

Memorandum

To: Philip Timney – Director of Liquor Licensing TRM No:
Through: Andrea Allen – Senior Director Liquor Date: 1 September 2021
From: Mark Wood, Manager Licensing – Liquor, Gambling & Racing
Re: Recommendation to the Commission for own motion variation of licence conditions - update

Background

Various licences were granted to entities in remote Indigenous communities under the previous *Liquor Act 1978*. These licences, along with an determination by the Federal Minister as a result of the *Northern Territory National Emergency Act 2007 (Cth)* (NTNERA) and Commission decisions, placed product restrictions on these licences. The restriction was that products available for sale are limited to mid-strength can beer only with the exception of the Warnkurr Sports & Social Club which will be discussed later in this document.

In general terms the product restrictions were a result of limited mid-strength options, with beer being the only option at that time, most are for on-premises consumption, however the Malandari Store and Heartbreak Hotel restrictions relate only to takeaway liquor sales.

Current situation

The following liquor licences have product restrictions in place:

Premises	Authority	Restriction
Warnkurr Sports & Social Club	Community Club	This licence is restricted to the sale of cans of beer only.
Peppimenarti Club	Community Club	Authority restricted to mid strength and light alcohol beer sales only, with an alcohol content of 3.99% or less.
Milikapiti Sports & Social Club	Community Club/Takeaway	Authority restricted to mid strength and light alcohol beer sales only, with an alcohol per volume content of 3.99% or less, except for Takeaway allowance.
Pirlangimpi Community Club	Community Club/Takeaway	Authority restricted to mid strength and light alcohol beer sales only, with an alcohol per volume content of 3.99% or less.
Beswick Community Club	Public Bar	Authority restricted to mid strength and light alcohol beer

		sales only, with an alcohol per volume content of 3.99% or less.
Malandari Store	Grocery Store	The sale of takeaway alcohol to Borroloola residents inclusive of Mara Camp residents will be restricted to canned beer only with an alcohol content of not more than 3.5%, and limited to eighteen (18) cans per person per day.
Nguiu Club	Public Bar	Authority restricted to mid strength and light alcohol beer sales only, with an alcohol volume content of 3.99% or less.
Heartbreak Hotel	Wayside Inn/Takeaway	The sale of takeaway alcohol to Borroloola residents and Mara Camp residents will be restricted to canned beer only with an alcohol content of not more than 3.5% and limited to eighteen (18) cans per day.

As written earlier, these licences have been in existence for many years, and the restrictions placed on them were made at a time when there were little options for low and mid-strength products other than beer.

There has been an exponential increase in options over the last few years, with mid-strength pre-mix spirits now commonplace, along with non-alcoholic beer, wine and spirits.

An example of the recognition of the growth in options is the Borroloola Rodeo's annual licence. Previously the licence has been restricted to canned beer, and after a particularly violent and chaotic event, mid-strength only. Since that time the event's licence has been granted restricting liquor to mid-strength canned products only, allowing for mid-strength pre-mix spirits to be sold as an alternative to beer.

An unintended consequence of this expansion of products was a reduction of people drinking hard spirits outside of the premises and then coming onto the premises to consume beer as well. From firsthand experience I can attest to the significant improvement in the behaviours and levels of intoxication that resulted from this expansion of products.

Licensee's enquiries

Some of the abovementioned licensees have in the last 18 months made initial enquiries about varying their licence conditions to allow for mid-strength pre-mix spirits to be an alternative to beer.

These initial enquiries have now grown with three (3) licensees actively seeking to vary their licence conditions. These applications will have the corollary effect of encouraging the remaining licensees to also seek variations.

An application for a variation of these conditions must be heard by the Commission and would result in up to eight (8) separate hearings, although I would recommend any application by Malandari Store would need to include Heartbreak Hotel given the nature and intention of the current restrictions. Accordingly, we are potentially looking at seven (7) separate Commission hearings in remote Indigenous communities.

History of the licences

The Peppimenarti Club, Milikapiti Sports & Social Club, Pirlangimpi Community Club, Beswick Community Club and Nguiu Club are in general restricted areas and were subject to the Federal Minister's variation of their licence conditions in 2008. That variation restricted sales to mid-strength can beer only.

The Warnkurr Sports & Social Club is in Kalkarindji, a remote Indigenous community, however it was not subject to the Federal Minister's decision as it was not declared a prescribed area by section 4 of the NTNERA, therefore the Minister could not vary their licence conditions. At this time the licensee is not formally restricted to mid-strength can beer sales only, they are however only able to sell can beer.

The licensee does however impose voluntary restrictions on their sales and intentionally strives to promote mid-strength beer sales, along with a one can per man per sale principle.

The Malandari Store and Heartbreak Hotel's restrictions arise from various decisions of the former Licensing Commission which imposed a product limit on the Malandari Store to mid-strength can beer only, and a quantity restriction and mid-strength can beer restriction on both licensees for residents of Borroloola and Mara Camp.

For completeness Heartbreak Hotel has a voluntary restriction of one carton of beer and one bottle of spirits to any person, per day, that does not live in Borroloola or Mara Camp.

Product options

Current restrictions limit sales to a maximum of mid-strength beer only. Mid-strength has an alcohol by volume content at 375 ml, is 3.5% and equates to one (1) standard drink. By comparison a Victoria Bitter 375ml full-strength beer is 4.9% and 1.4 standard drinks.

Mid-strength pre-mix spirits such as Jim Beam Bourbon, Bundaberg Rum with cola are also 375ml, 3.5% and 1 standard drink.

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 drink 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.

Noting the discrete difference with the licence at Kalkarindji, an option may be to allow for mid-strength pre-mix spirits as an alternative. This may encourage some who drink full-strength beer to switch to spirits that are mid-strength.

I respectfully submit the variation of these licence conditions to allow for mid-strength pre-mix spirits is non-controversial and a reflection of the positive changes in the industry, which has given rise to the significant growth in low and mid-strength options.

Commission options

As written above licensees are actively considering and working on applications for variations of their licence conditions. These must be heard by the Commission, unless they wish to delegate them to the Director under a targeted delegation.

If hearings were to be held this would result in significant cost implication to the department as well as significant man-hours in preparing the materials. An option open to the Commission, other than to delegate these matters to the Director given the non-controversial nature of them, is to commence an own motion action under section 113 of the *Liquor Act 2019* (the Act).

The Commission could commence the action to independently consider varying the licence conditions to in general, remove the reference to can beer, or otherwise allow for mid-strength pre-mix spirits or the like to be sold under the licences.

This would require one lot of proceedings and I would suggest, not be challenged by the licensees.

1 September 2021 - Update

The original memorandum was sent to the Commission on 12 August 2021 for their initial thoughts on the matter.

The Chairperson subsequently advised the Director on 13 August 2021, the Commission were open to commencing an own motion action under section 113 of the Act. The Chairperson asked that the relevant licensees be contacted to confirm their interest in the possible action, and for any other suitable variations they may want considered.

Each licensee has now been contacted and the potential action discussed with them, with the licensees unanimously providing their interest in such a variation.

For completeness the licensees of Milikapiti Sports & Social Club and Pirlangimpi Community Club qualified their interest, submitting they may not immediately implement the wider products if approved, but want the ability to do so in due course.

Separate to this matter, the licensee of the Milikapiti Sports & Social Club has contacted Licensing NT in relation to their **takeaway authority** which allows for trade only on a Saturday. Further, the licence specifically prohibits the sale of takeaway liquor on Christmas Day.

Takeaway Sales	Takeaway trading hours for the Milikapiti Sports & Social Club shall be between:- Saturday 16:30 and Saturday 18:00 hours. No takeaway on Christmas Day.
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Christmas Day 2021 is a Saturday and therefore the licensee will not be able to sell takeaway liquor that week.

The licensee has asked if they would be able to change their day this year to Friday, 24 December 2021.

Ordinarily minor variations to licences such as additional hours or the like are dealt with under delegation, through a special event authority. As this relates to takeaway liquor section 84(3) of the Act statute bars any such option.

Accordingly, Licensing NT has advised the licensee this would require them lodging an application for a variation of their conditions pursuant to section 110 of the Act, an action that would not offend the Act as the licensee already has a takeaway authority. An application of this nature would ordinarily require a substantial set of materials and submissions by the applicant, along with public notices and hearing by the Commission.

Despite this, the application is rather simple in nature and would seek the ability to change their day of takeaway sales to another, already approved day when Christmas Day falls on the Saturday. It may therefore be appropriate to include this in the Commission's section 113 action.

It should also be noted Pirlamgimpi Community Club is in the same situation, with their sole takeaway day of trade being a Thursday.

No other licensee is affected in this manner, as the respective licensees are uniquely circumstanced, being the only clubs of this nature with a highly limited takeaway authority. The licensees do not want additional hours or days, simply to move the day when it falls on Christmas Day. All other conditions, including those for on-premises sales and consumption would remain untouched.

It of course remains a matter for the Commission if they were minded to proceed with these actions, including the takeaway issues for the two licensees, however I submit the inability to sell takeaway liquor for potentially two weeks may be counter-productive, and encourage unlawful behaviour given the remote nature of the premises and their lack of access to other lawful means of takeaway liquor at Christmas.

Beswick Community Club

Separate to these matters the licensee of the Beswick Community Club is in the process of submitting applications for material alterations and variations to the current licence conditions. These applications are substantial, will require public notices and are likely to attract objections. They have asked if they could include this in the Commission's own motion matter, and have been advised this would not be appropriate.

They do however still wish to be included in the proposed change to the reference to beer.

Recommendation

That you consider the contents of this memorandum and recommend the Commission commence the own motion inquiry into varying the abovementioned licences in the manner described, including the wider matter of Christmas Day for the two licensees.



Mark Wood

Manager Licensing – Liquor, Gambling & Racing