

# Northern Territory Licensing Commission

## Reasons for Decision

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<b>Premises:</b>	<b>Mataranka Hotel Mataranka Homestead Tourist Resort Larrimah Wayside Inn</b>
<b>Licence numbers:</b>	80118506 81200500 81300518
<b>Licensees:</b>	Westbrick Pty Ltd Mr Stephen John Garner Mr Barry James Sharpe
<b>Nominees:</b>	Ms Debrah Ann Moore & Ms Kate Doherty Mr Stephen John Garner Mr Barry James Sharpe
<b>Proceeding:</b>	Request for Hearing Pursuant to Section 33(2) of the <i>Liquor Act</i> – Objection to Variation of Licence Conditions
<b>Heard before:</b>	Mr Richard O’Sullivan (Chairman) Mr Philip Timney (Legal Member) Mr David Brooker
<b>Appearances:</b>	Mr Mark Wood for the Director of Licensing Ms Debra Moore for the Mataranka Hotel & Mataranka Homestead Tourist Resort Mr Barry Sharpe for the Larrimah Wayside Inn
<b>Date of Hearing:</b>	5 July 2012

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## Background

- 1) On 14 March 2012 a full meeting of the Licensing Commission considered an interim report submitted by the Regional Alcohol Strategy Project Officer, Katherine, recommending a change to the conditions of licence for the Larrimah Hotel. The proposal was supported by then Mayor of Katherine, Ms Anne Shepherd, and recommended variations to the licence conditions for the Larrimah Wayside Inn so as to bring the licence conditions into line with those applicable to licensed premises in Katherine. The Commission noted the interim report and deferred consideration of the proposal pending the submission of an expanded report to be presented to the May meeting of the Commission.
- 2) The Commission received and considered the expanded report at its meeting convened on 3 May 2012. That report, submitted by the Senior Director, Alcohol Strategy, recommended variations to the licence conditions applicable to the Mataranka Hotel, the Mataranka Homestead Tourist Resort (“the Mataranka Homestead”) and the Larrimah Wayside Inn. The identified aim in the expanded report was to amend the licence conditions applicable to the three premises under consideration so as to align them with those applicable to licensed premises in the Katherine region.
- 3) The application for variation of licence conditions was initiated by the Jilkminggan Community Aboriginal Corporation (“the JCAC”) and sought, in addition to a restriction off take away hours for the Larrimah Wayside Inn, a review of the conditions relating to the sale of “heavy beer” prior to 12.00 noon.

- 4) Licensed premises in Katherine currently include the following conditions concerning the hours of sale for take away alcohol:

**Take Away Hours**

*Liquor shall be sold only for consumption away from the premises during the following hours:*

- (i) Sunday to Friday inclusive between the hours of 14:00 and 20:00;*
- (ii) Saturday and Public Holidays between the hours of 12:00 and 20:00; and*
- (iii) No trading on Good Friday or Christmas Day.*

- 5) In respect of the on-premise sale of alcohol, Katherine liquor licences include the following condition:

Only Light Beer may be sold between the hours of 10:00 and 12:00 seven days per week.

Light Beer will be defined as liquor with an alcohol content of NOT more than 3.0%.

- 6) For the Larrimah Wayside Inn the current licence conditions authorise the sale of take away alcohol, excluding fortified wine and cask wine in containers larger than two litres, during the following hours:

**Take Away Hours**

*Liquor shall be sold only for consumption away from the premises during the following hours:*

- (i) Sunday to Friday inclusive between the hours of 10:00 and 22:00;*
- (ii) Saturday and Public Holidays between the hours of 9:00 and 22:00; and*
- (iii) No trading on Good Friday or Christmas Day.*

- 7) The Mataranka Hotel licence conditions authorise take away sales between 14.00 pm and 20.00 pm and prohibit the sale of fortified wine and the sale of cask wine in containers larger than two litres. Take away sales of cask wine are restricted to the hours of 14.00 pm to 18.00 pm only and are limited to one two litre cask per person per day.

- 8) For the Mataranka Homestead Tourist Resort ("Mataranka Homestead") the current conditions authorise the sale of take away alcohol during the following hours:

**Take Away Hours**

*Liquor shall be sold only for consumption away from the premises during the following hours:*

- (i) Sunday to Friday inclusive between the hours of 14:00 and 20:00;*
- (ii) Saturday and Public Holidays between the hours of 12:00 and 20:00; and*
- (iii) No trading on Good Friday or Christmas Day.*

- 9) The Mataranka Homestead licence conditions also prohibit the sale of cask or fortified wine in containers larger than two litres. Take away sales of cask and fortified wine are restricted to the hours of 14.00 pm to 18.00 pm only and are limited to one two litre cask or one bottle of fortified wine per person per day.

- 10) For on-premises consumption of alcohol, the licences for the Larrimah Wayside Inn and the Mataranka Hotel currently authorise trade from 10.00 am to 02.00 am the following day from Sunday to Saturday inclusive. There are currently no restrictions on either licence in

respect of the sale of heavy or mid strength alcohol prior to 12.00 noon although the Mataranka Hotel has a voluntary restriction limiting on premise sales to light and mid strength beer prior to 12.00 noon.

- 11) For the Mataranka Homestead the authorised hours for the sale of alcohol for on-premises consumption are between 7.00 am and 23.00 pm daily. Liquor is not to be sold to members of the public for consumption on the premises before 10.00 am on any day i.e. between 7.00 am and 10.00 am each day sales for on-premises consumption are authorised only to bona fide lodgers of the premises. There are currently no restrictions on the sale of mid strength and heavy beer prior to 12.00 noon, although a voluntary measure is in place restricting sales to light and mid strength beer prior to noon.

**Consideration of the application lodged by the Senior Director, Alcohol Strategy.**

- 12) At its meeting on 3 May 2012 the Commission considered a report submitted by Ms Jane Alley, Senior Director, Alcohol Policy, Licensing, Regulation and Alcohol Policy (“the LR&AS Report”). The report annexed the draft Jilkminggan Alcohol Management Plan 2012 – 2016. The LR&AS Report recommended that the Commission amend the licence conditions for trading hours, pursuant to Section 33 of the *Liquor Act* (“the Act”), for the three premises under consideration as follows:

**Mataranka Homestead Tourist Resort:**

Trading Hours	[No change other than the following addition:] “Only light beer (not more than 3% alcohol content) may be sold on-premises between 1000 and 1159 hours seven days per week.”
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**Mataranka Hotel:**

Trading Hours	[No change other than the following addition:] “Only light beer (not more than 3% alcohol content) may be sold on-premises between 1000 and 1159 hours seven days per week.”
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**Larrimah Wayside Inn:**

Trading Hours	[No change other than the following addition:] “Only light beer (not more than 3% alcohol content) may be sold on-premises between 1000 and 1159 hours seven days per week.”
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Take Away Hours	Liquor shall be sold only for consumption away from the premises during the following hours:
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Sunday and Friday inclusive between 1400 and 2000 hrs  
Saturday and Public Holidays between 1200 and 2000 hrs  
No trading on Good Friday or Christmas Day

- 13) The LR&AS Report noted that the application for variation of licence conditions was initiated by the JCAC and that the application was primarily relevant to communities of Jilkminggan, Mataranka and Larrimah and would potentially effect drinkers from Ngukkur, Urapunga, Numbulwar, Minyerri, Borroloola, Wugulaar and Katherine.
- 14) Following the introduction of the restriction on take away hours to between 14.00 pm and 20.00 pm in the Katherine Region the same restriction was applied to the Mataranka Hotel and the Mataranka Homestead premises in September 2009. The Report noted that the restriction was not applied to the Larrimah Wayside Inn and, as a consequence, the purchase of take away heavy beer had trebled in 2010/11 with no change in the sales of light beer. Mid strength beer and pre-mix sales showed a slight increase and the sale or

rum nearly doubled. Data collected to date for 2012/13 indicates that the sales for the current financial year will probably remain at the 2010/11 level.

- 15) The application to standardise the licence conditions for the three premises originated from an initiative in the supply reduction Section of the Jilkmिंगgan Alcohol Management Plan ("the AMP"): "Tell the Licensing Commission that they should make the licence conditions for Larrimah Wayside Inn the same as in Katherine". In support of their application, the JCAC Directors obtained letters of support from Alawa Aboriginal Corporation (Katherine), Sunrise Health Service Aboriginal Corporation, Mataranka Health Centre, the former Mayor of Katherine and the Superintendent of Police for the Arnhem and Western Division. Police also requested that the application be broadened to review the availability of high alcohol volume products prior to midday at the Mataranka and Larrimah premises.
- 16) The LR&AS Report noted that responsible Jilkmिंगgan community members had observed a culture of "all day drinking" amongst a large group of community members. The fact that drinkers could drive seventy-five kilometres to Larrimah to purchase take away alcohol, prior to sales commencing in Mataranka, the report concludes that this increases the potential for harm arising from motor vehicle accidents and circumvents the harm reduction measures associated with the supply reduction conditions placed on Katherine licensed premises. Jilkmिंगgan community members submitted that the drinking culture impacts negatively on the community through domestic violence, fights amongst drinkers, neglect of children, poor health and exacerbation of chronic illnesses and premature deaths.
- 17) The LR&AS Report noted further that whenever control supply measures are put in place drinkers seek ways to circumvent them, as evidenced by the shift of drinkers from Katherine to Mataranka when the take away hours were first introduced for Katherine licensed premises. It was submitted that the movement of drinkers to Larrimah undermines the intent of previous Commission decisions in terms of alcohol supply control and increases the likelihood of motor accidents involving people driving under the influence of alcohol.
- 18) Information obtained from Police indicated that large numbers of people are drinking heavy beer in the morning prior to the commencement of take away sales in Mataranka and putting themselves, their passengers and other road users at risk by driving after a solid drinking session. The report recommended that the restriction on the sale of heavy beer for on-premises consumption currently applicable in Katherine also be applied to the Mataranka and Larrimah licences.

### **Section 33 Notices**

- 19) At the meeting held on 3 May 2012 the full Licensing Commission determined to adopt the recommendations contained in the LR&AS Report and issue Section 33 notices to the Licensees advising of the changes to the licence conditions of the three premises in accordance with those recommendations. The notices were forwarded to the respective Licensees by letters dated 23 May 2012.
- 20) Section 33 of the Act provides:

#### **33 Commission may vary conditions**

- (1) *Subject to this Section, the Commission may, from time to time by notice in writing, vary the conditions of the licence held by a Licensee.*
- (2) *A Licensee may, within 28 days of the date on which the Licensee receives a notice of a description referred to in subsection (1), by notice in writing lodged with the Director, request that the Commission conduct a hearing in relation to the conditions of his licence.*
- (3) *Where, under subsection (2), a Licensee requests that the Commission conduct a hearing, the Commission shall conduct a hearing in relation to the conditions of the licence of the Licensee.*

- (4) *After the Commission has conducted a hearing pursuant to this Section, the Commission may:*
- (a) *affirm, set aside or vary the decision made without a hearing; and*
  - (b) *make such other order as it thinks fit.*
- (5) *A variation of the conditions of a licence under this Section shall have effect on and from:*
- (a) *where the Licensee does not request, under subsection (2), that the Commission conduct a hearing:*
    - (i) *the expiration of the period referred to in that subsection; or*
    - (ii) *such later date as the Commission may specify in the notice referred to in that subsection; or*
  - (b) *where the Commission conducts a hearing pursuant to subsection (3) and the Commission affirms or varies the variation of the conditions of the licence:*
    - (i) *the date of the conclusion of the hearing; or*
    - (ii) *such later date as the Commission may specify at that hearing.*

21) By letter dated 31 May 2012 Mr Stephen Garner, a Director of the Licensee company for the Mataranka Hotel, objected to the variation of licence conditions relating to the sale of heavy beer prior to 12.00 noon and sought a Hearing in accordance with Section 33(2) of the Act.

22) Mr Garner noted that for the past two years he had voluntarily restricted on-premise sales to mid strength beer prior to 12.00 noon with positive effects. He added that, apart from local indigenous clients, the main trade of the Mataranka Hotel came from tourists who often visited the premises prior to noon for a meal, often accompanied by a bottle of wine. He submitted that the proposed restriction will affect the business of the Hotel dramatically and would be unfair in the face of the Licensee's pro-active promotion of responsible drinking.

23) In a letter dated 31 May 2012 Mr Garner, in his capacity as Licensee of the Mataranka Homestead, objected to the variation of conditions for that licence and also sought a Hearing pursuant to Section 33(2) of the Act.

24) Mr Garner noted that the Mataranka Homestead had also implemented a voluntary ban on the sale of full strength beer prior to 12.00 noon as a courtesy to all locals and members of the indigenous community of Mataranka. He noted that the voluntary restriction to mid strength beer was working well without any issues so far. He also noted that the Homestead was a tourist resort and the bar was frequented by guests who came in for a beer after a swim at the thermal pools. Mr Garner added that few local indigenous people frequent the Homestead to drink due to its location nine kilometres from the Mataranka Township.

25) Mr Garner submitted that given the main trade of the premises related to tourists the amendment of licence conditions would dramatically affect the business and would be unfair given his prior promotion of responsible service and drinking. He requested that he be permitted to continue to sell light and mid strength beer prior to 12.00 noon.

26) Mr Sharpe, as Licensee of the Larrimah Wayside Inn, responded to the Section 33 notice by letter dated 19 June 2012 and requested a Hearing in respect of the proposed variation of licence conditions. He submitted that there are no anti-social behavioural problems in Larrimah and that there are no Aboriginal communities located in close proximity to

Larrimah, as opposed to Mataranka. Mr Sharpe added that his business is 99% reliant on passing trade and that he would appreciate the opportunity to address the Commission on the proposed variations.

- 27) Taking account of the submissions lodged by the respective Licensees, the Commission determined to conduct a joint Hearing in respect of the proposed variations to licence conditions for the three premises.

## Hearing

- 28) The Hearing into the proposal to vary the licence conditions for the three premises was convened in Mataranka on 5 June 2012.

## Evidence of Remote Sergeant Lenora Giles

- 29) Remote Sergeant Lenora Giles was called to give evidence in support of the application and referred to her statutory declaration dated 1 February 2012, which was included in the Hearing Brief. Sergeant Giles is the OIC of the Mataranka Police Station and has held that position since February 2005.
- 30) Sergeant Giles noted that the observations of Police in Mataranka indicated a significant increase in the number of persons travelling from Mataranka to Larrimah in the morning to purchase take away alcohol since the restriction on take away sales prior to 14.00 pm was introduced for Mataranka licensed premises. Those people were then travelling back to Mataranka, Minyerri, Ngukkur or Numbulwar to consume the alcohol, often commencing drinking whilst on the drive back. She stated that this situation had led to a significant increase in apprehensions for drink driving offences over the previous 18 months.
- 31) Sergeant Giles stated that Police had apprehended several drink drivers returning from Larrimah, including instances of unrestrained children being in the vehicles. She cited specific incidents where drivers, who readily admitted having travelled to Larrimah to purchase alcohol, had returned positive BAC readings of 0.122% and 0.160% on the same date. Sergeant Giles stated that the vehicles usually had four or more passengers on board and the types of alcohol found in the vehicles was predominantly thirty pack cartons of VB but also included rum and bourbon.
- 32) In another incident, a driver who returned a BAC reading of 0.181% admitted purchasing alcohol from the Larrimah Hotel earlier in the morning. Two unopened thirty packs of VB were located in the vehicle and three passengers were taken into protective custody due to their state of intoxication. In her Statutory Declaration Sergeant Giles referred to various other incidents where Police had been informed by persons drinking at locations in and around Mataranka that they had travelled to Larrimah to purchase the alcohol earlier in the day.
- 33) Sergeant Giles referred the Commission to an incident that occurred at 8.30 pm on 24 January 2012 in which Police attended a fatality involving a pedestrian on the Roper Highway. The deceased, a resident of the Jilkminggan community, had been struck by a vehicle and died instantly. Witness statements confirmed that the occupants of the vehicle involved had travelled to Larrimah earlier that morning to purchase alcohol.
- 34) Sergeant Giles stated that Police had recorded the registration details of vehicles attending at the Larrimah Wayside Inn to purchase take away alcohol. Inquiries revealed that a number of the vehicles belonged to residents of the Minyerri, Jilkminggan and Beswick communities. Vehicles were also registered in the names of persons residing in Elliott, Borrooloola and Katherine.
- 35) Sergeant Giles stated that the current situation posed a significant danger to the people travelling to Larrimah to purchase alcohol as well as other persons travelling on the Stuart Highway, particularly during the tourist season when an increased number of vehicles travel the Stuart Highway.

- 36) In respect of the application to restrict the sale of heavy beer prior to 12.00 noon, Sergeant Giles stated in her statutory declaration that the restriction on take away hours in Mataranka was of limited effect when people were still able to attend the Mataranka Hotel and consume heavy beer and spirits from 10.00 am in the morning. She stated that Police had observed large numbers of people attending the Hotel and consuming heavy beer from 10.00 am to 2.00 pm, purchasing take away alcohol at 2.00 pm and then leaving the premises. The Commission notes that these statements are at odds with the evidence given by Ms Moore and Ms Doherty at the Hearing that the Mataranka Licensees have voluntarily restricted on premises sales prior to noon to light and mid strength beer.
- 37) Sergeant Giles noted that previous requests to bring the Larrimah Hotel into line with Katherine licence conditions had not progressed and a period of grace had been allowed to assess whether this would impact on the effectiveness of the Katherine / Mataranka restrictions. She submitted that Police intelligence indicated clearly that a significant number of people were circumventing the restrictions by travelling to Larrimah where they could purchase take away alcohol four hours earlier and so defeating the aims of supply control the restrictions in place in Katherine and Mataranka were intended to address.
- 38) Sergeant Giles stated that she would prefer that on-premise sales of alcohol prior to 12.00 noon were restricted to light beer only however she viewed a restriction to mid and light strength beer as a step in the right direction.

#### **Evidence of Ms Moira McCreesh**

- 39) Ms McCreesh is the Regional Alcohol Strategy Project Officer, Department of Justice, for the Katherine region. She stated that she has been involved in the development of the Jilkminggan AMP in conjunction with community members. She stated that Jilkminggan community is located some 140 kilometres south east of Katherine on the Roper River and is home to approximately 250 people. Jilkminggan is a "dry" community, having been declared a General Restricted Area in 1980 and also a prescribed area under the *NT National Emergency Response Act 2007*.
- 40) Ms McCreesh stated that community members are fully aware of alcohol problems affecting their community and the AMP is a means of addressing those issues. She noted that the AMP includes many harm reduction measures and that cutting down the supply of alcohol to residents of the community was at the forefront of those initiatives. Ms McCreesh noted that the *National Emergency Response Act* expires in August 2012 to be replaced by the *Stronger Futures Act* with the result the arrangements are currently in a transitional phase and the process for the passage of the AMP under the new Act is currently not settled.
- 41) Ms McCreesh submitted that community support for the AMP is overwhelming and referred the Commission to a letter, included in the Hearing Brief, from the Directors of the JCAC to the Minister for Alcohol Policy dated 26 February 2012 advising of the extent of harm and grief caused by excessive alcohol consumption. The letter is co-signed by 104 community members and seeks the Minister's support for a more uniform application of alcohol sales restrictions to all licensed premises accessed by community members. She stated that the number of signatories represented well in excess of 50% of the adult population of the community. The letter specifically highlights the issues caused by disparate hours for take away sales at different premises and the availability of full strength beer for on premise consumption prior to 12.00 noon.
- 42) Ms McCreesh stated that the supply control measures were a crucial element of the AMP and were critical to the successful implementation of the AMP. Any failures in the supply control measures have the potential to put other harm reduction measures included in the AMP at risk.
- 43) In respect of the application to restrict the take away sales hours for the Larrimah Wayside Inn, Ms McCreesh stated that the trauma from domestic violence, motor vehicle accidents and near misses involving intoxicated people were severely impacting on the wellbeing of

the community and urged the Commission to adopt the recommendations put forward in the current application.

### **Evidence of Acting Superintendent Kylie Procter**

- 44) Acting Superintendent Procter informed the Commission that she based in Katherine and currently holds the position of Superintendent for the Arnhem and Western Division. She referred the Commission to a letter from Superintendent Daniel Bacon, included in the Hearing Brief, in support of the application for changes to the licence conditions for the three premises under consideration. Superintendent Bacon advised that the proposed amendments to the licence conditions for the three premises fits within the framework of Harm Minimisation under the National Drug Strategy principles in the area of Supply and Demand Reduction.
- 45) Acting Superintendent Procter advised that Commission that there are four Police Stations in the Arnhem and Western Division and all have experienced the types of issues raised by Remote Sergeant Giles in her evidence before the Commission. Namely, that the disparity in licence conditions for premises in Mataranka and Larrimah was encouraging determined drinkers to drive further to obtain alcohol. She also noted that Police wholeheartedly supported the application and the amendments to licence conditions proposed by the Jilkminggan community and noted the strong support for the proposed initiatives from members of that community.

### **Evidence of Ms Simone Baker**

- 46) Ms Baker is a resident of the Jilkminggan community. She informed the Commission that she had personally witnessed residents of the community travelling to Larrimah to purchase alcohol before sales commence in Mataranka at 2.00 pm. She provided the Commission with first hand evidence that community members drive to Larrimah to purchase alcohol when they are unable to purchase it locally.
- 47) Ms Baker stated that there are always worries within the community when people drive to Larrimah to purchase alcohol due to road safety issues and the fear another person will be killed on the highway Her evidence was that even if they “are still half shot or way hung-over they will still drive” the round trip to Larrimah.
- 48) In response to a question from the Commission, Ms Baker indicated that alcohol was purchased from outside sources and then consumed in the community, even though the community is a restricted area. Ms Baker maintained that there was continual pressure on community members with a driver’s license to travel to Larrimah to purchase alcohol on behalf of others and that was one of the reasons she had not renewed her own licence.
- 49) In response to a general query relating to the patterns of alcohol consumption by community members, Ms Baker indicated that when subjected to certain restrictions community members will adapt their drinking behaviour to suit the prevailing conditions. She noted that when the restrictions were placed on Mataranka premises the collective response from community members was an adjustment in their alcohol consumption patterns. In Ms Baker’s view residents of her community would not drive as far as Daly Waters to purchase take away alcohol as take away sales would be available in Mataranka by the time they returned from Daly Waters. In Ms Baker’s opinion bringing Larrimah into line with the Mataranka premise for take away sales would be a positive move.
- 50) At this point Inspector Wood tendered into evidence a letter dated 19 June 2012 from Mr Dave Chalmers AO, NT State Manager for the Department of Families, Housing, Community Services and Indigenous Affairs, addressed to the Director of Licensing. Mr Chalmers noted that the JCAC had identified the Larrimah Wayside Inn as a key liquor supply point for the Jilkminggan community and advice from the JCAC was that the extended trading hours bear a strong influence on the drinking patterns of community members who specifically travel to Larrimah to purchase alcohol.

- 51) Mr Chalmers advised that the Commonwealth Government strongly supports supply controls as an effective strategy to reduce alcohol related harm, particularly when the desire for change is driven by local Aboriginal communities. He noted that varying the take away licence conditions for the Larrimah Wayside Inn would ensure regional consistency and provide support to the surrounding Aboriginal communities. Mr Chalmers submitted that aligning the opening and closing times of the Larrimah Wayside Inn would provide significant support to the Jilkminggan community in its endeavours to reduce the risks associated with excessive alcohol consumption and would also demonstrate the Commission's commitment to supporting Aboriginal communities seeking to reduce widespread alcohol related harm.

#### **Evidence of Ms Debrah Moore**

- 52) Ms Moore is a Dual Nominee of the Mataranka Hotel and the partner of Mr Garner, the Licensee of the Mataranka Homestead. Ms Moore is closely involved in the management and operation of both premises.
- 53) Ms Moore informed the Commission that the Mataranka Hotel and Mataranka Homestead had introduced a voluntary restriction on the sale of full strength beer so that only mid or light strength beer was sold prior to 12.00 noon. She noted that the restriction had a positive effect and was generally accepted by patrons who were content to consume mid strength beer if full strength beer was not available. She stated that the products of choice for the majority of patrons purchasing beer before noon was XXXX Gold and Carlton Mid Strength.
- 54) However, Ms Moore also noted that the restriction has a negative impact in respect of tourists who visited the premises and a formal restriction by way of variation of licence conditions would affect the lunch time tourist trade of the premises where patrons would be unable to purchase a bottle of wine with a meal prior to 12.00 noon. She anticipated that most tourists would probably be happy to purchase mid strength products and requested that this option be considered instead of restricting sales to light beer only. Ms Moore estimated that approximately 90% of the patrons of the Mataranka Homestead were tourists and that 50 to 60% of clients of the Mataranka Hotel were tourists as opposed to locals.
- 55) Ms Moore submitted that the current restriction on the hours of trade for take away sales had a detrimental impact on the trade of the Mataranka Hotel and created further frustration for tourists who were faced with a variety of different licence conditions and trading hours at the various licensed premises along the Stuart Highway.

#### **Evidence of Ms Kate Doherty**

- 56) Ms Doherty is a Dual Nominee of the Mataranka Hotel and also works on occasions at the Mataranka Homestead. She has held the position for approximately two years. She informed the Commission that the management of the Mataranka Hotel take a proactive stance in terms of responsible drinking and confirmed that a voluntary restriction on the sale of heavy beer prior to noon had been in place for some time with positive results.
- 57) Ms Doherty stated that patrons who create disturbances at the Hotel are banned and those who appear close to intoxication are encouraged to have a meal or a sleep before they are sold any more alcohol. She also noted that management discourages multiple sales to on-premises drinkers who are limited to purchasing one beer at a time per person.
- 58) Ms Doherty noted that the Mataranka Supermarket, a licensed take away alcohol outlet sells the majority of take away alcohol purchased in Mataranka and the main trade of the Mataranka Hotel in take away sales occurs after 5.00 or 6.00 pm when the Supermarket closes.

## Evidence of Mr Barry Sharpe

- 59) Mr Sharpe is the owner and Licensee of the Larrimah Wayside Inn. He stated that the Inn is primarily an historic tourist hotel and the proposed amendment of the licence conditions would be a big blow to the profitability of his business. He noted that Larrimah has a population of thirteen permanent residents and does not suffer from the alcohol related anti-social behaviour experienced by many other remote townships. Mr Sharpe noted that his premises include a caravan park and accommodation for overnight guests and the majority of his business, including alcohol sales, involves tourists and truck drivers who call in for a meal.
- 60) Mr Sharpe stated that the premises are open from 7.00 am each day and on premise alcohol sales are authorised between 10.00 am to 2.00 am the following day with meals available at all times. There are no restrictions for on premises alcohol sales to bona fide lodgers. Whilst fuel is no longer available in Larrimah he does hold a small supply for emergency use by visitors to his premises who are not aware of the lack of fuel sales in Larrimah until they arrive.
- 61) In terms of sales of alcohol to residents of Mataranka and surrounding communities, Mr Sharpe stated that such sales are minimal amounting to a “mere trickle” and that he does not encourage such trade as it is not that profitable. Given the nature of his business as a tourist destination, Mr Sharpe stated that he would prefer not to sell alcohol to residents of nearby communities. He asked that the Commission note that some of the residents who co-signed the letter from the JCAC to Minister Lawrie had in fact purchased take away alcohol from his premises. In a candid submission, Mr Sharpe conceded that a restriction of on-premises sales to light beer only would not create a significant problem for the business but he would prefer to have the option to sell mid strength products as well as that was the drink of choice for many of his clients. Mr Sharpe added that he thought it would be a good idea if residents of surrounding communities were not permitted to purchase cartons of VB from his premises.
- 62) Also tendered into evidence were written submission from Mr Sharpe’s legal representative, Mr David Sweet. He stated that the Larrimah Wayside Inn is essentially a tourist facility reliant on passing trade and occasional sales to pastoralists and community members, with sales to community members infrequent and limited to one or two days that coincide with Centrelink pay days.
- 63) In respect of the statistics included in the Hearing Brief indicating an increase in alcohol sales between 2009/2010 and 2010 / 2011 financial years, Mr Sweet notes that no comparable figures were provided for the Mataranka premises so as to allow comparison of seasonal and market trends. He also noted that no figures were included for 2008 and 2009, following the restrictions on trade in Mataranka, so it is not possible to assess whether drinkers travelled to Larrimah for their take away supplies. Mr Sweet also submitted that the increase in take away sales at Larrimah may well have been generated by the increase in tourist trade with greater numbers of visitors coming to the premises since the opening of the wildlife park.
- 64) Mr Sweet submitted that the JCAC’s concerns regarding alcohol related motor vehicle accidents will be exacerbated if take away trading hours for the Larrimah Wayside Inn are restricted as community members will simply travel the further distance to Daly Waters to purchase alcohol.
- 65) Mr Sweet noted that the statutory declaration sworn by Remote Sergeant Giles in respect of Police interceptions of intoxicated drivers amounts to hearsay and provides insufficient details to enable the Licensee to respond to the claims (that those person travelled to Larrimah to purchase alcohol). Mr Sweet rejected the claim that the trading hours of Larrimah Wayside Inn and the purchase of take away alcohol by members of local aboriginal communities contribute to the harm associated with drink driving and motor accidents.

- 66) Mr Sweet submitted that the majority of Larrimah Wayside Inn's customers are not community residents and that a reduction of trading hours for take away sales to protect those people is therefore unwarranted. He stated that the proposed variations to trading hours, including a restriction allowing only the sale of light beer until 12.00 noon, will create a significant detriment to the commercial viability of the business which relies heavily on take away sales to passing tourists to sustain its profitability.

## Consideration of the issues

- 67) The AMP prepared for the Jilkminggan community is aimed at minimising alcohol related harm in and around the community. Harm minimisation, which includes cutting down the supply and demand for alcohol, is identified as a critical element of the AMP. In terms of what needs to be done to cut down supply, the AMP states *"Tell the Northern Territory Licensing Commission that they should make the licence conditions for Larrimah Wayside Inn the same as in Katherine"*<sup>1</sup>.
- 68) As set out in the background above, the trading conditions for the Larrimah Hotel authorise the sale of take away alcohol from 10.00 am to 10.00 pm daily, except for Saturdays and public Holidays when take away sales commence at 9.00 am. Licensed premises in Katherine and Mataranka are authorised to sell take away alcohol between 2.00 pm and 8.00 pm daily. For on-premise consumption, Katherine premises are authorised to sell only light beer prior to 12.00 noon each day whilst there is no such restriction for on-premises sales at the Larrimah Wayside Inn, the Mataranka Hotel and the Mataranka Homestead although the management of the Mataranka premises impose a light and mid strength beer restriction voluntarily. The JCAC has requested that the Commission takes steps to remove the anomalies.
- 69) The request to amend the licence conditions for the Larrimah Wayside Inn and the Mataranka Hotel and the Mataranka Homestead to limit on premises sales to light beer only prior to 12.00 noon is contained in the report submitted to the Commission by the Senior Director, Alcohol Strategy dated 24 April 2012 and contained in the Hearing Brief. The report also recommends bringing take away hours for the Larrimah Inn into line with Katherine and Mataranka.
- 70) The following brief summary of the reasons behind the Commission's previous decision to amend the licence conditions of licensed premises in Katherine is useful in placing the application currently before the Commission into context.
- 71) Following a public Hearing on 5 September 2007 in Katherine, the Commission on 19 October 2007 handed down decisions in response to the Katherine Town Council's application for a Public Restricted Area and a Liquor Supply Plan for the Katherine region. In respect of the Liquor Supply Plan proposal, the Commission determined to restrict the on premise sales to light beer only prior to 12.00 noon for licensed premises in the Katherine region. In addition, take away sales of alcohol were authorised between 2:00 pm to 8:00 pm only with no trading in all licensed premises on Christmas Day and Good Friday and no takeaway trading in stores on Sundays. Additional restrictions were placed on the sale of cask and fortified wine.
- 72) During that Hearing the Commission was asked to apply the restricted takeaway conditions to all relevant premises in Katherine, Mataranka, Victoria River and Pine Creek. It was submitted that without the inclusion of these nearby townships in the Katherine Supply Restrictions Decision, problem drinkers could travel to these nearby locations for the purchase of restricted alcohol products or for purchase outside the restricted trading hours for take away, negating the impact of the harm reduction intended with these Supply Restrictions. The Commission subsequently determined to restrict the trading hours for licensed premises in Katherine, Mataranka, Victoria River and Pine Creek.

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<sup>1</sup> Jilkminggan Alcohol Management Plan 2012-2016, page 8

- 73) A number of the affected Licensees sought a Hearing in respect of the proposed variations to take away trading hours. Police evidence presented at that Hearing expressed reservations if the Pine Creek, Mataranka and Victoria River were to retain their current take away trading hours, while Katherine premises were subject to the restrictions. It was submitted that restricting Katherine outlets to 2.00 pm commencement of takeaway trading, while allowing the outlying premises to open at 10.00 am would provide a four hour window for problem drinkers to travel to those premises and purchase alcohol. Whilst this has not proved a significant problem with the former two hour differential between the outlying areas and Katherine for takeaway, it was suggested there was a greater risk of Katherine residents travelling to other localities to purchase alcohol with the further widening of the opening time differential.
- 74) Following receipt of submissions from the Licensees of the Mataranka, Victoria River and Pine Creek Licensees, the Commission agreed to not vary the takeaway licence hours for those premises at that time<sup>2</sup>. The Commission determined that it would allow existing hours to continue for premises outside Katherine while imposing amended restricted hours in Katherine, but with the situation to be monitored to ensure there was no transference of alcohol purchases by problem drinkers from Katherine to these outlying regions. A review was to be conducted within three months of the new takeaway hours being applied to the Katherine Township, to determine if transference of alcohol purchases to the outlying regions was occurring.
- 75) The new takeaway hours came into force in Katherine in January 2008. Whilst an internal three month review did not immediately show that the difference in takeaway licence hours was causing a problem, this situation changed over time and Police advised in late 2008 that they were intending to seek a standardisation of the takeaway hours in the greater Katherine Region to bring them in line with those applicable in the Katherine Township. Police subsequently made application for a review of the hours of supply in Mataranka and Pine Creek, seeking a change in the hours to align them with Katherine. The Commission again convened on 11 August 2009 to consider that application<sup>3</sup>.
- 76) Police evidence presented to the August 2009 Hearing included observations that Mataranka had, in recent years, experienced a significant increase in alcohol related issues which impacted negatively on the two town camps and the wider community. It was submitted that the restriction on takeaway alcohol sales in Katherine before 2:00 pm has resulted in an increase in the number of people from outlying communities travelling to Mataranka to purchase takeaway alcohol from 10:00 am onwards. Many of these people then remained within the Mataranka town area, either drinking in public or staying at the town camps. Police also observed that the more indulgent hours in Mataranka had led to an increase in the number of people from communities as far away as Lajamanu, electing to remain in Mataranka for extended periods.
- 77) Following the August 2009 Hearing the Commission published its reasons for decision on 1 September 2009 and made the following observations:
- (i) *The Commission fully understands the commercial concerns of the Mataranka Licensees who play a valuable role within the community and who simply want to ensure that their businesses remain sustainable and profitable.*
  - (ii) *The Commission's role, however must take into account the wider impact of alcohol upon the community. In the wider Mataranka region, there is clear evidence that Mataranka has become the place to go for liquor supplies between 10:00 am and 2:00 pm.*

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<sup>2</sup> Licensing Commission: Reasons for Decision, Katherine Liquor Supply Plan, 4 December 2007

<sup>3</sup> Licensing Commission: Reasons for Decision, Mataranka, Pine Creek Review, 1 September 2009

- (iii) *The evidence before the Commission supports a finding that the liquor purchased by customers from Mataranka before 2:00 pm is contributing measurably to alcohol related harm, both within that community and in surrounding communities.*
- (iv) *The Commission intends to accept the submission of Northern Territory Police that the licensed hours for Mataranka Licensees should be brought into line with those in Katherine. It does not intend to make any change to Pine Creek or the Victoria River Roadhouse because there is no evidence before it at present to support a need for change. Those communities will be monitored from time to time to ensure that the situation has not changed.*
- (v) *The Commission has also considered whether some special exemption should be provided to Mataranka Licensees to enable them to continue selling alcohol outside of the tighter takeaway hours to bona fide tourists and pastoral stations. It is noted that Mataranka is situated only 100 hundred kilometres from Katherine. Licensees in Katherine are restricted to the takeaway hours of 2:00 pm to 8:00 pm for all customers and there is no good reason why the Commission should allow Mataranka Licensees to be treated differently.*

- 78) Those considerations and observations are equally valid in the context of the application currently before the Commission seeking a variation of the take away trading hours for the Larrimah Wayside Inn so as to bring them into line with those applicable in Katherine and Mataranka.
- 79) The evidence presented by Remote Sergeant Giles, both in her oral evidence and her statutory declaration, indicates clearly that residents of Mataranka and outlying communities are travelling to Larrimah to purchase take away alcohol prior to the 2.00 pm opening that applies in Mataranka. The evidence in respect of the level of intoxication of some of drivers apprehended by Police on the return drive from Larrimah, and the volume of alcohol purchased, is alarming not only to the Commission but also to the wider community and tourists in terms of the safety of road users being put at risk by intoxicated drivers and grog runners. Sergeant Giles evidence was not challenged by Mr Sharpe.
- 80) The Commission has no difficulty in finding that residents of Mataranka and outlying communities are regularly travelling to Larrimah to purchase take away alcohol in order to circumvent the supply measures currently in place in Katherine and Mataranka. At the 2009 Hearing the former Licensee of the Mataranka Hotel submitted that restrictions were not necessary in Mataranka as Katherine residents would not travel that far, 104 kilometres each way, to purchase take away alcohol. That submission proved over time to be incorrect and take away trading restrictions were imposed in Mataranka to protect the integrity of the Katherine supply restrictions and to close the “window of opportunity” the disparate trading hours provided for drinkers determined to obtain take away alcohol prior to 2.00 pm.
- 81) The evidence presented to the Commission at this Hearing clearly indicates that the restrictions now in place in Mataranka have resulted in people travelling seventy-five kilometres each way from Mataranka to Larrimah to purchase take away alcohol prior to sales commencing in Mataranka at 2.00 pm. Mr Sharpe indicated during the Hearing that he would prefer that residents of Mataranka and surrounding communities did not purchase take away alcohol from his premises as it was not worth his while in terms of profit and was not in accord with the tourist focus of his business.
- 82) The Commission is also persuaded by the cogent and first hand evidence presented by Ms Baker who spoke of the continual pressure on community residents with a driver’s licence to travel to Larrimah to purchase alcohol for others prior to it being available in Mataranka. She stated that she did not currently hold a driver’s licence to avoid “humberging” from community members who wanted a lift to Larrimah to purchase take away alcohol.
- 83) The Commission also takes account of the commercial disadvantage suffered by Mataranka Licensees due to the existing disparity in authorised trading hours for the sale of take away alcohol. There is little doubt that Mataranka residents would not travel to

Larrimah to purchase alcohol were it not for the fact take away alcohol is available in Larrimah four hours earlier than in Mataranka.

- 84) The Commission acknowledges the suggestion that restricting take away alcohol sales in Larrimah may very well have the effect of inducing determined drinkers to travel even further for their early supply of alcohol. It was suggested during the Hearing that extending the restriction to the Larrimah Wayside Inn would simply induce drinkers to drive the additional ninety-two kilometres to Daly Waters and thereby increase the dangers associated with the additional travel and exacerbating the potential for road trauma. That may well be the case, as was demonstrated when Katherine drinkers discovered the "loop hole" in the Mataranka licence conditions and took on the 208 kilometre round trip to purchase alcohol, including in taxis.
- 85) Ms Baker however provided the Commission with a different perspective, gained from her first hand observations as a community resident. She stated that when take away hours were restricted for Mataranka premises there was an adjustment in alcohol consumption patterns for some drinkers. In her opinion residents of her community would not drive as far as Daly Waters to purchase take away alcohol once they realised that Mataranka premises would be open for trade by the time they made the return trip from Daly Waters.
- 86) The Commission notes and accepts the evidence presented by Mr Sharpe and Ms Moore that further restrictions on the sale of alcohol will have a detrimental impact on tourists and particularly those driving along the Stuart Highway. There can be little doubt that a proportion of tourists are inconvenienced and frustrated by the various alcohol restrictions in place in Territory licensed premises. However, that inconvenience to tourists needs to be assessed against the situation in the Territory and the concerted efforts at all levels of Government to reduce the serious and on-going alcohol related harm afflicting many Aboriginal communities.
- 87) The Commission recognises that licence conditions for the various hotels and roadhouses along the Stuart Highway have been tailored on a case by case basis taking account of local conditions and, to a great extent, the proximity of Aboriginal communities and associated levels of harm experienced on those communities. The result has been a myriad of varied licence conditions which it is conceded must be frustrating for tourists, truck drivers and commercial travellers and local residents alike. It is also accepted that the disparate licence conditions result in Licensees bearing the brunt from disgruntled clients who reasonably expect licensed premises to operate under a consistent set of conditions in respect of the hours of trade and the products available for sale at any given time.
- 88) The Commission is of the view that many of the concerns raised by Licensees in respect of the frustration experienced by tourists as a result of inconsistent licence conditions could be alleviated by standardising conditions applicable to the various categories of licensed premises located along the Stuart Highway. In the Commission's view the certainly that would flow from standardised conditions would go some considerable way to ameliorating the existing frustration and allowing tourists and travellers to plan their alcohol purchases to fit with consistent and adequately publicised trading hours and licence conditions.
- 89) Taking all the above matters into account the Commission is satisfied that the trading hours for the sale of take away alcohol for the Larrimah Wayside Inn should be brought into line with those in place in Katherine and Mataranka. The Commission acknowledges that this decision may cause some inconvenience to tourists and travellers passing through Larrimah however this needs to be balanced against the interests of the wider Territory community and the concerted efforts on many fronts to curb irresponsible drinking, particularly where that involves residents of Aboriginal communities, and to minimise the resultant alcohol related harm.
- 90) The Commission is prepared to review this Decision after twelve months to consider whether the restrictions are having the desired effect and, equally as importantly, to ensure that the measures do not result in determined drinkers travelling further distances to another venue, such as Daly Waters or another place along the Stuart Highway.

- 91) As noted above, the Commission has concerns in respect of the variance in licence conditions in respect of take away purchases and on premises consumption at the numerous licensed premises along the Stuart Highway. The Commission, as convened for this Hearing, intends to refer this issue to the next full meeting of the Commission with the aim of seeking endorsement for a complete review of all roadhouse and hotel licenses for premises along the Stuart Highway so as to consider standardisation of licence conditions in a more holistic and consistent manner. The Commission is aware that the varying licence conditions are frustrating and confusing for visitors to the Territory and is of the view a standardisation of licence conditions would go some considerable way to removing that frustration without diluting the supply control measures aimed at reducing alcohol related harm.
- 92) Neither Mr Sharpe nor Ms Moore raised any significant objection to the proposal to restrict on-premises sales prior to 12.00 noon. They did however request that the Commission consider amending that component of the application to include mid strength and light beer. The Commission was informed that mid strength beer was the drink of choice for many of their patrons, locals and tourists alike.
- 93) Ms Moore stated that the Mataranka premises already have in place a voluntary restriction on the sale of heavy beer prior to 12.00 noon which has proven successful in moderating the drinking habits of patrons early in the day. Ms Doherty, who manages the Mataranka Hotel, confirmed that the voluntary restriction, which permitted only sales of light and mid strength beer prior to noon, had been effective and was accepted by most patrons, both local residents and tourists. Both Ms Moore and Ms Sharpe informed the Commission of several initiatives introduced by the Licensee aimed at ensuring responsible service and, equally as importantly, responsible patron behaviour. The Commission was advised that the Mataranka Hotel enforces a zero tolerance approach to intoxicated patrons and the Commission commends the Licensee for its efforts in that regard. The management of the Mataranka Hotel and the Mataranka Homestead is commended for those initiatives.
- 94) According to the Australian Alcohol Guidelines, issued by the National Health and Medical Research Council, full strength beer is classified as that containing 4.9% alcohol by volume, mid strength beer contains 3.5% alcohol by volume and light beer contains 2.7% alcohol by volume.
- 95) Taking account of the submissions on behalf of the Licensees for the 3 premises, together with the self-imposed restrictions and their good track records as Licensees in terms of responsible service and compliance over relatively lengthy periods, the Commission is prepared to accede to the concession sought by the Licensees.
- 96) The Commission determines to restrict on-premises sales of alcohol for the three premises to light and mid strength beer prior to 12.00 noon on each trading day.

## Decision

- 97) Following the Hearing at which representatives of Mataranka Hotel, the Mataranka Homestead and the Larrimah Wayside Inn made submissions, the Commission is not persuaded to overturn its Notice of Intention to vary the take away licence conditions for the Larrimah Wayside Inn. However, the Commission is persuaded, on the basis of the submissions on behalf of the three Licensees, to vary the Section 33 Notice so as to restrict sales for on premise consumption to light or mid strength beer for on premises consumption prior to 12.00 noon. The Commission notes that the current sale of mid strength beer at the two Mataranka premises does not appear to be causing harm and that the client base has a preference for mid strength beer. Between 10.00 am and noon the licence conditions will be amended to allow for the sale of mid and light strength beer only for the three licensed premises under consideration.
- 98) The Commission determines, pursuant to Section 33(4)(a) of the Act, that the licence conditions for the Larrimah Wayside Inn be varied by inserting the following conditions:

**Mataranka Homestead Tourist Resort**

Trading Hours                      Only mid strength and light beer (not more than 3.5% alcohol content) may be sold for on-premise consumption between 1000 and 1159 hours seven days per week.

**Larrimah Wayside Inn**

Take Away Hours                  Liquor shall be sold only for consumption away from the premises during the following hours:

- (i) Sunday to Friday inclusive between 1400 and 2000 hrs
- (ii) Saturday and Public Holidays between 1200 and 2000 hrs
- (iii) No trading on Good Friday or Christmas Day

- 99) The Commission also determines, pursuant to Section 33(4)(a) of the Act, that the licence conditions for the Mataranka Hotel and the Mataranka Homestead Tourist Resort be varied by inserting the following conditions:

**Mataranka Hotel**

Trading Hours                      Only mid strength and light beer (not more than 3.5% alcohol content) may be sold on-premises between 1000 and 1159 hours seven days per week.

**Mataranka Homestead Tourist Resort**

Trading Hours                      Only mid strength and light beer (not more than 3.5% alcohol content) may be sold on-premises between 1000 and 1159 hours seven days per week.

- 100) The above variations to licence conditions shall come into effect twenty eight days from the date of publication of this decision so as to allow Licensees time to make the necessary arrangements to implement the changes.
- 101) The Commission will review the above decision, if requested to do so by any interested party, or under its own recognisance after the new conditions have been in place for a period of twelve months.

Richard O'Sullivan  
Chairman

25 July 2012