ALRM SUBMISSIONS ON NEEDED AMENDMENTS TO THE LIQIUOR LICENCING ACT 1997

ALRM is the peak body in South Australia for upholding the legal rights of Aboriginal people.

Our mission is to seek for Aboriginal people of South Australia -- Justice Without Prejudice.

ALRM is a law practice for the purposes of the *Legal Practitioners Act 1982*. It is also a community controlled Aboriginal organisation, funded under the Indigenous Legal Assistance Program (ILAP) of the federal Attorney General's Department. ALRM was first incorporated in 1973 as an incorporated Association.

ALRM employs over 21 legal practitioners and 10 Aboriginal Field Officers in its central Adelaide office and branch offices in Murray Bridge, Port Augusta and Ceduna. Within the bounds of very limited funding ALRM provides legal services in criminal, civil and family law across the whole of the state

In addition ALRM has had, since1999 extensive experience in acting for remote communities in the Licencing Court of South Australia and in the negotiation of accords, and negotiated agreed imposition of conditions on liquor licences.

ALRM was instrumental in preparing for and holding the 2013 Dry Communities Summit and in coordinating the work of the Committee to implement the work of the Summit since that time.

This submission is based upon that broad experience in working for Aboriginal communities in the liquor licencing field for over 25 years.

Grounds of Objection under The Liquor Licensing Act .
The grounds of objection under Section 77 of the Liquor Licensing Act, uses outmoded language. In that regard I refer to Section 77(5) (g)(i) of the *Liquor Licensing Act*. The formula of objection relies upon outmoded language and an unrealistic view of "the vicinity" of the premises concerned. Similarly under section 77(5)(g)(iii) the " locality of the premises" may be too narrow a definition.

In papers submitted to the Liquor & Gambling Commissioner, ALRM has pointed out that remote Aboriginal communities may be materially affected by the operations of licensed premises whether or not they be in the "vicinity" or "locality" of those premises and this will apply to other possible objectors as well. It is submitted that the present test is outmoded and should be replaced by a material affectation test, that

is , a test which relies on the question whether a particular community or school or other institution will be materially and adversely affected by the provision of a licence at a particular place. In addition it should be recognised that in remote locations, a takeaway liquor outlet can have disastrous effects upon a community, notwithstanding it is a considerable distance from the outlet.

Similarly, the formula found in the same section of the Act of objections based around 'disturbance or inconvenience to those who reside work or worship', is an outmoded test and should be expanded or replaced by a test based around public health and welfare considerations and the wishes of local communities and community organisations and community health services. In addition it should be recognised that in remote locations, a takeaway liquor outlet can have disastrous effects upon a community, notwithstanding it is a considerable distance from the outlet.

It is understood that similar formulae for objection are found in the *Gaming Machines Act*, and ALRM would recommend that similar amendments be made to that Act for the same reason.

Grog Running

ALRM is particularly concerned about the use of take-away sales for the purposes of sly grogging and grog running to remote communities, particularly in cases where grog is being run and taken to dry communities where the possession of liquor is unlawful.

ALRM has the opinion of Senior Counsel to the effect that there is a strong argument that licensees may have potential criminal liability as accessories to the commission of offences of possession of liquor on dry communities, in circumstances where sales take place to persons well known to be travelling to such communities with vast quantities of liquor and where the licensee or it's employee knows or has reason to believe this.

In the circumstances where grog running has the capacity to create serious violence, disorder, and social and medical problems for communities, it is submitted that more stringent rules ought to be applied to control grog running. They should be directed to ward controlling supply and preventing sales. It is notorious that with the best will in the world it is difficult to control grog running by policing methods within communities.

Section 43 *Liquor Licensing Act*

ALRM recommends the retention and expansion of section 43 in accordance with this submission. Consistent with what is said below, ALRM also recommends that Aboriginal communities and other public health and public interest organisations also be given locus standi, under the Act to approach the Commissioner and the Licencing Court to seek to have section 43 style conditions imposed on Licenced premises, in accordance with the RCIADIC recommendations. This should be done by specifically mentioning such organisations under section 43(2) *Liquor Licensing Act.*

Section 43 of the *Liquor Licensing Act* might be further amended to allow the Commissioner to impose restrictive or empowering conditions on the licence in circumstances where the Commissioner has reason to believe that the imposition of conditions would prevent or curtail the commission of dry area offences on a local Aboriginal community (*Aboriginal Lands Trust Act or Pitjantjatjara Lands Rights Act)* or curtail excessive consumption of alcohol on communities remote from the licensed premises, and in circumstances where the Commissioner has reason to believe that grog running is occurring.

This is amply justified by the findings and recommendations of the Sleeping Rough Inquests;-
(www.courts.sa.gov.au/inquests/findings/2011/sleeping rough inquests),

This is probably allowed for in the breadth of section 43 already, however it would be useful to make it a dotpointed example, as is already done in the case of conditions to prevent consumption off premises in the vicinity of those premises.

It is further and in the alternative submitted that the generality of section 43(1) might usefully be made more specific by referring to a power to impose conditions generally in the public interest and in the interests of public health and welfare- rather than by the use of dot pointed examples. There should also be a specific ancillary power to add conditions to ensure that Licensees comply with public interest conditions. Such as for example a power to impose conditions requiring licensees to monitor and record takeaway sales and details of all purchasers.

Accords

ALRM sees much benefit to be gained from Liquor Licensing accords and the general principle of making licensees and group of licensees accountable to the local communities which they serve. Again, it should be recognised that in remote locations, a takeaway liquor outlet or set of takeaway outlets in the same locality can have disastrous effects upon a community, notwithstanding it is a considerable distance from the outlets.

It is important that the Communities concerned be intimately involved in the process of negotiating Accords and monitoring their effects, intended and unintended. In those circumstances, it is suggested that the powers of the Commissioner in relation to accords needs to be broadened and that those powers need to reflect the proper operation of the responsible service and consumption principles. This should be done in the light of the evidence presented in the Nundroo case [2013]SALC that the effects of takeaway liquor on remote communities is disastrous in terms of morbidity amongst residents – particularly pregnant women and children of school age who may be neglected by drinking parents, domestic violence, maintenance of order and the effects in general on community morale of binge drinking.[1] The process of an Accord

[1] The Review is particularly referred to the Monograph "Alcohol in the Outback, Drinking in a remote Aboriginal Community" by Palmer & Brady ANU Northern Australian Research Unit 1984 , which monograph discusses the effects of takeaway liquor on a remote South Australian Community.

generally could be and should be used to monitor and prevent large takeaway sales, so as to curtail their effect on remote communities.

Similarly, as part of an accord process, remote communities should be able to agree that licensees have, as a corollary of a special measure provision, for the purposes of the *Racial Discrimination Act 1975*, a specific authority to refuse to make such sales in circumstances where they believe that the liquor to be purchased may well be taken to a dry community in circumstances where an offence would be committed.

Accords should also be used to control the times of take away sales and the types of liquor available.

ALRM has recommended that liquor accords be given specific legislative backing. We have also recommended that legislative power to apply accords should have a built in mechanism to ensure proper evaluation of their effectiveness and the means to measure unintended but negative consequences of the accord itself.

Accords which at the moment have no statutory basis would have their position enhanced, if that were specifically provided for in the Liquor Licencing Act.
It would also be desirable as a matter of principle for such agreements to be publicly known and regulated and registered by the Licencing Authority.

It is thus submitted that the *Liquor Licencing Act* should be amended to provide for the Commissioner to have power to encourage, negotiate, approve and register agreements and Licencing Accords which are consistent with the Responsible Service and Consumption principles and which restrict and regulate trading hours or the kinds of liquor available, in the public interest.

It would also give recognition to implementing RCIADIC recommendation 276.

> 276. That consideration be given to the desirability of legislating to provide for a local option as to liquor sales trading hours, particularly in localities where there are high concentrations of Aboriginal people. (4:282)

Also, any legislative power to apply accords should have a built in mechanism to ensure proper evaluation of their effectiveness and the means to measure and correct unintended but negative consequences of the accord itself.

Trade Practices Law
The present position in relation to section 32(2) *Liquor Licensing Act* –Hotel Licences, is that the mandatory opening times are between 11am and 8 pm, beyond that opening hours are discretionary to the outer time limits of the licence. It may be that for reasons consistent with the responsible service and consumption principles and in accordance with a local accord, licensees will wish to limit their opening hours on an agreed basis, for the sake of a public benefit. They may not need any alteration to the condition of their licence to do so but if they do so collusively or in accordance with the conditions of an accord or agreement, they may find themselves in breach of the *Competition and Consumer Act2010 (CW).*

I refer in that regard to the Federal Court case of ACCC v Woolworths(SA)Pty Ltd (No2), [2004]FCA128(18thFeb 2004).

It is submitted that this is a further reason to rationalise the accord process by incorporating it in the legislation.

Access to the Licensing Court & to the Licensing Authorities

ALRM has long made submissions that the relevant Royal Commission into Aboriginal Deaths in Custody(RCIADIC) recommendations ought to be implemented in full, as they apply to the *Liquor Licensing Act*. I refer in that regard to Recommendations 277, 278 & 279,

> 277. That legal provision be available in all jurisdictions to enable individuals, organisations and communities to object to the granting, renewal or continuance of liquor licences, and that Aboriginal organisations be provided with the resources to facilitate this. (4:282)
>
> 278. That legislation and resources be available in all jurisdictions to enable communities which wish to do so to control effectively the availability of alcoholic beverages. The controls could cover such matters as whether liquor will be available at all, and if so, the types of beverages, quantities sold to individuals and hours of trading. (4:283)

ALRM submits that apart from the power of the Licensing Commissioner to make applications to the Licencing Court, or to vary the conditions of licences for the public benefit and public interest, under section43, there ought also to be a power for local community organisations and local health services to make applications for the purposes of varying licenses, that effect local communities adversely.

> 279. That the law be reviewed to strengthen provisions to eliminate the practices of 'sly grogging'. (4:283)

In relation to sly grogging, sale of liquor without a licence is an offence under the *Liquor Licensing Act* , section 29

> Section 29; A person who sells liquor without being licensed under this Act to do so is guilty of an Offence .
>
> Maximum Penalty $20,000.00, for a second or subsequent offence $40,000.

There are many grey areas however, including the use of third parties to make take away purchases for intoxicated people and the use of taxis to do the same thing. Where money changes hands between the ultimate purchaser and the third party BEFORE the purchase, it seems clear that an offence is not committed under section 29, as it stands. However if liquor is purchased by a third party and on sold to the ultimate consumer it would appear that an offence is committed. The obvious point is that such transactions are notoriously difficult to detect and to police.

It may be that specific offences could be created as to cover situations where a person is purchasing as an agent for and on behalf of persons known to be prohibited from purchasing takeaway themselves.

In relation to taxis, it is understood that in the Northern Territory, a law prohibits any taxi driver from purchasing liquor for takeaway whilst on duty as a taxi driver. It is submitted that such a rule might well be considered for South Australia, particularly in light of many years experience of allegations – never able to be proven, of sly grogging by taxi drivers in Ceduna and in Port Augusta. (no doubt other places as well.) It is submitted that such a rule would undermine the basis for such an illicit trade, where the victims were likely to collude with the perpetrators in preventing effective detection or prevention measures.

All of that said it is acknowledged that sly grogging is difficult to police and that cooperation between the community and police is necessary for prosecutions to take place.

Tippling Clauses

ALRM notes that the old Licensing Act of South Australia in the 1930's contained a tippling clause which effectively prevented sales of liquor on credit. That clause made debts from individual customers to licensed premises unenforceable in relation to the sale of liquor on credit beyond a nominal value of a few shillings.

It is submitted that consideration should be given to a similar clause being placed in the existing *Liquor Licensing Act* to prevent sales of liquor on credit beyond a nominal value of $20 or $30.

IN our submission, it is not appropriate that persons in poverty should purchase liquor by putting up household items as security for future payments, nor is it consistent with principles of responsible service and consumption that liquor be sold on credit in this manner.

Methylated Spirit

The sale of Methylated spirits to a person suspected to be likely to drink it is an offence under the *Summary Offences Act* .

9A—Supply of methylated spirits

(4) A person who supplies methylated spirits, or a liquid containing methylated spirits, knowing, or having reason to suspect, that it is intended to be drunk, is guilty of an offence.

Maximum penalty: $750.

(6) In this section—

methylated spirits means industrial spirit or commercial methylated spirit, that is to say, ethyl alcohol which has been denatured by the addition of methyl alcohol, benzene, pyridine or any other methylating or denaturing substance or agent.

ALRM does not know when the last prosecution for selling methylated spirits for the purpose of ingesting it took place, but it is quite properly still illegal and ALRM continues to hear of cases where it is unlawfully sold and consumed, to the great detriment of Aboriginal people and of homeless persons, in the grip of the grog. It is thus submitted that this review should consider the question whether the existing laws, penalties and practices limiting the sales of methylated spirits are adequate.

Section 132 Liquor Licencing act

The Liquor Licencing (Dry Area-Long Term) regulations are general in character and cover many cities and towns or parts of cities and towns in South Australia, which are in each case separately described in schedule 1 to the regulations in question.
A total in excess of 81 areas in the state are scheduled, many or most of them are areas of high Aboriginal population. Many towns, cities and suburbs of Adelaide have multiple schedulings to cover specific public places in their towns, cities and suburbs. Others such as Ceduna -Thevenard have blanket prohibitions covering the whole town.
Examples of areas of high Aboriginal population covered by Scheduling are
COUNTRY

- Ceduna -Thevenard [whole town includes foreshore to end of jetty!]
- Pt Augusta 5 areas – includes Gladstone Square adjacent to Court House, parks and foreshore
- Coober Pedy
- Kadina
- Mannum
- Murray Bridge [foreshore of the river and associated parks]
- Meningie
- Pt Lincoln [includes foreshore]
- Pt Pirie [3 areas]
- Renmark [2 areas]
- Victor Harbor [2areas]
- Wallaroo[3 areas]

ADELAIDE & SUBURBAN

- Aberfoyle Park
- NoarlungaCentre
- Pt Adelaide[3areas]
- Semaphore
- Adelaide , whole of the CBD and the Parklands

<u>What the Royal Commission said</u>

The Royal Commission into Aboriginal Deaths in Custody agreed that dry areas could be useful for individual communities and that a dry area on a community, at the request of the community could achieve good results in terms of minimising harm and adverse effects of excessive alcohol consumption.[2]

[2] RCIADIC Natrional Report Volume 4 .Chapter32.2.7pages 276-8

That kind of limited Dry Area, at the request of an aboriginal community is a different proposition from a dry area under the *Liquor Licensing Act* which would cover a whole town or city , and which could have a discriminatory and harmful effect on Aboriginal people and others who are homeless and in the grip of the grog.

Evaluation of Dry Areas

Much evaluation work has been done on the effects of dry areas on towns and cities, most particularly with the dry area which cover the central business district of Adelaide. In general terms it has been discovered that:

1. Dry areas that cover a town as a whole tend to operate in such a way as to single out Aboriginal people since it is mostly Aboriginal people that drink and socialise in public places.
2. Dry areas are effective in deterring literate employed young men and women from drinking in public places.
3. That dry areas have the effect of lowering crime rates in the central business district of the towns and cities concerned , but at too high a price in terms of
    - Civil liberties, particularly for Aboriginal citizens whose social life in communicating and interacting with peers in a public place is disrupted by dry areas.
    - Limiting access to services
    - Creating a homogenised and artificial image of Australian towns and cities in the minds of tourists. The plight of Aboriginal people in terms of health, welfare , effects of dispossession etc are "swept under the carpet
    - Undoing the effects of the wise decision of the Parliament in 1984 to decriminalise the old summary offence of being drunk in a public place and replacing it with the *Public Intoxication Act* .

Vulnerable people moved away as a result of dry areas are in danger

- of crimes, including crimes of sexual and general violence being committed upon them
- of suffering medical emergencies in obscure places where access to medical services is limited
- of exposure to adverse weather
- of further alienation because of their invisibility.

4. It must be remembered that those who do drink in public places tend to be people who suffer from chronic illnesses and are marginalised from family and other social ties. They are the very people who need services which are made much harder to deliver. All of this was emphasised by the Deputy Coroner in the Sleeping Rough Inquests.

Lack of Consensus with Aboriginal People

At the same time, such dry area laws that cover towns and cities and which adversely impact Aboriginal populations, have never historically been created by a political

consensus which includes all of the Aboriginal people and communities affected . It is that imposition of dry areas by civic authorities in the towns and cities, and approved by State Government which gives rise to resentment and feelings of discrimination in the minds of Aboriginal people.
Often the State government wants to put in services to the Aboriginal community as a response to these very criticisms, however the record in terms of actual infrastructure and real gains for the Aboriginal community is questionable.

For the last several years there have been unsuccessful budget bids for a specific Aboriginal detoxification and alcohol rehabilitation centres, but the new Port Augusta facility is the only new facility which has been opened. This has also occurred in the context of the defunding of other services such as the Kalparrin farm.

Expiation
Under existing arrangements, particularly with dry area offences under the Liquor Licencing Act, expiation notices are an inappropriate and ineffective means to enforce laws.
They often apply to homeless people and people "in the grip of the grog", to quote the Deputy State Coroner in the Sleeping Rough Inquests. [3]
It is the experience of ALRM lawyers and Field Officers that homeless people and people sleeping rough are often subject to police attention and the attention of Council employees for the kinds of minor offences, which are subject to expiation and these people are, because of their medical condition often incapable of comprehending expiation notices or their implications.

- They do not understand that an unpaid notice gives rise to further payments and fees as long as they remain unpaid.
- They do not understand that they are able to have their matters diverted to court (to contest their fitness to plead).
- They do not understand that multiple offences give rise to multiple notices.
- They do not comprehend the notices themselves, written as they are in their second language English and with much legalese and fine print.

In one remote community visited by ALRM our workers found that in October 2014 there were a total of 25 community members with unpaid fines totalling $90, 000. In July 2015 we found 28 community members with a total of $299, 000. These figures are extraordinary and outrageous and they disclose that expiation for offences in public places is not effective and does not engender respect for the law. They keep already poor people in the grip of poverty through fortnightly reductions of already meagre pensions and allowances. They create an unmanageable and unconscionable burden on the Penalty Management Unit.

ALRM supports proposals that , consistent with recommendations of the Sleeping Rough Inquests , people in the grip of the grog be treated under a medical model of intervention and diversion through the *Public Intoxication Act* and detoxification in public hospitals and alcohol rehabilitation centres. ALRM does not however support mandatory treatment orders.

[3] www.courts.sa.gov.au/coroner/findings /2011/ sleeping rough inquests

In addition ALRM recommends (as stated in numerous previous submissions) that the criteria for apprehension under the *Public Intoxication Act* should be widened to include intoxicated disorderly behaviour and offensive language cases. So much is consistent with the Victorian Parliamentary Committee Report on public drunkenness.[4]

ALRM. January 13th 2016

[4] Parliament of Victoria; Drugsand Crime Prevention Committee Inquiry into Public Drunkenness. Final Report June 2001.