



Liquor Commission of Western Australia 2014/15 Annual Report



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Availability in other formats

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Statement of Compliance

Hon. Colin Holt, MLC,
Minister for Housing; 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 of Western Australia for the financial year ended 30 June 2015.

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



Jim Freemantle
Chairperson

01 September 2015

Overview of Agency

Executive Summary

It is my pleasure to present the Annual Report of the Liquor Commission of Western Australia for the year ended 30 June 2015.

During the year in review, 40 new applications were lodged with the Liquor Commission and 15 applications were carried over from 2013/2014. As at 30 June 2015, the Commission had determined 33 applications, six applications were withdrawn and 16 applications were carried over to 2015/16.

As has been the case for some years now, the issue of an increased push by major retailers for large scale liquor stores has continued to dominate a significant amount of the Commission's workload. In dealing with such matters, the Commission must remain cognisant of the need to balance the harm/ill-health that can be attributed to large scale liquor discounting with the public interest aspect of such applications.

Similarly, the Commission continues to deal with issues surrounding opposition by local residents to not only large liquor stores, but also to a host of other licensed premises.

On the other side of the argument, the reporting period saw a decline in the number of section 95 applications received by the Commission, which would tend to indicate an improving trend in how licensees are conducting their business.

I wish to take this opportunity to thank Commission members, and in particular the executive officer and staff for their invaluable contributions to the efficient operation of the Commission.



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 2015, the Minister responsible for the Racing and Gaming Portfolio was the Honourable Colin Holt MLC, Minister for Housing; Racing and Gaming.

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. The latter is achieved by way of a rehearing and thus makes 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;
- determining complaints and disciplinary matters in accordance with section 95 of 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; and
- 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.

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 questions of law that have been reviewed;
- give directions to the Director of Liquor Licensing, to which effect shall be given; and
- 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.

Appeals Which May Be Heard by the Liquor Commission

The Commission can determine the following matters under the Act:

Section 24

The Director may refer the whole or part of any matter that is to be determined by the Director, or any question of law arising from such a matter, for hearing and determination by the Commission.

Section 25

Application for review of the Director's decision can be lodged 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 lawyer as defined in section 3 of the Act.

Section 95

The Liquor Commission determines complaints and disciplinary matters in accordance with section 95 of the *Liquor Control Act 1988*. Complaints lodged to the Commission may be made by the Director of Liquor Licensing, the Commissioner of Police or a local government authority.

The Commission will determine the validity of the complaint and impose disciplinary measures if grounds exist for such a course of action.

Where a complaint is lodged for disciplinary action, one member of the Commission is to be a lawyer as defined in section 3 of the Act.

The following table shows the number of section 95 complaints that were handled by the Commission during 2014/15.

Complaints Outstanding as at 1 July 2014	2
Complaints lodged 1 July 2014 – 30 June 2015	5
Complaints resolved 1 July 2014 – 30 June 2015 (including one withdrawal order)	4
Total Outstanding Complaints as on 1 July 2015	3

Section 115(AD)

An application for a review of a barring notice issued by the Commissioner of Police can be heard by a Commission constituted by one member.

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 to dispose of the matter or application.
- 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 about 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 lawyer as defined in section 3 of the Act.

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.

Executive support for the Liquor Commission is provided by the Department of Racing, Gaming and Liquor.

As of 30 June 2015, the Liquor Commission consisted of nine members, namely:

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 Chairperson of Good Samaritan Industries, Deputy Chairman of Racing and Wagering Western Australia, and Chairperson of the Racing and Wagering Western Australia Integrity Assurance Committee. Mr Freemantle is also a former Vice President of the Western Australian Chamber of Commerce and Industry, and a former Chairperson of the Swan River Trust. Mr Freemantle holds a Bachelor of Economics and a Masters of Administration from Monash University.

Seamus Rafferty - Deputy Chairperson

Mr Rafferty graduated from Notre Dame University in 2001 with a Bachelor of Law degree. He is a former State Prosecutor with the Office of the Director of Public Prosecutions for Western Australia (2002 and 2009), where he was involved in the prosecution of serious crimes in the District and Supreme Courts on behalf of the State of Western Australia. Since 2009, he has been a sole practitioner, specialising in criminal law. Mr Rafferty is a committee member of the Criminal Lawyers' Association and was Secretary of that organisation between 2009 and 2011.

Edward Watling - Member

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. He has more than 40 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 and held that position until 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 was appointed an inaugural member of the Liquor Commission in December 2006.

Helen Cogan - Member

Ms Cogan is a former State Solicitor's Office lawyer where she held the position of Senior Assistant State Solicitor. She was employed with the State Solicitor's Office from 1993 until 2005. Ms Cogan worked for various private and public legal organisations within Australia and overseas prior to her employment with the State Solicitor's Office.

Eric Isaachsen - Member

Dr Isaachsen has worked for more than 25 years in general practice covering a broad range of professional interests. He is a Senior Sessional Member of the State Administrative Tribunal, sitting on matters in the Vocational and Human Rights streams.

Evan Shackleton - Member

Mr Shackleton graduated from the University of Western Australia in 1996 with a Bachelor of Law degree. After completing articulated clerkship with the Legal Aid Commission, he continued to work in all areas of criminal defence until he left the Commission in 2004 to commence practice as a sole practitioner in criminal defence.

Mr Shackleton is currently a committee member of the Magistrates Court Liaison Committee.

Belinda Lonsdale - Member

Ms Lonsdale graduated from the University of Western Australia with a Bachelor of Law in 1991 and a Masters of Business Administration in 1999. She was admitted to practice in 1993, and since 2003 has been a barrister at Albert Wolff Chambers practicing principally in the area of criminal law and disciplinary tribunals.

Ms Lonsdale was President of the Criminal Lawyers' Association in 2005 and 2006. She is currently a Commissioner for Legal Aid, having been appointed to that position in 2006 and is a member of both the Law Society and Bar Association councils.

Michael Egan - Member

Mr Egan graduated from the University of Tasmania in 1980 with a Bachelor of Law degree. He worked in a senior management role in the Western Australia Public Service from 1985 until 1997 in a regulatory capacity, and subsequently, prior to his retirement in 2013, in an executive management position in the private sector in the gaming, hospitality and entertainment industry.

Alex Zilkens - Member

Mr Zilkens graduated from University of Sydney in 1986 with a combined Arts/Law degree, and has worked as a lawyer in private practice since his admission in 1987. He has been the principal of Zilkens Lawyers since 1993, taking instructions in commercial legal work as well as commercial and general litigation. After 14 years as chairman of YHA Western Australia, he stood down from that position to become the chairman of Hostelling International Australia (formerly known as YHA Australia), a position that he has held since then. On 4 August 2014 Mr Zilkens was elected as a Vice President of the International Youth Hostel Federation trading as Hostelling International, a registered charity under the Charities Act in England and Wales, United Kingdom representing 69 member associations (youth hostelling associations from different countries).

Performance Summary for 2014/15

The table on page 12 provides details of the number, nature and outcome of applications heard and determined before the Commission as at 30 June 2015.

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

Outstanding matters as at 30 June 2015

As at 30 June, there were seven matters that have been heard but not determined. These were:

- Jim and Ida Bennett;
- Dougal McLay;
- Liquorland (Australia) Pty Ltd;
- Anne Choong and others;
- MYD Korea Pty Ltd;
- Australian Leisure and Hospitality Group Pty Ltd; and
- Zelda's Nightclub.

Furthermore there were eight matters listed but not heard, which were:

- Rum Holdings Pty Ltd/Anthony David Fleming;
- NRG Corporation Pty Ltd/Malcolm James Grant;
- Bradley Michael Crough;
- Australian Leisure and Hospitality Group Pty Ltd;
- All Night Long Pty Ltd;
- Copenclan Nominees Pty Ltd;
- Richmond Investments Pty Ltd; and
- Carnegies Realty Pty Ltd.

Following matter was neither listed nor heard:

- Newport Fremantle Pty Ltd.

The following table shows the number of applications lodged and determined during the current reporting period.

Applications Lodged and Heard 2014/15			
Case No.	Name	Section of Act	Outcome
L30/01/295	John Walter Luckman	95	Disqualified for a period of three years from being the holder of position of authority in a body corporate that holds a licence; interested in, or in the profits or proceeds of, a business carried on under a liquor licence whether as a natural person or as a partner in an unincorporated body or otherwise; or an approved manager in any licensed premises.
L30/01/297	Riley Enterprises (Pty) Ltd	25	Application refused
L30/01/298	Independent Liquor Merchants Pty Ltd	25	Application refused
L30/01/299	Tyrell Gardiner	25	Application refused
L30/01/300	Brain Godfrey Humphrey	25	Application refused
L30/01/301	Stephen and Catherine Miller	25	Application refused
L30/01/302	Barring Notice-MB	115AD	Barring notice conditions varied
L30/01/304	Blacktower Capital Pty Ltd	25	Application granted in part
L30/01/305	Barring Notice-LH	115AD	Barring Notice revoked
L30/01/306	Barring Notice-TPW	115AD	Barring Notice varied
L30/01/307	High Society (WA) Pty Ltd	25	Application refused, condition varied
L30/01/309	Windrush Holdings Pty Ltd	25	Application refused
L30/01/310	Barring Notice-AE	115AD	Application granted
L30/01/311	Champagne Alley Pty Ltd	25	Application refused
L30/01/315	Barring Notice-BM	115AD	Application refused
L30/01/316	Barring Notice- AM	115AD	Application refused
L30/01/322	Barring Notice- DM	115AD	Application refused
L30/01/325	Barring Notice-AW	115AD	Application refused
L30/01/327	Barring Notice-KW	115AD	Application granted
L30/01/330	Giuseppe Anastasio	95	Disqualified for 10 years from being the holder of a position of authority in a body corporate that holds a licence or being interested in, or in the profits or proceeds of, a business carried on under a licence.

Significant Appeals before the Commission

The Commission continued to make a number of significant decisions during the reporting period. Below are some of the more high profile decisions made by the Commission.

Mad Mex Hay Street (LC 28/2014)

An application was made by Mad Mex Fresh Mexican Grill Pty Ltd to the Director of Liquor Licensing for the conditional grant of a restaurant licence for the premises known as “Mad Mex Hay Street” located at Shop 6, Central Park, 777 Hay Street, Perth.

The applicant also sought an extended trading permit, pursuant to section 60(4)(h) of the Act, to allow alfresco dining on the footpath adjacent to the proposed premises.

No objections were lodged, but the Commissioner of Police lodged a notice of intervention, pursuant to section 69 of the *Liquor Control Act 1988*. On 24 March 2014, the Director refused the application (see decision A 223860).

During the proceedings, the applicant submitted they were committed to providing unique, fresh Mexican food as demonstrated in their vision to grow Mad Mex nationally by remaining true to their founding principles of “fresh and healthy, fast and delicious, authentic and exciting”.

According to the applicant, the Director’s reasons for refusing the licence were primarily the size and layout of the restaurant, the perceived manner of trade, and the location of toilet facilities for patrons. The Act however, does not require any minimum size for a premises to be granted a restaurant licence, and that the Hay Street premises is sufficient in size and standard for the licence to be granted.

At the hearing, the applicant submitted that the distance from the premises to the toilets was 25 metres. However, as the Commission can only have regard to the materials that were before the Director, the distance relevant for the purposes of the Commission was 45 metres which was submitted by the applicant in a letter dated 7 September 2013. The fact that the Premises Manager of the Department of Racing, Gaming and Liquor deemed the toilets as being satisfactory is not determinative to the Commission’s decision.

It was a concern to the Commission that the toilets were going to be shared with six other businesses. Mad Max Hay Street has 34 seats for patrons, and only one key to the toilets. No provision had been made for the possibility that a patron may wish to use the facility when another is already doing so.

The Commission was also not satisfied that the premises is a restaurant, and found that it was more in keeping with a takeaway food outlet. Section 3(1) of the Act defines “meal” as “food that is eaten by a person sitting at a table, or a fixed structure used as a table, with cutlery provided for the purpose of eating the food”. Relevantly, this section also defines restaurant to mean “a premises on which **meals** (Commission’s emphasis) are proposed to be regularly prepared for sale or supplied and are eaten”.

In its decision to refuse the application as not being in public interest, the Commission observed that *“The size of the premises is not determinative. The business model is not determinative. The toilet facilities are not determinative. The number of seats is not determinative. The number of patrons who take away or eat on premises at a particular time and occasion is not determinative. But each and all of those factors, considered in their totality, lead the Commission to that conclusion”*.

Blacktower Capital Pty Ltd v Commissioner of Police, Executive Director of Public Health and Director of Liquor Licensing (LC 42/2014)

This successful appeal relates to an application seeking a review of the decision of the delegate of the Director to refuse an Extended Trading Permit (ETP) for the premises situated at 321 Murray Street, Perth known as “Wolfe Lane”. The premises for which the application was made is operated as a small bar, a category of liquor licence that is generally accepted as low risk. The applicant volunteered a number of conditions to be attached to their licence which may mitigate any perceived incremental harm.

In its PIA, the applicant submitted 82 consumer surveys together with 14 witness statements supporting the requirement for the extended trading hours. The applicant also submitted a table detailing several ETPs granted by the licensing authority in the immediate vicinity.

According to the applicant, Police CAD and IMS reports indicated that the level of antisocial and violent behaviour associated with the premises was low. They claimed that the general evidence led by both interveners, the Commissioner of Police and Executive Director of Public Health, needed to be treated with caution as the conclusions were not always applicable to specific locations or types of licence.

The Commissioner submitted that CAD and other police data showed that there was a strong correlation between alcohol and violent crime with reviews of the literature estimating that between 41 percent and 70 percent of violent crimes were committed under the influence of alcohol. Police claimed grant of the application would increase the availability of alcohol in Perth, including on weeknights after 12am, and particularly between midnight and 2am on Thursdays through Sundays. In this regard, the Commissioner noted that there were 187 existing licensed premises in Perth (including three small bars holding ETPs which allowed trading until 1am), 12 tavern licensees holding ETPs (including three with ETPs allowing trading until 2am on Friday and Saturday), and one hotel licensee with an ETP allowing trading until 2am.

The Executive Director Public Health referred to several reports and various statistics relating to alcohol related violence in the city, and concluded that while there was necessarily an element of speculation in anticipating what may or may not happen in the future, the studies referred to by the EDPH provided strong evidence that the grant of the application would likely result in an increase in the already significant level of alcohol-related harm and ill-health in Perth.

While the Commission shared the concern of the interveners about the potential for harm, based on the evidence before it and on balance of probabilities it could not be satisfied that the grant of this permit would result in such harm that would be unacceptable.

Furthermore, in the Commission's view, placing controls on the type of drinks to be sold later in the night and a requirement for the provision of food at all times would sufficiently mitigate any incremental harm that might be caused by the grant of the application. As an attempt to balance the public interest with any resultant harm that may arise from the grant of this application, the Commission exercised its discretion to extend trading hours by only one hour rather than the two additional hours sought. The Commission also imposed a lockout to assist in the orderly dispersal of patrons at and around closing time.

Mr Tyrrell G Gardiner and Mrs Jennifer Gardiner and Others v Grant McClintock (LC 01/ 2015)

In this appeal, residential objectors were seeking a review of the Director's decision to grant an application to permit the number of patrons who may be ordinarily accommodated on the premises at any one time from 120 to 200. Objectors claimed this was not in keeping with the planning laws and said there would be an adverse impact on the amenity of the area as a result.

Objectors gave evidence that noise was an ongoing issue and nothing was being done to mitigate this problem, which was particularly acute to those properties to the north of the premises. They claimed that apart from the day-to-day issues with music noise and traffic/parking problems, the licensee regularly held a number of large events at the premises which accentuated the detrimental effects of the premises on the amenity, quiet and good order of the locality.

Objectors claimed that the premises is situated on a 2.2 hectare block which is not suitable for a medium to large scale tourist venture, and the business has evolved from the initial approval of a micro-brewery to a tavern, a function centre and a venue for large events for up to 1000 people. It was submitted that the site of the premises was too small and not a location suited for the type of business development proposed by the licensee, and the fact that very little had been done by the licensee to mitigate the problems further emphasised the fact that the application to increase the patron numbers should not be accepted. Further, the expansion plans put at risk accepted practices for primary producers such as raising stock, running machinery and conducting hazard reduction burns in what has traditionally been a farming area.

In respect to the ground of non conformity with planning laws, it was alleged that the licensee had not obtained the required planning consent to use the premises to accommodate 200 people. Neither a local government section 39 nor section 40 certificates for the approved development of a restaurant or brewery or for the proposed development to allow an increase from 120 to 200 patrons had been submitted with the application to vary the licence as required by sections 39(1) or 40(1) of the Act.

The Commission, in dealing with this ground of review, observed that notwithstanding the submissions made on behalf of the objectors regarding deficiencies in complying with planning laws, the material before the Director included a report by the Department's Senior Premises Inspector summarising the status of the current section 39 and 40 certificates. This report was appropriately relied upon by the Director.

In respect to the adverse impact on the amenity of the area, the Commission was persuaded by the applicants, who reside in the vicinity of the premises, that they suffered offence, annoyance, disturbance and inconvenience from the presence of the premises. Consequently, increasing the number of patrons permitted on the premises by 66 percent from 120 to 200 would inevitably result in the lessening of the amenity, quiet and good order of the locality in which the premises are located. That is, a greater number of patrons will add to traffic (amenity), noise (quiet) and the risk of unacceptable behaviour (good order) in the locality of the premises.

The Commission recognised that the premises are located in what is primarily an agricultural environment, with adjacent properties engaged in a range of rural activities that could be adversely affected by intense traffic movements and accelerated noise factors. The evolution of the business from a micro-brewery/small restaurant facility to a larger entertainment outlet, including the hosting of large functions, had changed the dynamics of the business operation. It was concerning for the Commission to note that the licensee offered little more than what could be described as “superficial observations” concerning the impact of the increase in patron numbers. The only step taken by the licensee was the provision of additional parking which only addressed one part of the amenity and annoyance issues.

Ultimately, the Commission concluded that an increase in the maximum number of allowed patrons, as proposed will, on the balance of probabilities, further exacerbate the conflict of use situation that currently applies in this locality. Accordingly, the Commission quashed the Director’s decision granting the application to vary the condition of the licence to increase the number of patrons from 120 to 200.

Penzance Pty Ltd v EDPH and Director (LC 39/2014)

The Commission received an application seeking a review of the decision of the Director refusing an application for an ETP in respect to premises known as “Beer Works Tavern” at 161 James Street, Northbridge to permit trading on Friday and Saturday from 12 midnight until 2am the following morning.

As part of the application, it was submitted that, in effect, the application was for the “renewal” of an existing ETP which was first granted to the applicant in December 2002 and which had previously been renewed on a number of occasions without interruption.

The Director intervened in the proceedings before the Commission and on his behalf it was submitted that his original decision was supported by the evidence before him (the same evidence being that before the Commission by virtue of the provisions of section 25 of the Act). He claimed the reasoning was sound and it was open to the Commission to adopt the same reasoning and reach the same conclusion as the Director.

The Director claimed there were existing levels of alcohol related harm and ill-health in Northbridge that are concerning and the re-introduction of up to 450 people will have an unknown impact. In the circumstance that the premises have not traded since 2008, the Director was not satisfied that the grant of the ETP would not contribute to the existing alcohol related violence and harm in Northbridge to an unacceptable degree.

The applicant had submitted that the alcohol related harm and ill health were not at an unacceptable level and that the fact that the levels had been decreasing over the last few years meant that such levels were not at an unacceptable level. The Director submitted that simply because the levels had decreased, this was not a basis for a conclusion that the current level is acceptable. What is acceptable or not requires an objective assessment of the seriousness of the given level of harm in conjunction with the Commission's assessment of whether that level is in line with, or exceeds, community expectations. Based on the evidence, Northbridge is an area experiencing a high level of alcohol related harm and ill health.

It was submitted that it was implicit in the Director's recitation of the evidence, read in conjunction with the findings that were expressly made, that the Director found that the application was likely to increase the level of alcohol related harm in Northbridge. It was appropriate to take into account the fact that the premises is not currently trading nor has it operated since 2008. The Commission has previously considered the existing manner of trade, operation and management of licensed premises to be relevant when determining whether or not to grant an ETP.

If the ETP was granted, the effect would be a reintroduction of approximately 450 people into Northbridge at times when harm and ill-health were at their peak. This application differs from the usual renewal process where an applicant is already trading and patrons from their premises are already included in the data.

In the application, the ETP was sought in an area where there were already concerning levels of alcohol related harm and ill health. In these circumstances, it is presumed that an applicant will usually need to demonstrate that it is a well managed facility with procedures to reduce or mitigate the potential impact that the premises may have on existing levels of harm.

While the applicant provided evidence and submissions relating to their previous management of the premises, and their management of other licensed facilities, the Director found that these factors were insufficient to counterbalance the significant levels of harm and ill health that already existed in the locality.

The Executive Director Public Health submitted that the applicant's criticism of the data provided by EDPH was improperly conceived in its focus on whether or not levels of harm were on the decline. Attention should be drawn to what the current levels of harm are, and, whether the grant of the ETP will create an unacceptable risk of higher levels of such harm and ill-health. In essence, it was submitted that in order to minimise alcohol related harm or ill health, it would be appropriate for the applicant to first demonstrate a trading history in order to better assess the possible impact of the ETP upon alcohol related harm and ill health in Northbridge.

In its responsive submissions to those made by the Director and EDPH, the applicant submitted that there was no basis for the proposition by the Director that when the Beer Works Tavern reopens, up to 450 patrons will be "reintroduced" into Northbridge. Rather, in all likelihood, the vast majority, if not all, consumers who patronise the applicant's venue during the hours sought under the application, would be persons who habitually resort to Northbridge for their entertainment needs. It was submitted that rather than a "reintroduction" of 450 patrons, it is more accurate to describe the proposed patronage at the applicant's venue as a "redistribution" of patrons among licensed premises within Northbridge.

With regard to the Director's reference to the lack of a recent trading history at the applicant's venue, the applicant claimed they had an unblemished trading history between 2002 and 2008 when trading under the ETP which was the subject of the present "renewal" application. The applicant, and in particular stakeholders of the applicant company, were experienced licensees who had successfully managed numerous licensed premises within the locality.

With regard to the EDPH reference to the risk that extended trading hours may lead to increased alcohol-related harm and ill-health caused by drink driving, there was no evidence that would support a finding that persons who resort to Northbridge are currently "drink driving". Therefore, it was difficult to determine upon what basis an inference could be drawn that the grant of the present application "may lead to increased alcohol-related harm and ill-health caused by drink driving".

In granting the application, the Commission observed that while the data presented showed that increased trading hours were associated with an increase in harm, an increase in the venue trading hours as proposed in the ETP application would not, in itself, contribute to a degree of harm and ill-health beyond that which currently existed in the locality. The Commission acknowledged that while the extent to which the ETP sought might affect the degree of harm and ill-health due to alcohol in Northbridge was a necessary consideration, the fact is that the venue has (subject to section 62(9) approval) a liquor licence to trade to 12 midnight on a Friday and Saturday night. Therefore, patrons attending the venue up until that time will already be in the Northbridge locality. Without the ETP, those patrons would be required to leave the premises at 12 midnight and it then becomes problematic as to how many will seek to migrate to other Northbridge venues or alternatively, will leave the locality. It would be expected that many would seek another venue option. The migration factor has been a well-recognised contributor to anti-social behaviour, as patrons from different venues mingle in the street and in many instances, join queues for access to another venue.

The Commission found that should the applicant be granted an ETP, there may be a more orderly dispersal of patrons from the venue over the 12 midnight to 2am period with a significant reduction in the need to migrate to other premises. The Commission formed the view that this outcome was more preferable than having up to 450 patrons exiting the premises at midnight.

In its decision, the Commission noted that in respect to the "lack of trading history of the licensee", while in the normal course not provided for in the Act or the Director's policies, the granting of an ETP, where there is no trading history for the licensee, would generally not be in the public interest. However, on the basis of the circumstances of this application, given the reasons previously outlined by the licensee, it was in public interest that the application be granted.

Commissioner of Police v John Walter Luckman (LC 32/2015)

On 13 June 2014, the Commissioner of Police, pursuant to section 95 of the *Liquor Control Act 1988* lodged a complaint against John Walter Luckman. Essentially, the complaint was that Mr Luckman cultivated/was in possession of a prohibited plant/drug with the intent to sell and supply and was therefore not a fit and proper person to hold a position of authority in the licensee company Justluck Pty Ltd of which he was the sole shareholder and Director.

It was submitted by the complainant that the Commission should infer that the respondent was engaged in the ongoing supply of cannabis on a significant commercial scale, an inference supported by:

- The quantity of cannabis in his possession, which was sufficient to give rise to a presumption of intent to sell and supply under the MDA;
- The presence of digital scales and clipseal bags, both of which are indicia of drug dealing;
- Text messages indicating that, in exchange for money, the first respondent would leave cannabis in various places around his home for collection, including the dishwasher;
- The fact that bags containing cannabis were found in the first respondent's dishwasher and kitchen drawers;
- The sophisticated hydroponic set-up found in the first respondent's residence which included grow tents, lights, timers, an automatic watering system and flyscreens for drying cannabis head material; and
- The fact that the bedroom and en suite bathroom in the first respondent's residence were dedicated wholly or partly to the growing of cannabis, suggesting that the residence exceeded the first respondent's needs and was itself evidence of capital invested in the drug dealing venture.

The respondent argued that the operation of the licensed premises was entirely separate from the conduct the subject of the allegations, and therefore had no impact (positive or negative) on the operations of the business or the sale/supply of liquor. In such circumstances there was nothing to "protect" the public from. It was submitted that in contrast the evidence showed that:

- The respondent operated the licensed premises in a professional, sound and responsible manner, which had resulted in an entirely clean record under the Act at Luckie's Liquor and earned him the praise of surrounding businesses and professional acquaintances who attest to his character and reputation; and
- He was a successful businessman who after successfully running two other businesses, took over Luckie's Liquor approximately three years ago, employs 8-9 people and had entirely transformed the store, increasing its turnover by over 50 percent and creating a successful local business that is appreciated by customers, staff and the local community.

It was submitted that the complaint failed to reach the evidential standard to enable the conclusion that the first respondent was supplying drugs, as prescribed by section 115(1)(b) of the Act. The first respondent's evidence in his statement is persuasive in that he only grew for his own personal use and that was to self-medicate for chronic painful medical conditions and sleep problems; that there were smoking implements in the home that he had used; that the kitchen scales were in the kitchen to be used as kitchen scales; and the plastic bags were used for a variety of things including bagging his sandwiches for work and bagging cannabis for his own personal use so that he could control how much he was smoking.

Furthermore, the respondents' full time manager's evidence is persuasive in that he has never seen nor heard the respondent have anything to do with unlawful drugs or be under the influence of same, or seen or heard anything that could potentially be related to unlawful drugs; and such evidence, on the balance of probabilities, serves to rebut the statutory presumption as to supply and outweighs the circumstantial case against the first respondent. Police submitted that the assertion that the cannabis was for personal use was not believable as it was at odds with the evidence and should not be accepted by the Commission, particularly in the absence of a smoking implement.

In examining the evidence before it, the Commission reached the conclusion that evidence provided by Police relating to the quantity of cannabis, the role of the "dishwasher", the text messages on the respondent's mobile phone, the sophisticated hydroponic set-up and the juxtaposition of the kitchen scales and cipseal bags were compelling. The police report of the absence of a smoking implement was also an indication that the prohibited drug was being cultivated for other than personal consumption, albeit that the respondent had provided photographs of smoking implements that he claimed were in the residence at the time of the police inspection. The Commission did not accept the respondent's argument that the police simply did not observe these items.

In summary, the Commission, having regard to the circumstantial evidence submitted, was not persuaded that the cannabis found in the residence of the respondent was solely for his personal use. The extent of resources dedicated for cultivating cannabis was inconsistent with the submission that it was being used exclusively for personal use.

The Commission observed that a person who was employed as an approved manager was required to exhibit high standards of honesty and integrity, and strongly denounced the actions of the respondent, especially in light of his role and responsibilities as an approved manager and director of the licensee company. Mr Luckman was found to have fallen well short of the standards expected of a manager of a licensed premises, and worthy of disciplinary action sought by the complainant. Accordingly, the Commission disqualified Mr Luckman for a period of three years from being the holder of a position of authority in a body corporate that holds a liquor licence, interested in, or in the profits or proceeds of, a business carried on under a liquor licence whether as a natural person or as a partner in an unincorporated body or otherwise or an approved manager in any licensed premises.

Additionally, the Commission suspended the licence for the licensee company for a period of six months from the date of the determination, or until the licence was transferred, or Mr Luckman removed himself as a director and shareholder of the licensee company; whichever was earlier.

Significant Issues Impacting the Liquor Commission

Trends or Special Problems that have Emerged

One Stop Shopping Experience

Once again, as last year, the Commission considered several applications for moderately sized liquor stores in shopping centres to offer a “one stop shopping experience” to the customers visiting the shopping centre.

Although each application is to be determined on its merits, the Commission is of the view that the proper development of the industry requires a measured approach to the grant of additional licences, and the grant of a licence based on the limited convenience it offers in this case is not a sufficient requirement in the context of the Act. Convenience is just one factor to be considered when considering the requirement of consumers for liquor - under the current Act it must be considered having regard to the proper development of the liquor industry, the other objects of the Act and, of course, the public interest.

As has been noted in the Commission’s decisions, liquor is a product that may have negative consequences in the community and is subject to extensive regulation as to its sale, supply and consumption. These controls and restrictions exist for the benefit of the community and while some members of the community may express a desire for more convenience, the Commission is entrusted with the responsibility of making a determination on whether the public interest is served by any proposal to widen or extend the level of convenience currently enjoyed by the public by the extension or granting of certain licences. A liquor outlet at every corner delicatessen or beside every supermarket or regularly visited retail outlet to satisfy the convenience of some members of the public is not what the community would countenance or expect, and would not be, in the Commission’s view, in accordance with the provisions and intent of the Act.

Forecasts of the Commission’s Workload for 2015/16

It is expected that although the workload of the Liquor Commission for 2015/16 will be similar to previous years, the complexity of the matters before the Commission will continue to increase, thereby placing pressure on the current resources of the Commission. Indications are that the Commission is adequately resourced to carry out its functions efficiently for the time being.

Proposals for Improving the Operation of the Commission

The Commission will continue improve and streamline the process of handling applications for review.

Other Legal and Government Policy Requirements

Advertising

Section 175ZE of the *Electoral Act 1907* requires public agencies to report details of expenditure to organisations providing services in relation to advertising, market research, polling, direct mail and media advertising. During the reporting period the Commission incurred a total expenditure of \$328 in advertising expenses.

Remuneration of Members

During the reporting period, the following remuneration figures applied to Commission members.

Commission Member	All Earnings	Superannuation
Helen Cogan	\$9,113	\$866
Jim Freemantle	\$30,643	\$2,911
Eric Isaachsen	\$7,751	\$736
Seamus Rafferty	\$1,319	\$125
Edward Watling	\$18,867	\$1,792
Belinda Lonsdale	\$3,957	\$376
Evan Shackleton	\$10,749	\$1,021
Alex Zilkens	\$8,929	\$676
Michael Egan	\$9,634	\$915
Total	\$100,962	\$9,418

Other Government Policy Requirements

The Commission meets its requirements through arrangements with the Department of Racing, Gaming and Liquor. The Department's Annual Report contains information on how the Department meets the following requirements:

- Disability Access and Inclusion Plan Outcomes.
- Compliance with Public Sector Standards and Ethical Codes.
- Recordkeeping Plans.
- Substantive Equality.
- Occupational Safety, Health and Injury Management.