the licensee has an established business model developed in accordance with a changing regulatory environment. Were the licensee an applicant for a new licence, the Commission would have been more inclined to restrict its takeaway trade so as to prohibit sales on Mondays and Tuesdays, in line with all other takeaway outlets in Alice Springs. However, having made the considerable investment required to establish, develop and maintain its business, the licensee is entitled to claim that it should be permitted to continue to operate that business unless it is established that to do so would result in significant harm. The Commission has had regard to the public interest in allowing lawfully and properly conducted business enterprises, and in particular small locally owned and managed business enterprises such as the licensee's, to continue to operate without impediment, providing they comply with the applicable statutory and regulatory framework.
33. The Commission has determined to vary the hours during which the licensee is authorised to sell liquor for consumption off the premises both in accordance with the licensee's current trading practices and to make it clear that the conditions of the licence do not infringe the restrictions on producers' authority operating hours prescribed by reg 72 of the Regulations.
34. In their submission, NT Police stated that the licence:

...should be restricted to patrons who visit the premises in line with its intended community amenity; a boutique brewery. In that, there should be some other on-licence transaction from the premises to qualify for a patron to take a product sample off-licence. A further proposed condition on the licence should include that a patron can only qualify for supply of takeaway alcohol if they're a bonafide visitor or guest of the premises.

...the licence should be further varied to include volumetric restrictions to the available takeaway product sample of not more than one carton per customer containing 24 individual articles. A patron can therefore select a number of different product samples to take away in a carton for them to make an informed decision of future purchases from takeaway outlets.
35. The Commission considers that there is force in these submissions. However, the Commission also accepts the licensee's submission that it would be unfair to single it out from other licensees operating with a producers' authority.

36. It is now commonplace in Australia for breweries, distilleries and vineyards to open their cellar door to the public to come and sample their wares, and to buy some to take home, or order online. By including the words “the amounts of the liquor prescribed by regulation”, s 47(1)(j) of the Act, which reflects and supports this segment of the liquor industry, envisages a limit on how much liquor a producer is authorised to sell to visitors for consumption off the premises. However, no such regulation has yet been prescribed. In the view of the Commission, this omission should be rectified, and at paragraph 3 above the Commission recommends that the Minister take action accordingly.
37. Finally, for the avoidance of doubt, this decision should not be taken as an indication by the Commission that it considers the current restrictions on takeaway sales in Alice Springs on Mondays and Tuesdays to be ineffective, inappropriate or unduly restrictive. The scope of this decision is limited to the particular impact on alcohol consumption and associated harm by a small and uniquely circumstanced licensee.

### **NOTICE OF RIGHTS**

38. Section 31(1) read with s 113(4) of the Act provide that the decision set out in this decision notice is reviewable by the NTCAT. Section 94(3) of the *NTCAT Act* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.
39. In accordance with s 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Director, the licensee, PAAC, NT Police and Hospitality NT.



Russell Goldflam  
CHAIRPERSON  
NORTHERN TERRITORY LIQUOR COMMISSION  
25 September 2024

On behalf of Commissioners Goldflam, Abbott-McCormack and Stedman