

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

Applicant: Chernov Pty Ltd, Chitty Pty Ltd and Legge Pty Ltd trading as Sunset Events

Intervener: Director of Liquor Licensing

Commission: Mr Eddie Watling (Deputy Chairperson)
Ms Helen Cogan
Mr Greg Joyce

Date of Hearing: 30 October 2009 (**in Chambers**)

Date of Determination: 30 November 2009

Premises: Applicant's former premises, Suite 9, 100 Hay Street, Subiaco

Applicant's relocated premises, 4 Stack Street Fremantle

Matter: Application pursuant to Section 25 of the *Liquor Control Act 1988*

Legislation: *Liquor Control Act 1988*

Determination: The Commission has determined pursuant to section 25(4) of the *Liquor Control Act 1988* to affirm the decision of the Director of Liquor Licensing and refuse the Application for the removal and transfer of the Licence No. 6280086710, however a remedy is proposed—see paragraphs 6-8, page 6 of this determination.

1. **Background**

- 1.1 On 11 September 2002, a Special Facilities – Catering Licence was issued to the Applicant's predecessor "...for the prescribed purpose of caterer and authorises the sale of liquor from the Licensed premises (being defined areas of the building situated at Suite 9, 100 Hay Street Subiaco), for consumption at unlicensed premises where the caterer has agreed to provide a food and/or beverage service for a pre-arranged event, reception or function".
- 1.2 On 5 August 2008, pursuant to Section 92 of the Act, the delegate of the Director of Liquor Licensing suspended the Licence (No 6280086710) with effect from that date by reason of the fact that the Applicant had ceased to occupy or carry on business at the licensed premises. No notice of such cessation was given to the licensing authority.
- 1.3 On 4 November 2008, the Applicant lodged applications:
 - (1) for the transfer of the Licence (section 82 of the Act) and
 - (2) for the removal of the Licence (section 81 of the Act) to new premises at 4 Stack Street Fremantle.
- 1.4 On 12 February 2009, the Delegate of the Director of Liquor Licensing refused the applications for removal and transfer of the Licence (Decision No 191260). In that Decision the Delegate made reference to the fact that the Licence had been suspended for a period not exceeding 28 days, had not been cancelled and that the Director of Liquor Licensing ("the Director") had stated that the Licence would be cancelled. It is noted that in terms of later correspondence between the Applicant's Solicitors and the Director agreed that no action to cancel the Licence would be taken until after 31 July 2009.
- 1.5 By letter dated 13 March 2009, addressed to the Liquor Commission the Applicant sought a review of the Decision (No 191260) of the Delegate of the Director of Liquor Licensing on the grounds set out in that letter.
- 1.6 On 17 March 2009, the Director lodged a Notice of intervention in the matter.
- 1.7 On 7 April 2009, the Liquor Commission, at the request of the Director and with the consent of the Applicant quashed the decision (No 191260) and referred the applications back to the Director for redetermination.

- 1.8 On 29 June 2009, the Director refused the applications for removal and transfer of the Licence.
- 1.9 On 31 July 2009, the Applicant lodged an application for review of the Director of Liquor Licensing's decision dated 29 June 2009.
- 1.10 On 4 August 2009, the Director lodged a Notice of Intervention.
- 1.11 On 30 October 2009, the application to review was by consent of the Applicant and the Intervener heard in Chambers (on the papers).

2 Application for Review – Material and Submissions

- 2.1.1 All the material which was before the Director of Liquor Licensing when making his Decision on 29 June 2009 was before the Liquor Commission and was considered by the Liquor Commission in making its determination, including :
 - 2.1.2 Grounds for Review (lodged on 31 July 2009);
 - 2.1.3 Further and Better Particulars (lodged on 31 July 2009);
 - 2.1.4 Supplementary Submissions (lodged on 31 July 2009);
 - 2.1.5 Final Submissions (lodged on 16 October 2009);
 - 2.1.6 Intervener's Submissions dated 16 October 2009;
 - 2.1.7 Submissions in Reply (lodged on 22 October 2009);
 - 2.1.8 Submissions under Section 38 (of the Act) – Public Interest Assessment (lodged on 22 October 2009).

All the submissions (and grounds for review) were comprehensive, thorough and useful.

3 Reasons

1. The Application for Removal and Transfer of Licence followed suspension of the Licence by the Director as a consequence of the re-location of the Licensees business premises, which was effected without advice to the Licensing Authority.

2. The Commission has closely examined the Applicant's submissions lodged on November 4 2008, requesting the transfer of the Licence to Sunset Events and setting out a number of options for the operation of that Licence - the preferred option being to:

“Seek contemporaneous removal and transfer of the Sunset Licence to Sunset at the new premises.”

3. Whilst in the normal course, the Transitional Provisions of the Act (Schedule 1) might have applied to allow the Licence to be maintained in the original form, the re-location of the Licensed premises, and the consequential Application for Removal and Transfer of Licence, has given occasion for the Director to re-assess the Licence category/class.

4. The Commission considers that the Director's application of Section 82(1) of the Act which reads:

“ Subject to section 83, the Director has the same powers in relation to the approval of the transfer of a Licence as the licensing authority, appropriately constituted, has in relation to the grant of a new Licence of the same class.

is correct under the circumstances, particularly as there have been relevant changes to the Act, the Regulations and the Director of Liquor Licensing Policies since the Special Facilities Licence - Catering was issued.

5. The Commission accepts the Director's submission that if the Applicant were to lodge a new application for a Licence of the same class it would not satisfy the requirements necessary for approval. The Applicant has acknowledged this situation in the Application for Removal and Transfer of Licence – paragraph 12 of Applicant's submission lodged with the letter dated May 25 2009, to the Director of Liquor Licensing.
6. The Commission has made its determination in this matter having taken into consideration the provisions of section 33 of the Act –the absolute discretion of the Commission to grant or refuse an application under the Act on any ground or for any reason that the Commission considers in the public interest, and the provisions of section 16(7)(b) and (c) of the Act, to act according to equity, good conscience and the substantive merits of the case without regard to technicalities and legal forms and to act speedily and with as little formality and technicality possible.

4. General Comments

1. In view of the special circumstances of this application the Commission believes that it is appropriate that some general comments be provided in order to assist the implementation of the processes that are required to enable Sunset Events to maintain and grow its present operations in accordance with the Objects of the Act – sections 5(1)(c) and 5(2)(a),(d) and (e).
2. In general terms, the Applicant has sought the removal and transfer of its existing Licence to maintain processes that are considered to be efficient and cost effective in operating its events business.
3. As there is no appropriate Special Facilities Licence class available to the Applicant it will be necessary for the Applicant to apply for an Occasional Liquor Licence in relation to each of the events to be conducted. In accordance with Section 59 (1) of the Act:

“An occasional Liquor Licence authorises the Licensee to sell, or the supply or consumption of liquor –

- (a) at such times, and on such occasion or during such period not exceeding 3 weeks, as may be specified;*
- (b) at such places, and within such designated area, as may be specified; and*
- (c) subject to such terms or conditions as may be specified.”*

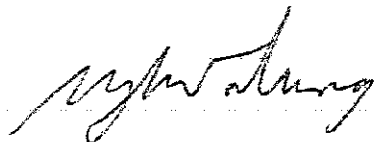
4. The Departmental Occasional Liquor Licence Policy further states:

“The term “occasion” refers to a gathering, function or event, including a sporting contest show, exhibition, trade or other fair or reception at which it is proposed that liquor be sold or supplied and consumed.”

5. The Commission sees no reason why the process for obtaining an Occasional Licence for an event should be any more restrictive or burdensome or impose greater business uncertainty than has applied in the past. Section 59(5) of the Act provides the Director (Licensing Authority) with sufficient flexibility to apply an Occasional Licensing process that is appropriate to meet the Objects of the Act as set out in sections 5(1)(c) and 5(2) and to facilitate the needs of business.

6. Whilst the provisions of Section 38 of the Act in relation to the requirements for a Public Interest Test will apply to each Occasional Licence application, where the same event is held on a regular or annual basis, without a change in circumstances, the Licensing Authority may issue an Occasional Licence to cover that event over an extended period i.e. more than one year if an annual event. If however, there is a significant change in circumstances, such as the relocation of the event to another site, then the provisions of Section 38 of the Act will again take effect.
7. An approach, as suggested in 6 above, will address the Applicant's concerns in relation to the administrative and cost burdens and will remove any uncertainties that might affect the staging of events and in business development.
8. Similarly, as the Occasional Liquor Licence Policy states:
"As a general principle, Occasional Liquor Licences may be granted up to 12 times within a 12 month period"

There is sufficient flexibility for the Licensing Authority to approve more than 12 occasional licences within a 12 month period, where deemed to be in the public interest.
9. Whilst this hearing was held in Chambers, it none-the-less was a re-hearing of all of the material before the Director when making the decision. The Commission is of the view that the Director did not err at law in reaching the decision nor is it considered that there has been any denial of natural justice in either the decision or re-hearing processes. The positions of both parties have been clearly articulated in the submissions and have been given full consideration by the Commission in reaching this determination.



Mr Eddie Watling
DEPUTY CHAIRPERSON