

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Top Springs Hotel
Licence Number:	81203330
Licensee	Jones Cattle NT Pty Ltd
Nominee:	Ms Pauline Anne Haseldine
Proceedings:	Request for Hearing pursuant to Section 33(2) of the <i>Liquor Act</i> – Objection to Variation of Licence Conditions
Heard Before:	Mr Richard O’Sullivan (Chairman) Mr Philip Timney (Legal Member) Mrs Jane Large
Appearances:	Mr Alan Woodcock, Counsel for the Licensee Mr Mark Wood, for the Director of Licensing
Date of Hearing:	10 to 12 December 2012

Background

- 1) By decision dated 8 August 2012 the Northern Territory Licensing Commission (“the Commission”) determined to issue notice pursuant to Section 33 of the Liquor Act (“the Act”) to the Licensee of the Top Springs Hotel advising of a variation to the conditions associated with the liquor licence. The letter to the Licensee, dated 14 August 2012, advised as follows:

“The following conditions will be inserted in Liquor Licence 81203330.

The sale of takeaway liquor is restricted to twelve heavy beers or thirty light or mid-strength beers per person not being bona fide residents of the premises per day with a maximum of three individual purchases per vehicle only.

Sale of liquor on purchase order to nearby cattle stations must be pre ordered on account and is exempt from the takeaway liquor restriction.”

- 2) By correspondence dated 23 August 2012 Mr Alan Woodcock, Counsel for the Licensee of the Top Springs Hotel, advised that his client requested that the Commission conduct a Hearing pursuant to Section 33(2) of the Act in relation to the conditions of the licence. The Hearing was set down to take place in Katherine from 10 to 12 December 2012.
- 3) On the morning of 11 December 2012, the second day of the Hearing, Mr Woodcock raised a legal argument in respect of the validity of the Section 33 Notice issued to his client. He tendered written submissions in support of the argument that the Section 33 Notice was ultra vires the Act. In response, Inspector Mark Wood tendered written submissions asserting that the Notice was valid. The Commission considered the written submissions and, taking account of the fact that

the Hearing had commenced and the attendance of witnesses from remote locations had been arranged, determined to proceed with the Hearing and provide its response to the legal argument prior to determining the substantive matter that was the subject of the Hearing, namely whether to proceed with the variation of licence conditions.

Submissions on Behalf of the Licensee

- 4) Mr Woodcock's written submissions may be summarised as follows: Section 33 of the Act is headed "Commission may vary licence conditions" and, relevant to the submissions, reads as follows:

33 Commission may vary conditions

(1) Subject to this Section, the Commission may, from time to time by notice in writing, vary the conditions of the licence held by a Licensee.

- 5) Section 33AA is headed "Minister's power to determine additional licence conditions" and reads as follows

33AA Minister's power to determine additional licence conditions

(1) The Minister may determine additional conditions of a licence if the Minister thinks the determination is urgently needed for the wellbeing of the communities that might be affected by the operation of the licence.

(2) Without limiting subsection (1), the Minister may determine any of the following conditions under that subsection:

(a)

(c) a condition about the amount of liquor that may be sold for consumption away from the premises;

- 6) The procedure adopted by the Commission in the letter of 14 August 2012 is clearly that of determining an additional condition (or in the language of the letter "inserting"). Nowhere in the letter is the central issue of variation of a licence condition discussed or explained. The Commission has clearly exercised the power of determining a new condition, a power that only the Minister can exercise under Section 33AA.
- 7) Reading the Act as a whole the legislature has made a clear distinction between the powers of the Minister and the powers of the Commission. The power to insert new conditions vests with the Minister only and the power to vary with the Commission. The legislature goes on to give as an example that the Minister may determine an additional condition relating to the amount of liquor that may be sold for consumption away from the premises.
- 8) Even if the Commission had purported to vary the licence it would be exceeding its power to do so as no condition as to the amount of alcohol that may be sold for consumption away from the licensed premises exists in the licence for the Commission to vary.
- 9) In support of his written submissions Mr Woodcock stated at the Hearing that Section 33 would be read differently if not for the amendment to the Act inserting Section 33AA. Following the insertion those Sections must be read together and

must be given the ordinary natural, meaning of variation with the result the Commission does not have the power to add or insert a licence condition.

- 10) Mr Woodcock added that “vary” is a word that could be read very broadly if not for the insertion of Section 33AA in the Act which has the effect of delineating the Commission’s powers and the Minister’s powers. The Act, as amended, provides only the Minister with the specific power to determine additional licence conditions with the result the Commission does not have the power to do what is proposed under the Section 33 notice. Mr Woodcock submitted that the Act must be read and must be interpreted by giving the words their ordinary meanings in the context of the whole of the Act.
- 11) Mr Woodcock informed the Commission that he had contacted the Supreme Court earlier in the morning and been advised that the Sections of the Act under consideration have not been judicially considered by the Supreme Court.

Submissions By on Behalf of the Director of Licensing:

- 12) Inspector Wood tendered written submissions in response which may be summarised as follows: The *Northern Territory Licensing Commission Act* provides the following powers to the Commission:

5 Powers and functions of Commission

- (1) *The Commission must perform the functions imposed on it under this Act or another Act and do any other thing that is necessary or convenient to be done for the proper performance of those functions.*
- (2) *The Commission has the power to do all things that are necessary to be done for or incidental to the performance of its functions.*

- 13) Specifically subsection (2) gives broad powers to the Commission “to do all things that are necessary”. It necessarily follows that upon consideration and determination it may be necessary to make a change to a licence condition, including impose a new licence condition, the Commission has a general power to do so.

- 14) Section 24 of the Liquor act provides for the issuing of a licence:

24 Licences

Subject to this Act, the Commission may issue a licence, in a form approved by the Commission, to an applicant for the sale of liquor, or the sale and consumption of liquor on, at, or away from, premises specified in the licence.

- 15) The power to grant a licence is only provided to the Commission, not the Minister. The applicant provides information under Section 27 as to what type of licence is sought and the conditions upon which they must operate. It is therefore a situation where no conditions exist on a licence at the time of application.
- 16) The Commission in considering an application under Section 28 must consider, inter alia:
- “regard to any law of the Territory which regulates in any manner the sale or consumption of liquor or the location”*

17) Once considered and so determined the Commission must, pursuant to Section 29 of the Act:

29 Decision after consideration of application

(1)

(2) *After considering an application for a licence, the Commission must, having regard to the objects of this Act:*

(a) *issue a licence subject to such conditions as are determined by it under Section 31;*

18) Section 31 of the Act provides for the types of conditions which the Commission may add to a new licence:

31 Conditions of licence

(1) *Subject to the Regulations, the Commission may issue a licence subject to such conditions as it may consider necessary or desirable in the particular circumstances of an application before it.*

(2) *Without limiting the generality of subsection (1), the Commission may, subject to the Regulations, determine conditions with respect to:*

... ..

(e) *the method of sale of liquor, including restrictions on the type of container in which liquor may be sold and limitations as to the quantities or type of liquor which may be sold by a Licensee; and*

... ..

(4) *It is a condition of all licences that a Licensee:*

(a) *must not take any action that, in the opinion of the Commission, would induce the irresponsible or excessive consumption of liquor on licensed premises; and*

19) Section 31(4)(a), although not specifically existing in the body of the licence, is a condition already within a licence which provides for some level of restriction on sales of liquor by type and quantity. The licence includes the following conditions:

Takeaway Hours: Liquor shall be sold only for consumption away from the premises during the following hours:

- (i) Sunday to Friday inclusive between the hours of 10:00 and 22:00
- (ii) Saturday and Public Holidays inclusive between the hours of 9:00 and 22:00; and
- (iii) No trading on Good Friday and Christmas day.

20) The condition already provides for the sale of takeaway liquor, the variation being considered is in relation to takeaway liquor and there is nothing to prevent the Commission from varying this condition in such a fashion as to include a restriction

on product type and quantity. It is submitted by Counsel for the Licensee that the Commission is able to vary existing conditions on a licence.

21) Paragraph 6 of the Submission by Counsel for the Licensee (paragraph 8 above in this decision) submits no condition exists "... .. as to the amount of alcohol that may be sold for consumption away from the premises ..." It is submitted by the Director that the Takeaway Hours condition in providing for liquor to be sold as takeaway implies a minimum quantity, being 1 unit of liquor. One (1) unit of liquor is a quantity and therefore the Licensee's submission must fail with regards to paragraph 6.

22) The Minister's powers in relation to additional conditions exist in Sections 33AA and 59A. Similar provisions exist in Section 101AD as to the powers of the Minister and each of these state:

"... .. is urgently needed for the well being of communities ..."

23) The second reading speech by Dr Burns on 22 August 2007 states that the changes to the Act which gave rise to these Ministerial powers is for situations where:

"... .. a situation is so urgent that time is not available to consult and seek cooperation. These reforms empower the Minister ... to respond urgently to liquor related harm in any Territory community."

24) From this the Minister may act immediately and without consultation whereas the Commission must consult and seek cooperation, the process of which is prescribed in Section 33. Dr Burns stated further:

"... .. I will have the capacity to make urgent decisions according to the circumstances, I can also seek the view of the Licensing Commission prior to making a declaration ..."

25) It is submitted the intention of the legislature in providing for the Minister's powers is **only** in situations where the Commission would otherwise **have** to consult prior to variation.

26) Section 48 of the Act provides:

48A Power to suspend licence or impose or vary conditions

(1) The Commission may, on its own motion in an emergency or pending the investigation of a complaint or consideration of an application for taking disciplinary action, but subject to subsection (2), suspend a licence, or impose or vary a condition of a licence, where in its opinion it is in the public interest to do so.

(2) Without derogating from the Commission's powers elsewhere given in this Act, action of the Commission taken under subsection (1) has no effect after the expiration of 7 days after the action is taken.

(3) In this Section:

condition, of a licence, does not include a condition determined under Section 33AA.

- 27) The Commission's powers to impose conditions without consultation and in circumstances where urgent action is required is limited to only seven days except if the condition is determined under Section 33AA. It is therefore submitted the intent of the legislature is to support the Commission in emergency situations where a period of seven days is not sufficient. The current process being undertaken is allowing for the prescribed consultation and is in keeping with the intention of the legislature.
- 28) Inspector Wood made the following oral submissions in support of the written submissions tendered on behalf of the Director. He stated that, in essence there are two branches in response to the submissions made on behalf of the Licensee. The first branch is that the emergency powers provided in 33AA in relation to the Minister also exist in other parts of the Act, for example in Section 59(A) and Section 101AD. He submitted that it is clear that the intent of the legislature is that these powers are to be enacted in emergency situations, when there is an urgent need, and the power to issue a licence and determine conditions are and always remain within the power of the Commission itself.
- 29) Inspector Wood submitted that the Commission is required, except when exercising its powers under Section 48A, to consult and consider and take time prior to exercising its powers. Section 48A provides the Commission with the power to take action without consultation where emergency considerations are relevant and when there is an urgent requirement to do something. The Commission's powers in that regard are limited to a seven day period. He submitted that the power of the Minister to add licence conditions is complimentary to Section 48A and provides that additional conditions imposed by the Minister may remain in force for longer than seven days. In emergency situations the Minister may act without the requirement to actually consult with the community, with the Licensee or anybody else. The Minister may seek the views of the Commission in respect to the conditions to be imposed if he chooses to do so.
- 30) Inspector Wood submitted that when a licence is applied for and issued, there are no substantive conditions attached to that licence. The conditions are determined by the nature of the business to operate under the licence as advised by the Licensee. The Commission determines the appropriate conditions and it is clear that the intent of the legislature was that the placement of condition on licences at the time the licence is granted is a matter for the Commission alone.
- 31) Inspector Wood stated further that there is actually a condition on the licence for the Top Springs Hotel in relation to hours during which takeaway alcohol may be sold. That condition states that, *'liquor shall be sold only for consumption away from the premises during the following hours'*. He submitted that condition implies that a minimum of one unit of alcohol, whatever that unit is, may be sold for takeaway consumption. Inspector Wood argued that the licence condition stipulates the conditions under which takeaway alcohol may be sold and it is open to the Commission to vary that condition under Section 33 of the Act.

Submissions in Response on Behalf of the Licensee

- 32) Mr Woodcock emphasised that the procedure under review is the decision of the Commission to vary liquor licence conditions under Section 33 of the Act. The Commission has elected to use that Section and to invoke those powers and has done so by the letter of 14 August 2012. The operative words are contained in subsection 33(1):

'Subject to this Section the Commission may from time to time, by notice in writing, vary the conditions of the licence held by a Licensee'.

However, the words used in the letter of 14 August 2012 to the Licensee are *'the following condition will be inserted in the liquor licence'* and the power to add or insert new conditions on a licence are reserved for the Minister.

- 33) Mr Woodcock submitted that the procedure in this instance is a procedure where the Commission has done something other than vary the conditions of the licence. In this instance the Commission has overstepped the power contained in Section 33 to vary licence conditions by inserting a new licence condition and the very words used in the letter of the 14 August 2012 demonstrate that to be so. Whether or not more broadly speaking there is a power to adopt this procedure under another Section of the Act is an argument for another day.
- 34) Mr Woodcock added that the second reading speech is a tool that can be used in interpreting legislation only when there is some ambiguity contained in the legislation. He submitted that there is no ambiguity in Section 33 and recourse may not be had to the second reading speech in this instance. Mr Woodcock added, in respect of the second reading speech, that it appeared to represent a Northern Territory Minister giving his characterisation to legislation that has been added to a Northern Territory Act by the Federal Parliament that was not drafted by his draftsmen or debated amongst the NT Ministers. He submitted that this fact further detracted from the weight that could be attributed to the words of the NT Minister in this instance.

Ex Tempore Decision on the Legal Argument

- 35) At this point the Hearing was adjourned to allow the Commission to consider the submissions in respect of the extent of the Commission's powers contained in Section 33. At the resumption Commission Timney advised the parties of the Commission's proposed course of action in respect of those submissions.
- 36) Commission Timney advised that the Commission considered that it had three options open to it. Firstly, it could prefer Mr Woodcock's submissions and abandon the Hearing on the basis the Commission had acted outside the powers contained in Section 33. Secondly it could find in favour of Inspector Wood's submission and proceed with the Hearing and the calling of the remaining witnesses.
- 37) The third option, and the one the Commission has decided to adopt, is that Commission reserve its decision on the legal point raised by Mr Woodcock and proceed with the Hearing as planned until its conclusion. Commissioner Timney confirmed that the Commission had determined to adopt this option from a pragmatic point of view rather than on a strict legal basis. It was noted that the Commission was not in a position to make a pronouncement on the legal point at this time and to abandon the Hearing now whilst the Commission considers the submissions from the parties could well result in the Hearing being reconvened at some later date with the attendant requirement to recall the parties and their witnesses, some of whom had travelled significant distances to attend the Hearing in Katherine.
- 38) It was noted that the only detriment the Commission could identify in respect of the proposed course is that the Licensee will bear the legal costs associated with the continuation of the Hearing and the proposed site visits with the risk of those costs being thrown away should the Commission ultimately determine that the Section 33

notice was ultra vires. The Commission is of the view that the disadvantage to the Licensee in that regard was outweighed by the inconvenience to witnesses and the Commission should the Hearing be abandoned at this stage only to be revived should the legal issue be resolved by a decision that the issue of the Section 33 notice was within the power of the Commission.

- 39) The Commission determined that the Legal Member would consider the submissions from the parties on the legal issue and prepare a formal decision for consideration by Commission.

Consideration of the Issues

- 40) Section 33 of the Act authorises the Licensing Commission to vary the conditions associated with a liquor licence from time to time. Section 33 is worded as follows:

33 Commission may vary conditions

(1) Subject to this Section, the Commission may, from time to time by notice in writing, vary the conditions of the licence held by a Licensee. (Emphasis added).

- 41) The Commission, following receipt of a comprehensive report recommending that it do so, issued a written notification dated 14 August 2012 to the Licensee of the Top Springs Hotel informing the Licensee that the licence conditions for the premises would be varied by the insertion of a condition restricting the daily volume of take away alcohol that may be sold to individual customers or groups of customers travelling to the Top Springs Hotel in the same vehicle.

- 42) The substantive part of that notification from the Commission read as follows:

*“The following conditions will be **inserted** in Liquor Licence 81203330.*

The sale of takeaway liquor is restricted to twelve heavy beers or thirty light or mid-strength beers per person not being bona fide residents of the premises per day with a maximum of three individual purchases per vehicle only

Sale of liquor on purchase order to nearby cattle stations must be pre ordered on account and is exempt from the takeaway liquor restriction.”

- 43) As set out above, the validity of the notification has been challenged by Counsel for the Licensee who submits that the Commission has acted ultra vires the Act in exceeding the powers conferred by Section 33 by imposing an additional condition on the licence. The issue for determination by the Commission is whether the actual wording of Section 33 of the Act, which is clearly aimed at authorising the Commission to vary the conditions of a liquor licence from time to time, is wide enough to authorise the addition of a licence condition, as distinct from a variation of a condition that is already included in the licence.
- 44) Mr Woodcock’s submission that Section 33 has not been the subject of consideration by the Supreme Court of the NT has been confirmed by the Commission’s own inquiries in that regard. However, the definition and scope of the word “vary” when used in a legislative context has been the subject of judicial deliberation.

45) In the matter of *R v Tonkin; ex parte Federated Ship Painters' & Dockers' Union of Australia*¹ the High Court considered the scope of the word "vary" in a case very much on point with the issue currently before the Commission and one which considered the scope of the word "vary" in an Act. In that case the High Court was required to consider Section 49 of the Commonwealth *Conciliation and Arbitration Act* which provided the power to set aside an award or any of the terms of an award or to vary any of the terms of the award. In exercising the Section 49 power to vary an award, the Conciliation Commissioner had inserted a new clause into the Ship Painters' & Dockers' Award. A writ of prohibition was supported on the single ground that the order of the Conciliation Commissioner was not within the power created by Section 49 to vary the terms of an award.

46) The High Court judgement was delivered by Dixon CJ who found²:

The whole argument turns on the phrase in s. 49 "vary any of the terms of an award". It is contended that the order is not a variation within the meaning of the language of s. 49 because it inserts a new provision on a distinct subject matter and does not consist of some modification or alteration, simplification or the like, of an existing clause. We think this argument confines the language of the clause unduly and lacks any substantial support either in the history of the provision or in the form in which it is now expressed.

*To begin with, the expression "terms of an award" means much more than "clauses" and in fact it was conceded that it had a wider signification. The expression in truth appears to refer to the whole contents of the award as those contents prescribe the rights and obligations of the persons governed by the award or affected by it. The word "vary" is one which no doubt in different contexts may have different meanings. In s. 49 there is a distinction drawn between setting aside an award or any of the terms of an award and varying any of the terms of an award. But the distinction made, at all events in words, between setting aside and variation, can carry no restriction upon the meaning of "variation" beyond showing that it refers to a change in some part of the award. Probably it is enough to say **that to vary the terms of the award is to change them in part whether by addition, by excision, by modification or by substitution or by qualification or otherwise.** (Emphasis added).*

In the present case a distinct provision is introduced into the award which has a direct bearing on the whole operation of the award, that is to say, on its contents so far as they impose obligations on one party or confer rights on the other. We think that to do this is quite fairly within the words of the power which enables the conciliation commissioner, if for any reason he considers it desirable to do so, to vary any of the terms of an award. (at p528)

47) The Tonkin decision was also referred to in a matter before the Federal Court of Australia in *Re Commonwealth of Australia and the Commission of the Safety Rehabilitation and Compensation of Commonwealth Employees v Farage Esber*³. In that decision the Federal Court found, with reference to the Tonkin decision:

"Although the meaning of the word "variation" must depend on its context, the normal connotation of the word suggests the introduction of change or

¹ (1954) 92 CLR 526

² *Ibid* at page 528

³ 101 ALR 35

alteration. Such alteration may come about by addition or substitution or by qualification or otherwise. (Emphasis added).

48) The decision of the High Court in the Tonkin case was also considered and followed by the Supreme Court of the NT in the matter of *Rozycki v Work Social Club Katherine Inc*⁴ in which the Court was required to consider the scope of a provision of the *Work Health Act* which provided a power to the Court to vary a decision or determination appealed against. In respect of the scope of the word “vary” Martin CJ found:

The word (vary) is of wide import and no doubt takes its meaning from the context in which it appears. Here, it is used in a provision giving jurisdiction to this Court on appeal, and there is no reason to think that it was intended that this Court should have anything less than the plenitude of powers which the word can legitimately embrace in disposing of the appeals. It includes power to change the decision or determination in part, whether by way of addition or by excision, modification or by substitution, qualification or otherwise. (Emphasis added).

49) On the basis of the judicial authorities referred to above, the Commission is satisfied that the decision to issue the Section 33 notice to the Licensee of the Top Springs Hotel Section advising that the licence conditions would be varied by the insertion of an additional condition was within power taking account of the wide definition given to the word “vary” by the Courts. The Commission is satisfied that the power to vary licence conditions, as authorised by Section 33 of the Act, includes the power to add licence conditions in accordance with the wide definition of the word vary, as endorsed by the authorities cited above.

50) The final issue for the Commission’s consideration is whether the amendment to the Act which inserted Section 33AA was such as to impliedly modify Section 33 so as to reserve the power to add conditions to a liquor licence solely for the Minister, effectively resulting in a narrower scope for the exercise of the Commission’s power to vary conditions.

51) Section 33AA is headed “Minister’s power to determine additional licence conditions and reads as follows

33AA Minister's power to determine additional licence conditions

(1) *The Minister may determine **additional conditions** of a licence if the Minister thinks the determination **is urgently needed** for the wellbeing of the communities that might be affected by the operation of the licence.*

(2) *Without limiting subsection (1), the Minister may determine any of the following conditions under that subsection:*

(a) *a condition about when the licenced premises may be open for the sale of liquor;*

(b) *a condition about the type of liquor that may be sold on the premises;*

⁴ (1997) 112 NTR 19

- (c) a condition about the amount of liquor that may be sold for consumption away from the premises;*
- (d) a condition requiring proof of the purchaser's identity for a sale of liquor exceeding an amount prescribed by regulation;*
- (e) a condition requiring the keeping of records prescribed by regulation for the sale.*

- 52) Clearly, the powers available to the Minister in respect of additions to licence conditions are limited in comparison to the authority available to the Commission to vary licence conditions. The Minister does not have authority to vary or amend licence conditions and he may only impose additional licence conditions in an emergency situation. Inspector Wood's submission, with which the Commission agrees, is that the power available to the Minister to impose additional conditions is unfettered, including that the Minister is not compelled to consult with the Licensee or an affected community prior to imposing additional conditions. The Minister may consult the Commission however consultation is not mandatory.
- 53) The reasons for the legislature providing the Minister with the power to add licence conditions without consultation are patently obvious when that Section is read as a whole. The Minister may only exercise his powers under Section 33AA when additions to licence conditions are "urgently needed" for the well being of a community. The Commission, on the other hand, may exercise the powers reserved to it under Section 33 at any time that it thinks fit and on the basis of any considerations that the Commission considers warrant the variation. There is no requirement for an "urgent need" or emergency situation to exist so as to enliven the Commission's Section 33 powers.
- 54) In addition, a Licensee affected by the issue of a Section 33 notice by the Commission foreshadowing a variation to licence conditions is provided with a statutory right to request that the Commission conduct a Hearing in respect of the proposed action. The Licensee of the Top Springs Hotel has exercised that statutory right in this case and requested a Hearing. Where a Licensee exercises the right to request a Hearing the Commission has no discretion, it must conduct a Hearing. Clearly the process of conducting a Hearing before the Commission and determining, following the Hearing, whether or not the proposed variation should actually be implemented takes time. In that sense the Commission's powers are not analogous to those of the Minister nor are they conducive to dealing with urgent situations where non-consultative action is required for the wellbeing of a community.
- 55) The authorities cited in this decision in respect of the wide scope of the word "vary" to include an addition confirm that it is available to the Commission to impose an additional licence condition pursuant to Section 33 of the Act. The Minister may determine that any of examples of additional conditions articulated in subsection 33AA(a) to (e) be imposed if he is satisfied that the additional condition is urgently needed for the well being of a community. However, the Commission may also impose any of those types of conditions, at any time, so long as the process set out in Section 33 is applied and followed.
- 56) The Commission is authorised by Section 33(1) to impose any licence conditions it thinks fit when a licence is initially issued. Applying the broad definition for "vary" as pronounced by the legal authorities the Commission is also authorised to impose additional conditions, as it thinks fit, under the process set out in Section 33A of the

Act. The Minister has the authority to determine additional licence conditions under Section 33AA, but only in an emergency situation.

57) There is nothing contained in the language of Section 33AA indicating that the powers granted to the Minister by the insertion of Section 33AA into the Act in 2007 was intended or has the effect of limiting the powers available to the Commission under Section 33A or reserving any of those powers for the Minister exclusively. To the contrary, the amendment provides the Minister with the specific power to impose additional licence conditions in urgent situations. The Commission retains the power to vary licence conditions, including via the insertion of new licence conditions, in any other circumstances, including when there are no urgency considerations and a formal process of consultation is appropriate.

Decision

58) For the reasons set out above, the submission on behalf of the Licensee that the Commission is acting beyond the scope of its powers in considering the insertion of a licence condition limiting the amount of takeaway alcohol that may be sold by the Top Springs Hotel must fail.

59) Having conducted a Hearing in respect to the Section 33 Notice issued to the Licensee of the Top Springs Hotel the Commission is entitled to conduct its deliberations as to whether or not the proposed licence condition should be added to the licence conditions for the Hotel.

60) It is recommended that the Commission now consider the substantive matter for determination, namely whether or not to proceed with the foreshadowed variation of the Licence conditions attached to the liquor licence for the Top Springs Hotel.

Philip Timney
Legal Member

28 February 2013