



Department of
**Local Government, Sport
and Cultural Industries**

Liquor Commission of Western Australia

2021-22 Annual Report



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Statement of Compliance

Hon. Tony Buti, 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 of Western Australia for the financial year ended 30 June 2022.

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



Ms Kate Pedersen
Chairperson

6 September 2022

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 2022.

During the year in review, the Commission determined 40 applications, whilst eight applications were discontinued.

Furthermore, 18 applications were carried over to 2022-23; of these, 10 were heard but not determined and eight were awaiting consideration.

In October 2021, the Supreme Court handed down its decision in the matter of *Liquorland (Australia) Pty Ltd v Director of Liquor Licensing* [2021] WASC 366 (the *Liquorland* decision). Justice Archer upheld all grounds of the appeal by Liquorland (Australia) Pty Ltd, quashed the Commission's decision and remitted the matter back to the Commission for reconsideration. The matter was heard on 30 June 2022 and the decision was reserved at the time of writing.

The decision of Justice Archer is important to the licensing authority and applicants, as it provides guidance on how the provisions of section 36B of the *Liquor Control Act 1988* are to be construed when determining an application for the grant of new packaged liquor outlets, the weighing and balancing of the public interest versus the requirements of section 36B, and factors that need to be considered when determining the locality of the proposed premises.

The composition of the Commission was enhanced with the appointment of Ms Sandra Di Bartolomeo in September 2021 for a 12-month term. Unfortunately, Sandra has decided to not seek reappointment. On behalf of the Commission, I thank her for her hard work and wish her well in her future endeavours.

I also wish to congratulate members Mr Nicholas van Hattem, Ms Alya Barnes, Ms Emma Power, Ms Kirsty Stynes, Dr Kim Hames and Ms Colleen Hayward, on their reappointment to the Commission.

I would like to take this opportunity to thank all Commission members for their talents, hard work, and dedication to the effective operation of the Commission throughout the year.

I also wish to thank the staff from the Department of Local Government, Sport and Cultural Industries for their ongoing support, and the State Administrative Tribunal for the use of their facilities to conduct hearings.



Ms Kate Pedersen
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 2022, the Minister responsible for the Racing and Gaming Portfolio is Dr Tony Buti, MLA, Minister for Finance; Aboriginal Affairs; Racing and Gaming; Citizenship and Multicultural Interests.

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 re-hearing and therefore 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 *Liquor Control Act 1988*.

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 2021-22.

Complaints outstanding as at 1 July 2021	3
Complaints lodged 1 July 2021 – 30 June 2022	2
Complaints withdrawn 1 July 2021 – 30 June 2022	0
Complaints resolved 1 July 2021 – 30 June 2022	1
Total outstanding complaints as at 30 June 2022	4

Section 115AD

An application for a review of a barring notice issued by the Commissioner of Police can be heard by the 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;
- matters relating to the hearing of an objection;
- a finding of fact required to be made in order to dispose of the matter or application; and
- 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.

Members of the Commission are 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 Commission is provided by the Department of Local Government, Sport and Cultural Industries.

As of 30 June 2022, the Liquor Commission consisted of 11 members, namely:

Ms Kate Pedersen – Chairperson

Ms Pedersen is a barrister at Quayside Chambers. She is a commercial barrister with a wide-ranging litigation practice. She was previously an Assistant State Solicitor in the counsel team at the State Solicitor's Office. Ms Pedersen has engaged in a broad range of counsel work, appearing in the State Administrative Tribunal, the Magistrates, District, Supreme, Federal and High Courts. She has particular specialty in regulatory crime, including complex prosecutions relating to fatal accidents in workplaces and mine sites. She holds a Bachelor of Law from the University of Western Australia (Honours) and a Masters in Law from the University of Melbourne.

Ms Emma Power – Deputy Chairperson

Ms Power graduated with a Law degree from Murdoch University in 2004 and has been working predominately in property, development, corporate and commercial law since that time. Prior to studying law, she was a secondary school teacher teaching visual arts. In 2017, Ms Power became the principal of the private law practice Power Commercial Law. She is also the legal member of the Local Government Standards Panel.

Ms Kirsty Stynes

Ms Stynes is a qualified legal practitioner currently employed at Seamus Rafferty & Associates. She was previously employed as a lawyer at Swan River Law Barristers and Solicitors and as an Usher to His Honour Judge Simon Stone at the District Court of Western Australia.

Mr Paul Shanahan

Mr Shanahan graduated from the University of Western Australia (UWA) with a Bachelor of Laws degree in 1988 and was admitted to the Supreme Court of WA the following year. Mr Shanahan has over thirty years of experience in legal practice, primarily in litigation and dispute resolution. His practice has focused on commercial disputes, regulatory matters, administrative law matters, insurance and risk management matters, and building and construction disputes. Mr Shanahan has practiced as in-house Counsel, in private practice and in the public sector. His skill-set includes advocacy in a wide range of Courts and Tribunals. Mr Shanahan is currently General Counsel and Director of Governance at UWA and a member of the Board of the Youth Legal Service.

Ms Elanor Rowe

Ms Rowe graduated from the Inns of Court School of Law, London in 2003 after completing her LLB Honours degree at Reading University and a Diploma in European Legal Studies at the University of Maastricht, Netherlands. She has practised as a solicitor in both England and Australia and was admitted as a Lawyer in the Supreme Court of WA in 2010. She currently works in property management and is a member of the Local Government Standards Panel WA.

Mr Nicholas Van Hattem

Mr van Hattem is a barrister with experience in commercial, government and criminal law matters. Prior to joining Francis Burt Chambers, he worked as a solicitor at Freehills, Aboriginal Legal Service, Rio Tinto and the State Solicitor's Office.

Ms Alya Barnes

Ms Alya Barnes is the Director and Principal of Barnes & Gatti Legal, an incorporated legal practice with a focus on contract and commercial law, business sales and pharmacy law issues including acquisitions and disposals. Ms Barnes has a strong background in property and commercial law, has international and domestic legal experience, and holds a Law degree and Arts degree.

Dr Kim Hames

Dr Hames is a former member of Parliament who was Deputy Premier for seven years and, during 20 years in Parliament, Minister for Health, Tourism, Aboriginal Affairs, Water, Housing and Workplace Development at various times and Governments. He has also worked for 26 years as a general practitioner, including the last four. He is also on the board of Ronald McDonald House.

Professor Colleen Hayward

Ms Colleen Hayward is a senior Noongar woman with extensive family links throughout the south-west of WA.

For more than 35 years, Ms Hayward has provided significant input to policies and programs on a wide range of issues, reflecting the needs of minority groups at community, state and national levels. She has an extensive background in a range of areas including health, education, training, employment, housing, child protection and law and justice, as well as significant experience in policy and management.

Among her many achievements, Ms Hayward has been recognised for her long-standing work for and on behalf of Aboriginal and Torres Strait Islander communities across Australia by winning the 2008 National NAIDOC Aboriginal Person of the Year Award. Ms Hayward is also a recipient (2006) of the Premier of WA's prestigious Multicultural Ambassador's Award for advancing human rights and anti-racism in the community and is the 2009 inductee into the WA Department of Education's Hall of Fame for Achievement in Aboriginal Education.

In 2012, Ms Hayward was inducted into the Western Australian Women's Hall of Fame and was recognised as a *Member in the General Division of the Order of Australia*. 2015 saw Ms Hayward awarded one of Murdoch University's Distinguished Alumni for her work in the areas of Equity and Social Justice.

Ms Pamela Hass

Ms Hass holds a Bachelor's degree in Law (with Honours), an Arts degree, and a Master's degree in Law. Until December 2014, Ms Hass was an elected member of the Council of the Law Society of WA where she is now Chair of the In-House and Government Lawyers Committee of Council. Until June 2011, Ms Hass was University Secretary, Director of Governance and Special Legal Counsel at the University of Western Australia. Prior to this, she was General Counsel and University Secretary at Macquarie University in Sydney. Before taking up the Macquarie position, she was General Counsel to Curtin University of Technology in Perth, where she established that University's first in-house legal service. Advice was provided at both Curtin and Macquarie Universities in administrative law, governance, intellectual property, dispute resolution, contract/commercial law, property law, and major litigation management.

From 2011 to the end of June 2022, Ms Hass was General Counsel, Legal Services with the WA Department of Jobs, Tourism, Science and Innovation (formerly the Department of

State Development) where she headed up a small in-house legal team working on major resources projects and other State initiatives. She was the first national president of the Australian Corporate Lawyers Association from Western Australia and a past Board member of the RSPCA and the Perth Institute of Contemporary Art (PICA).

Ms Sandra Di Bartolomeo

Ms Di Bartolomeo has significant experience as a banking and finance lawyer, specialising in corporate, construction, resources, energy and property financing. She was formerly a partner of MinterEllison, a national law firm, leading the finance division in Perth and has held various senior leadership positions with National Australia Bank, most recently heading up the Corporate and Institutional Bank Legal team in Western Australia and Queensland. She is currently a Legal Consultant with MinterEllison.

Ms Di Bartolomeo is also a non-executive director on the board of Horizon Power, and has previously held positions on the Art Gallery of Western Australia Foundation Council, the Italian Chamber of Commerce and Industry Committee and the Law Society Commercial Law Committee. She holds a Bachelor of Laws from the University of Western Australia, and postgraduate qualifications from both the Securities Institute of Australia and the Australian Institute of Management. She is also a Graduate of the Australian Institute of Company Directors.

Performance Summary for 2021-22

The following tables provide details of the number, nature and outcome of applications before the Commission as at 30 June 2022. Full determinations are available from the Liquor Commission's website: [Liquor Commission](#).

Applications determined in 2021-22				
Case No.	Section of Act	Name	Matter	Outcome
L30/01/514	24	JB Foods Pty Ltd	Referral by the Director of Liquor Licensing of an application for the grant of a liquor store licence known as Karratha Cellars.	Application refused. Decision appealed to the Supreme Court.
21/1171	25	JLD	Application for review of the decision of the Director of Liquor Licensing to issue a prohibition order.	Prohibition order varied.
21/2150	24	Australian Leisure and Hospitality Group Pty Ltd	Referral by the Director of Liquor Licensing of an application to alter/redefine a licensed premises known as the Leisure Inn, Rockingham.	Application granted.
21/2004	115AD	MF	Application for review of a barring notice.	Application dismissed.
21/3065	25	JM	Application for review of the decision of the Director of Liquor Licensing to issue a prohibition order.	Prohibition order varied.
21/2427	115AD	SV	Application for review of a barring notice.	Application withdrawn.
21/3064	25	Broadwater Village Grocer Pty Ltd	Application for review of the decision of the Director of Liquor Licensing to refuse the grant of a liquor store licence in relation to premises known as Broadwater Village Grocer.	Application granted.
21/3057 and 21/3511	95	Hades Corp Pty Ltd (licensee) and Lenno Parasuraman (director)	Complaint by the Commissioner of Police alleging there is proper cause for disciplinary action against the licensee and director.	Hades Corp fined \$30,000 and trading conditions imposed on the licence. Decision appealed to the Supreme Court.

Applications determined in 2021-22				
Case No.	Section of Act	Name	Matter	Outcome
21/3507	25	Chief Health Officer	Application for review of the decision of the Director of Liquor Licensing to grant a special facility licence for premises known as Archie Brothers, Cirque Electriq & Strike Bowling & Holey Moley Golf Club without imposing a condition prohibiting juveniles from entering the premises after 8pm daily.	Application withdrawn.
21/3112	25	DS	Application for review of the decision of the Director of Liquor Licensing to issue a prohibition order.	Prohibition order varied.
21/3113	25	Westmore Pty Ltd	Application for a review of a decision by the Director of Liquor Licensing to cancel a liquor store licence in relation to premises known as Hi Mart.	Application granted. Liquor licence reinstated.
21/3114	25	Planbig Investments Pty Ltd	Application for review of the decision of the Director of Liquor Licensing to refuse the grant of a liquor store licence in relation to premises known as Iluka Plaza.	Application granted.
21/3115	115AD	BR	Application for review of a barring notice.	Barring notice varied.
21/3116	115AD	DGE	Application for review of a barring notice.	Barring notice varied.
21/4137	25	Bar Bes (WA) Pty Ltd	Application for a review of the decision by the Director of Liquor Licensing with respect to two section 117 trading conditions for premises known as Bar Bes.	Section 117 licence conditions varied.
21/4291	115AD	MB	Application for review of a barring notice.	Application dismissed.
21/4296	115AD	TJC	Application for review of a barring notice.	Barring notice quashed.
21/4317	115AD	Anonymous	Application for review of a barring notice.	Application dismissed.

Applications determined in 2021-22				
Case No.	Section of Act	Name	Matter	Outcome
21/4351	24	JJC	Referral by the Director of Liquor Licensing of an application by the Commissioner of Police to issue a prohibition order against JJC.	Application dismissed. Decision appealed to the Supreme Court.
21/4520	115AD	CJD	Application for review of a barring notice.	Application dismissed.
21/4521	115AD	LKO	Application for review of a barring notice.	Application dismissed.
21/4602	115AD	APS	Application for review of a barring notice.	Barring notice varied.
21/4864	115AD	PMW	Application for review of a barring notice.	Application withdrawn.
21/5469	115AD	JVC	Application for review of a barring notice.	Application dismissed.
21/5519	115AD	NGS	Application for review of a barring notice.	Application dismissed.
21/5522	115AD	JH	Application for review of a barring notice.	Barring notice varied.
22/97	115AD	DJB	Application for review of a barring notice.	Application withdrawn.
22/98	115AD	MDA	Application for review of a barring notice.	Application dismissed.
22/99	115AD	JME	Application for review of a barring notice.	Application dismissed.
22/211	115AD	JH	Application for review of a barring notice.	Barring notice varied.
22/297	115AD	TE	Application for review of a barring notice.	Application dismissed.
22/514	115AD	GC	Application for review of a barring notice.	Barring notice varied.
22/564	115AD	NY	Application for review of a barring notice.	Barring notice varied for one-off occasion only.
22/695	115AD	JPT	Application for review of a barring notice.	Application withdrawn.
22/696	115AD	NKB	Application for review of a barring notice.	Application discontinued as the barring notice expired.
22/697	115AD	GSC	Application for review of a barring notice.	Barring notice varied.
22/698	115AD	LHS	Application for review of a barring notice.	Application withdrawn.

Applications determined in 2021-22				
Case No.	Section of Act	Name	Matter	Outcome
22/699	25	CTS	Application for review of the decision of the Director of Liquor Licensing to refuse an application to vary or revoke a prohibition order.	Application dismissed.
22/700	115AD	KPS	Application for review of a barring notice.	Barring notice varied.
22/703	115AD	DJB	Application for review of a barring notice.	Orders issued to quash barring notice issued on 9 March 2022.
22/844	115AD	DY	Application for review of a barring notice.	Application dismissed.
22/873	115AD	CGS	Application for review of a barring notice.	Application withdrawn.
22/874	115AD	TJM	Application for review of a barring notice.	Orders issued to vary the barring notice to expire on 10 February 2022.
22/916	115AD	KSH	Application for review of a barring notice.	Orders issues to vary the barring notice to expire on 10 February 2022.
22/1737	25	CLS Pty Ltd	Application for review of the decision of the Director of Liquor Licensing to refuse an application for an extended trading permit (ongoing hours) to allow Sunday trading at premises known as Condello's Liquor Store.	Application withdrawn.
22/2812	115AD	DF	Application for review of a barring notice.	Application withdrawn.
22/1841	115AD	RH	Application for review of a barring notice.	Barring notice varied.

There are 10 matters that have been heard but not determined as at 30 June 2022:

Matters heard but not determined as at 30 June 2022				
Case Number	Name	Section of Act	Nature of matter	Status
21/1114	Spinifex Holdings (WA) Pty Ltd	95	Complaint by the Commissioner of Police alleging there is proper cause for disciplinary action.	Decision reserved.
21/1115	Boab Inn Pty Ltd			
21/1116	Emanuel Dillon			
21/1917	Spinifex Holdings (WA) Pty Ltd	147	Application by the Commissioner of Police seeking forfeiture of illegal gains due to breaches of licence conditions.	Decision reserved.
21/2179	Chief Health Officer	25	Application for review of the decision of the Director of Liquor Licensing to grant a conditional special facility (cinema) licence for premises known as United Cinemas Rockingham with a juvenile exemption pursuant to section 120(1)(e) of the Act.	Matter to be determined on the papers.
21/2702	Chief Health Officer	25	Application for review to grant a conditional special facility (cinema) licence for premises known as Hoyts Karrinyup with a juvenile exemption pursuant to section 120(1)(e) of the Act.	Decision reserved.
21/958	Endeavour Group Limited	25	Application for review of the decision of the Director of Liquor Licensing to refuse the grant of a liquor store licence in relation to premises known as BWS Falcon.	Decision reserved.
22/605	Endeavour Group Limited	25	Application for review of the decision of the Director of Liquor Licensing to refuse the grant of a liquor store licence in relation to premises known as BWS Kelmscott	Decision reserved.
22/2067	Liquorland (Australia) Pty Ltd	24	Referral of grant of a liquor store licence in relation to premises known as Liquorland Karrinyup.	Decision reserved.
22/2810	DN	115AD	Application for review of a barring notice.	Matter to be determined on the papers.

Finally, there are eight matters that are awaiting consideration and will be carried over to the 2022-23 FY:

Matters to be carried over to 2022-23 FY				
Case Number	Name	Section of Act	Nature of application	Status
21/1918	Bradley Dunn	24	Referral by the Director of Liquor Licensing of applications by the Commissioner of Police for revocation of approved managers approval.	Matters to be determined together on the papers. Applications on hold pending the outcome of matters 21/1114, 21/1115, 21/1116 and 21/1917.
21/1919	Emanuel Dillon			
21/1920	Kenneth Dodge			
22/1601	Deva Paradiso Pty Ltd	25	Application for review of the decision of the Director of Liquor Licensing to refuse to vary a trading condition of a liquor licence for premises known as Club Paradiso.	Matter heard on 26 July 2022. Decision reserved.
22/2151	Anonymous	24	Referral by the Director of Liquor Licensing of two applications by the Commissioner of Police for prohibition orders.	Matters listed for hearing on 3 October 2022.
22/2640	Jashan Pty Ltd (Licensee) and Vinod Parihar (director)	95	Complaint by the Commissioner of Police alleging there is proper cause for disciplinary action against the licensee and director for breach of the <i>COVID Restrictions Gatherings and Related Measures Directions No 2</i> on 31 December 2021 at a premises known as The George.	Matters heard on 23 August 2022. Decision reserved.
22/3514	MM	115AD	Application for review of a barring notice.	Matter to be determined on the papers.
22/3591	RB	115AD	Application for review of a barring notice.	Matter to be determined on the papers.

Supreme Court Challenges

LIQUORLAND (AUSTRALIA) PTY LTD v DIRECTOR OF LIQUOR LICENSING - GDA 7 of 2021

As reported in last year's annual report, on 10 May 2021, Liquorland (Australia) Pty Ltd appealed the decision of the Commission to refuse an application for the conditional grant of a liquor store licence for premises known as Liquorland Karrinyup, on the following grounds:

The Commission erred in law in that it misconstrued section 36B(4) of the *Liquor Control Act 1988* in that:

1. It held that the phrase "the requirements" for packaged liquor is limited in its scope to the physical item or product of packaged liquor when the sub-section, properly construed, does not so limit the meaning of the phrase.

Particulars

Properly construed the sub-section provides for the consideration of the requirements for packaged liquor by reference to the same matters as are considered under the public interest test in section 38(2) of the Act; and

The sub-section creates a different test to the public interest test in section 38(2) of the Act in that the sub-section applied an objective element by asking whether or not 'the requirements for packaged liquor' can 'reasonably' be met by existing packaged liquor premises in the relevant locality, which element is not part of the public interest.

2. It held that the phrase cannot 'reasonably be met' means, in effect, 'cannot sensibly, rationally or moderately be met' having regard to contemporary standards and expectations for the requirements of packaged liquor.
3. It held that the relevant locality is to be determined by reference to the area from which customers of the proposed premises will be drawn when the sub-section, properly construed, requires that the relevant locality is to be determined by reference to the area, district, or neighbourhood within which the proposed premises are to be located.

On 26 October 2021, the Supreme Court published its determination in *Liquorland (Australia) Pty Ltd -V- Director of Liquor Licensing* [2021] WASC 366. The Court upheld all grounds of the appeal, quashed the Commission's decision and remitted the matter back to the Commission for reconsideration.

On 7 December 2021, at the request of the parties, the Commission issued orders to quash the original decision of the delegate of the Director of Liquor Licensing and referred the matter back to the Director to reconsider his decision according to law.

On 28 April 2022, the Director referred the matter to the Commission for determination pursuant to section 24 of the Act. The Commission heard the matter on 30 June 2022 and reserved its decision.

HADES CORP PTY LTD AS LICENSEE OF MILLENNIUM RESTAURANT (ACN 636 913 070) AND COMMISSIONER OF POLICE – GDA 5 OF 2022

On 15 July 2021, the Commissioner of Police lodged a section 95 complaint against Hades Corp Pty Ltd and Mr Lenno Joseph Parasuraman (director and shareholder) in relation to a premises known as Millennium Restaurant.

On 8 February 2022, the Commission determined that the complaint had been made out to a satisfactory standard such that proper cause for disciplinary action exists. The Commission imposed a penalty of \$30,000 against Hades Corp Pty Ltd, and imposed amended trading hours and conditions on the Millennium Restaurant's liquor licence.

On 10 February 2022, Hades Corp Pty Ltd appealed the decision to the Supreme Court on the following grounds:

1. The Commission erred in law by taking into account irrelevant considerations or did not take into account relevant considerations, in imposing the monetary fine on the appellant.
2. The Commission erred in law by varying the trading hours in a manner that was legally unreasonable, alternatively, by taking into account irrelevant considerations or did not take into account relevant considerations in varying the trading hours¹.
3. The Commission erred in law by failing to provide reasons for its decision to varying the trading hours, or the reason as to why the continued operation of the premises under the current trading hours is unsuitable.
4. The Commission erred in law by denying the appellants procedural fairness in varying the trading hours without affording the appellants any or adequate opportunity to make submissions on them.
5. The Commission erred in law by denying the appellant procedural fairness in imposing the additional trading conditions (h)² and (m)³.
6. The Commission erred in law by imposing additional condition (m) in a manner that was legally unreasonable, alternatively, by failing to take into account relevant information in imposing additional condition (m).

At the date of this report, this matter is yet to be determined.

¹ "The trading hours are between 10:00am and 3:00am seven days a week and otherwise as prescribed in section 98F of the Act."

² "No liquor is to be sold or supplied for consumption on the Premises in any of the following ways: i) no liquor is to be supplied in a vessel with a capacity exceeding 600 ml, except bottles of wines; ii) no spirit-based beverages are to be supplied in vessels with a capacity exceeding 375 ml; and iii) in measurements of spirits that exceed 45 ml in any vessel."

³ "Staff, employees and agents of the licensee are not permitted to consume liquor at the premises. "Agents" includes "party hostesses" or persons engaged to provide entertainment of any kind."

JB FOODS PTY LTD v COMMISSIONER OF POLICE AND CHIEF HEALTH OFFICER AND PILBARA COMMUNITY ALCOHOL AND DRUG SERVICE – GDA 6 OF 2022

On 5 September 2019, JB Foods Pty Ltd lodged an application for the conditional grant of a liquor store licence for premises known as Karratha Cellars. On 8 July 2020, the Director of Liquor Licensing referred the matter to the Commission for determination pursuant to section 24 of the Act.

On 12 April 2022, the Commission refused the application as the applicant had failed to discharge its onus under section 36B(4) of the Act in relation to whether existing packaged liquor premises already met the local package liquor requirements.

On 3 May 2022, the applicant appealed the decision to the Supreme Court on the following grounds:

The Commission erred in law in failing to find that:

- convenient one-stop shopping for consumers of packaged liquor in a locality; and/or
- consumer choice; and/or
- the proposed offering of a higher standard of presentation and security in the proposed packaged liquor premises, including the provision of opportunities to taste, discover and enjoy packaged liquor products otherwise unfamiliar to such consumers;

are relevantly “requirements of consumers”, such that the Commission thereby misconstrued section 36B(4) of the Act.

The Commission erred in law in finding:

- that Karratha City Shopping Centre reasonably met consumer requirements for one-stop shopping in a single centre; and
- that the existing packaged liquor stores in the locality reasonably met consumer requirements for a range of packaged liquor products (consumer choice);

such that the Commission thereby misconstrued section 36B(4) of the Act.

The Commission erred in law in finding that the whole of Karratha was the relevant “locality” for the purposes of section 36B(4) of the Act, in that the finding was made in a legally unreasonable way.

Particulars

The Commission misconstrued section 36B(4) of the Act by:

- failing to find that the word “locality” in section 36B(4) of the Act bore the same meaning it held in section 38(4)(b) of the Act;
- conflating the process of discerning the meaning of the term “locality” in section 36B(4) of the Act with the application of the facts to the meaning of that term; and
- basing its finding as to the meaning of “locality” in section 36B(4) of the Act impermissibly on external materials and facts, such as the Director’s policy (at [57] – [58]), when the meaning is to be determined by reference only to the text of the Act;

- The Commission failed to take into account or otherwise engage at all with the demographic data and opinions expressed in the Retail Economist Report of Pracsys;
- There was no evidence as to what was, and how to characterise, the residents of Karratha as one “community”, and no reasoning to explain how that defined the “locality”;
- There was no reasoning as to why the nature of “at risk groups” and their location were relevant to defining the locality;
- There was no reasoning for why the “forced manner” of the town’s expansion was relevant to defining the locality;
- There was no reasoning as to why the “isolation” of the town site was relevant to defining the locality;
- There was no reasoning as to why the fact that any person travelled from one place to another in Karratha for any purpose was relevant to defining the locality;
- There was no reasoning as to how such factors justified the conclusion that the “town” of Karratha (in point of fact a city) comprised “an entire community” such that the relevant “locality” was the entire City of Karratha; and

The Commission failed to consider, or otherwise engage at all, with the evidence that planning for the suburb of Tambrey as it was commenced and developed, focused on orderly and proper planning principles that required the delivery of services and amenities that conformed with the planning framework applicable to the proposed development, as identified in its Structure Plan and all relevant state planning policies, by which the suburb of Tambrey formed a particular area for consideration.

At the date of this report, this matter is yet to be determined.

COMMISSIONER OF POLICE v JJC - GDA 9 of 2022

On 8 June 2021, the Commissioner of Police lodged an application for a prohibition order against JJC, prohibiting him from entering all licensed premises within Western Australia for a period of three years. On 25 October 2021, the Director of Liquor Licensing referred the matter to the Commission for determination pursuant to section 24 of the Act.

On 8 June 2022, the Commission dismissed the application. On 24 June 2022, the Commissioner of Police appealed the decision to the Supreme Court on the following grounds:

Ground 1

The Liquor Commission erred in construing section 152E of the *Liquor Control Act 1988* in that it found that section 152E only applied to offending behaviour in or near licensed premises when, on its proper construction, section 152E is not so limited.

Particulars

The Liquor Commission found, at paragraph [41] of its written reasons for decision (Reasons), that 'there should be a nexus between the anti-social behaviour and liquor licensed premises such that the offending behaviour is required to be in or near licensed premises before section 152E can respond'. In doing so, the Liquor Commission construed section 152E so as to introduce a requirement not explicitly set out in the legislative text, or

otherwise required by the context, rather than merely considering the public interest test set out in the section.

Ground 2

The Liquor Commission's reasoning, at paragraph [40](b) of its Reasons, was irrational.

The Liquor Commission found at paragraph [40](b) of its Reasons that a prohibition order would be of limited benefit because the Respondent had always met his alcohol requirement through secondary supply.

This conclusion was irrational, because:

- section 109 of the *Liquor Control Act 1988 (WA)* makes it an offence to sell alcohol without a valid licence or permit. Accordingly, the Liquor Commission implicitly considered the potential for the Respondent to unlawfully avoid the effect of a prohibition order (being a potential applicable to the grant of any such order) to be a reason for not imposing that order; and
- in any event, the evidence before the Liquor Commission was that the Respondent was now able to, and intended to, purchase his own alcohol, such that it was reasonably likely that a prohibition order would be beneficial to minimise harm or ill-health in the future.

Ground 3

The Liquor Commission's reasoning, at paragraph [40](a) of its Reasons, was irrational.

Particulars

At paragraph [40] of its Reasons, the Liquor Commission found that:

- the Respondent had a 'significant alcohol problem';
- the Respondent had a list of police incidents that listed 11 of 38 family violence incidents as alcohol-related; and
- the Respondent's conduct during a number of those incidents 'unequivocally involved alcohol'.

Considered as a whole, the Liquor Commission's reasons indicate that it accepted that the Respondent's criminal behaviour in those 11 incidents was caused, in whole or in part, by his consumption of alcohol.

Whether the Respondent also committed offences while sober is irrelevant to the issue of whether he committed offences as a result of his consumption of alcohol. It was accordingly irrational for the Liquor Commission to take that issue into account when assessing whether it would be in the public interest to issue a prohibition order.

At the date of this report, this matter is yet to be determined.

Significant Issues Impacting the Liquor Commission

Trends or Special Problems that have Emerged

The *Liquorland* Decision

The *Liquorland* decision provides guidance on how the provisions of section 36B of the Act are to be construed when determining section 25 reviews in relation to an application for the grant of a new packaged liquor outlet. Matters to be considered include:

1. Section 36B is not limited in contemplation for only “packaged liquor”:
 - (a) The Commission must have regard to the objects of the Act.
 - (b) 'Requirements of consumers' mean the same in section 36B(1) and section 5(1)(c);
 - (c) Consumer requirements will arise in two contexts under the public interest test or section 36B.
 - (d) In deciding whether the requirements of consumers cannot reasonably be met by existing premises, the Commission will consider those requirements, and whether they can be reasonably met by existing premises, taking into account (among other things) the object in section 5(1)(c).
 - (e) In considering the object in section 5(1)(c) in this context, the Commission will need to have regard to the proper development of the industry in identifying the consumer requirements that, in this context, the Act seeks to cater for and in determining whether those requirements can be reasonably met by existing premises.
2. Public interest versus section 36B:
 - (a) The “Consumer Requirements” condition requires consideration of whether consumer requirements cannot reasonably be met by the existing premises (having regard to the objects of the Act). It is an objective test.
 - (b) The Public Interest condition looks to, among other things, the risk that granting the application may have negative consequences, such as harm or ill-health, the reduction of amenities in the locality, and offence to those who live or work there. It also looks to any effect the granting of the licence may have in relation to tourism or community or cultural matters. Determining the public interest is a discretionary value judgment (to be made having regard to the objects of the Act).
 - (c) There is no reason why matters such as convenience, product range, service and efficiency would not, or should not, be relevant to both conditions.
 - (d) The reference to 'cannot reasonably be met' in section 36B(4) of the Act means 'cannot sensibly or rationally be met'. It does not mean 'cannot be provided for without occasioning substantial difficulty or substantial inconvenience'.
3. Locality:
 - (a) The word 'locality' in section 36B denotes an area that surrounds, and is geographically close to, the location of the proposed premises. It was not intended to equate to the area(s) from which consumers would come, i.e., catchment areas.

- (b) This is not to say that the 'locality' will inevitably, or even usually, be a circular area within a particular radius of the proposed site. The shape and size of the 'locality' may be influenced by topographical features (including man-made features such as roads) and the areas from which the proposed site could be accessed reasonably easily on foot or push-bike. If there is a community in the area of the proposed site, the geographical spread of that community may also influence the shape and size of the 'locality'.
- (c) Due to the variety of factual situations that may arise, it is impossible to prescribe a specific test to be applied or even an exhaustive list of the factors that will or may be relevant in the determination of the locality in any given case.
- (d) Premises outside an identified locality remain relevant to the assessment under section 36B, despite its reference to 'existing packaged liquor premises in the locality in which the proposed licensed premises are, or are to be, situated'.

Barring notice review applications

There was an increase in the number of reviews of barring notices imposed by the Commissioner of Police under section 115AD of the *Liquor Control Act 1988* compared to the previous reporting period. This may be a result of the easing of COVID-19 restrictions across Western Australia.

Forecasts of the Commission's Workload for 2022-23

Notwithstanding the increase in the number of barring notice review applications and further considerations of section 36B in light of the *Liquorland* decision, it is expected that the Commission's workload will remain steady.

Proposals for Improving the Operation of the Commission

The Department of Local Government, Sport and Cultural industries is continuing to explore options to improve capability and efficiencies for executive support services provided to the Commission.

Other Legal and Government Policy Requirements

The Commission meets its requirements through arrangements with the Department of Local Government, Sport and Cultural Industries. The Department's Annual Report contains information on how the Department meets the following requirements:

- Occupational safety, health and injury management;
- WA multicultural policy framework;
- Substantive equality;
- Disability Access and Inclusion Plan Outcomes;
- Compliance with Public Sector Standards and Ethical Codes;
- Recordkeeping Plans;
- Substantive Equality; and
- Occupational Safety, Health and Injury Management.

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.

The Commission incurred the following expenditure in 2021-22.

Expenditure	Organisation	Amount (\$)	Total (\$)
Advertising	Government Gazette	\$285.60	\$285.60
Grand total			\$285.60

Remuneration of Members

Chairperson

The Chairperson is entitled to payment of:

- \$763 per day for hearings or deliberations/meetings of less than 4 hours; or
- \$1,074 per day for hearings or deliberations/meetings of over 4 hours.
- Plus \$129 per hour for preparation time. The rate which applies is 3 hours for up to one day and 3 hours for each additional day of hearings or deliberations or part thereof.
- Plus \$129 per hour for decision writing time. The rate which applies is 5 hours for up to one day and 3 hours for each additional day of hearings or deliberations or part thereof.

Members

The members are entitled to payment of

- \$505 per day for hearings or deliberations/meetings of less than 4 hours; or
- \$773 per day for hearings or deliberations/meetings of over 4 hours.
- Plus \$102 per hour for preparation time. The rate which applies is 3 hours for up to one day and 3 hours for each additional day of hearings or deliberations or part thereof.
- Plus \$107 per hour for decision writing time. The rate which applies is 5 hours for up to one day and 3 hours for each additional day of hearings or deliberations or part thereof.

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

Position title	Member name	Type of remuneration	Period of membership		Gross/actual remuneration for 2021-22
Chairperson	Kate Pedersen	Sitting fees plus preparation and decision writing time	1/7/2021	30/6/2022	\$4,891
Deputy Chairperson	Emma Power	Sitting fees plus preparation and decision writing time	1/7/2021	30/6/2022	\$12,698

Position title	Member name	Type of remuneration	Period of membership		Gross/actual remuneration for 2021-22
Member	Paul Shanahan	Sitting fees plus preparation and decision writing time	1/7/2021	30/6/2022	\$6,829
Member	Elanor Rowe	Sitting fees plus preparation and decision writing time	1/7/2021	30/6/2022	\$6,812
Member	Kirsty Stynes	Sitting fees plus preparation and decision writing time	1/7/2021	30/6/2022	\$3,533
Member	Nicholas Van Hatten	Sitting fees plus preparation and decision writing time	1/7/2021	30/6/2022	\$9,016
Member	Alya Barnes	Sitting fees plus preparation and decision writing time	1/7/2021	30/6/2022	\$4,374
Member	Pamela Hass	Nil – Public servant	1/7/2021	30/6/2022	Nil
Member	Dr Kim Hames	Sitting fees plus preparation and decision writing time	1/7/2021	30/6/2022	\$6,324
Member	Prof. Colleen Hayward	Sitting fees plus preparation and decision writing time	1/7/2021	30/6/2022	\$3,304
Member	Sandra Di Bartolomeo	Sitting fees plus preparation and decision writing time	20/9/2021	30/6/2022	\$5,887
Member	Sarah Oliver	Sitting fees plus preparation and decision writing time	1/7/2021	13/8/2021	\$841
Former Member	Alex Zilkens ⁴	Sitting fees plus preparation and decision writing time	Nil	Nil	\$1,614
					\$66,123

⁴ Payment for work undertaken during 2020/21.

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Availability in other formats

This publication can be made available in alternative formats. The report is available in PDF format at [Liquor Commission](#).

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