

Northern Territory

LIQUOR COMMISSION

Policy and Procedures Manual

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1 USING THE MANUAL

1.1 Introduction

This manual seeks to provide Liquor Commission (Commission) Members with information to assist in fulfilling their responsibilities as a member of the Commission in exercise of their powers and performance of functions under the *Liquor Commission Act* and *Liquor Act*.

The Commission is established by Section 5 of the *Liquor Commission Act* and is formed as a body corporate with perpetual succession under a common seal. The Commission is capable of acquiring property and of suing and being sued.

The Commission is an independent statutory authority with extensive powers to regulate liquor licensing in the Northern Territory under the *Liquor Commission Act* and *Liquor Act*. Responsibilities include:

- assessing new liquor licence applications;
- making and reviewing decisions;
- hearing and determining complaints referred by the Director-General of Licensing.

Recent reforms of the liquor regulatory framework have been designed to:

- ensure that the decision making and processes of the Commission are transparent, accountable and enhance administrative efficiency; and
- foster appropriate enforcement of, and compliance with the provisions of the *Liquor Act* within a tiered framework and ensure separation between those making decisions and those undertaking enforcement and compliance.

As a Commission Member, you will be required to make decisions that have an impact upon the liquor industry and community of the Northern Territory.

The Commission is structured in such a way as to bring together people with appropriate knowledge, experience and expertise. As a Member you are charged with an important responsibility. The liquor industry and community places its trust in Members to act with impartiality and to make decisions based upon the facts put before the Commission in a manner that is free of external influence and interference.

1.2 Chairperson's Welcome

I congratulate you on your appointment as a Liquor Commissioner.

The Riley Review concluded *that "a lot of Territorians do not drink responsibly and more needs to be done to address the drinking culture and individual attitudes towards safe drinking practices"*.

The establishment of an independent Liquor Commission was a key recommendation of that review and through your appointment you have an opportunity to make an important contribution toward reducing alcohol related harm in the Northern Territory.

I wish you all the best for your time with the Commission.



RICHARD COATES
Chairperson

2 LEGISLATIVE FRAMEWORK

2.1 Establishment of Liquor Commission

The Commission is an independent statutory authority created and governed by the *Liquor Commission Act* (the Act).

The Act contains provisions relating to:

- the establishment, function and powers of the Commission;
- Commission Membership;
- proceedings of the Commission;
- matters relating to hearings by the Commission;
- review of Director-General of Licensing (Director-General) decisions made under the *Liquor Act*; and
- administrative matters.

The Commission is accountable to the Attorney-General and Minister for Justice.

The Commission has an advisory relationship with the Minister and reports to the Minister on its activities. The Minister has the authority to make appointment to the Commission by notice in the *Gazette*.

The legislative framework provided by the Act and the *Liquor Act* is used throughout the manual to underpin the policies and procedures that support the conduct of business of the Commission.

2.2 Roles and Responsibilities

The Commission is an independent decision maker for decisions under the *Liquor Act* about licences, serious disciplinary matters, restricted areas and restricted premises. The Commission's roles and responsibilities include:

- the consideration of liquor applications under the *Liquor Act* and determination by public hearing;
- the consideration of complaints referred by the Director-General of Licensing under the *Liquor Act* and determination by public hearing; and
- the consideration and determination of an application for review of a decision made under the *Liquor Act* by the Director-General of Licensing.

2.3 Member Induction

The induction of new members will be at the direction of the Chairperson. As a part of the induction process, each member will be provided with a copy of the Policy and Procedures Manual.

The purpose of the induction is to ensure that members are appropriately informed of their role, the standards of accountability expected of them and any statutory obligations imposed on them prior to being called upon to make decisions.

An overview of the following matters will be provided to Members:

- introduction to the workings of the Commission, their role and responsibilities and administrative arrangements;
- process for setting meeting and hearing schedules;
- details about tenure and circumstances which may lead to removal from office;
- the conflict of interest policy and completion and submission of the “Declaration of Personal Interests Form”;
- details of remuneration, claimable expenses, travel arrangements (where applicable) and any other conditions of appointment;
- attendance requirements including formal notice of absence (a Member who is unable to attend a meeting is expected to give their apologies to the Board and Committee Support Services Unit by email or phone as soon as possible before the meeting. Apologies received are recorded in the minutes) ;
- roles and responsibilities of Licensing NT;
- completion of commencement paperwork;
- training in the use of electronic equipment and files.

2.4 Conduct of Commission Members

The Commission plays a key role in liquor licensing decisions in the Northern Territory.

There is an expectation from the community and the liquor industry that Members will carry out their responsibilities conscientiously and diligently and shall maintain the highest standards of ethical conduct.

Decisions must be made impartially and take into account all relevant issues. Determinations must be made not only without bias but without the perception of bias.

The rule against bias is inherent in the principles of natural justice and procedural fairness and governs the attitude or state of mind of the decision maker. Members must ensure that they are approaching matters for determination objectively and also so that a person observing the Commission's processes and procedures could not reasonably form the view that a matter had been pre-determined.

In dealing with perceptions of bias it is better to be proactive, so a member should alter their Chairperson to any relationships the member may have which could possibly be perceived as influencing him/her to favour a particular party in the matter before the Commission. For example, a Member might be a social member of a large licensed social club which is seeking a variation of its licence conditions. The Chairperson would then in all likelihood disclose that relationship to the parties at the commencement of the hearing and deal with any objections to that Member remaining on the panel.

Members have a fundamental responsibility to act within applicable legislation, applicable common law and accepted principles of good governance and to act in accordance with generally expected ethical principles applying to the public sector.

Members must take reasonable steps to ensure they are well briefed about Commission business in order to make informed decisions. Members are responsible collectively for Commission decisions and should support and adhere to those decisions.

A dissenting view can be exercised by a Member on particular decisions and will be recorded in the Minutes. However, once a Commission decision is made, all Members are expected to respect and abide by the decision.

2.5 Conflicts of Interest

Members have an obligation to act in the best interests of the Commission in an ethical manner and must:

- act in good faith and put interests of the Commission ahead of their own;
- exercise their powers for the purpose of the Commission; and
- observe a duty of care in discharging their duties with regard to the law.

To ensure good governance, the Commission must behave ethically and lawfully and procedures must be place to reinforce ethical conduct. An aspect of good governance is the management of a conflict of interest and it is best practice to have a procedure in place for examining the potential conflict whenever it arises.

A conflict of interest may occur if a financial interest or a relationship influences or appears to influence the ability of a member to exercise objectivity or where a Member puts his/her personal interests ahead of the interests of the Commission.

A conflict of interest exists when it is likely that a Member could be influenced, or could be perceived to be influenced, by a personal interest in carrying out their duty. A conflict of interest that leads to partial decision making may constitute corrupt conduct.

Conflicts cannot always be avoided but they must be identified and action must be taken to ensure that the conflict situation is mitigated effectively. If a conflict of interest does arise and is not prevented, it can have a damaging impact on public confidence in the Commission. The law only protects a Member who breaches the duties of office if the breach was due to an honest mistake.

The Act provides for the following strategies for avoiding conflict of interest:

- it prohibits a Member from holding an office or having an interest in, a club or body corporate that holds a liquor licence or a gaming machine licence;
- it obliges a Member to declare any interest in any matter being considered by the Commission or about to be considered by the Commission and requires the nature of the interest to be disclosed to the Chairperson as soon as practicable after the relevant facts have come to his or her attention;

- it obliges the Chairperson to declare any interest in any matter being considered by the Commission or about to be considered by the Commission and requires the nature of the interest must be disclosed to the Minister as soon as practicable after the relevant facts have come to his or her attention;
- it prohibits a Member or the Chairperson who has disclosed an interest, from taking part in any deliberation of a decision in any matter in relation to that interest; and
- mandates the Commission to make and publish guidelines specifying the types of interests that a member must disclose under section 21 of the Act.

It is a ground for the Minister to terminate the appointment of a member due to failure to disclose an interest as set out in section 21 of the Act.

2.6 Conflicts of Interest Guidelines

Section 21 (4) of the Act requires the Commission to make and publish guidelines specifying the types of pecuniary interests that a member must disclose under section 21 of the Act.

The Commission is committed to high standards of ethical conduct and places great importance on making clear any existing or potential conflict of interest.

As a guide, the following are types of interest that may give rise to a conflict of interest:

- where the Member has immediate family or business connections which are the subject of an application under consideration of the Commission;
- where the Member, immediate family or business connections of a Member, or any other persons with whom the Member is in a close relationship, stands to gain financially from the Commission decision;
- where an indirect benefit is gained by a spouse or other family member or close associate from a decision of the Commission (for example the son of the Member is appointed as the nominee of the company applicant);
- where the Member, family member or close associate has shares in the company applicant;
- where the Member's spouse has a contract with the company applicant (for example it will be contracted to provide security services);
- where the Member has a role on the governing body of another organisation, where the activities of that other body may be in direct conflict or competition with the activities of the application under consideration.

A Member shall not make use of inside information.

Members shall declare any conflicts of interest of which they become aware by process set out in the Act and at the start of the Commission meeting concerned. The nature of the conflict of interest shall be recorded in the meeting minutes.

When a conflict of interest or potential conflict of interest is identified and registered, the Member concerned shall not be provided any relevant Commission papers that discuss the matter and shall leave the meeting room as soon as the agenda items comes up for discussion. The concerned Member shall not vote on the issue nor initiate or take part in any Commission discussion on the subject (either in the meeting or with other Members before or after the Commission meeting, unless expressly invited to do so by unanimous agreement of all other Members present). The Member's abstinence shall be recorded in the meeting minutes.

If a Member declares an existing or potential conflict of interest, confidentially is to be respected. If a Member alleges that another Member has a conflict of interest, whether existing or potential, and that person does not agree, the Chairperson shall resolve the matter.

2.7 Declaration of Personal Interests

Before a Member begins his or her tenure with the Commission, he or she will complete and submit a "Declaration of Personal Interests Form". This form provides for particulars of personal pecuniary and other relevant interests and those of immediate family (spouse, de facto partner and dependent children).

The completed form is forwarded to the Department of the Attorney-General and Justice's Human Resource Management Unit for secure retention.

Members will make a yearly declaration during term of office detailing all the businesses, groups and other boards they and their family members are affiliated with.

Members must not accept a gift or benefit that is intended to, or likely to, or may be perceived to cause them to act in a partial manner in the course of their duties.

Members must advise the Chairperson if they believe that they have been offered a bribe or if they have been offered or received a favour or benefit.

2.8 Political Affiliations

A Member has the same right to freedom of political expression and association as other Members of the community. However, political interests must always be undertaken in a strictly private capacity and must not conflict with the primary duty of Members.

3 SECRETARIAT AND ADMINISTRATIVE SERVICES

The Commission is supported by Licensing NT, Department of the Attorney-General and Justice. The Board and Commission Services work unit within Licensing NT is charged with providing secretariat services to the Commission in addition to various other Boards and Commissions. Should the Commission convened require information, research or any other material to assist it in properly discharging its functions, a request should be made by the Chairman in the first instance to the Director-General of Licensing to ensure that appropriate divisional resources can be allocated to tasks.

Communication between the Commission and Licensing NT will generally be through the Chairman and the Director-General of Licensing. To ensure consistency in services provided to the Commission, all correspondence between the Commission and the division should be directed to and will be received from: Liquor.Commission@nt.gov.au

Commission members will be provided with a Northern Territory Government (NTG) lap-top device for Commission business. Access to Commission documents will be available and provided from time to time electronically. Access to a NTG e-mail address can be facilitated for Commission business.

Support services will include the following:

- administrative support and secretarial services in accordance with the legislative frameworks of the Act and *Liquor Act* to ensure that the Commission meets its statutory responsibilities and obligations; the development, coordination and maintenance of efficient and effective systems, processes and procedures;
- the establishment and maintenance of administrative control systems to record and monitor the flow of incoming and outgoing correspondence;
- update of Commission information as required to ensure that presentation of all documents are correct and complete and deadlines are met;
- coordination and liaison with the division to ensure timely responses to Commission business;
- maintenance of the Commission diary, arrangement of meetings, inquiries and reviews, including processing of movement requisitions, monitoring of tasks and adherence to timeframes;
- provision of professional support as the first point of contact for internal and external communication with the Commission and provision of professional office administration support in organising meetings, including booking venues, taking minutes and the coordination and dissemination of appropriate documentation to relevant persons and organisations;
- maintenance of the Commission webpage, including Membership details, hearing dates and publishing of Reasons for Decisions, Annual Reports, policies and guidelines;
- creation and monitoring of a Commission email account and management and response to Commission telephone calls;

- maintenance of the Commission Common Seal register;
- provision of secretariat services in relation to disciplinary proceedings and reviews including notification of the date, time and place of the hearing, assembly and distribution of Inquiry Books, taking and recording minutes of the hearing and circulation and publishing of Reasons for Decision;
- assistance in actioning meeting outcomes;
- meet government reporting requirements of the Department of Chief Minister in relation to statutory bodies;
- assist in the preparation and presentation of the annual report of the Commission;
- arrange the remuneration of Members in accordance with the *Assembly Members and Statutory Officers (Remuneration and other Entitlements) Act* and *Financial Management Act*, including submission of employment services payment forms;
- source and book venues for meetings and inquiries; prepare rooms, including set up and operation of teleconferencing and recording facilities;
- arrange necessary travel and accommodation to enable the conduct of Commission business;
- ensure integrity of exhibits and other hearing material including preservation of recordings of Public Hearings;
- source and appropriate file transcripts of proceedings, as required;
- action Membership vacancies, appointment of Members by *Gazette* notice and maintain register of Members;
- arrange other Gazettal notices, as required;
- other services and resources necessary for the proper conduct of a hearing or other Commission business as may be agreed upon by the Chairperson and the Director-General.

4 PROCEEDINGS OF COMMISSION

4.1 Convening of Commission and Sittings

Section 16 of the *Liquor Commission Act* provides for the Commission to convene as often as is necessary for the exercise of its powers and the performance of its functions. This includes the convening of public hearings to make decisions under the *Liquor Act*.

Subsection (3) requires the Chairperson to make arrangements to enable the Commission to convene.

Section 18 of the Act permits the Commission to deal with more than one matter at a time by convening with three or more members to deal with a matter and convening with three or more members to deal with another matter.

Section 20 of the Act establishes that questions before the Commission are determined by a majority of those members present. In the event of an equal number of members deciding for and against the question, the presiding member may determine the question.

Section 20 of the Act also requires the Commission to keep records of its proceedings, for procedures of the Commission to be determined by the Commission subject to any requirements under the *Liquor Act* that apply.

4.2 Dates and Times of Meetings

The Commission will, from time to time determine the frequency and timing of its meetings and the Chairperson will make arrangements that enable to Commission to convene.

To ensure good governance, a meeting timetable will be established at the start of each calendar year and timetable for the provision of meeting briefing papers. The annual calendar will also set out any regular items that need to be considered at particular meetings, for example, preparation and submission of the annual report.

The timetable will be maintained by Licensing NT and will be circulated to Members.

The Commission may change the date, time and place of any Commission meeting in liaison with Licensing NT which will update the meeting schedule and send revised meeting invitations.

4.3 Late Papers

As a means of good governance, the Commission discourages the submission of late papers as Members need to read and digest the papers ahead of the meeting. The Commission may determine to accept a late paper depending on the urgency and severity of the matter.

4.4 Preparation for Meetings

The Agenda will provide details of the items to be considered at a meeting. The Chairperson, will endeavour to set the Meeting Agenda 14 days ahead of the meeting date. This will allow for Briefing Papers to be prepared, collated and circulated, in the agreed form, 5 working days ahead of the meeting.

Members should accept a request to attend a meeting of the Commission only if they are confident that their work and personal commitments will allow sufficient time for preparation for the meeting and for attendance at the meeting.

It is expected that prior to attending the meeting, Members will have read and digested the materials provided, developed an understanding of their content and have formed a preliminary view about the recommendation contained in the Briefing Paper.

4.5 Discussion and Decision Making Principles

The structure of Commission membership is designed to draw upon a group of members of the community that combine, qualifications, knowledge, experience, expertise and good standing in the community.

To ensure that maximum benefit is obtained from this depth of competence and experience, it is expected that Members will:

- approach meetings in a collegiate style;
- listen to the views and issues identified by other Members
- actively participate in the discussion of matters during meetings;
- base their decisions on information contained in the briefings provided, their common sense and life experience;
- critically analyse the information provided;

- make decisions that are impartial, free from external influence and consistent with the principles of natural justice and procedural fairness.

4.6 Agenda Briefing Papers

Meeting Agenda Papers will represent the information that the Commission receives to allow it to fulfil its duties and undertake its deliberations.

Guidelines on how Commission papers should be presented follow:

- written in plain English, with minimum use of acronyms and industry jargon;
- share a consistent format and layout, include background, current situation and recommendation in an accessible font and font size;
- include clear legislative reference for any matter on which a decision is being sought;
- contain sufficient information to provide for an informed decision by Members;
- include the author's name and position title;
- if generated within Licensing NT, be reviewed and approved by the Director-General of Licensing before being circulated to the Commission

4.7 Out-of-Session Papers

An out-of-session decision may be made when a matter arises that needs to be addressed before the next meeting of the Commission. In such cases, an Out-of-Session Paper will be sent to Members by email from Licensing NT and details for sending return responses will be provided.

4.8 Recording of Minutes

The Commission will ultimately decide on the preferred mode of recording minutes and the extent to which additional information regarding discussions is contained within them.

The minutes will rely on the Briefing Papers and not seek to repeat or paraphrase them. This principle will assist in ensuring the minutes are appropriately concise. The minutes prepared by Licensing NT, will include:

- names of attendees, supporting officers and presenters;
- resolutions that describe the decision of the Commission, including any conditions of approval;

- any declaration of interest of a member;
- a record of any member's dissent or abstention from a resolution;
- a record of any delegation of authority the Commission makes;
- the actions decided;
- reference to any paper or discussion on any carried forward items, matters arising or outstanding issues.

The Chairperson and Members will agree on a procedure for circulating the draft minutes (for example, circulation by email to all Members or circulation only to the Chairperson with Chairperson approved minutes circulated to all Members). At a minimum, the draft minutes should be reviewed by the Chairperson. The Chairperson should review them and note and communicate any amendments required within the time period agreed in the procedure. At this point, the minutes become "Chairperson approved" minutes.

If any significant changes are suggested by one or more Members, a teleconference may be convened to discuss the changes, or subject to the Chairperson's approval of the changes, the revised minutes will be circulated to Members.

The Chairperson approved minutes will be included in the next Meeting Agenda for formal approval at that meeting. The original minutes will be retained in compliance of section 20(2) of the Act.

Minutes may be stored electronically but must be capable of being reproduced in written form.

5 HEARINGS

5.1 Convening Public Hearings

Section 16 of the *Act* provides for the Commission to convene as often as is necessary for the exercise of its powers and the performance of its functions. This includes the convening of public hearings to make decisions under the *Liquor Act*.

In accordance with section 16(2) of the *Act*, the Commission is required to convene public hearings to make decisions under the *Liquor Act*.

The objective of the Commission based decision-making structure is to deliver balanced and consistent regulatory decision-making for liquor matters.

The holding of open Commission hearings will ensure procedures and processes are subject to scrutiny and that views of stakeholders are represented in a matter under consideration by the Commission. Further it will provide for the Commission to explain its current thinking and provide opportunity for feedback.

Part V Division 2 of the *Liquor Act* sets out the procedural matters relating to the conduct of hearings by the Commission.

Section 53(2) mandates a hearing to be conducted in public unless the Commission considers that a public hearing is likely to cause undue hardship to a person, in which case the Commission may direct that the hearing, or part of the hearing, is to be conducted in private.

Public hearings will be held as part of the inquiry or investigation process when determining certain liquor licensing matters. Public hearings will provide interested parties in relation to those liquor licensing matters with the opportunity to expand on written submissions or objections, or to discuss inquiry issues with the Commission in a public forum.

The Commission will conduct a public hearing in relation to various liquor licensing matters under the *Liquor Act* including:

- an application under section 26 for the grant of a licence;
- an application under section 32A(1) for variation of the conditions of a licence;
- an application under section 46A for substitution of other premises specified in a licence;
- an application under section 119 for approval to make a material alteration to licensed premises, including:
 - an alteration that increases the area used for the sale of liquor or the sale and consumption of liquor; and
 - any other applications where the Director-General considers it to be in the public interest that notice of the application be published;

The manner in which the hearing will be conducted will be determined by the Commission.

5.2 Media

Members of the media may attend public hearings however, audio and/or video recording of the proceedings by media representatives will not be permitted.

5.3 Conduct of Hearing

The Chairperson or Deputy Chairperson will preside over public hearings and be assisted administratively by Licensing NT.

Hearing proceedings will generally be audio recorded. The Commission however, may make a determination as to the manner by which proceedings are recorded. Access to recordings of proceedings will be at the discretion of the Commission.

Any documentary or physical evidence tendered in the course of the hearing will be recorded, labelled with an exhibit number and stored for a period determined by the Commission.

The Commission may require a person appearing before it to give evidence on oath in accordance with the *Oaths, Affidavits and Declarations Act*.

5.4 Deciding Matter

At the end of the hearing, the Commission will deliberate on the submissions made in the matter and the evidence before it. The Commission may immediately hand down the decision or may reserve its decision, to be delivered at a later stage.

Following determination of the matter, the Commission will issue a Decision Notice in accordance with the requirements of the Act and *Liquor Act*, and the Decision Notice may be issued at a time after the decision has been announced.

Following the issuing of the Decision Notice, copies will be provided to the respective parties and a copy of the Decision Notice will be published on the Commission's website.

Licensing NT will be responsible for the integrity of exhibits and other hearing material including preservation of recordings of Public Hearings and be responsible for the proper and appropriate records management and any action required to give effect to the Commission determination.

5.5 Legal Counsel

If requested by the Chairperson, the Director-General will facilitate the provision of legal services to the Commission.

6 COMMISSION POWERS IN RELATION TO COMPLAINTS

6.1 Complaints

Section 68 of the Act provides for a person to make a complaint against a licensee. The complaint must be lodged with the Director-General in the approved form, specify the ground for the complaint and be signed by the complainant.

The Director-General must accept the complaint or refuse to deal with the complaint if satisfied that it is frivolous or vexatious or, no ground exists for the complaint.

If the Director-General accepts the complaint, an investigation must be conducted and on completing the investigation, the Director-General must decide to either dismiss the complaint or, in relation to the ground:

- give the licensee a formal warning;
- issue an infringement notice;
- enter into an enforceable undertaking; or
- refer the complaint to the Commission for disciplinary action to be taken against the licensee.

If the Director-General takes an action that does not involve a referral to the Commission, the Director-General must give a report to the Commission about the actions taken.

6.2 Referral of Complaint

Section 69(1) of Act provides for the Director-General to refer a complaint about a licensee to the Commission to decide whether to take disciplinary action against the licensee. The Director-General must also inform the licensee of the referral.

The referral must specify details about the ground for the disciplinary action and the disciplinary action that is recommended. The Director-General must provide the result of the investigation and any comment given by the licensee in response to the complaint.

6.3 Conduct of Public Hearing

Section 69(4) mandates that the Commission must conduct a hearing for deciding the complaint and the process to be followed.

The Director-General will prosecute the complaint.

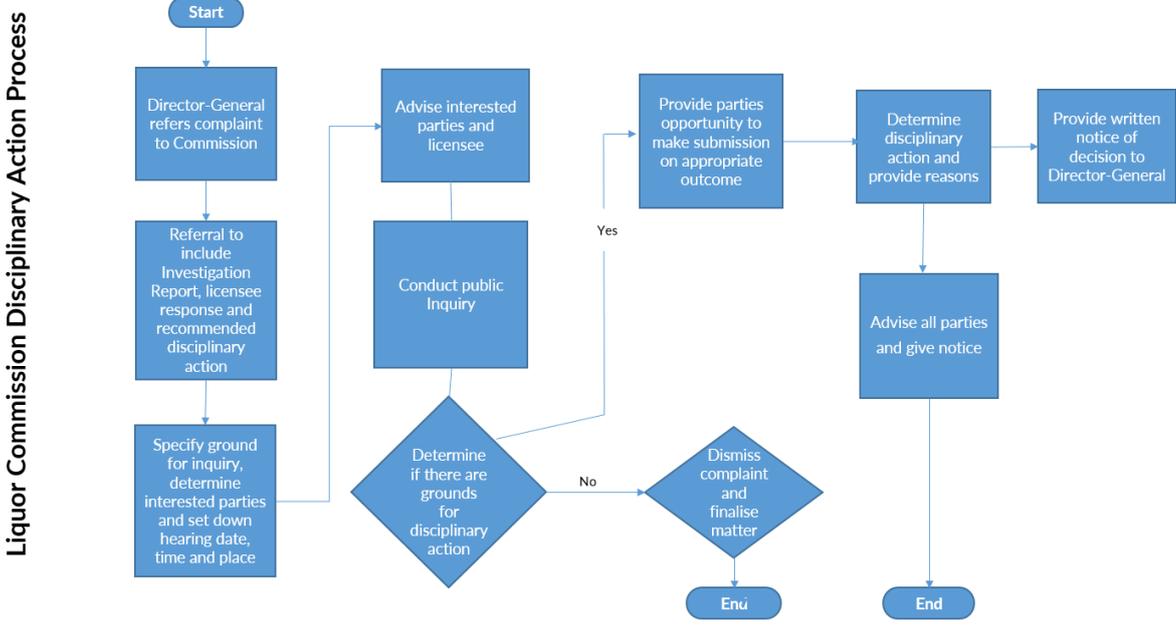
On completing the hearing, the Commission will determine if grounds for disciplinary action exist based on the evidence presented at the hearing and the reports before it. If the Commission determines that there are no adequate grounds for disciplinary action, the Commission will dismiss the complaint and finalise the matter.

6.4 Disciplinary Action

If the Commission determines that there are grounds for taking disciplinary action, the Commission may take any of the following actions:

- Vary the conditions of the licence;
- Impose additional conditions for the licence;
- Suspend the licence;
- Cancel the licence;
- Impose a monetary penalty;
- Direct the licensee to take or refrain from doing a specified thing; or
- Disqualify the licensee from holding a licence for a specified time.

6.5 Disciplinary Action Process – Flow Chart



7 REVIEW OF DIRECTOR-GENERAL DECISIONS

7.1 Application for Review

Part 4 of the *Liquor Commission Act* provides for a person, who is an 'affected person' defined in section 28(1) of the Act, to apply to the Commission for a review of a Director-General decision made under the *Liquor Act* within 28 days after written notice of the decision is given. The Commission may allow an additional period of time in which to make the application.

An application for review must be in the approved form and state the grounds and the facts relied on and be accompanied by the prescribed fee.

An 'affected person' is:

- a person who is declared to be an affected person by the Act under which the Director-General's decision was made;
- a licensee to which a decision concerning disciplinary action relates;
- an applicant to which a decision concerning an application relates; or
- a person who has made a submission, complaint or objection during a proceeding that resulted in a decision,

An affected person is also a licensee of a premises for which a decision under section 106 of the *Liquor Act* is made.

7.2 Review of Decision

The Commission must, on receipt of an application, review the Director-General's decision. The Commission may reject the application without reviewing it if the Commission considers the application is of a frivolous or vexatious nature.

Section 32 of the Act provides that the Commission must take into account any matter which the Director-General decision would have been required to take into account under which the decision was made.

The Commission must also follow the procedures for review determined by the Commission, and must comply with the rules of natural justice.

7.3 Decision on Review

The review decision may affirm the Director-General's decision, vary the decision or set it aside and substitute a new decision.

Section 33 provides that the Commission must give written notice of the review of a decision to the applicant and each person with a right to apply for a review or appeal of the decision in the Act under which the decision was made.

The notice must state the Commission's decision, the reasons for making it and detail any rights to apply for a review or appeal of the Commission's decision.

7.4 Procedures for Review

On receipt of a review application, the Commission will:

- determine the 'parties' who provided information or material, or gave evidence, to the Director-General in making the original decision. The parties may participate in the review process and provide submissions to the Commission;
- determine whether a directions hearing is necessary;
- determine whether a hearing will be conducted or whether the Commission will make its decision based on written submissions of the parties without the need for a hearing;
- notify all parties of the proposed proceedings.

The application will be considered by not less than three Commissioners.

If a directions hearing is required, it is to be held at the earliest available dates of the parties to determine preliminary matters before the final hearing. At the directions hearing, directions may be given on the management of the progress of the matter and lodgment of submissions.

The Commission will endeavour to hear applications as expeditiously as possible and a hearing will be scheduled depending on the availability of Commissioners and all parties to the proceeding. Generally a matter will be heard and determined within 6 weeks from the date of lodgment of the review application.

The Chairperson will fix a date, time and place for the holding of the review and cause notice to be given to the parties not less than 7 days before the date fixed for the hearing.

A party may be represented by a lawyer or by a person with specialist knowledge or expertise relevant to the proceedings and approved by the Commission.

At a hearing, the Commission may be assisted by legal counsel who may examine witnesses and address the Commission.

7.5 Hearing

The Commission aims to conduct hearings with as little formality and technicality as possible. The applicant or interested party is not required to be represented by a lawyer, but may do so. A support person may also attend.

8 EVIDENCE SUMMONSES

Section 22 of the Act empowers the Commission to obtain evidence, either on application by a party or on its own initiative, by issuing a summons to appear or produce evidentiary material.

A person commits an offence if, when issued with a summons to appear as a witness, the person intentionally fails to appear or report from day-to-day unless excused.

A person commits an offence if, when issued with a summons to produce evidentiary material, intentionally fails to comply.

Section 23(3) provides that strict liability applies to the service of a summons to appear under section 23(1)(a) or a summons to produce material under section 23(2)(a). There is a reasonable excuse defence for both offences.

Section 24 establishes how the Commission may deal with documents or other evidentiary material. If documents are produced at a hearing, that Commission may:

- inspect the documents; and
- make and retain, copies of the documents.

The Commission must return the original documents to the person who produced them as soon as practicable after completing the hearing.

A party may apply for the issue of an evidence summons by making written application to the Commission. Following consideration of the application, the Commission may:

- issue the evidence summons;
- request the party applying for the evidence summons to provide further information in support of the application for the issue of the evidence summons; or
- refuse to issue the evidence summons.

If the Commission issues the evidence summons, a copy of it will be endorsed with:

- the date of issue;
- for an evidence summons requiring the production of evidentiary material, the date by which and the place at which the documents must be produced;
- for any evidence summons requiring a person to appear and give evidence, that date upon which and the place at which the person must appear;
- any amendments made by the Commission;
- a statement of any conditions imposed by the Commission; and
- the seal of the Commission.

The Commission will provide one sealed copy of the evidence summons to the party who applied for it.

The evidence summons must be served on the person required to comply with it by giving the original sealed copy to:

- if the recipient is a person – the person;
- if the recipient is a body – an executive officer of the body; or
- a person authorised to accept service of documents on behalf on the recipient

An example of a summons follows:

NORTHERN TERRITORY OF AUSTRALIA
Liquor Commission Act

In the matter of a Hearing
pursuant to the
Liquor Commission Act

Section 22

XXXX
Applicant/s

AND

XXXX
Respondent/s

SUMMONS TO GIVE EVIDENCE OR PRODUCE EVIDENTIARY MATERIAL

To:

Of:

Pursuant to section 22 of the *Liquor Commission Act* you are summonsed to appear before the Liquor Commission at a hearing to give evidence or produce evidentiary material –

- (a) At Conference Room 1, NAB House, Level 3, 71 Smith Street, Darwin;
- (c) At (time) on (day), (date) and until you are excused from further attending.

Issued:

Chairperson of the Liquor Commission

23. Person fails to comply with summons

- (1) A person commits an offence if:
 - (a) ~~the~~ person has been served with a summons to appear as a witness at a hearing; and
 - (b) ~~the~~ person intentionally fails to do either or both of the following:
 - (i) attend as required by the summons;
 - (ii) ~~appear~~, and report, from day-to-day unless excused, or released from further attendance by the Commission

Maximum penalty: 100 penalty units or imprisonment for 6 months

- (2) A person commits an offence if:
 - (a) ~~the~~ person has been served with a summons to produce documents or other evidentiary material; and
 - (b) ~~the~~ person intentionally does not comply with the summons.

Maximum penalty: 100 penalty units or imprisonment for 6 months

- (3) Strict liability applies to subsections (1)(a) and (2)(a).
- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant has a reasonable excuse.

Do not ignore this notice. If you do not understand this notice or require assistance contact Licensing NT on 8999 1800, a legal practitioner or your local legal aid office.

9 ANNUAL REPORT

The Act provides transparency for the operation of the Commission by requiring that the Commission publish annual reports on its operations.

Section 38 of the Act requires the Commission to publish a report to the Minister on its operations for the financial year under each Act that confers powers or imposes functions on the Commission.

The Commission must give the report to the Minister within 3 months after the end on the financial year (by 30 September) and the Minister must in turn lay the report before the Legislative Assembly within 6 sitting days after receiving it.

The Annual Report also provides an opportunity to:

- increase industry and community awareness of the role and functions of the Commission;
- understand the process of hearing and determining liquor applications and complaints and information considered by the Commission;
- provide transparency around decision making and disciplinary functions and Commission accountability and performance;
- report on any significant reforms to liquor regulatory arrangements and refinement of strategies and liquor activities;
- articulate the goals, direction, challenges, opportunities and strategic approach of the Commission.

Key information presented in the Annual Report will include:

- a review of the year by the Chairperson;
- an overview of the Commission;
- profile of the Members;
- activities of the Commission relating to liquor licence decisions, complaints and reviews of Director-General Decisions;
- liquor decision notices issued;
- major activities and projects undertaken

10 COMMON SEAL

Section 5(1) of the Act provides for the Commission to have a common seal. The common seal is, in its physical manifestation, a rubber stamp carrying the words “Common Seal” and the name “Northern Territory Liquor Commission”.

The common seal is in legal terms, the equivalent of the signature of an ordinary individual and its use therefore has a degree of legal formality.

This policy is intended to regulate the use of the Commission’s Common Seal (the Seal) and prohibit unauthorised use of the Seal or any device resembling it.

The objective of the policy is to protect the integrity of the Seal and authorise its use, and describe when the Seal may be affixed to documents.

10.1 Controls

The Seal will be securely kept by Licensing NT.

The Seal shall not be removed from the Licensing NT office without the authority of the Chairperson.

The Seal will only be used when authorised by a resolution of the Commission.

Every document to which the Seal is affixed must be witnessed by the Chairperson and one Member or the Deputy Chairperson and one Member.

10.2 Authority for Use

The Seal is to be used only on the authority of the Commission in respect of any legal matter and in respect to any reference. Such authority may take the form of direction or confirmation resolution.

Apart from the official use of the Seal, no person may use the Seal or any device resembling the Seal without the authority of the Commission.

The use of the Seal should be restricted to the minimum number of cases. It is not necessary to use the Seal for all business, such as approving minutes.

The Seal is to be affixed to:

- liquor licences issued by the Commission;
- any Instrument of Delegation;
- a summons issued under section 22 of the Act.

10.3 Keeping the Common Seal

Licensing NT will ensure the security of the Seal at all times.

10.4 Register

A record shall be kept detailing circumstances whenever the Seal is used. The records shall contain a description of the document, the date the Seal was affixed, the date the Commission resolved to affix the Seal and the name(s) of the persons affixing the Seal.

This document may be in either hard copy or electronic form and is the responsibility of Licensing NT.

11 DELEGATION

11.1 Power of Delegation

Section 37 of the Act empowers the Commission to delegate its powers and functions under the Act or the *Liquor Act* to:

- the Chairperson;
- another Commission Member;
- the Director-General of Licensing; or
- an employee as defined under section 3(1) of the *Public Sector Employment and Management Act*.

A delegation to the Chairperson or to the Director-General may be further delegated if the Chairperson or Director-General considers it appropriate.

A delegation must be in writing.

12 PUBLIC INTEREST AND COMMUNITY IMPACT TEST

12.1 Public interest and community impact test in respect of licence or licensed premises

Section 6 of the *Liquor Act* provides for a new public interest and community impact test for decision making in relation to a licence or licensed premises and mandates the decision maker to apply the test set out in subsection (2).

The decision maker must now have regard to:

- the harm caused to the community or a section of the community due to excessive or inappropriate consumption of alcohol; and
- cultural, recreational, employment or tourism impacts, and
- the social impact in, and the impact on the amenity of, the locality of the premises or proposed premises; and
- the density of existing liquor licences within the community area; and
- the volume of alcohol sales within the community area and any increase in volume within the community area arising from the licence the subject of the application;
- any other prescribed matters;

When considering the potential impacts on the community in the area that would be affected by a decision to grant or refuse an application or which changes the conditions of a licence.

The decision maker must also apply the community impact assessment guidelines provided for in section 6A.

The guidelines for determining whether or not an application being considered or determined satisfies the public interest and community impact test are required to be published in the Gazette by the Minister under section 6A(1) of the Act.

Section 6B of the Act places the onus upon the applicant to satisfying the Commission that the application meets the public interest and community impact test.

13 REVIEW OF COMMISSION DECISION

13.1 Review of Decisions

Section 120ZA of the *Liquor Act* provides for the review of decisions of the Commission. A reviewable Commission decision is one that is specified in the Schedule to the *Liquor Act*

Schedule		Reviewable decisions
		sections 120ZA, 120ZB and 120ZD
Section	Decision	
29	Decision to issue licence or refuse application	
31	Decision to issue licence subject to condition	
32A	Decision to vary, or refuse to vary, conditions of licence	
33	Decision to vary conditions of licence	
33F	Decision to grant, or refuse to grant, exemption	
43	Decision to refuse application for transfer of licence	
46A	Decision to approve or refuse application for substitution of premises	
49A	Decision to suspend licence	
59	Decision to issue special licence subject to condition or refuse to issue special licence	
63	Decision to revoke special licence	
68	Decision to dismiss complaint	
69(3)	Decision to take disciplinary action against licensee	
81	Decision to declare, or refuse to declare, general restricted area	
84	Decision to revoke declaration of general restricted area	
86E	Decision to declare, or refuse to declare, public restricted area	
86G	Decision to revoke or amend declaration of public restricted area or to refuse application	
92	Decision to issue permit or refuse application	
101E	Decision to declare, or refuse to declare, restricted premises	
101H	Decision to vary, or refuse to vary, declaration of restricted premises	
101K(1)	Decision on application to revoke declaration of restricted premises	
101K(2)	Decision to revoke declaration of restricted premises	
101ZF	Decision to issue, or refuse to issue, exemption certificate	
106	Decision to declare licensed premises or part of premises to be prohibited area for children	
119(8)	Decision to approve, or refuse to approve, material alteration	

13.2 Meaning of *affected person*

A person is an affected person for a reviewable decision if any of the following apply:

- for a decision that relates to disciplinary action relating to a licence – the person is the licensee;
- for a decision that was made in relation to an application – the person is the applicant;
- the person made a submission, complaint or objection during the process that resulted in the decision being made
- for a decision made under section 106 – the licensee of the licensed premises.

A person is an affected person for a reviewable decision if the person was:

- an affected person under the *Licensing (Director-General) Act* for the decision that was reviewed under Part 3 of the Act; or
- an affected person under the *Liquor Commission Act* for the decision that was reviewed under Part 4 of that Act.

13.3 Jurisdiction of Civil and Administrative Tribunal

An affected person for a reviewable decision may apply to the Northern Territory Civil and Administrative Tribunal (NTCAT) for a review of the decision.