

**LEGISLATIVE COUNCIL**  
**Question On Notice**

**Tuesday, 20 November 2018**

**1789. Hon Robin Chapple to the Minister for Regional Development representing the Minister for Racing and Gaming**

I refer to the alcohol restriction in Fitzroy and Halls Creek, and I ask:

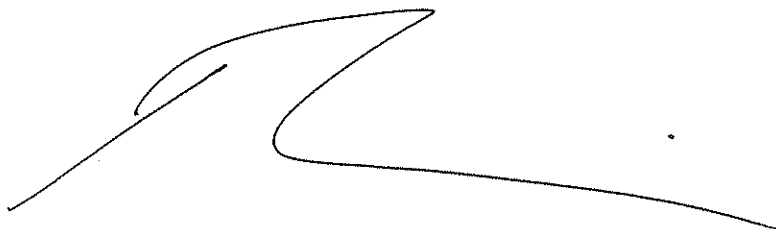
- (a) will the Minister outline the changes since the restrictions were introduced;
- (b) will the Minister list the services that have been provided since the restrictions were introduced, and how their effectiveness have been measured; and
- (c) will the Minister provide information on the amount of attacks on humans and infrastructure prior to the introduction of restrictions and since the restrictions?

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**Answer**

It is understood that the Minister for Racing and Gaming's office discussed this matter with the Member's office directly to offer assistance in appropriately directing the Member's questions, given much of the information sought does not fall under the Minister's responsibilities.

- (a) The restrictions in Fitzroy and Halls Creek have not been amended since their respective introductions in 2007 and 2009. See tabled paper no # for 2007 and tabled paper no # for 2009.
- (b) This question would be better directed to the Minister for Health; Mental Health and the Minister for Community Services who have portfolio responsibilities for providing assistance services in Fitzroy and Halls Creek.
- (c) This question would be better directed to the Minister for Police, who may be able to provide the data sought.

A large, stylized handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke.



**DECISION OF DIRECTOR OF LIQUOR LICENSING**

- PREMISES:**
1. KIMBERLEY HOTEL  
LICENCE NO. 6010016030
  2. HALLS CREEK STORE  
LICENCE NO. 6030016329

**NATURE OF MATTER: HALLS CREEK - SECTION 64**

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Section 64 of the *Liquor Control Act 1988* ('the Act') provides that the licensing authority may, at its discretion and of its own motion, impose conditions in addition to the those specifically imposed by the Act, or in such a manner as to make more restrictive a condition specifically imposed by the Act.

On 13 January 2009, pursuant to section 64(2a) of the Act, a notice was issued to all licensees in the area of the State north of 20° south that I was satisfied that the level of alcohol-related harm occurring in the Halls Creek area and in the Kimberley region is such that it would be in the public interest to impose restrictive conditions on those licences. The information and evidence in support of that finding were detailed in the notice of 13 January 2009.

The notice issued to the licensee of the Halls Creek Store and the Kimberley Hotel included the following proposed condition:

*"The sale of packaged liquor, exceeding a concentration of ethanol and liquor of 2.7 per cent at 20°C, is prohibited to any person, other than a lodger (as defined in section 3 of the Act).*

In giving that notice, licensees were required to show cause by 20 February 2009 why the proposed conditions should not be imposed.

The present conditions on the Halls Creek Store ("the Store") and Kimberley Hotel ("the Hotel") licences were imposed on 6 June 2007 (Decision No.A183554) by the Delegate of the Director of Liquor Licensing ("the 2007 Restrictions").

Upon receipt of submissions dated 20 February 2009 from both licensees, an extension to 31 March 2009 was granted for the licensees to respond further to the proposed condition. The Hotel also sought up-to-date statistics on Fitzroy Crossing.

Further submissions were received from the Executive Director, Public Health (“the EDPH”) and WA Police Service (“the Police”) and these were forwarded to the licensees on 24 March 2009. The due date for the receipt of submissions in relation to the proposed condition was extended to the close of business on 28 April 2009.

## THE HOTEL SUBMISSION – FEBRUARY 2009

***Evidence of Harm or Ill Health*** (State Coroner’s Inquiry – Impact of Alcohol on the Population of Western Australia)

The Hotel submits that as a result of the imposition of the 2007 Restrictions, there is no basis for the Director of Liquor Licensing to impose the proposed condition because what must be determined is:

1. *“Whether harm or ill health due to the use of liquor is still occurring”.*
2. *“Whether the 2007 Restrictions have been effective or ineffective in reducing the harm and ill health due to the use of liquor.” (paragraph 33)*

The background to the 2007 Restrictions was that following receipt of a submission from the WA Police Service in April 2006, the Halls Creek licensees and other stakeholders were advised on 20 April 2006 of the decision to conduct an inquiry under section 64 of the Liquor Licensing Act.

Liquor restrictions have been imposed on the Store and the Hotel since 1992; involving 10 decisions by the licensing authority.

On 20 December 2006 an interim decision was released to provide the licensees and stakeholders an opportunity to consider the proposed conditions and make submissions on same. After considering those submissions, Decision A183554 was issued on 6 June 2007.

In considering the conditions imposed by that decision, it is important to note that the inquiry commenced in April 2006 and with respect to the submission from the Executive Director, Public Health, the Hotel submitted that the Executive Director,

*“... has not relied upon any statistics, i.e. such as hospital admissions, sober up shelter admissions, in support of her submissions. Rather, she has relied upon a visit of 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”.*

The delegate accepted this position and included these words in his decision.

Accordingly, not only were the 2007 Restrictions not premised on statistics provided by the Executive Director, Public Health, the delegate did not have the benefit of the January 2008 report of the Epidemiology Branch of the Department of Health and the Drug and Alcohol Office on the *"Impact of alcohol on the population of Western Australia"*. Furthermore, the delegate did not consider the National Drug Research Institute's 2007 publication entitled "Restrictions on the sale and supply of alcohol: evidence and outcomes".

Also the Coroner's Report into 22 deaths in the Kimberley Region (February 2008) and Oombulgurri (18 July 2008) were not available for the Delegate to consider in Decision A183554.

More importantly, the Delegate contemplated that modification and periodic review may be necessary:

*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.*

With respect to the impact of alcohol, at paragraphs 23, 57, 80, 114 and 133 of Annexure E (original dated 28 April 2008) for example, the Hotel acknowledges that problem/at risk drinkers in Halls Creek purchase packaged liquor from the Hotel and the Store.

***Evidence of Harm or Ill Health*** (General Research)

While acknowledging that "...general research...supports the introduction of...conditions", the Hotel argues "...that 'it has little probative value in the present application.'" (paragraph 39)

Minimising the harm or ill-health due the use of liquor, caused to people who reside in or resort to Halls Creek, is a matter for the future and is essentially a matter of prediction. Justice Ipp quoted the observation in *Malec v J.C. Hutton Pty Ltd* (1990) 169 CLR 638 (*Lily Creek 2000* supra paragraph 26) –

*"The future may be predicted and the hypothetical may be conjectured. But questions as to the future or hypothetical effect of physical injury or degeneration are not commonly susceptible of scientific demonstration or proof."*

With respect to predicting the possibility of harm or ill-health, well established health research can assist the licensing authority in understanding the circumstances that are associated with alcohol-related harm and the relationship to different licence types. There is a significant body of research demonstrating that there is a positive relationship between levels of per capita alcohol consumption populations and the frequency and range of social and health problems.

Examples of problems include acute harms, which tend to arise from episodic bouts of intoxication (e.g. violent assault, drink driver road crashes and pedestrian fatalities) and long term or chronic harms that arise from many years of problem drinking (e.g. alcoholic liver cirrhosis, various cancers, alcohol dependence)[Chikritzhs, T et al. 2001, *Mortality and life years lost due to alcohol: a comparison of acute and chronic causes*. Medical Journal of Australia, 19 (174).]

The expert testimony in the matter *Executive Director Public Health v Lily Creek International & ORS* (2000) WASCA 258 of Professor Dennis Gray, summarised international and Australian literature and research, demonstrating that alcohol consumption levels are influenced by the availability of alcohol. Reviews of the literature were included in:

- National Drug Law Enforcement Research Fund (2007). Predicting alcohol-related harms from licensed outlet density: a feasibility study. National Drug Law Enforcement Research Fund Tasmania.
- National Drug Research Institute (2007). Restrictions on the Sale and Supply of Alcohol: Evidence and Outcomes. National Drug Research Institute, Curtin University of Technology: Perth.

The literature reviews conclude that although the relationship is complex and may vary in magnitude over time and place, there is clearly a demonstrable, positive relationship between the availability of alcohol and the level of consumption. The National Drug Research Institute study provides the following summary:

*"There is a vast epidemiological research literature on the effects that legislative and regulative controls on alcohol availability have on consumption and related harms and the relationship between these has been the subject of several comprehensive reviews in recent years e.g. (Babor et al. 2003; Heather and Stockwell 2003; Loxley et al. 2004). These reviews cite many studies – going back over thirty years – which demonstrate a positive relationship between levels of alcohol consumption within populations and the frequency and range of social and health problems experienced by those populations. Underlying this literature are the principle elements of 'availability theory'."*

With respect to "availability theory", Stockwell and Gruenewald (2004) *"suggested...only increased availability that leads to a real change in the 'full price' of alcohol – which includes economic and convenience considerations – will lead to increased consumption. Applying the same logic, only those attempts to decrease availability which have an impact of the range of factors that influence the 'full price' of alcohol are likely to result in a decrease in consumption."*

In relation to the most effective mix of restrictions, the National Drug Research Institute's study states that *"(a) single targeted restriction (e.g. Sunday trading ban for liquor stores, hotel closing at midnight) may be more effective than an entire suite of half-heartedly implemented, watered-down or ill-considered restrictions."*

Therefore, I do not accept the Hotel's submission regarding the 'probative value' of the research.

***Evidence of Harm or Ill Health*** (Information Specific to Halls Creek) – ***Additional Material***  
– ***Insufficient Evidence – Requirements of Consumers***

The Hotel characterises the letters cited in the notice as, at:

*“...best... calls for further restrictions, however, in the absence of evidence in relation to what harm or ill health has occurred within Halls Creek since 2007, or information in relation to the effect or lack of effect of the 2007 Restrictions, it is submitted that the viewpoints of the abovementioned authors have little prohibitive value in relation to the present inquiry.” (paragraph 42)*

In my view the letters, as opinion evidence, have the same status in weighing and balancing the objects of the Act as the letters/submissions included with the submission from Hotel (and the Store) as to the public interest consideration of the Hotel and the Store catering for the requirements of consumers for packaged liquor.

Annexure F of the Hotel's submission reveals the occurrence of alcohol related offences in four Kimberley towns, including Halls Creek. At Annexure G the Hotel provide an analysis of alcohol related crime in Halls Creek.

This analysis must be considered in the context outlined in the Police December 2008 submission:

*“Since February 2007 the Halls Creek Police have adopted a ‘low tolerance’ approach to policing, using basic enforcement methods to raise the standard of behaviour and to reduce the impacts of alcohol abuse. Our policy is targeted and aimed to meet community expectations and needs with there now being tangible consequences for individuals not meeting these community standards/expectations.*

*We strive to achieve this through taking control of people affected by liquor within the community before they become our victims, complainants or offenders.”*

[emphasis added]

This is understood to mean the policing strategy is to take people affected by alcohol into custody to reduce such other consequences as domestic violence and assaults.



With respect to the submission from Mr Faulkner (Halls Creek District High School) detailed the harm or ill-health caused to students due to 'alcohol abuse', the Hotel submits that '*...it is not of assistance to the Licensing Authority to consider the drinking habits of the parents of high school students prior to the imposition of any restrictions in Halls Creek in relation to the availability of liquor.*' This is in contrast to the statement at paragraph 60 of Annexure E of the Hotel's submission:

*"It is accepted that when an alcoholic parent spends a significant period of time in an intoxicated state or spends the family funds on liquor that a consequence of that may be child neglect."*

It is of concern to the licensing authority if any harm or ill-health caused to "parents" due to the use of liquor is viewed as "normalised" by "high school students", particularly as the Halls Creek Shire's population according to section 9.8 of Attachment C (DEMOGRAPHIC REPORT-HALLS CREEK) of the Store's submission, "*...is young, particularly the indigenous community. There is a high proportion of minors and young adults...*" Also, the plight of children in the Kimberley as a result of alcohol abuse was highlighted in the Coroner's Report into 22 deaths in the Kimberley Region and again in his Oombulgurri report.

#### **2007 Restrictions – Additional Conditions – Department of Health Submission**

The conditions proposed/discussed in the Police and EDPH submissions did not form part of the section 64 Notice.

With respect to the EDPH submission, the following are compelling matters in relation to the alcohol-related harm in Halls Creek –

- the high per capita alcohol consumption in Halls Creek;
- the potential under reporting of alcohol-related presentations because the Emergency Department presentations are recorded according to the primary condition requiring treatment;
- the rates of alcohol-related hospitalisation for males and females in Halls Creek for the period 2002-2006 were 7.54 times higher than the corresponding State rate; and
- the prevalence of drunkenness in Halls Creek demonstrated by the utilisation of the Halls Creek Sobering-Up Centre.

Furthermore, at paragraph 62 the Hotel acknowledges the success in Halls Creek, as detailed in the Police submission, of "*restrictions on the sale of full-strength packaged liquor*".

### **Halls Creek Liquor Accord**

I do not accept that it is in the public interest, as submitted by the Hotel,"... *that the decision as to when full strength packaged sales should be restricted is one best made by the Accord on a case by case basis.*"

Liquor accords are voluntary initiatives which rely on the goodwill and cooperation of licensees with no certainty of adherence to any agreed restrictions. Furthermore, no application has been made under section 64(1b) of the Act for the Director to approve the accord; even then conditions can only be imposed through the section 64 process.

### **Alcohol Management Plan**

As with liquor accords, there is no legislative authority to support the implementation of the Hotel's proposed Alcohol Management Plan.

### **THE STORE SUBMISSION – FEBRUARY 2009**

The store submits that:

- *"The statistical research reflects the imposition of restrictions on liquor licences can be counterproductive."*
- *"The evidence suggests there is an improvement in the health and welfare of the members of the community in Halls Creek."*
- *"There is no causal evidence to suggest the imposition of harsher restrictions in the supply of liquor in Halls Creek will lead to an improved state of welfare, well-being and an improvement for the marginalised members of the community in Halls Creek."*
- *"The consequence of imposing the restrictions on the sale of packaged full strength beer is that the store will become economically unviable, resulting in its closure. The result is a service facility previously available to the community is removed."*
- *The consequence of closure of the Store will create a monopoly market for the sale of liquor by the hotel in Halls Creek."*

### **Crime Rates**

The Store submits crime rates for Halls Creek that show a decline in 2008/09 compared with 2004/05 and 2006/07; however, the 2008/09 figures are consistent with the pre 2004/05 figures.

The Store compares the assault rates for 2007 and 2008 for Halls Creek with Fitzroy Crossing, which must be interpreted in the context of:

- (a) in the 2006 Census, there were 928 persons usually resident in Fitzroy Crossing compared with 1211 in Halls Creek; and
- (b) the "low tolerance" policing strategy in Halls Creek since February 2007 targeting alcohol consumption and abuse.

***Cogent material from empirical studies which suggest liquor restrictions can be counterproductive and be ineffective where restrictions are imposed unilaterally***

The Store cited d'Abbs and Togni's (2001) comments on the evaluation of the 1992 restrictions in Halls Creek undertaken by Douglas. While highlighting the findings that question the effectiveness of the restrictions, the Store ignores the fact that while the total number of criminal charges recorded at Halls Creek Police Station did not change for the first 12 months of the restrictions, there was "... *an 18% fall in the succeeding year (compared with the number in the 12 months preceding the restrictions).*" Further, in relation to Tennant Creek, Derby and Curtin Springs, d'Abbs and Togni report that "... *the evidence that the restrictions had a significant impact is much stronger.*"

With respect to the impact of the 1992 restrictions on health and well-being, no consistent trend was reported in relation to domestic violence presentations as a percentage of outpatients presentations. However, for alcohol-related presentations as a percentage of presentations at Halls Creek District Hospital, there was a decline over two years following the restrictions, and the number of Royal Flying Doctor Service emergency evacuations reduced following the restrictions.

The Store also draws some questionable conclusions from the comments made in the National Drug Research Institute's evaluation of the 1992 Halls Creek restrictions undertaken by Douglas (1998); therefore, section 8.2.2 of the National Drug Research Institute's paper is referenced in full:

#### *8.2.2 Evaluation of the 1992 Halls Creek restrictions*

*The effect of the Halls Creek restrictions was evaluated independently by Douglas (1998). The study compared levels of alcohol consumption and indicators of harm before and after the restrictions were introduced in November 1992. The design incorporated a measure of overall per capita alcohol consumption and a range of indicators of alcohol-related harm including: number of criminal charges made by*

police; alcohol-related outpatient admissions to the local hospital; presentations to the hospital for domestic violence; and Royal Flying Doctor Service (RFDS) evacuations. Derby/Fitzroy Crossing – which was not subject to additional restrictions at the time – was selected as a control region to compare changes in per capita alcohol consumption.

Compared with the same period in the previous year (baseline), adult per capita alcohol consumption in Halls Creek declined by about seven per cent during the first year of the restrictions (1992-93 figures included data for the four months before the introduction of the restrictions). During the second year of implementation, per capita consumption was about five per cent lower than at baseline. In particular, wine consumption declined by 39 per cent, a gain that was partly offset by a 24 per cent increase in full strength beer and 10 per cent increase in spirits consumption. However, per capita consumption in the community of Derby/Fitzroy Crossing also appeared to decline in 1992-93 by a similar magnitude – about six per cent. During the same period, per capita consumption throughout the whole state was relatively stable (less than one per cent increase in 1992-93 and two per cent increase in 1993-94).

The Douglas (1998) evaluation attempted to assess whether changes in alcohol consumption in Halls Creek was specific to the restrictions by providing descriptive comparisons with a control region (Derby/Fitzroy Crossing). Unfortunately, no statistical test of the significance of the changes within Halls Creek compared to the control region was provided. It is, therefore, difficult to determine the extent to which the decline in consumption in Halls Creek can be attributed to the restrictions – especially given that declines in consumption also occurred in the community of Derby/Fitzroy Crossing.

Analysis of police data found that compared to baseline, numbers of criminal charges reported by police increased by about 1.5 per cent during the first 12 months and by 18 per cent in the second year. The proportion of alcohol-related charges was not known. Limitations in the quality of these data were acknowledged by the author who cited lack of continuity of policing due to high staff turnover as a problem and differences in law enforcement practices by individual officers.

To determine changes in health indicators, a comparison of alcohol-related presentations assessed by nursing staff at the Halls Creek District Hospital during equivalent quarters before and after the implementation of restrictions was conducted. There was an initial decline in presentations in the first quarter,

*followed by an increase over the next three quarters. By October 1994 alcohol-related presentations accounted for 3.11 per cent of all presentations, compared with 6.75 per cent in November 1992 when the restrictions were first introduced. Surprisingly, during the nine months between May 1993 and January 1994 there was no significant difference in the proportions of alcohol-related presentations. This unexpected variation is difficult to explain given that no comparisons were made with a control region, however there is a strong likelihood that the subjectivity of the measure, nursing staff changes, and differing standards of data entry by individuals all played a part. Analysis of the data on domestic violence presentations did not detect any trends during the two year period, with post-intervention numbers showing no significant changes or trends which could be attributed to the restrictions.*

*Finally, emergency evacuations by the RFDS for any injuries (both alcohol-related and non alcohol-related) appeared to show a peak in frequency during the three months directly preceding the implementation of the restrictions then a marked drop during the three months immediately after. Thereafter, the average number of evacuations declined slightly.*

*It must be acknowledged that the Douglas (1998) study was one of the first evaluations to assess the effectiveness of alcohol restrictions, and the lack of sophistication in design, method, analyses and the variable nature of the results reflects this. However, despite limitations in the quality of the data that show only modest changes in key indicators, the community support that was so integral to the process of introduction of restrictions, and the development of other strategies to overcome the alcohol problems in town, had greatly empowered the community. The combination of restrictions on the availability of alcohol, the opening of the sobering-up shelter, employment programs, sport and recreation programs and educational programs enabled the community to play an active role in addressing alcohol-related problems in town.*

In relation to the imposition of restrictions unilaterally, as referenced above, the National Drug Research Institute's study states that "(a) single targeted restriction (e.g. Sunday trading ban for liquor stores, hotel closing at midnight) may be more effective than an entire suite of half-heartedly implemented, watered-down or ill-considered restrictions."

## **Sections 6 to 9**

With respect to Halls Creek being “*singled out*”, the section 64 Notice identified information in the possession of the licensing authority specific to Halls Creek.

The Store posed the question “*as to the reasons why packaged liquor is singled out*”?

The sale of liquor for on-premise consumption is in a regulated environment where consumption can be monitored and supervision can occur, whereas this is not the case for the consumption of packaged liquor.

In its January 2008 objection to the alteration, of the Kimberley Hotel, the Store stated:

*“Since 1991-1992, the Licensing Authority has consistently and persistently imposed a matrix of conditions on the two liquor licences permitted to sell packaged liquor in Halls Creek because it has formed the view liquor is harmful to a sector of the community.*

Furthermore, as noted above, in the Hotel’s submission (including Annexure E), the association between problem/at risk drinkers and packaged liquor is acknowledged.

With respect to the opinions/views of members of the Halls Creek community (including the letter from Christopher Loessl and Virginia O’Neil) in relation to the imposition of the condition described in the section 64 Notice, they must, in the public interest, be weighed and balanced in terms of the objects of the Act. The public interest considerations must prevail over the private/commercial interests of the Store.

## **THE HOTEL SUBMISSION – APRIL 2009**

### ***Relevant Factors in Assessing Submissions***

I accept the Hotel’s assertion that given that the Halls Creek licensees “have traded under restrictive conditions...*that a greater reduction in indicators of harm or ill health is to be expected within Fitzroy Crossing during the period of time under consideration...*” However, while the Crossing Inn hotel was conditioned to prohibit the sale of packaged liquor before 12 noon, the licensee also traded under a number of voluntary restrictions prior to October 2007.

Also for the purpose of considering the EDPH and Police statistics, the 2006 Census for Halls Creek and Fitzroy Crossing, recorded the respective populations as:

- Halls Creek - 1211
- Fitzroy Crossing – 928.

***EDPH Submission dated 20 March 2009***

Notwithstanding that the codes employed in the Emergency Department are not solely for alcohol related injuries, while there is “no clear trend” in total ED presentations in Halls Creek, the Fitzroy presentations from July 06 to December 08 have clearly declined. With respect to alcohol related ED presentations, over the same period the Halls Creek presentations have increased while the Fitzroy Crossing presentations have declined.

There is a declining trend in total alcohol related hospital admissions for Fitzroy Crossing whereas for Halls Creek, despite the trading restrictions that have been in place over the July 06 to September 08 period, the trend line is rising.

The discussion at section 4 of The EDPH's submission outlines the limitations and benefits of the two methodologies for presenting alcohol related hospitalisations and the discussion section provides an explanation to the data provided. The EDPH submits:

*“Overall, it can be seen that Emergency Department presentations have continued to reduce in Fitzroy Crossing since the introduction of the restriction, whereas Emergency Department presentations in Halls Creek continue to be high, and on the increase, demonstrating the significant impact of the liquor restrictions in Fitzroy Crossing. Previous evaluation reports regarding Fitzroy Crossing have articulated feedback from health professionals regarding the safety of staff improving, reductions in Emergency Department presentations and the beginnings of change commencing regarding the overall health and wellbeing of the community.”*

With respect to the Hotel's “inference” regarding the relocation of Fitzroy Crossing residents, the inference is not supported by any demographic analysis. Nevertheless, in my opinion the EDPH submission has established on the balance of probabilities, the “need for effective alcohol control measures to be introduced” in Halls Creek to address the alcohol related harm occurring in Halls Creek.

### ***Police Submission***

According to the police submission, in Fitzroy Crossing' there has been a reduction in the calls for assistance and this trend is continuing in 2009.

With respect the comparison between the calls for police attendance to domestic/disturbances/assault incidents in Halls Creek and Fitzroy Crossing (noting that the call figure for Fitzroy Crossing of 307 for Oct 07 – Feb 08 was in fact 110), there is a significant decline in calls for Fitzroy Crossing compared with Halls Creek despite the restrictions that have been in place in Halls Creek prior to October 06 (plus the more restrictive conditions since June 07).

In regard to the Incident Management System (IMS) statistics, The Hotel submits that the Police submission in relation to Fitzroy Crossing is one of convenience and then uses this logic to assert a greater reduction in assaults and domestic violence in Halls Creek due to complainants as a result of the restrictions in place in Halls Creek, being more sober and, therefore, more likely to make a complaint than was previously the case. With respect to recording incidents onto IMS, the Police submit that Computer Dispatch System and Computer Aided Dispatch *'incidents are generated by the public and are always recorded in the system. Therefore they are less susceptible to external factors when considering their correlation to the actual levels of harm being experienced in the community.'*

While not accepting the Hotel's assertion regarding the Police's Fitzroy Crossing IMS submission being a *"submission of convenience"*, in my opinion the Police submission establishes on the balance of probabilities the occurrence of domestic violence and assaults in Halls Creek and Fitzroy Crossing, which by the Hotel's admission, is affected by restrictions on the availability of alcohol.

### **THE STORE SUBMISSION – APRIL 2009**

The submission includes a restatement of the assertions and representations made in the Store's February submission. Despite the Store drawing a stronger comparison between the operations of the liquor store and the operations of the hotel, the fact remains they both sell packaged liquor with the former accounting for the greatest volume of liquor sales in Halls Creek.



The matters raised by the Store in relation to the relocation of Fitzroy Crossing residents and the statistics submitted by the Police and the EDPH are consistent with the Hotel's April 2009 submission. The Store's concern with , for example, the Police methodology for recording call outs under CDS versus CAD, Halls Creek having a 24 hour police station with greater police numbers to service a larger population and the two ways of presenting alcohol-related hospitalisations, do not detract from the opinions I expressed above that the EDPH and the police submissions establish on the balance of probabilities, the alcohol-related harm occurring in Halls Creek.

### **DETERMINATION**

On 13 January 2009, pursuant to section 64(2a) of the Act, a notice was issued to all licensees in the area of the State north of 20° south that I was satisfied that the level of alcohol-related harm occurring in the Halls Creek area and in the Kimberley region is such that it would be in the public interest to impose restrictive conditions on those licences. The notice issued to the Store and the Hotel included the proposed condition prohibiting the sale of mid and full strength packaged liquor.

In its February submission, the Hotel sought up-to-date statistics on Fitzroy Crossing.

The submissions from the Hotel and the Store refer to the effectiveness of the restrictions imposed on the Crossing Inn hotel in Fitzroy Crossing, and both undertake a comparative analysis/exercise between Halls Creek and Fitzroy Crossing. However, the section 64 Notice did not present any comparative analysis of the effectiveness of the Fitzroy experience *albeit* the results of the conditions imposed on the Crossing Inn provide significant weight to the argument that limiting or restricting access to liquor may reduce the harm or ill-health caused to people, or to any group of people, due to the use of liquor. Nevertheless, any determination to impose restrictions on the sale of liquor in Halls Creek must be based on the merits of the public interest considerations for Halls Creek given that the licensing authority *"may obtain information as to any question that arises for decision in such manner as it thinks fit"*.

The Hotel and the Store provide detailed analysis of the statistics relied upon by the EDPH and the Police in their respective submissions. The arguments presented by the Hotel and the Store, however, tend to focus on the quantum of, for example, assaults or emergency department admissions, rather than the existence of assaults and emergency department admissions, a number of which are alcohol-related, when the *"mere possibility"* of harm or ill-health is a relevant matter for the licensing authority when discharging its functions.

The Act empowers the EDPH to present evidence or make representations to the licensing authority in relation *"the harm or ill-health caused to people, or any group of people, due to the use of liquor, and the minimisation of that harm or ill-health."* The Police are also empowered to make reports to the licensing authority *"for the proper administration of the Act."*

For the reasons outlined in the Section 64 Notice issued to the Halls Creek Store and the Kimberley Hotel, and having considered the March 2009 submissions from the EDPH and the Police and the February and April submissions from the Store and the Hotel, I find that, on the balance of probabilities, it is in the public interest and desirable to restrict the sale of packaged liquor in Halls Creek to minimise the harm or ill-health due to the use of liquor, caused to people residing in or resorting to Halls Creek.

Accordingly, under section 64 of the Act, the following condition will be imposed on the Halls Creek Store and the Kimberley Hotel licences:

*"The sale of packaged liquor, exceeding a concentration of ethanol and liquor of 2.7 per cent at 20°C, is prohibited to any person, other than a lodger (as defined in section 3 of the Act) or a liquor merchant."*

Therefore, as from and including 18 May 2009, the Halls Creek Store (licence number 6030016329) will be subject to the following section 64 conditions:

1. *The sale of packaged liquor, exceeding a concentration of ethanol and liquor of 2.7 per cent at 20°C, is prohibited to any person, other than a liquor merchant.*
2. *The licensee is to lodge returns of sales data every four months in accordance with the approved form.*

As from and including 18 May 2009, the Kimberley Hotel (licence number 6010016030) will be subject to the following section 64 conditions:

1. *The sale of packaged liquor, exceeding a concentration of ethanol and liquor of 2.7 per cent at 20°C, is prohibited to any person, other than a lodger (as defined in section 3 of the Act) or a liquor merchant.*
2. *The sale and supply of liquor for consumption on the premises is prohibited before 12.00 noon on any day, except when it is sold ancillary to a meal or to a lodger.*

3. *The licensee is to lodge returns of sales data every four months in accordance with the approved form.*
4. *A dress code is to be displayed at each entrance to the premises.*
5. *Liquor products are not permitted to be displayed for sale within the area outlined blue on the plan dated 17 November 2008.*

These conditions are imposed indefinitely, however, the effectiveness of these conditions will be assessed as soon as practicable after 12 months. This will include assessing relevant data provided by the Executive Director Public Health and the WA Police Service.

Barry A Sargeant  
**DIRECTOR OF LIQUOR LICENSING**  
11 May 2009



Government of **Western Australia**  
Department of Racing, Gaming and Liquor

Your Ref:

Our Ref: 1603

Enquiries: Janine Belling  
☎ (08) 9425 1854

The Licensee  
Kimberley Hotel  
PO Box 244  
HALLS CREEK WA 6770

Dear Sir/Madam

**SECTION 64 ENQUIRY: KIMBERLEY HOTEL**

Enclosed is a copy of the decision in respect of the above.

Should you have any queries regarding this matter please contact me on [08] 9425 1854.

Yours faithfully

Janine Belling  
**ERROR! BOOKMARK NOT DEFINED.**

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cc: Police - Kimberley District Office

cc: Licensing Enforcement Division  
Western Australia Police  
Cambridge House  
Level 2, 297 Hay Street  
PERTH WA 6000

Enc