On 20 December 2006 I released an interim decision on my inquiry pursuant to section 64 of the Liquor Licensing Act 1988 (the ‘Act’) to consider:

1. The extent to which the sale and supply of liquor in Halls Creek is consistent with the good order and proprietary and the minimisation of harm or ill-health caused to people or any group of people due to the use of liquor.

2. Whether it was in the public interest to impose further restrictions on the liquor licences in Halls Creek.

That decision summarised the submissions that had been received and proposed the following restrictions, which would be imposed as conditions of the relevant liquor licences:

1. Packaged liquor may only be sold between 12.00 noon and 6.00 pm, Monday to Saturday.

2. The sale and supply of liquor is prohibited before 12.00 noon on any day except where it is sold ancillary to a meal, or to a lodger.

3. The sale of 750ml beer bottles (“King Browns”) and wine in flagons is prohibited.

4. The sale of wine in a cask greater than 2 litres in volume is prohibited.

5. The sale of fortified wine is prohibited.

6. Liquor may only be purchased in the following volumes per person, per day:
   - the sale of non-fortified wine in casks is to be limited to one 2 litre cask; or
   - 12 cans of full-strength beer; or
   - 24 cans of low alcohol beer (3.5% or less); or
   - 12 ready-to-drink pre-mix cans; or
   - 2 bottles of wine.

7. The sale of packaged liquor in glass bottles is prohibited with the exception of non-fortified wine.

8. All servers of liquor are to be trained within 21 days of being employed. The training is to be provided by the Police or The Health Department and the licensees are required to maintain a register of staff training.

9. Licensees are to lodge quarterly liquor sales data in accordance with an approved form.
Pastoralists and station owners can register with the police to seek an exemption from the restrictions under conditions 1, 2 and 6 on the basis that the liquor is to be consumed on pastoralist or station owners’ premises only.

I further recommended the establishment of a local Accord, comprising of the police, local government, licensees and key community leaders, to further consider local initiatives to address alcohol-related problems, and indicated that it would be desirable to develop a dress code which reflected local community expectations.

Natural justice requires that the licensees be afforded an opportunity to comment on the proposed conditions and the submissions that were lodged. Accordingly, the licensees of the Halls Creek Store and the Kimberley Hotel have lodged submissions in response to the interim decision.

**SUBMISSIONS BY THE LICENSEE OF THE HALLS CREEK STORE**

Mr Gavin Crocket of G D Crocket & Co responded on behalf of the licensee of the Halls Creek Store.

Mr Crocket submitted that an analysis of Halls Creek health and police statistics reveal a lower crime rate and improved health conditions since the original conditions were imposed on the two category A licences in 1992. Between 1992 and 2004 liquor restrictions in Halls Creek reflect —

- a significant decrease in violent crime;
- a significant decrease in liquor infringements;
- of a population of approximately 5091, only approximately 0.01% of residents are chronic alcoholics;
- levels of alcohol-related family violence and underage drinking in Halls Creek are consistent with the Western Australian average;
- a decrease in the number of hospital admissions in Halls Creek;
- Halls Creek health and police statistics reveal the town probably has the lowest in the Kimberley region, particularly compared to towns like Fitzroy Crossing and Derby.

Accordingly, the statistics do not support additional liquor restrictions being imposed on the category A liquor licences in Halls Creek. The evidence shows the existing conditions on the licences are effective, and the conclusions drawn by the Health Department and the police are unsupported by the evidence.

According to Mr Crocket, Halls Creek’s licensed outlets already have the most onerous conditions in the Kimberley. Alcohol-related problems are not isolated to Halls Creek. Surrounding towns and Western Australia in general suffer far higher levels of alcohol-related crime and health detriment, and this inquiry ought to be pro-active in encouraging alternative avenues of reform in Halls Creek, especially given the liquor store has an unblemished record over its 34 years of operation.

Mr Crocket provided the following crime statistics for the Kimberley region:

**Assault**

- The number of aggravated assaults dropped by 29% from December 2004 to March 2006.
The number of other assaults fell by 50% from December 2004 to March 2006, which clearly demonstrates an improvement.

It is observed that Western Australia as a whole has experienced a 52% increase in assaults since 1991.

It is observed that the town of Derby experienced an approximate 13% increase in the number of assaults from 2005 – 2006, albeit that no further liquor restrictions are proposed for Derby.

Although Western Australia is generally experiencing more alcohol-related assaults, Halls Creek has shown a decline in the number of violent crimes for the 2004 – 2006 period (per police statistics).

**Liquor Infringements**

It is observed that in 2006 at a section 64 inquiry conducted by the former Director of Liquor Licensing, Senior Sergeant David Hornsby stated that since 2005, police have run an ongoing operation specifically targeting public drinking and anti-social offences throughout the town.

As a result of additional police focus, the number of liquor infringements has reduced by 70% from 2005 to 2006.

Mr Garth Rider, a former detective in Halls Creek, and subsequent employee at the Halls Creek Store, is of the view that many of the liquor infringement notices were issued to the same people (repeat offenders, particularly visitors from outlying areas).

Chronic alcoholism in the Halls Creek region according to Mr Rider is estimated to be in the vicinity of 50 people. This should be contrasted against the 5091 people who live in the Halls Creek Shire.

It is observed that the aggregate sum of liquor infringement notices is extremely low (3.52 liquor infringement notices are issued per week in Halls Creek).

**Family Violence**

It was stated by Senior Sergeant David Hornsby at the 2006 inquiry that in 77% of family violence incidents (in Halls Creek), alcohol was directly involved.

Statistics supplied by the Commissioner of Police indicate that alcohol is a direct factor in 73% of all assaults in Western Australia as a whole.

Halls Creek’s levels of alcohol-related family violence are consistent with the State average.

**Underage Drinking**

Senior Sergeant David Hornsby in 2006 submitted that police frequently locate alcohol-affected children during patrols. Underage drinking is not isolated to Halls Creek.

Western Australia as a whole statistics:

- 88% of school students aged 12 – 17 have experimented with alcohol.
- 8% of 12 year olds, 54% of 15 year olds and 76% of 17 year olds have consumed more than 10 alcoholic drinks.
- In this regard Halls Creek statistics are consistent with the State’s underage drinking figures.
The following health statistics for the Kimberley region were submitted:

**Hospital Admissions**

- The Director of Nursing, Steve Norris, submits that hospital admissions in Halls Creek are not measurably increasing.
- Following the initial liquor restrictions in 1992, the number of hospital admissions dropped by 24.9%.
- The number of Emergency Flying Doctor evacuations has decreased since 1992.
- It is observed that the town of Derby has experienced no drop in alcohol-related admissions due to restrictions.
- Halls Creek is experiencing a far greater improvement than other alcohol-affected areas/communities in the Kimberley Region.

**Domestic Violence**

- Dr Margaret Stevens submits in the 2006 inquiry, that one reason for further restricting the distribution of alcohol is due to domestic violence towards children.
- No consistent correlation between alcohol restrictions and domestic violence can be observed.
- This suggests that the problem of domestic violence is linked to a host of other factors, not simply the availability of alcohol. Dr Stevens fails to address these issues.

**Alcohol-free Sundays**

- Dr Stevens claims that several years ago things were better, when there was no packaged liquor on Sundays and low strength beer on Thursdays. This submission is factually incorrect, in that —
  - According to Peter Tierney, proprietor of the liquor store, and Garth Rider, there has never been an alcohol-free Sunday.
  - Statistics show that health conditions in Halls Creek have improved over the last 15 years.
  - Hospital admissions and flying doctor evacuations are lower than previous years.
- According to Mr Crocket, there is no evidence to suggest that Halls Creek requires further restrictive conditions on the liquor licences.

Mr Crocket suggests that responsible residents and tourists should not be inconvenienced, when the current restrictions have yielded positive results. Restrictions can only have a partial impact on reducing alcohol-consumption. Members of the public who are determined to secure liquor will somehow achieve their aim. This is reflected in the study undertaken in the Kimberley by Peter D’Abbs and Samantha Torgi (*Peter D’Abbs and Samantha Torgi, Liquor Licensing and community action in regional and remote Australia. A review of recent initiatives (2001)*). The findings reflect —

“Where restrictions have targeted wine sales, there is evidence of a compensatory shift to other beverages, mainly beer, but this has not completely offset falls in wine sales. Similarly, examination of liquor purchases by
neighbouring outlets suggests that falls in apparent consumption in the target community are partially offset by geographical shifts in purchasing patterns, but not to an extent sufficient to negate all of the local reductions in sales."

Mr Crocket states that conditions were originally imposed on the category A licences in Halls Creek in 1992. Since that date, some four other formal inquiries have been conducted, with the largest inquiry being conducted in 2003. At page 23 of that decision, the Director accepted the following evidence and submission:

"Professor Stockwell, in his deliberation, has formulated the view that the responsibility for minimising the harm associated with alcohol use cannot be placed on entirely on any single group in society, whether this be the liquor industry, the police, health department, individual drinkers, liquor licensing authorities or local communities."

Similarly, the Director gave careful consideration and relied on information provided by Professor Stockwell in Volume 5 Alcohol Misuse and Violence at page 303. These factors are:

"Other community needs and concerns to which the liquor licensing legislation may pay heed are:

- The desire of the majority of adult Australian to enjoy access to their favourite recreational drug.
- The need to foster a stable and profitable retail alcohol industry.
- The need to foster and support tourism.
- The right of residents to the peaceful enjoyment of their neighbourhood.
- The needs of governments to collect taxes."

The profitable and stable alcohol industry referred to by Professor Stockwell comes into sharp focus with the suggested additional condition 6 as set out in the interim decision. There is no evidence to support the Health Department’s conclusions, which underpin the suggested condition, in fact the local evidence or knowledge suggests the opposite.

Local Knowledge

The Kimberley Hotel has no packaged liquor section on the licensed premises.

The taking of bulk liquor into dry communities from the store in Halls Creek does not happen for the following reasons:

(a) The store is tightly controlled.

(b) All indigenous members of the community are known to the licensee family who have operated the store for some 34 years.

(c) Any bulk purchase (being 5 cartons or blocks of beer, 12 litres of cask wine, 5 litres of spirits) is immediately reported to the police and the form is filled in by the purchaser and faxed to the police immediately after the purchase.

(d) Bulk orders are infrequent.

(e) Members of the community (refer to the attached statements) affirm that “sly grogging” is done mainly through liquor purchased in Kununurra.

(f) Many of the problem drinkers have not purchased liquor at the store for the past 5 – 10 years because they have been refused service by the licensee, as they do not comply with the House Management Policies, the provisions of the Act, the high standards of
host responsibility maintained by the store, and are known to the licensee to fall in the class of persons who should be refused service.

A confidential analysis by an Accountant, of the financial detriment that would be caused by the implementation of conditions 6 and 7, indicates that the economic viability of the store would be severely compromised.

Since the findings of the 2005/2006 inquiry, there has been no significant change in the circumstances in Halls Creek. If anything, the status quo of health and crime prevention has improved. It follows that there is no reason to advocate further stringent conditions on the licences.

According to Mr Crocket, the vast majority of indigenous people in Halls Creek are known to the proprietors of the store and a fair, hard and equitable management regime is implemented by the owners of the store, across the board.

The store remains one of the consistent organisations and businesses in the town, which has provided stability, proper control and the responsible supply and sale of its products in the community. The store is proactive in community participation, subsidises community events, refuses liquor to be part of any logo in sponsored events, promotes current educational programs and is supportive of the community.

The store provides a broad range of liquor products, suitable facilities, and extensive services to the community of Halls Creek and tourists visiting the area. People who abuse liquor, by and large, are excluded from purchasing liquor from the store, unless the person changes so as to comply with the strict guidelines prescribed by management.

The store’s management criteria are probably superior to the majority of operators who are involved in the leisure, liquor and hospitality industry. All of its staff have been trained through the prescribed educational centres.

The store does not allow liquor advertising. Outside the store the only advertisement relates to low strength beer. Educational brochures are regularly handed out and distributed in the community.

Delinquent behaviour by drunks results in the Halls Creek Store being closed until delinquents rectify their poor habits — the entire community suffers as a consequence of closure (which has the desired effect on the delinquent consumer of liquor).

The store, as part of its proactive participation in the community, has triggered the formation of an Accord, the first meeting having taken place on 21 February 2007.

The Accord is funded for the first six months by the store, and the store has been able to involve a number of high profile participants from both the private and government sector. The Accord, with a strong interest from all levels of the community, is in a position to deal with local issues, particularly those aspects as identified in conditions 6 and 7 of the interim decision.

According to Mr Crocket, an analysis of the information submitted to the current review reveals that the following members of the community show strong support for the status quo of the restrictive conditions:

The Chief Executive Officer of the Shire of Halls Creek does not support change in the conditions of the liquor licence at this time and requests that the existing conditions on the licences in Halls Creek be renewed for another 12 months. The two reasons advanced by the CEO are —

1. Further restrictions merely moves the problem of substance abuse elsewhere in the region.
2. Restructuring beer sales to low alcohol beer, from past experience, indicates that an adverse impact is experienced in communities such as Fitzroy Crossing and Kununurra. The Chief Executive Officer remains responsible for the implementation of local authority statutory functions, the administration of services and facilities and the community welfare in the Shire of Halls Creek. His views on these issues should be significant.

Senior Sergeant Hornsby believes that the alcohol-related issues in Halls Creek require an holistic approach. The effects of restrictions are, in themselves, not sufficient to resolve the many and complex issues in Halls Creek. Liquor restrictions are necessary to assist in making Halls Creek a safer community, however should never be implemented in isolation without support from other initiatives.

Mr Dennis Eggington, CEO, Aboriginal Legal Services, WA, has reservations about additional restrictions leading to further aspects of racism surfacing in the daily lives of Aboriginal and Torres Strait Island people (in Halls Creek). Mr Eggington asserts that restrictions on bulk purchasing are ineffective unless properly monitored throughout the Kimberley region (sly grogging).

Mr Grant Smart, CEO, Australian North West Tourism, is of the view that further restrictions on the sale of alcohol will have a negative impact not only for tourism in Halls Creek but for the Kimberley region overall.

Mr Bernard Whewall, Managing Director, Broome and the Kimberley Holidays believes that tighter restrictions on the sale of alcohol could well create more economic damage than is currently caused by the social problems the licensing authority is attempting to address.

Mr Peter Howell, Managing Director, Nexus Freight, has real concerns about yet further liquor restrictions in a locality which already has some of the most stringent liquor restrictions in the country.

Mr Paul Murphy, resident employed in Halls Creek, believes the current liquor restrictions are adequate, although he has reservations as to the success, and more restrictions will not necessarily reduce the problems, but only move them elsewhere.

It is submitted, that there remains a challenge for the community of Halls Creek to remain on top of alcohol-related issues in that community. Evidence suggests a fairly strong headway start has been made in addressing problems resulting from alcohol within this community.

Halls Creek is a community which can demonstrate, though community involvement and other issues, including carefully formulated conditions on the licence, that the community is capable of turning around.

The Accord reflects a large body of informed people willing to participate in future programs. This is the proper forum to enquire into changes to conditions on the licences. There is a wealth of knowledge amongst the participants in the Accord, all of whom have a bona fide purpose to make a better community in Halls Creek by participating in the Accord. The Accord’s programs will advance the welfare of this community as a whole.

It is submitted that in light of the above, and on the finding in the 2005/2006 inquiry, there appears to be no need to make material changes to conditions on the licence at this stage. However, there needs to be closer consultation on how to improve the welfare of this community through collective or collegiate activities of members of this community.
(a) Condition 1 has already been activated by the store, and its experience suggests that 12.00 noon until 6.30-7.00 pm is a more reasonable time for the period in which to sell packaged liquor Monday to Saturday.

(b) Condition 2 concerning the issue of food is of no application to the store owner because of the prescribed time period.

(c) Condition 3 acknowledged by the store owner is an aspect which could assist in public health, as is condition 4.

(d) Condition 5 has its own difficulties, in that particular members of the community will seek out fortified wine at other venues or localities in the Kimberley. It simply shifts the problem.

(e) The store is opposed to the implementation of conditions 6 and 7 for the reasons stated earlier.

(f) Condition 8 is already adhered to by the store and has been for several years.

(g) The store’s management policies are that condition 9 presents fairly logistical problems for the licensee by providing this material information, because it involves a large time consuming exercise and believes the subject matter of this condition should be a matter which could be dealt with at the Accord level.

According to Mr Crocket, any additional restrictions placed on the store licence are going to have a detrimental effect throughout the community, which cannot be said to be in the public interest. Mr Crocket also submitted a statement from Ms Millie Hills, Community Member (foremost) and Chairperson of the Ngoonjuwah Council Aboriginal Corporation, Halls Creek. Ms Hills states that as Chairperson of the Ngoonjuwah Aboriginal Corporation, she represents the majority of community people living in Halls Creek. The following comments are provided from locals, along with her personal views on the imposition of restrictions on alcohol sales in Halls Creek:

- Why should the local people be penalised for the wrongdoings of others who choose to put themselves in a situation where they have nowhere to drink, eat or sleep, other than out in the public eye for all to see.
- Many locals will travel some 360 kms to Kununurra to purchase their alcohol should the restrictions be put into place.
- The hotel needs to keep their patrons on licensed premises whilst consuming alcohol – not send them across the road out in public.
- Take-aways should only be purchased via a drive-thru service, to alleviate street drinking and loitering. We do have a taxi service in town.
- Introduction of by-laws in remote Aboriginal communities have had a major impact on members by way of family breakdowns, family tragedies, displacement of families, all due to wanting access to alcohol, and which meant that people had to drive to town and stay in town as alcohol is not allowed in their community.
- Take-away the by-laws and allow people the right to drink alcohol in their community. Strong community members need to control this and implement rules for their own community.
- What are the Agencies in Halls Creek doing about this very anti-social behaviour of some members of our community who continue to do what they do?
The Shire has a Ranger who can use the Local Government Act to enforce the laws of loitering and squatting in public places. Why is this not being done?

Police can use the Police Act to enforce the law on street drinking, disorderly conduct etc. Why is this not being enforced?

Alcohol Centre. What programs are being run through the centre? Any progress with anyone?

Sobering Up Shelter. Free accommodation, shower and possibly something to eat. What else do they do?

Safe House. What programs are being run out of the Safe House?

Night Patrol. Free transport to the pub and shops.

SUBMISSIONS ON BEHALF OF THE LICENSEE OF THE KIMBERLEY HOTEL

Mr Peter Fraser, Ilbery (Solicitors) presented the following submissions on behalf of the licensee of the Kimberley Hotel:

It is submitted by the licensee of the Kimberley Hotel, that overly restrictive conditions may be counter-productive and not necessarily in the public interest. According to the licensee, the conditions imposed by the previous Director in January 2004 had an unintended consequence in that they did not reduce the harm or ill-health occurring in Halls Creek, but rather, due to their restrictive nature, created a volatile situation.

On 7 July 2004, a teleconference was held between the Director, Halls Creek licensees and representatives from key agencies in Halls Creek. During the course of the teleconference, the director was advised:

(a) Mr Peter Connell, the CEO of the Shire of Halls Creek, advised that during the period of 1 March 2003 to 1 July 2003, 18 people were admitted to the Women’s Refuge Shelter. Following the imposition of the restrictive conditions, between 1 March 2004 and 1 July 2004, 97 people were admitted (a 539% increase).

(b) Mr Martin Peirson-Jones advised that his hotel staff were receiving regular abuse and threats, and on several occasions staff had been physically assaulted (the Duty Manager required hospital attendance on 1 May 2004). Mr Peirson-Jones further advised that admissions to the Halls Creek Sobering Up Shelter had increased despite the liquor restrictions, and the local District Hospital had experienced a rise in the number of people treated as a result of being injured during violent assaults.

As a result of the evidence that was given during the course of the teleconference, the Director amended the restriction which only authorised packaged liquor between 6.00 pm and 9.00 pm on any night to the sale of low strength alcohol, to the sale of packaged liquor between 7.00 pm and 9.00 pm on any night of permitted trade to be restricted to the sale of six RDTs or half a carton of full strength beer per person.

It is further submitted that in the initial course of restrictions —

(a) Volatile situations approaching a riot involving anywhere from between 100 to 200 aggressive individuals occurred on a regular basis within the vicinity of the Kimberley Hotel.

(b) Staff of the Kimberley Hotel were assaulted by patrons attempting to obtain alcohol.
(c) Numerous assaults occurred between intoxicated individuals attempting to obtain alcohol. These range from the minor to:

(i) fighting outside the saloon bar gate with sticks and stones being used as weapons – 5 March 2004;
(ii) a female person being stabbed – 21 April 2004;
(iii) a vicious assault within the vicinity requiring ambulance attendance – 14 May 2004;
(iv) a male person being stabbed with a pair of scissors and struck on the forehead with a rock requiring ambulance and police attendance – 4 June 2004.

Significant property damage occurred, including:

(i) On 30 March 2004 a fight erupted resulting in motor vehicle windows being smashed with a stick. On the same day a fight started in the saloon bar resulting in a chair being thrown at a jukebox.
(ii) On 28 May 2004 an empty bottle was thrown into the bottle department fridge destroying glass panelling.
(iii) On 3 June 2004 a chair was thrown into the ceiling destroying and bringing down a light.
(iv) On 5 June 2004 a fight erupted resulting in a motor vehicle being torched and destroyed.

The imposition of more stringent conditions resulted in:

(a) The need for police attendance to defuse tension between intoxicated persons attempting to gain entry to the hotel and crowd controllers seeking to prevent such entry.

(b) Large numbers of juveniles attempting to enter the premises, not only through the main doors but by jumping over fences and gaining access through the roof.

(c) Large numbers of patrons humbugging within the licensed venue.

(d) Limited on-site sales.

(e) Binge drinking during the early part of the day.

In support of these assertions the licensee provided statements from the following witnesses:

- Patricia McKay;
- Jamie Savage;
- Alan Harris;
- Andrew Black;
- Russell Tremlett;
- George Hremeviuc.

During this period, there appeared to be an increase in the number of intoxicated people arriving at the Hotel upon opening. Given that no liquor is available in town prior to opening, the only inference according to the licensee that can be drawn is that alcohol was being obtained by problem drinkers from outside the township. The experience in Halls Creek in relation to overly restrictive conditions is not unique. It is asserted that a similar situation occurred in Meekatharra following a succession of Section 64 hearings.

On 11 June 2003, pursuant to Decision A108206 restrictive conditions were imposed upon the licences within Meekatharra, namely:
(a) Packaged liquor may only be sold between 12 noon and 10pm Monday to Sunday for the Hotel licences, and between 12 noon and 10pm Monday to Saturday for Woolworths Supermarket.

(b) The sale of packaged liquor between 6pm and 10pm on any night is restricted to the sale of low strength alcohol (up to 3.5% ethanol by volume or less).

(c) The sale of 750ml beer bottles is prohibited.

(d) The sale of wine in casks or flagons is limited to one 2 litre cask or flagon per customer per day.

(e) The sale of fortified wine in 2 litre casks or greater is prohibited.

Following the imposition of these conditions submissions were made to the licensing authority by the licensees and local police in Meekatharra advising that restrictions had caused increased tension between indigenous patrons and hotel staff to such an extent that the situation in the hotels was volatile.

Evidence was heard by the Director in relation to this unforeseen result of the imposition of restrictive conditions, and accordingly, in Decision A108206, the Director:

(a) accepted it would be contrary to the public interest if the existing trading hour restrictions were allowed to continue in their current form;

(b) modified the restrictive conditions as follows:

(i) Packaged liquor may only be sold between 11am to 10pm Monday to Sunday for the Hotel licences and between 11am to 10pm Monday to Saturday for Woolworths Supermarket.

(ii) Only the equivalent alcohol of 12 cans of full strength per customer can be purchased as packaged liquor between 9pm and 10pm on any permitted day of trading.

(iii) The sale of 750ml beer bottles is prohibited.

(iv) The sale of wine in casks or flagons is limited to one 2 litre cask or flagon per customer per day.

(v) The sale of fortified wine in a 2 litre cask or greater is prohibited.

It should be noted that the modified conditions deleted the requirement that the sale of packaged liquor between 6.00 pm and 10.00 pm be limited to low strength alcohol and increased the hours during which packaged liquor may be sold from 12.00 noon to 10.00 pm to 11.00 am to 10.00 pm.

It is submitted that the experiences within the communities of Halls Creek and Meekatharra demonstrate that, while liquor restrictions can have a positive effect in reducing the harm or ill-health being caused to a section of the community through the use of liquor, if overly restrictive, the beneficial effects can be nullified, with a significant increase in tensions between problem drinkers and licensees and staff. This tension is illustrated by outbreaks of violence and destructive behaviour.

Following the modification of the licence conditions within Halls Creek in 2003, the licence conditions were reviewed and renewed on:

(a) 29 April 2005; and

(b) 13 March 2006.
Both in 2005 and 2006 further modification of the licence conditions were not required. There were no further outbreaks of the violence and dangerous behaviour associated with the 2004 restrictions.

It is submitted that the licensee of the hotel has demonstrated a commitment to taking all steps necessary to improve the situation in Halls Creek, however without a corresponding effort by health agencies and community services within Halls Creek, to target and divert funds to addressing the problems in Halls Creek, it is doubtful whether further liquor restrictions will have any effect upon the situation.

The following is provided in response to the submissions that were received in respect of the current Inquiry and summarised in my Interim Decision.

1. Commissioner of Police

In the submission on behalf of the Commissioner of Police, It is noted that the overall crime statistics for the Halls Creek Police Sub-District indicate a significant reduction in the number of reported crimes. Whether this reduction can be put down to the liquor restrictions or better policing is not an inference that can be drawn from the data.

For example, the Australian Institute of Criminology in the 2005 document Record 17: Halls Creek Alcohol Action Advisory Committee Projects notes that the sobering up shelter within Halls Creek has been successful in diverting 82% of all police detentions for public drunkenness. The study further notes that as a result of the existing liquor restrictions, comparisons of domestic violence instances and injuries related to alcohol use pre and post restrictions show that there has been a decrease in both.

When assessing the success or failure of liquor restrictions, solely focusing upon reduction in crime and/or hospital admissions, for example, can be misleading. The impact of other community initiatives cannot be underestimated, nor the effect upon the community when these initiatives are discontinued. Too often, however, stakeholders automatically place the blame upon licensed premises without looking within their own community to determine if there have been any other changes which can have any effect upon the visible effects of the abuse of alcohol within Halls Creek.

Within the Interim Decision, the only category of offences that is focused upon is assaults and traffic offences. It is submitted that traffic offences are not a relevant consideration, as a person whose blood alcohol reading is over the legal limit does not equate to a finding that a person was intoxicated. The police have stated that the level of drink driving offences within Halls Creek is unacceptable. This may well be the case, however, this is a matter for education and not liquor restrictions.

It is noted that the level of assaults has arisen over the reporting period. It would appear that the police have identified the cause of the increase in assaults as a result of an increased confidence in police, with more assaults being reported. This may well be the case, however, it cannot be overlooked or ignored that in 2004 unduly onerous restrictions resulted in an increase in assaults, an increase in hospital admissions, and an increase in admissions to female shelters. The only inference that can be drawn from the history of Halls Creek is that the restriction of liquor can result in tensions between problem drinkers and the community, problem drinkers and the police and problem drinkers and licensed premises within the townsite. The clear indication is, however, that a reduction in alcohol insufficient to meet the needs of problem drinkers is all too often the trigger for aggressive behaviour.

The police also provided statistics in relation to domestic violence. The claim is made that in 77% of the family violence incidents, alcohol was directly involved. The research study conducted by Jane Mulroney from the Australian Domestic and Family
Violence Clearing House entitled “Australian Statistics on Domestic Violence” has the following to say in relation to domestic violence amongst the Aboriginal community:

- Based on offences reported to police in Western Australia, indigenous women are 45 times more likely to experience family violence than non-indigenous women (page 10).

- Reasons for the higher rates of indigenous family violence have been reviewed. The Northern Territory Data Collection Project Report highlighted that indigenous Territorians generally conduct their lifestyle and activities in the public arena and accordingly, when altercations do occur within a family, violence may be harder to conceal and more likely to be drawn to the attention of external support agencies. The Violence in Indigenous Communities Report (Memmott 2001) also refers to multi-causal factors that explain higher rates of violence within Aboriginal communities. Historical circumstances, loss of land and traditional culture, the disempowerment of traditional elders, the breakdown of community kinship systems in Aboriginal law, entrenched poverty and racism are clear factors underlying the use of violence.

The issue of violence within the Aboriginal community, particularly family violence, has been the subject of extensive research. Given the multi-causal effects of domestic violence within an Aboriginal community, caution should be exercised in portraying domestic violence as a result of alcohol abuse.

While the abuse of alcohol may well play a part, the danger in focusing upon the role of alcohol in disputes of this nature is that important causal factors may well be downplayed or ignored. Rather than addressing these serious issues, it is all too easy for stakeholders to throw their hands in the air and blame the drinking patterns of the proponents of domestic violence.

It has been alleged that in almost every assault, either the victim or the offender or both are heavily affected by alcohol. Although not expressly stated, based upon evidence given previously by officers on behalf of the Commissioner of Police, most recently in the ETP hearing conducted in Broome in relation to the Roebuck Bay Hotel in 2006, the writer is aware that the official crime statistics of the WA Police System does not include indicators in relation to whether or not alcohol played a part in the offence. Accordingly, the assertion that in almost every assault either the victim or the offender or both were heavily affected by alcohol, it is presumed, is based upon anecdotal evidence from individual police officers within Halls Creek.

The difficulty with a blanket statement, however, that victims or offenders were affected by alcohol is what inference is to be drawn by the Licensing authority. This statement would appear to be at odds with the comments made by Inspector Paul Ferguson in the West Australian on 29 March 2006, during the course of which he stated:

(a) Local police had only received a handful of sexual assault complaints in the past year and some of those were for complaints regarding a slap on the bottom, nothing like the horrifying stories of assault that have been whispered throughout the community.

(b) The environment existed for widespread sexual abuse in Halls Creek but there was no evidence.

Based upon Inspector Ferguson’s comments it is submitted that the anecdotal evidence of a considerable number of sexual assaults is nothing more than speculation, rumour, hearsay and innuendo. The claim that there is evidence to
support that these types of offences involve alcohol to some degree is, at best, dubious.

The focus of the Interim Decision appears to be on assaults, particularly assaults of a domestic or family nature, and sexual assaults. Based upon the comments made during the decision it would appear that other categories of offences have reduced during the period when restrictions have been in place.

Based upon the statistics provided, it is difficult to determine:

(a) The extent to which alcohol was a contributing factor.

(b) Given that Halls Creek is such a small community, the extent to which the behaviour complained of is widespread or a result of the actions of repeat offenders.

It is clear, however, that with offences of this nature a reduction in offending will only occur through:

(a) Appropriate court based orders in relation to anger management and family counselling.

(b) Interventionist programs implemented by the Department of Health and Community Services, particularly in the area of domestic violence.

(c) A shift in the cultural beliefs of Aboriginals which, to an extent, condones such behaviour (with the exception, of course, of sexual abuse).

A matter highlighted by the police in their submissions is the considerable impact that effective policing can have upon the drinking habits of alcohol abusers in Halls Creek. Within Halls Creek the abuse of alcohol by the affected section of the public is very visual, given that alcohol is not consumed within the home, but rather within public areas within the townsite.

Whilst liquor restrictions impact upon the supply of liquor at the point of sale, the reality is that licensees have no control over the manner in which liquor is consumed, or by whom, once the purchase is made and the purchaser leaves licensed premises.

The practice within Halls Creek is for liquor to be purchased in small amounts, normally a half carton, by alcohol abusers, with the alcohol then being shared amongst several people.

It is submitted that the practice of the most visual alcohol abusers within Halls Creek is not to purchase liquor in greater quantities as, whether they purchase a half carton or a carton, due to the practice of sharing the alcohol with family and friends, they are still likely only to consume one to two cans themselves. It is rare for intoxication to be reached based upon the purchases made by an individual problem drinker. Rather, intoxication is reached based upon the consumption of alcohol supplied by a number of different people throughout the course of the day. The effect of this practice is that while licensees within Halls Creek practising the responsible service of alcohol do not supply alcohol to intoxicated people, the reality is that the alcohol purchased will be supplied to problem drinkers who, in all likelihood, are already in a considerable state of intoxication.

Street drinking and public intoxication, when associated with unruly behaviour, are offences and it is significant to note that since 2005 Halls Creek Police have specifically targeted these behaviours. By denying problem drinkers within Halls Creek public areas within which to drink, a significant beneficial side effect is the breakdown
of the communal practice of sharing alcohol. The results achieved by the police through this practice demonstrates that the restriction upon the availability of alcohol is only a small step towards reducing the harm and/or ill health caused within Halls Creek due to the use of alcohol. Greater results in reducing harm or ill health will only be achieved by the implementation of strategies directed towards changing the drinking habits of problem drinkers, as opposed to their purchasing habits. It is submitted that there is recognition of this fact by the police in the restrictions proposed by them.

The majority of submissions made by the police were directed towards modifying the behaviour of problem drinkers once liquor has been purchased. It is to be noted that the restrictions focused upon:

(a) Further crowd controllers within licensed premises.
(b) Further training for staff employed upon licensed premises.
(c) Steps to be taken to prevent public drinking (i.e.: signage advising that consumption of alcohol in the vicinity of licensed premises is not permitted).
(d) Legislative change to designate areas where alcohol is not permitted to be taken.
(e) The confiscation of alcohol.
(f) The establishment of a wet mess in Balgo.

The thrust of their submission would appear to be that extensive changes to liquor restrictions are not required. Recognising that liquor restrictions are only a part of the puzzle to be solved to reduce harmful drinking in Halls Creek, the police focus appears to be upon matters outside the control of individual licensees.

2. **Executive Director of Public Health**

The submission of the Executive Director of Public Health has not relied upon any statistics, i.e.: such as hospital admissions, sober up shelter admissions, to support her submission. Rather, she has relied upon a visit to Halls Creek conducted by her during the course of which she consulted with various un-named local stakeholders about the alcohol-related harm in the town.

Dr Stevens states that several years ago things were better, when there was no packaged liquor on Sundays and low strength beer on Thursdays. It will be noted, that at no time has there been a complete restriction upon the sale of packaged liquor in Halls Creek on a Sunday. Further, the reference to restrictions which allow only low strength beer on Thursdays can only be a reference to the situation in Halls Creek in 2004. The restriction referred to by Dr Stevens as resulting in “things being better” had exactly the opposite effect. As discussed above, due to the dramatic increase in women being admitted to Women’s shelters, the violence perpetuated against staff of the Kimberley Hotel and the near riotous behaviour of problem drinkers within the town, the restriction referred to by her as “making things better” was repealed.

Dr Stevens also states that restrictions have not always been enforced, with intoxicated people seen being sold packaged liquor and underage and untrained bar staff being employed.

The matter being address by Dr Stevens is clearly a policing matter and it is significant to note that in their submissions, the police refer to the zero tolerance approach taken to liquor licensing infringements since 2005. It is significant to note that no licensed premise within Halls Creek, either since 2005 or since implementation of liquor
restrictions in 2003, have ever been charged with selling alcohol to an intoxicated person. Further, no licensed premises has ever been charged with having underage staff upon licensed premises.

These criticisms of the assertions made by Dr Stevens is not to suggest that she is incorrect in stating that sections of the community within Halls Creek are experiencing harm and ill health as a result of alcohol. Rather, it is submitted that the errors made by her indicate that she has only “skimmed” the surface of the problems within Halls Creek and has not given adequate consideration to the steps that are required to be taken to address these problems. It is submitted that Dr Stevens has failed to recognise that:

(a) The majority of persons within Halls Creek who abuse alcohol regularly are itinerant. They have no ties to Halls Creek in the sense of employment or housing.

(b) The balancing act to be conducted by the Licensing authority in relation to the imposition of restrictions is one between imposing restrictions which are effective as opposed to overly restrictive conditions which has the effect of causing persons at risk to move to another townsite where liquor restrictions are less.

(c) As evidenced in Halls Creek in 2004 and Meekatharra in 2005, overly restrictive conditions can also have the effect of increasing tensions between problem drinkers and licensees to the extent that more harm is done than good.

Finally, it is also of significance to note that the restrictions proposed by Dr Stevens are significantly more onerous than that proposed by the police who have day to day contact with the affected section of the public.

3. Mr Keith Lethbridge, Project Officer, Department of Indigenous Affairs/on behalf of the CEO of the Elders Reference Group at Halls Creek.

Mr Lethbridge, in both his capacities, has advocated extremely onerous restrictions upon the sale of liquor within Halls Creek. Mr Lethbridge has failed to recognise that:

(a) Historically in Halls Creek when tighter restrictions have been imposed, they have been unsuccessful due to the result in outbreak of violence against both Hotel staff and other members of the community.

(b) Halls Creek cannot be viewed in isolation. Problem drinkers within the community, in the event unduly onerous restrictions are imposed, will simply move to a new locality where alcohol is easier to obtain.

Mr Lethbridge, in his submission, also fails to recognise that the restriction of alcohol will not resolve the problems faced by the affected section of the public. Mr Lethbridge, at 2.4 of the Interim Decision, has adopted the position that the restriction upon the supply of alcohol to 3½ days a week would reduce hospital admissions, lock-up admissions, sobering up shelter admissions and non-attendance at school. However, it is submitted that alcohol restrictions are only one part of the mechanism which is required to address the problems being experienced. By itself it will not resolve the problems.

At paragraph 2.8 of the Draft Decision, Mr Lethbridge proposes that no takeaway sales be permitted at all between Sunday and Thursday. The rationale for the above
suggestion is to ensure that all persons receiving ‘Jobsearch’ support be available for training or work during work days.

The difficulty with Mr Lethbridge’s suggestion is perhaps, representative of the problems which faced Halls Creek historically. While on the job training for persons seeking employment is admirable, as with many of the services which have been available in Halls Creek aimed at assisting the disadvantaged section of the population, on the job training is ceasing within Halls Creek the week ending 16 March 2007.

4. Mr Keith Lethbridge (Snr), Acting Chairperson, Halls Creek District Health Advisory Council (“DHAC”).

The DHAC rejects the notion that further restrictions on the sale and supply of liquor would simply transfer the issues in Halls Creek to another town. The DHAC has not provided any basis for this opinion which, it is submitted, cannot be supported. It is submitted that it would not be disputed that one of the consequences of making Balgo a dry community was the influx of problem drinkers from Balgo into Halls Creek. This influx has resulted in the suggestion from the police that a wet mess be considered within Balgo as an educative tool to encourage people to drink alcohol responsibly.

Statements have been provided from the following persons who hold a concern that overly restrictive conditions will result in Aboriginals moving to another location to access packaged liquor:

   (a) Councillor Patricia McKay;
   (b) Councillor Jamie Savage;
   (c) Dawn Elaine Corbett and John Gavin Corbett;
   (d) Stephen Woodhouse;
   (e) Russel Tremlett.

Significantly, Stephen Woodhouse and Russell Tremlett indicate that they have already seen signs of affected Aboriginals leaving Halls Creek as a result of the restrictions and have concerns that the advent of further restrictions will increase the number of problem drinkers who leave Halls Creek.

Ms Dawn Elaine Corbett works in the education system within Halls Creek and a particular concern of hers is the effect it will have on children if adults leave the town to access liquor with fewer restrictions.

The evidence from the Halls Creek Shire is that they recognise as a matter of historic fact that restrictions do have the effect of transferring the problems to towns with fewer restrictions. Consequently, as a result, they are supportive of the Kimberley Inter-Agency Working Group (“KIWG”) which is committed to a standardised approach to substance abuse across the Kimberley to prevent this from occurring. The KIWG was formed as a response to the problem of transference of problem drinkers from townsite to townsite.

A letter from the Halls Creek Shire Council dated 22 February 2007, outlines their concerns that restrictions will result in an increase in “black market” liquor and cause at risk drinkers to leave town.

5. Mr Steve Norris, Director of Nursing, WA Country Health Service.

Mr Norris has not supplied any statistics or figures to support his claim that each evening there is at least one presentation to the Outpatients Clinic related to alcohol consumption. It is also impossible to determine from his submission what percentage of total admissions each evening are related to alcohol consumption. Mr Norris makes the point that the restrictions on sales of packaged liquor to 6 RDTs and 2 litre casks of
wines does not prevent people from purchasing spirits and bottled wine. There is nothing to suggest, however, that following the imposition of this restriction there was a transference in purchasing from RDTs for example, to spirits. It is also submitted that Mr Norris states that there has been an increase in the amount of broken glass. We note, however, that Mr Norris has not made reference to there being an increase in attendance at the Outpatients Clinic by people who have been injured due to broken glass. It is also noteworthy that Mr Norris’s concerns about broken glass are not being echoed by either the police, the Shire Council or the Department of Health.

Mr Norris offers his opinion that there has not been a measurable change to the alcohol-related presentations to hospital since restrictions have been enforced. With respect to Mr Norris this is not supported by the previous reviews conducted by the licensing authority in relation to the impact that the Section 64 conditions have had within Halls Creek. In summary, Mr Norris has attempted to reduce the problems faced by the relevant section of the community within Halls Creek to a simple question of supply and demand. There is no recognition that the problems faced by chronic alcoholics cannot simply be addressed by restricting the supply of alcohol. Alcoholism is of course a disease and, as discussed throughout the course of these submissions, when faced with a restriction, the simple decision faced by problem drinkers, the majority of whom are itinerant, is to move to a locality where liquor is easier to purchase. As discussed above, this has been recognised by the Halls Creek Shire and witnessed by other persons within Halls Creek.

6. Mr David Monaghan, District Manager, Kununurra / Wyndham and Halls Creek Health Service.

Mr Monaghan primarily focuses upon the incidents of glass related injuries treated at the Hospital and states that staff at the Halls Creek Health Service would support a restriction on packaged or takeaway full strength beer including a complete restriction on takeaway sales in glass bottles of any size. However, no statistics have been provided in relation to the number of glass related injuries. Further, no statistics have been provided in relation to what percentage glass related injuries are, of total attendances at the Hospital on an Emergency Department basis.

The proposal being put forward by Mr Monaghan would, as will be discussed below in further detail, prevent any person in Halls Creek from buying a bottle of table wine, or a bottle of spirits. It is submitted that before such an onerous condition is imposed there would have to be strong evidence before the licensing authority that when the needs of the public were balanced against the rate of injuries within Halls Creek, there was sufficient evidence to find that the needs or interests of the community to be able to purchase packaged liquor of this nature should be subservient to the health concerns.


Mr Frewen advocates severe restrictions, most notably a low alcohol beer day followed by two consecutive days with no packaged liquor. The assumption grounding such a submission is that problem drinkers within the community would not access liquor outside of Halls Creek either by:

(a) Travelling and bringing it in from places such as Kununurra and Fitzroy Crossing.

(b) Alternatively, moving to towns with lesser liquor restrictions.

As has been previously discussed within these submissions, we do not believe that such an assumption can or should be made.
8. **Summary of submissions seeking further restrictions.**

With the exception of the submissions provided by the police, which incorporated crime statistics, the remaining submissions received do not appear to have been accompanied by any statistics or evidence supporting the factual basis of the opinions expressed.

The majority of calls for further restrictions are seeking a dramatic reduction in the supply of alcohol with calls for alcohol free days varying from two to four days per week. In advancing this suggestion it has been our consideration of fact that:

(a) Problem drinkers can and will access liquor from other communities such as Fitzroy Crossing and Kununurra, either by travelling to those destinations and bringing alcohol back in bulk or alternatively simply moving to a town with less restrictions.

(b) Further, no consideration has been given of the occurrences in 2004 when tighter liquor restrictions were in place.

As evidenced in 2004, it is not always the case that tighter liquor restrictions result in a subsequent increase in the reduction in harm or ill health associated with the use of liquor. The occurrences in 2004 highlight the difficult balancing act the licensing authority must undertake when determining whether or not to restrict further supplies of liquor.

When exercising the discretion under Section 64 of the Act, the Licensing authority must give consideration to the needs of the public within Halls Creek to access packaged liquor. When considering the question of need, the relevant section of the public can be divided into two categories namely:

(a) Those persons who live and reside within Halls Creek and have ready access to the packaged liquor services.

(b) Those persons who do not reside and/or work within Halls Creek and accordingly, who attend Halls Creek to purchase packaged liquor in larger quantities on an irregular basis.

It has been recognised within the Interim Decision, that the majority of persons who use alcohol within Halls Creek do so responsibly. Those persons have a need to purchase packaged liquor for a variety of reasons including:

(a) To enjoy with a meal or while socialising with friends at home.

(b) For special events such as barbecues, 21\textsuperscript{st} birthdays etc.

The purchasing habits of this category of people can be described as regular purchasers on a weekly basis with periodically large purchases for such things as barbecues, parties etc. The ability for these persons to access packaged liquor will be dictated by primarily, their hours of work and family commitments.

Judicial notice can be taken of the fact that members of the community of Halls Creek will have a wide requirement for packaged liquor, depending upon individual tastes, varying from beer, wines, spirits and ready to drinks. Judicial notice can also be taken of the fact that many members of the Halls Creek community who purchase packaged liquor are not only purchasing to satisfy their own personal needs, but also, commonly, the needs of family members or other persons they reside with. The classic example
would be the housewife or house-husband who purchases packaged liquor in conjunction with grocery shopping for their spouse and/or adult children. This will result in a combination of packaged liquor being purchased on many occasions ie: a carton of beer in conjunction with bottled wine and/or ready to drinks and/or spirits.

When exercising the power under Section 64 of the Act, the balancing act to be undertaken by the licensing authority is one of balancing the needs of the responsible section of Halls Creek who have a need to purchase packaged liquor while minimising the harm or ill health that the use of liquor causes within a certain section of the population.

A petition has been obtained from the hotel in relation to the question as to whether further restrictions should be opposed.

A number of submissions were received from key stakeholders seeking further restrictions of packaged liquor. Notwithstanding that submission, there is also recognition that certain sections of the community should be exempted from these conditions due to the difficulty they have in accessing packaged liquor within Halls Creek. We note that:

(a) The Executive Director of Public Health recognises that the exemptions initially proposed in the 2004 restrictions be continued.

(b) Mr Keith Lethbridge (Jnr) acknowledges that station owners, miners, tourists and other people with a legitimate reason for purchasing alcoholic drinks for consumption out of town should have the capacity to do so.

Specific submissions were also received from the following persons, specifically referring to the needs of tourists to be able to access packaged liquor without undue restraint:

(a) Mr Grant Smart, CEO, Australia’s Northwest Tourism, who indicates that any further restrictions in relation to the purchase of packaged liquor in Halls Creek would be detrimental to the tourism industry.

(b) Mr Bernard Whewell, Managing Director, Broome and Kimberley Holidays, who indicates that some 7,000 passengers per year utilise his services and who expresses concern that further restrictions on alcohol will affect the flow of business to the region. Mr Whewell points out that current restrictions are already causing some inconvenience for tourists.

Supporting the proposition that exemptions need to be put in place for certain classes of persons, statements were submitted from the following persons:

(a) Patricia McKay
(b) Michael Dunnett
(c) Tony Martinez
(d) Shane French
(e) Geoff Reen
(f) John Zinner
(g) Mary Dixon
(h) Charmaine Grott
(i) Wendy Brocklehurst
(j) Mervyn Wortley
(k) Steve Easton
(l) Phillip Cox
In relation to the question of whether or not exemptions to these persons would cause or contribute to the harm or ill health within Halls Creek due to the use of liquor, it was submitted that there is no merit to the suggestion that:

(a) Persons who are working away from Halls Creek on rural properties, stations or mine sites will suffer harm or ill health if they are permitted to purchase liquor at times which do not adversely impact upon their working day and in quantities necessary to satisfy their needs, given that they only shop in Halls Creek periodically and purchase in bulk when they do so.

(b) Tourists who are passing through Halls Creek and who do not wish to have their journey adversely interrupted by the need to comply with the restrictions simply to purchase alcohol in bulk to take to their next destination.

It is submitted that if any amendments are required to the current conditions, exemptions be granted to persons who fall within these categories.

When considering what restrictions should be placed upon the sale of packaged liquor, it is relevant for the licensing authority to consider what preventative steps or interventionist steps have been taken by other community groups and/or government services within Halls Creek with reference to:

(a) Initiatives that have been in place during the period of time that restrictions have applied to date.

(b) What initiatives or programs have occurred.

(c) Initiatives or programs which are being implemented within the near future.

There has been recognition both in the Interim Decision and previous Section 64 decisions handed down in relation to Halls Creek that the restriction upon the sale of liquor will not resolve the problems faced by the affected community within Halls Creek. There has been consistent acknowledgment both by the licensing authority and key stakeholders within Halls Creek that what is required is an holistic approach involving a number of different agencies.

Reference is made within the Interim Decision to the West Australian Aboriginal Alcohol and Other Drugs Plan 2005-2009. It is significant that within the framework of the Plan proposed, the restriction on alcohol availability is a very small component. The focus of the Plan is upon the co-operation between various government agencies in relation to:

(a) Education.

(b) Intervention during the developmental ages of young Aboriginals.

(c) Development of work opportunities.

(d) Greater awareness of cultural needs.

(e) Greater encouragement of increased schooling.

The holistic approach adopted by the report does illustrate that alcohol restrictions alone, have little effect upon the problems experienced in townships such as Halls Creek. It naturally flows from this proposition that, when assessing the effects that the restrictions have had to date, it is unreasonable for key stakeholders to expect dramatic improvements without the co-operation and assistance of relevant Aboriginal groups, health organisations and state agencies.
From the imposition of the restrictions upon licences in Halls Creek in 2003 to date, it is significant to note that the following services ceased being offered within Halls Creek:

(a) Night patrols.

(b) “Work for the Dole”.

(c) Aquatic Centre (now only open two days per week).

The impact of such services as night patrols cannot be underestimated. The role of night patrol services in minimising, for example, crime, particularly domestic violence and assaults in general, cannot be underestimated as demonstrated by the research conducted by Blagg & Valuri in 2003 entitled “An Overview of Night Patrol Services in Australia”. This research considered the impact of night patrols in areas such as the West Australian, with specific reference to Halls Creek, the Northern Territory, Queensland, New South Wales, South Australia and Victoria. The researchers noted that:

“Night patrols have become a distinctive feature of the communal landscape in indigenous Australia:

• In many communities – particularly remote Aboriginal communities – they often represent the only consistently available mechanism for ensuring social order, preventing or diffusing violent situations and protecting the vulnerable.

• In rural towns and inner city areas they divert intoxicated people away from contact with the criminal justice system.

• Assist vulnerable young people by providing transport home and/or referring them on to support services.

• Work in an integrated way with sobering up shelters, safe houses and women’s refuges.”

At page 18 of their report, in relation to Halls Creek, the researchers note that:

“In Halls Creek, the issue of alcohol abuse was at the forefront when the patrol was set up. The National Drug Research Institute research found that the main aims of the patrol were to assist intoxicated persons to the sobering up shelter, provide support to women and children at risk, identify instances of domestic violence and aid police in finding solutions (National Drug Research Institute, 2000, page 4). The research concluded that the patrol had been successful in:

Identifying people in need of immediate assistance; and in responding to those needs. In addition the patrol appears to have made some contribution to reducing domestic disturbances and violent offences against people (page 19).”

The Halls Creek patrol was managed by the Jungarni-Jutiya Alcohol Action Council Aboriginal Corporation. We note that a submission was received on behalf of the Corporation and it is uncertain whether in the course of that submission they provided any information in relation to why this valuable resource had been disbanded.

One of the benefits of the recent series of articles conducted in Halls Creek by the West Australian, however, has been a shift in the attitude of the government in relation to funding such services, as a result of which we have been advised that the following projects will be implemented within Halls Creek in the very near future:
(a) Until recently, medical detoxification services had been provided by hospitals in Broome, Derby and Kununurra. Plans have been in place, however, for the Halls Creek Hospital to provide medical detoxification services.

(b) The Drug and Alcohol Office (“DAO”) has recently developed a new evidence based alcohol education program for the State which aims to change the culture of drunkenness and reduce alcohol-related problems. The first phase has involved the development of local educational material and public health education by Goolari Media for the Kimberley region. As part of its response to the Halls Creek situation, DAO, in conjunction with the Injury Control Council of Western Australia’s Community Grant Scheme, will dedicate resources to the ‘Enough is Enough’ alcohol education program specific to the Kimberley region.

(c) DAO is diverting funding to the Jungarni Aboriginal Corporation within Halls Creek for the purpose of the employment of an additional alcohol and other drug worker.

(d) In a media release by Sheila McHale MLA dated 19 April 2006, on behalf of the Minister for Indigenous Affairs, it was stated that the government will provide additional resources for mental health workers within Halls Creek to support youth at risk of substance abuse. The Department for Community Development (“DCD”) is to start the HYPE (“Helping Young People Engage”) program to target children at risk.

(e) Implementation of the suggestion of a family centre by DCD and the Halls Creek community.

(f) An additional outreach counsellor will be employed to work with users of the sobering up shelter.

(g) Funding has been provided for a new community child protection worker and new field officer within Halls Creek.

In response to the focus upon Halls Creek, the government has established a new $8.7million hospital in Halls Creek. As part of the development of the Hospital, the Northwest Mental Health Service will provide visiting professionals to Halls Creek every fortnight (media statement issued by the Office of Mr Jim McGinty MLA, Attorney General, Minister for Health dated 4 July 2006). The government has budgeted $15 million to improve housing in Halls Creek. Work upon the housing has commenced with the demolition of the dinner camp and will include:

(a) $3.8 million to commence the refurbishment program in conjunction with the Shire of Halls Creek to refurbish 20 houses and create four lots for new public rental units.

(b) $7.7 million to purchase 12 lots for rental housing and 10 lots on the airport land for government employees housing which would enable construction of additional housing.

(c) $3.5 million for the construction of 10 new dwellings.

In conjunction with the increased housing there will be increased funding in the supported housing assistance program within Halls Creek managed through Anglicare. This program is devoted towards assisting people in the community to improve their own living standards. Finally, in Halls Creek in the middle part of 2006, a six month trial was commenced at the instigation of the Commonwealth Government aimed at increasing school attendance by encouraging parents to send their children to school so that they can become involved in employment oriented activities. This would include Centrelink interviews with families, including personal visits and job network activities including community work, work for the dole and ‘Jobsearch.’ The results of the trial have yet to be released.
Finally, with respect to child welfare and protection, plans have progressed for the introduction of a youth hostel. Children at risk will reside at the hostel from Monday to Friday. During this period they will be fed, clothed and attend school. On weekends they will return to their families.

The importance of these new programs is that Halls Creek is finally getting the resources necessary to provide a structured approach to addressing the underlying problems which are undoubtedly a significant contributing factor to the abuse of liquor by the relevant section of the community. A statement from Ms Mirrika Councillor, an Aboriginal herself, illustrates the importance of such programs, particularly in relation to diverting children and the youth of Halls Creek away from this destructive lifestyle.

It is submitted that many of the submissions received from key stakeholders in relation to the present inquiry do not appear to have turned their minds to the effect that these additional programs will have upon the present problems experienced within Halls Creek and the fact that while alcohol abuse may be a visible symptom of the problems experienced within Halls Creek, unduly onerous conditions restricting the supply of alcohol will not resolve the cause of these problems.

An important matter to be considered by the licensing authority is the danger of undermining the additional programs and purpose behind the implementation of resources for new positions within Halls Creek by imposing conditions of such a restrictive nature that those most at need choose to move from Halls Creek to another location whereby they are deprived of the services which are now planned to be provided.

The period during which restrictions have been in place to date within Halls Creek have been marked by the lack of an accord. This has now changed with the formation of an accord, which will involve the licensees within Halls Creek, the police, the local council and representatives from the Health Department. The Accord will be chaired by Judith Butters. The licensee of the Kimberley Hotel is committed to being a strong presence within the Accord. The benefits of a strong Accord are widely recognised, namely:

(a) It provides a forum for feedback between licensees, the police and stakeholders in relation to the success or failure of conditions upon a licence and informal practices aimed at reducing harm or ill health.

(b) It enables licensees to apply a consistent approach within the township to changing purchasing habits and situations that can arise. By way of an example, an informal practice which developed outside of the Accord but which will be considered further by the Accord is the notification of police when bulk purchases are made at licensed premises. At present, for example, if a patron purchased five cartons of beer, it is the practice of the Kimberley Hotel to advise the police by facsimile immediately after the purchase. This co-operation between licensees and the police is aimed at preventing the practice of sly gorging whereby alcohol is purchased in Halls Creek and taken to “dry” communities.

The Accord will permit licensees to develop and implement strategies to counter problems within the township identified by key stakeholders. One of the items which will be tackled by the Accord is the issue of litter and broken glass within the township.

It has long been recognised by the licensing authority that problems associated with harm or ill health due to the use of liquor can only be addressed through an holistic approach involving the police, licensees and relevant community groups and agencies. The single biggest threat to such an holistic approach is when there is a lack of communication between the relevant stakeholders. The Accord will provide a vehicle by which licensees can become aware of and co-operate with relevant agencies who are tackling these problems. In response to the proposed conditions, the following is submitted:
1. **Packaged Liquor may only be sold between 12 noon and 6pm Monday to Saturday.**

Our concerns with this proposed condition are three-fold namely:

   (a) The significant potential for the condition to result in an increase in tensions between the licensees and problem drinkers within the community resulting in a return to the situation the township experienced in 2004.

   (b) The likely unintentional consequences of problem drinkers travelling outside of Halls Creek to purchase liquor (as discussed previously).

   (c) The difficulties associated with persons who work within Halls Creek being able to access packaged liquor upon completion of work.

The concern of the licensee, based on previous experience, is that the imposition of this condition will:

   (a) Place his staff in the realistic situation of being the subject of violent assaults by affected members of the community trying to gain access to the Hotel.

   (b) Property damage.

   (c) Attempted theft of liquor.

   (d) Stretch resources of both the licensee and the police in controlling problem drinkers trying to gain access to the licensed venue.

Each of the abovementioned concerns raised by the licensee are not speculative, but rather based on the previous experiences within 2004.

In addition, Halls Creek cannot be viewed in isolation. Packaged liquor is readily available at Kununurra and Fitzroy Crossing. The concern is that if packaged liquor is not available, problem drinkers will simply drive to the nearest townsite to satisfy their addiction, which could result in children being left to fend for themselves while adults leave the townsite.

While there may be a respite for people within the community as a result of the Sunday restriction what, in all likelihood, will occur is that the problems will be transferred to another town.

Further, the benefits of a restriction on the sale of packaged liquor on any one day is dubious. We refer to the decision of the Northern Territory Licensing Commission *Review of Tennant Creek liquor restrictions*. A six-month review was conducted in relation to various restrictions imposed within Tennant Creek. On Thursdays, the front bars and bottle shops of licensed premises were closed, lounge bars could not open before 12 noon and food had to be available. At the end of the review the Commission noted:

"While it is to be accepted the current restrictions have made some impact on alcohol consumption and related patterns of drinking in Tennant Creek on certain days, they have not been successful in decreasing the harmful level of alcohol consumption per capita in Tennant Creek. Statistics provided to us confirm that “Thirsty Thursdays” are successful in decreasing the number of call-outs attended by police and the number of presentations at hospitals on that day...... however the evidence suggests that antisocial behaviour and alcohol consumption on the days
surrounding Thirsty Thursdays may well be high as a result of the restrictions."

It may be argued then that not all problem drinkers will have access to a vehicle and the ability to simply travel to another town. Those particularly at risk will be unlikely to gain entry to the Hotel due to the imposition of dress standards. These drinkers will be at risk of suffering from withdrawal symptoms due to the inability to gain access to alcohol.

It is submitted that the effective withdrawal upon serious problem drinkers within the town will result in an increase in violence both directed toward staff of licensed premises and also toward family members and other persons in Halls Creek. It is significant to note that during the 2004 restrictions, one of the unforeseen results was the dramatic increase in the number of women attending refuge shelters within Halls Creek.

Between Mondays and Saturdays, the cessation of packaged liquor sales at 6.00 pm will significantly inconvenience those persons who work within the township. Many people within the town will not be able to access the packaged liquor facilities until as late as 6.30 pm or 6.45 pm. In this respect, statements have been provided by Jamie Savage, Geoff Reen, Shane French and Steve Easton.

The situation will also arise where there will be a bottleneck of people trying to purchase packaged liquor prior to the cut-off. The licensee does have a concern that this will result in an increase in tensions between the licensees, staff and persons attempting to make purchases.

Accordingly, it is proposed that the conditions remain unamended as it applies from Monday to Saturday with the exception of one variation. A continued difficulty posed by the condition is that people have been prevented from purchasing table wine after 7.00 pm, although they can purchase RDTs or beer. We submit that the condition be amended so that up to two bottles of wine can be purchased between 7.00 pm and 9.00 pm. It is submitted that it is significant that the police have not called for an alcohol free day.

The following modification is therefore proposed:

Packaged liquor may only be sold between 12.00 noon and 4.00 pm on Sundays in the following volumes per sale.

- the sale of non-fortified wine in casks is to be limited to one 2 litre cask;
- 12 cans of full strength beer;
- 12 cans of low or mid strength alcohol beer;
- 12 ready to drink pre-mixed cans; or
- 2 bottles of wine.

The effect of this condition will be that while the availability of packaged liquor on Sundays will be severely restricted, persons seeking access to packaged liquor on Sundays will be able to make limited purchases.

Due to the limited trading time, patrons will be unlikely to have sufficient time to consume the packaged liquor purchased and make repeat purchases.

The availability of packaged liquor in a very limited form on Sundays, however, may well deter problem drinkers from travelling to Kununurra and Fitzroy Crossing to gain liquor from alternative sources.
The availability of liquor, to a limited extent, may also have a positive impact in blunting the withdrawal symptoms being experienced by problem drinkers within the town.

2. **The Sale and Supply of Liquor is prohibited before 12 noon on any day except where it is sold ancillary to a meal or to a Lodger.**

It is agreed that the imposition of this condition would help break the cycle of the consumption of liquor early in the day for some members of the community. It will have the effect of educating and encouraging them to consume alcohol in a responsible manner if they so choose, during the morning, and ensuring that if they so choose they will be doing so in conjunction with a meal.

It is submitted though, that when balancing the needs of the community to access liquor during the hours of the morning, in particular tourists, and reducing harm or ill health amongst problem drinkers, it must be recognised that it is unlikely that between 11.00 am and 12.00 pm people will wish to have a meal. Prior to 11.00 am, it is anticipated that tourists and members of the Halls Creek community would not be inconvenienced by the condition as the liquor will be enjoyed in conjunction with a breakfast or brunch.

We refer to the interim modification Section 64 Inquiry – Meekatharra – Decision No. A115587. As discussed above, the prohibition upon the sale of packaged liquor before 12 noon within Meekatharra resulted in tensions between licensees and staff which was unacceptable to the licensing authority, resulting in a modification of this condition, permitting packaged liquor to be sold from 11.00 am. To avoid such tension within Halls Creek, we submit that, although the condition refers to over the bar sales as opposed to packaged liquor sales, the proposed condition be modified.

Accordingly, a proposed modification to this condition is as follows:

- **The sale and supply of liquor is prohibited before 11.00 am on any day except where it is sold ancillary to a meal or to a lodger.**

3. **Conditions 3 & 4.**

Supported by the licensee.

4. **The Sale of fortified wine is prohibited.**

It is noted that there has been no evidence to suggest that fortified wine is a product which is abused by problem drinkers within Halls Creek. Further, we submit that while fortified wine may seem to be a product which may be targeted by problem drinkers due to its high alcohol content and relative cheapness, in practice, the consumption of fortified wine is, in many ways, preferable to that of other products.

It is unusual for problem drinkers within the Aboriginal community to purchase fortified wine and drink it undiluted. The common practice is for fortified wine to be mixed with lemonade. As a result of this, less alcohol is purchased because the fortified wine lasts for a longer period of time, however, the alcohol content of the fortified wine is reduced through the addition of lemonade.

The mixing of fortified wine and lemonade is a practice which has previously been documented, and in many ways acknowledged as the lesser of two evils by the licensing authority in the decision A141890 – Section 64 Inquiry Newman delivered 30 July 2004.

It is further noted that the practice of product substitution by problem drinkers can undermine the effect of such conditions.
The issue of product substitution was highlighted in the 30 July 2003 decision of the Northern Territory Licensing Commission trial restrictions on the sale of liquor in Alice Springs. During the course of the Decision, the Commission stated:

“The Commission can choose to further vary the conditions of liquor licences and simply prohibit the sale of Port, either in casks or in total, but to what benefit? The “problem drinkers” will simply shift to another product, perhaps spirits or one of the increasing ranges of ready to drink mixes.

“Product substitution” is not unique to Alice Springs. It has been an issue in other trial restrictions and remains of concern in Tennant Creek... The Commission’s position is that there is little point in banning Port. To do so would simply lead to further and further product substitution, the logical and ultimate consequence of which would mean there would be very few liquor products left for the reasonable enjoyment of the Alice Springs community.

In the current circumstances the Commission sees it has little choice but to remove the restriction on container size, knowing full well that the effect of deleting this restriction would be the return of four and five litre wine casks. The matter should not rest here, it is clear that there are numbers of serious problem drinkers within the Alice Springs community and strategies other than simply banning specific products are needed to ameliorate this situation.”

It is submitted that it may well be preferable not to impose the abovementioned condition and rather, permit the Accord to create strategies to address the abuse of certain products. The benefit of this approach would be that as product substitution occurs the Accord will have the flexibility to respond.

5. Liquor may only be purchased in the following volumes per person per day:

- the sale of non fortified wine in casks is to be limited to one 2 litre cask; or
- 12 cans or full strength beer; or
- 24 cans of low alcohol beer (3.5% or less); or
- 12 ready to drink pre-mixed cans; or
- 2 bottles of wine

A restriction on one transaction per day would be unenforceable and will only lead to prosecutions being brought against licensees. Due to, for example, in relation to the Kimberley Hotel, shift changes and the sale of packaged liquor from more than one bar, it would be impossible to monitor the purchasing habits of patrons.

Any restrictions upon quantities of packaged liquor purchased per transaction must operate in conjunction with a variety of products. For example, the condition as presently framed would not cater to the all too common situation whereby a husband purchases beer for himself and wine for his wife simply for the purpose of a Sunday roast. As presently drafted he will be requested to make a choice in relation to which product he wished to purchase. “Problem drinkers” within town are not prone to purchasing large quantities of alcohol. As identified in the statement of Martin Peirson-Jones, the standard practice is to purchase alcohol in half cartons or less. As mentioned previously, this is a direct result of the culture by which products are shared amongst drinkers. The effect of this practice is whether or not a carton is purchased or a half carton, the purchaser is only likely to get one or two cans out of it. Accordingly, we submit that the condition should be modified as follows:
Liquor may only be purchased in the following volumes per person per transaction

- the sale of non-fortified wine in casks is limited to one 2 litre cask;
- one block of full strength beer;
- one carton of ready to drinks;
- one 750ml bottle of spirits;
- 4 bottles of wine.

Only two products may be purchased in conjunction with each other in any one transaction

It is also the experience of the licensee that the majority of responsible drinkers within Halls Creek do not purchase alcohol on a day by day basis to meet their daily needs but rather, in conjunction with their weekly shopping, will purchase a slab of beer and two or three bottles of wine etc.

The restriction upon the levels of liquor which may be purchased will prevent the situation, however, of patrons purchasing liquor in bulk (subject to the exemptions discussed below). It is noted that it has not been proposed to place a limit on light or full strength beer. The logic behind this proposed condition is that at present problem drinkers in Halls Creek simply do not purchase light or mid strength beer. By not placing a restriction on the volume of this product which can be purchased, it is submitted that an offshoot may well be product transference away from the “harder” liquor.

6. The sale of packaged liquor in glass bottles is prohibited with the exception of non-fortified wine.

The purpose of this condition, it is stated, is to restrict the amount of broken glass throughout the townsite. The effect of such a condition, however, is that persons within Halls Creek will be prevented from purchasing a wide range of packaged liquor, including but not limited to:

(a) Certain popular brands of beer such as Heineken, Corona, Pure Blonde, Redback, Crown Lager, Cascade Light etc.

(b) Spirits and liqueurs.

(c) Certain ranges of ready to drink pre-mixed alcohol, particularly the Smirnoff Ice and Smirnoff Cut range.

It is submitted that the issue of broken glass within the township is an issue which can be best addressed by the Council and licensees through initiatives advanced by the Accord. The success or failure of the Accord in relation to this issue can be assessed when the implemented conditions are reviewed.

7. All servers of liquor are to be trained within 21 days of being employed. The training is to be provided by the Police or the Health Department and the Licensees are required to maintain a register of staff training.

The licensee has no difficulty with the imposition of this condition.

8. Licensees are to lodge quarterly liquor sales data in accordance with an approved form.

Given that liquor sales occur over the counter and are rung up on the same till as purchases which occur for consumption on site, there will be difficulties associated with
providing data in relation to individual products sold for takeaway purposes. It will be possible, however, to provide data in relation to total liquor purchases.

Exemptions

During previous Section 64 decisions it was the intent of the then Director of Liquor Licensing that exemptions could be obtained for these persons at the discretion of the local police. Unfortunately this system has not worked due to the reluctance of the police to grant such exemptions.

It is submitted that the purpose of exemptions is to cater for the needs of persons who work or reside outside of Halls Creek who only attend the townsite periodically for the purpose of purchasing supplies.

The categories of persons, however, who would require such an exemption are wider than simply pastoralists and station owners and would include:

(a) Tourists.
(b) Pastoralists.
(c) Station owners.
(d) Mining companies.
(e) Tradesmen, contractors and sub-contractors who work for extended periods of time outside of Halls Creek.
(f) Tour operators/tour groups who are conducting tours outside of the town for protracted periods of time.
(g) Sporting associations.
(h) Government workers and schoolteachers who are employed on wet communities within the Shire but for whom the only source of liquor is Halls Creek.

It is proposed that the system which will be implemented is that such persons would register at the local police station. Once a week the local police would circulate the list of persons to whom exemptions apply, to the licensees in town. The Halls Creek Police Station, however, is not a 24 hour police station and, depending upon the activities of the police, there are occasions when it is not manned. To accommodate this occurrence, it would be proposed that forms be kept at each of the licensed premises. A person seeking an exemption can complete a form at the licensed venue and effect a purchase, however it will be a condition upon the licence that the form shall be provided to the local police for registration within 24 hours.

It would be proposed that the form would contain the following information:

- The name of the person or company upon whom the purchases are being made.
- The address of the person who is making the purchase.
- In the event that the address of the person making the purchase is within the Halls Creek Shire, the purpose for which the liquor is being purchased. It is anticipated that boxes could be ticked, ie: purpose, working away from town which, if ticked, would oblige the assistant to identify the main location of, and the dates during which they will be working.
• Persons purchasing packaged liquor would be provided with a receipt from the licensee indicating that the liquor had been purchased pursuant to an exemption. This will assist in effective policing.

We would further propose that a one off exemption be available to persons holding 21st birthdays, engagement parties, anniversaries etc where a bulk purchase would be required. These one off exemptions could only be obtained from the police. Persons seeking such an exemption would be required to register the date and location of the event. Similarly a receipt would be issued indicating that liquor had been purchased pursuant to an exemption.

**Dress Codes**

In respect of a dress code, the following dress codes currently exist at the Kimberley Hotel:

(a) Cocktail Bar – “Kimberley formal”; men’s shirt with collar, long pants or walk shorts.

(b) Pool Area – After 6pm, clean, neat, casual clothes, shirts with sleeves, no thongs.

(c) Sports Bar – Smart neat dress at all times.

(d) Saloon Bar – Footwear must be worn at all times, clean, neat and tidy dress after 6pm. Very dirty clothes not accepted. (The reference to very dirty clothes not being accepted is deliberate. Culturally, many Aboriginals do not see a certain amount of dirt on their clothes as being unacceptable. An acceptance of this cultural belief has been factored into the dress code).

**Conclusion**

In summation, it is submitted that the licensee is committed to the responsible service of alcohol and operating the Hotel in such a manner as to minimise the harm afforded to the community through the use of liquor. The concern of the licensee, however, is that overly restrictive conditions will:

(a) Result in a return to the situation as existed in 2004 prior to the relaxation of conditions.

(b) Result in the most at risk drinkers moving from Halls Creek to other areas where liquor is more easily purchased.

The relocation of at risk drinkers to other townsites will have the following effects:

(a) They will be deprived of the benefits of the recent injection of money into Halls Creek, resulting in a number of services and programs being developed to address the underlying causes of problem drinking within Halls Creek.

(b) A false impression will be created in relation to the success of liquor restrictions. Whilst statistics in relation to hospital admissions, sobering up shelter admissions and arrests may be reduced following the imposition of conditions, such data is misleading if those most at risk have moved to other townsites.

(c) Those residents and persons travelling to Halls Creek are subject to unduly onerous liquor restrictions directed at persons who no longer reside within Halls Creek.
The modified conditions proposed by the licensee are aimed at:

(a) Addressing the needs of responsible drinkers within Halls Creek.

(b) Restricting the supply of alcohol to at risk drinkers, while being aware of the resultant tensions and violence which can occur if conditions are unduly restrictive.

It is significant to note that the restrictions proposed by the licensee are more restrictive than those suggested by key stakeholders who are on the frontline in relation to the fight against harm or ill health, namely:

(a) The police within Halls Creek.

(b) The Shire of Halls Creek.

The modified conditions proposed by the licensee were drafted after careful consideration of:

(a) The needs of the responsible drinkers in Halls Creek to access packaged liquor.

(b) The success and/or failure of a similar condition in Halls Creek in 2004, Meekatharra and the experiences in the Northern Territory.

(c) The underlying causes of problem drinking within Halls Creek and the initiatives that have been implemented or will be implemented by various bodies to address this problem.

(d) The need to avoid the relocation of at risk drinkers to other locations where alcohol may be easier to access.

It is the intention of the licensee that the Accord will play an extremely significant role within Halls Creek in combating the harm caused by the misuse of alcohol.

Halls Creek has previously not experienced the benefits of a strong Accord and, it is respectfully submitted, that the licensees, police, local Council and other key stakeholders who will form part of the Accord, should be granted the opportunity to prove whether the Accord will be a success or failure prior to the imposition of the stringent conditions proposed within the Interim Decision.

CONCLUSION

The licensees of the Halls Creek Store and the Kimberley Hotel have been afforded an opportunity to respond to the submissions that I received concerning the Inquiry under section 64 of the Act and the proposed conditions contained in my interim decision of 20 December 2006. It is submitted by the licensees that the existing conditions in Halls Creek have in fact been beneficial in reducing alcohol-related harm, and that the imposition of further, more restrictive conditions, is unnecessary.

It has previously been stated by this authority and elsewhere that the full benefit of liquor restrictions will only be realised if they form part of a broader strategy to minimise alcohol-related problems in any community. Liquor restrictions on their own, are not the panacea to alcohol-related problems, although they can be a useful mechanism to contribute to minimising alcohol-related harm. Research indicates that liquor restrictions are most effective if they operate in conjunction with effective policing and community service programs.
When considering the imposition of conditions under section 64, I reiterate the findings of Greaves J in Nippon Inn The Club LLC 0800 where he stated:

“If, after inquiries, this authority finds that it should give consideration to placing a condition on a licence in the public interest in a case such as present, then plainly the Act and natural justice require the licensee to be so informed. The licensee may then have the opportunity to consider that information and make submissions upon it. In the end, however, it is for this authority to determine how it should exercise its discretion upon the material before it in the public interest under the Act and according to law.”

It is pleasing to note that one of the recommendations in my interim decision was the establishment of a local Accord. An Accord has now been established in Halls Creek, which is chaired by a respected indigenous member of the community, and that Accord includes participation by the licensees, police, local government and community representatives.

It is proposed by the licensees that the effects of other government initiatives and the establishment of a local Accord should be given an opportunity to work, before more restrictive conditions are imposed.

I am aware that the government has allocated significant funding to address the alcohol, truancy, housing and abuse problems that exist in Halls Creek, which includes the establishment of two hostels for at risk children to be removed from abusive parents in the town. Many of these proposed government initiatives will start to take shape over the next one to three years. It is over this period of time that any further benefits from liquor restrictions are expected to materialise.

Notwithstanding that the evidence submitted indicates the existing conditions have contributed to minimising alcohol-related harm in the community, it does not, in my view, lead to a conclusion that further modification to the existing conditions should not be contemplated or periodically revised.

On the balance of probabilities, I accept that alcohol is still a major contributor to harm within the community of Halls Creek. As Ipp. J stated in Executive Director of Health v Lily Creek International & ORS [2000] WASCA 258:

“Section 33 of the Act confers upon the Licensing Authority an absolute discretion……... 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 a 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.”

Accordingly, after considering the evidence presented, I am of the view that some modification of the existing conditions as foreshadowed in my interim decision is appropriate and in the public interest, and consistent with one of the primary objects of the Act, which is to minimise alcohol-related harm.

Condition 1

Packaged Liquor may only be sold between 12.00 noon and 6.00 pm Monday to Saturday.

The licensee of the liquor store has indicated that it has already activated a condition similar to this, however it suggests that 6.30 pm to 7.00 pm closing time is more reasonable in which to sell packaged liquor. This would overcome the difficulties associated with persons who work in Halls Creek being able to access packaged liquor after work. It is submitted by the licensee of the Kimberley Hotel that this problem could have a potential impact for an increase in tensions between the licensee and problem drinkers as experienced in 2004, and
is also likely to have the unintentional consequence of problem drinkers travelling outside of Halls Creek to purchase liquor.

The prohibition of packaged liquor on a Sunday has not resulted in similar consequences in other communities as experienced in Halls Creek in 2004. I am of the view that the prohibition on the sale of packaged liquor on a Sunday is important, to allow the community a day of respite. I am also of the view that aspects of this community have changed over the last three years when problems were experienced in Halls Creek when packaged liquor was restricted. Further, if people travelling to other towns to obtain liquor becomes an issue, this can be addressed in due course as part of the ongoing monitoring process. Accordingly, condition 1 as proposed will be implemented, although the restriction on packaged liquor will be between 12.00 noon and 6.30 pm Monday to Saturday.

This is a considerable reduction in the availability of packaged liquor in the community.

**Condition 2**

*The sale and supply of liquor for consumption on the premises is prohibited before 12 noon on any day, except where it is sold ancillary to a meal or to a lodger.*

This condition does not affect the licensee of the liquor store, and it was acknowledged by the licensee of the hotel that the imposition of this condition would help break the cycle of the consumption of liquor early in the day for some members of the community. However, it was submitted that in balancing the needs of the community to access liquor during the hours of the morning, it would be more appropriate that the restriction apply before 11.00 am. The argument from the licensee of the hotel in this regard is not compelling, and the prohibition on the sale of liquor before 12 noon has been effective in other communities. Accordingly, condition 2 will stand.

*Conditions 3 and 4 are supported by the licensees.*

**Condition 5**

*The sale of fortified wine is prohibited.*

The licensee of the liquor store suggests that this condition would simply result in members of the community seeking out fortified wine at other venues or other localities in the Kimberley, and simply shifts the problem.

The licensee of the hotel submits that while fortified wine may seem to be a product which problem drinkers might use due to its high alcohol content and relative cheapness, in practice, the consumption of fortified wine is in many ways preferable, rather than that of other products, because it is usually mixed with lemonade or some other diluting agent. It was also submitted that it could lead to product substitution if the sale of fortified wine was prohibited. Currently, the sale of fortified wine in a two litre cask or greater, is prohibited. It was also submitted by the licensee of the hotel that it may not be preferable to impose the condition at this stage, but rather, permit the Accord to consider strategies to address the abuse of individual products. The benefit of this approach would be that as product substitution occurs, the Accord will have the flexibility to respond.

I am nonetheless, of the view that the sale of fortified wine should be prohibited, and if the Accord becomes aware that product substitution is occurring, which is more harmful, then it is open for the Accord to advise this office and this condition can be reviewed.
Conditions 6 and 7

These conditions will not be imposed at this stage, because of the potential effect it may have on the operation of the liquor store. The closure of the liquor store, thereby creating a monopoly in the town, is not necessarily in the broader public interest. It is also open to the Accord to consider whether restrictions in these areas and/or other initiatives to minimise the impact of injuries caused by glass in the town, can be implemented. Liquor accords are now formally recognised under the Act and an Accord can request that conditions be imposed on liquor licences within their locality. However, the existing condition requiring licensees to maintain a register of bulk liquor will remain.

Condition 8

All servers of liquor are to be trained within 21 days of being employed. The training to be provided by the police, Health Department, or an accredited training provider, and the licensee is required to maintain a register of staff training.

Existing staff are to be trained within four weeks of the issue of this decision. New staff will be required to be trained in accordance with the recent amendments to the Act.

Condition 9

Licensees are to lodge quarterly liquor sales date in accordance with an approved form.

Both licensees submit that there are logistical problems with implementing this condition. Nonetheless, I believe that the provision of data relating to the sale of liquor by the premises, is an important tool to assist the licensing authority in monitoring the sale of individual products which could negatively impact on the community. However, in order to afford the licensee sufficient time to overcome the difficulties and to prepare a pro-forma document that can retain the necessary data, Condition 9 will not be effective on the licences for a period of three months, to allow the licensees time to address this issue. The licensees will then need to submit a return every four months.

Exemptions

The existing restrictions allow for some exemptions to the conditions in order to minimise the impact upon persons passing through the towns or who live and work outside the community but visit the town to purchase goods and services.

It is submitted by the licensee of the Kimberley Hotel that there are a range of persons who fall within the above category. It is therefore proposed that with the exception of bona fide tourists, any person seeking to be exempt from the restrictions must register with the police, who can then distribute an exemption list to the licensees. In respect of tourists, the licensees must in the first instance, satisfy themselves that the person is a genuine tourist and then complete a form which must be presented to the police within 24 hours. The form must contain the following information:

- The name of the person.
- The address of the person.
- The next destination of the person.
- The amount of alcohol purchased.
- Vehicle registration.

Finally, it is important for all agencies to continue to monitor the conditions and ascertain whether they are having a positive impact upon further minimising the problems in the community, particularly from a health and policing perspective. It is also important that this authority maintain contact with the Accord, to assist it in implementing local strategies to address identified problems.
The problems facing the community of Halls Creek will not be easily overcome, however I believe that there are many people in the community who are now strongly motivated to try and put into place appropriate strategies to address these problems and improve the quality of life for members of the community. This was particularly evident during my discussion with local community members when I visited Halls Creek. I believe that the implementation of these revised conditions, together with the implementation of broader initiatives to tackle problems such as truancy, employment and education within the town, and a strong and vibrant Accord, will all assist the community in trying to overcome the problems that confront them.

Accordingly, the following conditions will be imposed on the liquor licences in Halls Creek —

1. Packaged Liquor may only be sold between 12.00 noon and 6.30 pm Monday to Saturday.

2. The sale and supply of liquor for consumption on the premises is prohibited before 12.00 noon on any day, except where it is sold ancillary to a meal or to a lodger.

3. The sale of 750ml beer bottles (“King Browns”) and wine in flagons is prohibited.

4. The sale of wine in a cask greater than 2 litres in volume is prohibited.

5. The sale of fortified wine is prohibited.

6. Existing staff are to be trained within four weeks of the issue of this decision. New staff will be required to be trained in accordance with the recent amendments to the Act.

7. Licensees are to lodge returns of sales data every four months in accordance with an approved form.

   (Note: This condition will not take effect until three months after the date of this decision).

8. A dress code is to be displayed at each entrance to the premises.

9. Licensees to maintain a register of bulk purchases of packaged alcohol to prevent sly-grogging. This authority’s code of practice on “Selling of Liquor Without a Licence – Sly-Grogging” provides details of the procedure to be adopted.

10. Exemptions
    With the exception of bona fide tourists, any person seeking to be exempt from the restrictions must register with the police, who can then distribute an exemption list to the licensees. In respect of tourists, the licensees must in the first instance, satisfy themselves that the person is a genuine tourist and then complete a form which must be presented to the police within 24 hours. The form must contain the following information:

    - The name of the person.
    - The address of the person.
    - The next destination of the person.
    - The amount of alcohol purchased.
    - Vehicle registration.
In consultation with the Accord, the licensees, police and Executive Director Public Health, these conditions will be monitored on a regular basis to gauge their effectiveness and consider whether any further modification is necessary. I would also recommend that the licensees display signage detailing these restrictions in a prominent position within their venues, and that the Accord, in consultation with the local Shire, consider road signs advising the travelling public that liquor restrictions apply in Halls Creek.

PETER MINCHIN
DELEGATE OF THE DIRECTOR OF LIQUOR LICENSING

6 June 2007