

NORTHERN TERRITORY LIQUOR COMMISSION
NOTICE OF PROPOSED VARIATION OF LICENCE CONDITIONS

LICENSEES	LICENCE NUMBERS
Endeavour Group Limited (BWS Alice Springs)	80902856
Iris Gap View Operations Pty Ltd (Gapview Resort Hotel)	80102399
Iris Todd Operations Pty Ltd (Todd Tavern)	80102200
LAE Supermarkets Pty Ltd (Eastside IGA)	80902628
LAE Supermarkets Pty Ltd (Flynn Drive IGA)	80902945
LAE Supermarkets Pty Ltd (Northside IGA)	80902690
Liquorland (Australia) Pty Ltd (Liquorland Alice Springs)	80901729
Stuart Highway Investments Pty Ltd (Milner Road Foodtown)	80902951
Stuart Highway Investments Pty Ltd (Pigglys)	80902640

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

REFERENCE: LC:OMV:2023-002

CONSIDERED BY: Russell Goldflam (Chairperson)
Professor Phillip Carson (Health Member)
Mr Bernard Dwyer (Community Member)

INTRODUCTION

1. Pursuant to s 113 of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) proposes to vary the conditions of Alice Springs liquor licenses that operate with takeaway or grocery store authorities (**the licences**) to update, simplify and harmonise existing conditions in relation to reportable transactions and CCTV surveillance.
2. In 2018, the Commission commenced an own initiative inquiry into the conditions of the licences. Following the inquiry, on 27 May 2019 the Commission issued a

notice varying licence conditions.¹ Some of the licensees sought a review of that decision by the Northern Territory Civil and Administrative Tribunal (**NTCAT**), which referred the matter back to the Commission for reconsideration. On 13 January 2020, having further considered the matter, the Commission issued a second notice varying licence conditions, including a condition titled “Reportable Transactions Condition” (**the first RTC**).²

3. On 28 October 2020, NTCAT made orders by consent in proceeding 2019-01764-CT varying the first RTC in the licences of the Gapview Resort Hotel, the Todd Tavern, Pigglys and the three IGA supermarkets, the licensees of which had been parties to the NTCAT proceedings (**the varied RTC**). On 19 November 2020, the Commission issued a further decision notice, applying the varied RTC to the licences of Liquorland Alice Springs, Milner Road Foodtown and BWS Alice Springs, the licensees of which had not been parties to the NTCAT proceedings.³
4. The RTC was and is intended “to assist police to detect, prosecute, deter and prevent the illegal secondary supply of liquor”.⁴ It requires licensees to report to police occasions when customers purchase suspiciously large quantities of takeaway liquor. However, since coming into force, the RTC has been rarely used, essentially because there has always been a police presence at takeaway liquor outlets during hours of operation in Alice Springs, which obviates the requirement for licensees to report an otherwise reportable transaction. Licensing NT has informed the Commission that in the first half of 2022, the RTC was only utilised on some 18 occasions.
5. The above-mentioned Commission decisions also included a condition titled “Camera Surveillance Condition”.
6. In its decisions of 13 January 2020 and 19 November 2020, the Commission determined that the RTC and Camera Surveillance Condition would be further reviewed after 12 months.
7. Despite this, the Commission did not conduct the foreshadowed review after 12 months, and neither Licensing NT nor any of the licensees has requested that the Commission do so.

¹ Northern Territory Liquor Commission *Notice of Variation of the Conditions of Licences* (27 May 2019), accessed at https://cmc.nt.gov.au/_data/assets/pdf_file/0010/697816/alice-springs-s33-decision-notice-final.pdf

² Northern Territory Liquor Commission *Second Variation of the Conditions of Licences* (13 January 2020), accessed at https://cmc.nt.gov.au/_data/assets/pdf_file/0006/784086/Decision-Notice-Alice-Springs-s33-second-variation-130120.pdf

³ Northern Territory Liquor Commission *Variation of the Conditions of Licences* (19 November 2020), accessed at https://cmc.nt.gov.au/_data/assets/pdf_file/0003/952185/decision-notice-variation-conditions-licence-191120.pdf

⁴ Northern Territory Liquor Commission *Notice of Proposed Variation of the Conditions of Licences* (27 February 2019) at [20], accessed at https://cmc.nt.gov.au/_data/assets/pdf_file/0008/658421/S33-Notice-of-Proposed-Variation-of-Conditions-of-Licence-270219.pdf

8. On 29 August 2023, a full meeting of the Commission determined to conduct the overdue review. It does so for the following reasons.
- a. It has come to the attention of the Commission that discrepancies exist in the wording of the RTC as currently incorporated in the various licences. These discrepancies require correction.
 - b. The Commission is actively considering extending the operation of the RTC to takeaway and grocery store authority licences elsewhere in the Northern Territory, and it is therefore timely to reconsider the effectiveness of the RTC in Alice Springs.
 - c. The Commission has established a *Code of Practice for CCTV system in licensed premises* that supersedes the existing Camera Surveillance Condition in the licences.⁵
 - d. It is high time that the Commission made good, albeit belatedly, on its commitment to review its 2020 decision.
 - e. To avoid any doubt, the Commission considers that the RTC should be clearly confirmed as a continuing condition of the licences, rather than remain indefinitely as a “trial” measure.

THE CURRENT SITUATION

9. The first RTC and the varied RTC are similar but not identical. Notwithstanding the Commission’s decisions referred to above, the intended effect of which was to impose the varied RTC condition on all of the licences, some of them currently include the varied RTC, whereas others do not. Given the complexity of the proceedings that produced the varied RTC, it is unsurprising that this has occurred.
10. Although for the reasons set out above the varied RTC has been only rarely used in Alice Springs, the Commission considers that it remains fit for purpose. The Commission notes that the idea of incorporating an RTC was originally proposed by licensees and their industry group,⁶ and that the terms of the varied RTC were consented to by the six licensees who were parties to the NTCAT proceedings, and generally accepted by the remaining three licensees.⁷ The terms of the varied RTC were only settled after a lengthy and detailed process of consultation,

⁵ Accessed at https://cmc.nt.gov.au/_data/assets/pdf_file/0008/1145591/code-practice-cctv-system.pdf

⁶ See Australian Hotels Association (NT Branch) *Submission to Liquor Commission – Alice Springs*, pp 8, 9 and 14, accessed at https://cmc.nt.gov.au/_data/assets/pdf_file/0009/585522/AHA-NT-submission-to-the-Liquor-Commission-280918.pdf. See also Northern Territory Liquor Commission *Notice of Proposed Variation of the Conditions of Licences* (27 February 2019) at [9], [20], accessed at https://cmc.nt.gov.au/_data/assets/pdf_file/0008/658421/S33-Notice-of-Proposed-Variation-of-Conditions-of-Licence-270219.pdf

⁷ See Northern Territory Liquor Commission *Variation of the Conditions of Licences* (19 November 2020), accessed at https://cmc.nt.gov.au/_data/assets/pdf_file/0003/952185/decision-notice-variation-conditions-licence-191120.pdf

negotiation and deliberation in which the licensees were actively involved. In short, the Commission is satisfied that those terms are suitable.

11. In November 2023, the Commission conducted hearings in the Daly River district, meeting community members and service providers in Wadeye, Peppimenarti and Nauiyu. The evidence received by the Commission at these hearings raised serious concerns about the prevalence of unlawful and harmful secondary supply – grog-running – in the Top End. One measure to address this serious problem could be the introduction of an RTC for takeaway licensees in Darwin and beyond.
12. Since the varied RTC was imposed in Alice Springs at the end of 2020, several significant developments have affected the operation of the licences, notably:
 - a. Three of the licences were transferred to different licensees.
 - b. COVID-19 continued, along with government responses to the pandemic, one presumably unintended consequence of which was a significant increase in the consumption of liquor in the Northern Territory, apparently due in large part to significant increases in government payments to households in 2020 and 2021. In the nine years from 2010 to 2019, the average per capita annual consumption of liquor in the Northern Territory declined by 20%, from 13.4 litres of pure alcohol per person, to 10.71 litres. However, from 2019 to the end of 2021, per capita consumption increased by 15% to 12.28 litres, rapidly erasing most of the considerable progress that had been made over the previous decade to reduce consumption – and the associated harm – of liquor in the Northern Territory.⁸
 - c. On 17 July 2022 all but one of Alice Springs’ 18 town camps, as well as some nearby bush communities, ceased to be Alcohol Protected Areas as a result of the expiry of the *Stronger Futures in the Northern Territory Act 2012* (Cth).⁹ On top of the indirect consequences of the pandemic referred to above, this apparently resulted in a substantial increase in the amount of liquor sold by Alice Springs bottle shops, and an associated substantial increase in alcohol-related harm in the Alice Springs district.¹⁰
 - d. On 27 January 2023, using her powers under s 88 of the Act, the Minister for Alcohol Policy varied the licences’ conditions and trading hours. Specifically, conditions were varied by limiting the sale of takeaway liquor to one transaction per person per day; trading hours were reduced by three hours on Wednesdays, Thursdays and Fridays, and by two hours on Saturdays; and takeaway trading was completely prohibited on Mondays

⁸ Northern Territory Government, *Alcohol Policy in the Northern Territory: Consumption* accessed at <https://alcoholpolicy.nt.gov.au/data-and-evaluation/consumption>

⁹ The exception was Mpwetyerre (Abbott’s Camp), which had successfully applied to become a general restricted area prior to the enactment of the *Northern Territory National Emergency Response Act 2002* (Cth), the legislation that initiated “the Intervention”, as it is commonly called.

¹⁰ Office of Central Australian Regional Controller, *Proposed Actions for Alcohol related harm in Central Australian communities* (February 2023), accessed at https://cmc.nt.gov.au/_data/assets/pdf_file/0007/1189087/proposed-actions.PDF

and Tuesdays. The instrument recording this decision tabled in the Legislative Assembly in accordance with s 88(4) of the Act does not fix a date for the expiry of the varied condition and hours of operation. In April 2023 and again in July 2023, the Minister announced the continuation of these measures.

- e. On 16 February 2023, the *Liquor Amendment Act 2023* came into force with the immediate effect of restoring as “dry areas” those town camps and bush communities that, on 17 July 2022, had ceased to be Alcohol Protected Areas when the *Stronger Futures in the Northern Territory Act 2012* (Cth) expired.
- f. In early 2023, several of the licensees determined to voluntarily limit sales of takeaway liquor to, for example, no more than one 750 ml bottle of spirits, one carton of beer and six bottles of wine per person per day.

13. The Commission has had regard to these developments when considering whether to propose that the varied RTC be maintained. The Commission welcomes the measures taken by both the Northern Territory Government and licensees that have clearly been aimed at reducing alcohol-related harm. However, the Commission notes that the significant measures referred to at paragraph 12.d) above are of indefinite duration, and may be discontinued at any time. The Commission also notes that while the varied RTC condition has little work to do so long as police are stationed at all Alice Springs takeaway outlets, there is no legal obligation for NT Police to continue to maintain this practice. The Commission has previously found that the annual direct staffing cost of maintaining a POSI presence at one of Alice Springs’ smaller takeaway outlets is \$160,000.¹¹ There are nine takeaway venues in Alice Springs. Accordingly, and having regard to the notorious fact that police resources are chronically over-stretched, the Commission considers that there is a small but real risk that at some point in the foreseeable future, police patrols at Alice Springs bottle shops will be reduced or even discontinued.

14. In these circumstances, the Commission has formed the view that it would be in the public interest to maintain the varied RTC condition for the licences, both as a “backstop” in the event that police patrols are reduced, and as a model for the potential expansion of the RTC scheme to other parts of the Territory.

ENHANCEMENT OF PATRON IDENTIFICATION SYSTEM

15. The Commission has consistently endorsed licensee requests that the patron identification system established by Part 6 Division 1 of the Act be configured so as to support the RTC scheme. On 23 October 2023, the Chairperson of the Commission wrote to the Minister for Alcohol Policy, as follows:

¹¹ Northern Territory Liquor Commission, *Milner Road Foodtown Disciplinary Action* (LC2022/055, 14 December 2022) at [19(g)]

[W]ith the encouragement of the affected licensees, the Commission has repeatedly (on 27 May 2019, 13 January 2020 and 20 October 2020) recommended that the reportable transactions scheme be enhanced by using the Banned Drinkers Register screening system to enable a transaction report to be notified by way of a single additional key-stroke executed in the course of the existing BDR procedure. The Commission remains of the view that this would improve the effectiveness of the BDR scheme, resulting in improved detection and prevention of secondary supply.

16. In her response, the Minister indicated that this proposal is being actively investigated.

THE PROPOSED VARIATIONS

17. The Commission now proposes that all of the licences that do not include the varied RTC condition be varied by omitting the existing RTC and replacing it with the varied RTC, which provides as follows:

(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.

18. The Commission further proposes that the licence condition titled "Camera Surveillance Condition" be omitted and be replaced with the following condition:

The licensee must comply with the *Code of Practice for CCTV System in Licensed Premises* established by the Northern Territory Liquor Commission on 26 April 2023 and as varied from time to time.

INVITATION TO LICENSEES TO RESPOND

19. In accordance with s 113(2)(c) of the Act, the Commission invites each of the licensees to submit a response to the proposed variations within 28 days after the date of this notice.

20. The Commission also invites the Director of Liquor Licensing, the Director of the Alcohol Policy Coordination Unit and the Commissioner of Police to submit a response within 28 days of this notice.



RUSSELL GOLDFLAM
CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
5 January 2024

On behalf of Commissioners Goldflam, Carson and Dwyer