

Liquor Commission of Western Australia

(Liquor Control Act 1988)

Applicant: Nullagine Hotel Pty Ltd
(represented by Mr Peter Fraser of Dwyer Durack)

Respondent: Director of Liquor Licensing
(represented by Mr Nick John of State Solicitor's Office)

Commission: Mr Jim Freemantle (Chairman)
Mr Eddie Watling
Dr Eric Isaachsen

Matter: Application for review of a decision of the delegate of the Director of Liquor Licensing relating to a section 64 "Show Cause" in relation to premises known as the Nullagine Hotel.

Date of Determination: 24 August 2011

Determination

1. On 31 May 2011, the Delegate of the Director of Liquor Licensing ("the Director") imposed the following conditions upon the liquor licence for the Nullagine hotel under section 64 of the *Liquor Control Act 1988* ("the Act").
 1. *Having regard to conditions 2 and 3 below, packaged beer (as defined by section 3 of the Act) for consumption off the licensed premises may only be sold and supplied from 12 midday to 5 pm; except on a Sunday, Good Friday, or Christmas Day in which case the sale and supply of packaged liquor is prohibited; and no trading is permitted before noon on ANZAC Day.*
 2. *The sale and supply of liquor for consumption on premises is prohibited before 12 midday, except where it is sold or supplied ancillary to a meal or to a lodger.*
 3. *The sale and supply of packaged beer may only be sold or supplied in the following quantities:*
 - a. *where the beer contains less than 2.7 per cent concentration of ethanol at 20 degrees Celsius – in any quantity;*

- b. *where the beer contains greater than 2.7 per cent concentration of ethanol at 20 degrees Celsius – a maximum cumulative quantity of 11.5 litres per customer per day; and that beer can only be sold between 4 pm and 5 pm.*
- 4. *The restriction on the sale and supply of packaged beer under conditions 2 and 3 does not apply to:*
 - a. *a lodger;*
 - b. *a liquor merchant; or*
 - c. *a station owner or pastoralist and only on the condition that:*
 - i. *the liquor has been pre-ordered at least 24 hours in advance of pick-up/delivery; and*
 - ii. *the licensee maintains on the licensed premises, a register of purchases, which must be made available for inspection at the request of an authorised officer; and*
 - iii. *the register must contain the following information in relation to the station owner or pastoralist:*
 - 1. *Name*
 - 2. *Address*
 - 3. *Address to which the liquor is being delivered/taken*
- 5. *Where a packaged liquor product is available from a manufacturer in a non-glass container, licensees are prohibited from selling the product in a glass container.*
- 6. *The licensee is required to submit returns of alcohol sales data, by product type and quantity, to the Director of Liquor Licensing every four months with the first return required by 31 October 2011. The return must contain the following information:*
 - a. *Total amount paid or payable to the licensee and the quantity supplied in respect of:*
 - i. *Low alcohol liquor (2.7% ethanol by volume or less)*
 - ii. *Mid strength alcohol liquor (2.8% to 3.5% ethanol by volume)*
 - iii. *Full strength alcohol liquor (3.6% ethanol by volume or more)*
 - b. *The information is to be provided under the headings of the following product types: wine, beer, and spirits (as defined in section 3 of the Act), and pre-packaged pre-mixed alcohol beverages generally known as ‘ready-to-drinks (RTDs).*
- 2. An application seeking review of the decision of the Delegate of the Director was lodged with the Liquor Commission on 10 June 2011. The Director of Liquor Licensing lodged a Notice of Intervention pursuant to section 69(11) of the Act on 14 June 2011.
- 3. On 15 August 2011, the State Solicitor’s Office on behalf of the Director of Liquor Licensing conceded that the applicant had been denied procedural fairness and the parties consented for the decision to be quashed and the matter to be referred back to the Director.

4. Consequently, the determination of the Delegate of the Director dated 31 May 2011 is quashed and the matter is referred back to the Director for redetermination.

A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a horizontal line and a smaller, more distinct signature.

JIM FREEMANTLE
CHAIRPERSON