

## **DECISION OF DIRECTOR OF LIQUOR LICENSING**

**MATTER:** PILBARA INQUIRY - IMPOSITION OF CONDITIONS  
PURSUANT TO S 64

**PREMISES:** REFER ATTACHMENT A

**DECISION OF:** PETER MINCHIN  
DIRECTOR LIQUOR CONTROL AND ARBITRATION

**DATE OF DETERMINATION:** 11 JANUARY 2019

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### **Introduction**

- 1 One of the primary objects of the *Liquor Control Act 1988* (the Act) is to minimise harm caused to people, or any group of people, due to the use of liquor.
- 2 To further this object and because of the extent of alcohol-related harm and ill-health occurring in the Pilbara, restrictions on the availability of liquor were imposed in Newman in 2003 and Port Hedland and South Hedland<sup>1</sup> in 2004. In 2012, in addition to the restrictions that operated in Newman and Port Hedland, further restrictions were applied to the whole of the Pilbara region. From time to time, local Accords have also implemented voluntary restrictions on the availability of liquor in response to local issues, which have impacted on whether mandated restrictions were imposed. Also, restrictions sometimes vary from premises to premises within a town or area depending upon various factors.

#### *Current restrictions in Newman*

- 3 The following restrictions generally apply in Newman:
  - the sale of packaged liquor between 10 a.m. and 12 noon and between 8 p.m. and 10 p.m. on any day or night of permitted trading is restricted to the sale of low-strength alcohol (i.e. up to 3.5% ethanol per volume);
  - full strength packaged liquor may only be sold between 12 noon and 8 p.m. Monday to Sunday;
  - the sale of 750 ml beer bottles (“King Browns”) is prohibited;
  - wine and casks/flagons containing more than two litres of alcohol; and fortified wine in two litre casks or more is prohibited; and
  - the sale of port wine is prohibited on Tuesday, Wednesday, Thursday, Friday and Saturday unless by way of an approved exemption.

#### *Current restrictions in Port Hedland*

- 4 The following restrictions generally apply in Port Hedland:
  - packaged liquor may only be sold from Monday to Saturday from 11 a.m. to 8 p.m. The sale of packaged liquor on Sundays is prohibited, unless varied by way of a special exemption approved by this authority;
  - the sale of wine in casks or flagons containing more than two litres of alcohol is prohibited;
  - the sale of fortified wine in containers greater than one litre is prohibited;

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<sup>1</sup> Any reference to Port Hedland includes South Hedland unless otherwise distinguished.

- the sale of spirits in bottles or containers greater than 750mls is prohibited;
- the licensee is prohibited from, and shall not authorise, any external promotion which advertises the price of full strength "mainstream" packaged beers (i.e.: regular beer with over 3.5% ethanol by volume); RTDs (Ready To Drink spirit mixes); 2 litre wine casks; or spirits, whether the price is discounted or not. The licensee is also prohibited from any external promotion which links the purchase of full strength "mainstream" packaged beer, RTDs, spirits or 2 litre cask wine with any prize, contest or other customer incentive. The specific brands of "Mainstream" packaged beer affected include: Victorian Bitter, Fosters Lager, Melbourne Bitter, Emu Export, Emu Bitter, Swan Draught, XXXX, Hahn Ice, Tooheys Old, Tooheys New and Tooheys Red. Bottled wine, light beers (3.5% ethanol by volume) and premium beers are excluded from this condition; and
- the approved manager will attend cultural awareness training to be presented by a local Indigenous training provider.

#### *Current Pilbara wide restrictions*

- 5 The following restrictions generally apply across the Pilbara region, excluding Port Hedland and some premises in Newman:
- Packaged liquor may only be sold Monday to Saturday from 11 a.m. to 8 p.m. and Sunday from 12 noon to 6 p.m. (where the licence authorises)
  - The sale and supply of liquor for consumption on premises is prohibited before 11 a.m. except where it is sold or supplied ancillary to a meal or to a lodger;
  - Packaged liquor may not be sold or supplied in the following quantities:
    - in individual containers of more than two litres with an alcohol content of 6% or more (for example, wine casks of more than two litres);
    - in glass bottles of 750mls or more of beer; and
    - fortified wine in containers greater than one litre.

#### **Background to current inquiry**

- 6 In January 2017, the Commissioner of Police, by his delegate, provided a report (police report) to the Director of Liquor Licensing on the extent of alcohol-related harm in Port Hedland and recommended further restrictions on the availability of alcohol be imposed on the liquor licences in the town.
- 7 As a consequence of the police report, I wrote to various government agencies and other stakeholders seeking information on the extent and impact of alcohol-related harm in Port Hedland.
- 8 In the interim, and as part of the Roebourne response (consequence of police investigations of child abuse), the police provided an addendum to their report seeking Pilbara wide restrictions. Further information was subsequently sought from government agencies and stakeholders relating to the whole of the Pilbara. The following overview incorporates both lots of submissions.
- 9 Licensees in the region were provided with a copy of the police report together with the submissions from government agencies and stakeholders and afforded an opportunity to respond and submit any submissions or evidence relevant to this matter.
- 10 A large amount of information has been provided to assist in the determination of this matter and it is not practical to summarise or reference every submission or piece of evidence relied upon. The fact that I have not referred to a specific piece of evidence or

information does not mean that I have not considered it. Also, submissions were received from various government agencies prior to the Machinery of Government Reforms which resulted in the amalgamation of government departments. Accordingly, any reference to a government department will be as at the time of their submission.

### **Brief overview of the police report and stakeholder submissions**

#### *Police report*

- 11 The police report provided information on rates of alcohol-related harm occurring in the Pilbara and the negative impact that alcohol abuse is having on the community. For example:
  - the rate of alcohol-related domestics assaults in Port Hedland increased significantly from 2015 to 2016 and was just above the Regional WA rate and almost three times the State rate;
  - in 2016, alcohol-related domestic assaults in South Hedland almost tripled the 2015 rate, was in excess of three times the Regional rate and in excess of eight times the State rate;
  - the rate of alcohol-related non-domestic assaults in Port Hedland reduced in 2016, but was still well above the Regional WA rate and the State rate;
  - in 2016, alcohol-related non-domestic assaults in South Hedland more than doubled the 2015 rate and was in excess of three times the Regional rate and over six times the State rate;
  - the rate of alcohol-related threatening behaviour in Port Hedland reduced in 2016 but was still significantly greater than the Regional rate and the State rate;
  - St John Ambulance Hedland Sub Centre had a 17% increase in job numbers from 2015 to 2016 and across that period there was an increase of 25.6% in cases relating to domestic and assault trauma;
  - most of the work of the (former) Department of Child Protection and Family Support and the reasons why children come into the care of the State involves excessive alcohol consumption and South Hedland is the busiest office in the Pilbara; and
  - alcohol abuse is at the forefront of the problems presenting to the Pilbara Community Legal Service.
- 12 A report from the Officer in Charge of the South Hedland Police station was also provided. This report gave further insight into the extent of alcohol-related harm occurring in the town, the severity of offending and the negative impact alcohol abuse is having on the community. For example, about 250 students do not attend the high school each day and many children feel safer on the streets with friends rather than in their homes, where they are exposed to violence and alcohol consumption. It was stated by the OIC that while liquor restrictions alone are not the answer they would certainly reduce the level of intoxication enough so that service providers can engage more meaningfully with the community.
- 13 The police report indicated that alcohol-related harm and offending is not just limited to Port Hedland, with other towns in the region such as Karratha, Roebourne, Marble Bar, and Newman also experiencing high rates of alcohol-related offending. In terms of the Pilbara region:
  - the rate of alcohol-related domestic assaults in the Pilbara increased in 2016 and was seven times the metropolitan rate, almost five times the State rate and just under double the Regional rate;

- alcohol-related non-domestic assaults in the Pilbara increased in 2016 and were well above the Metropolitan, Regional and State rates; and
  - alcohol consumption on a per capita basis is above the State and National rate.
- 14 It was submitted by the police that Pilbara wide restrictions are necessary to minimise people travelling or relocating to other towns in the region and increase the effectiveness of any restrictions.
- 15 Consequently, the police recommended various restrictions be imposed on the liquor licences in the Pilbara, including to:
- prohibit the sale of beer, cider and “ready-to-drink” products with an alcohol volume over 3.5%;
  - reduce the hours of trade by three hours Monday – Saturday from 11am – 8pm to 2pm - 8pm;
  - prohibit the sale of packaged liquor on Sundays; and
  - restrict daily purchase quantities to a maximum of 30 cans of beer, 24 cans of RTDs, 750ml of spirits, one litre of fortified wine, and three 750ml bottles of wine. Except for fortified wine and spirits, which can only be purchased separately, the police proposed that a person may purchase a combination of the remaining products but at a reduced quantity; e.g. half of each product.

#### *Regional Services Reform Unit*

- 16 It was submitted that the problematic use of alcohol by people in the Pilbara is a major cause of violence, self-harm and long-term physical and mental health conditions. The problematic use of alcohol also reduces the resilience of families by limiting the effectiveness of early childhood, education, health and other human resources.
- 17 According to the Regional Services Reform Unit (RSRU), while supply reduction strategies are not the panacea to eliminate alcohol-related harm, they have been shown to be very effective as a circuit-breaker in Kimberley towns and communities, with positive family and social effects such as: 45% reduction in hospital admissions to the Fitzroy Valley hospital; 14% increase in school attendance in the Fitzroy Valley; 58% reduction in alcohol-related assaults in Halls Creek and 70% reduction in the number of people visiting the Halls Creek Sobering Up Shelter. It was submitted by the RSRU that when implemented in tandem with additional/targeted prevention, harm reduction and treatment services, there is evidence to show that liquor restrictions are beneficial.
- 18 The RSRU submitted that regardless of which restrictions are adopted, it is the strong preference of the Pilbara Human Services Regional Managers Forum that the Pilbara region, as much as possible, be subject to uniform supply reduction measures supported by an electronic Takeaway Alcohol Management System (TAMS).

#### *Tourism Western Australia*

- 19 It was submitted by Tourism WA that regional tourism represents a critical economic asset to the State. For example, in the year ending March 2016, 19 million daytrips and 9.8 million overnight trips were taken in Western Australia, by many different categories of visitors, who spent \$9.3 billion in the State of which 46% was spent in regional Western Australia.
- 20 Tourism WA noted that the Town of Port Hedland is an important destination in regional WA for business travel; and it also serves as a service centre and access point for visitors traveling through the Pilbara and beyond to the Kimberley, Gascoyne and Golden

Outback regions. The majority of leisure visitors to Port Hedland are self-drive tourists (70%) who are travelling through the region to other destinations.

- 21 Notwithstanding, Tourism WA acknowledges the significance of the issues raised in the police report and supports the need to reduce alcohol-related harm across the Pilbara. It also submitted that the introduction of alcohol restrictions in the face of significant health and violence problems in the region is a means of achieving this outcome, noting that it also needs to be supported by education and compliance as part of a holistic approach.
- 22 According to Tourism WA, the limits proposed by the police on the amount of alcohol that can be purchased per person per day should be enough to sustain a self-drive trip in the area, although the time limits suggested might negatively impact the visitor experience. Overall, Tourism Western Australia supports the introduction of alcohol restrictions in the face of the significant health and violence problems in the region, however it notes that different restrictions exist in different locations across the Kimberley and Pilbara, which can be confusing for tourists.

#### *Department of Child Protection and Family Support*

- 23 According to the Department of Child Protection and Family Services (DCP), alcohol use is linked to significant harm to children and families in the Pilbara. Such harm includes child abuse and neglect, family and domestic violence and Fetal Alcohol Spectrum Disorder (FASD).
- 24 It was submitted that family and domestic violence is one of the leading reasons for contact with the department. In this context, in the Pilbara District for the 12-month period ending 30 June 2016, approximately 49% (n = 1,066) of domestic violence incident reports were associated with the misuse of alcohol and of these, 33% were estimated to involve children. Family and domestic violence and alcohol misuse also contributes to children entering the care of the Chief Executive Officer (CEO) of the Department and in the period 1 July 2016 to 31 December 2016, 13 children entered the care of the CEO in the Pilbara District. It is estimated that approximately 30% of children in care in the Pilbara district have suspected FASD.
- 25 DCP supports reducing the supply of alcohol to address the negative impact that alcohol abuse is having on families and children in the region.

#### *McCusker Centre for Action on Alcohol and Youth*

- 26 The McCusker Centre for Action on Alcohol and Youth (MCAAY) supports the focus of the restrictions proposed by the police on packaged liquor because 80% of all alcohol sold in Australia is packaged liquor and the harms related to the consumption of packaged liquor occur away from licensed premises.
- 27 It was submitted that research has demonstrated consistent links between the availability of alcohol in a region and the alcohol-related problems experienced there. There is compelling evidence from Australia and elsewhere that regulating the availability of alcohol is an important strategy within a comprehensive approach to reduce the harmful use of alcohol. According to MCAAY, liquor restrictions, which have taken a number of forms, have made important contributions in a range of areas in the State where benefits have been seen across a broad range of health and social indicators.
- 28 MCAAY was of the view that the current restrictions on the availability of takeaway alcohol in Port Hedland, Karratha and elsewhere appear to be very modest and relate mainly to container size, which do not appear to be sufficient, given the magnitude of alcohol-related problems in the community.

*Housing Authority*

- 29 It was submitted by the Housing Authority that alcohol-related harm in Port Hedland has become a significant issue, which extends to some public housing tenancies, affecting tenants' ability to manage their tenancy and the ability of staff to manage the tenants. A key part of the Authority's response to this issue is the use of Liquor Restricted Premises Declarations, which are used in Port Hedland and other parts of the Pilbara.
- 30 The Housing Authority supports the use of appropriate strategies to reduce harm from excessive alcohol consumption in these and other towns across the State.

*Town of Port Hedland*

- 31 The Town of Port Hedland submitted that Council does not support the restrictions proposed by the police and would prefer to work with all relevant parties to find a solution to anti-social behaviour in the town. The Town has re-established the Port Hedland Community Safety and Crime Prevention Plan to assist with investigating solutions to address anti-social behaviour, domestic violence and other associated issues.

*Department of Aboriginal Affairs*

- 32 The Department of Aboriginal Affairs (DAA) submitted that the evidence in the police report demonstrates a clear correlation between high levels of alcohol consumption and social harm in Port Hedland and the DAA supports the proposal to impose restrictions on the sale of liquor. The DAA also supports the assessment that additional strategies are required to alleviate the abuse of alcohol in these communities and in DAA's view, there can only be a significant reduction in alcohol-related social harm using a holistic approach, and this requires the support of the communities, the RSRU and other government agencies.
- 33 The DAA submitted that it is supportive of all community initiatives to address the serious issue of drug and alcohol abuse in regional communities and as an active member of the Pilbara District Leadership Group, the DAA is supportive of the restrictions proposed by the police. The DAA is also supportive of the TAMS as an identification-based means of liquor control.
- 34 The DAA advised that the RSRU plans to work with local governments and Aboriginal leaders and communities on the potential for region wide alcohol restriction strategies to complement and connect locality specific restrictions implanted under the Act.

*Bloodwood Tree Association Inc*

- 35 The Bloodwood Tree Association (BTA) is a wholly controlled Aboriginal, not-for-profit organisation, which has been operating in Port Hedland for nearly 40 years.
- 36 It was submitted that dependency issues are complex and require intensive and considerable wrap around support to be effective and any solution needs to be focused not only on Port Hedland but also the surrounding areas (i.e. Pilbara and Kimberley regions). From data collected by BTA, people requiring services in Hedland (Sobering Up Centre, Community Patrols and Homeless Breakfast Program) are from outlying Pilbara communities, as well as Kimberley communities.
- 37 According to the BTA, banning alcohol does not work without adequate support, counselling, therapies, employment and replacement activities. Consequently, any restrictions need wrap around services to support them. Restricting the opening times for packaged liquor outlets will provide an opportunity to work with affected individuals longer.

*Shire of East Pilbara*

- 38 It was submitted by the Shire of East Pilbara that imposing liquor restrictions in Port Hedland will only result in people moving to other towns without restrictions and this relocation of people and associated alcohol-related problems needs to be considered as part of any determination.

*Commissioner of Children and Young People*

- 39 The Commissioner of Children and Young People (CCYP) noted that Port Hedland has a long history of high alcohol consumption and consequent problems and the association between alcohol consumption, child abuse and neglect and family violence is well documented. It was submitted by the CCYP that evidence has shown that this problem is a community-wide issue and not simply a problem affecting Aboriginal people, those on welfare payments or isolated groups within the community.
- 40 The CCYP stated that the harm associated with alcohol abuse affects children and young people in many aspects of their lives. FASD is prevalent in the area, as is poor nutrition, poor school attendance and completion rates, and physical violence. 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 have all been reported in similar communities where alcohol consumption is prevalent. The United Nations Convention on the Rights of the Child states that all children and young people have a right to live free from violence in any form.
- 41 According to the CCYP, children and young people will model the behaviours seen in their families and communities and therefore they are at risk of mirroring and continuing these behaviours. To break this cycle, further restrictions on the availability of liquor is an essential step in addressing these issues.
- 42 In the interests of children and young people, and given the serious health burden that the abuse of alcohol has across the Pilbara region, the CCYP strongly supported the introduction of further liquor restrictions together with a holistic suite of measures and advocacy work to support and promote change in the community.

*Chief Health Officer*

- 43 The submission from the Chief Health Officer (CHO) contained evidence and information in relation to levels of alcohol-related harm being experienced in Port Hedland and surrounding communities. The submission contained data, research and local stakeholder information which, according to the CHO, confirms that high levels of alcohol-related harm are currently being experienced in the area and therefore consideration of further restrictions on the availability of packaged liquor is warranted.
- 44 The following data was provided by the CHO:
- in 2011/12, which is the most recent data, per capita consumption was 12.29 litres compared to the State consumption rate of 11.94 litres, while the National Alcohol Sales Data Project figures for 2012/13, as referenced in the police report, indicates that alcohol consumption in the Pilbara region (21.1 litres) is significantly higher than the State rate (11.4);
  - for the period 1 January 2006 to 31 December 2015, the total hospitalisation rate for 'all alcohol-related conditions' for residents of Port Hedland was significantly higher (1.5 times) than the corresponding State rate, with five specific conditions recording rates significantly higher than the State rate –
    - other digestive system diseases (1.9 times);

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- other alcohol related diseases (1.8 times);
  - motor vehicle accident injuries (2.1 times);
  - assaults/abuse (2.6 times); and
  - other alcohol related injuries (1.6 times);
  - for the period 1 January 2006 to 31 December 2015, the total hospitalisation rate for 'all alcohol-related conditions' for residents of South Hedland was significantly higher (1.9 times) than the State rate, with seven specific conditions recording rates significantly higher than the State rate –
    - other digestive system diseases (4.2 times);
    - alcoholic mental and neurological disorders (1.6 times);
    - other alcohol related diseases (2.6 times);
    - motor vehicle accident injuries (1.9 times);
    - falls (1.4 times);
    - assaults/abuse (5.0 times); and
    - other alcohol related injuries (1.5 times);
  - for the period 1 January 2001 to 31 December 2015, there were approximately 1,715 alcohol/drug or induced mental disorders presentation to the Hedland Emergency Department;
  - for the period 1 January 2001 to 31 December 2015, there were approximately 37,304 presentations due to injuries, poisoning and toxic effects of drugs to Hedland Health Campus;
  - during 2016, there were 214 presentations to the Hedland Health Campus that were recorded as alcohol-related, 92 presentations that were drug-related and 350 presentations that were alcohol and/or drug related;
  - for the period 1 January 2012 to 31 December 2015, the total hospitalisation rate for all alcohol-related conditions for residents of Karratha and Ashburton were similar to the State rate, however, they were significantly higher for Roebourne; and
  - from 1 January 2015 to 31 December 2016 in Karratha, there were 68 presentations to the Emergency Department which were alcohol related, 54 presentations which were drug related and 160 presentations which were alcohol and/or drug related, while for Roebourne in the period 1 January 2012 to 31 December 2015, there were 182 alcohol/drug or induced mental disorders presentations and 2,762 presentations for injuries, poisonings and toxic effects of drugs (including alcohol).
- 45 It was noted by the CHO that Aboriginal people represent 6.9% and 18.8% of the population in Port Hedland and South Hedland respectively, compared to 3.1% of Aboriginal people in Western Australia and while in Australia there are fewer drinkers in the Aboriginal population compared to the non-Aboriginal population, and while Aboriginal people also drink less frequently, a greater percentage of Aboriginal people who do drink consume alcohol at levels that pose both short-term and long-term risks for health. According to the CHO, the harmful use of alcohol can be seen as a result of the disadvantage experienced by many Aboriginal people, who find themselves trapped in a cycle of poverty and poor health, disconnected from country and marginalised within society. These issues have impacted on the physical, mental, social, emotional and spiritual wellbeing of Aboriginal people.
- 46 The CHO also submitted that there are reported high levels of alcohol consumption and risky drinking behaviours amongst mining and construction industry workers, including Fly-in/Fly-out workers of which there is a high proportion in Port Hedland.



47 The CHO provided a statement from Professor Walker, Associate Professor and Head, Aboriginal Maternal Health and Child Development; Principal Research Fellow, *Making FASD History in the Pilbara*, who gave an overview of her work in the area of FASD in the Pilbara region. According to Professor Walker, the research undertaken in the Pilbara shows that high levels of alcohol consumption across the wider community in Port Hedland and South Hedland and surrounding remote communities is strongly (and causatively) associated with high levels of stress, trauma and violence, neglect and abuse in families. Based upon her work as a researcher in the Pilbara region over the past decade, it is Professor Walker's professional opinion that the oversupply and harmful use of alcohol has had a direct harmful impact on:

- domestic violence and family dysfunction;
- adverse impacts on mental health and wellbeing;
- high rates of self-harm and suicide/attempted suicide;
- high rates of hospitalisation;
- reports of child neglect and physical and sexual abuse;
- unplanned teenage pregnancies;
- intergenerational impacts of alcohol consumption in pregnancy, causing developmental delay and social and emotional issues;
- poor school attendance, participation and educational outcomes;
- high rates of vulnerability at school entry level associated with suspected and diagnosed FASD and other comorbidities;
- road traffic accidents; and
- high rates of vandalism, issues with the justice system and incarceration.

48 It was submitted by the CHO that there is a considerable body of research, spanning more than 30 years, demonstrating a positive relationship between the availability of alcohol and the frequency and range of social issues. According to the CHO, research also shows that a whole of population approach, such as liquor restrictions, can be an effective method to achieve long-term change in communities. While there are a number of factors that influence how a person drinks, access to, and the convenience of, obtaining alcohol make it difficult for those who drink at risky levels to avoid drinking or reduce the amount consumed. Positive impacts of reducing the availability of alcohol can also be seen broadly across communities, not only within more at-risk populations.

49 The CHO was of the view that liquor restrictions, appropriately tailored to specific communities can significantly reduce related harms, particularly in the short term. However, as with any strategy, liquor restrictions have the greatest chance of success if implanted alongside other initiatives.

#### *Mental Health Commission*

50 It was submitted by the Mental Health Commission (MHC) that the existing levels of alcohol consumption and subsequent levels of alcohol-related harm in Port Hedland warrants consideration of further restrictions on the availability of packaged liquor. Consistent with literature and evidence from other communities across Western Australia, liquor restrictions can be an effective strategy to reduce alcohol-related harm and can create an environment that supports change to occur and the opportunity for other programs and strategies to be effective.

51 The MHC provided submissions and evidence on the following key points:

- in the Pilbara Statistical Area 3, per capita consumption (litres of pure alcohol) is consistently higher than the State;

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- hospitalisation rates for 'all alcohol-related conditions' for residents in Port Hedland and South Hedland are significantly higher (1.5 times and 1.9 times) than the corresponding State rate;
  - a blood alcohol reading was detected in a significantly higher proportion of suicides in Port Hedland, South Hedland and surrounding suburbs (71%) in comparison to the State (39%);
  - across the Pilbara, a blood alcohol reading was detected in over half (57.1%) of suicides in the region;
  - FASD is a recognised issue in the Pilbara and experts have advised that liquor restrictions in other Western Australian communities have contributed to the prevention of FASD;
  - despite the absence of a packaged liquor outlet in Roebourne, data from the Roebourne Sobering Up Centre shows that from 2011 to 2016 there were 2,278 admissions, with 43.6% of these recorded in 2016;
  - of those who access MHC alcohol and other drug treatment services, alcohol is predominantly identified as the primary drug of concern for Port Hedland and South Hedland residents (48.6% and 50.7% respectively) and for over two in five (44.3%) of residents from Karratha and surrounding communities;
  - data presented by WA Police shows alcohol-related domestic and non-domestic assaults occurring in Port Hedland and South Hedland are higher than State rates, while alcohol-related domestic and non-domestic assaults in the Pilbara region, including Karratha and surrounding communities, are higher than State rates;
  - local stakeholders report that clients from Port Hedland, South Hedland and Karratha and surrounding communities who are seeking treatment for alcohol-related issues are financially and socially disadvantaged. This is relevant given those experiencing socio-economic disadvantage are likely to have poorer outcomes due to high risk drinking; and
  - there are high levels of alcohol consumption among mining workers as well as increased levels of mental health problems among Fly-in Fly-out (FIFO) workers.
- 52 According to the MHC, the research and evidence referenced in its submissions demonstrates there is a positive relationship between alcohol availability and the frequency and range of social and health problems. Where there are greater levels of alcohol consumption, there are subsequently high levels of alcohol-related harm. Evidence also suggests that limiting the availability of alcohol in communities may be an effective strategy in reducing mental health problems and preventing suicide.
- 53 It was stated by the MHC that experience in respect to liquor restrictions in other communities has demonstrated that limiting the availability of alcohol allowed local stakeholders and service providers to engage more effectively and consistently within the community, allowing other programs and strategies to be more effectively implemented.
- 54 The MHC provided examples of work being undertaken in Port Hedland and surrounding communities to prevent and reduce harm, which would benefit from reduced availability of liquor in the community:
- a priority action under the Western Australian state-wide suicide prevention strategy, *Suicide Prevention 2020: together we can save lives*, is the staged implementation of suitably qualified suicide prevention coordinators in alcohol and other drugs or mental health services across the State. The MHC is in the process of establishing contracts for the implementation of this role in the Pilbara; and

- implementation of an Alcohol and Other Drug Management Plan that covers Port Hedland and South Hedland which incorporates demand, supply and harm reduction strategies to address the following priority areas identified in relation to alcohol -
  - challenging the culture of alcohol consumption in Port Hedland and South Hedland; and
  - reducing of the secondary supply of alcohol to youth.

#### *Department of Justice*

- 55 The Department of Justice (DOJ) stated that it deals with the consequences of alcohol abuse every day and this abuse can lead to anti-social behaviour, offending and wider social problems such as FASD. Not only does this cause misery in the community and reduce safety and security for residents, it also results in significant cost impost on the Department, which is responsible for managing and treating offenders.
- 56 The DOJ consulted with the Superintendent of Roebourne Regional Prison and the manager of Pilbara Adult Community Corrections, who both have firsthand experience on the impact of alcohol abuse in the community and both support the introduction of further liquor restrictions because alcohol is a factor in the majority of offending in the Pilbara.

#### *City of Karratha*

- 57 The City of Karratha does not support further liquor restrictions as:
- the majority of the community does not support further liquor restrictions;
  - the community believes that further restrictions would not directly target the underlying problem;
  - further restrictions could have a negative impact on consumer choice and local businesses;
  - the community has indicated alternative interventions such as cashless welfare could be considered; and
  - the community has indicated that the current level of State Government services is inadequate and there needs to be a significant increased investment in social support services to address the underlying problem which has not been proposed.

### **Brief overview of industry submissions in response to the police report and stakeholder information**

#### *Australian Hotels Association*

- 58 According to the Australian Hotels Association (AHA), members of the Hedland accord already have several self-imposed restrictions around the sale of packaged liquor over and above the existing restrictions imposed in 2012. The police report indicates that many problems relate to South Hedland, and therefore the AHA questioned whether blanket restrictions across the entire town was necessary.
- 59 The AHA is of the belief that any measures to reduce drug and alcohol-related harm should take into account the wishes of the entire community and should not disadvantage the vast majority of people in the community who drink responsible. According to the AHA, further blanket restrictions in Port Hedland will have the following negative effects:
- move problems to surrounding towns and centres;
  - increase the incidence of sly grogging;
  - exacerbate and increase illicit drug use in the community;
  - negatively impact on employment and training within the tourism and hospitality sector;

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- unfairly penalise the majority of the community who drink alcohol responsibly;
  - be a source of division within the community; and
  - have a negative impact on tourism in the region, especially the key tourism demographic in the North West of “Grey Nomads” who want to stock up in provisions as they often spend long periods of time away from towns where takeaway alcohol is available for purchase.
- 60 It was submitted that industry is seeking a lasting solution that targets the whole of the problem rather than just moving it on, a whole-of-government approach that aids those who need it, and a resolution that minimises harm to the community through sensible regulation while still catering for the requirements of consumers for liquor and related services.
- 61 The AHA submitted that a cooperative approach with the support of industry is likely to prove more effective than the current system of town by town restrictions, and given time will have the following desired effects:
- eliminate the need for further tightening of liquor restrictions;
  - minimise the incidence of alcohol-related harm in regional communities;
  - effectively target those individuals causing harm in the community;
  - reducing street drinking and associated anti-social behaviour;
  - reduce the incidence of sly-grogging throughout the regions;
  - free up police and health resources in regional communities to focus on other issues;
  - encourage those with alcohol and substance abuse issues to seek help;
  - foster a cooperative approach between licensees and liquor enforcement;
  - not adversely impacting on most of the community who drink alcohol responsibly;
  - not adversely impact on tourism and tourists travelling through the region; and
  - strike a considered balance between all three primary objects of the Act.
- 62 In noting that some areas of the Pilbara did not experience unduly high rates of alcohol-related harm, the AHA stated that it is broadly supportive of calls from the police for the consideration of a consistent Pilbara and Kimberley wide approach to restrictions, including a Banned Drinkers Register (BDR) and targeting sly grogging, however, it was submitted that the following matters should be taken into consideration before restrictions are imposed:
- restrictions implemented on a town by town basis are likely to result in movement of the problem issues to other communities as has been demonstrated with previous liquor restrictions in the region;
  - consultation with individual members of the community regarding any proposed restrictions should be instigated with community sentiment taken into consideration; and
  - the learning opportunities that will arise for WA from the scheduled implementation of a new banned drinkers register in the Northern Territory.
- 63 A community survey was undertaken by the AHA with the following key findings:
- most consumers purchase full strength beer;
  - most consumers shop for liquor on a weekly basis;
  - as part of their regular shop, 50% of consumers purchase one case or less of beer or RTD, 40% of consumers purchase two or more cases, 33% purchase three bottles or less of wine, 14% purchase four or more bottles of wine, 28% buy spirits in 750ml

bottles, 12% buy 2 or more 750ml bottles and 16% buy one or more than one litre bottles;

- 49% of consumers go camping for 2-4 nights and 30% go camping for 5-7 nights which necessitate purchasing additional supplies of liquor;
- 85% of respondents did not believe the restrictions proposed by the police would cater to their requirements;
- 86% did not support Pilbara wide restrictions;
- if restrictions were imposed, 41% indicated that they would continue to purchase from a local liquor outlet, however consumers would try to circumvent the restrictions through different means including mail order, purchasing liquor from venues outside restricted areas or from venues not subject to restrictions, such as clubs.

64 In summary, the AHA made the following key points and recommendations based on the evidence and submissions of stakeholders:

- there is no evidence provided to demonstrate that restrictions have resulted in a reduction in violence in the Pilbara;
- the police submissions concede that people will, and indeed do travel considerable distances to circumvent liquor restrictions;
- sly grogging is a significant problem and unintended consequence of liquor restrictions;
- the amendments to the Act will give Police more power to curtail sly grogging and issue Barring Notices;
- the City of Karratha and Shire of East Pilbara do not support additional restrictions;
- there is substantial community resistance to additional liquor restrictions, but the vast majority are supportive of a more targeted response;
- to be effective, any liquor restrictions should only be decided in consultation with the entire community and with willing cooperation of the industry;
- any restrictions deemed necessary should include practical exemptions so as not to adversely impact most of the community who have a responsible relationship with alcohol; and
- it is imperative that restrictions do not adversely impact on tourism and should include a workable exemption for tourists wherever restrictions apply throughout the entire State.

#### *Liquor Stores Association*

65 It was submitted by the Liquor Stores Association (LSA) that for certain people with mental illness or addiction problems, responsible self-management is difficult, and they will sometimes behave in ways that result in serious consequences for themselves, their families and others who may be near them at the time. This in turn, can have a significant impact and cost on the broader community.

66 It was the view of the LSA that to successfully manage these complex individuals and reduce the level of harm they bring to themselves and the community, a multi-disciplined, collaborative approach incorporating both proactive and reactive strategies is required. The imposition of liquor restrictions is unlikely to change the behaviour of a relatively small group of individuals and creates the perception that the area is a dangerous community to live and visit.

67 According to the LSA, every stakeholder needs to collaborate and play their part in delivering a solution to help the unwell individuals and protect the broader community against anti-social behaviour and overly prescriptive regulation.

- 68 It was also submitted that the Port Hedland Liquor Accord has worked closely with police and voluntarily ceased packaged liquor sales when requested. The LSA is working with the Accord to research electronic and other solutions to improve harm minimisation for Port Hedland.
- 69 The LSA is supportive of using an electronic TAMS to ensure particular individuals are not able to purchase packaged liquor. It is the position of the LSA that further liquor restrictions should not be imposed, and government should support the use of a TAMS system instead.

#### *Pier Hotel*

- 70 The licensee of the Pier Hotel was opposed to the proposed restrictions because restricting trading hours for hotels and takeaway outlets will mean the loss of jobs for many employees in the hospitality industry. Unemployment rates are very high in Port Hedland after the crash of the last mining boom, and therefore losing more employment opportunities would have terrible repercussions for the workers, their families and the town itself.
- 71 It was submitted that government agencies support the restrictions because it will decrease the work they need to do, however, one of the local issues is the fact that local government support agencies have not been providing any service locally which has allowed issues to escalate. Local licensees are supportive of requests to put in place voluntary restrictions when requested for various events that happen locally from time to time and this has worked well.
- 72 According to the licensee, a sensible direction would be to leave the current liquor restrictions as they are; get government agencies to provide support for problem individuals and target rogue outlets individually if they are proven to be serving alcohol irresponsibly.

#### *North West Liquor Supplies*

- 73 It was submitted by the licensee that the data provided by the police is limited, somewhat selective and insufficient to justify the significant policy and regulatory change proposed in the police report. According to the licensee, there is a lack of evidence from the police on how, or even whether, their recommended course of action will minimise harm or ill-health in the community.
- 74 The licensee was of the view that the issues facing the local community have their genesis in dislocation, deskilling, disregard and the racist policies that have been applied to Aboriginal people of the region for over two centuries; and after all this time, the issue at hand is with behaviour of somewhere between 50-200 individuals, and unless the underlying causes and issues identified are addressed, the issue will remain. Many of those who repeatedly offend are not from Port Hedland and are chronic substance abusers.
- 75 While acknowledging there is no single answer to the complex problems that exist in the community, the licensee submitted that in the past both the causes and the issues have been accurately assessed and targeted actions have been proposed, but these prove to be cyclical and most have never continued to fruition. It was submitted that while liquor restrictions do have a place, they cannot and should not be the sole answer to these very complex problems. Alcohol restrictions and regulations can play their part in repairing dysfunctional communities, but they cannot do it all and neither can the liquor industry; the dysfunction is endemic.

76 It was submitted that further liquor restrictions should only be imposed if other responsible agencies demonstrate an intention to acquit their responsibilities in a meaningful way. The serious and systemic issues with alcoholism/substance abuse and chronic itinerancy exist in South Hedland to the extent that it has made the entire town dysfunctional. According to the licensee, the long and sorry history of this matter is that good folk see the problem, get agitated, find their magical silver bullet – be it cashless welfare, alcohol restrictions or whatever and they campaign passionately on it. However, these miracle fixes all fail, have always failed and will continue to fail, until such time as the authorities make a concerted, coordinated and sustained effort to address the real issues.

#### *Coles Liquor*

77 Coles Liquor submitted that it takes the responsible service of alcohol very seriously and is committed to harm minimisation initiatives to reduce the misuse and abuse of alcohol in the Hedland community. In this regard, Coles Liquor has implemented the following voluntary restrictions at its liquor store in South Hedland (in addition to the mandated restrictions that apply):

- no cask wine sales;
- no bottled wine for under \$7.99;
- no fortified wine for sale under \$13.99
- sales of full strength domestic beer limited to one carton per person per day;
- no beer or RTD in containers over 500ml;
- all spirits are locked behind glass;
- a security guard is stationed at the store;
- no promotions linking grocery sales with liquor (docket deals);
- no promotions offering discounts on additional qualifying liquor purchases;
- no multi-buy promotional discounts on beer cartons;
- no promotions on Emu Export and Emu Bitter beer cartons;
- three team members rostered on at all times; and
- additional security cameras.

78 It was also submitted that Coles Liquor is a member of the Port Hedland Liquor Accord and has been active in trying to set the standards of responsible service of alcohol and finding local solutions to local problems between licensees and key stakeholders. In this regard, the Accord and Coles Liquor separately have worked very co-operatively with the police over a long period of time.

79 In response to the police report, Coles submitted that it acknowledges the concerns of police in relation to the level of alcohol-related harm in Port Hedland and are supportive of harm minimisation measures that are uniform, targeted, reasonable and proportionate. However, according to Coles, ad-hoc, site specific restrictions should not be used as a substitute or looked at in isolation in the hope they will address the underlying problems and critical elements of the harm identified. In Coles' experience, limiting trading hours does not alleviate the issues of alcohol misuse, anti-social behaviour and public drinking and simply compresses the issues and shifts the problem to other areas which can be harder to regulate and police. It was also submitted that there are practical issues in enforcing some of the restrictions suggest by the police as there is no measure to prevent customers purchasing alcohol at multiple outlets to circumvent the restrictions.

80 It was Coles' firm belief that a sustainable long-term solution to the problems in the Port Hedland area will only come from a whole of community consultative approach which may include additional uniform restrictions on the availability of alcohol from all outlets in the

entire region, provided there is sufficient evidence to demonstrate it will reduce harm and is in the public interest.

### *Woolworths*

- 81 It was submitted by Woolworths that retail liquor outlets in places like Port Hedland need to tread a very fine line between serving the legitimate needs of the majority of the community who use the products they sell responsibly, while doing everything they can to prevent harm to vulnerable sections of the population. Woolworths attempts to strike this balance by operating its business to the highest standards of responsible service and through the implementation of additional voluntary measures designed to address the concerns raised by local authorities and the communities in which they operate.
- 82 According to Woolworths, the harms resulting from alcohol abuse are not isolated to indigenous communities, but it is the Indigenous community in remote areas that bear a disproportionate burden of the negative effects of harmful consumption of alcohol. It was submitted that any proposed further restrictions should be reviewed against those voluntary restrictions adopted by Woolworths in Port Hedland, which include:
- one service per person per day;
  - no fortified wines;
  - no cask wine;
  - no bottled wine under \$10 with a limit of 6 bottles per person;
  - one bottle of white or dark spirits per purchase per day;
  - one carton of RTDs per purchase per day;
  - two cartons of premium Australian/international and craft beer per purchase per day;
  - one carton of mainstream beer per purchase per day.
- 83 Woolworths submitted that the emphasis should not be just on supply reduction strategies, but consideration needs to be given to policies and actions that are specifically targeted toward reducing harmful patterns of consumption. Clearly a circuit breaker is needed, and a government action plan should include:
- amending the Liquor Act to provide specific authorisation to allow for discussions preparatory to a Liquor Accord to ensure they are a valid exception to the Cartel Provisions in the Competition and Consumer Act;
  - having known domestic trouble spots declared as 'Liquor Restricted Premises' and for police to maintain a sustained presence to remove and destroy all liquor found there;
  - all repeat offenders to be given a 'prohibition order' in the short-term until a suitable 'TAMS' or 'BDR' is in place across the Pilbara;
  - introducing a point of sale intervention with adequately resourced police to ensure adherence to public drinking bans;
  - requiring all royalty payments made through gift cards to exclude the purchase of alcohol;
  - consideration to imposing conditions on the Pilbara Trusts to establish mobile or remote offices for the issuing of royalty payments and holding of meetings;
  - expansion of the cashless welfare card;
  - support services and mandatory alcohol treatment; and
  - FASD industry-led initiative.



84 It was submitted that the majority of Pilbara residents and visitors to the region have a responsible relationship with alcohol and it plays a positive role in many people's lives as an accompaniment to celebrations, hospitality and many social and cultural activities. In summary, Woolworths stated that:

- alcohol should not be viewed discreetly as it is one component of the crisis afflicting the Pilbara region and Port Hedland. It needs to be holistically viewed including addressing many of the social determinants which lead to alcohol abuse;
- selective and indicated prevention (targeted) strategies should be prioritised; and
- a suite of measures requiring a multi-faceted approach by Government is needed to enable all industry participants to actively create a lasting and sustainable solution.

#### *Last Chance Tavern*

85 The licensee stated that he is unaware whether previous restrictions have been evaluated to determine their effectiveness and therefore any additional restrictions may not have any benefit in reducing alcohol-related harm. It was also stated that most of the Accord members in Port Hedland are in favour of doing the right thing, and if there are possible restrictions that will or might provide a positive outcome then there would be support for a proper trial, provided there was an evaluation of the trial in due course. There should be consultation with all parties to determine what are the right restrictions and then have a methodical and agreed approach to avoid negative outcomes for businesses and individuals in the town.

#### *Sodexo*

86 Sodexo operates two licensed premises in Pannawonica, which is a closed mining town with a small population of 695 people. It was submitted that due to the demographic characteristics in Pannawonica and the strong self-regulation and management culture, together with a low rate of offending, liquor restrictions should not be imposed in the town.

87 According to Sodexo, an appropriate level of liquor consumption is important to social life of mining workers in remote locations and to further restrict the availability of packaged liquor in Pannawonica is unwarranted and may unnecessarily be detrimental to its business.

#### *Dampier IGA*

88 It was submitted by the licensee of the Dampier IGA that further liquor restrictions are not warranted and would be an inconvenience to community members, tourists and visitors to Dampier. According to the licensee, it currently provides provisions for the Norwest Game Fishing Club members who come to Dampier to visit their shack on Rosemary Island for the season May to October and to Seafarers who work on the iron ore, gas and salt ships that load in Dampier and this liquor is consumed outside of the State.

89 The licensee of Dampier IGA is supportive of the implementation of a TAMS system to help combat alcohol abuse in the community.

#### *Joint submission of seven licensees represented by Ryan & Durey solicitors*

90 It was submitted that much of the Pilbara is not disadvantaged, with high levels of employment and income and while there are at-risk persons in the area, liquor restrictions impact the entire community. It was also submitted that not all areas of the region experience high rates of alcohol-related harm.

- 91 According to the licensees, imposing restrictions does not address the underlying issues causing the problems and in the long term, will have little impact. While liquor restrictions have been used in regional towns as a circuit breaker, they are not the long-term solution to the problem being experienced by indigenous communities.
- 92 If the restrictions imposed by the police were imposed, it was submitted that this would cause job losses in the hospitality sector and loss of shifts for employees. The proposed restrictions would also negatively impact on tourism which would be counterproductive to the significant investments being made by various bodies to encourage and promote tourism in the region.
- 93 Rather than imposing blanket restrictions, it was submitted that irresponsible licensees should be targeted, and restrictions imposed on a case by case basis, and restrictions should be adapted to the particular community. Licensees are supportive of the introduction of a BDR system which targets those individuals who are known to cause problems in the community.

#### *Shire of Ashburton*

- 94 The Shire of Ashburton undertook an online community survey to gauge whether there was support for the implementation of further liquor restrictions. As a result of this survey, the Shire of Ashburton advised that:
- the majority of the community do not support further restrictions;
  - the community believes that further restrictions would not directly target the underlying problem; and
  - further restrictions could have a negative impact on consumer choice and local businesses.

#### **Notice pursuant to section 64(2a) of the Act**

- 95 Having considered the evidence presented, I formed the view that the abuse of alcohol in the Pilbara continues to have a significant negative impact throughout the region, particularly in terms of domestic violence, child abuse, crime and anti-social behaviour. Consequently, I was of the view that the imposition of further restrictions on the availability of alcohol in the region was in the public interest.
- 96 Section 64 of the Act provides that the licensing authority may, at its discretion and at its own motion, impose conditions which it considers to be in the public interest or which it considers desirable in order to –
- minimise harm or ill-health caused to people, or any group of people, due to the use of liquor;
  - ensure that liquor is sold and consumed in a responsible manner;
  - ensure public order and safety; and
  - limit –
    - (i) the kinds of liquor that may be sold;
    - (ii) the manner or the containers, or number or types of containers, in which liquor may be sold;
    - (iii) the days on which, and the times at which, liquor may be sold.
- 97 More specifically, s 64(2a) of the Act states that if the licensing authority proposes to impose, vary or cancel a condition of a licence, the licensing authority may, by notice in writing, require the licensee to show cause why the relevant condition should not be imposed, varied or cancelled.

98 Consequently, after weighing and balancing all relevant factors, including the industry submissions, a notice was issued to all affected licensees in the region requiring them to show cause why the following conditions should not be imposed on their respective licences:

1. Packaged liquor may only be sold and supplied on a day other than a Sunday, Good Friday or Christmas Day – from 12 noon to 8 pm.
2. The sale of packaged liquor on a Sunday is prohibited.
3. The sale and supply of liquor for consumption on the premises is prohibited before 12 noon except where it is sold ancillary to a meal or to a lodger.
4. The sale of fortified wine is prohibited.
5. The sale of cask wine is prohibited.
6. The sale of beer in glass bottles of 750mls or more is prohibited.
7. Packaged liquor may only be sold or supplied in the following quantities:
  - (a) low alcohol liquor where the liquor contains less than 2.7 per cent concentration of ethanol at 20 degrees Celsius in any quantity;
  - (b) where the liquor contains greater than 2.7 per cent but no more than 7 per cent concentration of ethanol at 20 degrees Celsius a maximum cumulative quantity of 11.25 litres per customer per day (e.g. 1 carton of 30 cans @ 375 ml each);
  - (c) where the liquor contains greater than 7 per cent but no more than 15 per cent concentration of ethanol at 20 degrees Celsius a maximum cumulative quantity of 2.25 litres per customer per day (e.g. 3 bottles of wine @ 750 ml each); and
  - (d) where the liquor contains greater than 15 per cent concentration of ethanol at 20 degrees Celsius a maximum cumulative quantity of one litre per customer per day.

A person may purchase liquor in quantities provided for by either (b) or (c) or (d) or a combination of (b) and (c).

8. Operators of taxis or buses are not to be sold packaged liquor on behalf of persons in the vehicle.
9. Occupants of taxis or buses must exit the vehicle to purchase packaged liquor to allow for a thorough responsible service of alcohol assessment by staff.
10. Where a packaged liquor product is available from a manufacturer in a non-glass container, licensees are prohibited from selling the product in a glass container.
11. Licensees are required to submit returns of alcohol sales data, by product type and quantity, to the Director of Liquor Licensing for each financial year by 31 July. The return must contain the following information:
  - a) Total amount paid or payable to the licensee and the quantity supplied in respect of:
    - i) low alcohol liquor (2.7% ethanol by volume or less);
    - ii) mid strength alcohol liquor (2.8% to 3.5% ethanol by volume); and
    - iii) full strength alcohol liquor (3.6% ethanol by volume or more)

- b) The information is to be provided under the headings of the following product types: wine, beer, and spirits (as defined in section 3 of the Act), and pre-packaged pre-mixed alcohol beverages generally known as 'ready-to-drinks (RTDs).
12. The licensee is prohibited from, and shall not authorise, any external promotion which advertises the price of full strength "mainstream" packaged beers (ie: regular beer with over 3.5% ethanol by volume); RTDs; or spirits, whether the price is discounted or not. The licensee is also prohibited from any external promotion which links the purchase of full strength "mainstream" packaged beer, RTDs, or spirits with any prize, contest or other customer incentive. The specific brands of "Mainstream" packaged beer affected include: Victorian Bitter, Fosters Lager, Melbourne Bitter, Emu Export, Emu Bitter, Swan Draught, XXXX, Hahn Ice, Tooheys Old, Tooheys New and Tooheys Red. Bottled wine, low alcohol beers (3.5% ethanol by volume) and premium beers are excluded from this condition.
- 13 All approved managers will attend cultural awareness training to be provided by a local indigenous training provider.

#### Exemptions

1. The sale and supply of packaged liquor is only permitted to a person who is present at the time of purchase on the licensed premises conducting the sale, unless that person is:
- a) a liquor merchant;
  - b) a station owner or pastoralist and only on the conditions that:
    - i) the liquor has been pre-ordered at least 24 hours in advance of pick-up/delivery; and
    - ii) the licensee maintains on the licensed premises, a register of purchases, which must be made available for inspection at the request of an authorised officer; and
    - iii) the register contains the following information in relation to the station owner or pastoralist:
      - Name
      - Address
      - Address to which the liquor is being delivered/taken
      - Description and quantity of liquor ordered
  - c) a person who has pre-ordered the liquor at least 72 hours in advance of pick-up/delivery and only on the conditions that:
    - i) that person has personally completed and signed a Bulk Purchase Order form; and
    - ii) the Bulk Purchase Order form contains the following information in relation to the bulk purchase:
      - Name of purchaser
      - Address and phone number of purchaser
      - Address to which the liquor is being delivered/taken

- Description and quantity of liquor ordered and the reason for the bulk purchase
  - Purchaser's signature; and
- iii) the Bulk Purchase Order form is retained by the licensee and made available for inspection at the request of an authorised officer and a copy is provided to the local police within 24 hours.

The sale of liquor under this exemption is not subject to the quantity restrictions set out above.

2. The quantity restrictions set out above do not apply to the sale and supply of packaged liquor to a bona fide tourist, travelling through the Pilbara or Kimberley region, and who normally resides outside the Pilbara or Kimberley region and the liquor is to be consumed out of town. The licensee must record the following information where a sale is made under this exemption:

- Name of purchaser
- Address and phone number of purchaser
- Vehicle registration
- Address/location to which the liquor is being taken
- Description and quantity of liquor ordered and
- Purchaser's signature.

This information is to be provided to the local police within 24 hours and retained by the licensee for inspection at the request of an authorised officer.

### **Responses to the notice under s 64(2a)**

#### *Woolworths*

- 99 Woolworths reiterated its earlier submissions and stated that it supported some of the proposed conditions but was opposed to any quantity restrictions because it would be confusing for customers.

#### *Sodexo*

- 100 Sodexo was supportive of most of the proposed conditions except for condition 3 and condition 7.
- 101 In respect of condition 3, it was submitted that Sodexo customers are predominantly mining industry workers on various shifts and it is important to provide a morning service to accommodate different shifts and satisfy customer requirements for having a drink in a socially friendly environment with work colleagues after a night of hard working. In respect of condition 7, it was submitted that rates of offending in Pannawonica are low, and restricting volume sales of liquor will impact on the licensee's revenue and liquor sales plays an important role in the town's economy.

#### *City of Karratha*

- 102 The City of Karratha did not support the proposed restrictions as they will impact on the general population, not the problem drinkers. According to Council, additional resources for social support services need to be considered concurrently with the discussions regarding potential liquor restrictions and strategies such as a BDR and TAMS should be considered. It was Council's view that it is more appropriate to work through the issues of alcohol harm experienced locally and to consider comprehensive strategies and solutions rather than impose further restrictions.

*Coles Liquor*

103 Coles Liquor maintained its support for harm minimisation measures that are uniform, targeted, enforceable and proportionate. It was stated that most of the proposed conditions were reasonable however, some require further consideration:

- rather than prohibiting fortified wine, place a minimum price of \$13.99 to bring it into line with mid-tier product pricing;
- enforcing volume restrictions will be difficult for team members, who will need to monitor and remember whether customers have purchased up to the restricted quantity that day. It is also likely that customers will be frustrated and angry as team members take time to explain the restrictions and refuse service. In the alternative, it was suggested that if volume restrictions are imposed that there be no limit on liquor which is 3.5% ethanol or less; customers can purchase two cartons of liquor between 3.5% and 7%; customers can purchase six bottles of wine per day; and 1.5 litres of spirits. According to Coles Liquor, this will allow the majority of customers to purchase quantities and varieties which are more consistent with typical product volumes and consumer patterns;
- requiring products to be sold in non-glass containers if it is available from manufacturers would likely result in a significant reduction in the range of products customers would expect to be available and require re-examination of arrangements with existing suppliers;
- submitting yearly liquor returns will place a significant administrative burden on licensees; and
- in respect of the exemptions, customers should be able to pre-order 24 hours in advance rather than 72 hours because customers will not necessarily plan this far ahead.

104 In respect of Tom Price, it was submitted that Coles Liquor has already implemented additional restrictions above those imposed on their licence and that Tom Price has quite different characteristics to Port Hedland and does not encounter the same levels of alcohol-related harm and anti-social behaviour as other communities. It was therefore submitted that Tom Price should be exempt from the proposed restrictions.

*Tambrey Centre and Karratha Tavern*

105 It was submitted on behalf of the Tambrey Centre and Karratha Tavern that the restrictions should not apply to Karratha and it is unlikely that at-risk persons or problem drinkers will travel from Port Hedland to Karratha to circumvent the restrictions. However, if restrictions are imposed, the following issues were raised:

- it is unlikely that curtailing packaged liquor sales on a Sunday will reduce overall sales and drinkers will stock up on other days;
- rather than prohibiting fortified wine, perhaps have a price cut-off (i.e. nothing under \$15);
- volume restrictions may result in drinkers moving from venue to venue to source packaged liquor and this restriction has a disproportionate impact on ordinary consumers;
- respecting the confidentiality of the liquor returns is an important consideration;
- some clarity on the promoting of liquor products is required;
- some clarity in respect of the exemptions is required.

*North West Liquor Supplies*

- 106 It was submitted that the current restrictions in Port Hedland appear to have been limited in their effectiveness and there is an itinerant population in Port Hedland which results in social issues and anti-social behaviour. As part of any solution to the problems and the extent of alcohol-related harm in the region, consideration should be given to introducing a BDR and TAMS which might have the greatest impact on problem drinkers.
- 107 In respect of the proposed restrictions, the following comments were provided:
- a reduction in trading hours may result in a loss of jobs in the industry and provide an opportunity for sly grogging to fill the void;
  - rather than prohibiting fortified wine sales, impose a minimum price;
  - two litre casks should be available for sale;
  - there should be no volume limit on products below 3.5% ethanol; craft and imported beer should not be included in the volume restrictions; wine should be limited to six bottles per day with a minimum price per bottle; and
  - requiring products to be sold in non-glass containers if available may restrict the sale of some products such as international beers, however restricting Emu Export, VB and Tooheys Extra Dry to cans would address the issues without impacting on the broader community.
- 108 It was also submitted that on-line sales of liquor may undermine the effectiveness of any restrictions that are imposed.

*West Pilbara Liquor Accord*

- 109 The West Pilbara Liquor Accord (WPLA) acknowledged that State-wide, there is substantial drug and alcohol abuse which is generally underpinned by social disadvantage, however, while these issues may be more prevalent in the Pilbara, the media plays its part in exacerbating the issue further and the issues with substance abuse are limited to a small percentage of the population (both State-wide and in the Pilbara).
- 110 The response from the WPLA was based on three key elements:
- Karratha is vastly different from the rest of the Pilbara, and as the City of the North, deserves to be treated as such;
  - why is the Pilbara, and in particular Karratha, being targeted when there are areas with more drug and alcohol-related problems in the metropolitan area; and
  - alternative restrictions and a BDR are a more appropriate manner for dealing with alcohol abuse in the region.
- 111 The WPLA's preferred method of dealing with the substance abuse problem was through the introduction of a BDR, however in respect of the proposed restrictions, the following was submitted:
- condition 1 – supported;
  - condition 2 – not supported;
  - condition 3 – not supported;
  - conditions 4 – supported subject to price and volume restrictions;
  - condition 5 – should be a volume restriction not a blanket restriction;
  - condition 6 – supported;
  - condition 7 – supported however there needs to be a mechanism to monitor purchase limits (i.e. TAMS);
  - condition 8 – supported;

- condition 9 – supported;
- condition 10 – supported subject to around pack size;
- condition 11 – supported however the timeframe for lodging returns is too quick and no way of distinguishing FIFO from resident population in terms of consumption;
- condition 12 – supported subject to clarification;
- condition 13 – supported but should apply across all races/religions and at a cost that is reasonable to businesses; and
- exemptions – supported however the process needs to be simplified and some clarity around privacy, storage, communication and ensuring FIFOs cannot gain unlimited access to alcohol.

*Australian Hotels Association*

- 112 The AHA indicated that it is broadly supportive of harm minimisation measures that strike a balance between all the primary objects of the Act. The AHA agrees there are considerable issues linked to social disadvantage coupled with drug and alcohol abuse in the community, however, in their view, the existing patchwork of blanket restrictions has not worked despite a history of expanding restrictions spanning more than two decades.
- 113 It was noted by the AHA that there was no reference to a BDR in the notice issued to licensees, even though the AHA is aware that the Minister for Racing and Gaming has convened a working group to investigate and implement the roll out of a BDR. The AHA advised that this group of government, departmental, industry, legal, and law enforcement representatives has been tasked with formulating recommendations on how a BDR be initially trialled in the Pilbara. It was submitted that drug and alcohol-related harms in the region would be better addressed by a targeted response such as the introduction of a BDR, backed up by a comprehensive whole-of-government response as is proposed through the West Pilbara Trauma Response Plan. According to the AHA, no two towns are the same and any attempt to have uniformity must take into consideration the nature of each town rather than just taking restrictions from Port Hedland or Kununurra and imposing them across the entire region.
- 114 Nonetheless, the AHA provided the following comments in response to the notice issued to licensees in the region:
- conditions 1 and 2 – a reduction in trading hours does not appear to have had any benefit previously in Port Hedland and therefore it will not have any discernible effect to curb alcohol-related issues in the Pilbara;
  - condition 3 – a reduction in trading hours for on-site consumption will unfairly impact on those people who may finish a 12-hour shift at 7 a.m. and want to attend a venue for a drink after work or travellers who may want to enjoy a pre-flight drink before a morning flight in the airport lounge;
  - condition 4 – there are members of the public who drink fortified wine without incident and there is no evidence that it is the cause of alcohol-related harm. If adopted, it would be more appropriate to limit the size of the container;
  - condition 5 – restricting the availability of cask wine may result in problem drinkers moving to other products;
  - condition 6 – this restriction has been in place in other areas and problem drinkers appear to have shifted to other products or a different vessel;
  - condition 7 – People are likely to shop around at different venues to circumvent volume restrictions therefore the introduction of a TAMS system would be necessary to monitor purchase limits;
  - conditions 8 and 9 – these conditions are supported;



- condition 10 – this condition would appear to be directed towards reducing broken glass in the community, however, this does not appear to be an issue of concern in Port Hedland or Karratha;
- condition 11 – this would impose an additional administrative burden on licensees and if the purpose of the data is to identify liquor consumption, it does not capture liquor coming into the area via mail order or from sly grogging;
- condition 12 – this condition exists in Port Hedland and there is no evidence that it has achieved the desired result;
- condition 13 – this condition operates in Port Hedland and would appear to have been imposed with the laudable intention of fostering an understanding of indigenous traditions and values assisting in the development of interpersonal skills for communication with indigenous people when refusing service. There is no evidence that this condition has been successful. It could be reasonably suggested that the persons who might benefit most from cultural awareness training are those members of the community who have lost their true cultural identity in a fog of drug and alcohol abuse; and
- exemptions – the exemptions would appear to be a reasonable measure to allow genuine circumstances when the restrictions should not apply, however some minor modifications to the exemptions would assist the local community.

#### *Hon Jacqui Boydell MLC*

115 It was submitted that there is significant evidence showing that instances of alcohol abuse are having a negative impact throughout the Pilbara and the excessive consumption of alcohol has been identified as the main factor in family violence, assaults and anti-social behaviour in the region. While it is essential that something is done to minimise the harm caused by those consuming alcohol excessively, the proposed liquor restrictions will not solve the issue and there needs to be a targeted approach to those who abuse alcohol rather than region wide restrictions which impact the entire community. In this regard, a BDR system will ensure those causing the issues are targeted rather than the entire community.

#### *Onslow General Store*

116 It was submitted that the proposed restrictions do not effectively restrict the sale and supply of liquor in the community due to mail order sales. It was submitted that the proposed restrictions should apply to all retailers that provide the option to deliver liquor to the Pilbara.

#### *Karjini Eco Retreat*

117 It was submitted that the proposed restrictions will have little impact on their business due to the nature and style of business conducted under the special facility licence. However, the following comments were provided:

- the prohibition on packaged liquor sales on Sundays, Christmas Day and Good Friday should not apply to lodgers;
- the prohibition on fortified wine and cask wine should not prevent this liquor being provided for on-premise consumption; and
- the provision of an annual liquor return will be an administrative burden.

#### *Clubs WA*

118 It was submitted that licensed clubs should be exempt from the terms of the proposed restrictions and clubs should be allowed to purchase packaged liquor from retailers

without advanced notice, for club related events only. According to Clubs WA, licensed clubs are safe, family friendly venues and it is unlikely that clubs will become default licensed outlets for non-members if the exemption was to apply, because clubs are intrinsically different to the commercial sector in that:

- alcohol service in clubs is ancillary to the core business of the club;
- clubs must adhere to legislation for both liquor compliance and governance in their rules;
- clubs are managed for members by a committee elected by the members – not by individual owners/shareholders; and
- the nature of club membership restricts and manages how alcohol can be sold.

#### *Red Sands Tavern*

119 It was submitted by the licensee of the Red Sands Tavern that the Pilbara has seen a significant fall in population because of the downturn in the mining industry. For example, the population of Newman has declined from 8,000 people to 4,000 people in the last four years. A higher population is bound to lead to more anti-social behaviour and violence. The volume of liquor sold from licensed premises and consumed in the Pilbara has fallen substantially in the last four years and several licensed premises have gone into liquidation. The planned restrictions may make some premises uncommercially viable. It was also submitted that country hotels are a vital heart to every town and they provide the backbone to township cohesion and amenity. Until greater resources are directed to proper health rehabilitation facilities and professionals in the Pilbara, the problems will not go away.

120 In respect of some of the key restrictions, it was submitted that:

- restricting packaged liquor on a Sunday will only target the hard workers who choose to live in the town because Sunday is the only day most can get into town or be free from work;
- restricting on premise consumption before 12 noon will impact on shift workers;
- requiring non-glass containers, if available, limits people's choice of drinking out of a stubbie; and
- restricting cask wine sales may push people to bottled wine.

#### *Hon Nigel Scullion, Federal Minister for Indigenous Affairs*

121 It was submitted by the Minister that alcohol-related harm has been a significant issue in the Pilbara for some time and the excessive consumption of alcohol is a major risk factor in many health conditions, and is linked with social and emotional well-being, mental health and other drug use. According to the Minister, ongoing reports, including footage of intoxicated males violently attacking females on the street, suggest that an urgent review of WA alcohol policy may be needed.

122 The Minister noted that some alcohol restriction measures exist in parts of the Pilbara, however, he was of the view that current restrictions need to be strengthened with region-wide, evidence-based reforms, aimed at alcohol demand, supply and harm reduction. There is good evidence about the impact that alcohol supply reduction measures can have in reducing harm. The Minister recommended consideration be given to implementing such measures uniformly across the Pilbara, including:

- limitations on the operating hours of licensed premises, including prohibition of takeaway liquor sales on Sundays;

- strict carriage limits on alcohol travelling into communities, measured per person, per day;
- strict restrictions on the volume of takeaway alcohol available for purchase per person, per day; and
- removal from sale of cheap, high alcohol content products (such as port wine).

### Determination

123 The licensing authority may, at its discretion, impose conditions –

- in addition to conditions specifically imposed by the Act; or
- in such a manner as to make more restrictive a condition specifically imposed by the Act,

and may vary or cancel any condition previously imposed by the licensing authority, having regard to the tenor of the licence and the circumstances in relation to which the licensing authority intends that it should operate.<sup>2</sup>

124 More specifically, s 64(3) provides that the licensing authority may impose conditions which it considers to be in the public interest or which it considers desirable to –

- ensure the safety, health or welfare of persons who may resort to licensed premises is not at risk;
- ensure liquor is sold and consumed in a responsible manner;
- minimise harm or ill-health caused to people, or any group of people, due to the use of liquor;
- ensure public order and safety;
- limit –
  - the kinds of liquor that may be sold;
  - the manner or containers, or number or types of containers, in which liquor may be sold;
  - the days on which, and the times at which, liquor may be sold; and
  - limit the times when packaged liquor may be sold.

125 The discretion under s 64 must be exercised judicially and reasonably and the discretion is to be exercised in the public interest, taking into consideration the scope and purpose of the Act and its objects as set out in s 5. The primary objects of the Act are:

- to regulate the sale, supply and consumption of liquor;
- to minimise harm or ill-health 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.

126 Also, the Act was recently amended to include a new secondary object, which is to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor that are consistent with the interests of the community.

127 It should also be noted that these are not disciplinary proceedings against a licensee where a causal link between the operation of the licensed premises and the matters complained of need to be established. Consideration of the harm minimisation object of the Act is not necessarily directed to whether licensed premises are, or will be, to blame

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<sup>2</sup> S 64(1) of the Act.

for the misuse of alcohol which is causing, or likely to cause particular harm. The issue is whether, having regard to the objects of the Act, as a matter of public policy, it is appropriate and in the public interest to impose conditions on a licence.

128 The harm minimisation object is directed to minimising harm or ill-health caused to people, or any group of people, due to the use of liquor. It is not necessary to show that all members of a community are at risk, but often it is the most vulnerable in the community that may require some protection. This object is expressed very broadly and is therefore not based on some narrow concept of what harm might arise from the misuse or abuse of alcohol. Harm minimisation encompasses the health and well-being of individuals, families and communities, as well as social, cultural and economic harm.<sup>3</sup>

129 In considering the public interest, Tamberlin J said<sup>4</sup>:

*“The expression “in the public interest” directs attention to that conclusion or determination which best serves the advancement of the interest or welfare of the public ....and its content will depend on each particular set of circumstances.”*

130 The evidence before me indicates that:

- alcohol-related domestic assaults in the Pilbara increased in 2016 and was seven times the Metropolitan rate and almost five times the State rate and just under double the Regional rate;
- alcohol-related non-domestic assaults in the Pilbara increased in 2016 and was well above the Metropolitan, Regional and State rates;
- alcohol-related domestic violence in Port Hedland and South Hedland has increased in recent years, with rates significantly higher than the State rate;
- alcohol-related non-domestic assaults have dropped slightly in Port Hedland, but increased substantially in South Hedland, however both areas record rates significantly higher than the State rate;
- Pilbara Community Legal Service has identified a 50% increase in the number of domestic violence incidents referred to their service during 2016;
- alcohol-related hospitalisations are significantly higher than the corresponding State rate for Port Hedland and South Hedland;
- St John Ambulance has noted a 26% increase in assault-related callouts between 2015 and 2016;
- alcohol is a factor in a high proportion of suicides in the area;
- it was submitted by the Chief Health Officer that there are reported high levels of alcohol consumption amongst mining and construction industry workers, as well as increased levels of mental health problems among FIFO workers;
- alcohol consumption in the Pilbara is above the State rate;
- the excessive consumption of alcohol is identified as the main casual factor in family violence, non-family violence and anti-social behaviour in the Karratha Police sub-district;

<sup>3</sup> refer *Re Gull Liquor, Gingers' Roadhouse Upper Swan* (1999) 20 SR (WA) 321; *Director of Liquor Licensing v Kordister Pty Ltd* [2011] VSC 207).

<sup>4</sup> *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142

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- in 2016/17, reports of family violence involving an assault increased by 35.6% on the previous year in the Karratha Police sub-district;
  - according to the Department of Child Protection and Family Safety, most Family and Domestic Violence referrals they deal with, that involve the safety of children, are alcohol abuse related; and
  - alcohol-related harm is the most significant issue in the Roebourne sub-district and directly impacts on the ability of Police to keep the community safe.
- 131 Based upon this evidence, and other evidence submitted by stakeholders and government agencies, I find that alcohol is a significant contributor to harm and ill-health in the Pilbara region, which continues to have an overall negative impact on the community. This is consistent with earlier findings by the licensing authority which resulted in restrictions being imposed in Newman, Port Hedland and generally across the Pilbara.
- 132 The harmful use of alcohol is a community issue that can profoundly affect any family, regardless of cultural or ethnic background, however, alcohol consumption causes more harm amongst poor and socially marginalised populations. The social and economic determinants of harmful alcohol use such as unemployment, poor housing, racism, trauma, poor education and peer pressure mean that Aboriginal communities are overly impacted by the harm caused by alcohol consumed at high levels.
- 133 There is evidence that reducing the availability of alcohol in terms of hours; volume and product type can be an effective means of reducing alcohol-related harm. It is widely accepted that liquor restrictions provide a window of opportunity for community and government organisations to work with those persons who may be suffering from the negative impacts of alcohol to achieve long-term change. It should be noted that the use of liquor restrictions is not unique to Western Australia, with jurisdictions across the country using it as a harm minimisation initiative.
- 134 Research also demonstrates that access to, and the convenience of, obtaining alcohol makes it difficult for those who drink at risky levels to avoid drinking or reduce the amount of alcohol consumed.
- 135 There is wide acknowledgment and acceptance that alcohol abuse is having a negative impact on the lives and well-being of people in the Pilbara. There is also a general acceptance that something must be done to address this problem. There is however, some disagreement over what the most appropriate course of action, with industry support for a BDR/TAMS system, rather than further restrictions. I am aware that the Government is assessing the feasibility of implementing a BDR/TAMS for trial across the Pilbara. Such a system, whether it be as a complementary measure to liquor restrictions or ultimately as an alternative to restrictions/further restrictions being imposed on the broader community, would play an important role in monitoring daily purchase limits and targeting individuals who abuse alcohol. I note that such a system was reintroduced in the Northern Territory on 1 September 2017 and is one of many alcohol harm minimisation policy initiatives adopted in the Northern Territory directed towards achieving a safer and healthier community.
- 136 However, the implementation, trial and subsequent evaluation of a BDR/TAMS could take between 1-3 years and in my view, the high level of existing alcohol-related harm in certain areas of the Pilbara require a more immediate intervention and remedial action in the form of further restrictions imposed under s 64 of the Act. There is no doubt that over time, the effectiveness of liquor restrictions can be eroded and the current restrictions in the Pilbara have remained unchanged for many years.

137 In discharging its functions, the licensing authority needs to weigh and balance the competing interests in each case, however, the possibility that the use of liquor may cause harm or ill-health to people, or any group of people, is an important element of the public interest considerations that underlie object 5(1)(b) and the discretion conferred upon the licensing authority under s 33 of the Act.

138 Ipp J in **Executive Director of Health v Lily Creek International Pty Ltd**<sup>5</sup> noted that;

*“Whether harm or ill-health will in fact be caused to people, or any group of people, due to the use of liquor is a matter for the future and, in the sense referred to in **Malec v JC Hutton Pty Ltd**, is essentially a matter of prediction. The Licensing Authority will only be able to determine the likelihood of harm or ill-health occurring by reference to a degree of probability.*

*In my opinion, where the degree of probability is less than 51 per cent, it does not follow that the possibility of such harm or ill-health is to be ignored. In my view, there is nothing in the wording of s 5(1)(b) that leads to such a view. On the contrary, the public interest considerations that underlie s 5(1)(b) indicate that the potential of harm or ill-health is to be taken into account irrespective of whether the prospect of harm or ill-health is a possibility or a probability. The wording in s 69(8a) is also indicative of the intent to this effect.*

*Section 33 of the Act confers upon the Licensing Authority an absolute discretion to grant or refuse an application on any ground that the Licensing Authority considers in the public interest. The potential of harm or ill-health to people, irrespective of whether the harm or ill-health is proved on the balance of probabilities, would be a powerful public interest consideration. The section is therefore consistent with the view that the mere possibility of harm or ill-health would always be a relevant matter for the Licensing Authority when discharging its functions.”*

139 In my view, it is highly likely that the existing rate of alcohol-related harm in the Pilbara region will continue unabated unless there is further intervention.

140 I find that the level of alcohol-related harm in the Pilbara is such that additional restrictions on the sale and supply of liquor in the region is both necessary and appropriate. As noted in many submissions, including those from the industry, a regional wide approach is essential and whilst the level of harm is more prevalent in some towns than others, consistent restrictions across the region will reduce the likelihood of people travelling to other towns to circumvent the restrictions and merely shift the problem elsewhere. It is certainly my experience that this is likely to occur. Also, uniform restrictions across the region will remove the patchwork of restrictions that currently apply and make it less confusing for tourists and other people travelling throughout the area.

141 The notice issued to licensees under s 64(2a) detailed a suite of restrictions that, in my view, strike a balanced response to: (i) the evidence presented in respect of the extent of alcohol-related harm in the region; (ii) the interests of all sections of the community,

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<sup>5</sup> [2000] WASCA 258

including those who consume alcohol responsibly; (iii) how restrictions may contribute to minimising alcohol-related harm; and (iv) the objects of the Act.

142 As stated by the AHA, the myriad of issues surrounding drug and alcohol-related harm are incredibly complex and cannot hope to be solved with a single simplistic solution of limiting the supply of packaged liquor. This has been acknowledged by the licensing authority on many occasions, however liquor restrictions have proven to reduce alcohol-related harm in the community and afford greater opportunity for social service providers to work with at-risk drinkers. Supply reduction strategies help mitigate the harms that alcohol causes, but on their own, they will not solve the social and economic determinants of alcohol use that impact on the health and well-being of communities. It must also be equally acknowledged, given the complexity of the issues, that these restrictions should be considered in terms of their collective effectiveness in reducing alcohol-related harm, and not individually dissected.

143 In response to the notice issued under s 64(2a), there were many suggestions on possible amendments to the proposed restrictions to cater for various circumstances that arise with respect to the provision of alcohol within the community. It is not possible to cater to every individual preference, and there will be a degree of inconvenience for some members of the public. However, I have modified the proposed restriction where appropriate in response to industry submissions. The following factors were also relevant to determining the appropriate suite of restrictions:

- the sale and supply of liquor before 11 a.m. for on premise consumption has been restricted in most of the Pilbara since 2012;
- the sale of packaged liquor on Sundays has been prohibited in Port Hedland since 2004;
- most people purchase one carton or less of beer or RTD when purchasing alcohol (AHA survey);
- 33% of consumers purchase three bottles or less of wine and only 14% of consumers purchase four or more bottles of wine (AHA survey);
- some licensees already self-impose volume restrictions and product restrictions (i.e. limit of one carton per person per day and no cask wine sales and no fortified wine sales);
- Tourism Western Australia advise that the proposed volume limits should be enough to sustain a self-drive trip through the area;
- the nature and extent of existing restrictions that currently apply across the region;
- there is evidence that reducing the availability of alcohol in terms of hours; volume and product type can be an effective means of reducing alcohol-related harm in the community; and
- a population approach (whole of community), such as liquor restrictions, can be an effective method to achieve long-term change.

144 Accordingly, the following restrictions will be imposed on all licences in the Pilbara region (with some minor exceptions such as remote work canteens):

1. The permitted hours for the sale and supply of packaged liquor on a day other than a Sunday, Good Friday or Christmas Day – from 12 noon to 8 pm.
2. The sale of packaged liquor on a Sunday is prohibited.
3. The sale and supply of liquor for consumption on the premises is prohibited before 11 a.m. except where it is sold ancillary to a meal or to a lodger.

4. The sale of cask wine is prohibited.
5. The sale of beer in glass bottles of 750mls or more is prohibited.
6. Packaged liquor may only be sold or supplied in the following quantities:
  - (a) low alcohol liquor where the liquor contains less than 2.7 per cent concentration of ethanol at 20 degrees Celsius in any quantity;
  - (b) where the liquor contains greater than 2.7 per cent but no more than 7 per cent concentration of ethanol at 20 degrees Celsius a maximum cumulative quantity of 11.25 litres per customer per day (e.g. 1 carton of 30 cans @ 375 ml each);
  - (c) where the liquor contains greater than 7 per cent but no more than 15 per cent concentration of ethanol at 20 degrees Celsius a maximum cumulative quantity of 2.25 litres per customer per day (e.g. 3 bottles of wine @ 750 ml each); and
  - (d) where the liquor contains greater than 15 per cent concentration of ethanol at 20 degrees Celsius a maximum cumulative quantity of one litre per customer per day. In the case of fortified wine, nothing below \$25 price point.

A person may purchase liquor in quantities provided for by either (b) or (c) or (d) or a combination of (b) and (c).

7. Operators of taxis or buses are not to be sold packaged liquor on behalf of persons in the vehicle.
8. Occupants of taxis or buses must exit the vehicle to purchase packaged liquor to allow for a thorough responsible service of alcohol assessment by staff.
9. Licensees are required to submit returns of alcohol sales data, by product type and quantity, to the Director of Liquor Licensing for each financial year by 31 August. The return must contain the following information:
  - a) Total amount paid or payable to the licensee and the quantity supplied in respect of:
    - i) low alcohol liquor (2.7% ethanol by volume or less)
    - ii) mid strength alcohol liquor (2.8% to 3.5% ethanol by volume)
    - iii) full strength alcohol liquor (3.6% ethanol by volume or more)
  - b) The information is to be provided under the headings of the following product types: wine, beer, and spirits (as defined in section 3 of the Act), and pre-packaged pre-mixed alcohol beverages generally known as 'ready-to-drinks (RTDs).
10. The licensee is prohibited from, and shall not authorise, any external promotion which advertises the price of full strength "mainstream" packaged beers (i.e.: regular beer with over 3.5% ethanol by volume); RTDs; or spirits, whether the price is discounted or not. The licensee is also prohibited from any external promotion which links the purchase of full strength "mainstream" packaged beer, RTDs, or spirits with any prize, contest or other customer incentive. The brands of "Mainstream" packaged beer affected include, but not limited to: Victorian Bitter, Fosters, Emu Export, Emu Bitter, Swan Draught, XXXX, Hahn and Tooheys. Bottled wine, low alcohol beers (3.5% ethanol by volume) and premium/craft beers are excluded from this condition.



### Exemptions

1. The sale and supply of packaged liquor is only permitted to a person who is present at the time of purchase on the licensed premises conducting the sale, unless that person is:
    - a) a liquor merchant;
    - b) a station owner, pastoralist, persons operating a remote work site or seafarers (the sale can be to an employee that places and/or collects the order on behalf of the business) and only on the conditions that:
      - i) the liquor is to be consumed at a remote work site or on a ship; and
      - ii) the licensee maintains on the licensed premises, a register of purchases, which must be made available for inspection at the request of an authorised officer; and
      - iii) the register contains the following information in relation to the station owner or pastoralist:
        - Name
        - Address
        - Address to which the liquor is being delivered/taken
        - Description and quantity of liquor ordered
    - c) a person who has pre-ordered the liquor at least 3 days in advance of pick-up/delivery and only on the conditions that:
      - i) that person has personally completed and signed a Bulk Purchase Order form; and
      - ii) the Bulk Purchase Order form contains the following information in relation to the bulk purchase:
        - Name of purchaser
        - Address and phone number of purchaser
        - Address to which the liquor is being delivered/taken
        - Description and quantity of liquor ordered and the reason for the bulk purchase
        - Purchaser's signature; and
      - iii) the Bulk Purchase Order form is retained by the licensee and made available for inspection at the request of an authorised officer and a copy is provided to the local police within 24 hours.
- The sale of liquor under this exemption is not subject to the quantity restrictions set out above.
2. The quantity restrictions set out above do not apply to the sale and supply of packaged liquor to a bona fide tourist (this does not include a person who flies in on a regular basis to work in the area – for example a FIFO worker), travelling through the Pilbara or Kimberley region, and who normally resides outside the Pilbara or Kimberley region and the liquor is to be consumed out of town. The licensee must record the following information where a sale is made under this exemption:

- Name of purchaser
- Address and phone number of purchaser
- Vehicle registration
- Address/location to which the liquor is being taken
- Description and quantity of liquor ordered and
- Purchaser's signature.

This information is to be provided to the local police within 24 hours and retained by the licensee for inspection at the request of an authorised officer.

- 145 Although many people throughout the region may consume alcohol responsibly, these restrictions are unlikely to negatively impact on those responsible drinkers, or tourists visiting or passing through the area, but will reduce access and consumption of alcohol by at-risk persons. The restrictions will allow for more effective engagement by service providers and the implementation of programs and strategies for those persons who may be suffering from alcohol abuse and importantly, support the work proposed under the whole-of-government *West Pilbara Trauma Response Plan*. This is a co-ordinated Government strategy to address intergenerational disadvantage and child sexual abuse in the area. Supply reduction, demand reduction (prevention) and harm reduction strategies work best in combination and a comprehensive approach involving a range of strategies is required to effect sustainable change.
- 146 Addressing alcohol-related harm and abuse is a community wide responsibility and cannot be ignored, because its effects are widespread. Alcohol abuse doesn't only impact on individuals who may be directly affected, but also has a negative impact more broadly in terms of law enforcement, criminal justice, health and education. The cost burden to the community is significant. Ultimately, everyone benefits from having safer, healthier communities and to achieve this sometimes requires a whole of community response.
- 147 Several submissions raised concerns that mail-order sales might be used to circumvent the benefits to the proposed restrictions. In this regard, both Coles Liquor and Woolworths, who are the biggest suppliers of packaged liquor in the State, have advised that they will support the minimisation of alcohol-related harm in remote areas of the State by voluntarily abiding by liquor restrictions that are in place in regional and remote areas in respect of their on-line sales. Further, recent amendments to the Act allow for regulations to be made to impose carriage limits on the quantity of liquor that a person can transport and set parameters around the home delivery of liquor. These initiatives will also support the proposed restrictions and help reduce the potential for sly grogging in the region.
- 148 I am hopeful that these restrictions together with other Government initiatives will be the catalyst for positive and sustained change in the Pilbara region.
- 149 These restrictions will take effect from 31 March 2019, which will allow sufficient time for licensees to adjust their business operations and for the public to be informed of the new restrictions. A review of the effectiveness of these restrictions will be undertaken in due course in consultation with police, health and industry. I would also encourage local Accords to continue to work collaboratively with stakeholders to consider initiatives relevant to their local community.

150 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.

151 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

## ATTACHMENT A

1. Blanche Bar
2. Blanche Bar Catering
3. BWS - Beer Wine Spirits – Wickham
4. BWS - Beer Wine Spirits Karratha
5. Dampier Bowling Club Inc
6. Dampier IGA X-Press
7. Dampier Mermaid Hotel & Motel
8. Dampier Sports Club Inc
9. Econo Lodge Karratha
10. Fiorita Deli
11. Fortescue River Tavern
12. Hampton Harbour Boat and Sailing Club Inc
13. Ibis Styles Karratha
14. Julutharndu Maya
15. Karratha & Districts RSL & Services Social Club Inc
16. Karratha Airport Café and Bar
17. Karratha Bowling Club Inc
18. Karratha Caravan Park - Bottleshop
19. Karratha Country Club Inc
20. Karratha International Hotel
21. Karratha Kats Football & Sporting Club Inc
22. Karratha Sporting & Recreation Club Inc
23. Karratha Tavern
24. My Second Home
25. Onyx Events - Karratha

26. Onyx on Sharpe
27. Outback Travel Centre - Karratha
28. Pannawonica Sporting Club Inc
29. Pannawonica Supermarket
30. Pannawonica Tavern
31. Port Walcott Yacht Club Inc
32. Qantas Regional Lounge Karratha
33. Rambla Bar & Bistro
34. Samson Beach Tavern
35. Soul
36. Tambrey Centre
37. Vita Cafe Dining
38. Whim Creek Hotel
39. Wickham Ob's Social Club Inc
40. Wrapped Creations
41. BWS - Beer Wine Spirits Port Hedland
42. Cooke Point Recreation Club Inc
43. Finucane Island Sports & Recreation Club Inc
44. Gateway Village
45. Ibis Styles Port Hedland
46. Last Chance Tavern
47. Liquorland South Hedland
48. North West Liquor Supplies
49. Pardoo Roadhouse & Tavern
50. Pier Hotel
51. Port Hedland Yacht Club
52. Sandfire Roadhouse

53. South Hedland Liquor Supplies
54. Walkabout Hotel
55. Pardoo Liquor Store
56. Iron Clad Hotel
57. Kumarina Hotel
58. Newman Hotel Motel
59. Red Sands Tavern
60. Capricorn Bar and Grill
61. Cellarbrations at Newman
62. Newman Club Inc
63. Cats Football And Sporting Club Inc
64. Seasons Hotel Newman
65. Mia Mia - House in the Desert
66. Fortescue Golf Club (Inc)
67. Centrals Football Club Inc
68. Nullagine Hotel
69. Beadon Bay Hotel
70. Onslow Supermarket
71. Onslow Sports Club Inc
72. Discovery Parks Onslow
73. Onslow Beach Resort
74. Island View Café Onslow
75. Tom Price Hotel Motel
76. Liquorland Tom Price
77. Mountain View Sporting Club (Inc)
78. Nanutarra Roadhouse
79. Red Breeze

80. Auski Tourist Village Roadhouse
81. Karijini Eco Retreat
82. Tom Price Bowling Club Inc
83. Paraburdoo Inn
84. Cellarbrations at Paraburdoo
85. Paraburdoo Golf Club
86. Paraburdoo Bowling Club Inc
87. Esplanade Hotel
88. Port Hedland Golf Club Inc
89. RSL Port Hedland Sub Branch
90. Seafarer's Centre
91. South Hedland Bowling & Tennis Club Inc