

**Liquor Commission of Western Australia
(Liquor Control Act 1988)**

Applicant: Condo Produce Pty Ltd
(represented by Mr Cameron Sweeney as counsel and Mr Jarrod Ryan of Ryan & Co Solicitors)

Respondent: Director of Liquor Licensing
(represented by Ms Duska Van Nellestijn of the State Solicitor's Office)

Commission: Mr Nicholas van Hattem (Deputy Chairperson)
Ms Shelley Davies (Member)
Mr Tony Di Francesco (Member)

Matter: Application pursuant to section 25 of the *Liquor Control Act 1988* (the "Act") for review of the decision of the Director of Liquor Licensing to impose liquor restrictions in Carnarvon and Gascoyne Junction pursuant to section 64 of the Act.

Premises: Al's Liquor Store
Lot 2 Robinson Street, Carnarvon, WA, 6701

Camel Lane Tavern
Camel Lane, Carnarvon, WA, 6701

Date of lodgement of Application: 2 June 2023

Date of Hearing: 7 December 2023

Date of Determination: 10 December 2024

Determination: The Decision of the Director of Liquor Licensing is affirmed, and the Application for Review is dismissed.

Authorities referred to in determination:

- *Hancock v Executive Director of Public Health* [2008] WASC 224
- *McKinnon v Secretary, Department of Treasury* (2005) 145 FCR 70
- *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police and Others* (LC 01/2017).
- *Executive Director of Health v Lily Creek International Pty Ltd* [2000] WASCA 258
- *Commissioner of Police v Liquor Commission of Western Australia* [2019] WASC 165

BACKGROUND

1. An increase in crime in Carnarvon prompted growing community concern about the impact of alcohol in fuelling criminal and antisocial behaviour in the town.
2. The escalating situation in Carnarvon prompted calls from the community for action to curb the sale of alcohol.
3. On 30 January 2023, the Carnarvon Liquor Accord (“**the Accord**”) was approved by the Director of Liquor Licensing (“**the Director**”). As an approved Accord, the Accord may request the Director to impose conditions on relevant liquor licences, which may include:
 - a) restrictions on the sale of packaged liquor; or
 - b) limiting opening hours for licensed premises, quantity limits, alcohol strength and other conditions, as required.
4. While the Accord had discussed self-imposing voluntary liquor restrictions to reduce alcohol-related antisocial behaviour in Carnarvon, it had not reached unanimous agreement on what those conditions would be.
5. On 9 February 2023, the then Minister for Racing and Gaming, Hon Reece Whitby MLA and a Delegate of the Director, attended a meeting of the Accord and informed its members that if they could not agree to implement solutions, then the Director would exercise her statutory powers under the Act to take any action she deemed appropriate and in the public interest to address alcohol-related harm.
6. On 2 March 2023, the Minister for Racing and Gaming announced that the Government would take immediate steps to expand the trial of the Banned Drinkers Register to Carnarvon, following visits to the town by the Premier and the Minister, and meeting with Police, local government, service providers and the Accord.
7. On 15 March 2023, the Director wrote to licensees in Carnarvon and Gascoyne Junction to inform them that she had had initiated an inquiry, pursuant to section 64(1a) of the *Liquor Control Act 1988* (“**the Act**”), into the sale of packaged liquor in Carnarvon and the extent of alcohol-related harm and ill-health occurring in Carnarvon and surrounding areas.
8. The Director was satisfied there was a proper basis for exercising the power to impose conditions under section 64(1) of the Act to limit the manner or the containers, or number or types of containers, in which liquor may be sold and the days and times at which packaged liquor may be sold on and from the licensed premises.
9. Licensees were afforded the opportunity to show cause (“**show cause notice**”) why the conditions outlined in her letter to minimise alcohol-related harm in Carnarvon should not be imposed on their licences, pursuant to the provisions of section 64(2a) of the Act. The show cause notice detailed a suite of proposed restrictions, which the Director considered struck a balanced response to:
 - a) the evidence presented in respect of the extent of alcohol-related harm in the region;

- b) the interests of all sections of the community, including those who consume alcohol responsibly;
 - c) how restrictions contribute to minimising alcohol-related harm; and
 - d) the objects of the Act.
10. The evidence relied upon by the Director included:
- a) An analysis of wholesale liquor sales data for Western Australia:
 - i. reveals that approximately 60% of wholesale liquor is sold to liquor stores, whereas in Carnarvon, approximately 85% of wholesale liquor is sold to liquor stores;
 - ii. it follows that in Carnarvon, approximately 85% of the supply of liquor is by way of packaged liquor; and
 - iii. alcohol consumption per adult in Carnarvon is 2.4 times the State rate based upon population and wholesale sales data.
 - b) Data received from the Chief Health Officer and the Mental Health Commission which established that:
 - i. for the years 2010 to 2019, the number of alcohol attributable deaths in Carnarvon represents a significant statistical variation from whole-of-State data, with Carnarvon experiencing a rate of alcohol attributable deaths that was 151% above that observed in the rest of the State;
 - ii. for the years from 2017 to 2022, Emergency Department attendances relating to drug and alcohol for residents for Carnarvon were a rate of 3,381 per 100,000, and in 2022, was 140% above the State age-standardised rates of alcohol-related emergency department presentations;
 - iii. in the years 2016 to 2020, the rate of alcohol-related hospitalisations in Carnarvon was 82% higher than the State rate;
 - iv. the number of people who attended a treatment or support service in Carnarvon that was funded by the Mental Health Commission and sought treatment for issues related to abuse or misuse of alcohol:
 - where the principal drug of concern was alcohol, for the period of 2016 to 2017, was at a rate of 287-768 per 100,000, which is the highest rate in the scale provided in the research;
 - where alcohol was the primary drug of concern, for the period of 2013 to 2022, at the rates of 3,731 in 2013 and 3,381 in 2022, per 100,000, it was significantly higher than the rates for the State, at 380 and 335 respectively, during the same time-period;

- where alcohol was a drug of concern, for the period of 2013 to 2022, Carnarvon residents have consistently had a much higher rate per 100,000 population than the State for active client episodes, ranging from 5,751 in 2013 and to 3,889 in 2022, which are significantly higher than the same rate for the State, at 645 and 499 respectively, for the same time-period; and
 - since 2020, more than half of active client episodes each year have included alcohol as a drug of concern for both Carnarvon and Western Australia.
- c) St John Ambulance Carnarvon stated that they respond to approximately two callouts per day within the local community, with trauma accounting for the highest volume of calls in raw figures (160 of 710). Further, with respect to trauma coded dispatches, St John Ambulance Carnarvon experiences a spike in alcohol-related callouts between the hours of 6 pm and 6 am, with the majority of cases being for assaults and falls. St John Ambulance Carnarvon also advised that for weekends chosen from each month of the year in 2022, those weekends that were not subject to liquor restrictions imposed by the Police under section 114 of the Act, show a nine-fold increase in raw numbers of alcohol-related trauma callouts for St John Ambulance Carnarvon volunteer crews compared to those weekends that were subject to section 114 restrictions.
- d) In respect of existing levels of crime, data supplied by the WA Police provides that the rate of:
- i. alcohol-related offences for Carnarvon in 2022, were:
 - 16.2 times higher than the Perth Metropolitan rate;
 - 1.2 times higher than the Regional rate; and
 - 3.5 times higher than the State rate.
 - ii. alcohol-related family assaults in Carnarvon for 2022, were:
 - 8 times higher than the Perth Metropolitan rate;
 - 1 time higher than the Regional rate; and
 - 3.5 times higher than State Rate for the same period.
- e) Further to the health and crime data, WA Police also advised that there are attendance issues for schools in Carnarvon and data sourced from the WA Department of Education and the My School websites for Carnarvon, detailed attendance rates at three Carnarvon schools (by weighted average based on school population) for the period 2017 to 2022, also indicates that school attendance rates have dropped from approximately 75% to approximately 69%, which has anecdotally been attributed to the fact that students did not have the opportunity to get a good night of uninterrupted sleep, because they were wandering the streets or kept awake because of the activities of family drinking late into the night.

11. Having had regard to the totality of the evidence before her, the Director made the following findings:
- a) There are levels of harm and ill-health caused due to the use of liquor in Carnarvon that are at levels that make it appropriate to exercise the power conferred by section 64 of the Act in the public interest and to achieve the ends set out in section 64(3)(c), (cc), (d) and (e) of the Act.
 - b) Alcohol is a significant contributor to harm and ill-health in Carnarvon, which continues to have an overall negative impact on the community.
 - c) The 10 relevant licensed premises that operate in Carnarvon contribute to the levels of harm and ill-health due to the use of liquor, based on the fact that they currently sell full-strength packaged liquor without any limitations on the volume of such liquor that can be sold.
 - d) Restrictions on the sale of packaged liquor are a useful tool in reducing levels of harm and ill-health.
12. On 4 May 2023, the Director determined to impose the following liquor restrictions on 10 licences in Carnarvon and Gascoyne Junction (“**Decision**”):
- a) The sale and supply of packaged liquor is prohibited on Sunday and Monday.
 - b) The sale and supply of packaged liquor is only authorised on permitted days between the hours of 12 noon and 7 pm.
 - c) Packaged liquor cannot be sold in excess of the following quantities per customer per day:
 - i. 11.25 litres of beer, cider, or pre-mixed spirits (e.g., one carton or a combination of each kind of liquor up to 11.25 litres) where the alcohol content does not exceed 6%; or
 - ii. 3.75 litres of beer, cider or pre-mix spirits (or a combination of each kind up to 3.75 litres) where the alcohol content exceeds 6%; or
 - iii. 1.5 litres of wine (e.g. 2 bottles or 1.5 litre cask); or
 - iv. 1 litre of spirits; or
 - v. 1 litre of fortified wine.
 - d) No sales in an individual container that contains more than 400ml of beer.
 - e) Wine to have a minimum price of \$15 per bottle or cask.
 - f) Where a product is available in cans, it should not be sold in glass containers.
 - g) When the facilities become available, licensees must scan I.D. for all persons purchasing packaged liquor for compliance with the Banned Drinkers Register and Take Away Alcohol Management System.

- h) The sale of liquor is not subject to the restrictions in condition (a), (b) and (c) above where a customer pre-orders liquor at least 72 hours in advance of pickup or delivery and:
 - i. the customer has completed a Bulk Purchase Order form; and
 - ii. the Bulk Purchase Order form contains the following information:
 - (1) name, address and licence number of relevant licence and signature of licensee or employee;
 - (2) name, address, phone number of customer;
 - (3) address where the liquor is being taken or delivered;
 - (4) description and quantity of liquor ordered and the reason for the bulk purchase;
 - iii. a copy of the Bulk Purchase Order form is:
 - (1) provided to the Officer in Charge of the local Police station within 24 hours of the order being received by the licensee; and
 - (2) provided to the customer; and
 - (3) retained by the licensee and made available for inspection at the request of an authorised officer.
- i) Licensees must maintain on the licensed premises, a register of purchases made by a tourist, station owner, pastoralist or a person operating or employed at a remote work site.
- j) The register must be made available for inspection at the request of an authorised officer and must contain:
 - i. name, address, and phone number of the purchaser, including the residential address of a tourist; and
 - ii. address where the liquor is being taken or delivered; and
 - iii. description and quantity of liquor purchased; and
 - iv. vehicle registration of the purchaser.

13. Exemptions apply to tourists, pastoralists, station owners and operators of remote work sites.

THE REVIEW

14. On 2 June 2023 the Applicant applied for a review of the Decision, pursuant to section 25 of the Act. The Applicant submitted that the Director:

- a) misconstrued its statutory function required under the Act;

- b) erred in its conclusion regarding the level of alcohol-related harm in the locality;
- c) erred by relying upon statistical data not relevant to the locality or otherwise outdated and/or not reflective of the locality;
- d) erred by making assumptions relating to the data;
- e) erred by relying upon anecdotal and vocal concerns of the public without any substantiation, objective evidence or validation of those allegations;
- f) erred by failing to provide licensees with all the information and evidence considered by the Director;
- g) erred by relying upon “evidence” and “research” without providing details of that evidence and research;
- h) erred by misconstruing the proper construction of the meaning of “minimise” contained in section 5(1)(b) of the Act;
- i) erred by misconstruing the proper construction of primary and secondary objects of the Act;
- j) erred by misconstruing the proper construction of the “public interest”;
- k) erred in the interpretation of the submissions of the licensees especially in relation to the conditions imposed in the Kimberley; and
- l) failed to afford licensees procedural fairness.

LEGAL AND STATUTORY FRAMEWORK

- 15. The Commission is not constrained by a finding of error on the part of the Director but is to undertake a full review and make a determination on the basis of the same materials that were before the Director (*Hancock v Executive Director of Public Health* [2008] WASC 224, [54]; section 25(2c) of the Act).
- 16. On review pursuant to section 25 of the Act, the Commission may:
 - a) affirm, vary or quash the decision of the Director;
 - b) make a decision in relation to any application or matter that should, in the opinion of the Commission, have been made in the first instance;
 - c) give directions:
 - i. as to any questions of law reviewed; or
 - ii. to the Director, to which effect shall be given; and
 - d) make any incidental order.

17. When conducting a review, the Commission:
 - a) may make its determination on the balance of probabilities: section 16(1)(b)(ii);
 - b) is not bound by the rules of evidence or any practices or procedures applicable to courts of record, except to the extent that the licensing authority adopts those rules, practices or procedures or the regulations make them apply: section 16(7)(a);
 - c) is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms: section 16(7)(b); and
 - d) is to act speedily and with as little formality and technicality as is practicable: section 16(7)(c).
18. The failure to refer to any specific evidence in written reasons does not mean that the evidence has not been considered (*Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police and Others* (LC 01/2017)).
19. Section 64(1) of the Act provides that the licensing authority may, at its discretion, impose conditions in addition to conditions specifically imposed by the Act; or in such a manner as to make more restrictive a condition specifically imposed by the Act, and may vary or cancel any condition previously imposed by the licensing authority, having regard to the tenor of the licence and the circumstances in relation to which the licensing authority intends that it should operate.
20. More specifically, section 64(3) provides that the licensing authority may impose conditions which it considers to be in the public interest or which it considers desirable to:
 - a) ensure the safety, health or welfare of persons who may resort to licensed premises is not at risk;
 - b) ensure liquor is sold and consumed in a responsible manner;
 - c) minimise harm or ill-health caused to people, or any group of people, due to the use of liquor;
 - d) ensure public order and safety;
 - e) limit:
 - i. the kinds of liquor that may be sold;
 - ii. the manner or containers, or number or types of containers, in which liquor may be sold;
 - iii. the days on which, and the times at which, liquor may be sold; and
 - iv. limit the times when packaged liquor may be sold.
21. Section 64 of the Act empowers the licensing authority to (subject to the Act) impose, vary, or cancel conditions 'in relation to any licence'.

22. The licensing authority may also vary or cancel any condition previously imposed.
23. The discretionary power under section 64 must be exercised judicially and reasonably and in the public interest, taking into consideration the scope and purpose of the Act and its objects as set out in section 5. The primary objects of the Act are:
- a) to regulate the sale, supply, and consumption of liquor;
 - b) to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor; and
 - c) 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.
24. Further, one of the Act's secondary objects requires the licensing authority to encourage responsible attitudes and practices towards the promotion, sale, supply, service, and consumption of liquor that are consistent with the interests of the community.
25. The term "public interest" is not defined in the Act. Nor does the Act expressly state the nature of the factors to be considered by the Commission in determining whether an application is in the public interest.
26. The term "public interest" is defined in the Macquarie Dictionary as "the benefit or advantage to a whole community", as opposed to the individual. It directs attention to that conclusion or determination which best serves the advancement of the interests or welfare of the public, society or the nation and its content will depend on each particular set of circumstances.
27. While the term "public interest" is not defined in the Act, section 38(4) sets out matters which the licensing authority may have regard to in determining whether the grant of an application is in the public interest. Additionally, some of the measures prescribed in section 64(3) also inform a discussion on the relevant public interests for the purposes of an inquiry under section 64 of the Act. Further, in *McKinnon v Secretary, Department of Treasurer*, Tamberlin J relevantly stated that:
- "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."*
28. Similarly, in *Commissioner of Police v Liquor Commission of Western Australia* [2019] WASC 165, Archer J stated that:
- "...the plain meaning of section 64 is that the licensing authority has the power to impose conditions on a particular licence. Each time the licensing authority exercises that power, it is a decision to impose conditions on that particular licence. No doubt, the licensing authority may give reasons for exercising this power in relation to multiple licences in a single set of reasons. However, each exercise of power in relation to each licence is a separate decision under the Act."*

Further, the plain meaning of section 64 is that the licensing authority does not have the power to impose conditions on licenses within a geographical area or some other classification.”¹

29. Given the interpretation of section 64 of the Act set out by Justice Archer, the task of the Commission is to:
- a) consider the levels of harm and ill-health caused by liquor in the town of Carnarvon; and
 - b) if satisfied that there are levels of harm or ill-health caused by liquor, determine:
 - i. whether it is appropriate to exercise discretion to impose further conditions on a licence having regard to the tenor of the licence and the circumstances in relation to which the licensing authority intends that it should operate; and
 - ii. what conditions should be imposed in order to achieve the relevant purpose(s) set out in section 64(3) of the Act.
30. It should also be noted that section 64 proceedings are not disciplinary proceedings against a licensee where a causal link between the operation of the licensed premises and the matters complained of need to be established, but rather, the issue is whether, having regard to the objects of the Act, as a matter of public policy, it is appropriate and in the public interest to impose conditions on a licence or licences.
31. Further, the harm minimisation object is directed to minimising harm or ill-health caused to people, or any group of people, due to the use of liquor. While it is not necessary to find that all members of a community are at risk, often it is the most vulnerable people in the community that may require some protection. This object is expressed very broadly and is not based on some narrow concept of what harm might arise from the misuse or abuse of alcohol.
32. In discharging its functions under the Act, the Commission needs to weigh and balance the competing interests, however, the possibility that the use of liquor may cause harm or ill-health to people, or any group of people, is an important element of the public interest considerations that underlie section 5(1)(b) and the discretion conferred upon the Director under section 33 of the Act.
33. Ipp J in *Executive Director of Health v Lily Creek International Pty Ltd* [2000] WASCA 258 noted that:

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

¹ *supra*, at [52]-[53]

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

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

DETERMINATION

34. The Commission finds that there was a proper basis for the Director to impose the section 64(1) conditions given the significant levels of alcohol-related harm in Carnarvon.

Procedural fairness

35. The Applicant submitted that the Director failed to afford procedural fairness to the licensees.

36. That submission is on the bases that:

- a) the show cause notice only summarised evidence in relation to alcohol-related harm and ill-health occurring in Carnarvon and did not provide sources for the evidence, and as a result licensees were unable to assess the accuracy and fairness of the data (2.2.1 of the Applicant’s Primary Submissions);
- b) the licensees were not provided with a copy of the Issues Paper or the primary evidence relied on by the Director (2.2.7 - 2.2.8 of the Applicant’s Primary Submissions);
- c) the licensees were not provided with a reasonable opportunity to inspect the evidence relied on by the Director (2.2.9 - 2.2.11 of the Applicant’s Primary Submissions); and
- d) the Applicant was not provided a sufficient time frame to present its case prior to the Decision made by the Director (2.3.7 of the Applicant’s Primary Submissions).

37. Section 64(2a) of the Act is in the following terms:

“If the licensing authority proposes to impose, vary or cancel a condition under this section, the licensing authority may, by notice in writing, require the licensee to show cause to the licensing authority why the condition should not be imposed, varied or cancelled.”

38. The wording of section 64(2a) of the Act is that the Director, as the licensing authority, may consult affected licensees. The provision does not impose a mandatory requirement to do so.

39. The Commission finds that the Director's show cause notice provided sufficient information for the licensees to respond appropriately.
40. The Commission finds that the show cause process was not a process to question whether or not there was a level of harm that required restrictions. It was a process to consult as to whether or not proposed restrictions may have been appropriate to address the harm.
41. On that basis, the Applicant was afforded due procedural fairness to provide its feedback on the proposed restrictions.
42. If the Commission is not correct about that, it is then a question of considering the harm.

Harm in the community

43. There is evidence that:
 - a) the residents of Carnarvon were vocal about the extent of alcohol-related harm and dysfunction in the town, and some level of harm minimisation was needed (paragraph 3 of the Decision);
 - b) the number of alcohol attributable deaths in Carnarvon represents a significant statistical variation from the whole-of-State data, with Carnarvon SA2 experiencing a rate of alcohol attributable deaths that was 151% above that observed in the rest of Western Australia for 2010 to 2019 (paragraph 26(a) of the Issues Paper);
 - c) for the period of 2016 to 2020, the rate of alcohol-attributable hospitalisations in the Carnarvon SA2 for the period was also higher when compared against the WA State rate, being 82% higher for all persons, 65% higher for females and 89% higher for males (paragraph 26(c) of the Issues Paper);
 - d) that alcohol-related trauma callouts from St John Ambulance Carnarvon associated with unrestricted liquor trade represents a nine-times increase in raw numbers over similar weekend periods, where Police have taken temporary action under section 114 of the Act to limit the sale and supply of liquor (paragraph 56 of the Issues Paper); and
 - e) that St John Ambulance Carnarvon respond to approximately two callouts per day within the local community, with trauma accounting for the highest volume of calls in raw figures (160 of 710). Further, with respect to trauma coded dispatches, St John Ambulance Carnarvon experiences a spike in alcohol-related callouts between the hours of 6 pm and 6 am, with the majority of cases being for assaults and falls, which often results in unsafe environments for St John officers, who are frequently exposed to verbal abuse and occasional physical violence (paragraph 64 of the Issues Paper).
44. The Commission finds that these were reliable sources of information that could be relied on when making assessments about alcohol-related harm in the Carnarvon region.
45. The Commission finds that given the significant levels of harm reported that it was within the scope of powers for the Director to impose conditions, and the Director did not err in imposing the conditions.

46. At the hearing, the Commission asked the Applicant to comment on the data presented by St John Ambulance Carnarvon, particularly in regard to the Applicant's submission that the Director erred in referring to the comparative rate of St John Ambulance Carnarvon alcohol-related trauma callout for weekends that were not subject to liquor restrictions and those weekends that were, because the restrictions were said to have been imposed by Police under section 114 of the Act (Transcript of hearing pages 21 – 22).
47. The Applicant submitted that as the data was limited and did not have data from every weekend that it did not represent the full picture, and that there may have been weekends with zero callouts when restrictions were not in place.
48. The Commission finds that the data presented by St John Ambulance Carnarvon is reliable and an indicator that when restrictions are in place there are lesser occurrences of alcohol-related harm. It is a relevant data point in the overall analysis of harm.

Prohibition on packaged liquor sales on Sundays and Mondays – Condition 3(a)

49. As mentioned above at paragraph 12(a), the Director determined to impose that the sale and supply of packaged liquor be prohibited on Sunday *and* Monday.
50. In written submissions dated 23 November 2023, counsel for the Applicant submitted that the Director General Memorandum dated 1 May 2023 (Document 4) recommended only prohibiting the sale of packaged liquor in Carnarvon on Sundays. The Applicant made the point that this recommendation was based on liquor restrictions in other regions and corresponding determinations under section 64 of the Act.
51. Heavy emphasis was placed by the Applicant on the restriction being disproportionate when considering conditions imposed elsewhere in the State. For example, the Applicant made reference to:
 - a) the restriction in the Pilbara region where, after considering the harm and ill-health in the Pilbara region, the Liquor Commission only determined to limit the sale and supply of packaged liquor on Sundays;²
 - b) Document 4.4 of the Index of Documents detailed alcohol-related offences in Carnarvon compared with other towns the subject of section 64 restrictions. The comparison showed that the situation in Carnarvon is significantly better than the situations in Broome, Derby and Kununurra, and yet packaged liquor sales are permitted seven days per week in Broome and Derby, whilst Kununurra prohibits the sale of packaged liquor only on Sundays.³
52. The Intervenor submitted in response that a comparative approach did not take into account, importantly that unlike Carnarvon, a number of towns in the Kimberley region were already subject to significant liquor restrictions and other prohibitions.⁴ The Intervenor submitted that the conditions proposed as part of the inquiry into Kimberley and Pilbara packaged liquor availability were to be in addition to those existing conditions. Accordingly, the Intervenor submitted that a comparison between the conditions being proposed for Carnarvon and for towns in the Kimberley region is not reasonable.

² Applicant's Primary Submissions dated 23 November 2023.

³ Applicant's Responsive Submissions dated 30 November 2023.

⁴ Intervenor's Primary Submissions dated 23 November 2023.

53. The Intervenor submitted the following to support the introduction of the Sunday and Monday trading restriction:

- a) prohibiting the sale and supply of packaged liquor on Sunday and Monday was imposed to afford persons who drink at risky levels an opportunity to reduce their reliance on alcohol (and focus on more healthy habits), by further limiting access to, and convenience of obtaining, alcohol over that period;⁵
- b) while the prohibition on the sale and supply of packaged liquor on two days is not currently in force in other towns, some towns (such as Fitzroy Crossing and Halls Creek) prohibit the sale of takeaway liquor containing more than 2.7% alcohol to anyone (other than a permanent or casual lodger at a hotel) on any day of the week. Accordingly, to say that in no other region is the sale of packaged liquor prohibited on more than one day (such that the reference to Monday should be removed), does not give the full picture;⁶ and
- c) it is unclear why tourists would move on from Carnarvon earlier than planned simply because they cannot purchase packaged liquor on Sundays and Mondays, or before 12 noon on other days, particularly in circumstances where they can bring packaged liquor with them or consume alcohol at a hotel or tavern and as such, the impact on tourists is minimal.

54. Further, the Applicant submitted that:

- a) there was no evidence to support a finding that being closed on Sundays and Mondays would result in long-term change by people suffering from the negative impacts of alcohol. Especially when many governmental organisations are not open on Sundays to work with such persons;
- b) there was no evidence that being closed for two consecutive days would result in students attending school more;⁷ and
- c) the “break from the sale of packaged liquor on Sundays and Mondays” simply shifts the problem to on-premises establishments as at-risk persons simply go to on-premises venues to consume liquor.⁸

55. The evidence supports a conclusion that there are high levels of harm and ill-health due to the use of liquor in Carnarvon and that such levels are unacceptable and require intervention to reduce those levels. The level of alcohol-related hospitalisations and exposure of harm to children is of particular concern.

56. The residents of Carnarvon have been very vocal in the public arena about the extent of alcohol-related harm and dysfunction occurring in the town, so too, have the licensees themselves. The community as a whole, has expressed in no uncertain terms, that a change is desperately required.

⁵ Intervenor’s Responsive Submissions dated 30 November 2023.

⁶ Intervenor’s Responsive Submissions dated 30 November 2023.

⁷ Applicant’s Primary Submissions dated 23 November 2023.

⁸ Applicant’s Primary Submissions dated 23 November 2023.

57. In the circumstances, the Commission is of the view that a novel change such as the Sunday and Monday restriction is justified to address alcohol-related harm in Carnarvon.
58. As stated by a number of the licensees, the myriad of issues surrounding drug and alcohol-related harm are incredibly complex and cannot hope to be solved with a single simplistic solution of limiting the supply of packaged liquor. However, this fact has been acknowledged by the licensing authority on many occasions and irrespective of limited scope, there is a strong correlation between liquor restrictions and a reduction in alcohol-related harm in the community. Moreover, the Commission accepts the Intervenor's submission made in the hearing that such a restriction can increase participation in well-being services and decrease violence and pressure on policing services.
59. The Commission is therefore minded to allow the introduction of a different format of restriction, being a restriction of two consecutive days, to provide a circuit breaker for the community and give persons who are at risk and who are drinking at risky levels an opportunity to make a change. Therefore, no change to Condition 3(a) is required.

Limitations on Packaged Liquor

60. The Director determined that limiting access to alcohol through restrictions on the supply of packaged liquor is necessary. In the Director's view, it is highly likely that the existing rate of alcohol-related harm and ill-health in Carnarvon will continue unabated unless there is a strong and immediate intervention. The Commission accepts this view.
61. Section 64(3) of the Act provides, amongst other things, that the licensing authority may impose conditions which it considers to be in the public interest or which it considers desirable in order to limit the kinds of liquor that may be sold; the manner or the containers, or number or types of containers, in which liquor may be sold; the days on which, and the times at which, liquor may be sold (section 64(3)(e)).
62. The Commission finds that it is not a requirement of the licensing authority to ensure that the conditions that may be imposed pursuant to section 64 of the Act are the same or substantially similar across regions, towns or areas. Section 64 of the Act empowers the licensing authority (subject to the Act) to impose, vary or cancel conditions 'in relation to any licence'.
63. Further Archer J said at [50] that section 64(3) sets out a number of purposes for which conditions may be imposed. Many of those purposes specifically refer to the particular licence or particular premises upon which the condition will be imposed.⁹ As Her Honour states, this requires consideration on a licence by licence basis, having regard to the business activities of a particular licensee and the activities carried out on the licensed premises.
64. A condition imposed under section 64 may relate to any aspects of the business carried on under the licence and any activity carried on at the licensed premises (section 64(6a) of the Act).

⁹ *Commissioner of Police v Liquor Commission of Western Australia* [2019] WASC 165

65. Having regard to Archer J's reasoning, the Commission finds that there is no requirement on the licensing authority when imposing conditions pursuant to section 64 of the Act that the licensing authority must impose the same conditions that the licensing authority has imposed upon another licence or another licensed premises, for similar reasons. The nature and type of conditions to be imposed upon a licence and a licensed premises, is dependent on the facts of the case. Regard is to be had to the tenor of each individual licence as required by section 64 of the Act.
66. Although the licensing authority may seek to have regard to conditions imposed upon other licences or other licensed premises, the licensing authority is not obliged to replicate those conditions elsewhere.
67. The Applicant further submitted that liquor conditions cannot be imposed on a geographical basis or some other class of licences. The Commission accepts that submission.
68. The Applicant also submits that the Director's position that the conditions imposed on each licensee in Carnarvon should be consistent and uniform is not relevant in determining the Review Application on its merits and that the Commission is to undertake a review of the decision by way of a rehearing. The Commission accepts that submission.
69. The Applicant also submits that the conditions imposed by the Director in the Decision are not balanced and were disproportionate when considering conditions imposed in other regions, such as Port and South Hedland. The Commission does not accept that submission.
70. The Applicant submits in the Applicant's Responsive Submissions that the discretionary power under section 64 of the Act must be exercised judicially and reasonably and in the public interest, taking into consideration the scope and purpose the Act and its objects set out in section 5.
71. The words 'judicially and reasonably' as referred to by the Applicant, are not part of the introductory words to section 64(3) of the Act. Section 64(3) of the Act commences with the words: "*Without derogating from the generality of the discretion conferred on the licensing authority, the licensing authority may impose conditions which it considers to be in the public interest or which it considers desirable in order to...*".
72. The licensing authority is not limited to imposing the conditions solely on the ground of public interest. The alternative ground is: "*...which it (that is, the licensing authority) considers desirable...*" in order to achieve the outcomes or purposes set out in section 64(a) to (m) of the Act.
73. The word "desirable" is defined in the Macquarie Concise Dictionary, 8th edition, as amongst other things: 'advisable: a desirable course of action'. The Australian Oxford Dictionary, 2nd edition, defines desirable as amongst other things, 'worth having or wishing for'.
74. The Director can choose to impose conditions based on either ground - that which the Director considers to be in the public interest or which the Director considers to be desirable. Compliance with section 64 of the Act is, amongst other things, if the condition satisfies one or the other.

75. The condition needs to also satisfy the test that it is 'in order to'. The Australian Oxford English Dictionary describes 'in order to' as being 'with the purpose of doing'; 'with a view to'.
76. The condition which is imposed on the grounds that it is desirable must all be with the purpose or with a view to achieving the outcomes or purposes referred to in section 64(a) to (m) of the Act. There is a connection between the ground in the first place and the outcome or purpose in the second place.
77. If satisfied that conditions should be imposed, the task for the Commission is to determine what conditions should be imposed in order to achieve the relevant outcome or purpose(s) set out in section 64(3) of the Act.

Hours for sale of packaged liquor - Decision Condition 3(b)

78. The Applicant submitted that various conditions in the Decision were not supported by evidence which justified those conditions.
79. However, the Commission accepts that reducing trading hours is an intervention with a high level of efficacy.
80. The Director determined that the sale and supply of packaged liquor is only authorised on permitted days between the hours of 12 noon and 7 pm.
81. The permitted days are Tuesday, Wednesday, Thursday, Friday and Saturday.
82. The Applicant submits that the hours for sale of packaged liquor should be extended to be between the hours of 12 noon and 8 pm (a proposed extension of a further one hour) on the grounds that restricting the opening hours inconveniences those who work in purchasing packaged liquor before or after work. The Applicant further submits that not opening until 12 noon results in tourists leaving the town earlier than they would otherwise to go to other towns (such as Coral Bay) to purchase packaged liquor. No evidence is adduced to support that submission.
83. Having regard to the commentary above, the Commission is not bound by ensuring that there is consistency in other areas.
84. In the 'Issues paper prepared for the Director of Liquor Licensing - 15 March 2023' by Department of Local Government, Sport and Cultural Industries ("**Issues Paper**"), comment is made by the authors that research conducted by National Drug Research Institute (2007) *Restrictions on the Sale and Supply of Alcohol: Evidence and Outcomes* showed that reducing trading hours was identified as an intervention with a high level of efficacy, which can be applied to the general population and individual licensed premises with a high long-term viability, low reliance on enforcement for effective application and high viability for discrete regional communities.
85. The Commission finds that reducing trading hours is an important tool in the reduction of availability of alcohol.

86. It is well settled that the Act requires a balancing of various factors, reflected in the objects of the Act. The Commission accepts that there is no requirement under the Act for the licensing authority to take into consideration any economic factors as they relate to individual businesses.
87. The Director as stated in the Decision, is mindful that conditions need to strike a balance between minimising harm and ill-health by restricting the days in which packaged liquor can be sold and supplied, the volume of alcohol that can be purchased by consumers on a daily basis and the ability of licensees to properly and efficiently operate their businesses.
88. The Commission finds that research demonstrates that access to and the convenience of obtaining alcohol makes it difficult for those who drink at risky levels to avoid drinking or reduce the amount of alcohol consumed.
89. The Commission finds that the sale and supply of packaged liquor on permitted days between the hours of 12 noon and 7 pm is appropriate (and desirable) and no change to Condition 3(b) is required.

Restrictions on the Quantities of alcohol per customer per day - Decision Condition 3(c)

90. The Applicant submits that Condition 3(c) should be changed so that:
 - a) A customer is permitted to buy items from no more than two of the categories set out in Condition 3(c).
 - b) There should be permitted the right to purchase more than one item at any one time.
 - c) There is an increase in the quantity of alcohol that can be purchased by a customer.
91. The Applicant submits that the ability for a customer to purchase different types of packaged liquor per day is necessary for some customers.
92. The Commission finds that reducing the quantity of alcohol that can be purchased by a customer per day is also an important tool in the reduction of availability of alcohol.
93. The Commission finds that the sale and supply of packaged liquor in the quantities permitted in Condition 3(c) is appropriate (and desirable) and no change to Condition 3(c) is required.

Containers for beer more than 400ml – Condition 3(d)

94. Condition 3(d) states no sales in an individual container that contains more than 400ml of beer.
95. The Applicant submits that there are several international beer varieties such as Guinness and Sapporo, that come in cans of 440ml or 500ml and submits that the 400ml restriction should be changed to 700ml.
96. The Applicant considers that prohibiting the sale of king browns is reasonable but prohibiting vessels more than 400ml restricts the sale of several popular international brands.

97. The Commission finds that the sale and supply of packaged liquor in the container limit permitted in Condition 3(d) is appropriate (and desirable) and no change to Condition 3(d) is required.

Wine to have a minimum price – Condition 3(e)

98. Condition 3(e) states that wine is to have a minimum price of \$15.00 per bottle or cask.

99. The Applicant submits that the price floor of \$15.00 per bottle or cask is too high for wine and disadvantages those on a budget such as pensioners.

100. The Applicant submits that a quantity restriction, rather than a price floor is more appropriate or alternatively, that there should be a higher price floor for fortified wines only.

101. The Intervenor submits that the effect of the change proposed by the Applicant is to remove entirely a minimum price for non-fortified wine. The Intervenor submits that the removal of that limit is inconsistent with the evidence that changes in the price of alcohol has an effect on the levels of alcohol consumption. The Commission accepts the Intervenor's submission.

102. The Commission finds that the minimum price of wine as proposed by the Director in Condition 3(e) is appropriate (and desirable) and no change to Condition 3(e) is required.

Products to be sold in cans - Condition 3(f)

103. Condition 3(f) states that where a product is available in cans, it should not be sold in glass.

104. The Applicant submits that there is no evidence that the sale of glass containers is a significant issue in Carnarvon or that broken glass is an issue.

105. The Intervenor submits that it is accepted that there is no reference in the Decision to broken glass being a problem. However, the Intervenor further submits that there was evidence before the Director of a licensee having moved away from glass bottles to cans only and to the Accord having considered the issue of bottled wine creating glass issues in the streets.

106. The Applicant further submits that there is some ambiguity as to what "available in cans" means as some products are available in cans in other parts of the world but not in Australia, or are not available through certain suppliers in Australia. The Applicant, in addition, submits that there are many products still sold in glass making this condition confusing and unreasonable.

107. The Commission finds that the proposed Condition 3(f) is not confusing or unreasonable as it states that where a product is available in cans, it should not be sold in glass containers – the corollary is if it is not available in cans, then it can be sold in glass containers.

108. For health and safety reasons the Commission finds that Condition 3(f) is appropriate (and desirable) and no change to Condition 3(f) is required.

Bulk Orders – Condition 3(h)

109. The Applicant submits that the time for preorder be changed from at least 72 hours to at least 24 hours on the grounds that 72 hours is very difficult to manage.

110. The Applicant's submission was not substantiated.

111. The Commission finds that there is no need to make the change to Condition 3(h) proposed by the Applicant (or any other change).


Conditions

112. The Commission finds that having regard to the levels of harm and ill-health caused by liquor in Carnarvon, the conditions imposed by the Director are reasonable and balanced.

ORDERS

113. The Commission affirms the decision of the Director of Liquor Licensing to impose the conditions on the Applicant's licences.

114. The Application for Review is dismissed.



NICHOLAS VAN HATTEM
DEPUTY CHAIRPERSON



SHELLEY DAVIES
MEMBER



TONY DI FRANCESCO
MEMBER