



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

# Liquor Commission of Western Australia

## 2019-20 Annual Report



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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 [www.liquorcommission.wa.gov.au](http://www.liquorcommission.wa.gov.au).

People who have a hearing or speech impairment may call the National Relay Service on 133 677 and quote telephone number (08) 6551 4888.


## Statement of Compliance

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Hon. Paul Papalia CSC, 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 2020.

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



Seamus Rafferty  
Chairperson

17 September 2020

## Overview of Agency

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### Executive Summary

It is my pleasure to present the Annual Report of the Liquor Commission of Western Australia for the year ended 30 June 2020. During the year in review, 29 new applications were lodged with the Liquor Commission and 7 applications were carried over from 2018-19. As at 30 June 2020, the Commission had determined 22 applications, 5 applications were discontinued, 3 applications were adjourned sine die and 6 applications were carried over to 2020-21.

It is with great sadness that I advise that we have lost four of our Commissioners during the year.

Wendy Hughes was appointed as a Magistrate in the Children's Court of Western Australia in February. This is a recognition of Wendy's outstanding abilities as a lawyer and is a tremendous achievement for someone so young. I wish Wendy all the best in her role and thank her for her contribution to the Commission.

Mara Barone SC was appointed as a Judge of the District Court of Western Australia in May. I greatly appreciated the work that Mara has done over the time that she has been a member of the Commission and wish her well on behalf of all of us in her demanding role.

Mara and Wendy join fellow former members of the Commission as judicial officers: Judge Belinda Lonsdale and Magistrate Evan Shackleton. These appointments reflect well on the Commission and show the calibre of its membership

Eddie Watling retired on 30 June 2020. Eddie has been deputy chairman for a number of years and his contribution to the Commission over 12 years has been enormous. From a personal perspective, his advice and assistance has been of tremendous help. I will miss his sage advice and good humour.

Eric Isaachsen also retired on 30 June 2020. Eric has been on the Commission for many years and had provided valuable service to the Commission and been a great source of advice for me as Chairman. I will miss Eric's quiet and understated manner of dealing with matters and thank him for his long contribution to the Commission.

I would like to take this opportunity to thank all members for their contribution to the effective operation of the Commission throughout the year, as well as staff from the Department of Local Government, Sport and Cultural Industries for their ongoing support.



Seamus Rafferty  
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 2020, the Minister responsible for the Racing and Gaming Portfolio was the Honourable Paul Papalia CSC, MLA, Minister for Racing and Gaming.

### The Responsibilities of the Liquor Commission

The Commission's primary function is to adjudicate on matters brought before it through referral by the Director of Liquor Licensing, or by an application for a review of a decision made by the Director of Liquor Licensing. The latter is achieved by way of a 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;
- decision is to make, vary or revoke a prohibition order under Part 5A of the Act; or
- 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 2019-20.

Complaints Outstanding as at 1 July 2019	1
Complaints lodged 1 July 2019 – 30 June 2020	3
Complaints resolved 1 July 2019 – 30 June 2020	3
<b>Total Outstanding Complaints as at 1 July 2020</b>	<b>1</b>

### **Section 115(AD)**

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

### **Matters outside the jurisdiction of the Liquor Commission**

An application for review cannot be lodged against the following decisions of the Director of Liquor Licensing:

- cancellation of a licence under section 93 of the Act, unless the application for the review is made on a question of law;
- an application for or the conduct of business under an extended trading permit (where the period is greater than three weeks and less than five years) or an occasional licence;
- the imposition, variation, or cancellation of a term or condition of an extended trading permit, or an occasional licence;
- the cancellation or suspension of the operation of an extended trading permit or an occasional licence;
- matters relating to the hearing of an objection;
- 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 Liquor Commission is provided by the Department of Local Government, Sport and Cultural Industries.

As of 30 June 2020, the Liquor Commission consisted of 10 members, namely:

### **Seamus Rafferty – Chairperson**

Mr Seamus Rafferty graduated from Notre Dame University in 2001 with a Bachelor of Law degree. After eight years as a State Prosecutor with the State DPP, he has run his own practice specialising in criminal law for the past ten years. Mr Rafferty has been a member of the Liquor Commission since 2011 and Chairman since 2015. He was appointed a member of the Administrative Appeals Tribunal in 2016.

### **Edward Watling OAM – Deputy Chairperson**

Mr Watling is a founding partner and Executive Director of the firm Tourism Coordinates, a Perth-based company specialising in tourism strategic planning and development. He has more than 45 years' experience in the tourism industry, combining both government and private sector service. In 1984, he was appointed the inaugural General Manager of the Western Australian Tourism Commission and held that position until 1987.

Following that, Mr Watling took up a position within the Public Service Commission where he undertook a range of agency reviews for the Government's Functional Review

Committee, after which he served for seven years as a tourism consultant to the Minister for Tourism. Mr Watling was appointed an inaugural member of the Liquor Commission in December 2006.

### **Eric Isaachsen – Member**

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

### **Alex Zilkens – Member**

Mr Zilkens graduated from the University of Sydney in 1986 with a combined Arts/Law degree and has worked as a lawyer in private practice since his admission in 1987. He has been the principal of Zilkens Lawyers since 1993, taking instructions in commercial legal work as well as dispute resolution. Mr Zilkens was involved in the youth hostelling movement from 1996 to 2018 in various roles including chairman of YHA Western Australia (1996 - 2010), chairman of Hostelling International Australia (2010 - 2016) and as a Vice President of the International Youth Hostel Federation, a registered charity under the Charities Act in England and Wales, United Kingdom (2014 - 2018).

### **Emma Power**

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 a member of the Local Government Standards Panel and Racing Penalties Appeal Tribunal.

### **Paul Shanahan**

Mr Shanahan graduated from the University of Western Australia with a Bachelor of Laws degree in 1988 and was admitted to the Supreme Court of Western Australia the following year. Mr Shanahan practices predominantly in litigation and dispute resolution, including commercial disputes, regulatory matters, administrative law matters, insurance and risk management issues. In the past, his practice has also included building and construction disputes. He has practiced in the public sector, as in-house Counsel and in private practice. Mr Shanahan's skill-set includes advocacy, and he has almost 30 years' experience in representing clients in a large range of Courts and Tribunals. He is also actively involved in pro bono work and is a member of the Board of the Youth Legal Service.

### **Pamela Hass**

Ms Hass holds a Bachelor's degree in Law (with honours), an Arts degree, and a Master's degree in Law. She is a member of the Australian Institute of Company Directors, and until December 2014 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. Since 2011 Ms Hass has been General Counsel, Legal Services with the WA Department of Jobs, Tourism, Science and Innovation (formerly the Department of State Development) where she heads a small in-house legal team working on major resources projects and other State initiatives. She has also worked in a variety of other positions in both private practice and public law. She was the first national president of the Australian Corporate Lawyers Association from Western Australia.

### **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 now currently works in the hospitality industry and sits on several tourism committees and is also a member of the Local Government Standards Panel WA.

### **Kirsty Stynes**

Ms Stynes is a qualified legal practitioner currently employed at Seamus Rafferty Barrister and Solicitor. 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.

### **Sarah Oliver**

Ms Oliver graduated with a Bachelor of Laws (Hons) in 2002, and a Master of Law (Legal Practice) in 2004. In July 2016, she joined the independent bar. Sarah currently practises as a barrister at Francis Burt Chambers, specialising in criminal and administrative law. Prior to joining the bar, Sarah was employed as a Principal Federal Prosecutor at the Commonwealth Director of Public Prosecutions, and prior to that as a lawyer at the Australian Government Solicitor's Perth and Brisbane offices.

## Performance Summary for 2019-20

The table commencing on page 12 provides details of the number, nature and outcome of applications heard and determined before the Commission as at 30 June 2020.

Full determinations are available from the Liquor Commission's website at [www.liquorcommission.wa.gov.au](http://www.liquorcommission.wa.gov.au).

### Outstanding matters as at 30 June 2020.

As at 30 June 2020, there was one matter that had been heard but not determined:

- Section 25 review – Auto & Co Pty Ltd v Director of Liquor Licensing, in relation to premises known as “Atomic Espresso Café

The following three matters have been adjourned sine die:

- Section 95 complaint by Commissioner of Police - Marvel Loch Hotel Pty Ltd.
- Section 24 application – J P v Commissioner of Police.
- Section 115AD review of a barring notice (name withheld).

Furthermore, applications by following applicants were either listed but not heard or pending to be determined on papers:

- Section 25 review – Tookfe Pty Ltd.
- Section 25 review – Chief Health Officer v Director of Liquor Licensing, in relation to premises known as “Big Bell Accommodation Village”.
- Section 25 review - Chief Health Officer v Director of Liquor Licensing, in relation to premises known as “The Piccadilly”.
- Section 25 review – Lolba Holdings Pty Ltd v Director of Liquor Licensing, in relation to premises known as “CU Mart Cockburn”.
- Two section 115AD reviews of barring notices (names withheld).

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

<b>Applications lodged and determined in 2019-20</b>			
<b>Case No.</b>	<b>Name</b>	<b>Section of Act</b>	<b>Outcome</b>
L30/01/482	Sand Sports Australia	25	Application granted
L30/04/483	GRW	95	Disqualified for 12 months
L30/01/484	Cellarbrations at Boddington	25	Application refused
L30/01/485	Wiluna Traders	25	Application refused
L30/01/486	JTH – barring notice review	115AD	Barring notice varied
L30/01/487	The Boardroom Subiaco	95	\$3000 penalty imposed; undertake anger management course
L30/01/488	TD – barring notice review	115AD	Barring notice varied
L30/04/489	JJM – barring notice review	115AD	Withdrawn
L30/01/490	Cowaramup Brewing Company	24	Application granted
L30/01/491	SPR – Barring notice review	115AD	Withdrawn
L30/01/492	Philip and Kathryn Rogerson – Section 117 complaint: The White Star Hotel	25	Application refused
L30/01/493	South Freo Fresh Pty Ltd	25	Application refused
L30/01/495	MJI – Barring notice review	115AD	Application refused
L30/01/496	Monday Madness Pty Ltd	25	Withdrawn

Applications lodged and determined in 2019-20			
Case No.	Name	Section of Act	Outcome
L30/01/497	The Gold Bar Kalgoorlie	95	Application granted, conditions imposed on the licence and monetary penalty of \$1500
L30/01/498	CBC – Barring notice review	115AD	Withdrawn
L30/01/499	Greg and Jan Reudavey, in relation to premises known as “North Cottesloe Surf Life Saving Club”	25	Application refused
L30/01/501	NMW	25	Application refused
L30/01/502	JMR	25	Prohibition order varied
L30/01/503	TGL	25	Prohibition order varied
L30/01/504	JGW – Barring notice review	115AD	Barring notice varied
L30/01/505	DEW – Barring notice review	115AD	Application dismissed

## Significant Appeals before the Commission

The Commission continued to make a number of significant decisions during the reporting period. Below are some examples of such decisions.

### **SUNSEASONS PTY LTD AND OTHERS V DIRECTOR OF LIQUOR LICENSING – PILBARA LIQUOR RESTRICTIONS (LC 21/2019)**

On 20 January 2017, a delegate of the Commissioner of Police (Police) wrote to the Director of Liquor Licensing (the Director) advising there was a need for further restrictions to be imposed in South Hedland and Port Hedland. The Director was invited to exercise the powers conferred pursuant to section 64 of the *Liquor Control Act 1988* and impose additional further conditions on licensed premises in Port Hedland and South Hedland. The term “further” was used as restrictions were imposed on licensed premises operating in South Hedland and Port Hedland in 2004 and in the Pilbara region as a whole (with the exception of Port Hedland and some licensed premises in Newman) in 2012.

The Delegate of the Director of Liquor Licensing subsequently commenced an inquiry to determine whether to exercise the power conferred by section 64 of the Act. The purpose of that inquiry was to seek information on the extent and impact of alcohol-related harm in Port Hedland.

On 13 September 2017, the Police again wrote to the Director, advising that further restrictive conditions should be imposed on the entire Pilbara region on the basis that, though some other towns throughout the Pilbara are significantly further from Port and South Hedland, it is their proximity to the above towns that illustrates the need for Pilbara wide restrictions. This would negate the argument of displacement and increase the effectiveness of any restrictions.'

Licensees of ninety-one premises within the Pilbara region were given the opportunity to show cause to the licensing authority as to why further conditions should not be imposed on their licences. A number of these licensees provided responses as to why further restrictions should not be imposed.

The Delegate concluded that he was satisfied that the levels of harm and ill-health due to the use of liquor in the Pilbara region were such that additional restrictions on the sale and supply of liquor in the region was necessary and appropriate. Conditions were imposed on the 91 licences within the Pilbara region as a whole.

By way of applications pursuant to section 25 of the Act, the licensees of 23 premises operating in the Pilbara region sought review of the decision to impose further conditions.

The Commission conducted a public hearing on 27 June 2019 to determine each of the section 25 applications and afford each of the parties the opportunity to make submissions.

Counsel for the Police and the Chief Health Officer (CHO) submitted that:

- a) evidence of the nature and extent of harm and ill-health in the Pilbara due to the use of liquor is overwhelming;
- b) the evidence established that alcohol is a factor in the majority of offending in the Pilbara;
- c) alcohol was a major cause of violence, self-harm and long term physical and mental health conditions;
- d) that the imposition of conditions has had a positive impact in reducing harm and ill-health due to the use of liquor in other locations;
- e) that unless conditions were imposed in a uniform and consistent manner, there is a potential to undermine the purpose of imposing conditions in a particular location; and
- f) that the decision of the Director at first instance should be affirmed.

Counsel for the Director largely adopted the submissions made on behalf of the CHO and Police. It was suggested that a consistent approach was required across the Pilbara region and that to vary or quash the original decision would create a two-tiered licensing

system as only 23 out of the 91 licenses that operated in the Pilbara and that were the subject of the original proceedings, were parties to the proceedings before the Commission.

With some exceptions, counsel for the various applicants generally agreed that:

- a) the levels of harm and ill-health due to the use of liquor in South Hedland and Port Hedland warranted the imposition of further conditions relating to the sale of packaged liquor;
- b) the conditions on licensed premises that sold packaged liquor in South Hedland and Port Hedland should be modified from those imposed by the Director at first instance; and
- c) there was no proper basis to impose conditions on licences outside of South Hedland and Port Hedland and that to this effect the decision of the Director relating to the 16 licensed premises outside of those two towns should be quashed.

There was no dispute that there are high levels of harm and ill-health due to the use of liquor in South Hedland and Port Hedland. Those levels are of an unacceptable level and require some form of intervention in an attempt to reduce those levels.

There was no doubt that further conditions on the sale of packaged liquor are required in South Hedland and Port Hedland. A number of the applicants accepted this premise and made submissions as to the conditions that should be imposed.

The real issue was whether conditions were required in the Pilbara region as a whole so as to promote consistency and to avoid the potential of undermining any conditions to be imposed in South Hedland and Port Hedland. Further, to determine whether the levels of harm and ill-health caused due to liquor are such that further restrictions on the sale of liquor in the towns of Newman, Paraburdoo, Karratha, Tom Price, Dampier and Wickham are required. Those towns are of relevance as they are the towns in which some of the licensed premises the subject of these section 25 applications operate in. Having regard to the totality of the evidence before the Commission, the following evidentiary findings were made:

- a) There are levels of harm and ill-health caused due to the use of liquor in South Hedland and Port Hedland that are at levels that make it appropriate to exercise the power conferred by section 64 of the Act in the public interest.
- b) The seven licensed premises that operate in South Hedland and Port Hedland contribute to the levels of harm and ill-health due to the use of liquor, based on the fact that they currently sell full-strength packaged liquor without any limitations on the volume of such liquor that can be sold.
- c) Restrictions on the sale of packaged liquor are a useful tool in reducing levels of harm and ill-health.
- d) There are levels of harm and ill-health due to the use of liquor in the remainder of the Pilbara region outside South Hedland and Port Hedland.



- e) The levels of harm and ill-health due to the use of liquor in towns within the Pilbara outside South Hedland and Port Hedland are not at such levels that require further conditions to be imposed pursuant to the power conferred by section 64 of the Act.
- f) There is no requirement to impose uniform conditions within the Pilbara region to alleviate concerns that the conditions that will be imposed in South Hedland and Port Hedland will be circumvented, as the conditions that will be imposed are of such a nature, that the risk of such an occurrence is almost non-existent based on the fact that full-strength alcohol will still be available in South Hedland and Port Hedland.
- g) The fact that the Director may still impose the conditions that were to be imposed at first instance is not a sufficient basis to impose region wide conditions.

The Commission made the following orders:

- a) In respect to the applications for review pursuant to section 25 of the Act made by Sunseasons Pty Ltd, Hotel Newman Pty Ltd, Iron Bark WA Pty Ltd, Regional Property Custodian Pty Ltd as licensee of the Karratha Ibis, Ringthane Pty Ltd, Mark Carlson, Remppearl Pty Ltd, Redsands Nominees Pty Ltd, Raminea Pty Ltd, Haybar Pty Ltd, Rum Holdings Pty Ltd, Woolworths Group Limited and Liquorland Australia Pty Ltd, the decision of the Director at first instance is quashed and the conditions of each licence remain as in force as at the date of publication of the Commission's reasons.
- b) In respect to the applications for review pursuant to section 25 of the Act made by Delta Point Holdings as licensee for North West Liquor Supplies, Bushfalls Pty Ltd as licensee for South Hedland Liquor Supplies, Sonsan Pty Ltd as licensee for Last Chance Tavern, Walkabout Holdings Pty Ltd as licensee for Walkabout Tavern, Regional Property Custodian Pty Ltd as licensee for the Hedland Ibis, Woolworths Group Limited as licensee for BWS Port Hedland and Liquorland Australia Pty Ltd as licensee for Liquorland South Hedland, the decision of the Director at first instance is varied to the extent that the section 64 conditions on each licence would apply from 27 September 2019.

### **COMO HOTEL (LC 28/2019)**

By way of an application filed on 29 October 2015, Australian Leisure and Hospitality Group Pty Ltd applied for an alteration and redefinition of the existing tavern licence at the Como Hotel pursuant to section 77 of the *Liquor Control Act 1988*. The nature of the application was described as an upgrade and revitalisation of the Como Hotel and BWS liquor store. The renovation would involve internal upgrades to the Como Hotel and the conversion of the existing BWS bottle shop into a Dan Murphy's liquor store.

Following the advertisement of the application, 47 notices of objection were received by the Director of Liquor Licensing (the Director).

On 31 March 2017, the Director referred the application to the Commission for determination pursuant to section 24 of the Act.

A hearing was held on 27 October 2017 to determine the application. It became apparent during the course of the hearing that there were issues relating to traffic management that required further evidence and submissions. A further hearing was listed for 29 March 2018.

The determination of this matter was then delayed by issues relating to development approval, in which the applicant required an extension of time in which to substantially commence the approved development. On 16 July 2018, the State Administrative Tribunal amended the development approval by extending the period within which development must be substantially commenced to two years from the date of the Tribunal's decision.

A further hearing was conducted by the Commission on 24 October 2018 to allow the parties to make submissions in respect to traffic management in the area surrounding the licensed premises and other amenity related issues.

The applicant submitted that the proposed upgrade will improve existing facilities for customers and staff. It was contended that the facility is generally outdated and caters to a suburban market. The proposed changes will result in an appeal to a more universal market and become a destination operation as opposed to the suburban 'local' that currently operates.

It was also proposed that the existing BWS drive-thru will be demolished and replaced with a Dan Murphy's liquor store, significantly larger than the existing drive-thru operation. It was submitted that the proposed liquor store will offer a larger range of products for customers to choose from than that already available in the existing drive-thru premises. The proposed Dan Murphy's would result in a reduction of operating hours of one hour between Monday and Thursday, three hours on Friday and Saturday and one hour on Sunday.

Overall, the applicant submitted that it was in the public interest to grant the application on the basis that it will allow for the rejuvenation of a tired premises, will provide a destination liquor stores the likes of which do not currently exist in the locality or nearby, will not result in an increase of harm and ill-health to levels that would be considered to be inappropriate and which will not adversely impact on the amenity of the location.

The bases upon which the various objectors had objected to the granting of the application is as follows:

- a) there has already been significant local community opposition to the application as reflected by issues surrounding the obtaining of development approval;
- b) the City of South Perth Amendment No. 50 prohibits approval of a large-scale liquor store;
- c) there are an adequate number of liquor stores already operating in the locality;
- d) problems associated with proliferation of liquor outlets;
- e) increased amount of alcohol within the community if the application is granted;
- f) problems associated with destination liquor stores in general;

- g) evidence of alcohol abuse within the community;
- h) the adverse impact on amenity, with regard to parking issues, access to the licensed premises by vehicles and the impact on traffic flow in the immediate vicinity of the licensed premises;
- i) plans by the applicant to “crush” its competitors; and
- j) increase in harm and violence.

Given that the central consideration of the application was the potential adverse impact on the amenity of the location, specifically relating to parking issues and traffic movement, the primary issue for consideration by the Commission was whether the granting of the application would impact on the amenity, quiet and good order of the locality and/or whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises

The licensed premises operates on a property that is bordered by South Terrace, Norton Street and Canning Highway. It was clear from the evidence that:

- a) Canning Highway is a major arterial route that carries a significant amount of traffic on a daily basis;
- b) South Terrace is also a busy roadway, that has a residential homes and units on either side; and
- c) Norton Street is a residential street, that is much less busy than the other two roadways.

The Commission was provided with a large amount of evidence in respect to the potential impact on traffic movements in the vicinity of the licensed premises and parking issues in the event that the application was granted. The Commission also heard from residents who live in the immediate vicinity of the licensed premises who expressed their concerns as to what they believe would occur if the application were granted.

The Commission considered all reports and submissions relating to traffic management and parking issues that may be associated with this development. The Commission gave significant weight to the Transcore Report which considered all of the traffic/parking issues identified in earlier reports. It concluded that the proposed development would not have a significant traffic impact on the operation of the Canning Highway/South Terrace intersection nor on the traffic operation of South Terrace in the vicinity of the relocated driveway crossover to the site.’

The Commission also gave significant consideration to the opinions expressed by residential objectors particularly those who live in close proximity to the licensed premises. Those opinions were genuinely held and expressed in an entirely appropriate manner. However, the expert evidence that the Commission acted upon did not result in a conclusion that the granting of the application will so adversely impact on the amenity of the location or result in offence, annoyance, disturbance, or inconvenience to such a level, that the granting of the application would not be in the public interest.

Accordingly, on 9 October 2019 the Commission granted the application for an alteration/redefinition of the Como Hotel.

## WILUNA TRADERS (LC 05/2020)

On 17 October 2019, the Commission heard an application for review of the decision of the Delegate of the Director of Liquor Licensing refusing the conditional grant of a liquor store licence for the premises known as Wiluna Traders, pursuant to section 25 of the *Liquor Control Act 1988*.

At the hearing the applicant agreed that the history and experience of alcohol related harm in Wiluna was accurately summarised by the Director of Liquor Licensing (“the Director”) in the reasons for decision dated 14 June 2019. The Commission, having considered the material before it, accepted the following:

- a. there has been a history of alcohol abuse within Wiluna which has brought associated health, welfare and crime concerns;
- b. Wiluna has experienced voluntary and mandated restrictions in relation to the sale of alcohol;
- c. in the 1970s, problems arose with drunkenness amongst Wiluna’s Aboriginal population, and there was an agreement with the hotel in Wiluna and the local Police which provided that:
  - i. the hotel would only serve beer;
  - ii. packaged liquor would only be sold between 2pm and 7pm; and
  - iii. packaged liquor sales would be limited to low strength beer during law business times or when funerals occurred;
- d. the agreement was later amended to beer being only sold in cans due to issues surrounding glass bottles in fights;
- e. the “Club Hotel” was the sole licensed premises in Wiluna until the licence was surrendered in August 2017; and
- f. there has been no licensed premises in Wiluna since the Club Hotel surrendered its licence.

Wiluna Traders is owned and operated by the applicant and is currently operated as a grocery, fresh produce, general store, Caltex fuel stop and licensed Post Office operating seven days per week. The business is the primary supplier of goods and services to the township of Wiluna and the surrounding area.

Since July 2017 there has been no packaged liquor available in the immediate vicinity of Wiluna. However, there is online purchasing facilitated by the applicant’s Australia Post outlet, whereby consumers can order online from such outlets as Dan Murphy’s. Alternatively, consumers can travel to surrounding towns located more than 200km away.

The applicant contended that the granting of the application was in the public interest for the following reasons:

- a. binge drinking and anti-social behaviour: the applicant will be in a position to provide better liquor control, minimising the risk and disadvantage to residents by influencing the responsible sale and consumption of alcohol within Wiluna;
- b. convenience of purchasing: offer a one stop shopping experience for residents and visitors which the applicant asserts is commonly acknowledged to be a matter in the public interest:

- c. competitive pricing: the applicant will compete with the attractive pricing schedule of Dan Murphy's and other online competitors;
- d. a market will be met: the absence of any licensed venue open to the public for residents and visitors has resulted in a market for alcohol not being met; and
- e. discourage "grog runs": consumers of alcohol will not have to travel hundreds of kilometres to buy alcohol.

The applicant acknowledged that there has been a history of abuse of alcohol in Wiluna, which has brought associated health, welfare and crime problems. Further, the applicant acknowledged that the Wiluna Shire has a predominately Aboriginal population and would identify itself as an "at-risk" area given the socio-economic fabric of the community.

To further address the characteristics of the community, the Applicant proposed the following measures:

- a. adopt alcohol restriction days, which could include on Centrelink payment days;
- b. restrict cheap alcohol products;
- c. prohibit the sale of alcohol on credit;
- d. prohibit the licensee from retaining a credit card;
- e. prohibit unaccompanied juveniles from entering the licensed area; and
- f. prohibit alcohol for collection before or after the permitted hours of sale.

The Chief Health Officer (CHO) referred to the 2016 Census data and submitted there are approximately 720 residents in Wiluna of which 30% are Aboriginal and Torres Strait Islander. As a result, the township is considered an at-risk community given Aboriginal people are more likely to experience harms associated with the consumption of alcohol.

The CHO referred to the SEIFA data, which reported that the Shire of Wiluna is the fourth most disadvantaged Local Government Area in Western Australia. Further, it is one of the most disadvantaged suburbs falling within the bottom two percent with unemployment almost double the State average.

The Commissioner of Police submitted that Wiluna has complex issues of social, economic and alcohol related harm and the totality of the evidence establishes there are high levels of harm and an increase accessibility of alcohol is likely to exacerbate what are already unacceptable levels of harm.

The Commission formed the view that any benefit proposed by the Applicant was outweighed by the likelihood of an increase in harm and ill-health due to the use of liquor if the application were granted.

The Commission refused the application.

## Supreme Court Challenges

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### **COMMISSIONER OF POLICE V SYLVESTER PTY LTD – GDA 6 OF 2020**

On 28 May 2020, the Commission determined a section 95 complaint lodged by the Commissioner of Police seeking disciplinary action against Sylvester Pty Ltd, the licensee of The Gold Bar Kalgoorlie.

The Commission was satisfied that there were grounds for disciplinary action and made the following orders:

- Imposed a monetary penalty of \$1,500 against Sylvester Pty Ltd.
- Varied the crowd controller conditions referred to in condition 6 of the liquor licence for The Gold Bar Kalgoorlie.
- Imposed a new security requirement on the liquor licence that required the installation and operation of an identification system at the premises.

On 18 June 2020, the Commissioner of Police appealed the decision to the Supreme Court on the following grounds:

1. The Liquor Commission erred in law by varying condition 6 of the liquor licence for the premises known as The Gold Bar Kalgoorlie in a manner that was legally unreasonable.
2. By varying condition 6 of the licence in a way that renders condition 6 internally inconsistent, the Liquor Commission erred in law by coming to an irrational conclusion.

As at 30 June 2020, the appeal had not yet been determined.

## Significant Issues Impacting the Liquor Commission

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### **Trends or Special Problems that have Emerged**

The Commission was not immune to the effects of COVID-19, as there was a noticeable decrease in the number of new applications lodged during the period the restrictions were in place across Western Australia. Consequently, no face-to-face hearings occurred during this time; the two applications received during the height of the restrictions were determined on the papers.

As the restrictions were gradually lifted, there was spike in the number of applications lodged from late May through to June.

## Forecasts of the Commission's Workload for 2020-21

It is expected that as the COVID-19 restrictions are gradually lifted, the workload of the Commission for 2020-21 will increase to the levels seen in previous years. It is expected that the complexity of the matters before the Commission will continue to increase thereby placing pressure on the current resources of the Commission.

## Proposals for Improving the Operation of the Commission

The Department of Local Government, Sport and Cultural industries is exploring options to expand on the executive support services provided to the Commission.

## Other Government Policy Requirements

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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:

- 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.

## Other Legal and Government Policy Requirements

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### 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 \$468 of 'Government Agencies' expenditure in 2019-20 .

## Remuneration of Members

Chairperson \$1074 per day for hearings or deliberations/meetings of over 4 hours or \$763 per day for hearings or deliberations/meetings of less than 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 (i.e. 6 hours for 2 days of hearings or deliberations etc 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 (i.e. 5 hours for 1 day, 8 hours for 2 days of hearing or deliberations etc or part thereof).

Members \$773 per day for hearings or deliberations/meetings of over 4 hours or \$505 per day for hearings or deliberations/meetings of less than 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 (i.e. 6 hours for 2 days etc 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 (i.e. 5 hours for 1 day, 8 hours for 2 days etc).



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

Position	Name	Type of remuneration	Period of membership	Gross/actual remuneration 2019/20 financial year
Chairperson	Seamus Rafferty	Attendance/Decision Writing	12 months	\$12,231
Deputy Chairperson	Eddie Watling	Attendance/Decision Writing	12 months	\$8,986
Member	Dr Eric Isaachsen	Attendance/Decision Writing	12 months	\$6,225
Member	Alex Zilkens	Attendance/Decision Writing	12 months	\$7,571
Member	Emma Power	Attendance/Decision Writing	12 months	\$10,064
Member	Paul Shanahan	Attendance/Decision Writing	12 months	\$6,758
Member	Elanor Rowe	Attendance/Decision Writing	12 months	\$13,909
Member	Kirsty Stynes	Attendance/Decision Writing	12 months	\$7,402
Member	Sarah Oliver	Attendance/Decision Writing	12 months	\$7,040
Member	Wendy Hughes	Attendance/Decision Writing	7 months	\$5,117
Member	Mara Barone	Attendance/Decision Writing	10 months	\$1,682
Member	Pamela Hass	Ineligible – full time WA Public Servant	12 months	Nil
			<b>Total</b>	<b>\$86,985</b>