



Australian  
Competition &  
Consumer  
Commission

# **Draft** Determination

## **Applications for authorisation**

**lodged by**

**Casuarina Business Precinct Stakeholders Committee**

**in respect of**

**Casuarina Business Precinct Liquor Accord**

**Date: 25 March 2010**

**Authorisation no.: A91201 & A91202**

**Public Register no.:C2009/1955**

**Commissioners:** Samuel  
Kell  
Schaper  
Court  
Walker  
Willett

## Summary

The Australian Competition and Consumer Commission (ACCC) proposes to grant conditional authorisation to a proposed agreement between businesses in the Casuarina Business Precinct in Darwin to restrict the supply of certain types of alcohol products to consumers. Authorisation is proposed to be granted for 3 years.

The Casuarina All Sports Club Inc, on behalf of the members of the Casuarina Business Precinct Stakeholders Committee (the Committee), has applied for authorisation of a proposed agreement, known as the proposed Liquor Accord.

The proposed Liquor Accord is a community based initiative that has been developed to reduce anti-social behaviour and to improve crime prevention and public safety in the Casuarina Business Precinct (the Precinct) in Darwin. Among other measures, it includes proposed restrictions on the supply of certain types of alcohol products to consumers. Ready to drink products greater than 500 ml will be withdrawn from sale and the sale of large volume wine and fortified wine products will be restricted to one container per customer per trading day. Additionally, wine and fortified wine containers of 4 litres or greater in volume will not be sold before 12 noon each day.

The ACCC accepts that the supply restrictions within the proposed Liquor Accord are likely to assist in efforts to reduce anti-social behaviour in the Precinct, with associated enhanced crime prevention and improved public safety. The ACCC considers that this produces a public benefit.

However, as the proposed Liquor Accord is a local solution, there is a possibility that the restrictions on the sale of particular alcohol products within the Precinct may result in consumers simply purchasing these products elsewhere. This may move the anti-social behaviour problem to another location. This potentially undermines some of the public benefits claimed by the Committee, and highlights the importance of a coordinated approach to liquor control measures and their enforcement within a wider community.

The ACCC considers that the likely detriments resulting from the proposed Liquor Accord are limited. There will be some reduction in choice and convenience for consumers purchasing liquor products in the Precinct for off-premises consumption. However, the restrictions apply only to certain products and liquor retailers within the precinct will continue to compete more broadly.

Accordingly, the ACCC considers that the public benefits associated with the proposed Liquor Accord are likely to outweigh any public detriments.

The ACCC proposes to grant conditional authorisation to the supply restrictions within the proposed Liquor Accord for three years.

The ACCC grants interim authorisation to the supply restrictions in the proposed Liquor Accord, including any variation to the supply restrictions. Interim authorisation will enable the Committee to engage in discussions with licensees about the supply restrictions within the proposed Liquor Accord and to implement the supply restrictions.

The ACCC will now seek further submissions from the Committee and interested parties in relation to this draft determination, prior to making a final decision. The Committee and interested parties may also request a conference be held to make oral submissions on the draft determination.

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# 1. The applications for authorisation

- 1.1. On 30 November 2009 the Casuarina All Sports Club Inc on behalf of the members of the Casuarina Business Precinct Stakeholders Committee (the Committee) lodged application for authorisation A91201 with the ACCC. On 11 December 2009 Casuarina All Sports Club Inc on behalf of the members of the Committee lodged an amended application for authorisation A91201 as well as a related application for authorisation A91202.
- 1.2. Authorisation is a transparent process where the ACCC may grant immunity from legal action for conduct that might otherwise breach the *Trade Practices Act 1974* (the Act). The ACCC may 'authorise' businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment. The ACCC conducts a public consultation process when it receives an application for authorisation, inviting interested parties to lodge submissions outlining whether they support the application or not. Further information about the authorisation process is contained in Attachment A.
- 1.3. A chronology of the significant dates in the ACCC's consideration of these applications is contained in Attachment B.
- 1.4. Application A91201 was made under:
  - section 88(1A) of the Act to make and give effect to a contract or arrangement, or arrive at an understanding a provision of which would be, or might be, a cartel provision (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act)
  - section 88(1) of the Act to make and give effect to a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of the Act.
- 1.5. Application A91202 was made under:
  - section 88(1A) of the Act to make and give effect to a provision of a contact, arrangement or understanding, a provision of which is, or may be, a cartel provision and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act
  - section 88(1) of the Act to make and give effect to a contract, arrangement or understanding, a provision of which is or may be an exclusionary provision within the meaning of section 45 of the Act.
- 1.6. In particular, the Committee applied for authorisation of a proposed agreement, known as the Liquor Accord, which includes proposed restrictions on the supply of certain types of alcohol products to consumers. The applications for authorisation identify Casuarina All Sports Club Inc, GPT Group, The Village Shopping Centre, Coles Liquor and Woolworths Limited as the parties to the proposed Liquor Accord (the licensees). The Committee seeks authorisation for a period of three years.

- 1.7. On 16 March 2010 the Committee provided the ACCC with an amended proposed Liquor Accord. The amendment concerned the inclusion of a new clause 6(a) dealing with variations to the proposed Liquor Accord.

**Interim authorisation**

- 1.8. At the time of lodging the application, the Committee requested interim authorisation to allow it, with the cooperation of all licensees, to implement the measures in the proposed Liquor Accord.

## **2. The proposed Liquor Accord**

### **The Casuarina Business Precinct**

- 2.1. The Casuarina Business Precinct (the Precinct) is the area bounded by Trower Road, Bradshaw Terrace and Dripstone Road in Darwin. Casuarina Square, the largest shopping centre in the Northern Territory, is located within the Precinct.

### **The Casuarina Business Precinct Stakeholders Committee**

- 2.2. The Committee is made up of representatives from community organisations, businesses and property owners/managers in the Precinct, as well as government agencies. The members of the Committee include:
- Casuarina All Sports Club Inc.
  - The GPT Group (Casuarina Square)
  - Casuarina Village
  - Bureau of Meteorology
  - Bob Jane T Mart Casuarina
  - T & C Investments
  - Knight Frank representing Trinity Funds Management as Facilities Manager of the Casuarina CasCom Centre
  - Centrelink
  - The Shak (Australian Red Cross)
  - Darwin City Council
  - Northern Territory Department of the Chief Minister
  - Northern Territory Police
  - Northern Territory Office of Alcohol Policy Licensing and Regulation.
- 2.3. The Committee was established following the Crime Prevention Through Environmental Design review of the Precinct (the CPTED Review). The CPTED Review was commissioned by the Northern Territory Police in 2008 and undertaken by AMTAC Professional Services Pty Ltd. The Review identified a lack of strategic coordination with respect to the manner in which the stakeholders in the Precinct communicated. The Committee was formed as a result of this observation.
- 2.4. The purpose of the Committee is to develop practical responses to the recommendations arising from the CPTED Review. Recommendations 11 and 15 of the CPTED Review concern alcohol management.
- 2.5. Recommendation 11 suggests “that liquor licensing provisions be reviewed with respect to bulk alcohol sales within the Precinct and a workable approach to restricting the sale of bulk wine be developed”.

- 2.6. Recommendation 15 suggests “that the Northern Territory Government considers establishing the Precinct as a liquor free zone”.
- 2.7. The Committee considered that establishing the Precinct as a liquor free zone was neither practical nor desirable. However, given that anti-social behaviour caused by drunkenness is one of the most significant problems in the Precinct, the Committee agreed that a liquor accord restricting supply of the alcohol products that contribute the most harm may be a workable alternative.

### **The proposed Liquor Accord**

- 2.8. The proposed Liquor Accord has been developed in an effort to reduce anti-social behaviour and to improve crime prevention and public safety in the Precinct.
- 2.9. The proposed Liquor Accord is intended to assist in promoting responsible sale, service and consumption of liquor and to provide a safe environment for the users of the Precinct and for the community more generally.
- 2.10. The objectives of the proposed Liquor Accord are to:
- encourage behavioural/attitude changes in customers
  - reduce levels of anti-social behaviour in the Precinct including public drinking and drunkenness
  - reduce levels of underage drinking
  - reduce the supply of alcohol products that contribute the most to anti-social behaviour within the Precinct
  - increase positive communications between all stakeholders regarding crime prevention and community safety.
- 2.11. Under the proposed Liquor Accord, the participating licensees of the Precinct have agreed to cooperate, communicate and implement the following standards with respect to their licensed venues:

#### ***(a) Take-away alcohol products (the supply restrictions)***

Licensees agree to apply the following measures to restrict or constrain the supply of certain alcohol products:

- sale of wine and fortified wine containers of 4lt or greater in volume – no sale before 12 noon each trading day and sale restricted to one container per customer per trading day
- sale of wine and fortified wine containers of greater than 2lt in volume –sale restricted to one container per customer per trading day
- display of wine and fortified wine containers of greater than 2lt in volume – removal of products from retail display and relocation of products so that customers are required to seek assistance to purchase these products
- display of fortified wine bottles – removal of products from retail display and relocation of products so that customers are required to seek assistance to purchase these products

- ready to drink products greater than 500 ml in volume – all ready to drink products in single sales units greater than 500 ml are to be withdrawn from sale.

The ACCC understands that for the purpose of the proposed Liquor Accord, ‘ready to drink’ products are the same as pre-mixed products.

***(b) Underage***

Licensees agree to apply the following measures to all customers who appear to be under 25 years of age:

- requesting photo identification for proof of age and where identification is not produced adopting a “No ID, No Entry” or “No ID, No Service” policy
- assisting Police to identify underage customers
- retaining false or altered IDs and reporting them to the Police.

***(c) Behaviour standards***

Licensees agree to apply the following measures to assist customers to adopt a reasonable and appropriate standard of behaviour at all times:

- prominently displaying standardised customer awareness signs advising of behaviour standards including signage such as “No more it’s the law”, “No means no” and “Enough is enough”
- training staff in responsible service of alcohol and supporting staff in refusal of service to intoxicated customers
- advising customers of penalties for inappropriate behaviour and issuing behaviour awareness warnings and exclusion penalties to customers as required
- issuing and enforcing Trespass Notices to customers who demonstrate repeated inappropriate behaviour.

***(d) Public drinking***

Licensees agree to apply the following measures to assist NT Police in enforcing the ‘2km law’ that prohibits consumption of alcohol in public places within the Precinct:

- that signage be erected throughout the Precinct warning that public drinking is not permitted
- that Precinct stakeholders will make record of and report instances of public drinking to the NT Police.

***(e) Third party alcohol supply***

Licensees agree that they will make and keep records of and report to the NT Police any and all alleged instances of third party alcohol supply within the Precinct.

2.12. Under the proposed Liquor Accord, the participating licensees agree to meet regularly with NT Police, the Department of Justice (Licensing, Regulation and Alcohol Strategy Division) and other stakeholders where appropriate to:

- discuss compliance with the Liquor Accord including issues related to non-compliance

- review the operation and effectiveness of the Liquor Accord in relation to the objectives and industry practices related to the safe and responsible sale of alcohol
  - discuss any variations to the Liquor Accord to assist in achieving the objectives
  - develop any supporting documents required to implement the Liquor Accord including for example a penalties code, standardised signs and notices
  - assist the Licensing, Regulation and Alcohol Strategy Division of the Department of Justice in the compilation of an annual review of the Liquor Accord.
- 2.13. The parties to the proposed Liquor Accord may decide that variations are required to assist in achieving the aim and objectives of the proposed Liquor Accord. Variations may include but not be limited to:
- parties to the proposed Liquor Accord
  - standards of service, sale, behaviour and control
  - supply of products that are contributing to anti-social behaviour
  - hours of service.
- 2.14. The parties to the proposed Liquor Accord must seek advice from NT Police and the Department of Justice (Licensing, Regulation and Alcohol Strategy Division) in considering proposed variations to the proposed Liquor Accord. Variations to the proposed Liquor Accord require the written consent of all parties to the proposed Liquor Accord and must take into consideration the advice provided
- 2.15. A copy of the proposed Liquor Accord may be obtained from the ACCC's website ([www.accc.gov.au/AuthorisationsRegister](http://www.accc.gov.au/AuthorisationsRegister)) and by following the links to this matter.

### 3. Submissions received by the ACCC

- 3.1. The ACCC tests the claims made by the applicant in support of an application for authorisation through an open and transparent public consultation process. To this end the ACCC aims to consult extensively with interested parties that may be affected by the proposed conduct to provide them with the opportunity to comment on the application.

#### The Committee

- 3.2. Broadly, the Committee submits that reducing the availability and supply of the types of alcohol products that contribute the most to anti-social behaviour will result in a reduction in the number of people excessively consuming alcohol within the Precinct and a reduction in visits to the Precinct by customers seeking to purchase these products. A reduction in anti-social behaviour will improve the overall safety and amenity of the Precinct to the benefit of public users.
- 3.3. The Committee submits that while the proposed Liquor Accord will result in a reduced choice of alcohol products to consumers, it is not expected to affect the prices of goods or services either within or outside the Precinct.
- 3.4. In response to submissions from interested parties, the Committee noted that the proposed Liquor Accord is one of many practical measures to improve public safety and reduce anti-social behaviour in the Precinct.

#### Interested parties

- 3.5. The ACCC sought submissions from 41 interested parties potentially affected by the application, including community groups, industry associations, welfare groups, government departments and government agencies. The ACCC also invited submissions from the five licensees to the proposed Liquor Accord. A summary of the public submissions received from interested parties follows.
- **Alcohol and other Drugs Council of Australia (ADCA)** supports liquor accords in-principle, but believes that a number of factors need to be taken into consideration when assessing their effectiveness as a harm reduction strategy. The ADCA noted that liquor accords need to be embedded in a broader community safety strategy, be supported by appropriate levels of enforcement and include formal evaluation mechanisms.
  - **Australian Drug Foundation (ADF)** submits its support for the proposed Liquor Accord. It considers that the public benefit of the proposed Liquor Accord outweighs the impact on competition that implementation of the proposed Liquor Accord might have.
  - **Australian National Council on Drugs (ANCD)** supports applications that seek to put in place management plans that reduce the level of alcohol related harm and violence. The ANCD also submits its support for interim authorisation for the development of the Liquor Accord proposal.
  - **Darwin City Council** submits that as a party to the applications, it does not wish to make any further comment.

- **Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)** submits its in-principle support for the proposed Liquor Accord in so far as it aims to reduce alcohol-related harm. FaHCSIA noted that the *Report on the Northern Territory Emergency Response Redesign Consultations* identifies that local solutions to control alcohol can be more effective than universally imposed restrictions. FaHCSIA recognises that the use of liquor accords can be effective in encouraging accord members to implement practical solutions to alcohol related problems and improve community safety without the need for mandatory legislation and enforcement.
- **Northern Territory Department of Justice** submits that the Northern Territory Licensing Commission is conducting an evaluation of the appropriateness of bans in relation to the sale of a range of alcohol products. The process of consultation is complete and the Northern Territory Licensing Commission is currently reviewing the material available.
- **DrinkWise Australia Ltd (DrinkWise)** did not provide specific comments on the proposed Liquor Accord, but did advise of its support for cooperative community based approaches to liquor-related issues in local areas.
- **Liquor Stores Association of Northern Territory Inc (LSANT)** made a submission about the Northern Territory Licensing Commission's current evaluation of the appropriateness of bans in relation to the sale of a range of alcohol products, which it suggested may obviate the need for the authorisation sought by the Committee.
- **Northern Territory Police (NT Police)** strongly supports the applications for authorisation by the Committee. NT Police submits that among other measures, the proposed Liquor Accord is viewed as an additional initiative to reduce the availability of a number of alcohol products which are seen as significant contributory factors in the inappropriate, aggressive and occasionally violent anti-social behaviour experienced in the Precinct.
- **Woolworths Limited** advised that it will not be making any submission in relation to the proposed agreement.

3.6. The views of the Committee and interested parties are outlined in the ACCC's evaluation of the proposed Liquor Accord in Chapter 4 of this draft determination. Copies of public submissions may be obtained from the ACCC's website ([www.accc.gov.au/AuthorisationsRegister](http://www.accc.gov.au/AuthorisationsRegister)) and by following the links to this matter.

## 4. ACCC evaluation

- 4.1. The ACCC's evaluation of the proposed Liquor Accord is in accordance with tests found in:
- sections 90(5A) and 90(5B) of the Act which state that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding that is or may be a cartel provision, unless it is satisfied in all the circumstances that:
    - the provision, in the case of section 90(5A) would result, or be likely to result, or in the case of section 90(5B) has resulted or is likely to result, in a benefit to the public and
    - that benefit, in the case of section 90(5A) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement were made or given effect to, or in the case of section 90(5B) outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from giving effect to the provision
  - sections 90(6) and 90(7) of the Act which state that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding, other than an exclusionary provision, unless it is satisfied in all the circumstances that:
    - the provision of the proposed contract, arrangement or understanding in the case of section 90(6) would result, or be likely to result, or in the case of section 90(7) has resulted or is likely to result, in a benefit to the public and
    - that benefit, in the case of section 90(6) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement was made and the provision was given effect to, or in the case of section 90(7) has resulted or is likely to result from giving effect to the provision
  - section 90(8) of the Act which states that the ACCC shall not authorise a proposed exclusionary provision of a contract, arrangement or understanding, unless it is satisfied in all the circumstances that the proposed provision would result or be likely to result in such a benefit to the public that the proposed contract, arrangement or understanding should be authorised.
- 4.2. For more information about the tests for authorisation and relevant provisions of the Act, please see [Attachment C](#).

### The market

- 4.3. The first step in assessing the effect of the conduct for which authorisation is sought is to consider the relevant market(s) affected by that conduct.
- 4.4. Under the proposed Liquor Accord, the supply of certain alcohol products will be restricted. Ready to drink products sold for off-premises consumption greater than 500 ml in volume will be withdrawn from sale, while wine and fortified wine containers of greater than 2 lt in volume will not be sold before 12 noon each trading day and the sale of such products will be restricted to one container per customer per day.

- 4.5. The Committee submits that the relevant area of competition is the retail market for alcohol beverages in the Precinct.
- 4.6. The supply restrictions within the proposed Liquor Accord will be implemented by retailers within the Precinct. Consumers who purchase alcohol products from retailers within the Precinct, and particularly those products that will no longer be available under the proposed Liquor Accord, will be directly affected by the arrangements for which authorisation is sought.
- 4.7. As noted by the Committee, in response to the supply restrictions, consumers may choose to purchase alternative alcohol products within the Precinct. This suggests that the relevant product market may be broader than just bulk wine products and ready to drink alcohol products.
- 4.8. The Committee also noted that consumers may choose to purchase the products the subject of the proposed Liquor Accord from liquor retailers located outside the Precinct. This suggests that geographically, the relevant area of competition may be larger than the Precinct.
- 4.9. In this instance, the ACCC is of the view that its assessment will not be significantly affected by variations in precise market definition. However, for the purpose of assessing the applications for authorisation the ACCC will consider the impact of the proposed Liquor Accord on the retail market of liquor for off-premises consumption in the Precinct and surrounding areas.<sup>1</sup>

## **The counterfactual**

- 4.10. The ACCC applies the ‘future with-and-without test’ established by the Tribunal to identify and weigh the public benefit and public detriment generated by conduct for which authorisation has been sought.<sup>2</sup>
- 4.11. Under this test, the ACCC compares the public benefit and anti-competitive detriment generated by arrangements in the future if the authorisation is granted with those generated if the authorisation is not granted. This requires the ACCC to predict how the relevant markets will react if authorisation is not granted. This prediction is referred to as the ‘counterfactual’.
- 4.12. In the absence of authorisation, the ACCC considers it unlikely that the supply restrictions in the proposed Liquor Accord will go ahead. The Committee advises that Coles and Woolworths, as licensees of three of the four takeaway liquor outlets within the Precinct, have indicated that they are unwilling to discuss the proposed Liquor Accord unless the Committee obtain authorisation from the ACCC.

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<sup>1</sup> This definition of a local retail liquor market for off-premises consumption is consistent with the market found in *Australian Competition and Consumer Commission v Liquorland (Australia) Pty Ltd* [2006] FCA 826 (30 June 2006).

<sup>2</sup> *Australian Performing Rights Association* (1999) ATPR 41-701 at 42,936. See also for example: *Australian Association of Pathology Practices Incorporated* (2004) ATPR 41-985 at 48,556; *Re Media Council of Australia* (No.2) (1987) ATPR 40-774 at 48,419.

- 4.13. The Committee has sought authorisation of the proposed Liquor Accord in its entirety. The proposed Liquor Accord includes a range of measures to be implemented by participating licensees of the Precinct. These measures are:
- *Takeaway alcohol products* - restrictions on the sale of certain wine, fortified wine and ready to drink products.
  - *Underage* - adopting a “No ID, No Entry” or “No ID, No Service” policy, assisting police to identify underage customers and retaining false or altered IDs and reporting them to police.
  - *Behaviour standards* – prominently displaying signs advising of behaviour standards such as “No more it’s the law”, training staff in responsible service of alcohol and supporting staff in refusal of service to intoxicated customers, advising customers of penalties for inappropriate behaviour and issuing and enforcing behaviour awareness warnings, exclusion penalties and trespass notices to customers as required.
  - *Public drinking* - erecting signs throughout the Precinct warning that public drinking is not permitted, recording details of public drinking and reporting instances of public drinking to the NT Police.
  - *Third party alcohol supply* - recording details of instances of third party alcohol supply and reporting all instances of third party alcohol supply within the Precinct to the NT Police.
- 4.14. In the absence of authorisation, it would appear that the majority of the proposed Liquor Accord could continue to operate without risk of raising concerns under the Act. In particular, the measures concerning underage drinking, behaviour standards, public drinking and third party alcohol supply do not appear to raise competition concerns. Some of these measures may even be licensing or legislative requirements.
- 4.15. The ACCC considers that the Committee is able to give effect to those aspects of the proposed Liquor Accord which are not at risk of raising competition concerns with or without authorisation from the ACCC.
- 4.16. The remainder of this draft determination will focus on those aspects of the proposed Liquor Accord that are at risk of raising competition concerns, namely the restrictions on the retail sale of certain wine, fortified wine and ready to drink products for off-premises consumption.
- 4.17. The ACCC notes that the proposed Liquor Accord is a community-based local solution to the problems experienced in the Precinct. An alternative solution may be legislative or regulatory in nature. The ACCC is aware that the Northern Territory Licensing Commission is currently reviewing the impact of large volume (4 and 5 litre casks) wine and wine based products on community wellbeing including with respect to anti-social behaviour and health impacts in the Darwin, Palmerston and Litchfield Council areas. As part of the review, the NT Licensing Commission is considering the effectiveness of a limitation or ban on the sale of large volume wine and cheap problem products, including takeaway products.
- 4.18. The ACCC also notes that there is currently a Bill before the Northern Territory Parliament that will, when enacted, provide an exemption under section 51 of the Act for conduct on the part of any person for the purpose of preparing a draft local liquor

accord, for approval of a local liquor accord or for promoting or giving effect to the terms of a local liquor accord. The Bill defines local liquor accords to be any written code of practice, memorandum of understanding or other arrangement that:

- affects the supply of liquor, the opening and closing of licenses premises or other aspects of the management of, or conduct of business on, licensed premises; and
- is made for the purpose of preventing or reducing alcohol-related violence.

## **Public benefit**

4.19. Public benefit is not defined in the Act. However, the Tribunal has stated that the term should be given its widest possible meaning. In particular, it includes:

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principle elements ... the achievement of the economic goals of efficiency and progress.<sup>3</sup>

4.20. The Committee submits the proposed Liquor Accord will deliver public benefits, including a reduction in anti-social behaviour, enhanced crime prevention and improved public safety.

4.21. The ACCC's assessment of the likely public benefits from the proposed conduct follows.

## **ACCC assessment**

4.22. The supply restrictions within the proposed Liquor Accord are intended to reduce the availability to consumers of alcohol products that have been identified as leading to anti-social behaviour in the Precinct, including inappropriate, aggressive and occasionally violent behaviour.

4.23. Submissions from interested parties are generally supportive of measures which seek to reduce alcohol related harm. NT Police strongly supports the proposed Liquor Accord. DrinkWise and FaHCSIA highlighted the advantages of cooperative community based approaches to liquor-related issues in local areas, with FaHCSIA noting that local solutions to control alcohol can be more effective than universally imposed restrictions.

4.24. The ADCA has submitted that in order to be effective, liquor accords need to be embedded in a broader community safety strategy, be supported by appropriate levels of enforcement and include formal evaluation mechanisms.

4.25. In this regard, the Committee and NT Police have submitted that the proposed Liquor Accord is one of a number of initiatives to address anti-social activity in the Precinct. These initiatives include erection of fencing, improved security, lighting audits and garden maintenance, rapid removal of graffiti, improved rubbish removal and trespass training for business owners. Additionally, there are public safety measures in operation within the Precinct including:

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<sup>3</sup> *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677. See also *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242.

- First Response Patrol – operated by the NT Police, the patrol engages with itinerants and provides information and referral to service providers who can provide assistance
  - Darwin Area Night Patrol – funded by the Department of Justice, the patrol is operated by Larrakia Nation and provides a safe transport service to a range of destinations including sobering-up facilities, emergency accommodation or home
  - Casuarina Police Beat – a dedicated police presence within the Precinct. Patrols are conducted around the Precinct on a regular basis and the NT Police shop front is open during business hours. CCTV cameras, operated by NT Police 24 hours a day, are located on the streets bordering the Precinct and the public roadway that bisects the Precinct.
- 4.26. There is some evidence to suggest that limiting or restricting access to specific alcohol products may reduce consumption and related harms.<sup>4</sup> Although the studies indicate that substitution practices by drinkers and suppliers may occur, in most cases there have been overall declines in pure alcohol consumption.
- 4.27. The proposed Liquor Accord includes a variation clause which will enable the parties to the proposed Liquor Accord to impose supply restrictions on new problem alcohol products, in the event that problem products change over time. In considering whether to subject new alcohol products to supply restrictions, the parties to the proposed Liquor Accord must consult with the NT Police and the Department of Justice (Licensing, Regulation and Alcohol Strategy Division).
- 4.28. The proposed Liquor Accord includes review mechanisms, including an annual review of the Liquor Accord. The Committee has submitted that after three years, it will review the Liquor Accord in terms of whether:
- it has facilitated initial behavioural changes that reduce anti-social behaviour
  - there have been changes to behaviour over time as customers potentially reorientate to alternative alcohol products or alternative locations
  - the measures to enforce prohibition of public consumption of alcohol and third party supply have been effective
  - any initial reduction in anti-social behaviour is maintained over the longer term.
- 4.29. The ACCC considers that these measures are likely to contribute to the effectiveness of the proposed Liquor Accord as a means to reduce anti-social behaviour within the Precinct. The ACCC encourages the Committee to ensure the proposed Liquor Accord is as effective as possible, including by ensuring the elements identified by ADCA are incorporated.
- 4.30. As the proposed Liquor Accord is a local solution, there is a possibility that the restrictions on the sale of particular alcohol products within the Precinct may result in consumers purchasing the products elsewhere. This may move the anti-social behaviour problem to another location. This potentially undermines some of the public benefits

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<sup>4</sup> National Drug Research Institute, *Restrictions on the Sale and Supply of Alcohol: Evidence and Outcomes*, Curtin University of Technology, Perth, 2007.

claimed by the Committee, and highlights the importance of a coordinated approach to liquor control measures and their enforcement within a wider community.

- 4.31. Nevertheless, to the extent that the supply restrictions within the proposed Liquor Accord lead to a reduction in anti-social behaviour in the Precinct, with associated enhanced crime prevention and improved public safety, the ACCC considers that they are likely to produce a public benefit.

## **Public detriment**

- 4.32. Public detriment is also not defined in the Act but the Tribunal has given the concept a wide ambit, including:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.<sup>5</sup>

- 4.33. The Committee submits that the proposed Liquor Accord may result in some detriment to the public including a reduced choice of alcohol products and a requirement to travel a greater distance or to a different destination to purchase their preferred alcohol products.
- 4.34. The Committee submits that the proposed Liquor Accord is not expected to affect the prices of goods or services within or outside the Precinct.

## **ACCC assessment**

- 4.35. Agreements between competitors which impose restrictions on their decisions as to what they deal in, or with whom they deal, can result in inefficiencies. Such agreements distort market signals and can suppress competitive dynamics that would exist in a competitive market.
- 4.36. In this instance, the supply restrictions within the proposed Liquor Accord will constrain the sale of certain alcohol products purchased for off-premises consumption. This will have the effect of reducing consumer choice and convenience with respect to the purchase of these alcohol products within the Precinct.
- 4.37. However, as noted the restrictions currently apply to a limited range of products, namely:
- wine and fortified wine containers of 2 lt or greater in volume. These products will not be sold before 12 noon each trading day and their sale will be restricted to one container per customer per trading day.
  - ready to drink products greater than 500 ml in volume. These products will be withdrawn from sale.
- 4.38. Sales of all other alcohol products stocked by the licensees are not affected by the supply restrictions within the proposed Liquor Accord. Competition between licensees

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<sup>5</sup> *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

with respect to the majority of products they sell will not be affected by the supply restrictions within the proposed Liquor Accord.

- 4.39. Accordingly, the ACCC considers that any public detriment, including anti-competitive effects, resulting from the supply restrictions is limited.

## **Balance of public benefit and detriment**

- 4.40. In general, the ACCC may only grant authorisation if it is satisfied that, in all the circumstances, the restrictions within the proposed Liquor Accord are likely to result in a public benefit, and that public benefit will outweigh any likely public detriment.

- 4.41. In the context of applying the net public benefit test in section 90(8)<sup>6</sup> of the Act, the Tribunal commented that:

... something more than a negligible benefit is required before the power to grant authorisation can be exercised.<sup>7</sup>

- 4.42. For the reasons outlined in this chapter the ACCC considers the supply restrictions in the proposed Liquor Accord are likely to produce public benefit by reducing anti-social behaviour, including inappropriate, aggressive and occasionally violent behaviour, in the Precinct. The ACCC considers that any likely detriments are limited. There may be some reduction in choice and convenience for consumers purchasing alcohol products in the Precinct for off-premises consumption. However, licensees will continue to compete on price and the restrictions apply only to certain products.

- 4.43. Accordingly, the ACCC considers the public benefit that is likely to result from the conduct is likely to outweigh the public detriment. The ACCC is therefore satisfied that the tests in sections 90(5A) and (5B), 90(6) and (7) and 90(8) are met.

## **Length of authorisation**

- 4.44. The Act allows the ACCC to grant authorisation for a limited period of time.<sup>8</sup> The ACCC generally considers it appropriate to grant authorisation for a limited period of time, so as to allow an authorisation to be reviewed in the light of any changed circumstances.

- 4.45. In this instance, the Committee seeks authorisation for three years. The Committee considers that implementation of the proposed Liquor Accord over a three year period should allow sufficient observation and experience to enable an assessment of the effectiveness of the proposed Liquor Accord.

- 4.46. The ACCC proposes to grant authorisation to the supply restrictions within the proposed Liquor Accord for three years.

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<sup>6</sup> The test at 90(8) of the Act is in essence that conduct is likely to result in such a benefit to the public that it should be allowed to take place.

<sup>7</sup> *Re Application by Michael Jools, President of the NSW Taxi Drivers Association* [2006] ACompT 5 at paragraph 22.

<sup>8</sup> Section 91(1).

- 4.47. In the event that the Committee seeks re-authorisation, the ACCC would expect to be provided with the outcomes of the Committee's assessment of the effectiveness of the proposed Liquor Accord in reducing anti-social behaviour and improving crime prevention and public safety in the Precinct, including relevant data where available.

## **Interim authorisation**

- 4.48. Section 91 of the Act allows the ACCC to grant interim authorisation without making a decision on the merits of the application.
- 4.49. The ACCC will only grant interim authorisation in appropriate circumstances. In many circumstances it is not appropriate to do so because interim authorisation allows an applicant, for a limited period, to engage in conduct before the ACCC has been able to fully assess whether the conduct satisfies the authorisation test.
- 4.50. In this case, the Committee has sought interim authorisation to enable the development of the proposed Liquor Accord with Coles and Woolworths. The Committee submits that Coles and Woolworths, as licensees for three of the four takeaway liquor outlets within the Precinct, have indicated that they are unwilling to discuss a liquor accord unless the Committee obtains authorisation from the ACCC.
- 4.51. The Committee submits that in the event interim authorisation is granted, it would seek to enter into discussions with Coles and Woolworths as quickly as possible and seek their cooperation to voluntarily implement the proposed measures in the proposed Liquor Accord until a final determination is made.
- 4.52. The ANCD has submitted its support for interim authorisation for the development of the Liquor Accord proposal.
- 4.53. In assessing the request for interim authorisation, the ACCC considers that the conduct to be engaged in under interim authorisation, namely discussion of and implementation of the supply restrictions within the proposed Liquor Accord, is likely to result in a benefit to the public that outweighs any public detriment arising from the conduct.
- 4.54. On this basis, the ACCC grants interim authorisation to supply restrictions in the proposed Liquor Accord, including any variation to the supply restrictions. The ACCC expects to be made aware of any proposed variations to the supply restrictions as they are contemplated by the Committee. The ACCC will have regard to any variations made to the supply restrictions in its final determination of the applications for authorisation.
- 4.55. Interim authorisation will enable the Committee to engage in discussions with licensees about the supply restrictions within the proposed Liquor Accord and to implement the supply restrictions.
- 4.56. Interim authorisation will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation. The ACCC's decision in relation to interim authorisation should not be taken to be indicative of whether or not final authorisation will be granted.

## 5. Draft determination

### The application

- 5.1. On 30 November 2009 the Casuarina All Sports Club Inc, on behalf of the members of the Casuarina Business Stakeholders Committee (the Committee) lodged application for authorisation A91201 with the Australian Competition and Consumer Commission (ACCC). On 11 December 2009 the Committee lodged an amended application for authorisation A91201 as well as a related application for authorisation A91202 with the ACCC.
- 5.2. Application A91201 was made using Form A, Schedule 1, of the Trade Practices Regulations 1974. The application was made under:
- section 88(1A) of the Act to make and give effect to a contract or arrangement, or arrive at an understanding a provision of which would be, or might be, a cartel provision (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act)
  - section 88(1) of the Act to make and give effect to a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of the Act.
- 5.3. Application A91202 was made using Form B, Schedule 1, of the Trade Practices Regulations 1974. The application was made under:
- section 88(1A) of the Act to make and give effect to a provision of a contract, arrangement or understanding, a provision of which is, or may be, a cartel provision and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act
  - section 88(1) of the Act to make and give effect to a contract, arrangement or understanding, a provision of which is or may be an exclusionary provision within the meaning of section 45 of the Act.
- 5.4. In particular, the Committee applied for authorisation of a proposed agreement, known as the Liquor Accord, which includes proposed restrictions on the supply of certain types of alcohol products to consumers. The applications for authorisation identify Casuarina All Sports Club Inc, GPT Group, The Village Shopping Centre, Coles Liquor and Woolworths Limited as the parties to the proposed Liquor Accord.
- 5.5. On 16 March 2010 the Committee provided the ACCC with an amended proposed Liquor Accord. The amendment concerned the inclusion of a new clause 6(a) dealing with variations to the proposed Liquor Accord.
- 5.6. Section 90A(1) requires that before determining an application for authorisation the ACCC shall prepare a draft determination.

## **The net public benefit test**

- 5.7. For the reasons outlined in Chapter 4 of this draft determination, the ACCC considers that in all the circumstances the conduct for which authorisation is sought is likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition arising from the conduct.
- 5.8. The ACCC is also satisfied that the conduct for which authorisation is sought are likely to result in such a benefit to the public that the conduct should be allowed to take place.

## **Conditions**

- 5.9. The ACCC therefore **proposes to grant** authorisation to applications A91201 and A91202 **on condition that:**

### **C1**

The Applicant must provide the ACCC with the written details of any proposed variation to the proposed Liquor Accord made pursuant to clause 6(a) of the proposed Liquor Accord at least 28 days before any such proposed variation.

(a) Variations may include but not be limited to:

- i. parties to the proposed Liquor Accord
- ii. standards of service, sale, behaviour and control
- iii. supply of products that are contributing to anti-social behaviour
- iv. hours of service.

(b) Certain variations are not proposed to be authorised. See paragraph 5.12 below.

- 5.10. The ACCC invites submissions from the applicant and interested parties on this proposed condition of authorisation.

## **Conduct for which the ACCC proposes to grant authorisation**

- 5.11. The ACCC proposes to grant authorisation to the supply restrictions within the proposed Liquor Accord, including any variation to those supply restrictions, for a period of three years.
- 5.12. This draft determination is made on 25 March 2010.
- 5.13. The attachments to this determination are part of the draft determination.

## **Conduct not proposed to be authorised**

- 5.14. The proposed authorisation does not extend to:
- (a) any agreement between the parties to the proposed Liquor Accord on price; and
  - (b) any variation by the parties to:

- i. Clause 4 (Objectives) of the proposed Liquor Accord; or
- ii. Clause 6(a) (Variations to this Liquor Accord) of the proposed Liquor Accord.

5.15. The ACCC notes that if the parties wish to amend either or both of clauses 4 or 6(a) of the proposed Liquor Accord then, depending on the circumstances, the parties may apply to the ACCC for a minor variation to the authorisation, or revocation of the authorisation and substitution of a new authorisation. Which of those two options is ultimately pursued is, of course, a matter for the parties.

### **Interim authorisation**

5.16. At the time of lodging the application, the Committee requested interim authorisation to allow it, with the cooperation of all licensees, to implement the proposed measures in the proposed Liquor Accord.

5.17. The ACCC grants interim authorisation to the supply restrictions within the proposed Liquor Accord, including any variation to those supply restrictions.

5.18. The ACCC expects to be made aware of any proposed variations to the supply restrictions as they are contemplated by the Committee. The ACCC will have regard to any variations made to the supply restrictions in its final determination of the applications for authorisation.

5.19. Interim authorisation will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

### **Further submissions**

5.20. The ACCC will now seek further submissions from interested parties. In addition, the applicant or any interested party may request that the ACCC hold a conference to discuss the draft determination, pursuant to section 90A of the Act.

## **Attachment A — the authorisation process**

The Australian Competition and Consumer Commission (the ACCC) is the independent Australian Government agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act is to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service.

The Act, however, allows the ACCC to grant immunity from legal action in certain circumstances for conduct that might otherwise raise concerns under the competition provisions of the Act. One way in which parties may obtain immunity is to apply to the ACCC for what is known as an ‘authorisation’.

The ACCC may ‘authorise’ businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment.

The ACCC conducts a public consultation process when it receives an application for authorisation. The ACCC invites interested parties to lodge submissions outlining whether they support the application or not, and their reasons for this.

After considering submissions, the ACCC issues a draft determination proposing to either grant the application or deny the application.

Once a draft determination is released, the applicant or any interested party may request that the ACCC hold a conference. A conference provides all parties with the opportunity to put oral submissions to the ACCC in response to the draft determination. The ACCC will also invite the applicant and interested parties to lodge written submissions commenting on the draft.

The ACCC then reconsiders the application taking into account the comments made at the conference (if one is requested) and any further submissions received and issues a final determination. Should the public benefit outweigh the public detriment, the ACCC may grant authorisation. If not, authorisation may be denied. However, in some cases it may still be possible to grant authorisation where conditions can be imposed which sufficiently increase the benefit to the public or reduce the public detriment.

## **Attachment B — chronology of ACCC assessment for applications A91201 & A91202**

The following table provides a chronology of significant dates in the consideration of the application by the Committee.

<b>DATE</b>	<b>ACTION</b>
30 November 2009	Application for authorisation A91201 lodged with the ACCC, including an application for interim authorisation.
11 December 2009	Amended application for authorisation A91201 lodged as well as related application for authorisation A91202.
29 January 2010	Closing date for submissions from interested parties in relation to the request for interim authorisation and the substantive applications for authorisation.
15 February 2010	Submission received from the Committee in response to interested party submissions.
25 March 2010	Draft determination issued.

# Attachment C — the tests for authorisation and other relevant provisions of the Act

## Trade Practices Act 1974

### Section 90—Determination of applications for authorisations

- (1) The Commission shall, in respect of an application for an authorization:
  - (a) make a determination in writing granting such authorization as it considers appropriate; or
  - (b) make a determination in writing dismissing the application.
- (2) The Commission shall take into account any submissions in relation to the application made to it by the applicant, by the Commonwealth, by a State or by any other person.

Note: Alternatively, the Commission may rely on consultations undertaken by the AEMC: see section 90B.
- (4) The Commission shall state in writing its reasons for a determination made by it.
- (5) Before making a determination in respect of an application for an authorization the Commission shall comply with the requirements of section 90A.

Note: Alternatively, the Commission may rely on consultations undertaken by the AEMC: see section 90B.
- (5A) The Commission must not make a determination granting an authorisation under subsection 88(1A) in respect of a provision of a proposed contract, arrangement or understanding that would be, or might be, a cartel provision, unless the Commission is satisfied in all the circumstances:
  - (a) that the provision would result, or be likely to result, in a benefit to the public; and
  - (b) that the benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if:
    - (i) the proposed contract or arrangement were made, or the proposed understanding were arrived at; and
    - (ii) the provision were given effect to.
- (5B) The Commission must not make a determination granting an authorisation under subsection 88(1A) in respect of a provision of a contract, arrangement or understanding that is or may be a cartel provision, unless the Commission is satisfied in all the circumstances:
  - (a) that the provision has resulted, or is likely to result, in a benefit to the public; and
  - (b) that the benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the provision.
- (6) The Commission shall not make a determination granting an authorization under subsection 88(1), (5) or (8) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a proposed contract, arrangement or understanding, in respect of a proposed covenant, or in respect of proposed conduct (other than conduct to which subsection 47(6) or (7) applies), unless it is satisfied in all the circumstances that the provision of the proposed contract, arrangement or understanding, the proposed covenant, or the proposed conduct, as the case may be, would result, or be likely to result, in a benefit to

the public and that that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if:

- (a) the proposed contract or arrangement were made, or the proposed understanding were arrived at, and the provision concerned were given effect to;
- (b) the proposed covenant were given, and were complied with; or
- (c) the proposed conduct were engaged in;

as the case may be.

(7) The Commission shall not make a determination granting an authorization under subsection 88(1) or (5) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a contract, arrangement or understanding or, in respect of a covenant, unless it is satisfied in all the circumstances that the provision of the contract, arrangement or understanding, or the covenant, as the case may be, has resulted, or is likely to result, in a benefit to the public and that that benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the provision or complying with the covenant.

(8) The Commission shall not:

- (a) make a determination granting:
  - (i) an authorization under subsection 88(1) in respect of a provision of a proposed contract, arrangement or understanding that is or may be an exclusionary provision; or
  - (ii) an authorization under subsection 88(7) or (7A) in respect of proposed conduct; or
  - (iii) an authorization under subsection 88(8) in respect of proposed conduct to which subsection 47(6) or (7) applies; or
  - (iv) an authorisation under subsection 88(8A) for proposed conduct to which section 48 applies;

unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be; or

- (b) make a determination granting an authorization under subsection 88(1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied in all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to.

(9) The Commission shall not make a determination granting an authorization under subsection 88(9) in respect of a proposed acquisition of shares in the capital of a body corporate or of assets of a person or in respect of the acquisition of a controlling interest in a body corporate within the meaning of section 50A unless it is satisfied in all the circumstances that the proposed acquisition would result, or be likely to result, in such a benefit to the public that the acquisition should be allowed to take place.

(9A) In determining what amounts to a benefit to the public for the purposes of subsection (9):

- (a) the Commission must regard the following as benefits to the public (in addition to any other benefits to the public that may exist apart from this paragraph):
  - (i) a significant increase in the real value of exports;

- (ii) a significant substitution of domestic products for imported goods; and
- (b) without limiting the matters that may be taken into account, the Commission must take into account all other relevant matters that relate to the international competitiveness of any Australian industry.

## Variation in the language of the tests

There is some variation in the language in the Act, particularly between the tests in sections 90(6) and 90(8).

The Australian Competition Tribunal (the Tribunal) has found that the tests are not precisely the same. The Tribunal has stated that the test under section 90(6) is limited to a consideration of those detriments arising from a lessening of competition but the test under section 90(8) is not so limited.<sup>9</sup>

However, the Tribunal has previously stated that regarding the test under section 90(6):

[the] fact that the only public detriment to be taken into account is lessening of competition does not mean that other detriments are not to be weighed in the balance when a judgment is being made. Something relied upon as a benefit may have a beneficial, and also a detrimental, effect on society. Such detrimental effect as it has must be considered in order to determine the extent of its beneficial effect.<sup>10</sup>

Consequently, when applying either test, the ACCC can take most, if not all, public detriments likely to result from the relevant conduct into account either by looking at the detriment side of the equation or when assessing the extent of the benefits.

Given the similarity in wording between sections 90(6) and 90(7), the ACCC considers the approach described above in relation to section 90(6) is also applicable to section 90(7). Further, as the wording in sections 90(5A) and 90(5B) is similar, this approach will also be applied in the test for conduct that may be a cartel provision.

## Conditions

The Act allows the ACCC to grant authorisation subject to conditions.<sup>11</sup>

## Future and other parties

Applications to make or give effect to contracts, arrangements or understandings that might substantially lessen competition or constitute exclusionary provisions may be expressed to extend to:

- persons who become party to the contract, arrangement or understanding at some time in the future<sup>12</sup>

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<sup>9</sup> *Australian Association of Pathology Practices Incorporated* [2004] ACompT 4; 7 April 2004. This view was supported in *VFF Chicken Meat Growers' Boycott Authorisation* [2006] ACompT9 at paragraph 67.

<sup>10</sup> *Re Association of Consulting Engineers, Australia* (1981) ATPR 40-2-2 at 42788. See also: *Media Council case* (1978) ATPR 40-058 at 17606; and *Application of Southern Cross Beverages Pty. Ltd., Cadbury Schweppes Pty Ltd and Amatil Ltd for review* (1981) ATPR 40-200 at 42,763, 42766.

<sup>11</sup> Section 91(3).

- persons named in the authorisation as being a party or a proposed party to the contract, arrangement or understanding.<sup>13</sup>

## **Six- month time limit**

A six-month time limit applies to the ACCC's consideration of new applications for authorisation<sup>14</sup>. It does not apply to applications for revocation, revocation and substitution, or minor variation. The six-month period can be extended by up to a further six months in certain circumstances.

## **Minor variation**

A person to whom an authorisation has been granted (or a person on their behalf) may apply to the ACCC for a minor variation to the authorisation.<sup>15</sup> The Act limits applications for minor variation to applications for:

... a single variation that does not involve a material change in the effect of the authorisation.<sup>16</sup>

When assessing applications for minor variation, the ACCC must be satisfied that:

- the proposed variation satisfies the definition of a 'minor variation' and
- if the proposed variation is minor, the ACCC must assess whether it results in any reduction to the net benefit of the conduct.

## **Revocation; revocation and substitution**

A person to whom an authorisation has been granted may request that the ACCC revoke the authorisation.<sup>17</sup> The ACCC may also review an authorisation with a view to revoking it in certain circumstances.<sup>18</sup>

The holder of an authorisation may apply to the ACCC to revoke the authorisation and substitute a new authorisation in its place.<sup>19</sup> The ACCC may also review an authorisation with a view to revoking it and substituting a new authorisation in its place in certain circumstances.<sup>20</sup>

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<sup>12</sup> Section 88(10).

<sup>13</sup> Section 88(6).

<sup>14</sup> Section 90(10A)

<sup>15</sup> Subsection 91A(1)

<sup>16</sup> Subsection 87ZD(1).

<sup>17</sup> Subsection 91B(1)

<sup>18</sup> Subsection 91B(3)

<sup>19</sup> Subsection 91C(1)

<sup>20</sup> Subsection 91C(3)