Appendix 3

ALRM SUBMISSIONS ON NEEDED AMENDMENTS TO THE LIQUOR LICENCING ACT 1997

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.

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 are in the "vicinity" of those premises and this will apply to other possible objectors as well. It is submitted that the "in the vicinity of" 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 will be materially and adversely affected by the provision of a licence at a particular place.

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.

Liquor Licensing Accords and Grog Running
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 will be discussed below.

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.

As such, the Commissioner ought to be allowed to require licensees to keep detailed records of large take-away sales when there is reason to suspect that the sales of liquor for take-away may be taken to a dry community, and that the process of the Accord should be used to monitor such sales and 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.

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 local indigenous 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 serious grog running is occurring.

Similarly, and in light of the Sleeping Rough Inquests;-
(www.courts.sa.gov.au/inquests/findings/2011/sleeping rough inquests),
it is submitted that the section 43 powers ought also to be enlivened upon the basis of public health concerns and the propensity of takeaway liquor sales in certain circumstances to exacerbate public health and welfare issues. Section 43 powers ought to be able to be exercised to restrict access for people "in the grip of the grog". That should be done by the section making explicit reference to public health.

Control of liquor sales where a breach of dry area laws under the regulations under the liquor licencing act in a town may be suspected

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 consumption of liquor in dry areas under the Liquor Licencing Act in towns and cities , in circumstances where sales take place to persons well known to be persons who regularly drink liquor in public contrary to dry areas regulations and where the licensee or it's employee know or have reason to believe this is likely to occur.

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

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.

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.

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 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 Act 2010.*

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

Members of an accord which has at the moment no statutory basis would have their position enhanced, should they try to notify their agreement to the ACCC on a public benefit basis, if the accord or agreement had proper legislative authority.

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.

That should be done so as to give legislative backing to existing practice and so as to safeguard existing accords. 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)

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)
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> 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 to vary the conditions of licenses for the public benefit and public interest, 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.

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.

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 Inquiry should consider the question whether the existing laws and practices limiting the sales of methylated spirits are adequate.

These are amongst the matters which ALRM submits ought to be considered in relation to further reviews and amendments to the *Liquor Licensing Act* of South Australia.

ALRM. May 28th 2013.