

DECISION OF DIRECTOR OF LIQUOR LICENSING

FIRST APPLICANT: LEEDAL PTY LTD

PREMISES: CROSSING INN

PREMISES ADDRESS: SANFORD ROAD, FITZROY CROSSING

LICENCE NUMBER: 6010015958

APPLICATION ID: A000192549

SECOND APPLICANT: KIMBERLEY ACCOMMODATION (EAST) PTY LTD

PREMISES: KIMBERLEY HOTEL

PREMISES ADDRESS: ROBERTA AVENUE, HALLS CREEK

LICENCE NUMBER: 6010016030

APPLICATION ID: A000192547

NATURE OF APPLICATION: VARIATION OF LICENCE CONDITIONS

DATE OF DETERMINATION: 11 JANUARY 2017

Background

- 1 Leedal Pty Ltd is the licensee of the Crossing Inn, located in Fitzroy Crossing. The Crossing Inn is the sole provider of packaged liquor to the general public within Fitzroy Crossing. On 2 October 2007, following an Inquiry into the extent of alcohol-related harm occurring in Fitzroy Crossing and surrounding areas, a number restrictive trading conditions were imposed on the licence for the Crossing Inn, including the following condition:

“The sale of packaged liquor, exceeding a concentration of ethanol in liquor of 2.7% at 20° C, is prohibited to any person, other than a lodger (as defined in Section 3 of the Act).”

- 2 Kimberley Accommodation (East) Pty Ltd is the licensee of the Kimberley Hotel, located in Halls Creek. NMH Pty Ltd is the licensee of the Halls Creek Store, which operates under a liquor store licence in Halls Creek. The Kimberley Hotel and the Halls Creek Store are the sole providers of packaged liquor within Halls Creek. On 11 May 2009, following an inquiry into the extent of alcohol-related harm occurring in Halls Creek and surrounding areas, the following condition was imposed on the respective licences:

Kimberley Hotel

“The sale of packaged liquor, exceeding a concentration of ethanol in liquor of 2.7% at 20° C, is prohibited to any person, other than a lodger (as defined in Section 3 of the Act) or a liquor merchant.”

Halls Creek Store

“The sale of packaged liquor, exceeding a concentration of ethanol in liquor of 2.7% at 20° C, is prohibited to any person, other than a liquor merchant.”

- 3 In essence, the sale of packaged liquor to the general public in the towns of Fitzroy Crossing and Halls Creek is restricted to liquor in which the concentration of ethanol does not exceed 2.7% at 20° C.

The current applications

- 4 On 24 December 2015, Leedal Pty Ltd, Kimberley Accommodation (East) Pty Ltd and NMH Pty Ltd (collectively referred to as the applicants) lodged applications, under s 64 of the *Liquor Control Act 1988* (the Act) to vary the respective condition relating to the sale of packaged liquor by replacing 2.7% in the condition with 3.5%. All three applicants were represented by the same legal firm and the applications were lodged together. It was submitted by the applicants that due to the geographic proximity of Fitzroy Crossing and Halls Creek it is appropriate for these applications to be heard together.
- 5 The applications were required to be advertised for public comment in accordance with instructions issued by the Director of Liquor Licensing (the Director).
- 6 Objections to the grant of application in respect of the Crossing Inn were lodged by:
- The Executive Director, Public Health (EDPH);
 - The Commissioner of Police (the Commissioner);
 - The Commissioner for Children and Young People (CCYP);
 - Marninwarantikura Fitzroy Women Resource Centre (MWRC); and
 - The McCusker Centre for Action on Alcohol and Youth (MCAAY).
- 7 Objections to the grant of the applications in respect of the Kimberley Hotel and the Halls Creek Store were lodged by:
- The EDPH;
 - The Commissioner;
 - The CCYP;

- The MCAAY;
 - 28 Members of the Halls Creek Community (Halls Creek Community); and
 - Ian Charles Hill and Kura Lee Hill.
- 8 On 18 November 2016, NMH Pty Ltd advised that it was withdrawing its application for the variation of the trading condition. The remaining applicants wanted to proceed with their applications.
- 9 Section 38(1) of the Act provides that in respect of certain applications, where the Director decides it is appropriate, s 38(2) of the Act shall apply. Section 38(2) states:
- “An applicant who makes an application to which this subsection applies must satisfy the licensing authority that granting the application is in the public interest.”*
- 10 It was determined that s 38(2) will apply to these applications. The applications will be determined on the basis of the written material lodged by the parties as permitted under ss 13 and 16 of the Act.
- 11 It is appropriate to point out that liquor which has a concentration of ethanol of 3.5% or less is defined in the Act as “low alcohol liquor”, although it has been referred to interchangeably by the parties as either “low alcohol liquor” or “mid strength liquor”. Therefore, for the purposes of this decision, I will adopt the same colloquial terminology as the parties and refer to mid strength liquor. The evidence and submissions of the parties are briefly summarised below followed by the reasons for determination.

Summary of the Applicants’ case

- 12 The applicants accept that the restrictive conditions relating to the availability of packaged liquor have been effective in reducing the levels of alcohol-related harm and ill-health occurring within the town sites. However, it was submitted that an unintended consequence of the imposition of these conditions has been:
- the establishment of a thriving black market in both Fitzroy crossing and Halls Creek in the sale of full strength liquor (beer, wine and spirits); and
 - regular “grog runs” (depending on the respective town site) to Broome, Wyndham, Kununurra and Derby for the purpose of purchasing full strength liquor (many such grog runs have resulted in deaths as a consequence of car accidents).
- 13 As a result of the above mentioned practices:
- binge drinking occurs regularly in both towns;

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- families have been broken up with parents being unable to care for their children (predominantly because their funds are being diverted towards the black market) with grand-parents stepping into the breach;
 - there has been an increase in unreported domestic violence;
 - children are not attending school on pension days to ensure that their parents receive their “kids money” enabling them to eat;
 - children are roaming the streets late at night as they do not feel safe at home; and
 - there has been a shift in drinking patterns – whereas previously liquor was predominantly consumed in the open, now it is being consumed within homes within communities.
- 14 According to the applicants, the proposed variation will discourage people from purchasing liquor on the black market or conducting grog runs to towns where restrictions don't exist.
- 15 The impact of liquor restrictions in Halls Creek have been reviewed by the Drug and Alcohol Office on three occasions: twelve months post-restrictions; twenty four months post-restrictions; and five years post-restrictions. The five year report provided a range of statistical information covering six time periods:
- pre-restrictions – June 2008 to May 2009;
 - post restrictions period 1 – June 2009 to May 2010;
 - post restrictions period 2 – June 2010 to may 2011;
 - post restrictions period 3 – June 2011 to May 2012;
 - post restrictions period 4 – June 2012 to May 2013;
 - post restrictions period 5 – June 2013 to May 2014.
- 16 According to the applicant, the key findings from the five-year report were as follows:
- the number of drink-driving charges, assault offences and domestic violence offences during each of the five twelve-month periods post-restrictions were fewer than the twelve-month period pre-restrictions;
 - pre-restriction, there were 278 verified assault offences. During the post-restriction period 1 the number of verified assault offences decreased to 188, post-restriction period 2 to 116; post-restriction period 3 to 135; post-restriction period 4 to 147 and in post-restriction period 5 to 149;
 - pre-restriction there were 201 verified domestic violence offences. This number decreased to 153 reports in post-restriction period 1; 100 in post-restriction period

2; 92 in post-restriction period 3; 149 in post-restriction period 4; and 109 in post-restriction period 5;

- pre-restriction, Halls Creek police estimated that 90% of their work was alcohol-related. Post-restrictions police now estimate this figure has decreased to between 70-80%;
- during periods 1 and 2 post-restriction there was a decrease in the number of police tasked when compared to the twelve-month period pre-restrictions (2,058 pre-restrictions; 1,117 for period 1 and 1,027 in period 2). During post-restrictions period 3 the number of tasks increased to 2,200; 2,649 in post-restriction period 4; and 3,403 in post-restriction period 5 (although it is noted that there were changes in reporting methods);
- with respect to the police statistics, however, there are a number of shortcomings with respect to the report namely;
 - there were changes to the Police data recording system resulting in the inability to separate alcohol-related tasking from general tasking; and
 - data collected around assault and domestic violence changed from recording the total number of reported cases to only those verified through investigation.
- the number of alcohol-related emergency department (ED) presentations in total in Halls Creek hospital has remained lower in all post-restriction periods than in the twelve-month pre-restriction period;
- pre-restriction there were 942 alcohol-related presentations by Halls creek residents to the ED. This number decreased to 619 during post-restriction period 1; 339 post-restriction period 2; 489 post-restriction period 3; 387 post-restriction period 4; and 574 post-restriction period 5;
- there were a total of 9,194 presentations to the Halls Creek ED pre-restriction. This number fell to 7,105 in post-restriction period 5;
- the number of arrivals by ambulance to the Halls Creek hospital pre-restriction and post-restriction period 1 remained relatively stable at 230 and 221 respectively. There was a reduction of 23 arrivals by ambulance in post-restriction period 2 when compared to pre-restriction;
- during the post-restriction periods 3, 4 and 5 there was an increase in presentations by ambulance. During post-restriction period 3 there were 324 arrivals by ambulance, 417 in period 4 and 493 in period 5.

17 It was submitted by the applicant that there was a significant shortcoming in the five year report in that the report did not make any comments or recommendations regarding the current liquor restrictions nor include any anecdotal information or feedback from the community or local businesses. Consequently, the five year review

failed to address the black market which exists within the community in full-strength liquor and the prevalence of grog runs.

- 18 In a 2014 submission to the “Standing Committee on Indigenous Affairs’ Enquiry into Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities”, the shire of Halls Creek stated that:

“In summary the situation in Halls Creek 2014 is much improved to that of 2009. The liquor restrictions have however inadvertently contributed to a number of other related problems. The alcohol consumption that is still, inevitably, going on is now neither formally controlled nor monitored. People are spending more money on alcohol by buying from illegal sellers and/or travelling to Kununurra or Broome. Binge drinking is common to avoid relatives and friends consuming it. There is an increase in the use of more expensive illegal drugs.”

- 19 In respect of Fitzroy Crossing, it was submitted that comprehensive reviews of the impact of the liquor restrictions in that town were conducted by the University of Notre Dame in 2009 and 2010, however, no further reviews of the restrictions has occurred since that time. The 2010 Notre Dame report found that the benefits to the Fitzroy Valley from the liquor restrictions to be:

- a) reduced severity of domestic violence;
- b) reduced severity of wounding from general public violence;
- c) reduced street drinking;
- d) a quieter town;
- e) less litter;
- f) families purchasing more food and clothing;
- g) families being more aware of their health and being proactive in regard to their children’s health;
- h) reduced anti-social behaviour;
- i) reduced stress for service providers;
- j) increased effectiveness of services already active in the family;
- k) generally better care of children and increased recreational activities; and
- l) reduction in the amount of alcohol being consumed by Fitzroy Valley residents.

- 20 The applicants highlighted the following paragraph from the 2010 Report:

“A significant minority of respondents support a restriction as being modified to allow for the purchase of liquor to take away full or mixed drinks alcohol once a week on a Friday afternoon or Saturday afternoon. People who support some modification believe this will reduce the need for people to travel to surrounding communities to access alcohol and reduce the potential for accidents on the road by alcohol-affected drivers.”

21 The applicants noted the following health and police indicators reproduced within the 2010 report:

a) Hospital

For the 12 month period from October 2006 to September 2007 (pre-restrictions) there were 604 alcohol-related presentations by Fitzroy crossing residents at the Fitzroy Crossing Emergency Department (ED). Alcohol-related presentations decreased by 219 (down to 385 in total) for the first 12 month period post-restrictions (October 2007 to September 2008) but increased by 150 presentations for the second 12 month period post restrictions (October 2008 to September 2009) to 535 presentations.

b) Sobering up Centres

Staff at Halls Creek, Derby and Broome Sobering Up Centres indicate there has been minimal impact on their services for Fitzroy residents in terms of increased numbers of people using the service.

c) Police

Since the implementation of the restrictions in October 2007, there have been a total of 1,146 reported offences in the Fitzroy Crossing Police sub district, of which 35% (406) were alcohol-related. Data was not available prior to the restrictions so there is no comparative data.

d) Domestic Violence

The number of reported incidents of domestic violence, alcohol-related and non-alcohol related, have increased since the introduction of liquor restrictions in Fitzroy Crossing. There has been a 21% increase in reported alcohol-related domestic violence and incidents during period 1 post-restriction, when compared to the 12 month period pre-restriction (73 incidents pre-restriction and 93 incidents in period 1 post-restriction) and a further 51% increase during period 2 post restriction, when compared to the 12 month period pre-restriction.

22 It was submitted that this review is now five years old, and, unfortunately the practice of grog runs which is hinted at during the course of the report has become a sad reality in Fitzroy Crossing, in conjunction with the operation of a thriving black market trade in full strength liquor. The applicants also referenced an ABC News website report on 13 March 2014 about the rise of sly grogging in West Fitzroy Crossing and an article in

the *West Australian* newspaper on 20 March 2014 about police concerns around sly grogging.

- 23 The applicants lodged 29 statements from residents and stakeholders in Fitzroy Crossing and Halls Creek to support the applicants' claims that both the black market sale of alcohol and the practice of grog runs exists within these communities.
- 24 It was acknowledged by the applicants that the proposed variation will not solve the problem of the black market sale of full strength liquor or the practice of grog runs, however, it was submitted that the modification of the Light Beer Condition to permit the sale of take-away mid strength beer may well discourage members of the community from participating in the black market and engaging in grog runs. It was further submitted that the reduction in the availability of full strength liquor in the community will result in a corresponding reduction in the levels of alcohol-related harm and ill-health that is still occurring and therefore the grant of the application would be in the public interest.
- 25 The applicants also lodged 47 statements from residents of Fitzroy Crossing and Halls Creek, the majority of whom are members of the Aboriginal community who either access full strength liquor by grog runs or on the black market. Many of these witnesses state that if mid strength beer was available, they would consume mid strength liquor rather than travelling to other towns to purchase full strength liquor or buying full strength liquor on the black market. The witnesses indicate that the amount of liquor they consume would not change.
- 26 It was submitted that when considering the material lodged by the objectors, it is important to note that the applicant is not submitting that:
 - the Director did not have cause to impose the original restrictions in 2007 and 2009;
 - the Director erred in imposing the original conditions in 2007 and 2009; and
 - the restrictions have not, in some part, been effective. It is acknowledged that, with some exceptions, all harm indicators indicate that there had been significant improvements with respect to alcohol-related harm and ill-health in the town sites since the imposition of the restriction.
- 27 According to the applicants, the purpose of the present application is not to "re-open" the original s 64 hearings of 2007 and 2009. Rather, the applicant submits that with the passage of 9 years (Fitzroy Crossing) and 7 years (Halls Creek) it is important to consider the existing levels of alcohol-related harm occurring in the towns and strategies to combat it.
- 28 The applicants subsequently submitted that:

- there is a significant group of at-risk residents within the town sites who are currently regularly accessing full strength liquor by way of grog runs or purchasing it on the black market;
- persons within this at-risk group are consuming liquor at harmful levels; and
- the availability of mid strength liquor within the town sites would be an effective measure in diverting members of this at-risk group away from full strength liquor towards mid strength liquor.

Summary of the objectors' case

The Executive Director Public Health

- 29 It was submitted by the EDPH that Fitzroy Crossing has a history of alcohol-related problems which led to the community taking action to notify the licensing authority of the extent and impact of alcohol issues in the community. This was led by the local women of the town who wanted to put behind them years of grief and alcohol-fuelled violence. As a consequence, the current restriction was put in place.
- 30 The EDPH noted that a number of reviews have indicated that overall, the restriction on packaged liquor sales has reduced harm and ill-health in Fitzroy Crossing and Halls Creek.
- 31 According to the EDPH, there is evidence that sly grogging has been an ongoing practice in the communities which predates the low strength packaged liquor condition. In addition, there is evidence that persons travel to other towns for a number of reasons; the majority of the time the primary purpose is not to access alcohol. Further, whilst there may be a level of sly grogging occurring in the community, the applicant has not submitted any evidence to demonstrate that the low strength packaged liquor condition caused the establishment of a black market.
- 32 It was submitted that when alcohol restrictions are introduced, there invariably will be attempts to circumvent them. The point is not whether this occurs, but the extent to which it occurs. That is, does the consumption of what is sly-grogged substantially replace the amount that would otherwise be consumed if restrictions were not in place? In this regard, the EDPH submitted that the applicant has provided no evidence that the level of harm associated with sly grogging is greater than the harm that may have occurred in the absence of the condition.
- 33 The EDPH submitted that if the application is granted, it will increase the strength of packaged liquor available in the community by 30%. Stakeholders indicate that when higher strength takeaway alcohol was available there were higher levels of alcohol-related problems and harm. Overall, there has been a net reduction in harm following the introduction of low strength packaged liquor restrictions. If higher strength takeaway alcohol is re-introduced into the community it will increase a range of short and long term harms.

- 34 The EDPH referenced national and international literature which shows that packaged liquor contributes to a range of harms in the community. Research also shows that beer is a high risk product for alcohol-related harm. This research needs to be viewed in the context of the existing at-risk groups and the socio-economic profile of the communities.
- 35 The EDPH provided a statement from Dr James Fitzpatrick, a leading professional in the field of Fetal Alcohol Spectrum Disorder (FASD) who has worked in Fitzroy Crossing and Halls Creek. The following is taken from Dr Fitzpatrick's statement:

"In their documentation filed with the Department of Racing, Gaming and Liquor dated 24 December 2015, the licensees are claiming that the restrictions have caused consequences such as the below and submit that the ability to sell midstrength alcohol will reduce these problems:

- *binge drinking occurring regularly;*
- *families have been broken up with parents being unable to care for their children (predominantly because their funds are being diverted towards the black market) with grand-parents stepping in;*
- *there has been an increase in unreported domestic violence;*
- *children are not attending school on pension days to ensure that their parents receive their "kids money" enabling them to eat;*
- *children are roaming the streets late at night as they do not sell at home; and*
- *There has been a shift in drinking patterns – whereas previously liquor was predominantly consumed in the open, now it is being consumed within homes within communities.*

Based on my medical training and experience, it seems counter-intuitive that the listed alcohol-related problems can be reduced, by increasing the amount of pure alcohol that would be sold per annum (by introducing mid-strength as take-away). All of the listed problems are related to historical and ongoing trauma, social dysfunction, and exacerbated by high rates of alcohol use in the community. The solution to the listed problems lies not in increasing the amount of alcohol sold in the community; this is likely to contribute to the listed problems.

When considering what is proposed by the licensees, it is relevant to understand local activity regarding FASD and the evidence supporting the role of the current restrictions in reducing factors that contribute to FASD (e.g. alcohol consumption in pregnancy) – results which may be undermined by the proposal.

In my professional view, the availability of midstrength alcohol is likely to negatively impact on FASD outcomes. That is, rates of alcohol use in the general community are likely to increase, including use by pregnant women; hence rates of FASD will likely rise. Furthermore, based on our study in the Fitzroy Valley, higher background rates of alcohol use have been related to increased stress and trauma in households, such as children witnessing domestic violence, being subject to abuse or neglect, and experiencing food insecurity. This locally derived evidence is in keeping with international research that links higher rates of FASD to higher background rates of alcohol use in the community. Our FASD prevalence research has directly linked high rates of alcohol use in pregnancy in the Fitzroy Valley to high rates of preventable and permanent brain damage in children (FASD). Our FASD prevention research has directly linked a reduction in drinking in pregnancy to the FASD strategy that has alcohol restrictions as a central pillar.

Based on my experience in the communities in question and the evidence of the link between alcohol consumption and brain damage in children, any change in circumstance that increases the amount of pure alcohol sold in the Fitzroy Valley and Halls Creek, will be directly linked to an increase in drinking in pregnancy, and therefore an increase in the incidence of preventable and permanent brain damage.

In my professional view, the continuation of the current restriction is essential to a maintenance of the successful reduction in alcohol use in pregnancy. The effect of reducing background rates of alcohol use, will flow on to reduced alcohol use in pregnancy. The mechanism for this is less alcohol available in the community generally, reduced stress on pregnant women from drunk or abusive community members, and a reduced likelihood that pregnant women will drink mid or full strength alcohol in pregnancy.”

- 36 The EDPH provided data on the extent of alcohol-related harm in Halls Creek. It was submitted that alcohol-related harm in Halls Creek is a whole of community issue and there are at-risk groups in the locality including people in low socio-economic areas who are particularly at risk. Local stakeholders report that increasing the availability of higher strength alcohol will increase the pressure on the individuals who experience alcohol-related issues.
- 37 According to the EDPH, statements from local service providers and data submitted in the objection indicates that when higher strength takeaway alcohol was available in Halls Creek there were higher levels of alcohol-related problems and harm. Such problems have decreased following the introduction of low strength package liquor restrictions.

The Commissioner of Police

- 38 The Commissioner provided a history of the existing restrictions in the two communities and submitted that the current restrictions have had a positive impact on the extent of alcohol-related harm and ill-health in the localities. The Commissioner undertook local community consultation and provided evidence from a range of local stakeholders who were able to provide first hand insights into the Fitzroy Crossing and Halls Creek communities.
- 39 The Commissioner provided crime statistics and road crash data for the two towns and submitted that the evidence with respect to the rate of alcohol-related offending is essential in assisting the licensing authority in making findings that specifically identify the existing level of harm and ill-health in the relevant area, due to the use of liquor. Based on a comparison of alcohol-related offending in the localities compared to the State, Metropolitan WA and Regional WA rates, it was submitted that there is a significant level of pre-existing harm and ill-health caused by the use of alcohol in Fitzroy Crossing and Halls Creek.
- 40 In respect of Halls Creek, a more focused analysis of the crime data over time shows a relevant decline in alcohol-related offending, particularly in the context of domestic and non-domestic assault offences since the imposition of the restrictions. The statistics for the 2010 calendar year to date, represent the best impact of the restrictions on the rate of offending. From 1 January 2004 to 31 December 2009, the total rates of alcohol-related offences against the person were on average:
- 32.9 times the State rate per 1,000 persons (48.1 times for domestic assault offences);
 - 16.4 times the Regional WA rate per 1,000 persons (20.9 times for domestic assault offences); and
 - 47.2 times the Metropolitan rate per 1,000 persons (79.2 times for domestic assault offences).
- 41 By comparison, from 1 January 2010 to 30 June 2016, the total rate of alcohol-related offences against the person were on average:
- 14.4 times the State rate per 1,000 persons (20.5 times for domestic assault offences);
 - 7.0 times the Regional WA rate per 1,000 persons (9.2 times for domestic assault offences); and
 - 20.4 times the Metropolitan rate per 1,000 persons (31.4 times for domestic assault offences).
- 42 The Commissioner noted that whilst the offending appears to have more than halved in all categories compared to the regional and State averages since the imposition of

- the restrictions, both in total relevant alcohol-related offences and alcohol-related domestic assault offences, alcohol-related offending still remains significant.
- 43 In respect of Fitzroy Crossing, the crime statistics appear to reflect a differing position to that of Halls Creek, in particular there is no evident trend in the level of offending over time and the rate of offending is particularly fluctuating in nature. However, there is evidence to suggest that following the restrictions being imposed there has been increased education and awareness, particularly surrounding domestic violence issues. There is a common theme amongst service providers and long term residents of the community that the rate of reporting of offences has in fact significantly increased. This is supported by the apparent improvement in the relationship between the police and members of the community through continued engagement.
- 44 The Commissioner referred to the applicant's assertion that regular grog runs for the purpose of purchasing full strength liquor has resulted in deaths as a consequence of car accidents. The Commissioner submitted that the applicant's claims have not been supported by any form of evidence. Statistics show that there has been no notable increase in critical or fatal injuries as a result of road crashes recorded in the relevant locations. Data from Main Roads WA indicates there has been a significant downward trend in total road crashes in the Kimberley region following the imposition of restrictions. Although restrictions may not be solely responsible for this downward trend, it was submitted that the restrictions were a significant occurrence in both localities and upon the Kimberley region.
- 45 According to the Commissioner, an understanding of the communities the subject of the applications will provide valuable guidance in determining the likely harm to result from the granting of the applications, The Commissioner submitted that if a particular locality is currently experiencing a degree of harm that is at an unacceptable level, then the likely degree of harm to result from the granting of the applications will be significant. The Commissioner submitted that Fitzroy Crossing and Halls Creek, although improving somewhat, are still experiencing high levels of alcohol-related harm and cannot tolerate the increased risk that the granting of the applications will present. This is so, particularly given the nature of the locality and the presence of at-risk groups who are shown to be negatively and significantly impacted by the consumption of alcohol.
- 46 The Commissioner provided information from Dr Andrew Boulton, Honorary Fellow at the Telethon Kids Institute. Dr Boulton provided evidence on the benefits to the health and welfare of children in the area following the imposition of restrictions and the impact of FASD in Fitzroy Crossing.
- 47 It was noted that 2014 was the first year in decades that all babies in the Fitzroy Valley were born above United Nations standard health percentiles.
- 48 The Commissioner submitted that the alcohol restrictions imposed on these communities has acted as a catalyst in improving the social services and facilities of

the community and fostered a renewed sense of community mindedness leading to an improved relationship between members of the community and service providers. The delicate balance and improvements made thus far extend far beyond an application based on the assumption that the introduction of a low demand product (i.e. mid strength alcohol), which will increase the volume of alcohol available in the community, will mitigate the consumption of a high-demand product (i.e. full strength alcohol).

- 49 The Commissioner submitted that the relevant consideration in the determination of the applications is object 5(1)(b) of the Act, which is to minimise harm caused to people, or any group of people, due to the use of liquor. In undertaking a balancing exercise between the objects of the Act, and taking into account the public interest considerations contained within s 38(4) of the Act, the Commissioner submitted that there is overwhelming evidentiary support to suggest that the minimisation of harm or ill-health caused by an increase in alcohol volume, is the outweighing factor in the context of these applications.
- 50 According to the Commissioner, there has been overwhelming evidence to suggest that the Fitzroy Crossing and Halls Creek communities have been positively impacted by the current licence conditions. Although the restrictions have not mitigated all the issues currently faced in these communities, there is undeniable evidence that the restriction on the sale of packaged liquor has acted as a catalyst for positive change. The liquor restrictions are not a 'cure-all' and their effect is limited to the motivations of the communities in which they are implemented. There is a great deal of evidence to suggest that it will take generations for the improvements currently being experienced to be furthered, and the endemic issues faced by these communities relating to the misuse and abuse of alcohol to be properly addressed.

The Commissioner for Children and Young People

- 51 The CCYP has a statutory responsibility to monitor and review laws, policies, practices and services that affect the wellbeing of children and young people under the age of 18 in WA. The CCYP works under the principles that children and young people are entitled to live in a caring and nurturing environment and be protected from harm and exploitation.
- 52 According to the CCYP, the voices of the affected young people and children have been silent on the impact of alcohol-related harm and the need to address alcohol abuse within the community. Accordingly, the objection has a two-fold purpose of presenting evidence of the impact that these changes would have on children and young people living in the Fitzroy Valley, and providing an opportunity for their voices to be heard.
- 53 It was submitted that the harm associated with alcohol abuse affects children and young people living in the Fitzroy Valley in many aspects of their life. FASD is prevalent, as is poor nutrition, poor school attendance and completion rates, and physical violence.

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- 54 It was submitted by the CCYP that the link between alcohol consumption and child protection issues has been well documented, alongside the frequently associated impact of family and domestic violence on children and young people. The child does not have to be the victim of violence themselves – the existence of violent behaviour in the household has been shown to cause trauma to children. A child’s exposure to domestic and community violence can manifest itself in many ways, including:
- psychological trauma and mental health impacts;
 - school difficulties;
 - likelihood of substance abuse;
 - early school-leaving;
 - self harm and suicide attempts; and
 - higher potential for violent behaviours themselves.
- 55 The CCYP provided evidence about the impact of alcohol abuse on children and young people in the Fitzroy Valley and the positive impact of the current restrictions.
- 56 The CCYP visited Fitzroy Crossing to consult with children and young people, to hear their views and concerns and ensure their evidence is heard and considered as part of the determination of the current applications. Some of those concerns include:
- adults being drunk and the effect this has on children;
 - kids being hungry;
 - missing school or being too tired to learn if they do so;
 - violence and fighting in the family;
 - being scared and frightened; and
 - rubbish and litter associated with drinking, including glass in the river.
- 57 In respect of the current applications, it was submitted by the CCYP that the proposed amendment will increase alcohol availability in these communities; however, there is no evidence to suggest that this will decrease alcohol-related harm to children and young people, or will benefit anyone in the communities apart from those selling the alcohol. Research shows that increasing the availability and strength of alcohol also increases alcohol-related harm. Further, it was submitted that the applicant’s claim that the amendment ‘may well’ discourage members of the community from participating in the black market and engaging in grog runs presumes that those who currently seek to sub-vert the restrictions with ‘sly-grog’ runs will be satisfied by the level of intoxication offered by mid-strength beer instead and will consume the mid-strength beer in moderation, thereby reducing the harms in the community. According to the CCYP this

is highly unlikely to be the case. “Sly-grogging” and the black market sale of full-strength alcohol are about people’s desire for a specific high level of intoxication. Mid-strength beer will not satisfy those who seek this level of intoxication and it will not address these issues.

- 58 The CCYP submitted that there have been improvements in the communities of Fitzroy Crossing and Halls Creek since restrictions have been imposed but it is important that communities have time to build on these improvements – cultural change will require lengthy commitment to building better and more nurturing environments for children and young people in these communities. The CCYP also noted the unmet need for programs and services in the communities, without which there is a considerable risk that these improvements will not be sustainable. Community members expressed the view that the key to future success of programs in the area is long term investment, community empowerment and ownership of the problems and solutions, which includes addressing the culture of excessive alcohol use in the area.

Marninwarntikura Fitzroy Women Resource Centre

- 59 According to the MWRC, the introduction of restrictions on the sale of alcohol in Fitzroy Crossing was a community driven response, initiated by the MWRC, to address the devastating consequences of the widespread over-consumption of alcohol in the community. It was submitted that the work that the MWRC has undertaken in the years since the restrictions have been imposed have been the most significant and challenging in the history of the lives of the Fitzroy Crossing community. A statement from Ms June Oscar, Chief Executive Officer of the MWRC, outlined the extensive work that the MWRC has undertaken in Fitzroy Crossing to improve community life.
- 60 The MWRC submitted evidence from WA Main Roads which shows that there has been no increase in road deaths on the Great Northern Highway between Fitzroy Crossing and Broome. Further, WA Police records show there has been a decrease in the rate of alcohol-affected drivers being detected despite an increase in random breath testing. Evidence was also provided which indicates that between 2006 and 2015 attendance to the Fitzroy Crossing Hospital for alcohol-related injuries by the Aboriginal population has decreased by 32.7%.
- 61 The MWRC provided statements from various community members who expressed concerns that the proposed variation in the availability of packaged liquor in Fitzroy Crossing will increase levels of violence and drunkenness in the community. Mr Joseph Ross provided a statement. Mr Ross is a member of the Bunuba people and his family has been in Fitzroy Crossing since 1855. Mr Ross is the owner of a small business in the town and has been involved in a number of community and government led initiatives including:
- Chair of the Prime Minister’s Northern Land and Water Taskforce;
 - Chair of the Indigenous Water Policy group;

- member of the National Policy Commission on Indigenous Housing; and
- member of the Indigenous Youth Leadership Program.

62 Included in Mr Ross' statement is the following:

"Prior to the restrictions being introduced in 2007/2008, I observed that drunkenness was endemic in Fitzroy Crossing.

Children were suffering trauma through overexposure to violence and alcohol. The elderly were constantly harassed and I would observe violence against the elders by young people who were drunk.

Since the introduction of the restrictions, the amenity of the community has completely changed. It is a safe family environment where people can get a good night's sleep and go out in public without fear of being harassed.

Alcohol and domestic violence are still issues in the community, however women are sober and more confident to report domestic violence. The psychological effect of the restrictions on the community, particularly women, has been profound. They are now putting their health and the health of their children first.

Sly grogging has always existed to an extent in Fitzroy Crossing. People in the area have always driven to Broome or Derby on 'rabbit runs' to buy big amounts of alcohol. The sly grogging that is occurring now is a drop in the ocean compared to the consumption of alcohol in Fitzroy Crossing prior to the restrictions.

Sly grogging and the black market is about premium full strength products. There is no market for mid strength products. Consequently the easing of the restrictions on the Crossing Inn to sell mid strength will have no impact on the level of sly grogging."

63 According to the MWRC, the evidence gathered from lay witnesses creates a picture of a community already besieged by layers of historical trauma that was compounded by the chronic over supply of alcohol. The restrictions have only been in place a relatively short period of time. The traumas caused by the suicides, violence and FASD are only now being fully understood and programmes are being developed and implemented to educate the community about the dangers of alcohol consumption.

64 Evidence was submitted relating to the current situation in Fitzroy Crossing and the work being undertaken by a range of agencies, including the MWRC, to support and educate the community about alcohol and its impacts. One such project, the Lirilwan study was Australia's first population based data collection on the prevalence of FASD. It showed that FASD in the Fitzroy Valley community is the highest reported in

Australia and similar to high risk populations internationally. This study noted that the prevention of FASD in the Fitzroy Valley was an urgent public health challenge.

65 In summary, the MWRC contends that:

- the proposed variation to enable the sale of takeaway mid-strength beer would not reduce the black market in full-strength alcohol and would not reduce 'grog runs'. People do not illegally supply, nor drive to Broome and Derby to buy mid-strength alcohol, but rather full-strength beer and spirits. The demand for these 'premium' products is unlikely to be satisfied by the sale of mid-strength alcohol;
- there are other means of addressing sly grogging other than increasing the availability of alcohol in Fitzroy Crossing, namely additional policing on the roads into and out of Fitzroy Crossing and through alcohol management plans; and
- the introduction of the sale of mid-strength takeaway alcohol will increase the consumption of alcohol by people in the Fitzroy Valley and will undermine many of the demand reduction measures, such as education and raising community awareness, which has been adopted by the MWRC and other community groups.

McCusker Centre for Action on Alcohol and Youth

66 The MCAAY submitted that the impact of alcohol on Fitzroy Crossing Halls Creek communities has taken a number of forms including public drunkenness, domestic violence and neglect of children through the lack of provision of food. MCAAY referred to the evaluation of the restrictions that are in place and that a clear finding from Fitzroy Valley has been that the health and social benefits increased when the volume of alcohol available was reduced. The evaluation also showed that the majority of the Fitzroy Valley residents believe that "if the restrictions were lifted before people had learned to change their drinking habits, the town and valley would return to how it was before the restriction in a short space of time."

67 According to MCAAY, research has shown that while having stricter controls on alcohol has made towns like Fitzroy Crossing and Halls Creek safer, healthier and more pleasant places to live, the restrictions do not address the reasons why people are drinking in the first place nor provide support to keep people off alcohol in the longer term.

68 In noting the applicants' submission that the grant of the application may well discourage members of the community from participating in the black market and engaging in grog runs, MCAAY submitted that the applicants have not provided sufficient and/or compelling evidence to support their claims. The evidence provided by the applicants largely centres on the current problems in the towns, based on statements of community members and stakeholders.

69 MCAAY referred to research that shows alcohol availability is strongly related to alcohol consumption and harms, including assaults.

- 70 MCCAAY submitted that relaxing the liquor restrictions is likely to undermine the progress made in the communities since the restrictions were imposed. It was further submitted that the communities are now less accepting of alcohol-related violence and other alcohol-related problems. The communities have also been proactive in providing education about the risks of drinking alcohol during pregnancy and about the challenges faced by children with FASD and their families, particularly through the *Marulu: the Lirilwan Project* in the Fitzroy Valley. The Lirilwan Project involves Australia's first ever holistic approach to the prevention, diagnosis and management of FASD.
- 71 Whilst acknowledging the concerns about sly grogging and the risks associated with people travelling long distances to purchase alcohol from other towns, the MCAAY submitted that the applicant's approach – to reintroduce mid-strength alcohol for takeaway sale – is more likely to increase, rather than decrease, alcohol-related problems in these communities. The proposition that increasing access to higher strength alcohol will reduce the harm from alcohol is disingenuous and is not supported by the evidence.

Members of the Halls Creek Community

- 72 An objection was lodged signed by 28 members of the Halls Creek community. The objection included what appeared to be an on-line petition endorsed by 401 people from within Australia and overseas. The objection also included drawings from Halls Creek children depicting the effects of alcohol on the community together with a transcript of evidence from the Education and Health Standing Committee Inquiry into Aboriginal Youth Suicides.

Ian Charles Hill and Kura Lee Hill

- 73 It was submitted that past experience shows that selling higher strength alcohol in takeaway format results in greater levels of intoxication and degradation amongst the Aboriginal population. Halls Creek residents have witnessed the upswing in community life as a result of reduced levels of intoxication as a result of restrictions on takeaway alcohol, including lower levels of violence.
- 74 Mr Hill referenced the Education and Health Standing Committee Inquiry into Aboriginal Youth Suicides where it was noted that the restrictions have made a tremendous difference in the community as far as social dysfunction, domestic violence and attendance to the emergency department.
- 75 Mr Hill submitted that removing the restriction is likely to cause a resurgence of the drunkenness of the past because alcohol provides an unhelpful and temporary way to escape the underlying social issues affecting the community. According to Mr Hill, the assertion that sly grogging renders the restriction of no value is to misdirect the real issue: sly grogging is a criminal offence and does not thereby render a social good

invalid – these are two separate issues. Dealing with those breaking the law by sly grogging should be dealt with the same way as any crime.

Reasons for determination

- 76 The extent and severity of alcohol-related problems in Fitzroy Crossing and Halls Creek has been acknowledged for many years. Various inquiries under the Act have been conducted during this time resulting in restrictions on the availability of liquor in these towns. In 2007 and 2009, the Director restricted the availability of packaged liquor in Fitzroy Crossing and Halls Creek respectively to liquor in which the concentration of ethanol does not exceed 2.7% at 20° C.
- 77 Substantial evidence has been presented to conclude that the liquor restrictions in Fitzroy Crossing and Halls Creek have been successful in improving the health and social outcomes for residents in and around these communities. However, it must be noted that the restrictions were never intended to be a complete solution. They have however, provided a period of much needed respite and given these communities the opportunity to consider and implement programs to minimise existing harms and change attitudes towards alcohol. Alcohol abuse has been endemic in these communities over a long period of time; consequently, changing attitudes and behaviours towards alcohol will not occur overnight.
- 78 Liquor restrictions in remote communities are most effective when they are part of a holistic approach to minimising alcohol-related harm.
- 79 The applicants acknowledge the benefits of the restrictions, and stated in their submissions that the restrictions have “been effective in reducing the levels of alcohol-related harm and/or ill-health occurring within the town sites.”
- 80 The applicants’ primary submission is that full strength alcohol is readily available in Fitzroy Crossing and Halls Creek with consumers of full strength liquor accessing such liquor either by:
- purchasing it on the ‘black market’ i.e. from sly groggers; or
 - travelling to surrounding towns such as Derby, Wyndham, Kununurra and Broome and transporting it back to either Fitzroy Crossing or Halls Creek.
- 81 As a consequence of the above practices, it was submitted that the consumption of full strength liquor is negatively impacting on the local communities and a minor variation to the restriction on the availability of packaged liquor (i.e. allowing packaged liquor up to 3.5%) ‘may well’ discourage people from engaging in these practices.
- 82 To support this assertion, the applicants lodged statements from members of the Aboriginal community in Fitzroy Crossing and Halls Creek. These witnesses state that they currently access full strength liquor by grog runs or on the black market, however if mid strength packaged liquor was available in town, they would consume mid

strength liquor rather than seeking to obtain full strength liquor elsewhere (except on odd occasions). The witnesses further state that the amount of liquor they consume would not change.

- 83 This assertion is challenged by the objectors. The Commissioner noted that the vast majority of these witnesses are heavy consumers of full strength liquor, who will travel for, or alternatively purchase liquor illegally, to satisfy their preferences. Demand for mid strength liquor is negligible amongst these witnesses. The Commissioner asserted that it is questionable upon what basis the applicants purport that such individuals will entirely change longstanding routine and dependence on full strength liquor, based upon the introduction of mid strength packaged liquor into the localities. The Commissioner submits that the negative perception of light beer does not extend to taste, but rather, the physical reaction of heavy drinkers to consuming large quantities of full strength liquor to achieve a desired effect.
- 84 Further, the Commissioner observed that there is a notable difference between the consumption of low strength liquor (2.7%) and mid strength liquor (3.5%) in terms of levels of intoxication. Utilising the 'Widmark formula' of estimation, a person consuming five 375ml low strength beers (2.7%) over two hours will return a BAC of 0.04g/dL (if the person was a male weighing 75kg). If the same person was to consume five 375ml mid strength beers (3.5%) over two hours, they would return a BAC of 0.08g/dL. The first person would be within the ambit of the prescribed legal limit of BAC for driving, the latter would be over the prescribed limit, and perhaps more prone to provoke or engage in violence.
- 85 The MWRC submitted that the net result if the applications are approved is that mid strength liquor will be consumed in greater volumes on top of the full strength liquor available for consumption on premises or as packaged liquor obtained from grog runs or illegally. There is no evidence that the prevailing problems relating to sly grogging, domestic violence and community health will be ameliorated by the grant of the applications.
- 86 The EDPH submitted that whilst there are a number of factors that influence how a person drinks, increased access and convenience of obtaining alcohol can make it difficult for those that have alcohol problems to abstain or reduce their drinking.
- 87 While the applicants' witnesses state that they will switch to mid strength package liquor if it is available rather than sourcing full strength liquor, I find this evidence to be unreliable. These persons are heavily dependent on full strength liquor and in order to satisfy their needs, they will travel long distances or obtain it illegally. As submitted by the CCYP, sly grogging and the black market sale of full strength alcohol are about people's desire for a specific high level of intoxication and mid strength beer will not satisfy those who seek this level of intoxication. In addition, there are many more at-risk drinkers in the broader community who are heavily dependent on full strength liquor and in my view, increasing the availability of higher strength alcohol in the

community is likely to make it more difficult for these persons to reduce their alcohol consumption.

- 88 The MWRC provided a Statutory Declaration from Associate Professor Alan Clough of the School of Public Health, Tropical Medicine and Rehabilitation Services at James Cook University. His experience in the field of community based interventions aimed at the reduction of misuses of alcohol and drugs in remote indigenous communities. According to Associate Professor Clough, sly grogging is a common concern that arises in alcohol restricted communities. Further, Associate Professor Clough states that he is not aware of any academic research to suggest that relaxing alcohol restrictions will result in a decrease in sly grogging activities. To the contrary, he cites his own experience of the Pormpuraaw Indigenous community in Queensland where mid strength alcohol has been sold. Despite the availability of mid strength liquor, sly grogging remains a problem in that community. Associate Professor Clough stated that there is no evidence that relaxing restrictions as an unsupported strategy would reverse the prevalence of sly grogging; however, relaxing restrictions could see high levels of violence and community dysfunction return.
- 89 The fact that the restrictions have, and continue to have, a positive effect on the community demonstrates that for some, the inconvenience, due to the high cost or the distance required to travel, acts as a barrier to accessing full strength packaged liquor or at least has reduced the amount that is accessed. The applicants did not provide data on the amount of packaged liquor they currently sell within the community. While some at-risk drinkers may still be accessing full strength packaged liquor, others are consuming lower alcohol products or less alcohol overall, which is having a net benefit within the community.
- 90 It was determined that s 38(2) of the Act will apply to these applications. Consequently, there is a positive onus on an applicant to discharge this obligation (refer *Liquorland (Australia) Pty Ltd v Executive Director of Health* [2013] WASC 51; *Seoul Mart City Pty Ltd v Commissioner of Police* (LC27/2014).
- 91 It is therefore incumbent upon an applicant to adduce sufficient information to make it possible for the licensing authority to satisfy itself that the grant of the application is in the public interest.
- 92 In determining whether the grant of an application is 'in the public interest' I am required to exercise a discretionary value judgment confined only by the scope and purpose of the Act (refer *Water Conservation and Irrigation Commission (NSW) v Browning* (1947) 74 CLR 492; *O'Sullivan v Farrer* (1989) 168 CLR 210; *Palace Securities Pty Ltd v Director of Liquor Licensing* [1992] 7WAR 241; and *Re Minister for Resources: ex parte Cazaly Iron Pty Ltd* (2007) WASCA 175).
- 93 The factual matters that I am bound to take into account when determining whether the grant of an application is 'in the public interest' are those relevant to the primary and

secondary objects of the Act as set out in s 5 (refer *Woolworths v Director of Liquor Licensing* [2013] WASCA 227).

94 The primary objects of the Act are:

- to regulate the sale, supply and consumption of liquor;
- to minimise harm caused to people, or any group of people, due to the use of liquor; and
- to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.

95 The secondary objects of the Act are:

- to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State;
- to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
- to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.

96 Where tension arises in promoting the different objects of the Act, the licensing authority must undertake a weighing and balancing exercise. The decision will depend on the particular circumstances of the case (refer *Executive Director of Public Health v Lily Creek International Pty Ltd* [2000] WASCA 258).

97 The harm contemplated by the Act is not confined to consumers of alcohol and extends to harm caused to the health and well-being of individuals, families and communities, as well as social, cultural and economic harm. This includes harm which may occur through an increase in anti-social or injurious behaviour due to the use of liquor and is not limited to physical harm (refer *Re Gull Liquor, Gingers' Roadhouse Upper Swan* (1999) 20 SR (WA) 321; *Director of Liquor Licensing v Kordister Pty Ltd* [2011] VSC 207).

98 Whether harm or ill-health will, in fact, be caused to people, or any group of people, due to the use of liquor is essentially a matter of prediction. However, it is unnecessary to establish on the balance of probabilities that harm or ill-health will be caused to people, or any group of people, before the consideration can be taken into account (refer *Lily Creek* supra). The potential for harm or ill-health is to be taken into account by the licensing authority irrespective of whether the prospect is a possibility or a probability. It is a powerful public interest consideration (refer *Lily Creek* supra).

- 99 The question is whether, having regard to all the circumstances and the legislative intention, the grant of the application is justified. In answering this question, the licensing authority has a wide discretion. It is a matter for licensing authority to decide what weight to give to the competing interests and other relevant considerations (refer *Hermal supra*).
- 100 I accept that the views expressed by the various residents and others in support of the proposed variation are genuinely held beliefs. However there is a lack of evidence to support the underlying proposition that varying the restriction from 2.7% to 3.5% will lead to a reduction in grog runs or incidents of sly grogging. The evidence is that the vast majority of people undertaking grog runs or buying liquor on the black market are obtaining full strength liquor, not mid strength liquor. I find, on the balance of probability, that the introduction of mid strength packaged liquor in Fitzroy Crossing and Halls Creek is unlikely to discourage people, who are dependent upon alcohol in the form of full strength beer, wine or spirits, from engaging in sly grogging or grog runs.
- 101 In my view, the more likely outcome if the application is approved is that the consumption of mid strength liquor would merely supplement the existing consumption of full strength beer, wine and spirits. Based on the evidence, I do not accept that the grant of the applications would lead to any meaningful reduction in the consumption of full strength alcohol in Fitzroy Crossing and Halls Creek.
- 102 I find that the evidence does not support the applicants' claim that increasing the ease of access to higher strength packaged liquor in Fitzroy Crossing and Halls Creek is likely to decrease alcohol-related harm in the community.
- 103 The expert evidence of Dr James Fitzpatrick, a leading professional in the field of FASD, is that the availability of mid strength alcohol is likely to negatively impact of FASD outcomes in the Fitzroy Valley, which experiences the highest reported rates of FASD in Australia. I accept the evidence of Dr Fitzpatrick that the grant of the application is likely to undermine the work that has taken place, since the restrictions were implemented, to reduce incidents of FASD in the communities of Fitzroy Crossing and Halls Creek. FASD is preventable, but not curable. I find that the grant of the applications has the potential to increase the rates of FASD in the affected communities.
- 104 Wheeler J in *Executive Director of Public Health v Lily Creek International & Ors [2001] WASCA 410* said:

"The Act directs attention to the minimisation of alcohol related harm generally (s 5(1)(b)). The relevant question for the Court, in that case, is the level of alcohol related harm, due to the use of liquor, which is likely to result from the grant of an application. This does not mean that only the increased harm which may result from the specific premises in question is to be considered; rather it seems to me that must necessarily be

assessed against any existing harm or ill health so as to assess the overall level which is likely to result if a particular application is granted. Where, as occurs in probably the majority of cases, the existing level of alcohol related harm is no greater than that which appears to be commonly accepted in the community, the distinction is probably not significant. However, where there is already a very high and serious level of alcohol related harm in a community, it may be that the Court would find a relatively small risk of increase in that level of harm to be unacceptable. In other words, it is not the “risk” of harm in some abstract sense which is relevant, but rather the risk having regard to the proved circumstances of the particular area in relation to which the application is made” (emphasis added).

105 Therefore, in considering the risks associated with the grant of the applications, it is not the risk in some abstract sense, but rather the risk having regard to the proved circumstances of the area to which the application relates.

106 In similar context, Edelman J in *Liquorland (Australia) Pty Ltd v Executive Director of Public Health* [2013] WASC51, J said:

“In assessing the overall question of whether granting the application is in the public interest it is relevant to consider the baseline level of risk and, in that context, the effect of an increase in risk from the baseline level. It may be that where an existing level of risk is greater, a small increase in risk is less likely to be tolerated. Similarly, it is relevant that there are existing ‘at risk’ persons who might be further affected” (emphasis added).

107 Research, as referenced by the objectors, shows that alcohol availability is strongly related to alcohol consumption and harms. The findings of Australian research on the impact of changes in alcohol availability were summarised by the National Preventative Health Taskforce, which said: *“the results of this research is clear: liberalising alcohol availability is likely to increase alcohol-related problems”.*

108 I find, on the balance of probabilities, that even a “minor variation” (as submitted by the applicants) in the strength of packaged liquor available in these communities is likely to have a negative impact on the overall health and well-being of residents and visitors to Fitzroy Crossing and Halls Creek.

109 Given the history of alcohol-related harm and trauma in these communities, even a small increase in the risk posed by the grant of the applications is unacceptable.

110 According to the MWRC, there are many complex issues that affect the health and wellbeing of these communities, including:

- the loss of traditional lands and lifestyle;
- breakdown of the family and kinship systems;

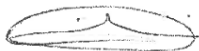
- lack of economic opportunity; and
 - poverty and welfare dependency.
- 111 These are not issues that can be resolved in the short term; however the current restriction on the availability of packaged liquor in these communities has provided an important window of opportunity to address some of these complex problems. It is certainly not uncommon when liquor restrictions are introduced in a community that there will be attempts to circumvent them. Nonetheless, the restrictions in Fitzroy Crossing and Halls Creek have been a catalyst for positive change.
- 112 I am of the view that the grant of the applications would result in an increase in the amount of pure alcohol available in the community. The evidence from the objectors clearly establishes that, notwithstanding the benefits that have resulted since the restrictions were introduced; the communities of Fitzroy Crossing and Halls Creek still experience high rates of alcohol-related harm. I find that the grant of the application has the potential to exacerbate the existing rate of alcohol-related harm in these towns.
- 113 Therefore, in consideration of the evidence as a whole, I find that the objectors have established their grounds of objection under ss 74(1)(a) and (b) of the Act and the grant of the application:
- would not be in the public interest; and
 - would cause undue harm or ill-health to people, or any group of people, due to the use of liquor.
- 114 It therefore follows that the applicants have failed to discharge their onus under s 38(2) of the Act. Consequently, the applications are refused.
- 115 The sale of liquor without a licence is an offence under the Act. In my view, there are alternative measures that can be adopted to reduce the incidents of sly grogging, rather than varying the conditions of the licences as proposed by the applicants.
- 116 If sly grogging is as extensive as suggested by the applicants, it is an issue that the community can take ownership of in order to reduce or minimise the impact of this practice. People can anonymously report persons who are known to sell liquor unlawfully to the Police Crime Stoppers telephone line. This will provide the police with the opportunity to gather the necessary intelligence in order to obtain convictions; seize the alcohol and seize vehicles used in the commission of the offence. Certainly more work can be done within these communities to promote and publicise the use of the Crime Stoppers option and I will liaise with the Commissioner and the EDPH on this issue.
- 117 In addition, the community could petition the Minister to consider declaring Fitzroy Crossing and Halls Creek restricted areas under the Act, thereby prohibiting the

possession of any packaged liquor in which the concentration of ethanol exceeds 2.7% at 20° C. This would act as a significant deterrent for people to purchase full strength packaged liquor in other towns and bring it back to Fitzroy Crossing or Halls Creek for sale or consumption.

118 Finally, the Commissioner submitted that in view of the overwhelming evidence that alcohol-related harm in Fitzroy Crossing and Halls Creek remain at significantly high levels, rather than varying the condition as proposed by the applicants, further restrictions on the availability of alcohol should be contemplated. However, in the interests of procedural fairness, I am of the view that such a proposal should not be considered as part of the determination of these applications.

119 Parties to this matter dissatisfied with the outcome may seek a review of the Decision under s 25 of the Act. The application for review must be lodged with the Liquor Commission within one month after the date upon which the parties receive notice of this Decision.

120 This matter has been determined by me under delegation pursuant to s 15 of the Act.



Peter Minchin
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING