

# NORTHERN TERRITORY LIQUOR COMMISSION

## REASONS FOR PROPOSED VARIATION OF LICENCES

### MATTER: PROPOSED VARIATION OF THE CONDITIONS OF LICENCES

#### LICENSEES

#### LICENCE NUMBERS

<b>Aileron Roadhouse</b>	81204578/FLL
<b>Banka Banka Station</b>	80817000
<b>Barkly Homestead</b>	81203263
<b>Bluestone Motor Inn</b>	80201870
<b>Devils Marbles Hotel</b>	81202869
<b>Eldorado Motor Inn</b>	80202797
<b>Elliott Hotel</b>	80104969
<b>Goldfields Hotel</b>	80102583/FLL
<b>Headframe Bottle Shop</b>	81002243
<b>Outback Caravan Park</b>	81117302
<b>Renner Springs Desert Hotel/Motel</b>	81202669
<b>Sporties Club Inc</b>	81402780
<b>Tennant Creek Golf Club</b>	81402752
<b>Tennant Creek Hotel</b>	80102044
<b>Tennant Creek Memorial Club Inc</b>	81402774
<b>Tennant Creek Police Social Club</b>	81403239
<b>The Elliott Store</b>	80902117
<b>Threeways Roadhouse</b>	81202764
<b>United Wycliffe Well</b>	80802878

**LEGISLATION:** Section 113, *Liquor Act 2019* ("the Act")

## BACKGROUND

1. Tennant Creek is built on the country of the Patta Warumungu people. In the words of the authors of the 2020 Tennant Creek Alcohol Harm Minimisation Plan:<sup>1</sup>

Tennant Creek is full of hidden gems – primarily in its people and the extraordinary leadership that has been shown in a wide variety of fields, but also its cultural assets, creativity and the stunning beauty of its natural surrounds.... Tennant Creek is now the regional centre for the large and remote Barkly Region which has a population of over seven thousand people and covers 323,692 square kilometres... Tennant Creek itself has a culturally and linguistically strong and diverse population of just over three thousand residents. The Indigenous population makes up approximately 50% of the population.

2. According to local legend, Tennant Creek sprang up in about 1930 at the site where a truck carting beer to the Barkly broke down.<sup>2</sup> Ever since, it has been known as a hard-drinking community. In her detailed 1988 study, Brady found that “it is clear that the Tennant Creek people substantially organise their local lives around alcohol, and that considerable physical and social problems exist in association with alcohol use by many in the town.”<sup>3</sup> In 1994/95 the per capita consumption of pure alcohol for persons aged over 15 years in Tennant Creek was 25.3 litres per year.<sup>4</sup> In the year following the introduction of the “Thirsty Thursday” restrictions

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<sup>1</sup> Accessed at <https://industry.nt.gov.au/boards-and-committees/liquor-commission/proposed-variations-of-conditions-of-liquor-licence-barkly-region>.

<sup>2</sup> Tennant Creek Region Visitors Guide, quoted in Wright, Alexis, *Grog War* (Magabala Books, Broome, 1997), 169.

<sup>3</sup> Maggie Brady, *Where the Beer Truck Stopped: Drinking in a Northern Australian Town* (Australian National University North Australia Research Unit, Darwin, 1988), 80.

<sup>4</sup> Dennis Gray, Sherry Sagers, David Atkinson, Brooke Sputore and Deirdre Bourbon, “Beating the Grog: an evaluation of the Tennant Creek liquor licensing restrictions” (2000) *Australia and New Zealand Journal of Public Health* Vol. 24 No. 1, 41.

in 1995, consumption declined by 20%. However, some years later consumption levels began to rise again, the “Thirsty Thursday” restrictions were lifted in 2006,<sup>5</sup> and by 2008, the Northern Territory Licensing Commission found that there was “an intolerable level of alcohol abuse in the township”.<sup>6</sup> Due, it would appear, to a further supply restriction measure, namely the stationing of police at the entrance to bottle shops in 2014, consumption again fell, this time by 26%.<sup>7</sup>

3. However, by the end of 2016, per capita annual consumption was back at the levels of 20 years previously: 24.5 litres, more than twice the Northern Territory average, and more than two and a half times the national average. As the Commission found in 2018, this was the equivalent of more than 60,000 cans of Victoria Bitter every week being drunk by a community with a drinking-age residential population of 2,342 people.<sup>8</sup>
4. The Commission also found that this extraordinarily high level of consumption was associated with an extraordinarily high level of alcohol-related harm. Although the Commission has previously documented instances of alcohol-related harm in the Barkly,<sup>9</sup> it is apposite to now cite a further such example. In the Northern Territory, 4.4% and 1.8% of babies are exposed to alcohol in the first and third trimester of pregnancy respectively. In the Barkly, these rates are 20.8% and 8.3%, far higher than any other region in the Territory.<sup>10</sup>

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<sup>5</sup> Northern Territory Licensing Commission, *Review of the Proposed Variations to Licence Conditions* (31 May 2006).

<sup>6</sup> Northern Territory Liquor Commission, *Proposed Variation of the Conditions of Licences* (8 May 2018), [3].

<sup>7</sup> *Ibid*, [1].

<sup>8</sup> *Op. cit.*

<sup>9</sup> *Ibid*, [2].

<sup>10</sup> De Vincentiis B, Guthridge S, Spargo J C, Su J-Y, Nanadakumara S, *Story of Our Children and Young People, Northern Territory 2019*, Menzies School of Health Research, 2019, 50.

5. That was the context in which on 12 June 2018 the Commission determined to continue, with minor variations, supply restrictions on takeaway liquor outlets in Tennant Creek and the Barkly region that had been first imposed by the Director-General of Licensing on 28 February 2018.<sup>11</sup>
6. Those measures are set out in full in the Commission's June 2018 decision, but the principal conditions imposed are those applicable to Tennant Creek licensees, as follows:
  - a. takeaway liquor will only be available for sale Monday through to Saturday between 4 pm and 7 pm
  - b. takeaway sales on Sunday is prohibited
  - c. sale of the following products will be limited to no more than one 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.
  - d. The sale of port, wine in a glass container larger than 1 litre and beer in bottles of 750ml or more remains prohibited.

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<sup>11</sup> Northern Territory Liquor Commission, *Variation of the Conditions of Licences* (12 June 2018)

## EVENTS SINCE THE 2018 DECISION

7. Initially, the Commission had proposed substantially more stringent restrictions on the supply of liquor in the Barkly.<sup>12</sup> However, in reliance on commitments made by the NT Government and NT Police to implement a series of ancillary measures, and further evidence that alcohol-related harm had declined since the imposition on 28 February 2018 of conditions by the Director-General of Licensing, the Commission ultimately decided to maintain those restrictions rather than strengthen them.
8. Because of its concern that these encouraging developments might not be sustained, the Commission declared that it considered that conditions should be further reviewed in six months.
9. In the event, the time-frame for the review stretched from 6 months to 30 months, in the circumstances set out below.
10. In August 2018 the Commission commenced an inquiry into takeaway licence conditions in Alice Springs. That inquiry was prolonged by an appeal to the Northern Territory Civil and Administrative Tribunal against the Commission's decision by some of the affected Alice Springs licensees. The Commission formed the view that the Barkly review should not be commenced until the Alice Springs inquiry was finalised, so that, if appropriate, the Commission would have the opportunity to harmonise the takeaway conditions fixed for the Barkly with those fixed for the Alice Springs district.

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<sup>12</sup> Northern Territory Liquor Commission, *Reasons for Proposed Variations of Licences* (8 May 2018).

11. In considering whether to delay the Barkly review, the Commission also had regard to indications that alcohol-related harm in the Barkly was continuing to decline. According to data published on the Northern Territory Alcohol Policies and Legislation Reform website,<sup>13</sup> Tennant Creek alcohol-related assaults, domestic violence alcohol-related assaults, alcohol-attributable emergency presentations to hospital and drink driving all declined significantly in the eighteen months after the restrictions were introduced on 28 February 2018.
12. On 5 September 2019, the Commission wrote to all the affected licensees and stakeholders who had made submissions to the Commission's 2018 Barkly inquiry informing them that it was minded to postpone the Barkly review until the finalisation of the Alice Springs inquiry. However, the Commission also stated: "If you consider that your community or the interests you represent will be prejudiced by these delays, and wish to have the Barkly review conducted without waiting for the final resolution of the Alice Springs inquiry, please write to the Commission setting out your reasons for doing so."
13. None of the licensees took up the Commission's invitation to seek to expedite the Barkly review. One stakeholder belatedly did so. On 2 January 2020, the Commission received a letter dated 18 December 2020 from the Barkly Regional Council requesting that the review commence immediately, and inviting a representative of the Commission to attend a Council meeting.

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<sup>13</sup> Accessed at <https://alcoholreform.nt.gov.au/data-and-evaluation>.

14. The Barkly Regional Council nominated three reasons for immediately commencing the review. Firstly, it complained that the Commission had not implemented recommendations made by the Council in April 2018. Secondly, it raised concern about grog-running from Mt Isa and outlets north of the Barkly on the Stuart Highway. Thirdly, it referred to the efforts of the Elliott community to implement its Alcohol Management Plan.
15. The Commission was unpersuaded by these arguments. Firstly, some of the matters raised by the Council in its April 2018 representations had been addressed in the Commission's June 2018 decision, and the remainder were beyond the remit of the Commission. Secondly, the submission regarding grog-running was not supported by cogent evidence or detail. This issue is addressed further in these reasons below. Thirdly, implementation of Alcohol Management Plans is beyond the remit of the Commission.
16. On 4 March 2020, the Commission's Chairperson wrote to the Council declining to immediately commence the review, noting that no licensees and no other stakeholders had made such a request, and that there was a real possibility that the outcome of the Alice Springs appeal would have a bearing on the planned Barkly review.
17. On 8 April 2020 Acting Deputy Chairperson Goldflam attended the Barkly Regional Council meeting (by telephone, due to COVID-19 restrictions) and briefed the Council regarding the status of the review and the other issues it had raised.

18. Of particular relevance to the review, some Council members asked if it would be possible to extend trading hours for liquor retailers, in order to better manage social distancing measures in these establishments. Member Goldflam subsequently responded in writing as follows:

When the Chief Health Officer first issued his [COVID-19] emergency declaration the Director [of Liquor Licensing] received a number of requests from Police to restrict takeaway liquor trading hours using the emergency powers in section 257 of the *Liquor Act 2019*, including for Tennant Creek, Nhulunbuy and a few smaller communities. The Commissioner of Police did not support a reduction in trading hours, primarily as that would have resulted in more people congregating at outlets over a shorter period of time which would be counterproductive in terms of the social distancing protocols. As a result the Director has not applied any restrictions to takeaway trading hours during the emergency.

The Director was also requested to place volume limits on takeaway alcohol sales. Again, this was not supported by the Commissioner of Police on the basis customers who wanted more than the set limit would visit more than one takeaway outlet, something that could not be controlled through the BDR. That was actually borne out in Western Australia where volume limits were introduced but removed shortly afterwards due to people visiting multiple premises and increasing the risk of spreading the virus. Similarly, the major outlets (BWS and Liquorland) introduced volume restrictions nationally for a couple of weeks and then returned to normal when the anticipated panic buying did not occur.

So far as extending trading hours for takeaway outlets in Tennant Creek during the emergency is concerned, the Director agrees that it is not practical to use the section 113 process in an emergency due to the prescribed notice period etc. He is aware of the request from the Tennant Creek Hotel to extend the trading hours, to assist the distancing measures. The letter from Jordan Jenkins was forwarded to Licensing NT via the Attorney-General.<sup>14</sup> The Attorney-General responded to Mr Jenkins advising that she would not use her emergency powers to increase Tennant Creek takeaway liquor trading hours. Similarly, the Director will not be exercising his emergency powers to extend hours.

19. On 15 May 2020 Member Goldflam also wrote to the licensee of the Tennant Creek Hotel in similar terms.

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<sup>14</sup> On 19 March 2020, Mr Jenkins, the licensee of the Tennant Creek Hotel, had written to the Commission requesting the immediate lifting of the June 2018 restrictions on takeaway trading as a COVID-19 response measure. The licensee's representations were also directed to the Minister for Alcohol Policy, who responded on 8 April 2020.



20. The Alice Springs review of takeaway licences was not formally finalised until 19 November 2020.<sup>15</sup> The most significant outcome of the Alice Springs review was the establishment of a “reportable transactions scheme”. For reasons explained below, the Commission does not consider that it is appropriate to introduce such a scheme in the Barkly, although the Commission does propose to apply one of the other Alice Springs varied conditions to Barkly licensees. The finalisation of the Alice Springs review cleared the way for the delayed Barkly review to commence.

## **THE APPLICABLE LAW**

21. Since the Commission conducted the 2018 Barkly inquiry, the *Liquor Act 1978* has been replaced by the *Liquor Act 2019*, section 113 of which regulates the conduct of this review. The procedure is in two stages. First, the Commission issues this notice of proposed variation of licence conditions. Second, after inviting affected licensees to comment within 28 days, the Commission issues a notice of any variations it has determined to make to licence conditions.

22. Unlike the repealed 1978 Act, the 2019 Act permits (although it does not compel) the Commission to conduct a hearing before varying licence conditions. If the Commission decides to conduct a hearing, it may do so either before or after issuing its notice with reasons for the proposed variation.

23. After issuing the notice of proposed variation, the Commission is required to consider any responses of the licensees received within 28 days. In the Commission’s view, section 113 also permits the Commission to consider the responses from non-licensees to the notice of proposed variation, provided the

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<sup>15</sup> Northern Territory Liquor Commission, *Variation of the Conditions of Licences* (19 November 2020).

licensees are given a reasonable opportunity to comment on any responses from non-licensees, consideration of which might give rise to findings or determinations that adversely affect the affected licensees.<sup>16</sup>

24. Section 113(3)(c) of the Act requires the Commission to consider “the public interest and community impact requirements” before varying licence conditions on its own initiative. Section 110(2) of the Act provides that a licensee who applies to the Commission to vary licence conditions must satisfy the Commission that doing so is in the public interest and would not have a significant adverse impact on the community. Similarly, in the view of the Commission, when exercising its powers under section 113, the Commission should only vary licence conditions if satisfied that to do so is in the public interest and would not have a significant adverse impact on the community.

25. Section 49(2) of the Act sets out ten objectives the Commission is required to consider for the purpose of determining whether the issue of a licence is in the public interest. In the view of the Commission, those objectives are all relevant to determining whether a licence variation under consideration is in the public interest.

26. Similarly, section 49(3) of the Act sets out ten matters the Commission is required to consider for the purpose of determining whether the issue of a licence would have a significant adverse impact on the community. In the view of the Commission, those matters are all relevant to determining whether a licence variation under consideration would have a significant adverse impact on the community.

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<sup>16</sup> This approach is consistent with the view of the Commission regarding the equivalent provisions in the 1978 Act: see Northern Territory Liquor Commission, *Variation of the Conditions of Licences* (12 June 2018), [6].

## THE REVIEW

27. On 9 October 2020, in anticipation of the imminent finalisation of the protracted Alice Springs inquiry, the Commission published a notice that the Barkly review was underway, and invited submissions by 30 October 2020 from licensees, stakeholders and members of the public. On 29 October 2020, the Tennant and District Times published an interview with Acting Deputy Commissioner Goldflam in which the Commission renewed its request for submissions and indicated that it would entertain applications for an extension of time for that purpose. The Commission acknowledges that despite its efforts to notify the Barkly community of the review, some sections of the community did not receive adequate notification.

28. The Commission also wrote to a broad range of agencies seeking data on alcohol-related harm in the Barkly district covering the period before and since the imposition of the restrictions on 28 February 2018.

29. In response to its call for submissions for the Barkly review, the Commission received ten submissions. The Commission has published the submissions it has received on its website, except for material submitted on a confidential basis or that the Commission considers to be commercial-in-confidence. Detailed submissions were received from NT Police and the Barkly Region Alcohol & Drug Abuse Advisory Group (BRADAAG). Submissions were also received from the Barkly Regional Council, Hospitality NT, Anyinginyi Health Aboriginal Corporation,

the Outback Caravan Park and four Tennant Creek residents. No submissions were received from any of the affected licensees.<sup>17</sup>

30. Only one of the submitters, Hospitality NT, urged the Commission to conduct a public hearing. In its submission, the Barkly Regional Council did not specifically request that a hearing be conducted, but did state:

Council believes it is important that proper public consultation takes place regarding both the current restrictions and proposed changes to those restrictions. When restrictions were imposed the community consultation was pathetic.

31. If this is a complaint that the consultations the Commission undertook in April 2018 were inadequate, the Commission rejects it.<sup>18</sup> If it is a complaint that the February 2018 restrictions were imposed without consultation, the Commission also rejects it. Those restrictions were imposed by the Director-General using her emergency powers, and extended by the Minister for Alcohol Policy using her emergency powers pending the conduct by the Commission of the 2018 review, following a series of town meetings at which residents had called for urgent action to address alcohol-related harm, supported by a compelling plea by the then Mayor of Tennant Creek.<sup>19</sup>

32. Having regard to the scant support for the holding of a public hearing and the few submissions received to date, the Commission determined not to conduct a public hearing before issuing this Notice of Proposed Variations. However, the

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<sup>17</sup> The Commission assumes that at least some of the affected licensees are members of Hospitality NT, but the Hospitality NT submission did not in its terms assert that it was made on behalf of any licensees in particular, or indeed on behalf of any licensees at all.

<sup>18</sup> Details of the Commission's 2018 consultations are set out at Northern Territory Liquor Commission, *Proposed Variation of the Conditions of Licences* (8 May 2018), [11] to [17].

<sup>19</sup> See Northern Territory Liquor Commission, *Variation of the Conditions of Licences* (12 June 2018), [28].

Commission remains open to the conduct of a public hearing in February 2021, if it forms the view that there is significant support for taking that course as a result of any responses it receives from licensees and others following the publication of this Notice.

33. In addition, in the event that the Commission decides not to conduct a public hearing, before determining what if any variations of licence conditions to impose the Commission will consult further with the two stakeholders, Hospitality NT and the Barkly Regional Council, who have raised the issue of consultation.

## **THE DATA**

34. The Commission has been greatly assisted by the agencies who have provided the Commission with data, summarised below, relating to alcohol consumption and alcohol-related harm in the Barkly over the period that commenced a year before the introduction of the restrictions in early 2018.

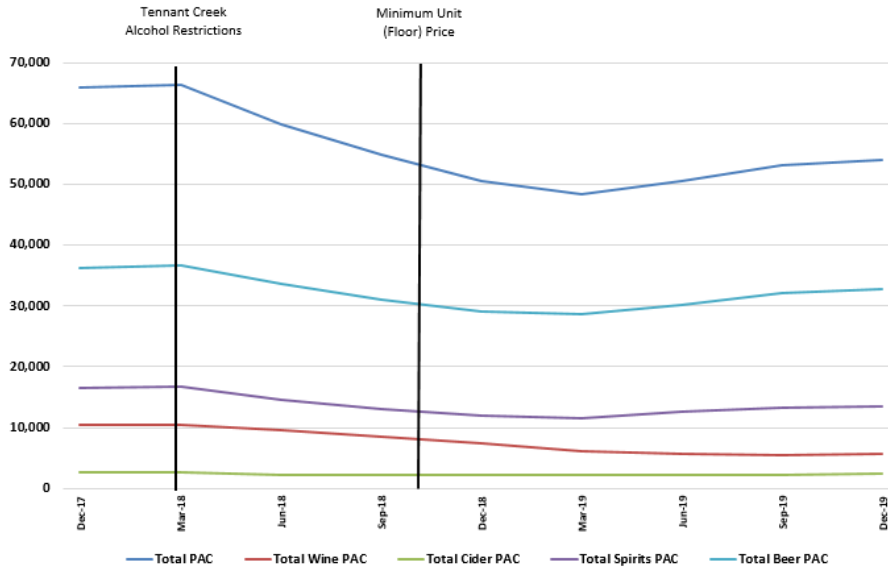
### Consumption

35. The best evidence available of the amount of liquor consumed in the Northern Territory is derived from the quarterly reports of liquor sales that registered wholesalers are required to make to the Director of Liquor Licensing (“the Director”).

36. The total wholesale supply in litres of Pure Alcohol Content (“PAC”) to the Barkly region for the two years from December 2017 to December 2019 is depicted in the following Figure showing 12-month rolling sums each quarter:<sup>20</sup>

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<sup>20</sup> Criminal Justice and Research and Statistics Unit, Department of the Attorney-General and Justice, *Review of Conditions of Liquor Licences (Supporting Data)*, 9 November 2020, 8.



37. In the first twelve months after restrictions were introduced on 28 February 2018, consumption fell by 27%, from about 67,000 litres PAC per annum to about 49,000 PAC per annum. In the following nine months, it rose again to about 54,000 litres per annum, an overall decline in consumption of about 20%. This is a significant and encouraging reduction, although the Commission notes with concern that since mid 2019, consumption levels have steadily crept up. No data is yet available for the period since March 2020.

38. The Commission notes that the introduction of the Minimum Unit Price measure on 1 October 2018 had no discernible effect on liquor consumption levels or patterns in Tennant Creek. This is unsurprising, because pre-existing takeaway licence conditions in the Barkly already restricted the availability of the cheapest type of liquor sold elsewhere in the Territory, and in particular, cask wine.

39. In its submission to the review, BRADAAG stated “alcohol restrictions have failed to reduce alcohol consumption in the town”. Based on the data referred to above, the Commission does not accept this contention. The Commission is satisfied that the conditions imposed in 2018 have been a significant factor in reducing the

unacceptably high levels of consumption of liquor in Tennant Creek. The Commission is also satisfied that if the 2018 supply restrictions had not been imposed, consumption levels would not have reduced as much as they did, if at all.

40. The Commission was also provided with monthly data of the number of takeaway liquor transactions conducted in the Barkly between September 2017 and September 2020,<sup>21</sup> which, allowing for seasonal fluctuations, showed little variation from March 2018 to March 2020. This is also unsurprising: the restrictions limit the amount of liquor people can purchase in a single day, which the Commission infers leads heavier drinkers to purchase takeaway liquor on more days of the week than previously.

41. In March 2020, COVID-19 restrictions were imposed, and the number of transactions markedly increased, which the Commission considers is likely due to the fact that pubs and bars were closed or operated on a restricted basis until August 2020, and, as is discussed below, because drinkers received substantial amounts of cash thanks to COVID-19 stimulus measures.

42. In the month of April 2020, the number of takeaway transactions at the four main Tennant Creek outlets (the Headframe Bottle Shop, the Tennant Creek Hotel, the Goldfields Hotel and the Tennant Creek Memorial Club) rose by 36% over the previous month, and these licensees have continued to trade at similar volumes since.

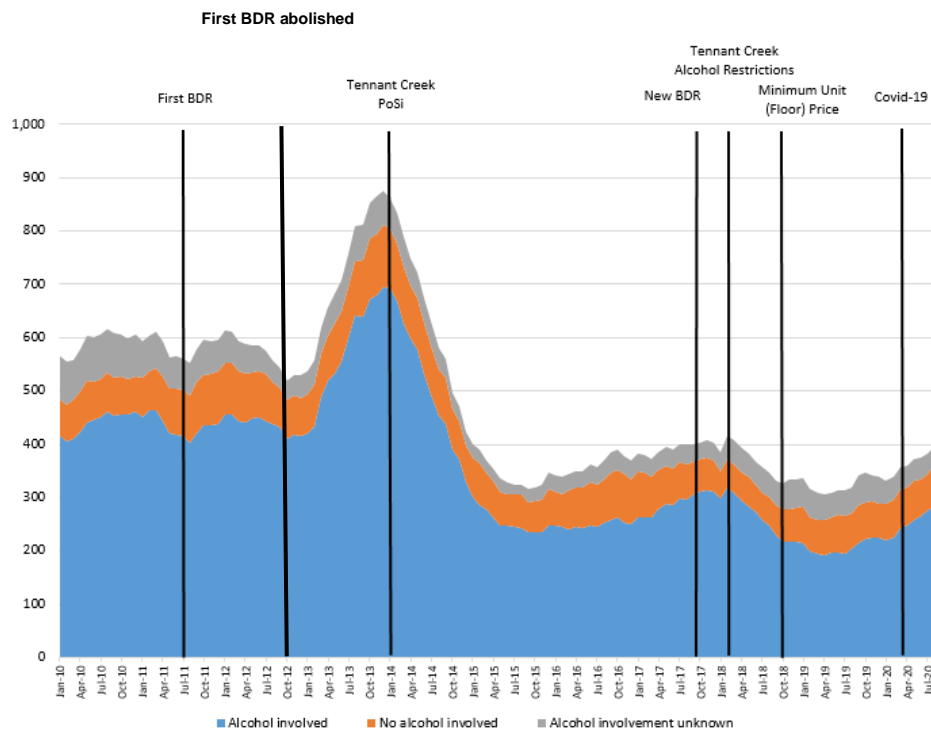
43. The Commission now turns to examine indicia of alcohol-related harm.

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<sup>21</sup> Ibid, 9. The Commission infers that this data was captured and extracted from the system established by Part 6 Division 1 ("Patron identification system") of the Act, which requires all takeaway purchasers to have an identification document scanned by the licensee.

## Alcohol-related offending

44. This figure depicts recorded assault offences by alcohol involvement in the Barkly region showing 12-month rolling sums, from January 2010 to July 2020.<sup>22</sup>



45. The Commission draws two inferences from this data. Firstly, alcohol has been implicated in at least 70% and as many as 80% of assaults reported to police in the Barkly over the last five years. Before that, the proportion was even higher.

46. Secondly, there is a clear correlation between liquor supply measures and alcohol-related assaults. In October 2012, when the first Banned Drinkers Register (BDR) was abolished, there was a step increase in alcohol-related assaults, followed by an equally steep but more prolonged fall after the introduction of Point of Sale Interventions (POSIs) by police at bottleshops in January 2014. In January 2016, alcohol-related assaults started to rise again. The Commission notes that from

<sup>22</sup> Ibid, 4.



about 2016 until about April 2018, police did not have sufficient resources to provide continuous POSI coverage of all Tennant Creek takeaway outlets (“full lockdown”, as it is called by police). Alcohol-related assaults continued to rise until the February 2018 restrictions were introduced, when they fell by 30%, from 300 to 200, over a period of 12 months. Since April 2018 police have maintained full lockdown in Tennant Creek.<sup>23</sup>

47. The Commission is concerned that alcohol-related assaults have trended upwards over the last 18 months, and are now nearly as prevalent again as they were when the current restrictions were introduced. For reasons detailed below, the Commission’s view is that since March 2020 this has been primarily due to the impact of COVID-19.

48. In their submission to the review, BRADAAG referred the Commission to the crime statistics published by NT Police on its website.<sup>24</sup> In their submission to the review, NT Police referred to the dataset set out at paragraph 44 above, in preference to the more concise and limited data published on their website. The Commission considers that the dataset it has relied on, the data points of which are a full sequence of quarterly “12-month rolling sums”, is more useful for the purposes of the review than the published NT Police crime statistics, which comprise only two such data points, at one year intervals.

49. Accordingly, the Commission does not accept the submission by BRADAAG that “since the introduction of restrictions in Tennant Creek, alcohol related assault is up by 48.1%.” The Commission considers that in the twelve months following the introduction of restrictions in Tennant Creek, alcohol-related assaults dropped by

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<sup>23</sup> Northern Territory Police, Fire and Emergency Services, *Submission 2020 Review of Barkly Liquor Licence Conditions*, 30 October 2020, 6.

<sup>24</sup> Accessed at <https://pfes.nt.gov.au/police/community-safety/nt-crime-statistics/tennant-creek>.

30%, and have since risen to nearly the same level as they were when the restrictions were introduced.

50. Having carefully examined the data and submissions it has received in relation to this key issue, the Commission considers that the liquor supply restrictions imposed on 28 February 2018 have materially contributed to a decline in both alcohol consumption and alcohol-related assaults in the Barkly. As a corollary, the Commission also considers that had the liquor supply restrictions not been imposed, there would have been higher alcohol consumption and a higher level of alcohol-related assaults in the Barkly.

#### Domestic violence

51. The effect of decreasing liquor consumption on the incidence of domestic violence in the Barkly is difficult to ascertain. On the one hand, NT Police have provided the Commission with data that shows that the percentage of all incidents reported to police that were alcohol-related declined from 35.7% in the 2016/2017 financial year, to 25.0%, 20.8% and 20.2% respectively in the next three financial years.

52. On the other hand, the incidence of reported alcohol-related domestic and family violence incidents has not decreased significantly since 2016/2017. However, over this period, NT Police report a significant positive trend in the nature and seriousness of these offences: “actual physical violence is low with the majority of D&FV matters involving verbal arguments only”.<sup>25</sup> This trend is consistent with the Commission’s findings above regarding assaults.

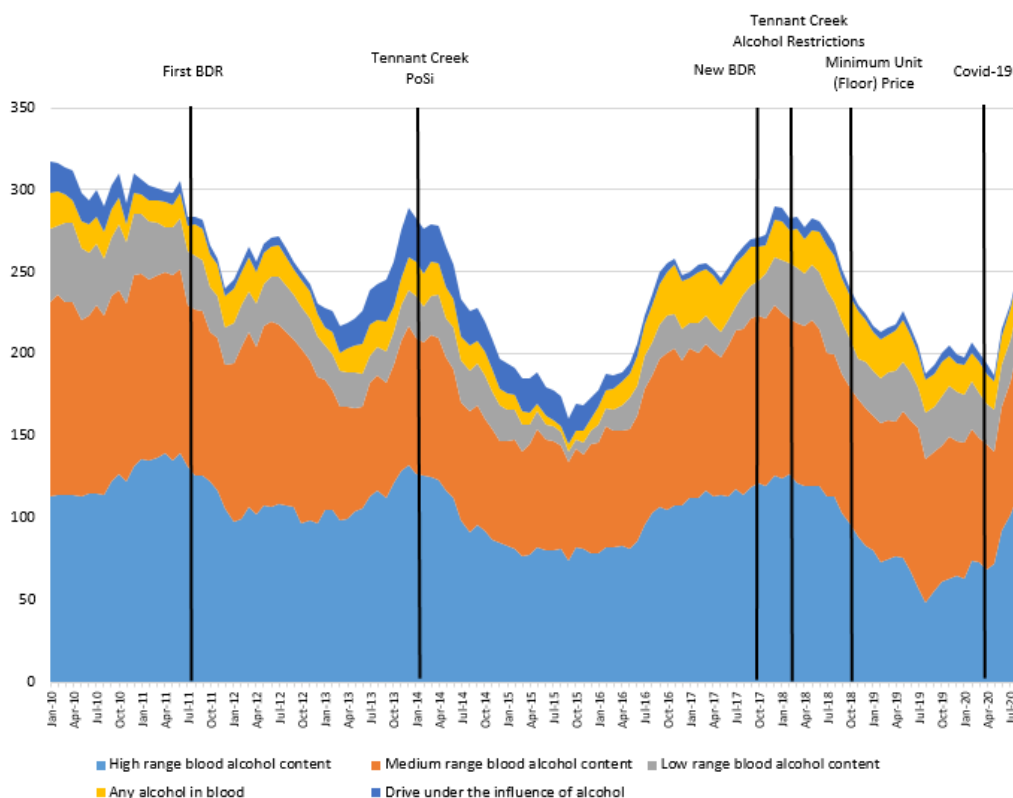
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<sup>25</sup> Northern Territory Police, Fire and Emergency Services, *Submission 2020 Review of Barkly Liquor Licence Conditions*, 30 October 2020, 9.

53. Similarly, the Commission notes that in March 2018, Operation Haven, a proactive policing program focussing on the reduction of domestic and family violence and alcohol abuse, commenced operation in Tennant Creek. According to NT Police, “As a result of an increase in proactive police engagement activities, we’ve seen a spike in figures relating to domestic violence, however we are seeing significantly less cases of serious violence as a result of alcohol abuse.”<sup>26</sup>

### Drink driving offences

54. This figure depicts drink-driving offences in the Barkly region showing 12-month rolling sums:<sup>27</sup>



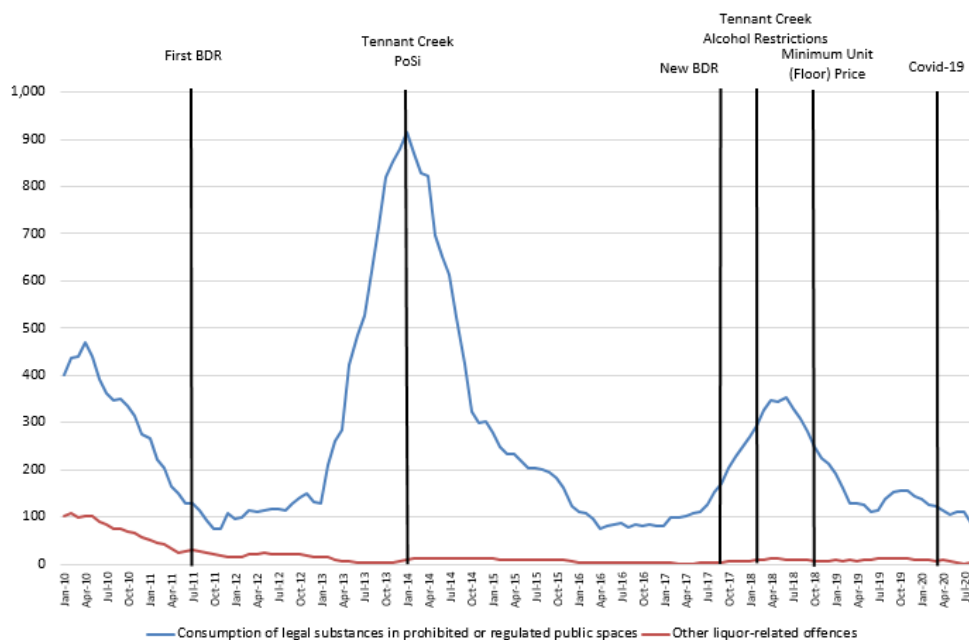
<sup>26</sup> NT Police, *Operation Haven – Community involvement* (Media Release 24 April 2018), accessed at <https://pfes.nt.gov.au/newsroom/2018/operation-haven-community-involvement>.

<sup>27</sup> Criminal Justice and Research and Statistics Unit, Department of the Attorney-General and Justice, *Review of Conditions of Liquor Licences (Supporting Data)*, 9 November 2020, 5.

55. As with the assault data examined above, the introduction of POSIs in 2014, and the supply restrictions imposed in 2018 correlate closely with substantial reductions in drink-driving offences. It is also noteworthy that this category of offending increased substantially when COVID-19 measures were implemented. The significance of this is discussed below.

Liquor-related offences

56. A similar pattern is evident in relation to the offence of drinking liquor in a prohibited place.<sup>28</sup>

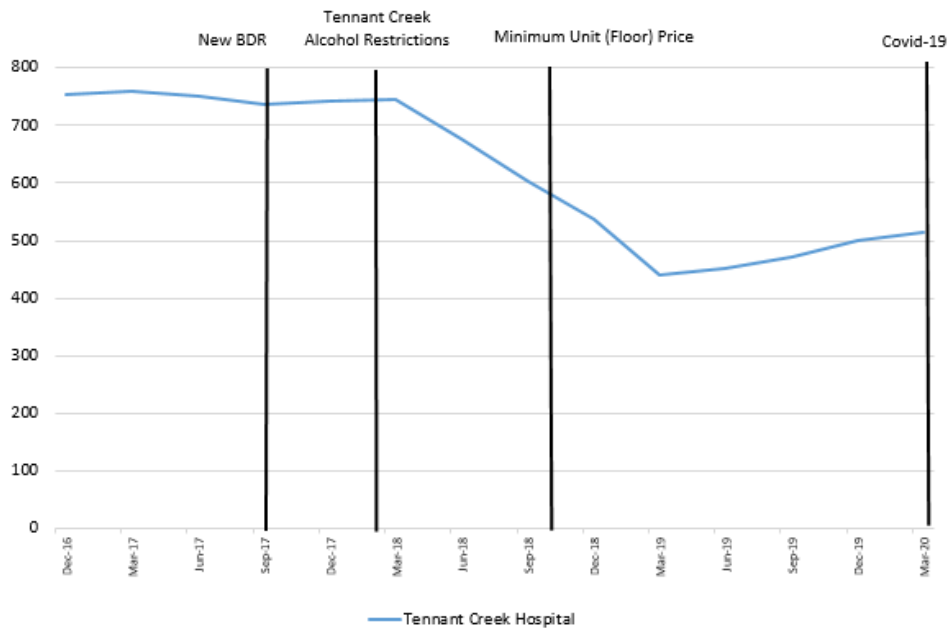


Alcohol-attributable emergency hospital presentations

57. This figure shows alcohol-attributable emergency department presentations to the Tennant Creek Hospital, using four-quarter rolling sums.<sup>29</sup>

<sup>28</sup> Ibid, 6.

<sup>29</sup> Ibid, 7.



58. The pattern of this data correlates well with the pattern described above in relation to offence rates. The 30% reduction in presentation rates from March 2018 to March 2020 supports a conclusion that not only are there fewer assaults now than when the supply restrictions commenced, but they tend to be less serious.

59. Data supplied to the Commission by St John Ambulance Australia (NT) further consolidates this hypothesis:<sup>30</sup> in the year leading up to the February 2018 restrictions, St John recorded on average 26 alcohol-related ambulance call-outs a month in Tennant Creek. In the twelve months following the imposition of the restrictions, the rate reduced to an average of 14 call-outs per month. In the next twelve months, to March 2020, the average dropped to 10 alcohol-related call-outs a month. From April to November 2020 there were on average 7 such call-outs.

<sup>30</sup> St John Ambulance Australia (NT) correspondence to Commission, 6 November 2020.

### Imprisonment rates

60. This hypothesis is further supported by considering patterns of imprisonment. In February, March and April 2018 there were 157 prisoners with a last known address in the Barkly region. Thereafter that number steadily declined until July 2019, when there were 114 such prisoners, a reduction of over 25%. Although, as noted above, Barkly alcohol-related offending rates have risen since July 2019, the number of Barkly prisoners has, apart from some minor fluctuations, remained stable. As at 30 September 2020, there were 123 Barkly residents in prison.<sup>31</sup>

### Child protection notifications

61. The Department of Territory Families, Housing and Communities reported that in the Barkly, notifications of suspected child abuse or neglect associated with alcohol fell by 30% over the two years between 2017-18 and 2019-20, from 311 to 224. Over this period the number of alcohol-associated notifications that were investigated and substantiated fell by 60%, from 189 to 75. Although this appears significant, the Department itself states: “The data does not indicate any significant change in notifications since the commencement of varied takeaway trading conditions of liquor licences in the Barkly region on 12 June 2018. There are some fluctuations across the data that are not considered unusual.”

62. Although the Commission considers that this data is consistent with other evidence showing that alcohol-related harm in the Barkly declined during this period, the Commission views it with caution. During this period the provision of child protection services in the Barkly increased and there was better co-ordination

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<sup>31</sup> Data provided to the Commission by NT Correctional Services Commissioner, 12 November 2020.

between key government agencies to protect children, which may well be the primary reason for the welcome decline in alcohol-related child abuse and neglect. Nevertheless, the CEO of the Department, Mr Ken Davies informed the Commission: “It is my strong view that the current alcohol restrictions have played a significant role in this stabilisation [of child protection notifications and the number of children coming into care]. The control of alcohol supply remains mission critical to the safety and well-being of families and children in Tennant Creek.”

### Other data

63. The Commission also received the following data:

- police protective custody episodes
- admissions to BRADAAG sobering-up shelter and residential alcohol rehabilitation
- Barkly Regional Council Youthlinx Program attendance
- offenders subject to supervision by Community Corrections
- school enrolment, attendance and suspensions

64. The Commission does not consider that this data substantially added to its understanding of the prevalence and nature of alcohol-related harm in the Barkly in the period under examination.

65. The Commission thanks all of the agencies that responded to the Commission’s request to compile and provide data for the purpose of the review.

### **OTHER MEASURES**

66. In its June 2018 decision, the Commission adverted to several ancillary measures that the NT government had indicated would be implemented in Tennant Creek,

and which it was anticipated would directly or indirectly reduce alcohol-related harm in the region.<sup>32</sup>

67. The Commission sought and has been provided with the following advice as to the implementation of these measures.<sup>33</sup>

- NT Police have maintained full lockdown of officers stationed outside takeaway outlets to check the credentials of patrons.
- Eleven additional police officers have been allocated to the Barkly.
- CCTV cameras have been reinstalled in Tennant Creek.
- Operation Haven (proactive policing to reduce domestic and family violence and alcohol abuse) has been rolled out to Tennant Creek.
- Three clinical nurses, a social worker and an Aboriginal case support worker delivering Department of Health alcohol and other drugs services have been allocated to the Barkly.
- A Licensing NT Senior Compliance Officer based in Tennant Creek has been re-appointed.
- Additional staff have been appointed to the Tennant Creek Territory Families office, including the provision of Youth Outreach night patrols.
- Three additional Department of Housing Public Safety Officer positions have been allocated for Tennant Creek (these positions are currently unfilled).

68. The Commission also notes the broad range of some 28 economic, social and cultural initiatives being taken under the auspices of the Barkly Regional Deal, a joint agreement between the Australian Government, the Northern Territory

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<sup>32</sup> Northern Territory Liquor Commission, *Variation of the Conditions of Licences* (12 June 2018), [14] to [16].

<sup>33</sup> Minister for Alcohol Policy letter to Commission, 12 November 2020.



Government and the Barkly Regional Council.<sup>34</sup> In the view of the Commission, many of these initiatives are likely to directly or indirectly reduce alcohol-related harm in the Barkly.

69. Finally, the Commission acknowledges the Tennant Creek Alcohol Harm Minimisation Action Plan 2019-2024 (AHMAP), which was developed by the Tennant Creek Alcohol Reference Group, and approved by the Minister for Alcohol Policy on 7 January 2020. The Commission notes that the AHMAP includes a supply reduction strategy that could bear directly on the outcome of this review. Strategy 2.1 of the AHMAP (“Investigate potential options around other supply measures”) comprises these two actions:

- a. explore potential options, consult and reach agreement on further restrictions;
- b. explore potential options and community attitude on a takeaway free day.

70. The Commission would welcome an update from the Alcohol Reference Group on the progress it has made on implementing these or any of the other strategies in the AHMAP that the Alcohol Reference Group considers may be relevant to the matters the subject of this review.

71. The Commission is strongly of the view that the setting of liquor licence conditions will be ineffective to benefit the community unless it is complemented by a suite of other regulatory frameworks, policies, strategies, services and programs that between them target alcohol harm reduction, alcohol demand reduction and alcohol supply reduction.

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<sup>34</sup> See [https://www.regional.gov.au/regional/deals/files/Barkly\\_Regional\\_Deal\\_20190413.pdf](https://www.regional.gov.au/regional/deals/files/Barkly_Regional_Deal_20190413.pdf).

72. Although the Commission is of the view that since the restrictions introduced in February 2018, alcohol-related harm in the Barkly has been reduced, and that the measures taken by the Commission have contributed to this achievement, the Commission is keenly aware that its contribution is only one part of a complex network of harm, demand and supply reduction measures, including the ones referred to above. As the Riley Review stated, “the Northern Territory needs a comprehensive, coordinated and sustained approach to reducing alcohol related harm”.<sup>35</sup>

73. It is also the view of the Commission that it would be misguided and naïve to withdraw or reduce any of these measures: although things have improved since February 2018, over the last 18 months, and in particular since the introduction of COVID measures, there are clear and concerning signs that alcohol consumption and related harm in the Barkly are again on the rise. The Commission notes with dismay recent reports that funding for BRADAAG’s drug and alcohol support services is to be significantly reduced.<sup>36</sup>

### The COVID effect

74. As noted above, alcohol-related assaults have trended upwards over the last 18 months. In their submission to this review, NT Police offered a potential explanation for the second half of this period:

NT Police Intelligence considerations provide anecdotal evidence that remote travel restrictions imposed from late March 2020 and social distancing requirements keeping household residents at home for extended periods,

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<sup>35</sup> T Riley, P Angus, D Stedman, *Alcohol Policies and Legislation Review Final Report* (October 2017), 8.

<sup>36</sup> <https://www.abc.net.au/news/2020-12-08/parole-board-boss-criticises-nt-govt-services-cuts/12957618>.

coupled with access to enhanced welfare support by way of extraordinary Human Services Job Seeker and Job Keeper payments, and Coronavirus Supplement payments, may have been a significant driver of increased incident counts.

75. The Commission also notes reports that by 31 May 2020, 26,700 Territorians, many of them from remote areas, had utilised a further Commonwealth government COVID-19 stimulus measure, the early access superannuation scheme, which permits participants to withdraw up to \$10,000 in each of the two financial years 2019/20 and 2020/21.<sup>37</sup> Assuming that Territorians have continued to use this scheme at the same rate as they did until the end of May 2020, the Commission estimates that over 60,000 applications have been made under the scheme in the NT. Nationally, the average amount of super that is accessed in each application is \$7,664.<sup>38</sup>

76. Drink-driving is the offence category with the sharpest increase since the introduction of COVID-19 stimulus measures. That is unsurprising, having regard to anecdotal reports that since April 2020 car dealers in the southern region of the NT have done a roaring trade: more cars, more cash and more grog are a recipe for more drink-driving.

77. In summary, the Commission considers that many people in the Barkly who usually live on fixed and low incomes have received the windfall of a substantial increase in their disposable income since March 2020. The Commission considers that it is likely that this has resulted in a significant increase in the amount of liquor being

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<sup>37</sup> Oliver Gordon and Henry Zwartz, *Coronavirus super exemptions see Indigenous Australians disproportionately accessing money*, ABC News, 11 June 2020, accessed at [abc.net.au/news/2020-06-11/nt-remote-communities-access-super-amid-coronavirus/12332670](http://abc.net.au/news/2020-06-11/nt-remote-communities-access-super-amid-coronavirus/12332670).

<sup>38</sup> Australian Prudential Regulation Authority (APRA), *COVID-19 Early Release Scheme* (Issue 32, 7 December 2020), accessed at [www.apra.gov.au/covid-19-early-release-scheme-issue-32](http://www.apra.gov.au/covid-19-early-release-scheme-issue-32).

consumed,<sup>39</sup> and a correlative increase in alcohol-related harm. While the Commission considers that this collateral consequence of the COVID-19 stimulus measures has weakened the beneficial effects of the liquor restrictions, the Commission also considers that those effects are transitory, and unlikely to continue in 2021, as Jobkeeper and Jobseeker payments are progressively reduced, and as superannuation fund members drain their accounts.

### Secondary supply

78. As mentioned above, the Barkly Regional Council has adverted to grog-running as a harmful unintended consequence of the restrictions imposed in February 2018.

In its letter to the Commission received in January 2020, the Council stated:

With alcohol limits in place within the Barkly, alcohol is flowing in from outside the region. The areas of most concern raised with Council are 'grog runners' transporting alcohol from Mount Isa and a growing trend of alcohol being run down the Stuart Highway from outlets north of the Barkly. We continue to receive complaints from various communities about this issue, Police are actively trying to stem the problem with only limited success.

79. The Council adverted to "this significant issue" again in its October 2020 submission to the review, and submitted that the extension of takeaway trading hours in the Barkly "may assist to reduce demand for secondary supply flowing into our Region". The Council also submitted that relaxing the product restrictions currently in place "may assist to reduce secondary supply", and that "it is certain that tightening restrictions will increase secondary supply of alcohol".

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<sup>39</sup> As noted at paragraph 37 above, no actual liquor supply data is yet available for the period since March 2020.

80. Only two other submissions received by the Commission for the purpose of this review raised the issue of secondary supply. One was from BRADAAG, which stated “Many BRADAAG clients report that secondary supply is rife and that they are being charged around \$350.00 for a bottle of rum.” The second was from Caroline Mitchell, who stated “Thirsty Thursday did not work all it did was install an underground grog running ethic!” Notably, NT Police did not raise this issue in their submission to the review.

81. The Commission accepts that excessive supply restrictions tend to push liquor production, distribution, supply and consumption underground. The Commission has however not been provided with any evidence to support the hypothesis that this is actually a significant issue in relation to the current review.

82. On the contrary, the strikingly close correlation between the amount of liquor that has been lawfully supplied<sup>40</sup> and the levels of alcohol-related harm as measured by key indicia<sup>41</sup> strongly imply that secondary supply has not been a significant factor since the introduction of the restrictions. Changes in patterns of consumption of liquor purchased from authorised local licensees have been matched by observed changes in harm levels. This would not have been the case had there had been high flows of secondary supply from outside the Barkly.

83. No doubt secondary supply occurs in the Barkly, as it has done since that legendary beer truck in the 1930s, and even before that. No doubt it will continue to occur, despite the best efforts of the police and the community to detect and stop it.

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<sup>40</sup> See paragraph 36 (wholesale supply).

<sup>41</sup> See paragraphs 44 (alcohol-related assault), 54 (drink-driving offences) and 56 (alcohol offences).

However, the Commission considers that market forces are themselves an effective dampener of secondary supply: not all that many drinkers will pay a grog-runner \$350 for a bottle of rum originally bought in Darwin or Mt Isa when the same product is available from a local licensee for a tenth of that price.

## **DISCUSSION**

84. Some submitters, notably including Hospitality NT and the Barkly Regional Council, have urged the Commission to extend takeaway trading hours and lift the product restrictions. Others, notably including NT Police and Anyinginyi Health Aboriginal Corporation, have urged the Commission not to lift or loosen the restrictions. Given the Commission's view set out at paragraphs 24 to 26 above of the application of the public interest and community impact requirements to this review, the Commission considers that to lift or loosen the restrictions it would need to be satisfied that doing so would be in the public interest and would not have a significant adverse impact on the community.

85. The Commission acknowledges the concern expressed by some submitters regarding the unsightly and potentially unsafe concentration of patrons lining up to purchase liquor during the three hour daily window currently allowed for takeaway purchases. Widening this window would probably result in shorter queues and more social distancing. On the other hand, it would increase the access of the community to liquor, and in addition, would place significantly more strain on police because of the additional resources that would be required to maintain full lockdown.

86. Having analysed the data it has received, the Commission is 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. Accordingly, the Commission does not propose to lift or loosen the restrictions.
87. As the Commission does not propose to loosen the current product restrictions, the Commission considers that there would be no utility in varying licence conditions so as to institute a reportable transactions reporting scheme, as the Commission has done for Alice Springs licensees. This is because the current product restrictions in Tennant Creek are stricter than the reportable transactions thresholds applicable in Alice Springs.
88. The Commission notes the contention by some submitters that, as the Barkly Regional Council put it “Barkly residents are being singled out for discriminatory treatment when it comes to purchasing alcohol Tennant Creek is not a dry community but rather the fifth largest town in the Territory and should be treated in the same manner as Darwin, Palmerston, Alice Springs and Katherine.” Similarly, Hospitality NT contends that the current restrictions have an “unfair and discriminatory impact on legitimate and bona fide customers and businesses who have been adversely impacted.”
89. The Commission has been provided with no evidence that any licensees have been adversely impacted by the February 2018 measures. Indeed, apart from the submission by one licensee referred to at footnote 14 above, the Commission has been provided with no evidence or submissions by the licensees at all since its June 2018 decision. If the licensees have been adversely impacted, they now have 28 days in which to so inform the Commission.

90. The Commission agrees that it is treating residents of the Barkly differently to residents of other parts of the Territory. This is because residents of the Barkly, as noted at paragraphs 1 to 4 above, drink differently, and in particular drink more, and to more harmful effect, than other Territorians. The Commission would be derelict in performing its functions in accordance with the Act if it failed to have regard to the particular circumstances of Barkly communities and Barkly community members when determining what licence conditions to fix for Barkly liquor licences.
91. The Commission is currently of the view that given the increase in liquor consumption and alcohol-related harm since mid-2019 in the Barkly, it is in the public interest and would have a beneficial impact on the community to further vary takeaway licence conditions in the Barkly.
92. The Commission does not propose to further reduce or change trading hours. The Commission considers that to do so would aggravate the social distancing problem referred to above. The Commission is not persuaded that moving the trading window, which was fixed having regard to working hours, school hours and rostered police shifts, would be beneficial.
93. The Commission does not propose to further tighten the existing product restrictions. For the 18 months after the restrictions were introduced, there were significant reductions in both liquor consumption and alcohol-related harm. Only one submission – from a Tennant Creek resident – called for the product restrictions to be further tightened. The Commission is not persuaded that further turning down the product restriction tap would be beneficial.



94. NT Police have submitted that the Commission should impose the same camera surveillance condition as it has imposed on Alice Springs licences, to “assist investigations into secondary sellers and misuses of the BDR”.
95. There are currently no Guidelines issued by the Commission with respect to camera surveillance conditions, and the previous Director’s Guidelines are outdated and under review. Local liquor accords may provide for the installation and operation of video surveillance, but none of the affected licensees is a party to a local liquor accord.<sup>42</sup>
96. As stated above, the Commission acknowledges that secondary supply is a long-standing problem in the Barkly. The Commission considers that it would be in the public interest to implement this measure, which has the potential to deter, detect and reduce secondary supply.
97. Accordingly, the Commission proposes to add a condition to Barkly liquor licences in the same terms as the camera surveillance condition it has added to licences in the Alice Springs district.
98. NT Police made the following submission:

Licensed premises personnel are not waiting for POSI officers to complete checks before completing transactions. A POSI member will be in the process of conducting checks on potential customers. Outlet staff attend to the vehicle occupants in the drive through area, scan their bank card or accept cash payment, the exchange of alcohol for payment is completed before the POSI member can complete their checks. In some instances, the check confirms that the customer should not have been permitted to purchase. In these situations,

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<sup>42</sup> The Commission is informed that a Tennant Creek Liquor Accord is under development, but that the draft Accord does not include provisions relating to video surveillance.

the alcohol is subsequently seized by Police under their POSI powers. The customer then has to approach the outlet to seek a refund with no guarantee that this will be forthcoming. It is proposed that a condition be included that POSI checks must be completed before a potential customer can complete payment for any purchase.

99. The Commission considers there is merit in this proposed condition, which would enhance the effectiveness of the POSI operations. In the view of the Commission that would be in the public interest. The Commission proposes to vary licence conditions for Tennant Creek licensees accordingly.

100. NT Police also propose that the scanning of customer identification to ascertain whether a person is prohibited from purchasing liquor because they have been placed on the BDR, be extended to persons who attend licensed premises to consume liquor on the premises.

101. Persons are placed on the BDR because they are problem drinkers. Persons on the BDR are eligible for assessment and treatment. The pathways to being placed on the BDR include:

- being repeatedly taken into protective custody;
- committing repeated drink driving offences;
- being a defendant in an alcohol-related domestic violence order;
- being ordered not to drink alcohol by a court;
- being assessed by the BDR registrar to go onto the BDR after referral from a health professional or family member; and
- self-referral.

102. The Commission notes that previously, two Alice Springs licensees, the Gapview Motel and the Todd Tavern, voluntarily adopted this measure for a period, checking the credentials of patrons at the entrance to the premises.
103. The Commission considers that this measure is likely to deter and prevent some banned drinkers who are currently unable to purchase takeaway liquor from circumventing the BDR by drinking on premises. That, in the view of the Commission, would be in the public interest. The Commission proposes to vary licence conditions accordingly.
104. As noted above, the Commission is concerned that the reduction in consumption of liquor after the introduction of the restrictions in February 2018 has not been sustained since mid-2019. Several of the submissions the Commission has received draw attention to what appears to be unsafe drinking and associated harm in particular streets and households in Tennant Creek.
105. NT Police have proposed a limit on how many purchases can be made per day by members who nominate the same residential address. The Commission considers that this proposal has merit, and that it would be in the public interest to implement it. The Commission proposes to vary licence conditions by imposing a limit of 3 takeaway purchases per day per household. The Commission believes that the pre-purchase scanning scheme currently in use is not set up to flag repeated purchases from the same address. The Commission requests the Director to endeavour to

have the scheme adjusted so as to flag purchases from the same address on the same day.

106. However, in the meantime, the Commission considers that this measure could be implemented by requiring sales staff to check with the POSI or PALI officer on duty as to whether a customer has nominated an address from which at least three purchases have already been recorded that day. The Commission requests NT Police to arrange for their officers, who attend with iPads linked to police databases, to be equipped to undertake these checks.

## **PROPOSED VARIATIONS**

107. The Commission proposes to vary the licence conditions of all affected licensees by inserting the following conditions:

- a. The licensee must install, maintain and operate a camera surveillance system in compliance with the requirements and guidelines prescribed by the Director of Liquor Licensing (“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.
- 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.

108. The Commission proposes to vary the licence conditions of the Tennant Creek Hotel, the Goldfields Hotel and the Elliott Hotel by inserting the following condition:

- a. The licensee must use and maintain the identification system established by the Minister under Part 6 Division 1 ("Patron identification system") of the Act when selling, supplying or serving liquor to patrons for consumption on the premises.

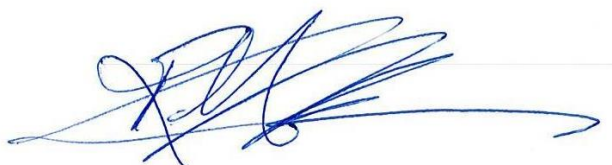
109. The Commission proposes to vary the licence conditions of the Tennant Creek Hotel, the Goldfields Hotel and the Headframe Bottle Shop by inserting the following condition:

- a. The licensee must not knowingly sell liquor to a member of a household on a day when that person or other members of that household have purchased liquor on three or more previous occasions that day.
- b. The licensee must take reasonable steps to ascertain whether a sale of liquor would give rise to a breach of the foregoing condition. For the purpose of this condition, it is a reasonable step for the licensee to check that an attending 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.

## INVITATION TO RESPOND

110. Pursuant to section 113(2)(c) of the Act, the Commission invites affected licensees to submit a response to the proposed variations within 28 days after the date of this notice.

111. The Commission also invites other interested parties to submit a response to the proposed variations within 28 days after the date of this notice. As stated at paragraph 32 above, the Commission is open to conducting a public hearing in Tennant Creek in February 2021 before varying licence conditions, if it forms the view that there is significant support for taking that course.



Russell Goldflam

ACTING DEPUTY CHAIRPERSON  
NORTHERN TERRITORY LIQUOR COMMISSION

6 January 2021

On behalf of Members Goldflam, Dwyer and McFarland