

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Headframe Bottleshop
Date of Decision:	15 August 2000
Date of Hearing:	20 September 1999
Complaint:	Application to vary Bottleshop Licence
Licensee:	Whyteross Pty Ltd
Nominee:	Wayne Paterson
Heard Before:	Mr Peter Allen (Chairman) Mrs Mary Ridsdale (Member) Mrs Shirley McKerrow (Member)
Appearances:	Mr John Stirk Council Ms Pamela Ditton for Julalikari

In this matter the Liquor Commission in general meeting determined to hold a hearing into the application by the licensee of the Headframe Bottleshop to vary the conditions of the licence by trading on Thursdays in the face of the so-called "thirsty Thursday" restrictions applying in the town of Tennant Creek. The application had been advertised in pursuance of a prior determination of the Commission in that regard, as a result of which publicity the Julalikari Council Aboriginal Corporation recorded its objection to the proposed variation.

On 20 September 1999 a hearing panel of the Commission convened in Tennant Creek for a hearing of the application. At the commencement of the hearing the legal representative of Julalikari, Ms Pamela Ditton, raised the threshold issue of the Commission's statutory power to conduct such a hearing. She submitted that there was no provision in the Liquor Act for an existing licensee to make application to vary an existing licence, and that the only type of application contemplated by the Act in this regard is an application for a fresh licence.

As all interested parties were assembled for the hearing, it was agreed that it was practical to proceed with the evidence and for a ruling to be made later on the jurisdictional submission. The hearing proceeded on that basis, and was eventually adjourned part heard. Ms Ditton subsequently requested a written decision on the issue.

The Commission dealt with an identical submission in March 1997 in a hearing of an application by the Tyeweretye Club in Alice Springs to vary its trading conditions to expand its product range from just beer, to which it was then restricted, to include a broad range of spirits. That matter too had attracted objections as a result of the Commission's direction to advertise the application. In that matter the Commission ruled on the issue as follows:

A preliminary issue raised at the hearing (addressed by both Counsel) was whether the Commission had the power to convene such a hearing.

The only direct reference in the Liquor Act (hereinafter called "the Act") to variation of conditions is to be found in Section 33, which quite obviously deals with the power of the Commission to unilaterally vary conditions, an aggrieved licensee in that situation then having 28 days within which to request a hearing in relation to his conditions. Other than that, the Act is silent as to the variation of conditions, and the circumstance of an existing licensee applying for a variation of its own devising is not canvassed by the Act.

Neither the Act nor any supplementary regulations provides for different categories of liquor licences. The combined effect of Sections 24 and 31 of the Act is that a licence shall permit the sale of liquor according to such conditions as may be incorporated in the licence. The licensee becomes licensed to trade in liquor in accordance with conditions tailored to the business conducted on the premises, and the licence is constituted by those conditions. A licensee who applies for a licence to trade in liquor under a different set of conditions can therefore be seen to be "an applicant for a licence" in terms of Section 27 and an applicant "for a grant of a licence" in terms of Section 48, because a different set of conditions would constitute a different licence, certainly in detail if not in kind.

Such a view is confirmed by a consideration of Section 31(1) of the Act. There would seem to be little doubt that Section 31 can be applied to an application for a change of conditions. The Commission has "an application before it" requiring a consideration by the Commission of "such conditions as it may consider necessary or desirable in the particular circumstances" of the application before it. The consequence of such consideration is the power to issue a licence in terms of its determination of conditions in the particular circumstances. The Commission is of the view that the terms of Section 31 support the perception of an application to change trading conditions as an application for the substitution of a licence in terms of the new set of conditions, and thus is an application to which Section 48 can apply in allowing for objections to which Section 49 would apply in providing for hearings in the discretion of the Commission.

The Commission has held to that ruling through many applications for variation of conditions since that time, and does so in the present case.

It is true that from time to time the Commission has determined that a particular requested variation is sufficiently minor and non-contentious as to not require advertising, and has proceeded to determine such application without having sought any input from the relevant community. Typical examples would be a hotel seeking to swap trading times between its different bars without extending its total trading hours, or a restaurant seeking to trade for an extra thirty minutes, or the like. In those cases the Commission treats the application as a request to exercise its discretion under section 33 of the Act in the manner requested by the applicant.

However, section 33 is an unsatisfactory vehicle for dealing with an application having any potential to impact adversely on the community, as it provides no mechanism or forum for third party input. Where a requested variation is such as could be seen to alter the nature or "flavour" of a licence, or the manner or degree in which it may impact on a community, the Commission will always regard such an application as an application for a different licence, and hence simply an application for a licence. In that situation it is illogical if not unlawful not to accord the community the opportunity to record its needs and wishes in relation to the proposed new conditions. The Commission is comforted in that view by a consideration of section 62A of the Interpretation Act, which provides that in interpreting a provision of an Act, a construction that promotes the purpose or object underlying the Act is to be preferred, even though the purpose or object not be stated in the Act. The Commission sees harm minimisation and community needs and wishes as underpinning the responsible administration of the Liquor Act.

The contentious nature and high profile of the application in the face of the current restrictions applying in Tennant Creek is obvious. Had the Commission not determined that this application for variation should be dealt with as an application for a new licence, Ms Ditton's client would have no statutory avenue of objection or remonstrance in relation to the application.

The Commission in all fairness wishes to receive such evidence as Julalikari wishes to put before it, and the applicant should have the opportunity to test that evidence. Even without the Commission's formal ruling on the nature of the application, a hearing would seem to be the fairest mechanism. The formal ruling, however, is that the proposed variation to the conditions of the licence is such that the application is to be regarded as an application for a different licence, and is

therefore subject to the provisions of section 48 of the Liquor Act. The hearing will proceed on that basis.

Peter R Allen
Chairman

15 August 2000