



Liquor Commission Western Australia 2009/10 Annual Report



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Availability in other formats

This publication is available in alternative formats such as computer disk, audiotape or Braille.

People who have a hearing or speech impairment may call the National Relay Service on 133 677 and quote telephone number (08) 9425 1888.

The report is available in PDF format at www.liquorcommission.wa.gov.au

STATEMENT OF COMPLIANCE

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 2010.

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

Yours sincerely,



Jim Freemantle
CHAIRPERSON

16 September 2010

OVERVIEW OF AGENCY

EXECUTIVE SUMMARY



In accordance with Section 9K of the *Liquor Control Act 1988*, it is with pleasure that I present the Annual Report of the Liquor Commission of Western Australia for the year ended 30 June 2010.

This report is designed to outline the Commission's activities and to satisfy its statutory reporting requirements. The Annual Report includes a synopsis of the Commission's activities.

The Commission carried over 13 applications from 2008/09 and received 48 new applications this year. Of these, 35 were heard and determined and 14 matters have been carried over to 2010/11.

During the year in review, the Commission had applications for prohibition orders lodged by the Commissioner of Police, prohibiting persons from entering or being employed in licensed premises. An application to the Supreme Court of Western Australia was lodged by one person on whom such an order was imposed, seeking an issue of a writ of certiorari to quash the prohibition orders of the Commission. The Supreme Court issued the writ, quashing the determination of the Commission. This is a significant matter before the Commission, as this case is the first major test of the prohibition order legislation, and is expected to set a precedent for the handling of future applications by the WA Police Service.

During the year, Ms Karen Lang resigned as a Commission member. The Commission thank her for her valued contribution and wishes her all the best for her future endeavours.

I also take this opportunity to thank the other members of the Commission for their invaluable contribution to the efficient operation of the Commission. They have given willingly of their time and expertise in discharging their responsibilities and coping with a heavy workload.

On behalf of the Commission, I thank the Department of Racing, Gaming and Liquor, and in particular the Executive Officer of the Commission, for providing executive support services. It would be impossible for the Commission to conduct its activities efficiently and effectively without this invaluable support.

A handwritten signature in blue ink, consisting of a stylized first name and a last name.

Jim Freemantle
CHAIRPERSON

OPERATIONAL STRUCTURE

ENABLING LEGISLATION

The Liquor Commission (the Commission) is established under section 8 of the *Liquor Control Act 1988* to provide a flexible system to review the decisions of the Director of Liquor Licensing (the Director), with as little formality and technicality as practicable. The Commission came into effect on 7 May 2007, to replace the Liquor Licensing Court.

The *Liquor Commission Rules 2007* regulate the practice and procedure of the Commission and matters that are related and subject to the *Liquor Control Regulations 1989*, as to the costs and charges payable in relation to proceedings under the Act.

RESPONSIBLE MINISTER

As at 30 June 2010, the Minister responsible for the Racing and Gaming Portfolio was the Honourable Terry Waldron MLA, Minister for Sport and Recreation; Racing and Gaming; Minister Assisting the Minister for Health.

THE RESPONSIBILITIES OF THE LIQUOR COMMISSION

The Commission's primary function is to adjudicate on matters brought before it through referral by the Director of Liquor Licensing, or by an application for a review of a decision made by the Director of Liquor Licensing, by way of a rehearing and thus making its own determinations based on the merits of each case. When considering an application for review, the Commission may have regard only to the material that was before the Director of Liquor Licensing when making the decision. The Commission is responsible for:

- Determining liquor licensing matters referred to it by the Director of Liquor Licensing.
- Conducting reviews of certain decisions made by the Director, or by a single member of the Commission, or decisions based on a question of law.
- Determining complaints and disciplinary matters in accordance with section 95 of the *Liquor Control Act 1988*.
- Making binding, high-level decisions in accordance with the *Liquor Control Act 1988*.
- Awarding costs associated with matters before the Commission.

- Reporting annually to the Minister for Racing and Gaming on the activities of the Commission.
- Reporting to the Minister for Racing and Gaming, when requested to do so, on the jurisdiction and functions of the Commission, including the provision of high-level policy advice relevant to liquor control matters.

In making its decisions, the Commission takes into account the objects of the Act, which are:

- Regulating the sale, supply and consumption of liquor.
- Minimising harm or ill-health caused to people, or any group of people, due to the use of liquor.
- Catering for the requirements of consumers of liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.
- Facilitating the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State.
- Providing adequate controls over the sale, disposal and consumption of liquor, and those persons directly or indirectly involved in the sale, disposal and consumption of liquor.
- Providing a flexible system, with as little formality and technicality as may be practicable, for the administration of the Act.

The Commission can make the following decisions:

- Affirm, vary or quash a decision subject to review.
- Make a decision in relation to any application or matter that should, in the opinion of the Commission, have been made in the first instance.
- Give directions as to any question of law that have been reviewed.
- Give directions to the Director of Liquor Licensing, to which effect shall be given.
- Make any incidental or ancillary order.

Parties to any proceedings before the Liquor Commission have the right to appeal any decision to the Supreme Court of Western Australia on a question of law.

THE CONSTITUTION AND JURISDICTION OF THE LIQUOR COMMISSION

In accordance with section 9A of the *Liquor Control Act 1988*:

- The Commission is to be constituted by one member, except as otherwise stated in the Act, or determined by the Chairperson under subsection 9A(2) of the Act.
- The Chairperson may determine that, in respect of any particular matter or any matter of a particular kind, the Commission is to be constituted by three members.
- If the Commission is constituted by three members and they are divided on a question, the question is to be decided according to the opinion of the majority of members.

The Commission is to be constituted by three members whilst determining the following matters under the Act:

SECTION 24

Matters that can be referred by the Director to the Commission:

- the matter or part of a matter relates to an application for the grant or removal of a licence;
- the matter or part of a matter relates to the making, variation or revocation of a prohibition order under Part 5A of the Act (any decision under Part 5A needs to be made in the public interest); or
- the Chairperson so determines under section 9A(2) of the Act.

SECTION 25

Application for review of the Director's decision when:

- the decision relates to an application for the grant or removal of a licence;
- the decision is to make, vary or revoke a prohibition order under Part 5A of the Act; or
- the Chairperson so determines under section 9A(2) of the Act.

SECTION 28(4A)

When there is an appeal against the decision of one Commission member, it is to be heard and determined by the Commission constituted by three other members, including a member who is a legal practitioner.

SECTION 95

Where a complaint is lodged for disciplinary action, one member of the Commission is to be a legal practitioner.

MATTERS OUTSIDE THE JURISDICTION OF THE LIQUOR COMMISSION

An application for review cannot be lodged against the following decisions of the Director of Liquor Licensing:

- Cancellation of a licence under section 93 of the Act, unless the application for the review is made on a question of law.
- An application for or the conduct of business under an extended trading permit (where the period is greater than three weeks and less than five years) or an occasional licence.
- The imposition, variation, or cancellation of a term or condition of an extended trading permit, or an occasional licence.
- The cancellation or suspension of the operation of an extended trading permit or an occasional licence.
- The assessment of a subsidy.
- Matters relating to the hearing of an objection.
- Finding of fact required to be made in order for the matter or application to be disposed of.
- A decision made in the course of, and for the purposes of, the administrative duties of the Director not directly related to the outcome of any application or matter before the licensing authority.

Furthermore, the Commission cannot reconsider any finding of fact by the Director of Liquor Licensing as to:

- the qualifications, reputation or character of a person, or the fitness or propriety of a person in relation to an application or licence;
- the adequacy or suitability of any premises, accommodation or services provided, or proposed to be provided under a licence; or
- in relation to a club licence, or an application for such a licence, or the existence of the club, unless the review is sought by the person who lodged the application in respect of which the decision was made; or by the person whom the finding was made in relation to the qualifications, reputation or character of a person.

ADMINISTRATIVE STRUCTURE

Section 9B of the *Liquor Control Act 1988* provides that the Liquor Commission consists of a Chairperson and other members as determined by the Minister for Racing and Gaming. At least one member of the Commission is required to be a legal practitioner as defined in the *Legal Profession Act 2008* or have been admitted to legal practice in another State or a Territory.

Each member of the Commission is appointed by the Minister for a maximum period of five years. Members are eligible for reappointment.

The member or members who constitute the panel in relation to an application/appeal shall be selected by the Chairperson, who will give consideration to their knowledge or experience.

As of 30 June 2010, the Liquor Commission consisted of the following members:

Mr Jim Freemantle, Chairperson

Mr Freemantle was the Chairperson of the committee appointed by the Government in 2004 to review the Liquor Licensing Act. He is a former Deputy Chairman of Good Samaritan Industries Board and is Deputy Chairman of Racing and Wagering WA, Chairman of the Racing and Wagering Western Australia Integrity Assurance Committee and a member of the Swan River Trust. Mr Freemantle is also a former Vice President of the Western Australian Chamber of Commerce and Industry, and formerly held the position of Chief Executive of the Home Building Society.

Mr Edward Watling, Deputy Chairperson

Mr Watling is a founding partner and Executive Director of the firm Tourism Coordinates, a Perth-based company specialising in tourism strategic planning and development. Mr Watling has more than 38 years experience in the tourism industry,

combining both government and private sector service. In 1984, he was appointed the inaugural General Manager of the Western Australian Tourism Commission (WATC), resigning that office in 1987. Following that, Mr Watling took up a position within the Public Service Commission, where he undertook a range of agency reviews for the Government's Functional Review Committee, after which he served for seven years as a tourism consultant to the Minister for Tourism. Mr Watling has served on several boards and committees, including the Indian Ocean Tourism Association, the Tourism Council Australia (WA), the Australian Tourism Research Institute, and the Perth Convention Bureau.

Ms Helen Cogan, Member

Ms Cogan is a legal practitioner recently retired from the State Solicitor's Office where she held the position of Senior Assistant State Solicitor. Ms Cogan is also a member of the Gaming and Wagering Commission of Western Australia. She was employed with the State Solicitor's Office over the period 1993 - 2005. Prior to her employment with the State Solicitor's Office, Ms Cogan worked for various private and public legal organisations within Australia and overseas.

Mr Greg Joyce, Member

Mr Greg Joyce was the former Director General of the Department of Housing and Works. He is currently Chairman of WorkCover WA. He has been on several Boards and Committees including Treasury Corporation Board and Chairman of the Justice Reform Implementation Committee. He has a law degree from the University of WA and is qualified to practice as a barrister and solicitor.

EXECUTIVE SUPPORT FOR THE LIQUOR COMMISSION

Executive support for the Liquor Commission is provided by the Department of Racing, Gaming and Liquor. The Executive Officer of the Commission is Ms Seema Saxena.

MAJOR ACHIEVEMENTS FOR 2009/10

The table below shows the number, nature and outcome of applications before the Commission as at 30 June 2010. The Commission has taken an average of four weeks to hear and determine each matter.

APPLICATIONS LODGED AND HEARD					
Section of the <i>Liquor Control Act 1988</i>	Carried over from 2008/09 ¹	Received 2009/10	Withdrawn in 2009/10	Total heard in 2009/10	Carried over to 2010/11
21	0	3	1	0	2
24	1	7	0	4	4
25	7	27	5	26	3
30	0	5	0	4	1
95	4	9	7	5	1
Total	12	51	13	39	11

Of the 39 applications heard by the Commission in 2009/10, 20 applications were determined and published during the course of the year, whilst 19 applications were determined and published in 2010/11.

Full determinations are available at the Liquor Commission's website at www.liquorcommission.wa.gov.au.

¹ Data gathered from 2008/09 Liquor Commission Annual Report

SIGNIFICANT APPEALS BEFORE THE LIQUOR COMMISSION

The following pages contain a synopsis of significant decisions handed down by the Commission. All references to “the Act” in the following pages refer to the *Liquor Control Act 1988*, unless stated otherwise.

LC16/2009 – SPINIFEX TRADING PTY LTD - SECTION 64 REVIEW

On 13 January 2009, the Director of Liquor Licensing (the Director) issued a Notice under Section 64 of the Act, which was served on the Licensees of Halls Creek Store and Kimberley Hotel, in which the Director imposed a number of conditions on both licenses in the interests of reducing alcohol-related harm in Halls Creek.

The Section 64 Notice offered an opportunity for the applicant (as Licensee) to show cause why the conditions should not be imposed and requested that any submissions in that regard be lodged with the Director by no later than close of business on 20 February 2009.

On 20 February 2009, and following correspondence between the applicant and the Director, the applicant lodged submissions in relation to the Section 64 Notice.

On 28 April 2009, and following correspondence between the applicant and the Director, the applicant lodged further submissions in relation to the Section 64 Notice.

Submissions in response to the Section 64 Notice were also lodged by the Executive Director for Public Health and the Commissioner of Police.

On 11 May 2009, the Director determined that as from 18 May 2009, the premises would be subject to section 64 conditions.

On 25 May 2009, the applicant lodged an Application for Review of the Director’s Decision.

On 27 May 2009, the Director lodged a Notice of Intervention pursuant to section 69(11) of the Act for the purpose of making submissions.

On 26 June 2009, the Commissioner of Police lodged a Notice of Intervention pursuant to section 3(6) and section 69(6)(c)(ii) of the Act for the purpose of making representations.

On 25 May 2009, the applicant lodged an application to lift the imposition of the conditions imposed on the licence of the premises by the Director’s Decision, as an interim measure pending the final determination of the Application to Review the Director’s Decision.

The matter was heard before the Commission on 28 July 2009.

There were a range of reports referred to in the section 64 Notice and summarised in the Director of Liquor Licensing's decision that supported the notion that excessive consumption of alcohol was damaging to the health of people. Whilst these reports were challenged by the applicant for their generality, there was no doubt that these reports played a significant role in the debate about alcohol harm to communities and represented existing research into the issue.

There were many letters to the Director for restrictions prior to the issue of the section 64 Notice. In summary, these letters expressed concerns that excessive consumption of alcohol was causing massive harm to the health and safety of both adults and children in Halls Creek and surrounding communities.

There were two public meetings held in Halls Creek, one on 11 December 2008 and the second on 12 February 2009 with an estimated attendance of 400 to 500 people. As a result of those meetings, there were a large number of letters submitted to the Director expressing concern about the possibility of the proposed ban. In addition, approximately 490 people signed a petition asking the Director not to implement the proposed decision.

The Halls Creek Chamber of Commerce wrote to the Director on 22 April 2009, expressing its concern about the proposed restrictions. The applicant submitted that the existing restrictions had a positive effect in decreasing the harm and ill-health to the Halls Creek community, provided statistics to support that view, and stated that as a consequence further restrictions were unnecessary.

The Commission issued its determination on 3 August 2009, affirming the Director of Liquor Licensing's decision and refusing the application.

The Commission acknowledged that liquor was recognised as a harmful substance and its use needed to be controlled. It was clear from the material before the Director that there was widespread harm and ill-health occurring in Halls Creek as a consequence of excessive alcohol consumption.

The Director's decision has had extensive consequences for the community of Halls Creek. The Commission acknowledged that the Director's decision would cause extreme financial stress to the applicant.

Furthermore, the Commission acknowledged that serious harm and ill-health currently occurring through excessive alcohol use, not only to the drinker, but to children in utero, children, elderly people, women, and the extended family. The Commission attached a higher weighting on the public interest of chronic harm and ill-health is at stake, it must attract a higher weighting than the other considerations.

LC23/2009 – COMMISSIONER OF POLICE V MR EDWARD HORACE WITHNELL

On 2 April 2009, the Commissioner of Police lodged two applications under section 152B with the Director of Liquor Licensing seeking:

- Order prohibiting Edward Horace Withnell from being employed by a licensee at any licensed premises for a period of five years from the date of the Order.
- Order prohibiting Edward Horace Withnell from entering any licensed premises for a period of five years from the date of Order.

On 14 April 2009, the Director of Liquor Licensing referred the matter to the Commission under section 24 of the Act.

On 29 June 2009, a preliminary hearing was conducted where various orders were made and these were set out in the Determination handed down on 3 July 2009 (see *LC12/2009 - Commissioner of Police v Mr Edward Horace Withnell*, available on the Commission's website).

The matter was heard before the Commission on 1 October 2009 (all parties), 2 October 2009 (in private pursuant to section 30 of the Act) and continued on 8 October 2009.

The Commission relied on confidential police information pursuant to Section 30(2) of the Act. Material classified as confidential police information must not be published or disclosed by the licensing authority to any person if the information is classified as confidential police information.

After hearing from all parties, the Commission issued its determination on 2 November 2009. Mr Edward Horace Withnell was prohibited from being employed by a licensee at any licensed premises.

Furthermore, the Commission varied the application pursuant to Section 152B(b) of the Act and Mr Edward Horace Withnell was prohibited from entering the following licensed premises of the class specified:

- nightclubs;
- hotels which hold an extended hours extended trading permit;
- clubs or restricted clubs;
- restaurants; and
- all special facilities licences, except those of the sub classes - Works Canteen, Theatre and Cinema, Transport, Vocational Education and Training Institution, Food Hall, Catering, Bed and Breakfast Facility, Room Service Restaurant and Auctions.

The prohibition orders came into effect from the date of the determination for a period of five years.

Mr Withnell appealed the Commission's decision to the Supreme Court of Western Australia [CIV1599 of 2010]. On 1 June 2010, the Commissioner of Police consented to a Writ of Certiorari, seeking to quash the decision of the Liquor Commission on the basis that there had been an error in the classification of the confidential police information.

It was acknowledged that some of the classified material could have been disclosed to Mr Withnell by way of a redacted version, while still maintaining the confidentiality of that information.

Mr Withnell's case was the first major test of the prohibition order legislation and was expected to set a precedent for the handling of future applications by the WA Police.

LC05/2010 - COMMISSIONER OF POLICE V BLOO MOONS PTY LTD

On 9 September 2009, the Director of Liquor Licensing (the Director) conditionally granted a Hotel Restricted Licence to Bloo Moons Pty Ltd in respect of premises located at 4 Anderson Street, Port Hedland. When granting the licence, the Director imposed a number of conditions on the operation of the licence. The licence was issued on 30 September 2009.

On 10 November 2009, the Commissioner of Police lodged an application for a review of the decision of the Director pursuant to section 25 of the Act.

A hearing was conducted on 24 March 2010.

The application for review was based on two issues:

- The effects of the Director's decision so distorted the Hotel Restricted licence classification as to counter the statutory scheme of classification of licences, such that the Decision was *ultra vires* and invalid; and
- The Director erred in law in placing conditions on the licence that purported to impose obligations upon the Licensee that were already imposed by statutory provisions within the Act.

It was submitted on behalf of the Director that because none of the parties before the Commission had challenged the correctness of the Director's decision granting the licence, that it was open to the Commission to confine its deliberations to the specific points raised by the Commissioner of Police in his review application.

The Commission did not accept this submission. Consequently, the Commission undertook a review of the decision of the Director on its merits.

According to the Applicant's Public Interest Assessment (PIA) it sought a Hotel Restricted licence to facilitate the provision of four-star accommodation, function and dining facilities to its guests, the business community and local residents.

In its PIA, the Applicant provided an overview of the existing facilities in the locality, demographics of the area and the purported limited impact that the operation of the venue would have on the amenity of the area and the existing levels of alcohol-related harm or ill-health.

In recognition of the existing harm caused by alcohol abuse in the community, the Applicant sought a Hotel Restricted licence in order to restrict packaged liquor sales to the general community. Furthermore, the Applicant, in order to create a lower risk drinking environment, proposed two conditions be imposed on the licence.

Pursuant to section 69(8a) of the Act, the Executive Director Public Health (EDPH) lodged a Notice of Intervention in respect of the application.

The purpose of the intervention was to make representations about the high risk aspects associated with the application and to recommend imposing harm minimisation conditions on the licence

Pursuant to section 69(6)(c)(ii) of the Act, the Commissioner of Police lodged a Notice of Intervention for the purpose of making representations and introducing evidence on the grounds that harm or ill-health would likely be caused to people, or any group of people, due to the use of liquor, and therefore the grant of the application was not in the public interest. A report providing police data on existing levels of crime and anti-social behaviour in Port Hedland, much of which was alcohol-related, was submitted.

It was the view of local police that the grant of a tavern licence would have a negative impact on the community and increase existing levels of alcohol-related harm, particularly in view of the existing liquor restrictions that operate in the town. The police were of the opinion that a Restaurant licence was a more appropriate type of licence to be granted to the Applicant.

The Commission issued its determination on 31 March 2010, affirming the decision of the Director, with the first condition of the trading conditions varied to read:

“With the exception of liquor consumed by lodgers in their rooms or persons attending a pre-arranged function or event, liquor may be consumed only by persons seated at a table.”

LC06/2010 - COMMISSIONER OF POLICE V GOLFING PUB PTY LTD

On 2 March 2010, the Commissioner of Police lodged a complaint under Section 95 of the *Liquor Control Act 1988* against Golfing Pub Pty Ltd, the licensee of Ryan's Premier Hotel Albany. The Commissioner sought:

- The suspension of the licence.
- Disqualification of the Licensee for such period as the Commission sees fit.
- Disqualification of Mr Wayne Leslie Stewart as Director and the Secretary of the licensee company and from being the holder of a position of authority in a body corporate holding a licence and/or being interested in, or in the profits or proceeds of a business carried on under a licence for such period as the Commission sees fit.
- Disqualification of the Licensee from being interested in, or in the profits or proceeds of, a business carried on under a licence.
- Imposition of a monetary penalty upon the Licensee in an amount that the Commission thinks fit.
- Imposition of a monetary penalty upon Mr Wayne Leslie Stewart in an amount that the Commission thinks fit.
- Imposition of conditions upon the licence.

The grounds on which these remedies were sought arose from events that took place on Saturday 18 July 2009 in and around the licensed premises, particularly that the Licensee permitted intoxication on the premise and supplied liquor to a person who was drunk. The person concerned, Christopher Maxwell Wolfe, developed lethal acute alcohol toxicity, which was a contributing factor to his death within a few hours after he had left the premises.

The matter was heard before the Commission on 12 April 2010.

It was apparent from Mr Stewart's statement to Police, together with statements made by others, that a large amount of alcohol was consumed by the deceased.

Statements from various people present and Mr Stewart confirmed that a large quantity of alcohol was served to Mr Wolfe, well in excess of anything that could be considered reasonable and that any responsible person employed in, let alone managing licensed premises, should permit.

There was nothing before the Commission to indicate that Mr Stewart was not aware of the amount of alcohol being served to Mr Wolfe. Mr Stewart actively aided and abetted unsafe drinking practices.

The Commission found that the Licensee failed badly in its responsibility as did Mr Stewart.

Through his Counsel, Mr Stewart expressed his remorse. Counsel advised that Mr Stewart had consented to a five year ban. Counsel further pleaded for no further penalty, as Stewart had suffered emotionally and financially. The Commission accepted that Mr Stewart had been heavily punished by virtue of his lengthy disqualification and the consequences of that.

On the 14 April 2010, the Commission issued its determination:

- The Golfing Pub Pty Ltd was fined \$15,000.
- Wayne Leslie Stewart was disqualified for a period of five years from being:
 - the holder of a licence;
 - the holder of a position of authority in a body corporate that holds a licence; and
 - a beneficiary of the profits or proceeds of a business carried on under a licence.
- Wayne Leslie Stewart was prohibited from being employed by a licensee at any licensed premises for a period of five years.

LC07/2010 – O'HANLONS (WA) PTY LTD V DIRECTOR OF LIQUOR LICENSING

On 14 October 2009, O'Hanlons (WA) Pty Ltd lodged an application, pursuant to sections 41 and 62 of the Act, for the conditional grant of a tavern licence in respect of premises known as The William Street Bird and located at 181 William Street, Northbridge.

The application was advertised to the general public in accordance with instructions issued by the Director of Liquor Licensing (the Director). There were no objections to the application. The Executive Director Public Health lodged a Notice of Intervention pursuant to section 69(8a) of the Act.

On 9 February 2010, the Director, pursuant to section 24 of the Act, referred the application to the Commission for determination. Pursuant to section 69(11) of the Act, the Director intervened in the proceedings before the Commission.

A hearing was conducted on 13 April 2010.

According to the Applicant's submission, the proposed venue aimed to become an intimate and inviting venue showcasing the work of local performing artists. The expected capacity of the venue was 150 patrons and although the application was for a Tavern licence, the general tone of the venue would be more akin to a small bar. The

Applicant proposed to provide an alternate, mature option to the culture that dominated Northbridge on busy nights.

The Applicant acknowledged the alcohol-related problems that existed in Northbridge. The Applicant submitted that its proposed venue would encourage a moderate and mature drinking attitude, where alcohol was accompanied by food and entertainment, thereby attracting people who would otherwise avoid Northbridge due to the scarcity of such options.

The Executive Director Public Health (EDPH) made submissions regarding the high risk aspects of the application.

The EDPH recommended that, should the application be granted, the following conditions be imposed:

- the maximum patron numbers for the premise be 150;
- the venue is to retain a focus on promoting local arts;
- the licensee is not permitted to promote or sell drinks which offer liquor by virtue of their 'emotive' titles such as "laybacks", "shooters", "slammers", "test tubes", "blasters" or "Jager bombs" and no liquor is to be mixed with energy drinks;
- a range of light and mid strength liquor products must be available for purchase during all trading hours;
- bar snacks are to be available at all times; and
- strict dress and behaviour code signage be displayed at the entrance of the venue.

By email dated 10 March 2010, the Applicant consented to the licence conditions proposed by the EDPH.

The Director raised concerns about the implications that granting the licence would have for Northbridge, particularly in view of evidence submitted highlighting the extent of alcohol-related harm in the area.

The Commission considered whether the level of alcohol-related harm or ill-health was of such a serious nature that the licensing authority would need to impose stringent conditions on a licence or refuse the grant.

In this context, the Applicant sought to establish a venue where the primary focus would be the provision of various forms of entertainment. According to the applicant, the proposed premises would provide important support for the development of live original music and performing artists, particularly in the "original music precinct" in which the premises was located.

The Commission issued its determination on 16 April 2010, granting the tavern licence, subject to a number of trading conditions.

LC16/2010 - COMMISSIONER OF POLICE V BRADLEY HAYES DORRINGTON

On 22 January 2010, the Commissioner of Police lodged an application pursuant to section 152B of the Act for a Prohibition Order against Bradley Hayes Dorrington. The application sought to have Mr Dorrington prohibited from entering all licensed premises, except liquor stores, for a period of three years.

On 3 March 2010, the Director of Liquor Licensing (the Director) referred the application to the Commission for determination pursuant to section 24 of the Act.

On 28 April 2010, the application was determined in Chambers on the written submissions of the parties and by consent of the solicitor for the respondent.

On 27 September 2008, Mr Dorrington was at the Leederville Hotel when he became involved in an altercation with another patron. Mr Dorrington, who was intoxicated at the time, without warning punched the other patron to the left side of the face whilst holding a glass in his hand, smashing the glass and causing a 4-5cm facial laceration and damage to the sight in the left eye of the victim.

Mr Dorrington was subsequently convicted in the Perth District Court on 28 April 2009 of Grievous Bodily Harm and sentenced to 15 months imprisonment, suspended for 24 months.

It was submitted by the Commissioner of Police that Mr Dorrington's violent behaviour at licensed premises had endangered public safety.

In considering the merits of making a Prohibition Order, it was submitted that Mr Dorrington had not been involved in any repeat anti-social behaviour in or around licensed premises, and that the Commissioner of Police was relying on a single incident that occurred at the Leederville Hotel on 27 September 2008.

When Mr Dorrington was sentenced in the District Court, he was required to be supervised by a Community Corrections Officer and undergo and complete courses relating to substance abuse and anger management. Mr Dorrington had engaged in both the supervision and program requirements imposed by the sentencing Judge.

Furthermore, his suspended sentence remained in force until 28 April 2011, and there was a measure of public protection by reason of the fact that Mr Dorrington had a considerable incentive to avoid becoming involved in any illegal or anti-social behaviour.

The Commission acknowledged that whilst Mr Dorrington was complying with his sentencing conditions and that he was considered to be at low risk of reoffending, his

actions were extremely violent and had serious consequences for his victim and were committed whilst intoxicated.

The Commission issued its determination on 24 May 2010, granting the application sought by the Commissioner of Police.

LC17/2010 - BUSSWATER PTY LTD V MR K V HOUSE AND MRS L V VERHOOG

On 1 September 2009, Busswater Pty Ltd lodged an application for a conditional grant of a liquor store licence for premises to be known as Broadwater Liquor and located at Lot 65/ 545 Bussell Highway, Busselton.

On 8 January 2010, the Director of Liquor Licensing (the Director) refused the application.

On 8 February 2010, Busswater Pty Ltd lodged an application for a review of the Director's decision pursuant to section 25 of the Act.

On 10 February 2010, pursuant to section 69(11) of the Act, the Director lodged a Notice of Intervention in respect of the review.

A hearing was conducted on 13 May 2010.

The applicant proposed to establish a liquor store, with both browse and drive through convenience. The site, which had been vacant for the past three years, was located next to the Broadwater Shopping Village and on a major arterial road.

In the Public Interest Assessment document submitted with the application, the applicant had sought to address the relevant matters raised under section 38(4) of the Act and asserted that the grant of the proposed licence would not impact negatively on the harm or ill-health of the community or on the amenity of the area or create offence, annoyance, disturbance or inconvenience to people who reside or work in the area.

Letters of support were received from several business owners. A Management Plan, House Management Policy and Code of Conduct for the business were submitted in support of the application.

In seeking the review of the Director's decision, the applicant claimed it was denied procedural fairness because the Director took into consideration information which was not lodged by any party to the application; which was not made available to the applicant before the determination of the application; and the applicant was not given the opportunity to respond.

At page 4, paragraph 5 of the Director's decision, he stated:

“Current alcohol availability in Busselton is associated with a measurable level of harm in terms of alcohol consumption on the Statistical Local Area of Busselton and alcohol-related hospitalization in the South West Health Region (incorporating Busselton) compared to corresponding State rates.”

By the inclusion of the above paragraph in his decision, the applicant asserted that the Director took into account information, upon which the Director expressed a view about current levels of harm in the South West Health Region, to which the applicant was not afforded the opportunity to respond or provide information to counteract the view expressed by the Director.

It was unclear to the Commission what the relevance was of the cited paragraph in the Director’s decision, and the Commission came to the conclusion that there was no denial of procedural fairness by the Director in the determination of this matter simply because the Director did not alert the applicant specifically to the report to which he had regard.

As the Commission was not aware of the relevance of the quoted paragraph in the context of the Director’s decision, it was deemed to be irrelevant and excluded entirely from consideration in the Commission’s determination.

The Commission issued its determination on 26 May 2010. The Commission found that the applicant did not provide sufficient evidence to satisfy the Commission that the grant of the licence was in the public interest as required under section 38(2) of the Act. The application was refused.

LC19/2010 - TOCOAN PTY LTD V RICHARD SARGEANT AND MARGARET SARGEANT AND OTHERS

On 4 May 2009, Tocoan Pty Ltd lodged an application for the grant of an extended trading permit for the Reef Hotel, located at 12 Victoria Street, Bunbury.

On 31 December 2009, the Delegate of the Director of Liquor Licensing (the Delegate) refused the application.

On 25 January 2010, Tocoan Pty Ltd lodged an application for a review of the Delegate’s decision, pursuant to section 25 of the Act.

In respect of the application for an extended trading permit, four residents in the vicinity of the licensed premises lodged objections. The Executive Director Public Health lodged a Notice of Intervention, and the Commissioner of Police lodged a Notice of Intervention. On 2 February 2010, the Director of Liquor Licensing lodged a Notice of Intervention in respect of the review application.

A hearing was conducted on 21 May 2010.

Counsel for the Commissioner of Police advised that the police intervention in respect of the original application for the extended trading permit before the Director of Liquor Licensing was flawed, because the police officer who lodged the Intervention may not have been authorised in writing to act on behalf of the Commissioner of Police. Consequently, it was likely that the intervention by the police was a nullity.

After discussion between the parties, Counsel on behalf of the applicant consented to the Commissioner of Police intervening in the review proceedings, with the Commission taking into consideration the material relied upon by the Commissioner of Police in the proceedings before the Director.

The applicant sought the grant of an extended trading permit to authorise trading on:

- Thursday evenings from 12 midnight to 1am;
- Friday evenings from 12 midnight to 2am; and
- Saturday evenings from 12 midnight to 2am.

According to the applicant in its Public Interest Assessment (PIA), the enduring popularity and existing non-problematic trading history of the premises established that the grant of a new permit would have a positive impact and benefit the local community. It was submitted that there would be no negative health or social effects resulting from the grant of the application, or any negative impact upon the quality of life of any person or groups within the locality.

A petition containing in excess of 900 signatures, together with 18 letters of support, were also submitted with the application.

Objections were received from four residents residing in the vicinity of the premises. Their concerns were that granting the application would cause an undue degree of offence, annoyance, disturbance or inconvenience to persons who reside in the vicinity of the licensed premises.

The purpose of the intervention from the EDPH was to present information for consideration by the licensing authority on the extent of alcohol-related harm in the locality and recommend that the application be refused. According to the EDPH, there was a number of high risk aspects associated with the application.

It was submitted by the EDPH that Bunbury was currently experiencing concerning levels of alcohol-related harm, indicated by high rates of Emergency Department presentations and crime and assaults occurring in the area.

It was submitted that in view of the data indicating high levels of existing alcohol-related harm in the locality of the Reef Hotel, the application should be refused.

It was submitted on behalf of the Commissioner of Police that the only reason that the applicant was seeking to extend its permitted trading hours was for financial gain, and that was not a proper reason for granting the application.

The Commissioner of Police was of the view that the overall detrimental effects that the grant of the application may have on the interests of the community far outweighed the commercial interests of the applicant.

The Commission issued its determination on 11 June 2010. The decision of the Delegate of the Director of Liquor Licensing was quashed and the application for an extended trading permit was granted, subject to conditions.

LC20/2010 - DAVID MCGEOGH AND PAUL OZANNE V IVORYBOW PTY LTD AND OTHERS

On 4 September 2009, David McGeogh and Paul Ozanne lodged an application for the conditional grant of a liquor store licence for Lesmurdie Liquor, located at Lesmurdie Road Shopping Centre.

In respect of the application for the conditional grant of a liquor store licence, objections were lodged by:

- 60 residents, of which 43 lodged a group petition;
- the Principal of St Brigid's College;
- Ivorybow Pty Ltd (licensee of Liquor Barons Lesmurdie); and
- the Shire of Kalamunda.

On 16 November 2009 and pursuant to section 69(8a) of the Act, the Executive Director Public Health (the EDPH) lodged a Notice of Intervention.

On 8 February 2010, the Director of Liquor Licensing (the Director) refused the application.

On 5 March 2010 David McGeogh and Paul Ozanne lodged an application pursuant to section 25 of the Act for a review of the Director's decision.

On 15 March 2010, pursuant to section 69(11) of the Act, the Director lodged a Notice of Intervention.

A hearing was conducted on 28 May 2010.

The applicant's Public Interest Assessment addressed the matters set out in section 38(4) of the Act, and provided data on the demographics of the locality and existing levels of crime. It was submitted that with the exception of graffiti, the occurrence of crime in the locality was significantly lower than the State average and over the past two years rates of crime had stayed relatively constant.

The applicant provided details of the strategies it would adopt to minimise any negative impact that the grant of the licence may have on the locality, including the use of CCTV, ID25 checks to discourage juveniles and adopting "Designing out Crime" principles.

The applicant was of the opinion that the grant of the application would be in the public interest. A petition containing 237 signatures and four letters of support from local business owners and residents, and a letter from the proprietor of the Lesmurdie Shopping Centre, were also submitted.

These objectors were collectively represented by Ilberys Lawyers Pty Ltd. It was argued by these objectors that the grant of the application would be contrary to the principal object contained in section 5(1)(c) of the Act in that the grant of the application was not necessary in order to cater for the requirements of consumers for liquor and related services.

Located directly opposite the proposed liquor store was St Brigid's College, a private Catholic school which had 550 primary school students (boys and girls) and 750 year 8-12 students (girls only). The college also provided facilities for 175 boarders, ranging in age from 13-18 years (girls only). The proposed liquor store would have street frontage, and the Lesmurdie Shopping Centre was frequented by students from St Brigid's, including boarders who shopped during the week and on weekends. Various publications and research papers were submitted to highlight concerns about juvenile alcohol consumption.

Finally, it was submitted that the limited parking facilities at the shopping centre would increase traffic congestion in and around the centre and therefore negatively impact on the amenity of the area. It was also asserted there was likely to be an increase in the level of anti-social behaviour in the locality if the application was granted. A petition opposing the application was also submitted.

These objectors raised similar concerns to the combined objectors regarding:

- the location of the proposed liquor store opposite St Brigid's College and the potential negative impact upon students; and
- increasing the number of liquor outlets in the area, particularly when there was already a liquor store within a short distance from the proposed liquor store, and the possible increase in harm and anti-social behaviour that may result.

The principal of St Brigid's College expressed concern about the location of the proposed liquor store in such close proximity to the College, particularly in view of female teenage binge drinking becoming a significant social issue. St Brigid's College engaged security on Friday and Saturday nights to contain existing anti-social behaviour in the area, and the grant of the application would increase problems. Parents of students objected strongly to the application.

The EDPH intervened for the purpose of making representations for consideration in the decision making process, regarding:

- young people as a high risk group for alcohol-related harm;
- the close proximity of the proposed premises to a school, which included a boarding college, where alcohol-related problems already impacted on the campus;
- the influence of alcohol advertising on young people; and
- the need for conditions to be placed on the licence to ensure the premises became lower-risk for alcohol-related harm, should the application be granted.

The EDPH recommended that if the application was granted the licence be subject to the following condition:

"No external alcohol or venue advertising (e.g., signage, posters, a-frames, billboards) within 400m of the school boundary".

It was also recommended that the applicant's proposed strategy of an 'if you look under 25, you will be asked for ID' approach be implemented as part of their house management policy and plan.

After hearing from all parties, the Commission issued its determination on 17 June 2010, refusing the grant of the application on the basis that the risks associated with the location of the proposed liquor store in relation to St Brigid's College were unacceptable and not in the public interest, particularly when weighed against the marginal benefits.

The Commission also noted that the consumption of alcohol by juveniles and the normalisation of binge drinking by young people were problems of increasing concern within the community. A significant factor in the Commission's determination was the disturbing levels of alcohol-related harm within this demographic, as demonstrated by the evidence presented by the objectors.

SIGNIFICANT ISSUES IMPACTING THE LIQUOR COMMISSION

TRENDS OR SPECIAL PROBLEMS THAT HAVE EMERGED

There has been a steady increase in the number of applications received by the Commission. Applicants are increasingly willing to challenge a decision of the Director of Liquor Licensing (or its Delegate) if they are dissatisfied with the outcome of that decision. Furthermore, the Director of Liquor Licensing has increasingly referred matters to the Commission for determination. Such trends are increasing the Commission's workload.

In reviewing applications, the Commission has identified a noticeable failure of applicants to demonstrate positive impacts of their liquor licence applications when completing the Public Interest Assessments (PIA). Such omissions, in the Commission's view, have a negative impact on the outcome of liquor licence applications.

FORECASTS OF THE COMMISSION'S WORKLOAD FOR 2010/2011

It is expected that the workload of the Liquor Commission for 2010/11 will substantially increase. Indications are that the Commission is adequately resourced to efficiently carry out its functions for the time being.

PROPOSALS FOR IMPROVING THE OPERATION OF THE COMMISSION

Other than for the continuing attention to improving and streamlining the process of handling applications for review, there are no proposals for improving the operations of the Commission.

OTHER LEGAL AND GOVERNMENT POLICY REQUIREMENTS

ADVERTISING AND SPONSORSHIP

In accordance with section 175ZE of the *Electoral Act 1907*, the Commission must report on any expenditure incurred for advertising, market research, polling, direct mail and media advertising. In 2009/10, total expenditure was nil.

DISABILITY ACCESS AND INCLUSION PLAN OUTCOMES

The Commission meets its obligations for Disability Access and Inclusion Outcomes through arrangements with the Department of Racing, Gaming and Liquor. The Department of Racing, Gaming and Liquor's Annual Report contains information on how the Department has complied with the obligations imposed under section 29 of the *Disability Services Act 1993*.

COMPLIANCE WITH PUBLIC SECTOR STANDARDS AND ETHICAL CODES

The Commission does not employ staff, but has a net appropriation agreement with the Department of Racing, Gaming and Liquor relating to functions carried out on behalf of the Commission by staff of that Department. Accordingly, the Commission does not report on compliance with the Public Sector Standards. The Department of Racing, Gaming and Liquor's Annual Report contains relevant information.

RECORDKEEPING PLANS

Section 19 of the *State Records Act 2000* requires every Government agency to have a Recordkeeping Plan. The Recordkeeping Plan provides an accurate reflection of the recordkeeping program within the agency and must be complied with by the agency and its officers. The records of the Commission are maintained by the Department of Racing, Gaming and Liquor. The Department of Racing, Gaming and Liquor's Annual Report contains information on the Recordkeeping Plan.

SUBSTANTIVE EQUALITY

The Commission meets its obligations for the elimination of systemic racial discrimination from all policies and practices, in accordance with the Policy Framework for Substantive Equality, through arrangements with the Department of Racing, Gaming and Liquor. The Department of Racing, Gaming and Liquor's Annual Report contains information on how the Department has complied with the obligations imposed under the *Public Sector Commissioner's Circular 2009-23*.

OCCUPATIONAL SAFETY, HEALTH AND INJURY MANAGEMENT

The Commission meets its obligations for occupational safety, health and injury management through arrangements with the Department of Racing, Gaming and Liquor. The Department of Racing, Gaming and Liquor's Annual Report contains information on how the Department has complied with the obligations imposed under the *Public Sector Commissioner's Circular 2009-11*.