



Criminal Lawyers Association of the Northern Territory (CLANT)

Patron: The Hon Justice Virginia Bell • President: Russell Goldflam • Secretary: Madeleine Rowley • ABN: 64 391 168 310 • Address: PO 969, Alice Springs NT 0871 • Telephone: 0401119020

Submission to House of Representatives Standing Committee on Indigenous Affairs Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander communities

1. Introduction

The Criminal Lawyers Association of the Northern Territory Inc. (CLANT) has been an effective and powerful voice for over 25 years for the improvement of the criminal justice system in the Northern Territory, representing both defence lawyers and prosecutors, practitioners from the public sector, the private profession and the independent bar.

Among CLANT's Objects and Purposes are:

- to promote and advance the administration of the criminal justice system and development and improvement of criminal law throughout the Northern Territory
- to actively contribute in public debates in issues relating to the criminal justice system
- to promote and encourage the protection of human rights and compliance with international human rights principles in the Northern Territory

In this submission, CLANT addresses the Inquiry's sixth Term of Reference ("Best practice strategies to minimise alcohol misuse and alcohol-related harm") as it relates in particular to the criminal justice system.

Summary of Recommendations

Recommendation 1: This inquiry urge the Northern Territory Government to reinstate the Banned Drinkers Register

Recommendation 2: This Inquiry urge the Northern Territory Government to immediately provide access to data compiled by the NT Police and Department of Health which would enable the effect of the abolition of the Banned Drinkers Register to be independently evaluated.

Recommendation 3: This Inquiry support the tiered volumetric taxation of alcohol, as recommended by the Henry Review.

Recommendation 4: This Inquiry urge the Northern Territory Government to fix a floor price for the purchase of alcohol.

Recommendation 5: This inquiry urge the Northern Territory Government to take the following measures in relation to the Alcohol Mandatory Treatment scheme:

- Amend the AMT Act to:
 - guarantee legal representation for people appearing before the AMT Tribunal

- remove all criminal sanctions for breaching AMT tribunal orders
- clarify and limit the exercise of police powers of apprehension for the purposes of the operation of the AMT scheme
- provide effective judicial review of decisions made in the assessment phase of the AMT scheme
- Institute an independent evaluation of the AMT scheme and Act

Recommendation 6: This inquiry urge the Northern Territory Government to abolish the Alcohol Protection Order scheme.

Recommendation 7: This Inquiry invite the NT Police to explain the legal basis on which police exercise their powers under the Temporary Beat Locations program.

Recommendation 8: This Inquiry urge the Northern Territory Government to immediately provide access to data compiled by the NT Police and Department of Health, including data in relation to the cost of maintaining the program, which would enable the Temporary Beat Locations program to be independently evaluated.

2. Background

The Riverside Bar next to the takeaway of Alice Springs' most famous drinking hole, the Todd Tavern, has long been known as the Animal Bar. The Animal Bar is well-patronised. On 16 September 2009 at 11.48 am, there were an estimated 236 patrons in situ. The maximum number permitted to be present at the time was 100. Following renovations, the permitted maximum was subsequently increased to 150.¹

At 2 pm each weekday, the patrons of the Animal Bar spill out and make their way next door to the bottleshop operated by the same licensee, because that's when the town's takeaway outlets are permitted to start trading. Takeaway prices are of course much cheaper. Police records show that the alcohol involved in 70% of alcohol-related incidents that attract their attention is consumed off-premises. In other words, it was bought at a takeaway.

Across the road from the Todd Tavern is the dry Todd River bed, where most of Alice's many murders and many of its many rapes are committed. Almost every one of the people who commit those crimes, almost every one of their victims, and almost every one of the civilian witnesses, was very drunk at the time, and a high proportion of them purchased their alcohol across the road at the Todd Tavern.

As Northern Territory criminal lawyers, CLANT members act in the bulk of the proceedings which arise from events like these. This can be tough and distressing for both prosecutors and defence lawyers, and is corrosive of the mental health of our own members. The harmful effects on the victims, offenders and witnesses are of course far more drastic. This appalling situation, which applies in many Northern Territory communities, has been the subject of strong judicial comment on frequent occasions.

It seems that the excessive consumption of alcohol continues for so long as alcohol is available. People drink until they can drink no more and then get up the next day and start all over again. The frequency with which drunken violence occurs is unacceptable and the level of violence is likewise completely unacceptable.

For the good of the town, for the good of the victims, for the good of the offenders and for the good of the innocent children of Tennant Creek, it seems to me obvious that a system must be devised to limit the amount of

¹ Northern Territory Licensing Commission *Reasons for Decision* (2 July 2010), accessed at: <http://www.nt.gov.au/justice/commission/decisions/100702%20Todd%20Tavern%20110.pdf> A five day licence suspension was imposed for this breach of s110 of the Liquor Act.

alcohol made available to the people whose lives are being devastated in this way and to educate and rehabilitate those already abusing alcohol. The people of the Northern Territory cannot sit on their hands and allow what is occurring in Tennant Creek to continue. I accept that it is a complex issue but it is an issue that must be addressed and must be addressed sooner rather than later. Hard decisions must be taken.²

On 3 April 2014, the same offender appeared before the same judge in the same court, for further alcohol-related serious violent offending. After referring to the passage cited above, Riley CJ said:

I am sad to say that those remarks remain true today, some six years later. So far this week, amongst the other business of the Court, I have dealt with four matters of a similar kind from Central Australia... There are other cases in the list of a similar kind yet to be dealt with. This is standard fare in almost every sitting of the Court in Alice Springs. The depressing fact is that the problems surrounding the abuse of alcohol and the consequent violence has not been successfully addressed. We as a community need to do more.³

In the Northern Territory, although consumption has declined since its peak in 2006, we still drink around 15 litres of pure alcohol per person per year, almost fifty per cent more than the national average, and four times the planet's average. Police records show that between 70 and 90 percent of our assaults are alcohol related. Most of the victims are women, almost all of whom are Aboriginal. In Alice Springs the risk of a woman being assaulted is 24 times higher if she is indigenous than if she is non-indigenous. In the first seven years of the century, in a town of only 27,000, surgeons at the Alice Springs Hospital treated a stabbing on average every two days. Our imprisonment rates are not only almost five times the national average, but are growing faster than any other jurisdiction.

Nationally, the annual cost of alcohol-related harm is about \$15 billion, which works out at a little under \$1,000 a year per Australian adult. In the Territory, the equivalent figure is well over \$4,000.

3. Previous measures

There have been at least twenty separate policy and legislative initiatives taken by governments of all persuasions and at all levels over the last decade to dam the rivers of grog which are drowning Northern Territory communities. Some of these measures have done more harm than good. The "Dry Town" declaration (granted on application by the Alice Springs Town Council pursuant to legislation passed by the Northern Territory government⁴) effectively re-criminalised public drinking, from 1 August 2007.⁵ The following month, the *Northern Territory National Emergency Response Act* (Cth) came into force, prohibiting the drinking, possession, supply and transport of liquor in 'prescribed areas'.⁶ The combined effect of these two measures was to force many Aboriginal drinkers to drink on the outskirts of town in improvised, hidden, unsupervised, unserved and, most importantly, unsafe locations.

² *R v Green* SCNT 20823606 (Sentence) Riley J, 20 February 2009. Extracts to similar effect from four further sentencing decisions by Riley CJ can be accessed at:

http://www.clant.org.au/images/images/Riley_CJ_remarks_on_alcohol.pdf

³ *R v Green* SCNT 21335955 (Sentence) Riley CJ, 3 April 2014

⁴ *Liquor Amendment Act* 2006 (No 27 of 2006). The Alice Springs Town Council lodged its application on 2 October 2006, 13 days after the Act commenced.

⁵ Northern Territory Licensing Commission *Reasons for Decision on Application by Alice Springs Town Council for a Public Restricted Area* (9 May 2007), accessed at: http://www.nt.gov.au/justice/commission/decisions/07_Alice_Springs_Dry_Town_Decision.pdf

⁶ Northern Territory town camps were gazetted as prescribed areas in early 2008. See, for example, *Northern Territory National Emergency Response (Town Camps) Declaration 2007 (No. 1)*, which remains in force pursuant to *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012* Schedule 1 Part 3 Paragraph 5(1)). These areas have since been designated as 'alcohol protected areas'.

But other measures have been more effective. Since 1 October 2006, sales of 4 and 5 litre cask wine have been banned in Alice Springs, and takeaway purchase of 2 litre casks, or bottles of fortified wine, have been limited to one per person per day, after 6 pm.

Enforcement of these supply restrictions was facilitated by the introduction of a system which required all purchasers of takeaway alcohol to produce photographic identification. This was scanned and transmitted to a centralised database which then informed the retailer if the purchase was legitimate. By mid-2010, illegitimate attempted purchases had been detected and refused on over 13,000 occasions in Alice Springs.

The results were heartening. Consumption decreased 18 percent in the two years after these restrictions commenced.⁷ Such was the success of these measures, that they were rolled out across the Northern Territory in 2011 by the previous Northern Territory Government as part of the “Enough is Enough” package, a key element of which was the Banned Drinkers Register (BDR).

CLANT considers that the abolition of the BDR in September 2012 by the incoming Northern Territory Government was ill-conceived, irresponsible and harmful.

Recommendation 1: This inquiry urge the Northern Territory Government to reinstate the Banned Drinkers Register

Recommendation 2: This Inquiry urge the Northern Territory Government to immediately provide access to data compiled by the NT Police and Department of Health which would enable the effect of the abolition of the BDR to be independently evaluated.

4. Supply restrictions

4.1. The Living with Alcohol program

Of the many measures which have been tried, the ones which have actually worked have been measures which have directly or indirectly restricted the supply of alcohol.⁸ Taxation is a powerful and effective supply tool which has previously been used successfully in the Northern Territory. Under the Living With Alcohol program, which ran from 1992 until 2000, a levy of 5 cents per standard drink which contained more than 3% alcohol (ie heavy beers, wines and spirits) was imposed, raising \$18 million. The program, championed by then Chief Minister Marshall Perron, was doubly effective. Firstly, there was a 22% reduction of alcohol consumed per person, as drinkers shifted to the cheaper, lighter beers. Secondly, the revenue raised was hypothecated to pay for prevention and treatment programs. An estimated 129 deaths, 1,200 hospital admissions and \$124 million in alcohol harm-related costs were saved.⁹

The program stopped because in *Ha v the State of New South Wales and Others* (1997) 189 CLR 465, the High Court ruled that this type of State and Territory revenue-raising was unconstitutional. *Ha* established that only the Commonwealth government has the power to establish schemes like the Living With Alcohol program.

4.2. Volumetric Taxation

No Commonwealth government since, however, has determined to exercise that power. In 2010, the Henry Tax Review sensibly recommended a standard volumetric tax on alcohol to

⁷ See National Drug Research Institute, *A longitudinal study of influences on alcohol consumption and related harm in Central Australia: with a particular emphasis on the role of price* (2012) accessed at: <http://ndri.curtin.edu.au/local/docs/pdf/publications/T220.pdf>. See also Menzies School of Health Research *Moving Beyond the Restrictions: The evaluation of the Alice Springs Alcohol Management Plan* (June 2009).

⁸ See NDRI Report, above, note 7.

⁹ National Drug Research Institute, *Preventing Harmful Drug Use in Australia* (2000)

replace the existing hodge-podge of taxes on spirits, wines and beers. If adopted, this would effectively establish a minimum price regime for the supply of liquor. Successive Commonwealth Governments, perhaps weary (and wary) of accusations that they do nothing but introduce great big new taxes, have not accepted this recommendation, which no doubt would be strenuously opposed by the big wine producers who dominate the bottom end of the market. The relative tax per unit of alcohol on cask wine, it should be noted, is about ten times less than it is on heavy beer, and more than twenty times less than it is on spirits. That is why cask wine is so cheap.

Recommendation 3: This Inquiry support the tiered volumetric taxation of alcohol, as recommended by the Henry Review.

Recommendation 4: This Inquiry urge the Northern Territory Government to fix a floor price for the purchase of alcohol.

Neither of these measures need result in an increase in the price of beer, but they would both make super-cheap wine significantly more expensive. Super-cheap wine is the beverage which predominates in the vast majority of cases of violent crime in the Northern Territory.

Besides abolishing the BDR, the Northern Territory has introduced two major statutory measures, the *Alcohol Mandatory Treatment Act* (the AMT Act) and the *Alcohol Protection Orders Act* (the APO Act). CLANT opposes these two schemes, which it considers are both ineffective and unnecessarily punitive, discriminatory and costly.

5. The AMT Scheme

In May 2013, CLANT published its concerns about the AMT scheme on its website.¹⁰ CLANT opposes the AMT scheme for several reasons.

5.1. No effective access to representation

There is no effective right to legal representation for people who get picked up and locked up, for as long as three months, under this law.

Section 113 of the AMT Act gives the appearance of entitling a person to representation. This has proven to be illusory. It is imperative that the Act be amended to guarantee representation. Representation by a lay advocate is inadequate. Any person facing a lengthy period of detention should be entitled to legal representation (as for example are persons brought before the Mental Health Review Tribunal). This need is all the greater having regard to the fact that appeals are restricted to a question of law only.¹¹

The first 10 months of the administration of the AMT Act have resulted in the civil detention of scores of people who appeared before the Tribunal without any representation. Only one such matter has to date come before the courts.¹² The order of the Tribunal in that case was found to have been unlawful. It may follow that the successful appellant in that case was unlawfully detained for a substantial period. It is readily foreseeable that many other people may have been similarly subject to periods of unlawful detention.

5.2. The scheme is racially discriminatory

The mandatory treatment law predominantly affects Aboriginal people, because they constitute the great majority of people who are drunk in public. The stated purpose of the

¹⁰ <http://www.clant.org.au/index.php/news/59-alcohol-mandatory-treatment-bill-legal-services-respond>

¹¹ Section 51(2) AMT Act

¹² *RP v Alcohol Mandatory Treatment Tribunal of the Northern Territory* [2013] NTMC 32

AMT scheme is “to assist and protect from harm misusers of alcohol, and other persons, by providing for the mandatory assessment, treatment and management of those misusers...”¹³ In light of the decision in *Maloney v The Queen*¹⁴, that should qualify the scheme as a legitimate ‘special measure’,¹⁵ pursuant to s8 of the *Racial Discrimination Act 1975* (Cth).

However, although the scheme is on its face designed to help people who are losing the battle with grog, there have been numerous statements by members of the Northern Territory Government to the effect that this law is going to clean up the streets. If that is actually another purpose of this law, it is not a special measure, but racially discriminatory and liable to be struck down.

5.3. *The scheme criminalises alcoholics*

This law brands some people with a health problem, alcoholism, as criminals. That is because it has been made an offence to abscond from a residential treatment facility three times. It is trite criminology that to reduce the over-incarceration rate of Indigenous people, we should narrow, not widen, the criminal net.

5.4. *The scheme gives police too much power*

The trigger for being made subject to the AMT scheme is, three times in two months, to be apprehended and taken into custody by police, pursuant to s128 of the *Police Administration Act*. The preconditions for the exercise of that power are broad. For example, it can be exercised by a police officer who forms a reasonable belief that a person is intoxicated in a public place and *may* cause substantial annoyance to someone.¹⁶ Similarly, the exercise of the discretion as to whether, having apprehended a person using this power, to take the person into custody at a police station, is not effectively structured, regulated or fettered. Although the Police Custody Manual provides, in effect, that police should only take persons apprehended under s128 to a watchhouse as a last resort, there does not appear to be any clear or rigorous system to ensure that this approach is actually applied in practice. The requirement that police only take persons apprehended under s128 to a watchhouse where there is no practicable alternative should be incorporated into the statutory provisions, and not be relegated to subordinate legislation which is not generally open to public scrutiny.

Importantly, an apprehended person can be taken to a private residence, to a sobering-up shelter, or to the police watchhouse, at the discretion of the apprehending police officer. However, it is only the last of these options which results in a ‘strike’ being recorded for the purpose of the AMT scheme.

The potential for police abuse of power and unlawful discrimination, particularly on the basis of race and age, are patent. The consequences can be enormous: detention for in excess of three months.

5.5. *A flawed assessment process*

The assessment process drives the entire rehabilitation scheme by channeling persons through the AMT Act’s various provisions, to determine whether or not a person who is brought into the AMT scheme continues onto mandatory rehabilitation, or whether he or she is unsuitable for the scheme.

¹³ *Alcohol Mandatory Treatment Act 2013* (NT), s 3

¹⁴ (2013) 87 ALJR 755

¹⁵ “Special measures taken for the **sole purpose** of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination” (Article 1(4) *International Convention on the Elimination of All Forms of Racial Discrimination*) (emphasis added)

¹⁶ Section 128(1)(c)(iii) *Police Administration Act*

Whilst a person is provided with a copy of rights statement upon their entry into an assessment center there is no right of review to the Local Court at this early juncture.¹⁷ Any relief that may be sought by a prerogative writ, *habeas corpus*, would be defeated (on a pragmatic basis) by the time limits on the assessment process.¹⁸

The drafting of the assessment process provisions and the 'assessment' to be made by the senior assessment clinician is vague and uncertain.¹⁹ The AMT Act requires that an assessable person must be assessed by a senior assessment clinician as to their suitability to participate in the rehabilitation scheme.²⁰ The legislation is unclear as to whether or not the opinion required to be formed by the senior assessment clinician must be formed before the conclusion of the 96 hour time limit or only started.

This dilemma was dealt with by the Court of Summary Jurisdiction in *Police v Karl Portaminni* [2013] NTMC (unreported). In Portaminni's case, having found that the defendant had been held as an assessable person outside the 96 hour time limit, the Court ruled that the opinion of the senior assessment clinician must be finalised and formed within the 96 hour time limit. This construction of an assessment is not clearly spelt out in the AMT Act.

Also of note in Portaminni's case, is that it was not revealed that the defendant had been held outside the 96 hour time limit until his solicitors summonsed the Department of Health to obtain the necessary records regarding his assessment and treatment under the AMT Act. This took considerably longer than 96 hours.

It is the view of CLANT that this initial assessment period can create a vehicle for injustice leading to the unlawful restraint of liberty on the following basis:

- An alcoholic, suffering from an addiction, can be detained against their will for 4 days on the basis of a health problem; and
- The very limited capacity to seek any judicial review by a person deemed to be an assessable person and forced into the assessment process.

As there is currently no judicial oversight of the assessment process under the AMT Act, the capacity for injustice and the unlawful restraint of an individual's liberty loom large.

5.6. A lack of transparency

In addition to serious reservations about the substantive merits of the scheme, CLANT is concerned about the Northern Territory Government's lack of transparency with respect to the establishment and operation of the scheme. The current inquiry refers to "best practice strategies". In CLANT's submission, this lack of transparency falls far short of best practice, as the following discussion illustrates.

A central issue in the decision in *RP v Alcohol Mandatory Treatment Tribunal of the Northern Territory* [2013] NTMC 32 was the lack of an advocate for the appellant who had appeared before the Tribunal. The court found:

¹⁷ Section 15 AMT Act; cf. Sections 9 and 10 of the *Alcohol Protection Orders Act* which allows for, at least, a merits review by a senior officer (usually a police officer the rank of inspector or above) of a police decision to issue an Alcohol Protection Order at the initial stages of contact with that Act.

¹⁸ The time required to take instructions from a client, to obtain all the relevant documents, file affidavits, serve notices on the parties and get a merits hearing date in the Supreme Court before the duty judge would test the limits of the 96 hour time limit and if an application for the writ were made outside of the 96 hours it is possible the court may decline to act as the purpose of acting would have passed.

¹⁹ Section 19 AMT Act.

²⁰ Section 19(2) AMT Act

Without an advocate she was effectively not being heard on factors crucial to the Tribunal's determination and as such I find that failure to appoint an advocate was a denial of natural justice.²¹

As reported by the ABC on 10 January 2014, NT Minister for Alcohol Rehabilitation Lambley responded by saying that this decision "has no implications for the tribunal's decisions, and it is not a precedent", and that "an advocate is not always required".²² What was not disclosed in this or any of the numerous public statements by the Minister, or in the Alcohol Mandatory Treatment Quarterly Reports published to date, or in any of the material published by the government for the purpose of its January 2014 Review of the scheme,²³ was that in fact, no advocate had been provided for any of the scores of people who had appeared before the Tribunal in Alice Springs. This was only disclosed to CLANT by Government at a Focus Group consultation with legal services conducted on 4 February 2014, in response to a direct question.

Recommendation 5: This inquiry urge the Northern Territory Government to take the following measures in relation to the Alcohol Mandatory Treatment scheme:

- **Amend the AMT Act to:**
 - **guarantee legal representation for people appearing before the AMT Tribunal**
 - **remove all criminal sanctions for breaching AMT tribunal orders**
 - **clarify and limit the exercise of police powers of apprehension for the purposes of the operation of the AMT scheme**
 - **provide effective judicial review of decisions made in the assessment phase of the AMT scheme**
 - **institute an independent evaluation of the AMT scheme and Act**

6. The APO Scheme

The Alcohol Protection Orders scheme is similarly flawed. Superficially, APOs resemble the Banning Alcohol and Treatment Notices (BATs) introduced by the previous Northern Territory Government: the police issue them, they ban you from drinking for three months, and if you're caught drinking, you get breached. But there are two fundamental differences. If you breached a BAT, you were directed into treatment, but you were not criminalised. If you breach an APO, you do not get treatment, but you are criminalised: you get charged, you can be kept in custody on remand, you go to court, and you can be sent to gaol.

Within the first four months of the operation of the APO Scheme, some problem drinkers have been repeatedly breached such that they have accumulated APOs which ban them from drinking until 2017 (or perhaps even longer). They are not permitted to enter supermarkets or any premises where alcohol is sold. Their dependence on alcohol is already, and inevitably, leading to repeated confrontations with police resulting in apprehension, detention, prosecution, conviction and punishment. Over 1000 APOs have been issued.

Recommendation 6: This inquiry urge the Northern Territory Government to abolish the Alcohol Protection Order scheme.

²¹ *RP v Alcohol Mandatory Treatment Tribunal of the Northern Territory* [2013] NTMC 32 at [31]

²² <http://www.abc.net.au/news/2014-01-10/second-mandatory-grog-rehab-tribunal-ruling-challenge-alice-spr/5193970>

²³ http://health.nt.gov.au/Alcohol_Mandatory_Treatment/index.aspx

7. Temporary Beat Locations (TBLs)

Whereas Minister for Alcohol Policy Dave Tollner lambasted the erstwhile Banned Drinkers Register by saying it made licensees into “something akin to heroin traffickers”,²⁴ no such criticism has been leveled by the government at its de facto replacement measure in Katherine, Tennant Creek and Alice Springs: the ubiquitous and conspicuous police patrols outside takeaway outlets, tasked to enforce the prescribed patchwork of restrictions which blanket, in a specially measured way, Aboriginal drinkers.²⁵ Police are entitled, and indeed required, to enforce this discriminatory prohibition regime. Their presence at bottle shops is no doubt expensive, and by many resented,²⁶ but it seems to have been effective: the apparent increase in drinking levels immediately following the abolition of the BDR on 1 September 2012 was succeeded by a modest but welcome reduction in consumption, particularly in Alice, Tennant and Katherine, as compared to Darwin and Palmerston,²⁷ where the bottle shop patrols (designated by police as “Temporary Beat Locations”) do not operate.

In this jurisdiction, where the havoc wreaked by alcohol is so appalling, there is at least a *prima facie* case to support any measure which brings drinking down. But even if it is ultimately shown to be effective, CLANT questions whether this sort of racially discriminatory approach (assuming it can be justified as a special measure) is really in the best interest of our community as a whole, and whether it can really be characterised as “best practice”.

The TBLs appear to be founded on a broad construction by police of their powers conferred by the *Liquor Act* (NT) under the following provisions:

- s95 (in relation to general restricted areas)
- s101AB (in relation to public restricted areas)
- s101M (in relation to restricted premises)
- s101AN (in relation to special restricted areas)
- s101Y (in relation to a regulated place)

Between them, the above categories incorporate:

- town camps²⁸
- public places in Alice Springs and other declared “dry towns”
- private homes which have been declared “dry”

The powers conferred by each of these provisions is expressed in similar terms, along the following lines:

If a police officer believes on reasonable grounds that a relevant offence has been, is being, or is likely to be, committed by a person in a [insert the type of restricted area], the officer may, without a warrant, search the person and seize any opened or unopened container in the area that the officer has reason to believe contains liquor. A police officer who seizes a container may immediately empty the container if it is opened or destroy the container (including the liquor in it) if it is unopened.

²⁴ Speech to Australian Hotels Association annual dinner, 22 May 2013

²⁵ See, for example, *Stronger Futures in the Northern Territory Act 2012* (Cth), Part 2 (“Tackling Alcohol Abuse”), which authorises the establishment of alcohol protected areas in town camps.

²⁶ Numerous speakers at a well-attended march and rally in Alice Springs on 27 March 2014 protesting “racist alcohol policies implemented by the Northern Territory Government and enforced by the NT Police” complained about the TPLs. A second protest march was held on 17 April 2014.

²⁷ NT Department of Business, “Wholesale Alcohol Supply to June 2013” accessed at http://www.dob.nt.gov.au/gambling-licensing/liquor/Documents/wholesale_alcohol_supply_201306.pdf, 18 February 2014

²⁸ Section 9(1) of the *Stronger Futures in the Northern Territory Act 2012* (Cth) provides that “The NT Liquor Act... applies... as if each alcohol protected area were a general restricted area under that Act”. See also above, note 6.

Police are certainly entitled to ask people entering or leaving licensed premises where they are planning to take and drink the alcohol they are intending to buy or have bought. Indeed, anyone has the right to make such an inquiry. On the other hand, no-one is by law obliged to respond to such an inquiry. However, it is highly likely just about everyone who is asked does give an answer, and that answer may in turn give rise to a reasonable suspicion that an offence is likely to be committed, which in turn provides a trigger for the exercise of the search and seizure powers referred to above.

At some venues, police conducting TPLs stand next to this sandwich board:



The wording of this sign implies that a failure to provide “proof of residency” on request is in itself sufficient to fire the “reasonable suspicion” trigger. In CLANT’s submission, this is highly questionable. It is also, judging by complaints received by CLANT members from members of the community in Alice Springs and Tennant Creek, offensive to some members of the public, who object both to the manner in which this distinctively “indigenous” graphic design clearly targets and stigmatises Aboriginal people, and the fact that the particular image chosen appropriates (whether deliberately or not) a creature of specific totemic significance to some members of the Aboriginal community.

Recommendation 7: This Inquiry invite the NT Police to explain the legal basis on which police exercise their powers under the Temporary Beat Locations program.

Recommendation 8: This Inquiry urge the Northern Territory Government to immediately provide access to data compiled by the NT Police and Department of Health, including data in relation to the cost of maintaining the program, which would enable the Temporary Beat Locations program to be independently evaluated.

A handwritten signature in blue ink, appearing to read 'R. Goldflam', with a long horizontal flourish extending to the right.

Russell Goldflam
President
Criminal Lawyers Association of the Northern Territory

19 April 2014