

**Liquor Commission of Western Australia
(Liquor Control Act 1988)**

Matter 1: Appeal by City of Rockingham pursuant to section 28(4a) of the *Liquor Control Act 1988* of determination no. LC 07/2013 of a single member of the Liquor Commission dated 27 February 2013.

Applicant: City of Rockingham
(represented by Mr Gavin Crocket of Cullen Babington Macleod Lawyers)

Respondent: Tocoan Pty Ltd
(represented by Mr Kevin Mann, Director and Mr Ashley Wilson of Frichot & Frichot Lawyers)

Matter 2: Appeal by Tocoan Pty Ltd pursuant to section 28(4a) of the *Liquor Control Act 1988* of determination no. LC 07/2013 of a single member of the Liquor Commission dated 27 February 2013.

Applicant: Tocoan Pty Ltd
(represented by Mr Kevin Mann, Director and Mr Ashley Wilson of Frichot & Frichot Lawyers)

Respondent: City of Rockingham
(represented by Mr Gavin Crocket of Cullen Babington Macleod Lawyers)

Commission: Mr Jim Freemantle (Chairperson)
Mr Evan Shackleton (Member)
Ms Belinda Lonsdale (Member)

Date of costs orders 25 February 2014

Date of further orders: 17 June 2014

1. On 5 December 2013, the Liquor Commission (“the Commission”) constituted by three members heard an appeal against a decision made by Deputy Chairman Rafferty relating to the issue of costs. The appeal specifically related to the decision to refuse an application made by Tocoan Pty Ltd (“Tocoan”) for costs in a hearing conducted pursuant to s.117 of the *Liquor Control Act 1988* (“the Act”). That hearing was conducted on 29 February 2012 and the Commission dismissed the complaint made by the City of Rockingham (“the council”).
2. The Commission subsequently upheld the appeal¹ and determined that Tocoan should have been awarded costs in respect to the s.117 hearing conducted on 29 February 2013. The issue of costs was remitted back to Deputy Chairman Rafferty. He subsequently awarded costs to Tocoan in the sum of \$15,840.00 that figure including the costs associated with the s.17 hearing.²
3. The Commission also determined that Tocoan is also entitled to the costs associated with the appeal hearing. Submissions enclosing schedule of costs applicable to the appeal hearing were lodged by the parties to the proceeding.
4. Those costs are limited to the legal costs of the proceedings and not the time spent by Mr Kevin Mann, he being a director of Tocoan who appeared in person at the appeal hearing.³ The principles relating to the granting of costs were outlined by Deputy Chairman Rafferty in a previous decision relating to these proceedings and are not in dispute.⁴
5. The scales of costs adopted by Deputy Chairman Rafferty in LC06/2014 are appropriate and have been adopted in this decision. The work completed by the solicitors for Tocoan is outlined in a document titled “Licensee’s Further Schedule of Costs in Relation to the Section 117 Proceedings and the Appeals”. The Commission accepts that the solicitors for Tocoan completed the amount of hours outlined in the schedule, but has adopted the hourly rate referred to in LC06/2014.

¹ LC44/2013

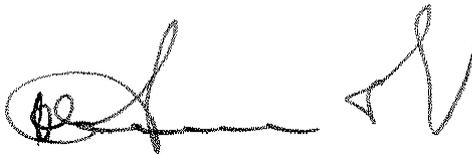
² LC06/2014

³ see *Cachia v Hanes* (1994) 179 CLR 403

⁴ LC07/2013

6. Accordingly, Tocoan is awarded costs in the sum of \$7040.00, which relates to the following items, namely:
- a) Perusing and considering City of Rockingham appeal notice \$352.00
 - b) Drafting of the licensee's submissions (6 hours) \$2112.00
 - c) Perusing & considering City of Rockingham submissions (2 hours) \$704.00
 - d) Drafting licensee's responsive submissions (6 hours) \$2112.00
 - e) Perusing & considering City's responsive submissions (2 hours) \$704.00
 - f) Drafting observations to assist Mr Kevin Mann (2 hours) \$704.00
 - e) Preparing schedule of costs (1 hour) \$352.00

The Commission has refused to order the costs associated with Mr Mann's preparation and appearance at the hearing for the reasons articulated by the High Court in *Cachia v Hanes*.



**MR JIM FREEMANTLE
CHAIRPERSON**