

# Northern Territory Licensing Commission

## Decision

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<b>Premises:</b>	(1) Wycliffe Well Store: 80802878 (2) Wauchope Hotel: 80802869 (3) Sporties Club Inc: 81402780 (4) Tennant Creek Memorial Club: 81402774
<b>Proceedings:</b>	Series of Hearings conducted pursuant to Section 33(3) of the <i>Liquor Act 1978</i>
<b>Heard Before:</b>	Mr Peter Allen (Chairman) Mrs Mary Ridsdale Mr Brian Rees
<b>Dates of Hearings:</b>	21-22 August 2001
<b>Date of Decision:</b>	17 December 2001
<b>Appearances:</b>	(1) Mr Lou Farkas for the Wycliffe Well Store (2) Mr Lee Richards for the Wauchope Hotel (3) Mr Randall Gould & Mr Rob Gould for the Sporties Club (4) Mr Peter Reid, Ms Julie Bright, Mr Robert Bright and Mr Nigel Rush for the Memorial Club (5) Ms Katrina Budrikis for the Julalikari Council Aboriginal Corporation (6) Ms Judy Murray for the Anyinginyi Congress Aboriginal Corporation

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The so-called "Thirsty Thursday" restrictions were trialed by the former Liquor Commission during 1995 and confirmed by that Commission on February 1996.

The restrictions prohibit front-bar trading and take-away sales from the two hotels and the Headframe Bottle-shop on Thursdays. Lounge bars may open but only from Midday. Meals must be available. Dress standards apply. The restrictions were not applied to the clubs.

In 1998 the former Liquor Commission conducted a review of the restrictions at the request of the Tennant Creek Town Council. The Commission was assisted in its conduct of the review by a community based group known as the "Beat The Grog" Committee. The Committee consisted of representatives of the Chamber of Commerce & Industries, the Regional Tourist Association, Police, liquor licensees, the Julalikari Council and the Anyinginyi Health Congress.

The review concluded on 19 November 1998. In its findings published on that date the Commission found that since the introduction of the restrictions there had been a significant reduction in the per capita consumption of alcohol in the Tennant Creek community and accompanying reductions in alcohol related harm. The Commission also found that a majority of the Tennant Creek community supported the retention of the restrictions. The Town Council, although it sought the review, did not participate in the review process.

The Liquor Commission undertook to conduct a further review, commencing November 2000.

In July 2000 the Chairman of the Licensing Commission was contacted by members of the former "Beat The Grog" Committee that assisted the Liquor Commission in its 1998 review of the restrictions. The Chairman was requested to commence the review promised for November 2000 as soon as possible and to rejuvenate the "Beat the Grog" Committee to assist in the conduct of the review.

The Licensing Commission agreed to commence the review earlier than planned as it had received information from Licensing Inspectors who had observed significant numbers of people leaving the Tennant Creek hotel late on Thursday afternoons, proceeding immediately to the Sporties Club and purchasing cartons of Victoria Bitter. A number of these persons were observed to be at the point of intoxication and following a hearing into a complaint, the licence of the Sporties Club was suspended for several days.

In a separate hearing the Commission ruled that the Tennant Hotel bar known as the Shaft, was a front bar and should not trade on Thursdays.

In late July 2000 the Chairman of the Licensing Commission attended a public meeting convened to discuss the proposed review and the processes to be followed in its conduct. Forty members of the Tennant Creek community attended, including the Mayor and representatives of all peak business and community organisations. The "Beat the Grog" Committee was reformed as a broadly based committee of community organisations. The Chief Executive of the Tennant Creek Town Council chaired the Committee.

The Committee met regularly throughout the second half of 2000 and forwarded copies of its minutes and attendance records to the Commission. Several meetings of the Committee were attended by staff of the Commission and/or the Racing, Gaming & Licensing Division of the former Department of Industries and Business.

It is important to note that representatives of the clubs did not attend meetings of the "Beat The Grog" Committee. The Commission is reliably informed that the Clubs were formally invited and regularly encouraged to attend. It is also noteworthy that the office of the Chamber of Commerce and Industries was not staffed for much of the review period. Thus the participation of this peak body in the review process was at best irregular. A submission from the Chamber indicates that most of its members "believe that Thirsty Thursday has not been an effective measure for addressing the alcohol issues in Tennant Creek for some time." This submission was not dealt with during the hearings.

The "Beat the Grog" Committee commissioned Dr Peter d'Abbs of the Menzies School of Health Research to report on the impact of the restrictions. Dr d'Abbs' research was independent from the operations of the Committee; it was funded by a National Health and Medical Research Council Grant and completed in October 2000.

The Commission studied Dr d'Abbs report. The report includes stakeholder's views regarding restrictions and a survey of opinions gathered from the community. The report contained an analysis of statistics related to liquor sales, assault offences, property offences and public drunkenness.

In the research underpinning his report, Dr d'Abbs found that the restrictions as a package have had a sustained, positive effect on reducing per capita alcohol consumption and levels of violence and injury. Dr d'Abbs also found that despite the evidence regarding reduced effectiveness of the Thursday restrictions and the widespread perception that the restrictions are no longer effective, only one-third of Tennant Creek residents want the restrictions scrapped.

Dr d'Abbs also reported on the debate amongst residents in Tennant Creek regarding whether emphasis should be placed on removing loopholes from the current system of Thursday restrictions, thereby making the restrictions potentially more effective and more equitable or abandoning the focus on Thursday altogether and moving to a broad reduction in take-away trading hours, similar to the system trialled in Katherine.

The "Beat the Grog" Committee resolved in favour of maintaining the restrictions on Thursday trading and recommended to the Commission that it include the clubs, the Three Ways, Wauchope and Wycliffe Well in the recommended restrictions on take-away sales. The Commission accepted this recommendation; it would have the effect of making Thursday a "take-away free day" in Tennant Creek and the surrounding region.

The detailed recommendations of the "Beat the Grog" Committee were attached to a letter to the Commission from the Chair of the Committee dated 2 February 2001 and were as follows:

1. *Apply restrictions to all licensed premises within a 30k radius of Tennant Creek.*
2. *Retain ban on takeaway sales from hotels and bottle-shops on Thursdays and extend to include all clubs and other like liquor outlets in Tennant Creek and at the Three Ways.*
3. *Retain ban on sales from hotel lounge bars and back bars before 12 noon on Thursdays and Fridays and include clubs and all other like liquor outlets.*
4. *Retain bar on front bar sales from hotels on Thursdays.*
5. *Restrict on premise sales to light beer only, between 10:00AM and Noon, Monday to Wednesday and extend to include all Tennant Creek clubs and other like outlets.*
6. *Retain the ban on the sale of wine casks of 4 litres and larger.*
7. *Retain the ban on sales of wine in glass containers of more than 1 litre.*
8. *Retain the ban on sales of fortified wines such as port and sherry in containers larger than 1.5 litres.*
9. *Take-away trading hours on Monday, Tuesday and Friday to be reduced to between the hours of 1:00PM and 8:00PM and to be applied to all premises including clubs and the Three Ways Roadhouse.*
10. *Retain the restrictions on the sale of 2 litre wine casks to one cask per person per day.*
11. *That a deposit on port wine sold in glass containers be charged and refunded subject to the development of a suitable system.*
12. *That there continue to be no third party sales to taxi drivers.*
13. *That the existing restrictions on "bush orders" remain in place.*
14. *That the Committee lobbies the relevant authorities for a resident licensing inspector for the Barkly region, based in Tennant Creek.*

On Thursday 17 May 2001, the Commission Chairman met with the "Beat the Grog" Committee. The purpose of the meeting was to confirm the Committee's recommendations.

In order to implement the recommended changes to licence conditions the Commission issued Section 33(1) notices to licensees in Tennant Creek and at Wycliffe, Wauchope and the Three Ways. The notices, issued on 10 July, informed licensees of the proposed changes to their licences, that the proposed changes would take effect from 1 October 2001 and that they could seek a Hearing.

The variation of licence conditions contained in the Section 33(1) notices was limited to restrictions on the sale of take-away liquor and had the effect that no take-away liquor would be available on Thursdays from premises situated in Tennant Creek and the immediate surrounding district.

It should be noted that at the time of issue of the Section 33(1) notices, the Commission's acceptance of the Committee's recommendations was limited to increased restrictions on the sale of take-away liquor on Thursdays and to retaining the existing restrictions specifically referred to in the recommendations.

On Monday 9 July, prior to issue of the Section 33(1) notices, the Chairman met with potentially affected licensees. Meetings were held in Tennant Creek, Wycliffe Well, Wauchope and the Three Ways.

At these meetings the Chairman informed licensees of their right to seek a hearing and the opportunity afforded at a hearing to present any evidence or information. The Chairman also informed the potentially affected licensees of the reasons for the Commission's decision to proceed with the restrictions and outlined the manner in which hearings, if sought, would be conducted.

Of the notified premises, the Wycliffe Well Store, the Wauchope Hotel, the Sporties Club, the Tennant Creek Memorial Club and Fernanda's sought a hearing pursuant to Section 33(2). The Tennant Creek Bowling Club, the Tennant Creek Golf Club and the Three Ways Roadhouse did not seek hearings. Fernanda's is the subject of a separate decision of the Commission.

All licensees that sought a hearing were provided with a hearing brief containing a copy of the d'Abbs report. Licensees were also provided with copies of the detailed submissions of the Julalikari Council Aboriginal Corporation. Ms Katrina Budrikis, acting on behalf of the Julalikari Council lodged these submissions with the Commission under cover of a letter dated 10 January 2001.

The hearings commenced on 21 August 2001 and were conducted in the conference room of the Bluestone Motor Inn at Tennant Creek.

For convenience and with the consent of licensees the hearings were conducted as a single sequential process commencing with the oral submissions of Ms Budrikis and Ms Murray, on behalf of the Julalikari Council and the Anyinginyi Congress respectively. The Commission denied the status of being a party to these proceedings to both the Julalikari Council and the Anyinginyi Congress. Nevertheless both the Council and the Congress were permitted submissions and were in turn made available for cross-examination by licensees. Ms Budrikis and Ms Murray were not however permitted to cross-examine licensees.

In her submission Ms Budrikis emphasised that the Julalikari Council supported the recommendations of the "Beat the Grog" committee and further enunciated her client's position that the Thursday restrictions, although effective, contained "too many loopholes". In her submission, the current restrictions were not fair to all premises in the town; the inclusion of the clubs would ensure a "level playing field". Ms Budrikis noted that the clubs, although invited, did not participate in the deliberations of the "Beat the Grog" committee. Ms Budrikis also submitted that the clubs had agreed when restrictions were introduced, that they would focus on their social and community role and clearly distinguish themselves from take-away outlets.

Ms Budrikis suggested that Section 32 of the *Liquor Act 1978* was applicable in the circumstances. Section 32 requires the Commission "to have regard to the needs and wishes of the community". It was submitted that the d'Abbs report indicated community support for the restrictions and evidence of the effectiveness of the restrictions in the reduction of alcohol-related harm as demonstrated by the lower number of admissions to hospital and emergency treatments. The Commission accepted Ms Budrikis' submission and agreed to include the provisions of Section 32 in its deliberations.

Ms Murray for the Anyinginyi Congress concentrated on funding sources for the town's alcohol rehabilitation services. The Commission was advised that requests made to Territory Health Services and ATSIC had failed to elicit the necessary support. Ms Murray also spoke of the activities of the Social Behaviour Issues Group that was examining social problems in the town and emphasised the "dramatic effect of take-away liquor availability on youth drinking".

Mr Lou Farkas for the Wycliffe Well Store submitted there are no reasonable grounds to include his premises in the Tennant Creek restrictions as his premises has been restricted with a "6 pack licence" for over twenty years. As Wycliffe Well is situated 136k from Tennant Creek, Mr Farkas submitted it is a nonsense to suggest that drinkers will make the 272k return journey, passing the Wauchope Hotel en route, to purchase a "6 pack" at his prices. A "6 pack register" is maintained by Mr Farkas, purchasers are required to sign the register.

Mr Farkas submitted that his sales "are not Tennant Creek's problem" but on the contrary, "liquor sales in Tennant Creek are his problem", as residents of the Ali-Curing community return in vehicles including taxis and then consume liquor purchased in Tennant within the vicinity of his premises.

Mr Farkas' concerns regarding the transport of liquor in taxis, an offence pursuant to the relevant legislation, are worthy of investigation by the appropriate authorities. The Commission will write to the Police and other appropriate authorities to express its concerns regarding the alleged transport of liquor by taxi.

Mr Lee Richards for the Wauchope Hotel tendered a letter of support, dated 9 August 2001, signed by the President and Vice President of the Ali-Curung Council Association Inc. The letter states that, "More than ten years ago, a verbal agreement was struck between both parties, agreeing to limit the sale of alcohol to a six pack per person per day for all Ali-Curung residents. This arrangement has been strongly adhered to and is respected and appreciated by all people".

The letter also refers to an arrangement whereby the community council can from time to time request that no liquor is sold to Ali-Curung residents or members of communities visiting Ali-Curung. Mr Richards tendered copies of correspondence from the Council to the Licensee, dated 10 October 2000 and 19 October 1992, as evidence of specific arrangements made for a sports carnival and a "large sorry camp".

Also tendered by Mr Richards was a register of take-away sales. The register detailed the date of sale, the registration number of the purchasers' vehicle, a description of the vehicle by colour and make, the number of persons in the vehicle and the number of "6 packs" sold to those persons. Mr Richards submitted that his staff were instructed that they must sight the purchasers' vehicle, ascertain the number of passengers and screen for persons under eighteen years of age.

Similarly to the submissions of Mr Farkas, Mr Richards submitted that he has problems with people returning from Tennant Creek, particularly after football matches in the town.

Representatives of the Sporties Club Inc emphasised that the objective of the club was to provide services to its members. It was stated that services to members and the community in general included support provided to the football league and the netball competition. It was submitted that part of the club's service to its members included the availability of take-away liquor to members and that members should have this "choice on any day".

The Commission was informed that the Sporties Club had made a number of changes to its trading and membership practices. These included a limit on take-away sales on a Thursday to one carton per member; new membership applications, lodged on a Thursday are not approved on the day but dealt with by the Committee and bona-fide guests are excluded from the premises on Thursdays. The point of sale for take-away liquor is at the bar and a register of Thursday take-away sales is maintained.

The Commission was advised that most of the Club's members are government workers or employed through CDEP and are thus paid on Thursdays. It was submitted that restrictions to take-away sales on Thursdays would limit the club's ability to service these members.

Concerns were expressed by the Club regarding the advance notice provided for "Beat the Grog" Committee meetings. It was suggested that notice given "was minimal" particularly as the nominee and the club's office-bearers would need to be absent from work to attend meetings whereas most members of the "Beat the Grog" Committee "were paid to be there". The Club was also concerned by a perception that the Club or clubs are trading illegally, a perception rejected by the Club's representatives.

Representatives of the Tennant Creek Memorial Club submitted that the club has voluntarily initiated changes to its policies and procedures applicable to the sale of take-away liquor, particularly on Thursdays. "Bulk" purchases of take-away liquor are not permitted, a one-carton limit was imposed in June 2000, the name and membership number of the purchaser is recorded and the hours of sale on Thursdays have been reduced to 4:30PM to 8:00PM. Security cameras have been installed; sales are limited to full members as distinct from country members and membership ID must be shown regardless of the day of purchase. The point of sale is internal and located in a specialised area at the end of the main bar. The Commission was advised that the Club does not sell cask wine or fortified wine such as cheap ports or sherries.

The Commission was informed regarding the community benefits disbursed by the Club, these included sponsorship or other forms of support provided for football, darts, 8-ball, netball, Little Athletics, cricket, the kindergarten, the primary and high schools and a significant donation to the Katherine flood appeal.

The Memorial Club's representatives submitted that it only sells take-away liquor as a service to members and that members expect this as a right. The Club was concerned that the restrictions create a black-market, that excess purchases are made on other days and that profiteering occurs as a consequence. The Club's President advised that members engaged in black-market activities have had their membership suspended. Further restrictions, it was claimed, would lead to a bigger black-market.

In regard to its participation in meetings of the "Beat the Grog" Committee, the Club submitted that "timing was a factor in not attending". In the Club's view it was better for all venues "to get together" to set standards and to make use of security cameras to monitor patrons. The Club was concerned that community agencies had not provided a list of "problem-drinkers" as requested to enable the Club to specifically monitor their drinking behaviours while on the premises.

The Club proposed that all take-away outlets should close no later than 8:00PM and that there should be no take-away sales of cheap ports, sherries or similar.

At the adjournment of proceedings on 22 August, the representatives of the Tennant Creek Memorial Club, the Sporties Club and the Julalikari Council Aboriginal Corporation were invited to make final written submissions. The Tennant Creek Memorial Club and the Sporties Club were invited to delay their final submissions pending receipt and consideration of the final submissions of the Julalikari Council.

The final submissions of the Julalikari Council were received by the Commission on 27 September 2001 and copied to the Clubs. The final submissions of the Memorial Club and the Sporties Club were received on 12 October 2001.

In its final submission the Julalikari Council advised that in the light of the Ali-Curung Council Association letter of 9 August 2001, referred to earlier in this decision, it no longer supported the Commission's intentions to vary the conditions of the Wauchope Hotel licence.

In regard to the clubs, the Council submitted that the clubs were signatories to an agreement not to sell take-away liquor on Thursdays and are thus in breach of that agreement. The Council maintained that the intent of the restrictions was to provide a respite day and that take-away trading by the clubs has undermined the extent to which Thursday is a day of respite.

The Julalikari Council submitted that the "Beat the Grog" Committee was a community based committee and had recommended the retention of Thursday restrictions rather than a shift to the "Katherine" model where similar restrictions apply across the trading week. It was submitted that Thursday remained the day of choice for Centrelink payments. The Council claimed that many of the changes to trading policies and practices at the Clubs were a relatively recent initiative; most made during the period of the review. The decision of the Memorial Club to "not sell certain types of alcohol" was commended.

In response to the Julalikari Council's final submissions the Memorial Club responded that a total ban of take-away sales on Thursdays would not be effective in providing respite "as the anti-social behaviour still persists on any given day within the Tennant Creek community".

The Memorial Club advised that it had originally entered into the "agreement" as a "trial" and that it had acted responsibly in its commitment to the agreement. The Club believes "that this issue is now un-resolvable given the continued incidents of anti-social behaviour being displayed in the community generally". The Club repeated its concerns regarding the sale of fortified wines in glass bottles and maintained its position that the issue of "problem drinkers" should be addressed rather than forcing restrictions "on the whole community".

The Sporties Club agreed that there had been an agreement and claimed that it had adhered to the terms of the agreement for at least twelve months even though the agreement appeared to be

breached by other clubs. The Club maintained that its voluntary restriction of one carton per member on Thursdays had been a policy of fifteen months standing and not the six months asserted by the Julalikari Council. The Club believes the "current restrictions are working and that they (the Club) do not contribute to the problems that have been stated by the Julalikari (Council)".

At the time of final submissions from the Clubs, the Commission received information that the licensees of the Wauchope Hotel and the Wycliffe Store had requested that if the Commission varied their licence conditions, such variations should be the same for both premises.

The Commission also received a submission from the Northern Territory Police. The submission, lodged by Superintendent Payne, Superintendent of the Barkly Division is dated 15 October 2001 and was received at the Commission's offices as a fax dated 16 October. As the submission was received after the hearing was adjourned and after the closing date for final submissions, the Commission has not taken its contents into account when considering the evidence and information before it in these proceedings. The Commission will retain the submission with its records of these proceedings and may make use of it during any future consideration of liquor licence conditions in Tennant Creek.

Interestingly, given the number of assertions, claims and counter-claims reported in the media regarding glass containers and the use of bottles as weapons, the Police made no recommendations regarding glass containers. The Commission will write to the Police and seek their views together with any information or statistics they may have available.

Questions were raised during the proceedings regarding the effectiveness of the Thursday restrictions, given the alleged shift of Centrelink payments to other days of the week. Information pertinent to payment days was obtained from Centrelink on 16 October 2001. The tables show that although payments are made on all days, Mondays to Fridays, the number of payments made on Thursdays is more than twice the number made on any other day and only marginally less than the number of payments made on the other four days combined.

Section 33(4) of the *Liquor Act* provides that after the Commission has conducted a hearing pursuant to Section 33(3) it may – affirm, set aside or vary its decision made earlier without a further hearing and; may make such other orders as it thinks fits.

For the licences of the Wycliffe Well Store and the Wauchope Hotel, the Commission is satisfied that current licence conditions and the agreements made with the Ali-Curung community are sufficient to ensure that conduct of the business at these licensed premises does not impact on the effectiveness of the Tennant Creek restrictions. The Section 33(1) notices issued in respect of these premises are withdrawn. They may continue to trade with their licence conditions unchanged.

For the licences of the Tennant Creek Memorial Club and the Sporties Club the Commission recognises that both clubs have made significant changes to their trading policies and practices on a Thursday and other days and that these changes have been voluntary. The Commission also notes and commends the significant levels of benefit each club provides to the Tennant Creek community through sponsorships and donations.

Nevertheless inequity exists. An absence of equity between those premises permitted to sell take-away liquor on Thursday and those premises denied this opportunity may not have been apparent at the time of the trial restrictions when an agreement was in place. The Commission understands that the agreement was intended to facilitate equity between the various premises. However it is clear that clubs moved away from the agreement and exposed the unreasonable disparity of licence conditions that exists between the clubs, the hotels and the Headframe Bottleshop.

That the clubs have imposed voluntary restrictions is commendable and highly likely to have lessened the alcohol-related harm that might have otherwise arisen. However equity remains and can only properly be dealt with by the application of a common set of licence conditions for the sale of take-away liquor.

For the Tennant Creek Memorial Club and the Sporties Club the terms of the Section 33(1) notices, issued 10 July 2001, are affirmed and will apply immediately.

The Commission recognises that both clubs may choose to abandon the system of voluntary restrictions each has imposed. This is a matter for the clubs to determine; the Commission will not stand in the way.

During its deliberations the Commission revisited the recommendations of the "Beat the Grog" Committee and in particular the recommendation that restrictions be applied to all premises so as limit the sale of liquor on premises, prior to 12 noon, to light beer only, on Mondays, Tuesdays and Wednesdays. The Commission on its own motion intends to vary the conditions of all licences in Tennant Creek and at the Three Ways in order to insert a "light beer condition". The Commission considers the condition to be a valuable harm minimisation strategy.

Section 33(1) of the Liquor Act allows the Commission to vary the conditions of licences. Section 33(2) & (3) allows for a hearing.

Notices pursuant to Section 33(1) will be served forthwith on all licensees in the township of Tennant Creek and on the Three Ways Roadhouse. The notices will inform licensees of the Commission's intention to vary the conditions of their licensees so that only light beer can be sold prior to midday on any weekday on which their premises are permitted to trade. This condition will not apply on Saturday, Sunday and Public Holidays and can be varied upon application to the Director of Licensing for functions associated with events such as Melbourne Cup Day. For the purposes of the condition, light beer will be defined as beer, lager or other brewed beverage with an alcohol content of not more than 3% by volume.

For those licences approved for the sale of take-away liquor, the Section 33(1) notices will foreshadow a condition that "no liquor of any type may be sold or supplied in a container larger than two (2) litres".

For the Three Ways Roadhouse, the Section 33(1) notice will also foreshadow conditions that will have the effect of varying the licence to a tavern or hotel licence with conditions similar to those of the Goldfields and Tennant Creek Hotels.

The Commission has no specific plans or a schedule for further general reviews of licence conditions in Tennant Creek. Although it may at some later time prove necessary or desirable to fine-tune licence conditions, the Commission has no desire to extend the restrictions beyond the variations ordered or foreshadowed in this decision. Independent research indicates that restrictions on the sale of liquor in Tennant Creek have a level of community support. Researchers also report that for restrictions to be successful, community support is required. Further restrictions are likely to limit this support.

The Commission respectfully observes that the Tennant Creek community should not rely, or appear to rely on restrictions alone to minimise alcohol-related harm. Nor in the Commission's view should the task be left to the Police, health, community and welfare agencies. A co-ordinated approach, involving all elements of the community is more likely to deliver the necessary outcomes.

Peter Allen  
Chairman