

Northern Territory Alcohol Policies and Legislation Review

Submission by One Stop Pinelands Pty Ltd (“One Stop”)

1. The Issues Paper accompanying the Northern Territory Alcohol Policies and Legislation Review informs that there are 515 “active alcohol licences” in the Northern Territory.
2. In the schedule on page 5 of the Issues Paper the licences are broken down to various types such as “restaurants”, “hotel”, “on-licence” etc. It is assumed by One Stop that the reference to the active alcohol licences in the issues paper is in fact a reference to Liquor Licencing Authorities or categories of licences (“Authorities”) available in the Northern Territory. This assumption derives from the Liquor Act Northern Territory (“the Act”) which is silent on the existence of Authorities in a direct way. There is however reference to Authorities scattered throughout the Act, for example, see section 32.
3. Consequently, the concept of Authorities is without legislative force in the Northern Territory, thereby leaving a “hole” in the Act.
4. There is only one application form available for a prospective licensee to complete when applying for a liquor licence. That form, once completed, lodged, assessed and issued provides for a liquor licence.
5. The accepted practice in the Northern Territory is that the regulators of the Act, Licensing NT, considers the nature of the application form and thereafter ascribes an Authority to the licence granted. The applicant does not input in any meaningful way to the Authority ultimately granted by Licensing NT. Categorization as a result is therefore, in large part, a discretionary process carried out by different individuals within Licensing NT.
6. The lack of legislative force and definition thereby gives uncertainty to the liquor industry and this submission of One Stop is addressed to that issue and to making the Authorities more certain and therefore make the process more transparent.
7. One Stop recognises the need to obtain consistency in liquor licensing in the Northern Territory to overcome the “licence creep” which has developed by reason of there not being defined Authorities to govern the licences which have been historically granted by the Licensing Commission and now granted by the Director General of Licensing.
8. One Stop supports the formal introduction of Authorities to authorise the manner in which a licensee may sell, serve and supply liquor which will, in One Stop's submission will be of assistance to not only applicants but also will be beneficial to the holders of liquor licences as well as the Regulator.

9. The alcohol review by the Northern Territory Government allows the opportunity for clarity to be achieved by clear direction being given to the industry. As a matter of common sense and practicality the Authorities, which should be the subject of legislation, need to be all encompassing and reflective of the different types of businesses that operate in the liquor industry.
10. This submission is advanced by One Stop to support an Authority in the Northern Territory which applies solely to Stand Alone Drive Through Bottle Shops. Such a class of licence is:
 - a. Different from all the other licence classifications operating in the Northern Territory;
 - b. Not plentiful in terms of existing numbers of licences. One Stop is of two such businesses.
 - c. Ought not be regulated in the same manner as stores or supermarkets which are all multi faceted businesses.
 - d. Serve a purpose and need in the Northern Territory community.

Other Jurisdictions

11. Other jurisdictions have legislation which provides legislative force to the categories of licenses available . As to licences similar to the business of One Stop we note:

QUEENSLAND

12. Under the Liquor Act 1992, Queensland permits the operation of “Detached Bottle Shops”. It is a requirement in Queensland that to apply for a detached bottle shops the applicant must hold a commercial hotel licence. Noting that the law in Queensland does not permit stores or supermarkets to sell liquor, the important consideration to take from the Queensland bottle shop category is that, the conditions are aligned with the conditions of a hotel licence.

NEW SOUTH WALES

13. New South Wales provides for a “Packaged Liquor Licence”. Alcohol can be sold from stores, supermarkets or stand alone bottle shops under this category of licence. The distinction to be drawn from the New South Wales experience is that there is no restriction in New South Wales as to Sunday trading and the holder of this category of licence is able to trade on that day from 10.00am to 10.00pm together with hotels, clubs and taverns.

VICTORIA

14. Stand alone bottle shops are categorised with licensed supermarkets under a licence known as a "Packaged Liquor Licence". Like New South Wales however, and different from the Northern Territory, the holder of a Packaged Liquor Licence is permitted to trade from 10.00am to 11.00pm on Sunday in competition with hotels, clubs and taverns. Further, late night sales, after 1.00am, are permitted under this category of licence in Victoria on application.

WESTERN AUSTRALIA

15. Western Australia has a special category for stand alone liquor stores known as a "Liquor Store Licence". The trading hours provided for this category of licence includes Sunday trading in the metropolitan area. Importantly, Western Australia does not permit stores or supermarkets to sell liquor.

SOUTH AUSTRALIA

16. South Australia has a retail liquor merchant's licence and also a wholesale liquor merchant's licence. South Australia does not permit supermarkets to sell alcohol. Importantly the retail liquor merchants licence in South Australia permits liquor to be sold on any day except Good Friday and Christmas Day between the hours of 8.00am – 9.00pm. Further, the licensed premises must be devoted entirely to the business conducted under the licence. The exception to this is that goods of and incidental to the sale of liquor, for example glasses, cheeses and pates may be sold under a retail liquor merchant's licence. Additionally, the premises must be physically separated from premises used for other commercial purposes.

Stand Alone Drive Through Bottle Shops

17. One Stop submits that none of the existing Authorities adequately cover the business operations of businesses such as One Stop whose operations are very different from either stores, supermarkets or liquor merchants.
18. One Stop has a unique business model which is similar to only one other licensed business in the Northern Territory, that of the Pit Lane Bottleshop. The nature of these two businesses are not adequately categorised in the existing Authorities. Both provide a drive through facility attached to a shop and allow for liquor to be purchased there and consumed elsewhere.
19. The existing Authorities do not reflect the business model of One Stop because the only Authority available is governed by conditions for either 'Store' or 'Liquor Merchant', neither of which has trading conditions similar to One Stop's licence.

20. On this basis, One Stop's submission is threefold:

- a. One Stop should not be caught by the same trading conditions as those of a "store" because the liquor trade of One Stop is not ancillary to any other business to be conducted on One Stop's premises;
- b. acknowledging that while it is not a Hotel, Tavern or Club, One Stop submits that it would be more appropriate if One Stop had similar trading conditions to a Hotel, Tavern or Club, but with the restriction that consumption of alcohol is not permitted on the premises nor the provision of meals or accommodation. One Stop's business, like Hotels, Taverns or Clubs, is to trade solely in alcohol (the provision of food and accommodation is not necessarily required to be provided by Hotels, Taverns or Clubs); and
- c. thirdly, and in the alternative to (b) above, businesses such as One Stop should, be issued licences which are categorised as a 'Drive Through Stand Alone Bottle Shop'.

Stores / Liquor Merchants

21. One Stop submits that it should not be caught by the same conditions as those of a store or liquor merchant as the uniqueness of the business model means that it falls outside of each of these categories.
22. A "store" sells alcohol as or part of a larger business. In other words, the sale of alcohol is ancillary to the other products offered for sale in a store. Historically, store authorities were granted to reflect that alcohol sales were ancillary to the sale of grocery and other household goods. At the time of the introduction of store authorities there was discussion about limiting the sale of alcohol to a percentage of total products sold. It would seem for obvious reasons that this position was not adopted, such reasons be regulatory enforcement of such a condition.
23. "Liquor Merchant" is an undefined general term, which creates uncertainty in terms of "what a licence looks like". It is submitted that this category should be confined to wholesale alcohol merchants.
24. A store or supermarket envisions a building with aisles, shelves and displays, which allows customers to wander through and choose from a variety items, such as a Myer Department Store. Other obvious examples include Woolworths or Coles which have a large display area with aisles and shelves of groceries and household goods, where customers can spend as long as they like perusing for items to buy and the purchasing of liquor is an ancillary or additional aspect of the overall store, rather than its primary function.
25. One Stop does not fit neatly within such a store or supermarket, and submits that this is because it is not either but a Drive Through Stand Alone Bottle Shop. It is different to a store or supermarket and not catered for in the existing Authorities. This is

because One Stop exists to sell alcohol products only. It is a Retail Liquor Merchant with a function closer to a hotel or tavern than a store of supermarket.

26. The Macquarie Dictionary definition of 'merchant' is:

'Someone who buys and sells commodities for profit: a wholesaler'.

27. A liquor merchant is therefore by definition a wholesaler. Liquor wholesalers should be catered for and categorised under a "Wholesale Authority". Two similar named Authorities lack clarity and transparency.

Hotel/Taverns and Club Conditions

28. One Stop's Submission is that it is similar to a Tavern or a Club in terms of its business model and should therefore be subject to the same conditions as Hotels, Taverns and Clubs, rather than the conditions of stores or liquor merchants.

29. Taverns, Hotels and Clubs are premises where the main business is the sale of alcohol. Alcohol sales are not necessarily an ancillary function, and certainly in the case of Clubs and Taverns, meals accommodation are not defining factors.

30. What is defining is that fact that alcohol can be purchased and taken from the premises for consumption at a different venue which is also the One Stop business model.

Summary

31. It is submitted that the approach taken in other jurisdictions should be applied in the Northern Territory. If all takeaway alcohol sales traded under the same conditions that there is no need for a distinction to be drawn between categories (The NSW and Victoria models). Where however there is a recognition of the difference between the business models (the other states) it is essential that they are considered on a "like for like" basis. If this approach was adopted in the Northern Territory a retail liquor merchant such as One Stop would have the same conditions as a hotel or tavern.

32. One Stop submits that the trading conditions proposed under the "Takeaway Authority" be amended by

- a. deletion of the reference to "Liquor Merchant";
- b. replacement of "Liquor Merchant" with the term "Drive Through Stand Alone Bottle Shop"; and
- c. alternatively, the trading condition of "Liquor Merchant" be retained and a further trading condition be added for a "Drive Through Stand Alone Bottle Shop."

33. An Authority with the above trading conditions as alternatives depending on the nature of the business to be conducted from the licensed premises will provide clarity and not add to the "licence creep" problem which has been experienced in the

Northern Territory. Additionally such categorisation will ensure that businesses are adequately able to continue to trade and provide services that are in line with the needs and wants of the surrounding community.

Other Matters

One Stop Submits:

- i. Annual licence fees ought not be imposed. The reality in retail business is that all taxes and levies are flowed through to the end user. Northern Territory consumer already bear a high burden created by the tyranny of distance. Imposition of annual fees will only serve to add to that burden.
- ii. Annual licence renewals are strongly opposed by One Stop. Finance for the purchase, establishment and renewal of licensed premises is, in part, based on the holding of a liquor licence which is an ongoing tradeable asset. Valuations to support borrowings is based, in part, on the holding of a liquor licence. If the licence was to be annual only the very wealthy would sustain an alcohol based business and this would reduce the ability to have varied licensed businesses and would reduce the vitality and vibrancy of the Northern Territory.



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David De Silva

Solicitors for One Stop Pinelands Pty Ltd

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