



# 2008/2009 Annual Report

## Liquor Commission of Western Australia



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## Availability in other formats

This publication is available in alternative formats such as computer disk, audiotape or Braille, on request from a person with a disability.

People who have a hearing or speech impairment may call the National Relay Service on 133 677 and quote telephone number (08) 9425 1888.

The report is available in PDF format at [www.liquorcommission.wa.gov.au](http://www.liquorcommission.wa.gov.au).


Hon. Terry Waldron, MLA  
Minister for Racing and Gaming

Dear Minister,

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 for the financial year ended 30 June 2009.

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

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Jim Freemantle', followed by a smaller, less legible signature or initials.

Jim Freemantle  
CHAIRPERSON

9 September 2009

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## **Chairperson's Overview**



Section 9K(1) of the [Liquor Control Act 1988](#) provides for the Chairperson on or before 30 September each year to submit to the Minister for Racing and Gaming an annual report on the activities of the Commission during the year ending on the preceding 30 June.

Accordingly, I am pleased to present this report on the operations of the Liquor Commission for the 2008/2009 financial year.

It has been a busy year, with 27 applications received. Of these, there were 20 section 25 reviews, six section 95 complaints and one section 154B application referred to the Commission by the Director of Liquor Licensing pursuant to section 24 of the *Liquor Control Act 1988*.

It is important to note that the role of the Liquor Commission has evolved significantly since the judgement of WA Supreme Court Chief Justice Martin in the case of [Hancock v Executive Director of Public Health \[2008\] WASC 224](#). The judgement quashed a decision of the Liquor Commission/Delegate of the Director of Liquor Licensing to reject an application by David Hancock ([LC1/2008](#)) for the grant of a hotel restricted licence, on the basis that the Delegate and the Commission had failed to afford Mr Hancock procedural fairness as required under the *Liquor Control Act 1988*.

It is also important to note that the nature of applications before the Commission has become increasingly complex due to applicants retaining the services of legal counsel. This development is to some extent contrary to the intentions of the 2007 liquor licensing reforms which were designed to replace the Liquor Licensing Court with a more flexible system with as little formality and technicality as practicable. As a result, Commission members are required to review detailed submissions from the counsel of applicants and interveners. Furthermore, in light of the Hancock judgement, it is incumbent on the Liquor Commission to provide much more detailed reasons for its determinations.

I take this opportunity to thank the other members of the Commission for their invaluable contribution to the efficient operation of the Commission. They have given willingly of their time and expertise in discharging their responsibilities and coping with a heavy workload.

Also, I take this opportunity to thank the Department of Racing, Gaming and Liquor, and in particular the Executive Officer for the Liquor Commission, for the ongoing provision of executive support services and for the provision of facilities to conduct the Commission's business. It would be impossible for the Commission to conduct its activities in an effective, efficient manner without their support.

A handwritten signature in blue ink, appearing to read 'Jim Freemantle', followed by a stylized flourish.

Jim Freemantle  
CHAIRPERSON

9 September 2009

## **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 2009, the Minister responsible for the Racing and Gaming Portfolio was the [Honourable Terry Waldron MLA](#), Minister for Sport and Recreation; Racing and Gaming; Minister Assisting the Minister for Health.

### **The Responsibilities of the Liquor Commission**

It is the responsibility of the Liquor Commission to:

- Determine liquor licensing matters referred to it by the Director of Liquor Licensing.
- Conduct reviews of certain decisions made by the Director, or by a single member of the Commission.
- Conduct reviews into decisions based on a question of law.
- Determine complaints and disciplinary matters in accordance with section 95 of the *Liquor Control Act 1988*.
- Make binding, high-level decisions in accordance with the *Liquor Control Act 1988*.
- Award costs associated with matters before the Commission.
- Report annually to the Minister for Racing and Gaming on the activities of the Commission.
- Report 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.

In making its decisions, the Commission takes into account the objects of the Act, which are:

- Regulating the sale, supply and consumption of liquor.
- Minimising harm or ill-health caused to people, or any group of people, due to the use of liquor.

- Catering for the requirements of consumers of liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.
- Facilitating the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State.
- Providing adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor.
- Providing a flexible system, with as little formality and technicality as may be practicable, for the administration of the Act.

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 question of law that have been reviewed.
- Give directions to the Director of Liquor Licensing, to which effect shall be given.
- 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, but any appeal will only be heard on a question of law.

### **Members of the Liquor Commission**

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 legal practitioner as defined in the [Legal Profession Act 2008](#) or have been admitted to legal practice in another state or a Territory.

Each member of the Commission is appointed by the Minister on a full time, part time or sessional basis 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.

The Liquor Commission consists of the following members:

### **Mr Jim Freemantle, Chairperson**

Mr Freemantle was the Chairperson of the committee appointed by the Government in 2004 to review the Liquor Licensing Act. He is a former Deputy Chairman of Good Samaritan Industries Board and is Deputy Chairman of Racing and Wagering WA, Chairman of the Racing and Wagering Western Australia Integrity Assurance Committee and a member of the Swan River Trust. Mr Freemantle is also a former Vice President of the Western



Australian Chamber of Commerce and Industry, and formerly held the position of Chief Executive of the Home Building Society.

**Mr Edward Watling, Deputy Chairperson**

Mr Watling is a founding partner and Executive Director of the firm Tourism Co-ordinates, a Perth-based company specialising in tourism strategic planning and development. Mr Watling has more than 35 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 (WATC), resigning that office in 1986. 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. Mr Watling has served on several boards and committees including the Indian Ocean Tourism Association; Tourism Council Australia; and the Perth Convention Bureau.



**The members of the Liquor Commission. Seated, from the left: Karen Lang, Jim Freemantle (Chairperson) and Helen Cogan. Standing, from the left: Greg Joyce and Edward Watling (Deputy Chairperson)**

**Ms Helen Cogan, Member**

Ms Cogan is a legal practitioner recently retired from the State Solicitor's Office where she held the position of Senior Assistant State Solicitor. Ms Cogan is also a member of the Gaming and Wagering Commission of Western Australia. She was employed with the State Solicitor's Office over the period 1993 - 2005. Prior to her employment with the State Solicitor's Office, Ms Cogan worked for various private and public legal organisations within Australia and overseas.

**Mr Greg Joyce, Member**

Mr. Greg Joyce was the former Director General of the Department of Housing and Works. He is currently Chairman of Workcover WA. He has been on several Boards and Committees including Treasury Corporation Board and Chairman of the Justice Reform Implementation Committee. He has a law degree from the University of WA and is qualified to practise as a barrister and solicitor.

**Ms Karen Lang, Member**

Ms Karen Lang is a legal practitioner admitted to the Supreme Court of Western Australia, Federal and High Courts of Australia, and Solicitor of the Supreme Courts of England and Wales. Ms Lang has practiced in private law firms in Perth and London, worked at Goldman Sachs in London and Legal Aid WA. Ms Lang is currently an appointed sessional member of the State Administrative Tribunal and Deputy Chair/Legal Member of the Real Estate and Business Agents Supervisory Board and the Building Disputes Tribunal.

**Executive Support for the Liquor Commission**

Executive support for the Liquor Commission is provided by the Department of Racing, Gaming and Liquor. The Executive Officer of the Commission is Ms Seema Saxena.

**The Constitution and Jurisdiction of the Liquor Commission**

In accordance with section 9A of the *Liquor Control Act 1988*:

- The Commission is to be constituted by one member, except as otherwise stated in the Act, or determined by the Chairperson under subsection 9A(2) of the Act.
- The Chairperson may determine that, in respect of any particular matter or any matter of a particular kind, the Commission is to be constituted by three members.
- If the Commission is constituted by three members and they are divided on a question, the question is to be decided according to the opinion of the majority of members.

The Commission is constituted by three members whilst determining the following matters under the Act:

**Section 24**

Matters that can be referred by the Director to the Commission constituted by three members if:

- the matter or part of a matter relates to an application for the grant or removal of a licence;
- the matter or part of a matter relates to the making, variation or revocation of a prohibition order under Part 5A of the Act (any decision under Part 5A needs to be made in the public interest); or
- the Chairperson so determines.

**Section 25**

Application for review of the Director's decision when:

- the decision relates to an application for the grant or removal of a licence;
- the decision is to make, vary or revoke a prohibition order; or
- the Chairperson so determines.

**Section 28(4a)**

Appeal the decision of one Commission member to the Commission with a panel of three members.

**Section 95**

Where the complaint is lodged for disciplinary action, one member of the Commission is to be a legal practitioner.

**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.
- The assessment of a subsidy.
- Matters relating to the hearing of an objection.
- Finding of fact required to be made in order for the matter or application to be disposed of.
- 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 whom the finding was made in relation to the qualifications, reputation or character of a person.

## **The number, nature and outcome of matters that have come before the Commission**

During the 2008/2009 reporting year, 15 matters came before, and were determined by, the Liquor Commission.

The following pages contain a summary of each decision handed down by the Liquor Commission. Decisions can be viewed at the Liquor Commission's website [www.liquorcommission.wa.gov.au](http://www.liquorcommission.wa.gov.au).

### **Section 24 Reviews**

#### **LC7/2009 Commissioner of Police -v- Nunzio La Bianca**

*In respect of the licensed premises known as The Rock Nightclub*

On 4 May 2009, the Commissioner of Police lodged an application to the Director of Liquor Licensing pursuant to section 152B of the Act, seeking an order against Mr Nunzio La Bianca prohibiting him from being employed by a licensee at any licensed premises for a period of five years. The Director referred the matter to the Commission pursuant to section 24 of the *Liquor Control Act 1988*.

The matter was listed for public hearing on 6 May 2009. It was also listed for private hearing on 15 May 2009, pursuant to section 30 of the Act. The Commission was constituted by three members, namely Mr Jim Freemantle, Ms Helen Cogan and Mr Greg Joyce.

After hearing from all parties and relying in part on confidential Police information supplied in support of the complaint, the Commission issued its determination on 19 May 2009. It upheld the complaint and Mr Nunzio La Bianca was prohibited from being employed by a licensee at any licensed premises for a period of five years from the date of the order.

#### **Complaints That Were Subsequently Withdrawn**

There were no section 24 complaints withdrawn during the year.

### **Section 25 Reviews**

#### **LC10/2008 David Payne -v- Proce Pty Ltd t/a Woolworths Limited**

*In respect of the premises known as Beer Wine Spirits (BWS), West Leederville*

On 7 April 2008, an application was lodged on behalf of Proce Pty Ltd for the conditional removal of a liquor store licence from premises situated at 278 Railway Parade, West Leederville (trading as Barossa Cellars) to premises situated at Shop 4-5 Cambridge Street Shopping Centre, 115 Cambridge Street, West Leederville.

Also lodged on the same date was a copy of an Agreement for Purchase of Business between Proce Pty Ltd as trustee for the Barossa Cellars Trust (Seller) and Woolworths

Limited (Buyer). Woolworths was to trade as Beer Wine Spirits (BWS), West Leederville at the new premises.

In accordance with section 67 of the Act, the application was advertised on the site of the premises for a period of 28 days, commencing on 9 April 2008, in The West Australian newspaper and by way of a Notice to Residents and Businesses located within a 200 metre radius of the premises.

On 6 May 2008 an objection to the conditional removal of the licence was lodged by Mr David L Payne. The grounds of the objection were based on the use of the Cambridge Street level car park, which has an elevated view into the rear of his property, by patrons of the BWS liquor store, particularly during extended trading hours beyond 6pm.

On 13 June 2008 the Director of Liquor Licensing, in accordance with sections 13 and 16 of the Act, granted the application by Woolworths Limited and dismissed the objection by Mr Payne.

On 11 July 2008, Mr Payne lodged an Application for Review of the Decision of the Director of Liquor Licensing.

The matter was listed for hearing on 25 September 2008, with the Commission constituted by three members, namely Mr Edward Watling, Ms Helen Cogan and Mr Greg Joyce.

After hearing from all parties, the Commission issued its determination on 13 October 2008, finding:

- No cause exists to vary or quash the decision of the Director of Liquor Licensing.
- The decision of the Director to grant a liquor store licence for the premises at Shop 4-5 Cambridge Street Shopping Centre, 115 Cambridge Street, West Leederville, stands.

The Commission also noted that there had been a process deficiency in that this matter reached the point of a hearing that may have otherwise been avoided, when there was a more appropriate option available under section 117 of the Act.

#### **LC11/2008 Mr X -v- Commissioner of Police**

*The names of the applicant and the licensed premises have been changed to protect their identities, due to a Police prosecution against Mr X which was subsequently discontinued.*

On 17 October 2007 a licensee lodged an application for Mr X to be approved as a manager under section 100 of the *Liquor Control Act 1988*. Mr X lodged a Personal Particulars Form on the same date.

On 21 December 2007 the WA Police Service advised the Director of Liquor Licensing that, on the basis of concerns about an incident at the Burswood Ruby Room Nightclub on 26 November 2007 and recorded on CCTV video surveillance, it was considered that Mr X's behaviour was such as to render him unsuitable to hold the position of Approved Manager.

As a consequence of the WA Police advice, the Director wrote to Mr X on 7 January 2008, enclosing a copy of the Police objection and inviting written submissions as to why Mr X

might consider that he is a fit and proper person to be approved as a manager at the licensed premises.

On 8 January 2008 the licensee lodged an application for approval of Mr X as a person in a position of authority under section 102 of the Act. This application arose from the licensee's resolution (dated 17 December 2007), to appoint Mr X as a director of the company.

On 24 January 2008 a WA Police Notice of Intervention was lodged with the Director, detailing the incident of 26 November 2007 and advising that Mr X was facing serious criminal charges before the Perth Magistrates Court in relation to two charges of assault occasioning bodily harm. The matter was set for trial on 24 April 2008.

On 24 April 2008 the West Australian Police discontinued the prosecution against Mr X and he was acquitted.

On 3 June 2008, the Director wrote to Mr X, inviting him to contact a departmental officer to make arrangements to view the CCTV footage and to make written submissions as to why his applications should be granted. The submissions were to be lodged no later than 18 July 2008.

On 18 July 2008, the Director received a letter from Mr X's lawyers setting out reasons to support the applications from Mr X. Four character references were included with the submission.

On 11 August 2008 the Director wrote to the licensee and provided a copy of the decision which refused the sections 35B and 102 applications.

On 8 September 2008, Mr X's lawyers lodged an application for a review of the decision for the following reasons:

- There was no other evidence before the Director, other than the CCTV footage to indicate that Mr X was not a fit and proper person.
- Insufficient weight was given to Mr X's lack of any criminal record and the references provided of Mr X's previous good record.
- Mr X was denied natural justice and procedural fairness by the failure of the delegate to disclose evidence and material relied upon to reach the finding.
- The delegate did not adequately consider other material which supported that Mr X was a fit and proper person.

The application was listed for hearing on 5 November 2008. The Commission was constituted by one member, Mr Edward Watling.

After hearing from all parties, the Commission gave due consideration to the following when reaching its decision:

- The CCTV footage shows considerable violence being carried out by Mr X to the extent that the WA Police lodged a Notice of Intervention with the Director and advised that two charges of assault occasioning bodily harm had been lodged before the Perth Magistrates Court.

- Despite the discontinuance of the prosecution, the CCTV footage remained critical in the determination of Mr X's character and in the assessment as to his suitability to be approved as a manager and a person of authority.
- The actions of Mr X, as shown in the 26 November 2007 CCTV footage, were such as to render him unsuitable for approval as a manager and a person of authority.

The Commission issued its determination on 17 November 2009, affirming the decision of the Director of Liquor Licensing.

### **LC1/2009 Floreat Beach Investments Pty Ltd -v- Director of Liquor Licensing (Anors)**

*In respect of the premises known as Floreat Tavern*

On 19 October 2006 Mr Ewan Gunn, and on 26 March 2007 Mr John Lukey, lodged complaints under the provisions of s 117(1)(b) of the *Liquor Control Act 1988* against the Floreat Tavern. They specifically complained about the following:

- Noise from the outdoor courtyard area (music and patron noise) was disruptive and unacceptable;
- Amplified bass noise was too loud when musicians or disc jockeys provided entertainment at the tavern; and
- Antisocial behaviour exhibited by patrons leaving the tavern was annoying and unacceptable.

Officers from the Department of Racing, Gaming and Liquor commenced a process of inspection, investigation and mediation. Some initiatives were introduced by the licensee and there was a reduction in the level of antisocial behaviour but complaints continued about the level of noise emanating from the tavern.

On 11 September 2007, Mr Peter Minchin, Deputy Director Licensing of the Department conducted a hearing to determine the complaints. Following submissions from the complainants and the licensee all parties agreed it was appropriate to monitor initiatives introduced by the licensee. The strategies introduced consisted of the following:

- A new sound system installed in May 2007.
- Speakers in the beer garden to be turned off in the early evening.
- A change in the type of entertainment to be offered – no live bands on Saturdays.
- No live music on Sundays after 6pm.
- Entertainment to be offered by duos on Friday nights.
- 11pm lockouts on Fridays.
- Improved staff training for bar staff at the tavern.

In October 2008, prior to the hearing before the Director of Liquor Licensing on 15 October 2008, an attempt was made by the Department to negotiate an agreed outcome. The complainants indicated that whilst there had been a significant improvement there were still instances when the noise levels were too high particularly in the courtyard. No agreement could be reached on the proposed conditions.

The Director of Liquor Licensing intervened pursuant to section 69(11) of the Act and on 20 November 2008 lodged an application for review.

The matter was listed for hearing on 19 January 2009, with the Commission constituted by three members, namely Mr Jim Freemantle, Mr Greg Joyce and Mr Edward Watling.

It was acknowledged that since the original complaint was lodged in October 2006, there had been a great deal of discussion, negotiation and process between all parties. This includes recognition by the licensee that it had to take remedial action across a range of issues to improve the situation. These issues were generalised and not specific to Friday night.

It was also acknowledged that the Director of Liquor Licensing has gone to great lengths to resolve the issues raised and the licensee has been a willing party to that process.

The Commission made its determination on 30 January 2009. It was determined to vary the Director of Liquor Licensing's decision as follows:

- When entertainment, whether by musicians or disc jockeys, is provided in the indoor function room, all doors and windows to the function room must remain closed after 7pm on any night.
- No amplified music to be provided by musicians or disc jockeys in the courtyard area after 7pm on any night.
- Pre-recorded music not to be played in the courtyard area after 11pm on any night.

#### **LC2/2009 Rowtree Pty Ltd -v- Director of Liquor Licensing (Anors)**

*In respect of premises known as Golden West Entertainment*

Rowtree Pty Ltd T/A Golden West Entertainment made an application for the grant of a Special Facilities Licence (Transport) for a vehicle to be known as the "Limbusine" to operate in and around the Geraldton area.

Notices of Intervention were lodged on behalf of the Executive Director, Public Health and by Senior Constable Ron Wilson of Mid West Gascoyne Alcohol and Drug Co-ordination Unit.

The grounds of the objections primarily were that the grant of the application would not be in the public interest and contrary to the provisions of section 74(1)(a) of the *Liquor Control Act 1988*.

On 20 November 2008, the Director of Liquor Licensing declined the application on the grounds that the applicant had failed to establish, on the balance of probabilities, that the grant of the application would be in the public interest as provided by section 38(2) of the Act.

The applicants lodged an Application for Review on 12 December 2008 on the following grounds:

- The finding by the Director that there was cause for concern about the applicants' general regard for the *Liquor Control Act 1988* was unreasonable.
- The concern expressed by the Director as to the ability of the Approved Manager, Mr Rowe, to adequately supervise as he is the designated driver is based on a misunderstanding.



- Denial of natural justice to the extent they were not informed that there was any issue in regard to toilet arrangements.
- The Director erred on the weight of evidence in not being satisfied that the grant of the licence was in the public interest.

The application was listed for hearing in Geraldton on 10 February 2009, with the Commission constituted by three members, namely Mr Jim Freemantle, Ms Helen Cogan and Ms Karen Lang.

In dismissing the Application the Commissions' reasons were as follows:

- There were reasonable grounds for concern about the applicants' regard for and understanding of their responsibilities under the Act. The majority of the issues have been resolved since then, but this information was not available to the Director at the time of the determination.
- There were reasonable grounds for concern about Mr Rowe's capacity to supervise to the required standards as well as drive the bus.
- The claim of denial of natural justice to the extent they were not informed that there was any issue in regard to toilet arrangements is not supported by the series of correspondence between the applicants and the Department of Racing, Gaming and Liquor.
- On carefully reviewing the material before the Director, the Commission came to the same conclusion as the Director that the applicants had not satisfied the requirements of section 38(2) and (4).

It was determined on 10 February 2009 to dismiss the application. The Commission concluded that in view of the substantial developments subsequent to the original documentation, the applicants may, if they wish, make a fresh application to the Director of Liquor Licensing.

### **LC3/2009 Chernov Pty Ltd, Chitty Pty Ltd and Legge Pty Ltd -v- Director of Liquor Licensing**

*In respect of licensed premises known as Sunset Events*

This was an application received on 13 March 2009 seeking review of Decision No. A191260 by the Delegate of the Director of Liquor Licensing under section 25 of the *Liquor Control Act 1988* relating to a transfer and removal application by Chernov Pty Ltd, Chitty Pty Ltd and Legge Pty Ltd.

The following grounds for appeal were alleged in the application for review:

- The decision maker had made an error in law in finding that granting the Application would be contrary to the *Liquor Control Act 1988*.
- There were no public interest or policy grounds for refusing the Removal and Transfer Application.

- There were strong public interest and policy grounds for granting the Removal and Transfer Application.
- There was a denial of natural justice and/or procedural fairness.

The complaint was listed for hearing before the Commission on 17 March 2009, with the Commission constituted by one member, Mr Jim Freemantle.

A Notice of Intervention was lodged by the Director of Liquor Licensing on 17 March 2009 with the Commission, wherein it was submitted that the determination handed down by the Delegate of the Director of Liquor Licensing was inconsistent with the principles of procedural fairness, in that the delegate failed to provide adequate reasons for his decision to the applicant. Further, the consideration to cancel the licence would have been relevant only upon the determination made in respect of the applications that are currently subject to review.

It was determined by consent on 7 April 2009 that the decision of the Delegate of the Director of Liquor Licensing refusing the applications for transfer and removal of licence stands quashed and the applications were referred back to the Director of Liquor Licensing for determination in accordance with the law. There was no order as to costs.

#### **LC4/2009 Ventorin Pty Ltd -v- Director of Liquor Licensing**

*In respect of licensed premises known as Pemberton Cellars*

On 21 November 2007, an application was lodged on behalf of Ventorin Pty Ltd for the conditional grant of a liquor store licence for the premises known as Pemberton Cellars situated at Lot 1, 38 Brockman St, Pemberton; and an extended trading permit (ETP) to authorise Sunday trading pursuant to section 60(4)(g) of the *Liquor Control Act 1988*.

The application for an ETP for the premises was deferred pending determination of the application for the liquor store licence.

On 19 September 2008, the Director of Liquor Licensing granted a conditional liquor store licence for the Premises.

On 16 December 2008, the Director of Liquor Licensing refused the application for an ETP.

On 15 January 2009, Ventorin Pty Ltd lodged an Application for Review of the decision to refuse the application for an ETP.

Ventorin Pty Ltd was dissatisfied with the Decision of the Director of Liquor Licensing and sought a review of the decision on the following grounds:

- The Director ignored or misapplied provisions of the *Liquor Control Act 1988* and inappropriately applying policy.
- The Director applied the wrong test in determining the application for an ETP.
- The Director failed to deal with the application on its merits by not having proper regard to the relevant evidence.
- The Director failed to give cogent or adequate reasons for the refusal of the ETP.

On 21 January 2009, the Director of Liquor Licensing lodged a Notice of Intervention in the matter for the purpose of making submissions.

The matter was listed for hearing on 10 March 2009, with the Commission constituted by three members, namely Mr Jim Freemantle, Ms Helen Cogan and Mr Greg Joyce.

After hearing from both parties, the Commission examined the merits of the applicant's submissions and the provisions of the *Liquor Control Act 1998*, with particular regard to section 5 (the objects) and section 38 (the public interest test). It also considered the intention of the legislature with the 2006 amendments and policy.

The Commission also weighed up the competing interests of both the Director and the applicant and decided that the applicant had not satisfied the Commission that it is in the public interest to issue the permit, given that the Pemberton area is well served by liquor outlets able to trade on Sunday, the closest being within 200 metres of the applicant's premises.

The Commission determined on 8 May 2009 to refuse the application for an Extended Trading Permit.

### **LC6/2009 Spandau Pty Ltd -v- Director of Liquor Licensing (Anors)**

*In respect of licensed premises known as O'Connor Cellars*

On 30 July 2007, Spandau Pty Ltd trading as O'Connor Cellars lodged an application under section 47 of the *Liquor Control Act 1988* for a Liquor Store licence in respect of the premises at Lot 776 Maguire Street, Kalgoorlie. The Director of Liquor Licensing granted the Liquor Store licence on May 30 2008.

On 13 March 2008, the applicant lodged an application for an Extended Trading Permit for Sunday trading at the premises between 10.00am and 8.30pm. The licensee's argument for an ETP was based on the following:

- The provision of Sunday trading in the suburb of Somerville, a mining community.
- The provision of a quality liquor store in an affluent suburb would not be likely attract at-risk groups.
- Residents should be afforded the same shopping benefits available in the Perth metropolitan area.
- The convenience to Somerville residents of purchasing liquor locally on a Sunday without having to travel too far.

On 18 July 2008, the Executive Director Public Health lodged a notice of intervention in relation to the ETP application, under section 69(8a) of the Act.

On 22 July 2008, the Kalgoorlie Alcohol Action Project and the National Drug Research Institute lodged Notices of Intervention in relation to the ETP application.

In summary, the interveners submitted that:

- The applicant's submission that Kalgoorlie can be considered a regional metropolitan area, and not a country town, should be rejected.

- 21 liquor outlets trading on a Sunday within 5 kilometres of O'Connor Cellars met market demand.
- Statistics show that alcohol is the cause of significant harm and problems in Kalgoorlie and alcohol consumption in the Goldfields is significantly higher than the State average. Accordingly, alcohol sales by the premises on a Sunday would increase alcohol consumption and lead to further harm.
- There is little evidence to support the argument that Somerville is an affluent suburb.
- There is no evidence to suggest that the severity and breadth of alcohol problems in Kalgoorlie are confined to less affluent areas.

On 16 December 2008, the Director of Liquor Licensing refused the ETP application.

On 16 January 2009, the applicant lodged an application for a review of the decision of the Director on the following grounds:

- The Director failed to accord any or proper weight to the submissions of the applicant when responding to the intervention of the Executive Director Public Health.
- Insufficient weight was accorded to the particular circumstances of the operations of the applicant.
- The Director gave undue weight to the generic policy considerations underpinning section 98D of the *Liquor Control Act 1988*.
- The Director gave undue weight to the fact that there are 25 hotels and taverns able to sell packaged liquor on Sunday without giving proper weight to the circumstances of trading within the City of Kalgoorlie-Boulder and the distinction to be made between the operations of the applicant and the operations of the hotels and taverns referred to.
- The Director erred in determining that, on the balance of probabilities, the applicant had not provided sufficient evidence to support the grant of the application.

The Liquor Commission conducted the hearing on 1 April 2009, with the Commission constituted by three members, namely Mr Edward Watling, Mr Greg Joyce and Ms Karen Lang.

After hearing from all parties, the Commission was not satisfied that granting the ETP was in the public interest, for the following reasons:

- Residents of the broader Kalgoorlie area are already well served by liquor outlets operating on Sundays. The granting of the ETP would not provide a service otherwise unavailable to Kalgoorlie residents.
- There is clear evidence of harm being caused to the Kalgoorlie community through the use of liquor. Allowing the ETP will increase the availability of liquor, presenting a small but real risk of further harm to the community. This was considered unacceptable, given the existing level of alcohol-related harm in Kalgoorlie.

- Any convenience to residents flowing from the granting of the ETP is outweighed by this risk.

The Commission issued its determination on 11 May 2009. It affirmed the decision of the Director to refuse the Extended Trading Permit application.

### **LC8/2009 Liquorland (Australia) Pty Ltd -v- Director of Liquor Licensing**

*In respect of licensed premises known as Liquorland Mandurah Forum*

On 17 July 2008, an application was lodged by Liquorland (Australia) Pty Ltd for an extended trading permit (ETP) to authorise Sunday trading at Liquorland Mandurah Forum, from 10am to 5pm on those Sundays on which Centro Mandurah Shopping Centre is authorised to trade, namely:

- each Sunday during school holiday periods;
- each Sunday during holiday long weekends; and
- from the first Sunday in December to the last Sunday in April inclusive.

On 19 December 2008, the Director of Liquor Licensing refused the ETP application on the following grounds:

- The premises did not fall within the metropolitan area.
- There are other licensed premises in the Mandurah business district where packaged liquor can be purchased on a Sunday.
- Licensees are entitled to apply for one-off ETPs for the Christmas period and other special events.

On 5 February 2009, the applicant lodged an application for a review of the Director's decision. On 13 February 2009, the Director lodged a Notice of Intervention.

The applicant sought a review of the decision for the following reasons:

- There are exceptional reasons why the Director's discretion under section 33 of the *Liquor Control Act 1988* should be exercised in this instance.
- The ETP is in the public interest, given that Mandurah is experiencing rapid growth and increasing popularity as a tourist destination.
- Centro Mandurah Shopping Centre is a major shopping centre, catering to the requirements of people who live and work in the area, as well as the large number of tourists with Mandurah being a key tourist destination.
- For all intents and purposes, Mandurah is part of the greater Perth metropolitan area.

The matter was listed for hearing on 30 April 2009, with the Commission constituted by three members, namely Mr Jim Freemantle, Ms Helen Cogan and Mr Edward Watling.

After hearing from all parties, the Commission was satisfied that granting the ETP was in the public interest. The Commission particularly noted that that proposed Sunday trading hours sought by the applicant are consistent with the established and approved Sunday trading hours of the Centro Mandurah Shopping Centre, which restricts the number of Sunday trading days to be in accordance with market demand.

The Commission issued its determination on 2 June 2009, upholding the application and overturning the Director of Liquor Licensing's decision. The Commission ordered that the application for an Extended Trading Permit be granted.

### **LC9/2009 Spinifex Trading Pty Ltd -v- Director of Liquor Licensing Anors**

*In respect to licensed premises known as Halls Creek Store*

On 13 January 2009, the Director of Liquor Licensing issued a Notice under section 64 of the *Liquor Control Act 1988* to the licensees of Halls Creek Store and Kimberley Hotel setting out proposed conditions to be applied and providing the opportunity for the licensees to show cause why these conditions should not be imposed. Written submissions were required to be lodged no later than close of business on 20 February 2009.

On 20 February 2009, the licensee of the Halls Creek Store lodged a submission suggesting a set of self-imposed conditions to be added to those already in place rather than having the proposed new conditions applied.

On 11 May 2009, the Director, having considered the March 2009 submissions from the Executive Director Public Health and the information provided by the WA Police and the February and April submissions from the Hall Creek Store and the Kimberley Hotel, determined on the balance of probabilities and public interest to impose the conditions on the Halls Creek Store and Kimberley Hotel licences.

On 8 June 2009, the applicant lodged an interim application to lift the imposition of the conditions placed on the Halls Creek Store, pending the final determination of an application for a review, also lodged on the same date.

On 11 June 2009, intervention submissions were received from the Executive Director Public Health and the Director. On the same day the Commissioner of Police advised that a Notice of Intervention would be lodged for the review hearing.

On 12 June 2009, the applicant lodged a final submission and a declaration by the licensee.

The matter was listed for a preliminary hearing on 15 June 2009. The Commission was constituted by one member, Mr Edward Watling.

Counsel for the applicant referred to the processes that had been applied leading to the section 64 Notice and through until the May 11 2009 decision of the Director to impose the subject conditions. It was contended that these processes were flawed and did not justify the decision reached.

It was pointed out that there had been many changes to conditions and drinking habits in Halls Creek over the years and that the Director in reaching the decision had ignored these factors.

The fact that the hotel was still able to sell full strength liquor across the bar was a contradiction to the conditions placed on the sale of packaged liquor by both the store and the hotel.

Counsel for the applicant also pointed out the serious financial implications for the business of the applicant as a direct consequence of the conditions being applied. It was submitted

that the business was heading for bankruptcy. To cease trading was not an option because this would risk the licence being suspended.

Counsel for the Director of Liquor Licensing and the Executive Director Public Health stated that the conditions were in place and had been for four weeks and no purpose would be served in lifting them during the period leading to the review hearing. While reference had been made to the level of chronic alcoholics, this was not the only issue, as binge drinking was also a major problem in the Halls Creek area.

Counsel further stated that there were no restrictions on the licensee selling stock to a liquor merchant and there was no evidence to confirm that the business was facing bankruptcy. This was an issue of health versus business and it is in the public interest to give priority to health issues.

Counsel for the Commissioner of Police concurred with the submissions filed for the Executive Director Public Health.

After hearing from all parties, the Commission issued its determination on 18 June 2009, and published its reasons for decision on 1 July 2009, dismissing the application to set aside the conditions imposed pending the final determination of the review of the decision of the Director of Liquor Licensing.

The Commission found that the harm and ill-health issues are such that it would not be in the public interest to lift the conditions as an interim measure, prior to the review hearing. There is a very clear risk of immediate harm and ill-health occurring in the Halls Creek community, to the extent that the outcome would likely to be highly detrimental to the interests of that community.

### **LC10/2009 Diana Sim -v- Director of Liquor Licensing**

*In respect to licensed premises known as Carilley Estate*

This was an application lodged with the Liquor Commission on 16 April 2009 seeking a review of the Decision of the Director of Liquor Licensing (A192489) relating to the conditional grant of a tavern licence to Isavel Carja for the premises known as Carilley Estate.

The grounds for the review alleged the lack of inclusion of the following self-imposed restrictions by the applicant of the tavern licence in the determination of the Director:

- A condition to restrict the sale of liquor other than that produced by Carilley Estate.
- The sale and supply of liquor other than that produced by Carilley Estate for consumption on the premises.

The appeal was listed for hearing before the Commission on 26 June 2009. The Commission was constituted by one member, Mr Jim Freemantle.

In accordance with the Minute of Consent Orders filed by the parties and pursuant to the provisions of section 25(4)(a) of the Act, the Commission issued its determination on 26 June 2009, varying the decision of the Director of Liquor Licensing so that the Carilley Estate tavern licence would be subject to the following additional conditions:

- The licensee may sell and supply liquor produced by Carilley Wines for consumption both on and off the licensed premises.
- The licensee may conduct tastings of liquor produced by Carilley Wines only.
- The licensee may sell and supply other liquor for consumption on the licensed premises only.
- No application to change trading conditions may be approved by the licensing authority without the application first having been locally advertised.
- Seating for 40 people must be available for dining at all times and dining tables will always be available in the Mediterranean room area of the premises for this purpose.

### **LC11/2009 AJ and CA Hague-Smith and JH and TN Naera -v- Director of Liquor Licensing**

*In respect to licensed premises known as Darling Range Drive In Liquor Centre*

This was an application lodged with the Liquor Commission on 3 June 2009, seeking a review of the decision of the Director of Liquor Licensing relating to the conditional grant of a liquor store licence to AJ and CA Hague-Smith and JH and TM Naera for the premises known as the Darling Range Drive In Liquor Centre.

The applicants sought a review of the decision to impose a proprietorship condition, which stated that the licensee of the liquor store licence must, at all times, also be the licensee of The Ranges Inn.

The appeal was listed for hearing before the Commission on 1 July 2009. The Commission was constituted by one member, Mr Jim Freemantle.

In accordance with the Minute of Consent Orders filed by the parties to this proceeding, the review application was allowed and pursuant to the provisions of section 25(4)(a) of the Act, the Commission issued its determination on 1 July 2009, varying the determination of the Director of Liquor Licensing by quashing the proprietorship condition imposed upon the licence.

### **Applications For Review That Were Subsequently Withdrawn**

There were a further four section 25 applications lodged and then withdrawn during the year.



## **Section 95 Complaints**

### **LC8/2008 Commissioner of Police -v- Goldfields Hotels Pty Ltd**

*In respect of licensed premises known as The Exchange Hotel*

The complaints made by the Commissioner of Police alleged that proper cause for disciplinary action existed against the respondent on the following grounds:

- Having been issued four liquor infringement notices respectively, under section 167 of the *Liquor Control Act 1988* and the respective modified penalties having been paid in accordance with that section.
- Liquor infringement notices were issued to the licensee for permitting juveniles to enter or remain on the premises.
- A liquor infringement notice was issued to the licensee for carrying on the business in a way that contravened a condition of the licence, namely, failing to provide a full meals service during the hours of trade.
- A liquor infringement notice was issued to the licensee for failing to keep a copy of plans approved by the licensing authority on the premises.

The complaint was listed for hearing on 5 September 2008, with the Commission constituted by three members, namely Mr Jim Freemantle, Ms Helen Cogan and Ms Diana Warnock.

After considering the written and oral submissions made by all parties at the hearing, the Commission was satisfied that proper cause for disciplinary action existed.

The Commission placed particular weight on the following matters:

- The complainant's submissions covering the seriousness of failure by the licensee to abide by the provisions of the Act.
- The respondent's submissions that the licensee did not in any way seek to trivialise any of the matters which are the subject of the liquor infringement notices but the offences might be regarded as at the lower end of the scale in terms of seriousness of the offences.
- The licensee of the premises at the relevant times is no longer the licensee of the premises.

On 19 September 2008 the Commission reached the following decision:

- Ordered the respondent to pay \$4000 to the Liquor Commission.
- Ordered the respondent to pay additional costs of \$2000 to the Liquor Commission.

## **LC9/2008 Commissioner of Police -v- Ronimi Engineering Pty Ltd**

*In respect of licensed premises known as Seoul Karaoke Restaurant*

The complaint made by Commissioner of Police dated 6 June 2008 alleged that proper cause for disciplinary action existed against the respondent on the following grounds:

- Liquor infringement notices were issued to the licensee for permitting the consumption of liquor without a meal in an area not subject to any permit allowing liquor to be consumed without a meal.
- On another occasion, eight liquor infringement notices were issued to the licensee for permitting juveniles to enter or remain on the premises and consume liquor without a meal, and for permitting the consumption of liquor without having had a meal in areas that permitted liquor to be served ancillary to a meal. There was no approved manager on the premises and no evidence of any person being temporarily appointed. The licensee elected to have the matters dealt with in court.
- The licensee had on other occasions permitted the consumption of liquor without a meal in areas that permitted liquor to be served only if ancillary to a meal.
- The licensee had on other occasions permitted juveniles to enter or remain on the premises without being accompanied by a responsible adult.
- On a number of occasions, Police observed Rodney Calkin positioned at the front door of the premises carrying out the duties of a crowd controller. Police were shown a notice of authorisation issued by the licensee under section 126 C(2) of the Act to Rodney Calkin. Rodney Calkin is not the holder of a Crowd Controller licence and due to his extensive criminal record would not be considered a fit and proper person and of good character to be issued with a licence.

On 11 June 2008, the Director of Liquor Licensing, having considered all relevant information, and being satisfied on the balance of probabilities that it was in the public interest, exercised his powers under section 91(1) of the Act to suspend the respondent's licence forthwith until the hearing of the complaint.

The complaint was listed for hearing on 16 September 2008. The Commission constituted three members, namely Mr Jim Freemantle, Ms Helen Cogan and Ms Karen Lang.

Counsel for the complainant requested cancellation of the respondent's licence. Section 96 of the Act sets out the range of penalties available to the Liquor Commission of which cancellation is the most serious.

Counsel for the respondent tendered a statement of the Respondent's convictions recorded in the Perth Magistrates Court on 14 August 2008, following its pleas of guilty to the eight infringement notices. The presiding magistrate had imposed fines of \$5000 on the respondent.

Counsel conceded on behalf of the respondent that cancellation of its licence was appropriate in the circumstances. Counsel submitted by way of mitigation that no other penalty should be imposed by the Liquor Commission, having regard to the financial detriment suffered by the respondent by way of lost income since the suspension of its licence by the Director of Liquor Licensing. The respondent has ongoing expenses such as

rent on the premises and has already incurred infringement notice penalties of \$2000 and Magistrate Court fines of \$5000 for conduct which is the subject of this complaint.

The Commission issued its determination on 19 September 2008, finding proper cause for disciplinary action. The Commission ordered:

- The respondent's licence be cancelled with immediate effect.
- The respondent to pay costs of \$1000 to the Liquor Commission of Western Australia within 30 days of the determination.

### **LC7/2009 Commissioner of Police -v- The Bog (Northbridge) Pty Ltd**

*In respect of the licensed premises known as The Rock Nightclub*

On 3 April 2009, the Commissioner of Police lodged a complaint seeking the cancellation of the licence pursuant to section 96(1)(e) of the *Liquor Control Act 1988*.

On 7 April 2009, the Director of Liquor Licensing, having considered the information before him, suspended the licence in the name of The Bog (Northbridge) Pty Ltd, pending the determination of the complaint before the Commission.

The matter was listed for public hearing on 6 May 2009. It was also listed for private hearing on 15 May 2009, pursuant to section 30 of the Act. The Commission was constituted by three members, namely Mr Jim Freemantle, Ms Helen Cogan and Mr Greg Joyce.

After hearing from all parties and relying in part on confidential Police information supplied in support of the complaints, the Commission issued its determination on 19 May 2009. It upheld the complaint and cancelled the licence in the public interest.

### **Complaints That Were Subsequently Withdrawn**

There was one section 95 complaint withdrawn during the year.

## **The Number and Nature of Matters that are Outstanding**

As at 30 June 2009, there are 12 matters, received during the year, which are outstanding and yet to be determined.

### **Section 24 Reviews**

#### **The Commissioner of Police –v- Edward Horace Withnell**

This is a Police application seeking a prohibition order be made in the public interest prohibiting Edward Horace Withnell from being employed by a licensee of any licensed premises and from entering any licensed premises.

### **Section 25 Reviews**

#### **Palmerville Pty Ltd –v- Colin and Deborah Findlay and the Director of Liquor Licensing**

*In respect of the licensed premises known as Utakarra Liquor Barn*

This is a dispute between the applicant and the respondents concerning contractual issues relating to the lease of the Premises and the rights of the parties to possession of the premises. A hearing will be held to determine if the Liquor Commission has the authority to hear the matter.

#### **Boldgem Pty Ltd –v- Director Liquor Licensing**

*In respect of the licensed premises known as the Great Eastern Hotel Midland*

This is an application for a review of the decision of the Director of Liquor Licensing to decline an application for an Extended Trading Permit, as on the balance of probabilities, it is not deemed to be in the public interest.

#### **Springmist Pty Ltd -v- Director of Liquor Licensing**

*In respect of the licensed premises known as Constellation Apartments*

Application for a review of the decision of the Director of Liquor Licensing to decline an application for a 'Special Facility Licence – Tourism', as on the balance of probabilities, it is not deemed to be in the public interest.

#### **Claudius Holdings Pty Ltd –v- Director of Liquor Licensing**

*In respect of the licensed premises known as Café Spiaggia*

This is an application for a review of the decision of the Director of Liquor Licensing to impose certain conditions on the granting of a Small Bar Licence.

**Kapinkoff Nominees Pty Ltd –v- Director of Liquor Licensing**

*In respect of the proposed licensed premises to be known as Carramar Family Pub*

This is an application for a review of the decision of the Director of Liquor Licensing to decline an application for a Tavern Licence in Carramar, as on the balance of probabilities, it is not deemed to be in the public interest.

**Berber Nominees –v– Director of Liquor Licensing**

*In respect of the licensed premises known as The Wine Box Nedlands*

This is an application for a review of the decision of the Director of Liquor Licensing to grant a Liquor Store Licence. The application for a review of the decision is made by an objector in the matter.

**Spinifex Trading Pty Ltd –v- Director of Liquor Licensing and Others**

*In respect to licensed premises known as Halls Creek Store*

This is an application for a review of the decision of the Director of Liquor Licensing relating to conditions imposed under section 64 on the Kimberley Hotel and Halls Creek Store.

**Section 95 Complaints**

Four complaints have been lodged by the Police, alleging proper cause for disciplinary action exist against the following licensees:

**Commissioner of Police –v- David Bernhard Sporn**

*In respect of the licensed premises known as The Palms Accommodation Boulder Pty Ltd T/A The Golden Eagle Hotel*

**Commissioner of Police –v- Outland Asset Pty Ltd**

*In respect of the licensed premises known as Royal Mail Hotel Meekatharra*

**Commissioner of Police –v- Trawlers Pty Ltd**

*In respect of the licensed premises known as Trawlers Club and Restaurant, Karratha*

**Commissioner of Police –v- The Leeman Country & Sporting Club Inc**

*In respect of the licensed premises known as The Leeman Country and Sporting Club*

## **Trends or Special Problems That May Have Emerged**

The role of the Liquor Commission has evolved significantly since the judgement of WA Supreme Court Chief Justice Martin in the case of [\*Hancock v Executive Director of Public Health\* \[2008\] WASC 224](#). The judgement quashed a decision of the Liquor Commission/Delegate of the Director of Liquor Licensing to reject an application by David Hancock ([LC1/2008](#)) for the grant of a hotel restricted licence, on the basis that the delegate and the Commission had failed to afford Mr Hancock procedural fairness as required under the *Liquor Control Act 1988*.

Furthermore, as a consequence Chief Justice Martin's judgement, the Liquor Commission is required to provide much more detailed reasons for its determinations. This obligation requires the members to devote time which is substantially more than was envisaged at the time the Commission was initiated.

It is also noted that the nature of applications to the Commission have become increasingly complex due to applicants retaining the services of legal counsel. This development is to some extent contrary to the philosophy of the 2007 liquor licensing reforms which were designed to replace the Liquor Licensing Court with a more flexible system with as little formality and technicality as practicable.

As a result, the Commission members are required to review detailed material submitted by counsel for applicants, requiring them to spend a considerable amount of time in preparation for hearing matters.

## **Forecasts of the Commission's Workload for 2009/2010**

It is expected that the workload of the Liquor Commission for 2009/2010 will increase quite substantially as it is anticipated that an increased number of applications will be received. Indications are that the Commission is adequately resourced to efficiently carry out its functions for the time being.

## **Proposals for Improving the Operation of the Commission**

Other than for the continuing attention to improving and streamlining the process of handling applications for review, there are no proposals for improving the operations of the Commission.

## **Other Legal Requirements**

### **Ministerial Directives**

There were no Ministerial Directives received during the financial year.

### **Advertising and Sponsorship**

In accordance with section 175ZE of the [Electoral Act 1907](#), the Liquor Commission incurred the following expenditure in advertising, market research, polling, direct mail and media advertising:

Total expenditure for 2008/2009 was nil.

### **Disability Access and Inclusion Plan Outcomes**

The Commission meets its obligations for Disability Access and Inclusion Outcomes through arrangements with the Department of Racing, Gaming and Liquor. The Department of Racing, Gaming and Liquor's Annual Report contains the information on how that department has complied with the obligations imposed under section 29 of the [Disability Services Act 1993](#).

### **Compliance with Public Sector Standards and Ethical Codes**

The Commission does not employ staff, but has a net appropriation agreement with the Department of Racing, Gaming and Liquor relating to functions carried out on behalf of the Commission by staff of that Department. Accordingly, the Commission does not report on compliance with the Public Sector Standards. The Department of Racing, Gaming and Liquor's Annual Report contains the relevant information.

### **Recordkeeping Plans**

Section 19 of the [State Records Act 2000](#) requires every Government agency to have a Recordkeeping Plan. The Recordkeeping Plan provides an accurate reflection on the recordkeeping program within the agency and must be complied with by the agency and its officers. The records of the Commission are maintained by the Department of Racing, Gaming and Liquor. The Department of Racing, Gaming and Liquor's Annual Report contains the information on that Department's Recordkeeping Plan.

### **Freedom of Information**

As a statutory authority, the Commission is an agency for the purposes of the [Freedom of Information Act 1992](#). Decision-makers in respect of all gambling related access applications are senior officers within the Department of Racing, Gaming and Liquor's Director and the internal reviewer is the Chairperson of the Commission.

## **Government Policy Requirements**

### **Public Interest Disclosure**

The Commission meets its obligations under the [\*Public Interest Disclosure Act 2003\*](#) through arrangements with Department of Racing, Gaming and Liquor. The Department of Racing, Gaming and Liquor's Annual Report contains the information on how that Department has complied with the obligations imposed pursuant to section 23(1) of the *Public Interest Disclosure Act 2003*.

### **Corruption Prevention**

The Commission meets its obligations for Corruption Prevention through arrangements with the Department of Racing, Gaming and Liquor. The Department of Racing, Gaming and Liquor's Annual Report contains the information on how that department has complied with the obligations imposed under the [\*Public Sector Commissioner's Circular 2009-25\*](#).

### **Substantive Equality**

The Commission meets its obligations for the elimination of systemic racial discrimination from all policies and practices, in accordance with the Policy Framework for Substantive Equality, through arrangements with the Department of Racing, Gaming and Liquor. The Department of Racing, Gaming and Liquor's Annual Report contains the information on how that department has complied with the obligations imposed under the [\*Public Sector Commissioner's Circular 2009-23\*](#).

### **Occupational Safety, Health and Injury Management**

The Commission meets its obligations for occupational safety, health and injury management through arrangements with the Department of Racing, Gaming and Liquor. The Department of Racing, Gaming and Liquor's Annual Report contains the information on how that Department has complied with the obligations imposed under the [\*Public Sector Commissioner's Circular 2009-11\*](#).