

REASONS FOR DECISION TO IMPOSE CONDITIONS ON A LICENCE

Section 43(2)(g) of the *Liquor Licensing Act 1997*

Pursuant to s 43(2)(g) of the *Liquor Licensing Act 1997 (the Act)*, I, Dini Soulio, Liquor and Gambling Commissioner may, by my own initiative, impose conditions on a licence if I consider the conditions to be in the public interest.

My decision and the reasons which follow applies to the following licensees:

Licence Type	Licence Number	Premises Name	Licensee
General & Hotel	57001489	Sky Tavern	Chloe Bay Pty Ltd
General & Hotel	57002998	Pastoral Hotel Motel	Duxton Risdon Custodian Pty Ltd
General & Hotel	57004437	Western Hotel	Australian Leisure & Hospitality Group Pty Ltd
Packaged Liquor Sales	57700708	Liquorland	Liquorland (Australia) Pty Ltd

Background

On 8 February 2022, pursuant to my powers as Commissioner, I imposed temporary restrictions on the sale of alcohol in Port Augusta.

The restrictions were imposed as a result of information received from South Australia Police (**SAPOL**) indicating that there had been an increase in alcohol related offences and antisocial behaviour within the Port Augusta township within the weeks preceding the restrictions. As such, I considered it necessary to take urgent action to seek to reduce health-related harms associated with the excessive consumption of alcohol, and to minimise the increased anti-social behaviour and alcohol-related violence caused by the excessive or inappropriate consumption of liquor.

The restrictions were initially imposed for a two-week period and were similar in nature to the restrictions that have been in place in Ceduna and Coober Pedy for a number of years. The restrictions were as follows:

- *Bottle shops are not permitted to open for trade before 11am*
- *Customers can only purchase ONE of the following restricted items per person per day for takeaway:*
 - *One bottle of spirits OR*
 - *One 2L cask wine (any casks over 2L cannot be purchased) OR*
 - *One bottle of fortified wine/port.*
- *Photograph identification (driver's licence or proof of age card) must be shown when purchasing any of the items listed above and the details of the purchase (name, address, type of liquor and quantity purchased) must be recorded in a register (either handwritten or electronic) and retained by the licensee for the duration that the restrictions remain in force.*
- *Liquor cannot be sold to any person who attends a bottle shop drive-through in a taxi, including the taxi driver.*
- *Restrictions limiting the volumes of cask wine, spirits and fortified wine/port do not apply to managers and supervisors of station properties; managers and supervisors of companies operating mining ventures and other licensees.*

I sought feedback in relation to the impact of the restrictions imposed from various licensees and stakeholders impacted by the restrictions. There was significant support by help services, health services in the area, and from SAPOL for the continuation of the restrictions imposed. In particular, the Port Augusta Hospital provided data showing a significant reduction in alcohol-related harm admissions during the two weeks that the restrictions were in place, and help services such as the Sobering Up Unit reported significant reductions in intoxication and alcohol-related injuries and harm.

As a result of the feedback received, I determined it was in the public interest to extend the temporary restrictions in Port Augusta for a further period of 4 weeks. One of the concerns raised by licensees was the requirement for customers to produce identification and the need to record and retain that information by licensees. As such, I removed that requirement, recognising that without technological support, the condition was too onerous for licensees. The effect of this was that restrictions on quantities were limited to per transaction, rather than per person per day. The quantity restriction on spirits was also lifted.

The conditions imposed on 8 February 2022 were therefore substituted with the following conditions to remain in force until 22 March 2022:

- *Bottle shops are not permitted to open for trade before 11am;*
- *Customers can only purchase ONE of the following items per transaction:*
 - *One 2L cask wine (any casks over 2L cannot be purchased) OR*
 - *One bottle of fortified wine/port*
- *Liquor cannot be sold to any person who attends a bottle shop drive through in a taxi, including the taxi driver.*
- *The above restrictions limited the volumes of cask wine and fortified wine/port do not apply to the following persons: Managers and Supervisors of station properties; Managers and Supervisors of companies operating mining ventures; other licensees.*

On Thursday 10 March 2022, I met separately with each of the following agencies in Port Augusta:

- Stepping Stones Day Centre
- Port Augusta District Council Representative
- South Australia Ambulance Service (SAAS)
- Port Augusta Hospital Emergency Department Doctors and Nursing Unit
- Sobering Up Unit
- Des's Taxi Service.

The feedback from help services and medical staff indicated that the restrictions had been effective in reducing alcohol-related harm and presentation of alcohol-related injuries. The restrictions had also been effective in enabling help services to engage with clients earlier in the morning to provide counselling, medical assessments and other referral services. The feedback indicated that while there were still high levels of anti-social behaviour in Port Augusta, the acute harm-related issues previously encountered by the Sobering Up Unit, the day centre, and the ambulance and hospital services had reduced significantly.

As a result of the feedback received, I again extended the conditions but varied the condition in relation to taxis, to permit persons to purchase liquor from a taxi while in the browsing lane, provided that they exit the taxi to make the purchase.

The purpose of the extension was to allow further time for consultation, feedback and data analysis before determining whether the restrictions should be imposed on an ongoing basis.

Current Restrictions

Since 23 March 2022, the following restrictions have been in effect on the sale of alcohol in Port Augusta:

- *Bottle shops are not permitted to open for trade before 11am;*
- *Customers can only purchase ONE of the following items per transaction for consumption off premise:*
 - *One 2L Cask Wine (any casks over 2L cannot be purchased); OR*
 - *One bottle of fortified wine/port*
- *Liquor cannot be sold to any person seated in a taxi, including the taxi driver*
- *Patrons may exit the taxi in the browsing lane to make a purchase, however liquor cannot be sold to a taxi driver on duty whether the taxi driver is seated in a taxi or by walk-up sales.*
- *The restrictions limiting the volumes of cask wine and fortified wine/port do not apply to the following persons:*
 - *Managers and supervisors of station properties;*
 - *Managers and supervisors of companies operating mining ventures;*
 - *Other licensees.*

Review dated 4 August 2022

On 4 August 2022, I wrote to the licensees enclosing a review of the restrictions which summarised the consultation I conducted in relation to whether restrictions should be imposed in Port Augusta on an ongoing basis.

I annexe the Review of Port Augusta Liquor Restrictions 2022 (**the Review**), which forms part of these reasons.

I outlined the conditions I proposed to impose on an ongoing basis and invited submissions in response, which are summarised below.

Licensees' Submissions

Liquorland (Australia) Pty Ltd

Liquorland Australia Pty Ltd (**Liquorland**) have submitted that they maintain their support of harm minimisation measures that are uniform, targeted, enforceable and proportionate, and concede that most of the conditions proposed continue to be appropriate. However, Liquorland are not in support of the continued restriction on opening hours, and state that they receive regular complaints from customers who are inconvenienced by being unable to do their 'one-stop shopping' prior to 11am in Port Augusta. Further, there are travellers and tourists in caravans who regularly pass through the town who complain that a 'one-stop shop' experience is not available prior to 11am.

Liquorland submit that the main feedback being provided from the township to their teams is that they feel they are a '*majority being unfairly punished for the actions of a minority who may choose to drink irresponsibly*' and contend that in order to strike an appropriate balance, the proposed conditions should be varied so that bottle shops may be permitted to trade from 10am onwards, rather than 11am.

With respect to the proposed commencement of the restrictions, Liquorland submit that the foreshadowed commencement date of 1 October 2022 is of some concern in terms of allowing sufficient time for the implementation of ID Scan, for staff to be trained, technology implemented and integrated into current IT security, and to appropriately communicate the

decision to the public. Accordingly, Liquorland suggest that the restrictions should not commence until at least 30 November 2022.

Australian Leisure and Hospitality Group Pty Limited

Australian Leisure and Hospitality Group Pty Limited (**ALH Group**), which is part of the Endeavour Group of companies, has commended the South Australian Government for the measures it has taken in Port Augusta, and for the investment in technology solutions to enable licensees and relevant authorities to capture meaningful data.

ALH states that it is supportive of “*workable, evidence-based solutions to ensure local issues can be monitored, reviewed and continuously improved to ensure they are effective in addressing the challenges that communities are facing*”.

ALH have made a number of helpful and constructive suggestions in respect of potential amendments to the wording of conditions to be imposed as put out for consultation, some substantive, and others to assist in providing greater clarity. I have decided to adopt a number of ALH's suggested amendments to the conditions to be imposed.

Duxton Risdon Custodian Pty Ltd

Duxton Risdon Custodian Pty Ltd (**Duxton**) became the licensee of the Pastoral Hotel on 20 June 2022, noting it was not the licensee for the majority of the trial period for the restrictions.

With respect to the exercise of my power under s 43, Duxton submits there is inadequate evidence of the extent of alcohol related harm caused by the sale of liquor for consumption off the licensed premises and inadequate evidence that the imposition of these conditions will result in a reduction of that harm.

In particular, Duxton submits it is not clear from the information provided what impact, if any, the circumstances of the floods resulting in road closures and Covid related restrictions preventing residents from returning to the Lands had on the stated increase in alcohol related offences and anti-social behaviour in the community. Duxton submits that if any such increase can be attributed to these circumstances, rather than the supply of carry off liquor from bottle shops in Port Augusta, Duxton submits it is not necessary to impose restrictions on an ongoing basis.

I make the following observations to address those submissions. Issues relating to alcohol related harm and anti-social behaviour in and around Port Augusta are not new. These are not issues that only arose in Port Augusta due to Covid or floods, and in fact have existed for many, many years with calls for restrictions and also the introductions of initiatives such as the City Safe Program. In relation to the current circumstances, the restrictions were first introduced on 8 February 2022 and operated at their most restrictive for two weeks by including limits on spirits, cask wine, port/fortified wine per person per day and the obligation to record transactions. The Sobering Up Unit data, as outlined in the Review, reflects a dramatic reduction of admissions in February 2022, as well as a significant reduction in BAC levels in excess of 0.25. The restrictions had a direct and positive effect on reducing the number of intoxicated persons requiring admission to the Sobering Up Unit, as well as acute levels of intoxication.

The return to country buses did not commence until 15 March and operated on 15,17, 22 and 24 March 2022. Statistics from the Sobering Up Unit indicate that admissions in May 2022 returned to levels that were previously seen in October 2021, despite return to country buses operating in March. This is consistent with submissions from SA Police that the impact of the initial restrictions was immediately felt, with a reduction in anti-social behaviour, however

following the removal of the requirement to produce identification and the change to restrictions per transaction from daily limits, the impact of the restrictions was diminished.

The submissions of Stepping Stones Day Centre, as outlined in the Review, are also relevant. The Centre indicated that prior to the imposition of restrictions, the Centre would see a daily average of between 40 to 60 persons at breakfast and between 20 to 40 persons at lunch, of which approximately 30% would be intoxicated. Following the imposition of alcohol restrictions, the number of clients and intoxicated presentations decreased and there was a week where there were only two presentations of intoxicated clients. In a further submission dated 10 May 2022, the Centre indicated that the number of intoxicated presentations had remained low but had increased slightly following the easing of the restrictions to per transaction rather than per person, and removing spirits as a restricted category.

Whilst the Centre also attributed improvement to clients returning to country, the submissions emphasised the positive impact of the restrictions, noting in their submission of 16 February 2022 (emphasis added):

*The last week has been **the best I have seen it over the last 5 years** that I have been employed by the Aboriginal Drug and Alcohol Council SA and believe me when I say we have endured a lot.*

This is confirmation of the concerns in relation to anti-social behaviour and alcohol related harm being a longer term issue and not only attributable to Covid and restrictions in movement.

In addition, the Emergency Department of the Port Augusta District Hospital reported a significant reduction in acute intoxication admissions and alcohol related injuries during the two weeks the restrictions were first introduced. Whilst the hospital's data is unhelpful in that it does not separate between drug and alcohol related admissions, I take into account the detailed submission of emergency doctor Dr Nguyen, who has experienced firsthand the impact the restrictions have had on alcohol related presentations to the emergency department (see annexed Review).

I am satisfied that the restrictions have had a direct impact on alcohol-related harm and anti-social behaviour in Port Augusta, although I consider that this impact was weakened when I made the decision to amend the restrictions such that daily limits were lifted and transactions were not recorded or monitored.

Duxton's submissions queried whether the relevant "community" under consideration is the residents of Port Augusta, those residing in prescribed lands, transient groups in and around the Port Augusta region, or all of these people. I make it clear that it is all of these people. Port Augusta is a gateway to the North and West of South Australia. There is no point in time when one could isolate these issues as only attributable to local residents, or only to transient groups. A country town as significant as Port Augusta is naturally always in a state of flux, subject to seasonal influences and unpredictable busy periods. I must therefore consider any need for ongoing restrictions in that context, and equally I must consider the impact any restrictions will have on business, tourism, licensees, residents, transient groups, and those residing in Aboriginal communities who visit Port Augusta.

Duxton's submits that it is likely the proposed conditions will be of limited effect in Port Augusta given the ready access to alternative carry off liquor in and around Port Augusta. There is currently no evidence before me that liquor purchased for consumption off over the counter from hotels, as opposed to standalone bottle shops, is contributing to these issues, however I acknowledge the value in this submission and intend to address such issues if and when they

arise. Alcohol being purchased in nearby towns to be brought back into the Port Augusta community, will also be addressed.

Decision

At the outset, it is important to note that liquor restrictions, and policing of the same, are one tool in addressing alcohol-related harm in communities. I recognise there is a need for support and assistance from help services and agencies engaged in the funding and provision of those services.

In deciding whether it is in the public interest for restrictions to be imposed on an ongoing basis, I must balance the economic impact to licensees and inconvenience to the public against the positive impact the restrictions have had in reducing harms associated with the prevalence of alcohol abuse and reducing associated violence and antisocial behaviour.

I have carefully considered the submissions of all parties in relation to the Review, the trial period and proposed ongoing conditions. I am grateful for those submissions and the helpful suggestions presented in relation to the proposed conditions. A number of amendments suggested by ALH are appropriate and will be adopted.

Based on the Review, I consider there can be no doubt the sale and consumption of alcohol in Port Augusta results in significant antisocial behaviour, harm to the community, and negative health impacts which is borne disproportionately by a vulnerable community.

In light of the submissions provided by SAPOL, and the various medical professionals and services who provided submissions, such as the Sobering Up Unit, Port Augusta Hospital and Regional Health Service, Dr Phi Nguyen, SA Ambulance Service, and Stepping Stones Drug and Alcohol Day Centre, I am of the view that the restrictions proposed (with some amendments as set out below) should be made ongoing.

In reaching this decision I have had regard to the objects set out in section 3(1) of the Act, as required by section 3(2) of the Act.

Section 3(1)(a) of the Act provides is directed to harm minimisation and the protection of the public:

(1) The object of this Act is to regulate and control the promotion, sale, supply and consumption of liquor—

(a) to ensure that the sale and supply of liquor occurs in a manner that minimises the harm and potential for harm caused by the excessive or inappropriate consumption of liquor;

Subsection (1a) prescribes that for the purposes of section 3(1)(a) of the Act, the harm caused by the excessive or inappropriate consumption of liquor includes various matters:

(1a) For the purposes of subsection (1)(a), harm caused by the excessive or inappropriate consumption of liquor includes—

(a) the risk of harm to children, vulnerable people and communities (whether to a community as a whole or a group within a community); and

- (b) the adverse economic, social and cultural effects on communities (whether on a community as a whole or a group within a community); and
- (c) the adverse effects on a person's health; and
- (d) alcohol abuse or misuse; and
- (e) domestic violence or anti-social behaviour, including causing personal injury and property damage.

I am also mindful of Gilchrist J's decision in *Liquorland McLaren Vale* [2022] SALC 53 where His Honour held variously that:

A licensing authority plainly must have regard to all the objects of the Act in considering an application. But in my opinion, the Act now contemplates that harm minimisation has primacy over the other objects, especially in connection with a designated application. I therefore reject Liquorland's submission to the effect that all the Act's objects must be treated equally. [at 133]

In the end, a licensing authority must 'balance each of the objects and arrive at an appropriate synthesis in the particular circumstances of the case by the way of a discretionary judgment', recognising that harm minimisation is of prime importance. [at 145]

In connection with the issue of harm minimisation, it is notable that s 3(1)(a) speaks of minimising the potential for harm and s 53A(2)(a)(i) speaks of harm that might be caused. Both require predicting the future. [at 159]

In *Executive Director of Health v Lily Creek International Pty Ltd*,³³ Ipp J discussed this concept and suggested that the judgment of Deane, Gaudron and McHugh JJ in *Malec v JC Hutton Pty Ltd*,³⁴ which dealt with the assessment of future losses in personal injury cases, provided some guidance as to how this issue in a licensing context, should be dealt with. The judgment in *Malec* makes the point that in connection with determining future events, hypothesis and conjecture are permissible and findings can be based on possibilities that fall short of being probable..... [at 160]

I am also mindful as observed by Gilchrist J in the *Liquorland McLaren Vale* decision that Parliament has not prohibited the sale of alcohol (at [140] – 145]) and that harm minimisation is just that, as opposed to the complete elimination of harm, (at [135]). What is required is striking an appropriate balance. In my view the conditions below strike the appropriate balance and are consistent with the requirement in section 3(1)(a) of the Act "to ensure that the sale and supply of liquor occurs in a manner that minimises the harm and potential for harm caused by the excessive or inappropriate consumption of liquor" (in light of the matters set out in section 3(1a) of the Act).

I turn now to outline my decision in respect of the various conditions to be imposed.

No takeaway sales before 11am

The restriction prohibiting takeaway sales before 11am has remained consistent throughout the trial period and based on my review, I am satisfied public consumption of alcohol has eased, particularly earlier in the morning, with the result that there are less intoxicated persons in public areas allowing health and outreach services to engage with clients to provide counselling, medical assessments, and other referral services.

I also note the feedback from some licensees that customers have generally adjusted to the later opening times with no net reduction in revenue. Some inconvenience remains for tourists which may, in part, be addressed through communication by accommodation providers. I recognise that the later opening times is an inconvenience to those who wish to purchase liquor prior to 11am, such as tourists and residents who prefer to do all their shopping before 11am as noted in Liquorland's submissions. I have therefore considered Liquorland's submission that the restriction should be amended to 10am. However, I have also considered the views of help service providers and representatives of Aboriginal communities received at a meeting in Port Augusta on 28 July 2022 that indicated overwhelming support for the 11am opening to remain. On balance I consider the later opening times has created a much-needed window to allow services to engage with persons suffering alcohol related harm, and such benefits outweigh any inconvenience caused to customers, including tourists. I therefore propose to retain this condition on an ongoing basis.

Restrictions on quantities

Based on the Review, I consider that the restrictions originally imposed and in force for two weeks which included restrictions on quantities per person per day and a requirement to produce identification such that transactions could be recorded were the most effective in reducing harms associated with the excessive consumption of alcohol.

The effectiveness of the restrictions reduced when the conditions were varied to quantities per transaction with no obligation to produce identification or recording of purchases. Based on the submission of South Australia Police, it is evident that multiple purchases are being made by individuals across the four bottle shops at concerning levels. However, I recognise that without technology to monitor such transactions, it is an impossible task for licensees to prevent such purchases. I therefore propose to provide licensees with an App called ID Scan SA which has recently been trialled in Ceduna and Coober Pedy. The App will record purchases of restricted items each day across each of the four bottle shops in the Port Augusta region such that licensees will be notified if a person has made a previous purchase and thereby exceeding the daily limits which apply under the licence.

I consider the following restrictions should apply per person per day:

- Up to two 750ML bottles of spirits; OR
- One 2L cask wine (any casks over 2L cannot be purchased) OR
- One 750ML bottle of fortified wine/port.

While I note that restrictions on spirits were initially imposed (one bottle per day) then subsequently lifted at the time the restrictions shifted to per transaction rather than per person per day, I consider some restrictions on spirits is necessary in light of the Review and the acute issues the restrictions are seeking to address. Moreover, two bottles of spirits per person per day is not onerous.

Takeaway sales prohibited to persons residing in prescribed lands

Since 2013, conditions have been in force in Coober Pedy which prohibit the sale of liquor for consumption off (takeaway sales) to persons residing in prescribed Aboriginal communities where consumption and possession of alcohol is not permitted. These conditions were originally imposed in 2013 to reduce the extreme risks to the safety of members of the Aboriginal communities in the wider region surrounding Coober Pedy caused by alcohol consumption to a dangerous level, violence, accidents and abuse and neglect of children.

The conditions were originally imposed following consultation and submissions received from the Board of Directors of AMYAC, the Umoona Tjutagku Health Service Aboriginal

Corporation, Umoona Aged Care Corporation and SAPOL. Similar conditions were also imposed in 2015 in Ceduna following consultation with affected communities.

As part of the review of liquor restrictions imposed in Port Augusta, I considered whether to impose a similar condition to prohibit sale of takeaway liquor to persons residing in prescribed lands to further minimise the risk of alcohol being brought into those communities and to seek to address the concerns expressed to me by APY Executive that without such a condition, community residents were incentivised to leave their communities and be exposed to dangerous levels of alcohol consumption that would not otherwise be permitted in their region. In light of the support provided by the APY Executive Board and Yalata Anangu Aboriginal Corporation, I propose to impose such a condition on an ongoing basis.

Taxi Condition

Given the positive feedback received from bottle shop staff in monitoring purchases as outlined in the Review, I consider it is appropriate to retain this condition on an ongoing basis.

Commencement of conditions

Liquorland's suggestion that the proposed ongoing restrictions ought not commence until 30 November 2022 has been considered, however I am confident that with appropriate signage and training in relation to ID Scan SA technology to be provided by my office, a commencement date of 1 November 2022 is reasonable for customers to be given sufficient warning of the requirement to show identification when purchasing takeaway liquor.

The existing conditions as part of the trial will continue until that date.

Conditions

I am satisfied that it is in the public interest to impose the following conditions pursuant to Section 43(2)(g) of the Act on bottle shops in Port Augusta on an ongoing basis, to be reviewed within 12 months from the date of this order:

1. The licensee must not sell liquor for consumption off the premises before 11am on any day.
2. Spirits, cask wine, port and fortified wine are restricted items. Customers may only purchase the following quantities of restricted items per person per day for consumption off the premises:
 - a. Up to two bottles of spirits; OR
 - b. One 2L cask wine (any casks over 2L cannot be purchased) OR
 - c. One bottle of fortified wine/port.
3. The limits applying to restricted items do not apply to the following persons:
 - managers and supervisors of station properties;
 - managers and supervisors of companies operating mining ventures;
 - other licensees.
4. Spirits, fortified wine and port shall not be sold for consumption off the premises in bottles exceeding 750ml volume.
5. The licensee shall not sell fortified wine or port in casks for consumption off the premises.

6. The licensee shall not sell liquor for consumption off to any person residing in a prescribed land.
7. Prescribed land, for the purposes of the licence conditions, includes the communities of Maralinga Tjarutja / Oak Valley, Yalata, Umoona, Anangu Pitjantjara Yankunytjatjara Lands, Northern Territory communities of Docker River/Kaltukutjara, Imanpa/Mt Ebenezer, Hermannsburg/Ntarja, Maryvale/Tijikala, Santa Teresa/Ltyentye Apurte and Finke/Aputula, Western Australia communities of Ngaanyatjarra Lands and Tjuntjuntjura.
8. The licensee must require photographic identification (driver's licence or proof of age card) to be shown when purchasing any liquor for consumption off the premises and licensees must use ID Scan SA for any purchase of liquor for consumption off the premises.
9. If ID Scan SA is not in operation for any reason outside of the licensee's control, the details of the purchase of any restricted item must be recorded (date, driver's licence/POA number, name, suburb, type of liquor and quantity purchased), either handwritten or electronic for the purpose of monitoring daily limits and those manual records are to be retained by the licensee for three months.
10. Liquor cannot be sold to any person seated in a taxi, including the taxi driver. Patrons may exit the taxi in the browsing lane to make a purchase, however liquor cannot be sold to a taxi driver on duty whether the taxi driver is seated in a taxi or by walk-up sales.

To allow sufficient time for customers to be notified of the changes in relation to ID Scan SA and the requirement to produce identification, I propose that the conditions outlined above will take effect from 1 November 2022. In addition to the ID Scan SA app, the Licensing Authority will assist in providing licensees with training and necessary signage to forewarn customers of the changes. The existing restrictions will remain in effect until that time.

Dini Soulio
Liquor and Gambling Commissioner
30 August 2022