



Liquor Commission

Annual Report on Activities

For the year ended 30 June 2008



Hon. Terry Waldron, MLA
Minister for Racing and Gaming

In accordance with section 9K of the *Liquor Control Act 1988*, I am pleased to present, for your information and presentation to Parliament, the Annual Report on the activities of the Liquor Commission for the financial year ended 30 June 2008.

The Annual Report has been prepared in accordance with the provisions of section 9K(2) of the *Liquor Control Act 1988*.

A handwritten signature in blue ink, appearing to read "J Freemantle".

J Freemantle
CHAIRPERSON

23 September 2008



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Chairman's Overview

Section 9K(1) of the *Liquor Control Act 1988* provides for the Chairperson on, or before, 30 September each year, to submit to the Minister an annual report on the activities of the Commission during the year ending on the preceding 30 June.

Accordingly, I am pleased to present the 2007-08 annual report of the Liquor Commission, which represents the first full year of the Commission's operations.

Members of the Liquor Commission met together as the full Commission once during the year, on 9 April 2008. At that meeting, members discussed:

- issues arising out of the Commission's decision in relation to the application for review of the Director of Liquor Licensing's decision in respect of premises known as The Claremont (see page), where the definition of "vicinity" caused the Commission some concerns;
- the appropriateness of disciplinary action under section 96 of the Liquor Control Act, regardless of whether a specific licensee has applied to transfer the licence during the hearing and determination of the Complaint;
- concerns about "denial of natural justice" and the requirements of section 16(1) of the Liquor Control Act, which provides for determinations of the licensing authority to be made on the balance of probabilities, together with the requirements for natural justice and practical decision-making;
- the proper procedure in respect to section 25 reviews and whether or not the Director of Liquor Licensing should be required to attend proceedings and make representations in relation to the decision being reviewed;
- the appointment of a Deputy Chairperson, pursuant to the provisions of section 9D of the Liquor Control Act; and
- an invitation from the Department of Racing, Gaming and Liquor for the Commission to participate in the Department's in-house seminars on the Liquor Control Act and How To Apply For A Liquor Licence.

I take this opportunity to thank retiring members of the Liquor Commission, Ms Deirdre Willmott, who resigned from the Liquor Commission on 19 March 2008 and Ms Diana Warnock, whose resignation from the Liquor Commission will take effect in 2008-09, for their invaluable contributions as inaugural members, to the functioning of the Commission. I wish them well in their future endeavours.

I also take the opportunity to welcome Mr Greg Joyce and Ms Karen Lang to the Liquor Commission, with effect from 14 July 2008. Mr Joyce is retired from the position of Director General with Department of Housing and Works and Ms Lang is a Barrister and Solicitor, admitted to the Supreme Court of Western Australia, Federal and High Courts of Australia and Solicitor of the Supreme Courts of England and Wales.



It was also pleasing to launch the Liquor Commission's website, which can be accessed at <http://www.liquorcommission.wa.gov.au> during the year under review. The website provides the public of Western Australia with information on the role of the Commission and its legislative base, as well as information on application forms and charges, copies of the Commission's decisions and other publications.

A handwritten signature in blue ink, appearing to be "J. Freemantle".

J Freemantle
CHAIRPERSON

23 September 2008



The Number, Nature and Outcome of Matters That Have Come Before the Commission

During the 2007-08 reporting year, eight matters came before and were determined by the Liquor Commission.

Section 95 Complaints

Director of Liquor Licensing -v- Red Cee Pty Ltd and White Dee Pty Ltd

In respect of licensed premises known as Club Red Sea

This complaint was originally filed with the Liquor Licensing Court, however, as the Court did not make a determination prior to 7 May 2007, the complaint was referred to the Liquor Commission on 24 May 2007, under the transitional provisions in Schedule 1A 5(4) of the *Liquor Control Act 1988*.

The complaint alleged that proper cause for disciplinary action existed against the licensee of Club Red Sea, Red Cee Pty Ltd and White Dee Pty Ltd, on the following grounds:

1. The licensee had been convicted of an offence under the *Health Act 1911* in relation to the licensed premises.
2. The safety, health or welfare of persons who resort to the licensed premises was endangered by an act or neglect of the licensee.
3. The licensee has been given infringement notices under section 167 of the Liquor Control Act and the modified penalties have been paid in accordance with that section.

The complaint was listed for hearing before the Commission on 17 July 2007, with the Commission constituted by three members, namely Mr Jim Freemantle, Ms Deidre Willmott and Mr Eddie Watling.

At the hearing, the second ground of the Director's complaint was withdrawn and the licensee admitted grounds 1 and 3.

Counsel for the Director submitted that the Commission should impose a monetary penalty under section 96(1)(m) of the Liquor Control Act in the sum of \$10,000, given that:

- the operation of licensed premises must be conducted responsibly in keeping with the objects of the Act, including the minimization of harm and ill-health; and
- failure to notify the Director of convictions (in this case following prosecution by the City of Subiaco under the *Health Act 1911*) hampers the licensing authority in the administration of the Act.



Counsel for the licensee submitted that the penalty should be an amount less than \$10,000 given:

- the good record of the licensee before and since the convictions under the Health Act;
- because the licensee pleaded guilty to the charges at the earliest opportunity; and
- the circumstances surrounding each of the infringement notices.

After hearing all of the evidence, the Commission was satisfied that proper cause for disciplinary action existed and that a monetary penalty was appropriate. However, after taking into account the penalties and costs already paid by the licensee, the Commission viewed the amount of \$10,000 to be excessive.

Therefore, the Commission ordered the licensee to pay a monetary penalty of \$5,000 and costs of \$400.70.

Director of Liquor Licensing -v- Viewtown Pty Ltd

In respect of licensed premises known as Northside Tavern, Merredin

This complaint was also filed with the Liquor Licensing Court. However, as the Court did not make a determination prior to 7 May 2007, the complaint was referred to the Liquor Commission on 22 May 2007, under the transitional provisions in Schedule 1A 5(4) of the *Liquor Control Act 1988*.

The complaint alleged that proper cause for disciplinary action existed on the grounds that the licensee had been issued with three infringement notices and paid the modified penalties under section 167 of the Liquor Control Act. In each case, the modified penalty was \$500. The first and second infringement notices concerned two breaches of section 110(3) of the Act, for allowing unauthorised consumption of liquor off the licensed premises and the third infringement notice concerned a breach of section 110(aa) of the Act, for failing to display required Harm Minimisation conditions.

The complaint was listed for hearing before the Commission on 21 December 2007, with the Commission constituted by three members, namely Mr Jim Freemantle, Ms Helen Cogan and Ms Diana Warnock.

At the hearing, Counsel for the Director submitted that the Commission should impose a monetary penalty under section 96 of the Act and that if the Commission should make a finding that proper cause for disciplinary action exists, a \$10,000 bond imposed by order of Liquor Licensing Court on 30 June 2005 must be forfeited.

Counsel for the licensee submitted that the Commission should not impose a monetary penalty in respect of the infringements and that the Commission was not bound to “automatically” make an order for forfeiture of the bond, given that there was no requirement for “automatic” forfeiture of the bond and section 96 of the Liquor Control Act provided the Commission the ability to exercise its discretion as to whether or not the bond should be forfeited.

After considering the evidence, the Commission was satisfied that proper cause for disciplinary action existed.



Having taken notice of the submissions of counsel for both the Director and the licensee and having considered the authorities relied upon by them, the Commission ordered the respondent to be issued with a reprimand in respect of the matters the subject of each of the infringement notices, with such reprimand to remind the licensee of their duties and responsibilities, including those in relation to the consumption of takeaway liquor and the display of Harm Minimisation Conditions, which are to be carried out and borne responsibly and carefully, however onerous they may be.

The Commission did not consider that it had any power to vary a decision of the Liquor Licensing Court in regard to the bond. Accordingly, in so far as an order may have been necessary, the Commission ordered that the bond of \$10,000 be forfeited immediately in accordance with its terms.

Commissioner of Police -v- Robert Francis Rodgers

In respect of licensed premises known as Royal George Hotel, Albany

This complaint was received on 4 December 2007 and alleged that proper cause for disciplinary action existed against the licensee on the grounds that he:

1. was convicted in the Magistrates Court on two offences of being drunk on the licensed premises, which imply that the licensee is unfit to be the holder of a liquor licence;
2. failed to notify the licensing authority of his convictions, as required by section 37A of the Liquor Control Act;
3. has been given five liquor infringement notices under section 167 of the Liquor Control Act and the modified penalties have been paid; and
4. has become an unsuitable person to hold a licence under the Liquor Control Act.

The complaint was listed for hearing before the Commission, in Albany on 15 April 2008, with the Commission constituted by three members, namely Mr Jim Freemantle, Mr Eddie Watling and Ms Helen Cogan.

At the hearing, Sergeant M Russell, for the Commissioner of Police, outlined problems of antisocial behaviour in the vicinity of the Royal George Hotel and explained the view of the WA Police that a significant amount of this was linked directly to the conduct of the management of the Royal George Hotel.

Counsel for the licensee submitted that:

- Mr Rodgers was leaving the industry and the state of Western Australia and the business had been acquired by Frederick Hotels Pty Ltd, subject only to the application for the transfer of the licence being approved by the Licensing Authority and therefore that the suspension or cancellation of Mr Rodgers' licence would have little practical effect on the licensee;



- the anti-social behaviour to which Sergeant Russell referred was in part due to the proximity of other licensed premises in Stirling Terrace and York Street (to which Sergeant Russell agreed); and
- lodgers at the Royal George Hotel would be inconvenienced if Mr Rodgers' licence was suspended or cancelled.

Sergeant Russell further expressed concern that even with the sale of the Royal George Hotel, it was important that Mr Rodgers be prevented from operating elsewhere and that disciplinary action was therefore still appropriate.

After considering the evidence, the Commission was satisfied that proper cause for disciplinary action existed. Furthermore, the Commission determined that:

1. Mr Rodgers is an unsuitable person to hold a licence as defined in section 95(4)(g) of the Liquor Control Act, at least at the present time.
2. Mr Rodgers should be disqualified for a period of 12 months from holding a licence, effective at and from midnight on 8 May 2008.
3. Mr Rodgers meets the costs of \$2,500 to be paid within 14 days.

On 8 May 2008, the Commission amended its determination in this matter by:

1. Deleting point 2 of the determination relating to Mr Rodgers disqualification for a period of 12 month from 12 May 2008 and inserting the following paragraphs:

The operation of the hotel licence 6010011833 be suspended under section 96(1)(d)(ii) until 29 May 2008 or until the licence has been lawfully transferred, whichever comes earlier. Furthermore, failure of the licence being lawfully transferred to another party by 5pm on 29 May 2008, the licence will be cancelled pursuant to section 96(1)(e) of the Liquor Control act 1988.

As from 30 May 2008 or from the licence being lawfully transferred, whichever comes first, Mr Rodgers be disqualified pursuant to section 96(1)(f) of the Act for a period of 12 months.

2. All other orders in the Commission's original determination remained unchanged.

Complaints Withdrawn

During the year, there were two additional section 95 complaints, which were lodged and subsequently withdrawn.



Section 25 Reviews

Mr David Hancock -v- Director of Liquor Licensing

In respect of unlicensed premises known as Hotel Bambu

This application was received on 2 October 2007 and sought a review of the decision of the Director of Liquor Licensing on 6 September 2007, to refuse Mr Hancock's application for the grant of a hotel restricted licence.

The application for review was based on the grounds that:

1. the applicant was denied natural justice and or procedural fairness in that no opportunity was given to respond to:
 - a) a departmental inspection report alluding to the state of the premises;
 - b) advertisements appearing on an internet site;
 - c) verbal submissions from the Police; and
 - d) observations of the Director.
2. That the Director erred in law by finding that the applicant's venue was a BYO facility.
3. & 4. The findings that:
 - a) further harm or ill health would be caused; and
 - b) the amenity of the area would be adversely affected,were not supported by evidence or the evidence was insufficient.
5. The Director erred in finding the applicant had not satisfied the requirements of section 38(2).

The application was listed for hearing on 31 January 2008, with the Commission constituted by three members, namely Mr Jim Freemantle, Ms Diana Warnock and Mr Eddie Watling.

After considering the evidence, the Commission found that the applicant had not discharged its onus under section 38(2) of the Act in relation to harm or ill-health and loss of amenity and:

- refused to accept that there was any material denial of natural justice to the applicant in the proceedings before the Director;
- formed the view that it was reasonable to find that the premises did trade as a BYO premises;
- accepted the Director's contention that the granting of the licence is not in the public interest on the grounds of potential increase in harm or ill-health because:



- (i) the published and readily available search clearly demonstrates the relationship between outlet density and increased harm and ill health; and
- (ii) the venue houses and attracts one of the generally accepted “at risk” groups in respect of alcohol consumption (18-28 years of age);
- rejected the applicant’s submission that backpackers and their friends were not a high “at risk” group;
- accepted the applicant’s submission that the premise is in the Northbridge Entertainment Precinct and in determining matters such as noise and disturbance, this fact should be accorded appropriate weight particularly in respect of affected residential areas should there be any;
- noted:
 - (i) that there were no objections from residents; but accepted the Director’s contention that there was the potential for negative impact on the amenity of the area; and
 - (ii) research conducted in the East Sydney Policing area and published by NSW Government demonstrates a clear correlation between outlet density and incidence of crime and anti social behaviour;
- found that the Director had not erred in finding that the applicant had not satisfied the requirements of section 38(2);
- held that the reasons provided by the Director in the determination were sufficient to justify the conclusion she reached even if the Commission had fully upheld the first ground of appeal; and
- ordered costs of \$2000 to be met by the applicant.

On 6 March 2008, Mr Hancock filed a notice of appeal at the Supreme Court on a question of law, against the decision of the Commission.

Commissioner of Police -v- Director of Liquor Licensing

In respect of licensed premises known as the Perth Social Club Pty Ltd

This application was received on 31 January 2008 and sought a review of a decision of the Director of Liquor Licensing on 30 January 2008 to temporarily vary the conditions of the special facility licence held by Perth Social Club Pty Ltd, by approving a ratio of one crowd controller for every 150 persons at the Big Day Out function on 3 February 2008.

During the processing of the application, the Director of Liquor Licensing consulted with the WA Police and the Town of Claremont. Police had submitted a report requesting a ratio of licensed crowd controllers be set at one crowd controller per 100 persons (1:100), with the Town of Claremont indicating that the Town’s guidelines for events only required security numbers of one crowd controller per 200 persons (1:200).



In the application for review, the Commissioner of Police submitted that the ratio of 1:150 was insufficient and could lead to the event not being properly controlled and that persons attending the function would be placed at risk, leading to harm arising from the sale and consumption of Liquor.

The application for review was listed for hearing before the Commission on 1 February 2008, with the Commission constituted by one member sitting alone, namely Mr Jim Freemantle.

Upon hearing from all parties, the Commission ordered that the relevant condition be varied to provide for:

- (1) not less than 300 crowd controllers be provided by the licensee;
- (2) if sufficient additional crowd controllers are available on the day then up to a further 30 shall be employed; and
- (3) employment of further crowd controllers beyond 330 to be at the discretion of the licensee.

Wiseview Pty Ltd and Argyle Holdings Pty Ltd -v- Director of Liquor Licensing

In respect of licensed premises known as The Claremont

This application was received on 8 January 2008 and sought a review of the decision of the Director of Liquor Licensing on 17 December 2007, to impose the following conditions on the tavern licence, pursuant to section 64 of the Liquor Control Act:

1. *A maximum of 1 crowd controller, licensed under the Security and Related Activities (Control) Act, must be on duty and stationed in the "drive-thru" bottleshop at the licensed premises, between the hours of 6.00pm and 9.30pm on Thursday evenings.*
2. *The 'drive-thru' bottleshop is not permitted to operate beyond 9.30pm on Thursday evenings.*
3. *Liquor purchased from the 'drive-thru' bottleshop is prohibited from being consumed on the licensed premises.*

The grounds for review were that:

- (1) the licensee was denied natural justice in that the decision was based on material that was not available to the licensee;
- (2) the Director erred in fact and/or law;
- (3) there was insufficient material before the Director to support the ultimate finding;
- (4) even if there was sufficient material before the Director, the conditions imposed on the licence will have no practical effect in achieving or rectifying the issues found by the Director in relation to the licensee's method of trade, or in the alternative, were totally unnecessary.

The application for review was listed for hearing before the Commission on 27 March 2008, with the Commission constituted by one member sitting alone, namely Mr Eddie Watling.



In its determination of this matter, the Commission found that there was no denial of natural justice to the licensee, given that all the relevant material upon which the decision was made was made available to the licensee.

Further, the Commission considered that the Director's show cause notice of 21 November 2007, which was served on the licensee, provided the opportunity to respond to the relevant material and that the licensee's response not challenging the veracity of the material. Additionally, the Commission considered that earlier management initiatives by the licensee, such as placing relevant signage at the 'drive-thru' bottle shop also indicated a knowledge and understanding of the relevant issues by the licensee.

The second ground of review, namely that the Director erred in fact and/or law by relying on the basis of police reports and other sources of information, was not accepted by the Commission. In this respect, the Commission noted that the "*...relationship between the Police Department and the Licensing Authority is set out in [section] 155(d) of the Act, which provides for the Director to act on police reports.*" In this respect, the Commission also noted the provisions of section 16(1)(b) of the Act, which provide for the licensing authority to:

- (i) obtain information as to any question that arises for decision in such manner as it thinks fit; and
- (ii) make its determinations on the balance of probabilities.

Furthermore, given that the Director identified the three primary objectives of the Act in his decision, the Commission considered that there was no evidence to conclude that the Director excluded proper consideration of primary objective 5(1)(c). Conversely, the Commission found that the Act's "*...objectives are conjunctive and have to be applied in a balanced approach in accordance with the overall provisions of the Act...*" and considered that the Director had acted in accordance with the Liquor Control Act in applying the conditions imposed on 17 December 2007.

In consideration of the third ground of review, the Commission considered that the police reports constituted sufficient material upon which to reach a decision under section 64 of the Act, in accordance with section 155(d) of the Act.

Finally, in consideration of the fourth ground of review, the Commission conceded that a case had been made by the licensee to support a variation of the conditions imposed. Therefore, pursuant to section 24(4) of the Liquor Control Act, the Commission varied the conditions imposed by the Director as follows:

- The "drive-thru" bottle shop is permitted to operate to 12.00 pm Thursday evenings.
- A minimum of 1 crowd controller, licensed under the Security and Related Activities (Control) Act, must be on duty and stationed in the "drive-thru" bottle shop at the licensed premises, between the hours of 9.00pm and 12.00pm on Thursday evenings.



- Should the licensee, after the expiration of a period of 6 months, be of the opinion that appropriate management and operational policies have been instituted to ensure that there are no sales to walk-up patrons on Thursday evenings, then the licensee may apply to the Director to further review the requirement for 1 crowd controller to be stationed in the “drive-thru” bottle shop between the hours of 9.00pm and 12.00pm on Thursday evenings.
- The third original condition that “liquor purchased from the “drive-thru” bottle shop is prohibited from being consumed on the licensed premises” is considered to be adequately covered under section 65(1)(c) of the Act and applies to all licensed premises and therefore did not have to be specifically re-stated in the Commission’s determination.

Kingplace Pty Ltd -v- Director of Liquor Licensing

In respect of licensed premises to be known as Y Wines

This application was received on 28 March 2008 and sought a review of the decision of the Director of Liquor Licensing on 19 March 2008, to grant a producer’s licence to the applicant, subject to a condition specifying that “...*the licensing authority being satisfied that the vineyard at the premises will yield sufficient produce to enable the licence to be issued in time to produce wine from the first vintage being imposed.*”

The applicant’s grounds of objection were that:

- (1) the Director erred in his interpretation of section 57(a) of the Act; and
- (2) the applicant was denied natural justice.

Specifically, the applicant argued that the Director erred, after finding “...*that the applicant has complied with all the necessary statutory criteria requirements and conditions precedent to the application being granted and that the grant of the application is in the public interest...*” by also finding that “...*the applicant does not, at this time, have a vineyard at the premises... the yields or has the potential to yield sufficient produce to enable the applicant to be granted an unconditional producer’s licence... the vineyard if not already planted with mature vines should have the imminent potential to yield sufficient produce upon the first vintage to become a genuine producer of liquor.*”

The matter was listed for hearing before the Commission on 11 April 2008, with the Commission constituted by three members, namely Mr Jim Freemantle, Ms Helen Cogan and Ms Diana Warnock.

In its decision delivered on 17 April 2008, the Commission determined, pursuant to section 25(4) of the *Liquor Control Act 1988* to vary the producer’s licence to remove the disputed conditions.

The decision was reached, following the Commission’s consideration of the relevant provisions of the Act and regulations. Ultimately, the question the Commission was required to determine, was “... *quite simply as to whether sections 56 & 57 and the relevant regulation together imply that the potential for production of liquor in sufficient volume must be imminent within any reasonable definition of imminent or put another way, was the Director correct in inferring that the potential had to be immediate or imminent as section 57 does not specifically state so.*”



The Commission held that in terms of section 57 and regulation 10, the potential to produce simply had to be real and demonstrable and not necessarily imminent and thus the conditions precedent for the issue of the a Producer's licence had been met.

Having determined the application for review on the first ground of the Application, the Commission made no determination as to the second ground of the Application for Review.

Ivorybow Pty Ltd -v- Director of Liquor Licensing

In respect of licensed premises to be known as Woolworths Liquor Kalamunda

This application was received on 6 March 2008 and sought a review of the decision of the Director of Liquor Licensing on 5 February 2008 to conditionally grant a liquor store licence to Woolworths Limited for premises to be known as Woolworths Liquor Kalamunda and to be situated at Shop 5, 123 Canning Road, Kalamunda.

Ivorybow Pty Ltd was an objector in the proceedings before the Director and sought the review on the grounds that:

1. The Director erred in concluding that the grant of the application is in the public interest.
2. The Director erred in concluding that the respondent Woolworths Ltd satisfied the requirements of section 38 of the Liquor Control Act.
3. The Director erred by not providing sufficient weight to the grounds of objection raised by the Ivorybow Pty Ltd and in particular by not giving sufficient weight to the following matters:
 - (a) the rates and general trends in alcohol related hospital admission in their local area;
 - (b) the at risk age group of 14-25 years in their local area;
 - (c) the increased likelihood of crime and anti-social behaviour with the increase availability of liquor in the local area; and
 - (d) the already sufficient number of packaged liquor outlets already existing in the local area.

The matter was listed for hearing before the Commission on 12 June 2008, with the Commission constituted by three members, namely Mr Jim Freemantle, Ms Diana Warnock and Mr Eddie Watling.

After considering and reviewing the submissions made by both parties during the hearing, the Commission was satisfied that the granting of a liquor store licence in the locality, in association with a Woolworths Limited grocery store, would provide an additional public amenity and was in the public interest.



In this respect, the Commission noted that whilst the *Liquor Control Act 1988* does not specifically define public interest, section 38(4) gives a broad guide of the issues to be addressed in determining whether a licence is in the public interest and in the view of the Commission, the provisions give the Director of Liquor Licensing wide ranging power to take into account a wide variety of matters, a view that is consistent with the principles laid down in *O'Sullivan & Farrer (1989)* 168 CLR.

Furthermore, in relation to the issues of harm or ill-health, impact on amenity and offence, annoyance, disturbance or inconvenience, as specified in section 38(4) of the Act, the Commission took the view that these issues had been adequately evaluated and on the balance of probabilities, had passed the public interest test, particularly given the fact that there appeared to have been little broad based objection by residents of the area.

In respect to some of these grounds of objection, such as claims that noise, rubbish, diesel fumes and the dangers and inconvenience attendant on large delivery trucks operating at all hours, the Commission determined that these factors would be present in all commercial operations, irrespective of whether the premises are licensed or not.

The Commission did not accept the arguments presented that the Woolworths Limited liquor store license will have such an adverse impact on the locality that the license should not have been granted.

The Commission also accepted that the Director acted in accordance with the provisions of section 16(1)(b) of the *Liquor Control Act 1988*, in that the licensing authority may:

- obtain information as to any question that arises for decision in such manner as it thinks fit; and
- make its determination on the balance of probabilities.

The Commission also accepted that the primary objects of the Act, as specified in section 5(1) had been applied in a balanced approach in accordance with the overall provisions of the Act and that the Director did not err in concluding:

The validity of the conjectures made in Grounds 1 and 2 have not been established and I am satisfied on the balance of probabilities, that pursuant to section 38(2) of the Liquor Control Act 1988, the grant of the application is in the public interest.

In conclusion, the Commission determined costs at \$2000 and ordered them to be met by Ivorybow Pty Ltd.

Applications for Review that were Subsequently Withdrawn

There were a further two section 25 applications lodged and then withdrawn during the year.



The Number and Nature of Matters that are Outstanding

As at 30 June 2008, there are five matters, received during the year, which are currently outstanding:

Section 25 Reviews

Argyle Holdings Pty Ltd (Anors) -v- Director of Liquor Licensing

In respect of licensed premises known as the Stadium Sports Bar

This application was received 4 October 2007, from the partnership of Argyle Holdings Pty Ltd, Fini Group Pty Ltd, Fortuna Nominees Pty Ltd and Tegra Holdings Pty Ltd and sought a review of a decision of the Director of Liquor Licensing on 4 September 2007, to refuse an application for alteration/redefinition.

The application was determined by the Director of Liquor Licensing under the provisions of the *Liquor Control Act 1988*, which were in force immediately prior to 5 May 2007 (the day of which the *Liquor and Gaming Legislation Amendment Act 2006* commenced operations).

However, the matter is still unresolved, following a request by the applicant for the review to be adjourned in order to allow the lodgement of a new application for redefinition with the Director of Liquor Licensing, to be determined under the current provisions of the *Liquor Control Act 1988*.

Counsel for the applicant has indicated to the Commission that if the new application is successful, the application for review before the Commission will be withdrawn. Conversely, if the new application fails, the application for review will proceed.

This approach is consistent with advice from the State Solicitor's Office, which indicates that the Licensee is entitled to have on foot both the section 25 review application and the new application for redefinition of the premises.

Jusparis Pty Ltd -v-Director of Liquor Licensing

In respect of licensed premises known as Simon's Seafood Restaurant

This application was lodged on 9 June 2008 and seeks a review of that part of the Director's decision of 16 May 2008, which refused an application for an extended trading permit. The same decision granted Jusparis Pty Ltd a tavern licence for Simon's Seafood Restaurant, at 73 Francis Street, Northbridge.

As the matter has only recently been received by the Commission, it has not yet been listed for hearing.



Kireen Nominees Pty Ltd -v- Director of Liquor Licensing

In respect of licensed premises known as the Kimberley Hotel

This application was lodged on 20 June 2008 and seeks a review of the Director's decision of 23 May 2008 to refuse an application for alteration/redefinition of the Kimberley Hotel in Halls Creek.

Kireen Nominees Pty Ltd was the applicant in the proceedings before the Director.

On 24 June 2008, in accordance with the provisions of section 69(11) of the *Liquor Control Act 1988*, the Director of Liquor Licensing advised of his intention to make a written submission in respect of the application for review.

As the matter has only recently been received by the Commission, it has not yet been listed for hearing.

Section 95 Complaints

Commissioner of Police -v- Goldfields Hotels Pty Ltd

In respect of licensed premises known as The Exchange Hotel, Kalgoorlie

This complaint was lodged on 30 January 2008 and alleges that proper cause for disciplinary action exists on the grounds that the licensee has:

1. been given four liquor infringement notices, numbers 143165, 143166, 215503 and 215504 respectively, under section 167 of the *Liquor Control Act 1988* and the respective modified penalties having been paid in accordance with that section;
2. liquor infringement notice numbers 143165 and 14366 were issued to the licensee for permitting juveniles to enter or remain on the premises;
3. liquor infringement notice number 215503 was issued to the licensee for carrying on the business in a way that contravened a condition of the licence, namely, failing to provide a full meals service during the hours of trade; and
4. liquor infringement notice number 215504 was issued to the licensee for failing to keep a copy of plans approved by the licensing authority on the premises.

Following submissions from Goldfields Hotels Pty Ltd's legal representative, the hearing of this matter has been listed for 5 August 2008.

Commissioner of Police -v- Ronimi Engineering Pty Ltd

In respect of licensed premises known as Seoul Karaoke Restaurant

This complaint was lodged on 6 June 2008 and alleges that proper cause for disciplinary action exists on the grounds that:

1. the business conducted under the licence has not been properly conducted in accordance with the licence;
2. the licensee has contravened a requirement of the *Liquor Control Act 1988*;



3. the licensee has sold or supplied liquor otherwise than in accordance with the authorisation conferred by the licence;
4. the licensee has been given an infringement notice under section 167 of the *Liquor Control Act 1988*, namely liquor infringement number 123623 and the modified penalty has been paid in accordance with that section; and
5. the licensee has not exercised the licence in the public interest.

Furthermore, in accordance with the provisions of section 69(11) of the *Liquor Control Act 1988*, on 11 June 2008, the Director of Liquor Licensing advised the Commission of his intention to make a written submission in respect of the complaint and to introduce evidence in respect of the conduct of business under the licence.

The complaint has been listed for hearing in September 2008.



Trends or Special Problems That May Have Emerged

At this stage of the Commission's operation, members have not formally identified any trends or special problems in the carrying out their statutory duties. However, a number of matters have been informally raised with individual members of the Liquor Commission, either by members of the general public or by liquor merchants, although these are more reflective of misunderstandings of the *Liquor Control Act 1988* and attendant regulations, rather than problems with the Act *per se* or the functioning of the licensing process. In circumstances where the Chairman deems it appropriate, concerns regarding to the licensing process are referred to the Director of Liquor Licensing.

Forecasts of the Workload of the Commission for 2008-09

At this stage in the Commission's operation it is not possible to forecast what the Commission's workload will be in the 2008-09 reporting year with a high degree of certainty, however indications are that the Commission is adequately resourced to efficiently carry out its functions.

Proposals for Improving the Operation of the Commission

There have been no proposals developed or submitted to the Commission in relation to improving the operation of the Commission.

