

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

<b>Applicant:</b>	Chief Health Officer <i>(Represented by Ms Felicity Negus of the State Solicitor's Office)</i>
<b>Respondent:</b>	The Greater Union Organisation Pty Ltd and Village Cinemas Australia Pty Ltd <i>(Represented by Mr Peter Fraser of Dwyer Durack Lawyers)</i>
<b>Commission:</b>	Mr Nicholas van Hattem (Deputy Chairperson) Mr Paul Shanahan (Member) Ms Shelley Davies (Member)
<b>Matter:</b>	Application pursuant to section 25 of the <i>Liquor Control Act 1988</i> (the "Act") for review of the decision of the Director of Liquor Licensing to grant a Special Facility (Cinema) licence for premises known as Event Cinemas Whitfords, with a juvenile exemption pursuant to section 120(1)(e) of the Act and subject to trading conditions. The Applicant asks the Commission to impose three further trading conditions on that licence.
<b>Premises:</b>	Event Cinemas Whitfords Westfield Whitfords City Shopping Centre 470 Whitfords Avenue Hillarys, Western Australia, 6025
<b>Date of lodgement of Application:</b>	10 January 2023
<b>Date of Hearing:</b>	19 April 2023
<b>Date of determination:</b>	28 February 2024

**Determination:**

The Application is allowed. The Decision of the Delegate is varied and the Application for the variation of the Special Facility (Cinema) licence in respect of the Premises is approved subject to the following additional trading conditions:

- a) **Condition 11:** Liquor may be served at the Premises from a discrete and clearly delineated fixed area of the Premises that is separate from the 'Candy Bar' area (i.e., separate from the area at the Premises used for the sale of confectionary, food, non-alcoholic drinks, and other products to patrons including children).
- b) **Condition 12:** The licensee must display signage that is clear, easy to read and prominently displayed at the Premises advising that:
  - (i) the supply of liquor to juveniles is an offence; and
  - (ii) night vision technology will be employed in the cinema to monitor patrons.
- c) **Condition 13:** Liquor may not be consumed within any theatre being utilised solely for a pre-arranged child focused cinema-related reception or function.
- d) **Condition 14:** Subject to Condition 15, food must be available at all times that liquor is being served at Event Cinemas (not including liquor served in Gold Class).
- e) **Condition 15:** In respect of Gold Class cinemas only, food must be available to order/purchase at all times that liquor is able to be ordered/purchased in Gold Class. This condition reflects current Gold Class practice of food and beverage orders being placed prior to a movie commencing.

The phrase "*separate from the 'Candy Bar' area*" in Trading Condition 11 above means that liquor sales operations and 'Candy Bar' sales operations can both be accommodated from a single counter structure at the Premises provided that the counter structure is configured in a way that will ensure there is a clear separation between the liquor sales operations and other sales operations and a clear separation between patrons for liquor sales and patrons for other sales.

### **Authorities referred to in Determination**

- *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208
- *Chief Health Officer v Hoyts Multi-Plex Cinemas Pty Ltd* (LC 29/2022)
- *Chief Health Officer v United Cinemas Australia Pty Ltd* (LC 06/2023)
- *Hancock v Executive Director of Public Health* [2008] WASC 224
- *Northbridge Enterprises Pty Ltd v Commissioner of Police* [2014] WASC 135

## **SUMMARY**

1. The Commission holds as follows:
  - a) The Chief Health Officer's (the "**CHO**") Application under section 25 is allowed.
  - b) The Decision of the Delegate is varied and the Application for the variation of the Special Facility (Cinema) licence in respect of the Premises is approved subject to the following additional trading conditions:
    - (i) **Condition 11:** Liquor may be served at the Premises from a discrete and clearly delineated fixed area of the Premises that is separate from the 'Candy Bar' area (i.e., separate from the area at the Premises used for the sale of confectionary, food, non-alcoholic drinks, and other products to patrons including children).
    - (ii) **Condition 12:** The licensee must display signage that is clear, easy to read and prominently displayed at the Premises advising that:
      - i. the supply of liquor to juveniles is an offence; and
      - ii. night vision technology will be employed in the cinema to monitor patrons.
    - (iii) **Condition 13:** Liquor may not be consumed within any theatre being utilised solely for a pre-arranged child focused cinema-related reception or function.
    - (iv) **Condition 14:** Subject to Condition 15, food must be available at all times that liquor is being served at Event Cinemas (not including liquor served in Gold Class).
    - (v) **Condition 15:** In respect of Gold Class cinemas only, food must be available to order/purchase at all times that liquor is able to be ordered/purchased in Gold Class. This condition reflects current Gold Class practice of food and beverage orders being placed prior to a movie commencing.
2. The phrase "*separate from the 'Candy Bar' area*" in Trading Condition 11 above means that liquor sales operations and 'Candy Bar' sales operations can both be accommodated from a single counter structure at the Premises provided that the counter structure is configured in a way that will ensure there is a clear separation between the liquor sales operations and other sales operations and a clear separation between patrons for liquor sales and patrons for other sales.

## **BACKGROUND**

3. This matter concerns an application by the Chief Health Officer (the "**CHO**") for a review of a decision ("**Review Application**") relating to an original application by Event Cinemas Whitfords ("**ECW**") lodged on 16 June 2022 (the "**Original Application**"), for a variation of a Special Facility (Cinema) licence which took effect from 19 September 2017 ("**pre-existing Licence**").
4. The Original Application was made pursuant to sections 64 and 77 of the *Liquor Control Act 1988* (the "**Act**") in respect of the premises known as Event Cinemas Whitfords, located at Westfield Whitfords City Shopping Centre, 470 Whitfords Avenue, Hillarys, Western Australia 6025 (the "**Premises**") for the prescribed purpose of allowing the sale of liquor to persons attending a film.

5. ECW described the purpose of the Original Application as follows:

*“to change its delivery of, and access to, liquor services across all cinemas at the premises to maintain competitiveness with other cinema groups in Western Australia; better meet consumer requirements with respect to both access to a greater range of movies, session times and liquor services; consolidate the provision of liquor services during quieter and off-peak periods and provide greater flexibility and level of services for both corporate and private social function bookings and special events”*.<sup>1</sup>

6. ECW’s submissions for the Original Application included its proposed manner of trade, its commitment to the responsible service of liquor, and its measures to ensure that liquor would not be sold, supplied, or consumed by juveniles permitted to enter the Premises for the purpose of viewing a film or a film-related function.

7. In addition, ECW made submissions addressing the legislative requirements and proposed trading conditions.

8. The CHO did not object to the granting of the Original Application, but rather intervened to make submissions, particularly as to the prospect of harm to children and young people attending a screening of a film at the cinemas caused by the exposure to alcohol.<sup>2</sup> The CHO recommended the imposition of further trading conditions on the licence if granted. Those proposed further trading conditions are that:

- a) liquor may not be served or consumed in a cinema where a “G” or “PG” rated film is being screened, unless it is part of an 18+ adults only screening (“**Proposed Condition 1**”);
- b) liquor may not be served or consumed at any function or special event that is specifically designed for, or targeted at children and/or young people (“**Proposed Condition 2**”); and
- c) food will be available during all trading hours (“**Proposed Condition 3**”).

9. The Premises, a purpose-built cinema complex, includes:

- a) 8 internal theatre rooms consisting of:
  - (i) two (2) Gold Class cinemas;
  - (ii) two (2) Vmax cinemas;
  - (iii) four (4) general admission cinemas; and
- b) the ‘Set Café and Bar’ (serving food and beverages).

10. ECW sought the grant of the Original Application under the Act to:

- a) expand the licensed area of the Premises to include the entire cinema complex;

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<sup>1</sup> Decision of the Director of Liquor Licensing A874984709 and A914504903, [8].

<sup>2</sup> Intervention was made pursuant to section 69(8a)(b) of the Act.

- b) permit adult ticketholders to purchase and consume liquor whilst attending the cinema complex to watch a movie or attend a function that is linked to a cinema experience within the licensed premises, including General Admission cinemas;
- c) allow all adult ticketholders to purchase and consume liquor from the Gold Lounge Bar; and
- d) permit unaccompanied juveniles to access all areas of the Premises, except Gold Class unless attending a child focused function where liquor would not be sold or consumed.

11. The specific grounds of the CHO's intervention are as follows:

- a) Pursuant to section 69(8a)(b) of the Act, the CHO intervened in the proceeding to make representations regarding the minimisation of harm or ill-health caused to people, or any group of people, due to the use of liquor.
- b) On 30 August 2022, the CHO submitted a written intervention in relation to the Application pursuant to section 69(8a)(b) of the Act ("**Intervention**"). In the Intervention, the CHO submitted that:
  - (i) alcohol will have a prominent profile at the Premises given the entire Premises is intended to be licensed;
  - (ii) exposing children and young people to the sale, supply and consumption of alcohol in the context of leisure activities can create a favourable association between the two, which can increase their risk of harm by influencing their attitudes towards alcohol and future drinking behaviours including drinking at an earlier age;
  - (iii) ECW's application for unaccompanied juveniles to be permitted at the venue will have harm and ill-health implications given the intention to allow adults to drink alcohol within all cinemas, including during movies where the predominant target groups are likely to be children and young people (such as "G" rated and "PG" rated); and
  - (iv) there are child safety concerns regarding juveniles, both accompanied and unaccompanied, interacting with adults under the influence of alcohol.
- c) As part of the above submissions, the CHO made detailed reference to *Chief Health Officer v Hoyts Multi-Plex Cinemas Pty Ltd* (LC 29/2022) ("**Hoyts Karrinyup**").

12. The CHO sought the implementation of Proposed Conditions 1, 2 and 3.

### **Delegate's Decision**

13. On 14 November 2022, a Delegate of the Director ("**Delegate**") granted the Original Application and varied the pre-existing licence to permit adult ticketholders to consume liquor whilst attending the cinema complex to watch a movie or attend a function, and to permit unaccompanied juveniles to enter and remain on the licensed premises except Gold Class ("**Decision**").

14. The Delegate imposed the following trading conditions (“**Additional Trading Conditions**”) on the licence:<sup>3</sup>
- 1) Pursuant to section 46(3) of the Act and regulation 9A(4) of the *Liquor Control Regulations 1989 (WA)* (“**Regulations**”) this licence is granted for the prescribed purpose of a “cinema”.
  - 2) During the permitted trading hours, the licensee is only authorised to sell and supply liquor to persons who are attending the screening of a film at the cinema complex or to attend a function that is linked to a cinema experience within the licensed premises.
  - 3) The sale of packaged liquor for consumption off the Premises is prohibited.
  - 4) The licensee shall not promote, advertise or employ incentives which encourage the excessive consumption of liquor by virtue of their ‘emotive’ titles such as (but not exclusive to) ‘laybacks’, ‘shooters’, ‘slammers’, ‘test tubes’ and ‘blasters’.
  - 5) The licensee is to provide a reasonable range of non-alcoholic and low-alcohol liquor products during all trading hours.
  - 6) Pursuant to section 120(1)(e) of the Act, unaccompanied juveniles are permitted to enter and remain on the licensed premises only where the juvenile is present on the licensed premises for the purpose of attending:
    - a) the screening of a film and who possess a ticket that is valid for the film screening at Event Cinemas Whitfords on that day, with the exception of daily screenings in Gold Class cinema, where all juveniles must be accompanied by a responsible adult; or
    - b) a pre-arranged child focused cinema-related reception or function being held in the concourse and/or within a cinema and holds an invitation or ticket to the event.
  - 7) A maximum of two (2) alcoholic drinks can be sold per person per transaction.
  - 8) Clearly visible signage is to be placed in the appropriate locations within the concourse area stating that liquor may not be consumed in the concourse area between Set Café & Bar and either Vmax Cinemas or the Gold Class area.
  - 9) The maximum number of patrons permitted to be on the licensed premises at any time is:
    - a) Gold class 1: 48 persons;
    - b) Gold Class 2: 40 persons;
    - c) Bar/Bistro: 150 persons;
    - d) General Admission 3: 307 persons;
    - e) General Admission 4-6: 160 persons;
    - f) VMax 1: 444 persons;
    - g) VMax 2: 425 persons; and
    - h) Main Lobby: 502 persons.
  - 10) A CCTV video surveillance system must be in place and operational. The system must comply with the minimum requirements identified and be maintained in accordance with the Director’s Safety and Security at Licensed Premises policy.

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<sup>3</sup> Special Facility licence No. 609210076517, 1-2.

## CHO's Application for Review

15. On 10 January 2023, the CHO lodged the Review Application.
16. The CHO made Primary Submissions dated 6 April 2023.
17. The CHO originally sought an order that the Commission quash the Decision and vary the Special Facility licence subject to the Proposed Conditions 1, 2, and 3.
18. The CHO and ECW have since reached an agreement regarding Proposed Condition 3, with the following wording:

### ***“Agreed Proposed Condition 3:***

*3(a). Subject to condition 3(b), food will be available at all times liquor is being served at Event Cinemas (not including liquor served in Gold Class cinemas).*

*3(b). In respect of Gold Class cinemas only, food will be available to order/purchase at all times liquor is able to be ordered/purchased in Gold Class. This condition reflects current Gold Class practice of food and beverage orders being placed prior to a movie commencing.”*

19. The CHO submitted that it was unreasonable for the Delegate to grant the Original Application without imposing Proposed Condition 1 and Proposed Condition 2 as harm minimisation conditions, given the proposed manner of trade and the risks of harm identified in the Intervention.

## Grounds for Review

20. The CHO's grounds for the review are as follows:
  - a) the sale, supply and consumption of alcohol in the context of child focused leisure activities impacts negatively on future attitudes and drinking behaviours (**Ground 1**); and
  - b) secondary supply and safety concerns (**Ground 2**).
21. In regard to Ground 1 and the imposition of Proposed Condition 2, the CHO's position is that the sale, supply, and consumption of alcohol in the context of child focused leisure activities, such as movie screenings and functions or events specifically targeted at children and/or young people, reinforces alcohol use for children and young people and can impact negatively on future attitudes and drinking behaviours.<sup>4</sup>
22. The CHO submitted that without the imposition of Proposed Condition 1 and Proposed Condition 2, there is effectively no option for children and young people to avoid exposure to alcohol consumption at the Premises, which they are exposed to from the moment they enter the Premises.<sup>5</sup>

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<sup>4</sup> CHO's Primary Outline of Submissions, [47].

<sup>5</sup> Ibid, [51].



23. In relation to Ground 2, the CHO submitted that the grant of the Original Application had the potential to place children in particularly vulnerable situations given unaccompanied juveniles will be present in the cinemas with adults unknown to them who have been drinking.<sup>6</sup>
24. The CHO made particular mention of the notorious fact in *Hoyts Karrinyup* that there “are some adults within our community who seek to sexually groom children”.<sup>7</sup> The CHO contended that the risk may be low, but the nature of the risk is so serious that it requires measures to be taken.<sup>8</sup>
25. The CHO believes that Proposed Conditions 1 and 2 will provide appropriate measures to address the risk.<sup>9</sup>

### **ECW's Submissions**

26. In its submissions dated 6 April 2023, ECW stated its position in relation to each Proposed Condition.
27. ECW opposed Proposed Condition 1 in its entirety, offered alternative wording for Proposed Condition 2, and agreed with the CHO's proposal wording for Agreed Proposed Condition 3.
28. ECW offered the following alternative wording to Proposed Condition 2:

*“Liquor may not be consumed within any theatre being utilised solely for a pre-arranged child focused cinema-related reception or function.”*
29. The alternative wording inserts the qualifier of ‘pre-arranged’ regarding child focused events.
30. In its submissions against Proposed Conditions 1 and 2, ECW made reference to *Northbridge Enterprises Pty Ltd v Commissioner of Police* [2014] WASC 135 stating: “evidence must provide a basis for a causal link between the harm and/or loss of amenity, etc. identified and the particular condition(s) sought to be imposed.”<sup>10</sup>
31. ECW submitted that the CHO had not provided sufficient evidence to justify the imposition of such stringent conditions.

### **Liquor Commission Hearing**

32. On 19 April 2023, the Commission convened to hear the matter.
33. At the commencement of the hearing, the Commission identified the issues in this matter as follows:
  - a) the parties have reached an agreement over the imposition of Proposed Condition 3;
  - b) there is a level of agreement over Proposed Condition 2, but disagreement over wording; and
  - c) there is disagreement over Proposed Condition 1.

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<sup>6</sup> Ibid, [53].

<sup>7</sup> Ibid, [59].

<sup>8</sup> Ibid, [61].

<sup>9</sup> Ibid.

<sup>10</sup> Respondent's Primary Submissions, [26].

34. The Commission asked if the parties had considered the use of night vision technology in their submissions. To this, the current status was that ECW had night vision technology and CCTV but the representatives wanted to receive instructions.

Condition 2: Child focused events

35. In regard to Proposed Condition 2, ECW had no objection to a 'child focused' condition if the application was restricted to situations such as sports teams or schools.
36. ECW raised concerns regarding the confusion of the phrase 'child focused' and how it is defined.
37. The CHO would be content to include a condition with specific reference to 'pre-booked' groups. The CHO contended that:
- a) the majority of events that fit into this group will involve small groups of individuals; and
  - b) there is a possibility for a percentage-based condition to be implemented.

Condition 1: "G" / "PG" screenings

38. In regard to proposed Condition 1, the CHO made submissions as to the following:
- a) There will be exposure of alcohol to juveniles.
  - b) Adults are able to drink in common areas with juveniles around.
  - c) The CHO aims to restrict the consumption of alcohol in the theatre itself.
  - d) The CHO wants to ensure spaces where the exposure to alcohol can be avoided.
    - (i) It is accepted that more children attend "G" and "PG" movies compared to other ratings.
  - e) There is an increased risk of secondary supply of alcohol to juveniles.
  - f) There is potential for grooming to occur, and any such risk is too high.
  - g) The use of night vision technology is not sufficient for the following reasons:
    - (i) The operator is unable to identify every juvenile.
    - (ii) The operator is unable to adequately detect if alcohol is being supplied to juveniles. The CHO notes that the cinema is dark and juveniles may be able to hide their consumption of alcohol.
  - h) The operator is unable to identify the relationship between juveniles and adults. Specifically, whether the children are known or unknown to the adults.
  - i) Risks associated with normalisation of the consumption of alcohol, as outlined in the submissions.

39. The CHO referred to:
- a) *Hoyts Karrinyup*, in which the same terms were imposed to that of Condition 1; and
  - b) *Chief Health Officer v United Cinemas Australia Pty Ltd* (LC 06/2023) ("**United Cinemas Rockingham**"), in which the terms were not imposed.
40. The CHO submitted that preventing the service and consumption of liquor in "G" and "PG" rated films is appropriate to ensure that there are spaces within the Premises where exposure to alcohol can be avoided which would not otherwise exist. The CHO contended that it ought to be accepted that more juveniles will attend screenings rated "G" and "PG", when compared with other ratings, and that is regardless of how many adults wish to attend "G" and "PG" movies.
41. The CHO also referred to the notorious fact finding held in *Hoyts Karrinyup*, that there are people within our community who seek to groom children and may use the cinema with the use of alcohol to groom children given the opportunity.
42. The CHO submitted that even if the notorious fact is considered as a low risk, it cannot be disregarded entirely, given the gravity of the consequences eventuating.
43. The Commission asked if there was any consideration for demarcation of sales areas to separate alcohol service areas. ECW submitted, with reference to floor plans, that the service areas are already demarcated and therefore there is no need for a condition to be imposed.
44. ECW confirmed the following:
- a) Alcohol is served from a 'Set Lounge' which is away from the ticketing and candy bar counters.
    - (i) The 'Set Lounge' is located between the ticketing and candy bar areas to the theatres themselves.
  - b) All common areas are accessible by juveniles.
  - c) There is a servery counter, closer to the candy bar areas, which is used in lieu of the 'Set Lounge' during off-peak times. This area is also clearly demarcated.
45. The current areas a juvenile can be exposed to alcohol are as follows:
- a) The Gold Class Lounge.
  - b) The Set Lounge and Main Concourse.
  - c) Any theatres.
    - (i) Note that from 2017, prior to the Delegate's Decision, juveniles could only encounter alcohol at V-Max theatres.
    - (ii) The Delegate's Decision effectively added the other theatres into the scope of the risk.

### ECW Submissions

46. Regarding “G” and “PG” screenings, especially those specifically targeted to juveniles, ECW submitted that children will generally be accompanied by a parent or a guardian in those circumstances.
47. Regarding exposure concerns, ECW submitted there are already numerous exposures in general life, as well as at the cinema that the risk is negligible.
48. ECW submitted that there is a level of acceptable harm associated with the use of liquor, and the key consideration will be the degree of harm experienced, and whether the degree is of such a nature that the Commission should step in by imposing a condition.
49. On the issue of cumulative exposure, ECW submitted that the use of liquor is widespread and the degree of harm from losing the condition is minimal.

### DETERMINATION

50. The Commission has undertaken a full review of the evidence and submissions, and the Commission now makes a determination on the basis of all the same materials that were before the Delegate when the Decision was made.<sup>11</sup>
51. The Commission has been provided with a large amount of material from the parties to assist in the determination. The fact that a particular piece of evidence has not been specifically referred to in these reasons should not be construed as a failure by the Commission to consider that evidence or submission. The Commission assures the parties that all materials provided by the parties have been carefully considered in making its determination.
52. The Commission emphasises that it is required to have regard only to the material that was before the Delegate when making the Decision.
53. The Commission draws no inference from the fact that the Commissioner of Police has not intervened nor that the Director of Liquor Licensing has not been represented.

### Scope of the Dispute

54. The matters in dispute in this Application are:
  - a) whether the imposition of Proposed Condition 1 relating to the service of alcohol in “G”/ “PG” related films is appropriate;
  - b) whether the imposition of Proposed Condition 2 relating to the service of alcohol for specific child focused events is appropriate;
  - c) whether the imposition of Proposed Condition 3 relating to the availability of food is appropriate; and
  - d) whether other conditions can address the CHO’s concerns.

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<sup>11</sup> *Hancock v Executive Director of Public Health* [2008] WASC 224.

### Carnegies application to the current case

55. ECW contended that the approach to be adopted by the Commission is the four-step approach set out in paragraph [42] of *Carnegies Realty Pty Ltd v Director of Liquor Licensing* [2015] WASC 208 (“**Carnegies**”).<sup>12</sup>
56. The CHO submitted the *Carnegies* approach is not appropriate in the current matter as the circumstances of this Application are outside the scope of the test.<sup>13</sup> *Carnegies* is distinguishable from the present case as:
- a) *Carnegies* concerned an application for an extended trading permit; and
  - b) sections 38(1), 38(2) and 64(4)(g) of the Act and regulation 9F of the Regulations collectively required the CHO to satisfy the licensing authority that the Application was in the public interest; however:
    - (i) the present case did not concern an application for an extended trading permit and is not subject to the same provisions of the Act and Regulations; and
    - (ii) the Commission's task is not simply to ask whether the four steps set out in *Carnegies* were applied or not, but to undertake an evaluative assessment of the issue of harm in the context of the Application.
57. For the reasons set out in CHO’s Primary Submissions,<sup>14</sup> the Commission finds that *Carnegies* can offer some guidance but is distinguishable.
58. The Commission understands that the parties are largely in agreement that what is to be taken from *Carnegies* is the ‘evaluative approach’ and the ‘balancing act’. It is the ‘overall approach’ rather than the step-by-step approach.
59. The Commission agrees with the CHO’s submission regarding the application of *Carnegies*. The Delegate was required to undertake an evaluative assessment of the issue of harm in the context of this Application.

### Section 120(1)(e) Juvenile Policy

60. The CHO submitted the appropriate application of the Juvenile Policy required the Delegate to impose appropriate conditions on the licence to minimise the risk of harm to juveniles as a result of exposure to adults using alcohol at the Premises.
61. The CHO submitted the risks of harm to juveniles in a licensed cinema setting are not limited to the risks of secondary supply of alcohol or risks of physical harm from adults consuming alcohol, but extend to risks of harm caused by alcohol consumption being highly visible and normalised.
62. The Commission has previously considered the risk of harm to unaccompanied juveniles in *Hoyts Karrinyup* and *United Cinemas Rockingham*.

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<sup>12</sup> Respondents Primary Submissions, [39]. See also, *Carnegies*, [42].

<sup>13</sup> CHOs Primary Outline of Submissions, [38 (a) - (d)].

<sup>14</sup> CHO’s Primary Submissions, [37], - [40].

### Risk of secondary supply to juveniles

63. In *Hoyts Karrinyup*, the Commission considered submissions from the parties regarding secondary supply of alcohol to juveniles. At paragraph [69] the Commission held that:
- a) *"the CHO in that case had provided no evidence of any actual secondary supply in a cinema";* and
  - b) *there was "at least some small risk of secondary supply, with reference to notorious facts rather than evidence."*
64. In *United Cinemas Rockingham*, the Commission found that the existing conditions did satisfactorily address the low-level risk of secondary supply, particularly whereby the cinema's use of night vision technology is communicated to patrons by way of clear signage.<sup>15</sup>
65. In considering these matters, the Commission finds that the existing conditions do satisfactorily address the risk of secondary supply, particularly if the cinema's use of night vision technology is communicated to patrons by way of clear signage.

### Proposed Additional Condition 1 - Service of Liquor during "G" / "PG" screenings

66. The CHO proposed:
- a) *"Liquor may not be served or consumed in a cinema where a "G" or "PG" rated film is being screened, unless it is part of an 18+ adults only screening."*
67. To support this Condition, the CHO put forward evidence regarding children and young people's exposure to alcohol and impact on future levels of harm, noting that:<sup>16</sup>
- a) *cumulative exposure to alcohol stimuli can influence attitudes and behaviours that can lead to early alcohol use, development of risky drinking patterns and associated harms and ill-health which extend into adulthood;*
  - b) *leisure activity is significant in the formative stages of life when identity development occurs and leisure activities have been identified as influencing young people's drinking behaviours;*
  - c) *the association of alcohol as an ordinary product, even when being consumed responsibly by adults can encourage favourable attitude to alcohol by young people, which in turn, can lead to earlier initiation of alcohol use; and*
  - d) *children are vulnerable to the people and settings they interact with directly or indirectly, and are an established at-risk group for alcohol-related harm.*
68. ECW proposed that the imposition of Condition 1 should be refused entirely, on the basis that the risk of harm to children who may be exposed to the consumption of liquor at a cinema when showing a "G" or a "PG" rated film was negligible, and thus submitted that the condition was unnecessary.

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<sup>15</sup> *Chief Health Officer v United Cinemas Australia Pty Ltd* (2023) (LC 06/2023) at [32].

<sup>16</sup> CHO's Responsive Submissions at [32].

69. ECW submitted that the same juveniles who were at risk of being harmed by observing liquor consumption walk through a shopping centre of restaurants and liquor stores, candy bar and movie foyer in which liquor is being consumed, in order to reach the theatre in question, and that the risk of harm to a juvenile from the consumption of liquor by adults in a darkened theatre is non-existent.
70. ECW contended that the implementation of this condition will not minimise juvenile's exposure to liquor in a way that they do not already experience as part of their everyday life.
71. ECW submitted that there had been no reports of incidents that indicated that juveniles, accompanied or unaccompanied, were experiencing any harm or ill-health from the lack of Condition 1.
72. In addition, ECW submitted that the CHO had sought for the same condition to be imposed in *United Cinemas Rockingham* and was unsuccessful, with the Commission declining to impose that condition.<sup>17</sup>
73. ECW noted that the venue had been trading under the Special Facility licence without the imposition of Condition 1 since 14 November 2022, and had no incidents reported or observed relating to secondary supply.
74. The Commission holds that the present conditions do adequately address the third risk of CHO's concerns (as at paragraph 67(c) of this Determination), however with the imposition of Additional Condition 2 (addressed below), the risk can be adequately addressed.
75. The Commission finds that this is a measure that is not necessary, and therefore declines to impose Proposed Additional Condition 1.

#### Proposed Additional Condition 2 - Consumption of Liquor in specific events

76. The CHO proposed:
- a) *"Liquor may not be served or consumed at any function or special event at Event Cinemas that is specifically designed for, or targeted at, children and/or young people."*
77. ECW proposed:
- a) *"Liquor may not be consumed within any theatre being utilised solely for a pre-arranged child focused cinema-related reception or function."*
78. The CHO submitted that the imposition of Condition 2 would minimise the risk or exposure of juveniles to the sale of alcohol.
79. The CHO submitted that they are content to include a condition with specific 'pre-booked' groups and are open to the consideration of a percentage-based condition.
80. ECW submitted that that proposal is too restrictive. ECW provided the example whereby 10 children are having a birthday in a 50-person cinema. In the instance, ECW submits that it would be unfair to restrict the sale of alcohol to the other 40 attendees.

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<sup>17</sup> Respondent's Responsive Submissions at [18].

81. ECW has no objection to a 'child focused' condition if the application was restricted to situations such as school groups or sports teams.
82. The Commission finds that there is some risk of harm associated with the service of alcohol where the majority of attendees are children, most relevantly, the normalisation risk articulated by the CHO.
83. The Commission also finds that the text proposed by the CHO is unworkable. The CHO's text would cover events organised by private persons without the knowledge of ECW. The Commission holds that ECW's proposed condition is appropriate and appropriately addresses the risk of exposure to alcohol at particular child focused events. Accordingly, the Commission imposes Additional Condition 2 in the language proposed by ECW.

#### Proposed Additional Condition 3 - Availability of Food

84. Proposed Additional Condition 3 states:

*"3(a). Subject to condition 3(b), food will be available at all times liquor is being served at Event Cinemas (not including liquor served in Gold Class cinemas). 3(b). In respect of Gold Class cinemas only, food will be available to order/purchase at all times liquor is able to be ordered/purchased in Gold Class. This condition reflects current Gold Class practice of food and beverage orders being placed prior to a movie commencing."*

85. Both the CHO and ECW have agreed to the imposition of Proposed Additional Condition 3.
86. The Commission finds that the availability of food at all times whilst liquor is being served is a reasonable condition. The condition is satisfactory for multiple reasons as it is:
  - a) endorsed by ECW and CHO;
  - b) not onerous to implement;
  - c) common place and reasonably expected;
  - d) an effort to broaden the scope of goods available for purchase, reducing the focus on alcohol;
  - e) a clear step aimed at reducing harm towards juveniles; and
  - f) an endorsement of sensible drinking behaviours by minimising the effects of alcohol.

#### Section 64 of the Act

87. The Commission recognises that the trading conditions described in paragraph 88 below as interpreted in accordance with paragraph 89 below differ from the Additional Trading Conditions sought by the CHO. However, the Commission:
  - a) notes that in accordance with section 64(1) of the Act, the Commission has discretion to impose any additional conditions on the licence which the Commission considers to be appropriate, having regard to the tenor of the licence and the circumstances in relation to which the Commission intends that licence should operate;
  - b) also notes that it may exercise that discretion on its own motion in accordance with section 64(2) of the Act;



- c) relies on that discretion to the extent the trading conditions described in paragraph 88 below (as interpreted in accordance with paragraph 89 below) differ from the Additional Trading Conditions; and
- d) had determined that all of the trading conditions described in paragraph 88 below (as interpreted in accordance with paragraph 89 below) are in the public interest.

## **CONCLUSION**


88. The Commission holds as follows:

- a) The CHO's Application under section 25 is allowed.
- b) The Decision of the Delegate is varied and the Application for the variation of the Special Facility (Cinema) licence in respect of the Premises is approved subject to the trading conditions as part of the licence listed below:
  - (i) **Condition 11:** Liquor may be served at the Premises from a discrete and clearly delineated fixed area of the Premises that is separate from the 'Candy Bar' area (i.e., separate from the area at the Premises used for the sale of confectionary, food, non-alcoholic drinks, and other products to patrons including children).
  - (ii) **Condition 12:** The licensee must display signage that is clear, easy to read and prominently displayed at the Premises advising that:
    - i. the supply of liquor to juveniles is an offence; and
    - ii. night vision technology will be employed in the cinema to monitor patrons.
  - (iii) **Condition 13:** Liquor may not be consumed within any theatre being utilised solely for a pre-arranged child focused cinema-related reception or function.
  - (iv) **Condition 14:** Subject to Condition 15, food must be available at all times that liquor is being served at Event Cinemas (not including liquor served in Gold Class).
  - (v) **Condition 15:** In respect of Gold Class cinemas only, food must be available to order/purchase at all times that liquor is able to be ordered/purchased in Gold Class. This condition reflects current Gold Class practice of food and beverage orders being placed prior to a movie commencing.

89. The phrase "*separate from the 'Candy Bar' area*" in Trading Condition 11 above means that liquor sales operations and 'Candy Bar' sales operations can both be accommodated from a single counter structure at the Premises provided that the counter structure is configured in a way that will ensure, there is a clear separation between the liquor sales operations and other sales operations and a clear separation between patrons for liquor sales and patrons for other sales.

  
NICHOLAS VAN HATTEM  
DÉPUTY CHAIRPERSON

  
PAUL SHANAHAN  
MEMBER

  
SHELLEY DAVIES  
MEMBER