

Licensee's submissions in response to
proposal to vary the terms of liquor
licence under the *Liquor Act 2019* (NT)
(“the Act”)

The Proposed Variation

1. These submissions are made on behalf of Club Eastside Inc (“Club Eastside”) and Gillen Club Inc (“Gillen Club”) (together “the Licensees”) in response to NOTICE OF PROPOSED VARIATION OF LICENCE CONDITIONS LC:OMV:2025-001 dated 20 November 2025 (“the Variation Notice”) under the Act. References to sections of legislation where not otherwise included are to the Act.
2. The Notice includes a proposal to vary the conditions of licence 81402530 held by Club Eastside and 81402891 held by Gillen Club (“the Licences”).
3. The Notice contains only one variation which relates to the Licensees, being specifically;

“2. The Commission proposes to vary the conditions of ... Club Eastside ... Gillen Club

Full-strength alcohol only with a full meal from 1130 hours until 1500 hours on Wednesdays, Thursdays and Fridays, full-strength liquor must not be supplied, sold, served or consumed on the premises except when served with a full meal.”

(“the Proposed Variation”)

4. The Proposed Variation to the Licences is resisted by the Licensees.

Statutory Power of the Commission to Vary Licence Conditions

5. The Commission has statutory power to unilaterally vary the conditions of a liquor licence per section 113 of the Act. The specific requirements in respect of those variations are

The Commission may vary the conditions of the licence or authority as proposed in the notice or in another way the Commission considers appropriate after considering:

(a) any response of the licensee submitted within the 28-day period; and

(b) the results of any hearing; and

(c) the public interest and community impact requirements.

6. Of those matters, using the above referencing;
 - (a) this response is delivered by Licensees;
 - (b) the Commission has reserved its positions as to whether a hearing will be held¹; and
 - (c) these terms do not have their ordinary meaning, they have a specific definition in the Act is

“public interest and community impact requirements means the public interest and community impact requirements listed in section 49.”²

(“the Statutory Considerations”)

7. There are two limbs of the Statutory Considerations, specifically;
 - (i) Public Interest assessed as against the criteria set out in subsection 49(2) of the Act; and
 - (ii) Community Impact Requirements assessed against the criteria set out in subsection 49(3) of the Act.
8. It is important to distinguish that this matter is one initiated by the Commission under s113 as opposed to one initiated by a licensee under s110. There is as such no requirement on the Licensee, as there would be under an application issued by a Licensee either for a fresh licence under s 49(1) or a variation under s110(2), to meet any particular standard of satisfying these criteria. The Commission therefore appears to be charged with a general consideration of the stated matters.

The Manner in Which the Commission has Utilised This Power

9. Review of its recent decisions suggests that applications by the Commission under s113 are less common than those under applicant-initiated processes. Where it does occur, the Commission seems to address the issue relatively briefly.
10. The Commission sought to apply variations across multiple Alice Springs licenses for broad policy reasons in *VARIATION OF THE CONDITIONS OF ALICE SPRINGS*

¹ Variation Notice para 13

² S4(1) of the Act

TAKEAWAY LICENCES³. This is similar to the present situation. In addressing the assessment of the 113(3) criteria the Commission noted only;

*“In accordance with s 113(3) of the Act, the Commission has considered all the responses of licensees that were submitted, as well as the **public interest and community impact requirements in the Act.**”⁴*

11. It should be noted the Commission recorded it had either received positive submissions, or no reply, from all interested licensees⁵.

12. Similarly brief notations appear in decisions concerning Bagala Social Club⁶ and the Peppimentari Club⁷ both of which are recorded as being with consent of the licensee. In Peppimentari, it appears the Commission specifically applies a consideration of its proposed variation against the criteria;

*The Commission is satisfied that the variation of conditions it has determined to make is in the public interest and will not have a significant adverse impact on the community.*⁸

13. The only other use of s113 of the Act the Licensees can locate concerns the Wirib Aboriginal Corporation⁹ which had entered into administration and is distinguished on that basis.

14. The Licensee has not been able to locate any variation arising under s113 which has been resisted by the subject licensee. It is therefore not clear what the Commissions view as to exercise of its function is in such circumstances.

The Administrative Nature of the Power the Commission Exercises

15. In its constituent Act, the Commission is described as an “*emanation from the Crown*”¹⁰. In the present case, the Commission acts at its own instigation, has performed investigative activities, purports to rely on evidence of the Commission

³ [2024] NTLiqComm 9

⁴ *Ibid* at 9

⁵ *Ibid* at 7

⁶ VARIATION OF THE CONDITIONS OF BAGALA SOCIAL CLUB [2024] NTLiqComm 50 at 6

⁷ VARIATION OF THE CONDITIONS OF PEPPIMENARTI CLUB LIQUOR LICENCE [2024] NTLiqComm 52 at 7

⁸ *Ibid*

⁹ VARIATION OF THE CONDITIONS OF WIRIB ABORIGINAL CORPORATION [2025] NTLiqComm 2

¹⁰ *Liquor Commission Act 2018 (NT) s5(4)*

Chairman¹¹, and will ultimately (if it imposes the Proposed Variation) exercise power conferred by statute. Those matters would suggest it is exercising administrative rather than judicial power, which is said to be assessed with reference to

“functions may be classified as either judicial or administrative according to the way in which they are to be exercised... So, if the ultimate decision may be determined not merely by the application of legal principles to ascertained facts but by considerations of policy also, then the determination does not proceed from an exercise of judicial power. Furthermore, if the object of the adjudication is not to resolve a dispute about the existing rights and obligations of the parties by determining what those rights and obligations are but to determine what legal rights and obligations should be created, then the function stands outside the realm of judicial power”¹².

Requirements for the Exercise of Administrative Power

16. As the Commission is exercising its function administratively, then it must be expected to do so with regard to principles, considerations, and constraints which are attendant to the Executive acting in such a manner. As general observations, it is inter alia obligated to;

- a. Act for proper purposes and in good faith¹³;
- b. Only take into account relevant considerations¹⁴;
- c. Afford each of the responding parties procedural fairness¹⁵;
- d. Have a sufficient factual basis to support its decision¹⁶; and
- e. Act reasonably and properly in making its decision¹⁷;

17. The foregoing are tendered as the Licencees general observations as to the requirements placed on the Commission and to record its expectation that they are followed in the Commissions performance of its function in this instance in addition to and as part of making the Statutory Considerations.

¹¹ Variation notice para 14, 17-21

¹² *PRECISION DATA HOLDINGS LTD. v. WILLS* (1992) 173 CLR 167 at 23-24

¹³ *Thompson v Randwick Municipal Council* (1950) 81 CLR 87

¹⁴ *Roberts v Hopwood* [1925] AC 578, *Minister for Aboriginal Affairs v Peko-Wallsend* (1986) 162 CLR 24

¹⁵ *FAI Insurances Ltd v Winneke; Fire and All Risks Insurance Co Ltd v Winneke* (1981) 151 CLR 342

¹⁶ *Minister for Immigration and Ethnic Affairs v Pochi* (1980) 44 FLR 41

¹⁷ *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332

Disconnection of Licensees With Complaints

18. The primary reason for which the Licensee resists the Proposed Variation is that they are disconnected from issues which give rise to the review process. Specifically, the Commission expressly states that the Review Notice has issued in response to the request of Yeperenye Centre and Congress¹⁸.

19. Yeperenye's correspondence is entitled "Todd Mall Liquor Licence Issues" and is quoted in the Review Notice as raising

*"concerns with the conduct of licensed premises operating in the CBD of Alice Springs... both the manner that the CBD bars are being operated and the negative, anti-social issues arising from the mode of operations"*¹⁹

20. Congress's correspondence is entitled

*"Ongoing Safety Concerns Related to Licensed Premises – Rock Bar and Bojangles, Alice Springs"*²⁰.

21. The focus of their concern is unequivocally stated as follows

*"These concerns relate specifically to frequent disruptive and unsafe behaviour occurring in the vicinity of two licensed premises – The Rock Bar and Bojangles – located near our headspace service on Todd Street"*²¹

22. The Commission has received no complaint as to either of the Licensees.

23. Other than as to the Proposed Variation, the Licensees are only mentioned in the Variation Notice where the Commission itself observes

*The Gillen Club, Club Eastside, ... have bars, and are all within 3 km of the Yeperenye Centre, but they are all outside the CBD, and do not appear to be substantial contributors to daytime CBD anti-social behaviour.*²²

24. The Review Notice does not cite any factual or evidentiary material concerning the Licensees or their operations.

¹⁸ Review Notice para 11

¹⁹ Ibid para 8

²⁰ Letter Central Australian Aboriginal Congress, Ms Marah Prior, 30 May 2025

²¹ Ibid

²² Variation Notice para 36

25. There is therefore a complete lack of purpose or foundation for the Proposed Variation, or indeed any variation, of the Licensee’s licences or authorities which would address matters specifically complained of or issues with Alice Springs CBD daytime anti-social behaviour.

26. If the Commission’s decision was to impose the Proposed Variation notwithstanding the foregoing, the Licensees suggest there would likely be issues with its purpose, evidentiary/factual basis and reasonableness.

General Differentiation of Licensee Venues With Subject Matter

27. The Licensees venues both hold Club authorities and are in the nature of community sporting clubs. There is a strong contrast between the purpose and method of the operations and the CBD bars are the subject of the Commissions focus.

Licensees	CBD Bars
Largest indoor kids play area	No kids play area
Community owned license	Privately owned licenses
Holds multiple kids parties weekly (free of charge for venue hire)	Not kid friendly venues
Holds sporting presentations weekly (free of charge for venue hire)	No affiliation or sponsor agreements with sporting teams
Holds wakes on usually a monthly basis (free of charge for venue hire)	Unknown
Has a board room used by local clubs weekly for free	
Full service incredibly busy kitchen	Much smaller bistros (esp Rock bar and Todd Tavern)
Community revenue donations - per annexure A	No donations
Suburban venues (Eastside and Gillen Respectively)	Within CBD precinct

Specific Prejudice to Licensees and Patrons of Proposed Variation

28. The Licensees presently hold Club authorities. These authorities are in line with the nature of their premises which is not confined to offering patrons a sit-down meal only. For example, during the times the subject of the Proposed Variation patrons attend so their children can play on the equipment and to play gaming machines and TAB/sports betting. People will also remain in the venue to socialise after consumption of their meals.

29. Restriction of full-strength liquor in terms of the Proposed Variation would exclude these persons from being able to purchase any wine along with most beer and spirits products. This would inconvenience patrons and do so in an unequal way. For example, those members of a group who are wine drinkers will have no alternative where beer drinkers will have an opportunity to drink mid-strength beer. This would be an unfair outcome.

Statutory Considerations as to Licensees

30. The Review Notice does not set out a detailed consideration of each of the public interest and community impact requirements. That notwithstanding, per observations in paragraph 10 to 12 herein, it seems the appropriate exercise is to consider the effect, if any, the Proposed Variation has on those criteria.

31. In relation to Public Interest on a test by test basis;

(a) *minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;*

Any reduction in liquor consumption will have some effect of reducing harm or ill-health to people who consume liquor.

(b) *ensuring liquor is sold, supplied, served and consumed on or in licensed premises in a responsible manner;*

There is no suggestion the service of liquor by the Licensees is irresponsible at present such that the proposed variation would have any effect on it.

(c) *safeguarding public order and safety, particularly when large numbers of people would be attracted to licensed premises or an area adjacent to those premises;*

The issue of public order and safety of concern to the Commission here per paragraph 22 does not attach to the conduct of the Licensees.

(d) *protecting the safety, health and welfare of people who use licensed premises;*

Again, per paragraph 22 the issues of concern to the Commission are not stated to arise in respect of the Licensees operations.

(e) *increasing cultural, recreational, employment or tourism benefits for the local community area;*

The Proposed Variation will not increase any of these benefits but could be expected to prejudice midweek functions, eg wake's.

(f) *promoting compliance with this Act and other relevant laws of the Territory;*

The Proposed Variation would have no effect either way.

(g) *ensuring each person involved in the business conducted at licensed premises receives training suitable to the person's role in the business;*

The Proposed Variation would have no effect either way.

(h) *preventing the giving of credit in sales of liquor to people;*

The Proposed Variation would have no effect either way.

(i) *preventing practices that encourage irresponsible drinking;*

There is no suggestion the service of liquor by the Licensees is irresponsible at present such that the proposed variation would have any effect on it.

(j) *reducing or limiting increases in anti-social behaviour.*

The issue of anti-social behaviour of concern to the Commission here per paragraph 22 does not attach to the conduct of the Licensees.

32. The Community Impact Requirements are in essence a consideration of the effect of proposed licence variation on;

(a) *people who live or work in the neighbourhood;*

(b) *the local council;*

(c) *police;*

(d) *places of worship and their congregation;*

(e) *hospitals; and*

(f) *schools;*

33. The Licensees do not consider that the Proposed Variation would have any effect as it pertains to these specific criteria, because their service of alcohol does not presently have any negative effect on those parties. Restricting or reducing it further could not be expected impact any issue which does not exist.

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