

DECISION OF THE DIRECTOR OF LIQUOR LICENSING

PREMISES: GULLIVERS TAVERN
KUNUNURRA HOTEL
LAKE ARGYLE INN
VAGG'S WYNDHAM LIQUOR

MATTER: VARIATION OF TRADING CONDITIONS

DECISION OF: PETER MINCHIN
DIRECTOR LIQUOR CONTROL AND ARBITRATION

DATE OF DETERMINATION: 16 NOVEMBER 2017

Background

- 1 Liquor restrictions, prohibiting the sale of packaged liquor on Sunday and restricting the quantity and times that packaged liquor can be purchased, were imposed in Kununurra and Wyndham in February 2011.
- 2 The restrictions were amended in March 2012 and again in November 2012 at the request of the local liquor accord. The current restrictions limit the quantities of mid and full strength packaged liquor that may be sold and the hours of sale to between 12 noon and 8 p.m. Monday to Saturday. Effectively, a person is limited to two cartons of full-strength beer or six bottles of wine or one litre of spirits per day. There is no restriction on the purchase of liquor with an alcohol content of 2.7% or less and a person can purchase one carton of full strength beer and three bottles of wine at the same time.
- 3 In addition to the restrictions specific to Kununurra and Wyndham, Kimberley wide restrictions also apply where packaged liquor may not be sold in individual containers of more than one litre of liquor with an alcohol content of 6% or more (for example, wine casks of more than one litre) and glass bottles of 400ml or more of beer.

Current inquiry

- 4 On 15 December 2016, the Wunan Foundation provided a report to the Director of Liquor Licensing about the on-going extent of alcohol-related harm in and about Kununurra and Wyndham. The Wunan Foundation, whose purpose is to promote the welfare of Aboriginal people in the East Kimberley, is seeking further restrictions on the availability of packaged liquor in the respective towns by reducing the daily limits for beer and wine to one carton of full-strength beer and/or three bottles of wine.
- 5 Section 64(1) of the *Liquor Control Act 1988* (the Act) provides that the licensing authority may, at its discretion, impose conditions on a licence in addition to those

conditions specifically imposed by the Act and may vary or cancel any condition previously imposed by the licensing authority.

- 6 Consequently, I wrote to various State Government departments inviting them to make submissions and provide evidence on the extent and impact of alcohol-related harm in Kununurra and Wyndham.
- 7 Licensees in the towns were subsequently provided with a copy of the various submissions, together with the report from the Wunan Foundation, and afforded an opportunity to respond.

Show cause requirement

- 8 Having read all the evidence and submissions from the various stakeholders, I formed the view that it would be in the public interest to further restrict the availability of packaged liquor in Kununurra and Wyndham.
- 9 Section 64(2a) of the Act states that where the licensing authority proposes to impose, vary or cancel a condition of a licence, the licensing authority may, by notice in writing, require a licensee to show cause why the condition should not be imposed, varied or cancelled.
- 10 On 11 September 2017, I wrote to the affected licensees requiring them to show cause why the availability of packaged beer and wine should not be further restricted as follows:
 - one carton, where liquor contains greater than 2.7 per cent but not more than 7 per cent concentration of ethanol at 20 degrees Celsius; a maximum cumulative quantity of 11.25 litres per customer per day; and/or
 - three bottles, 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.
- 11 I also indicated to the licensees that I was going to require them to provide quarterly returns of liquor sales and that the remaining restrictive trading conditions, which includes some exemptions to the daily limits, would remain in place.

Determination

- 12 The evidence from the Wunan Foundation and other stakeholders indicates that despite the current restrictions on the availability of packaged liquor in Kununurra and Wyndham, alcohol-related harm in these neighbouring towns is still extremely high. For example, in Kununurra:
 - in 2014, 183 domestic violence assaults (on average 0.5 per day) were recorded and 77 per cent were alcohol-related;
 - in 2015, 245 domestic violence assaults (on average 0.6 per day) were recorded and 77 per cent were alcohol-related;

- in 2016, up to 24 October, 258 domestic violence assaults (on average 0.9 per day) were recorded and 76 per cent were alcohol-related;
 - of all domestic violence assaults, 77 per cent are alcohol-related and of all other assaults 91 per cent are alcohol-related; and
 - in 2016, based upon comparable rates per 1,000 persons, alcohol-related domestic assaults in Kununurra were 35 times the Metropolitan rate; 8 times Regional WA rate; and 21 times the State rate.
- 13 In Wyndham, alcohol-related domestic assaults per 1,000 persons in 2016 were:
- 29 times the Metropolitan rate;
 - 7 times the Regional WA rate; and
 - 17 times the State rate.
- 14 Notwithstanding the existing restrictions, the rate of offending is not decreasing and it is of concern that the rate of alcohol-related domestic assaults is trending upwards.
- 15 There is broad support from service providers for the implementation of further restrictions on the availability of packaged liquor in the area to help address the high rates of alcohol-related harm in these communities. A disproportionately high level of police resourcing is required to deal primarily with alcohol-related issues.
- 16 The Australian Hotels Association (Western Australia) provided a formal response to the show cause notice on behalf of the following licensees:
- Gulliver's Tavern;
 - Kununurra Hotel; and
 - Vagg's Liquor.
- 17 It was submitted that the licensees are generally supportive of harm minimisation measures that strike a balance between the various objects of the Act. In this regard, the licensees are of the view that the proposed variation to the trading conditions of their licences, as set out in the show cause notice, provides that balance subject to some requested amendments, such as:
- allowing the sale of 2 cartons of low alcohol liquor (not exceeding 3.5% ethanol);
 - permitting the sale of 2 litre casks of wine; and
 - varying the timeframes under the exemption provisions of the conditions.
- 18 The licensees also submitted that the provision of quarterly liquor returns imposes an unnecessary additional administrative burden on them.
- 19 In any determination, the licensing authority must have regard to the primary and secondary objects of the Act.¹ The primary objects of the Act, as set out in s 5 are:
- to regulate the sale, supply and consumption of liquor;

¹ *Woolworths v Director of Liquor Licensing* [2013] WASCA 227

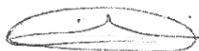
- to minimise harm caused to people, or any group of people, due to the use of liquor; and
 - to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.
- 20 Where conflict arises in promoting the objects of the Act, the licensing authority must weigh and balance the competing interests in each case.² However, it is a matter for the licensing authority to decide what weight to give to the competing interests and other relevant considerations.³
- 21 The harm minimisation object of the Act encompasses harm to the health and wellbeing of individuals, families and communities, as well as social, cultural and economic harm. It encompasses harm to personal safety and the freedom to move in the streets without hindrance, disturbance and molestation.
- 22 The evidence clearly establishes that the abuse of alcohol continues to have a significant negative impact on the communities of Kununurra and Wyndham. I also note that the Liquor Commission recently found that there is a significant level of harm and ill-health caused by the use of alcohol in the town of Kununurra and the abuse of alcohol has led to high levels of alcohol-related crimes, high levels of domestic violence, health-related issues and general social unrest.⁴
- 23 In my view, the proposed variation to halve the daily volume of full-strength beer and wine would be a positive move directed towards minimising alcohol-related harm in these communities. Tamberlin J in *McKinnon v Secretary, Department of Treasury* [2005] FCAFC 142 said:
- “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.”*
- 24 However, I do not accept the licensees’ submission that allowing the sale of 2 cartons of beer (up to 3.5% ethanol) and 2 litre casks of wine would contribute to the reduction of harm in the area. These proposals would be counterproductive to reducing overall consumption levels, and cask wine has historically proven to be problematic in remote communities, which is why the restriction on 2 litre casks of wine applies across the whole of the Kimberley, not just in Kununurra and Wyndham.
- 25 I also note that Tourism Western Australia stated in their submission that purchasing one carton of beer and/or three bottles of wine per person per day should be enough to sustain a self-drive trip in the area.

² *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258).

³ *Hermal Pty Ltd v Director of Liquor Licensing* [2001] WASC 356.

⁴ LC/2016 Liquor Barons Kununurra.

- 26 The licensees undertook a community survey on the proposed restrictions, with 53% of respondents indicating that the proposed restrictions would still cater to their requirements as a consumer, while 47% stated they would not. Overall, 48% of respondents supported further restrictions and 52% were opposed.
- 27 Although some consumers may experience a degree of inconvenience in obtaining packaged liquor, this does not, in my view, outweigh the possible social and health benefits that further restrictions may bring to the communities of this region. The whole community benefits from a reduction in crime and anti-social behaviour.
- 28 In respect of the request to vary the timeframes under the exemption provisions, I am concerned that there may be unintended consequences with the variation of this condition and further, there is little evidence to support this proposal. Therefore, the current condition will remain in place.
- 29 The provision of liquor returns, which detail the amount of liquor sold into the community, would help inform future reviews of the restrictions, however I accept that quarterly returns may be burdensome for the licensees. I will therefore require returns to be lodged on an annual basis for each financial year. Returns will need to be lodged by 30 July each year. This requirement will be extended to other licensees, albeit they are not currently subject to the restrictions.
- 30 I am mindful that other complementary initiatives are also being trialled in these communities, such as the Commonwealth Cashless Welfare Card and a Takeaway Alcohol Management System (implemented by the licensees). A concerted effort is needed to bring about a sustainable change in alcohol consumption and abuse in this region.
- 31 Accordingly, the respective licences will be varied in accordance with this decision, which will take effect from 4 December 2017. A review of the effectiveness these conditions will be undertaken at the end of June 2019.
- 32 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.
- 33 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