



# Policy

## Proceedings before the Director of Liquor Licensing

### Disclaimer

This Policy is designed to provide information in regard to the subject matter covered, and with the understanding that the Director of Liquor Licensing is not passing legal opinion or interpretation or other professional advice. The information is provided on the understanding that all persons undertake responsibility for assessing the relevance and accuracy of its contents.

## Introduction

Under section 16 of the *Liquor Control Act 1988* ('the Act'), the licensing authority is required to act without undue formality and is not bound by the legal rules of evidence.

The Director of Liquor Licensing (or delegate) (*the Director*) is empowered to conduct or arrange hearings, meetings, consultations, and negotiations as the Director thinks fit, at such times and places as the Director may appoint. Further, the Director may make findings on the balance of probabilities.

This document provides guidance as to the process that will be followed in proceedings before the Director.

## Legislative provisions

Under section 13(5)(a) of the Act, the Director may determine any matter without conducting a hearing. Most matters are determined on the basis of the written submission, however, in some circumstances, the Director may choose to determine the matter:

- by way of a conciliatory conference;
- by way of teleconference; or
- at a formal hearing.

Each application will be assessed on its merits, after the closing date for objections and after all relevant documentation has been provided. When deciding on the best process to follow, the Director will have regard to the nature and number of objections/interventions; legal representation; the type of licence/application being applied for; and whether the application relates to the metropolitan area or the country.

Where it is decided to conduct a hearing, the Director will:

- fix a time and a place for the hearing; and
- issue a notice of hearing to the applicant and to any other party to the proceedings.

A person given such notice is entitled to attend the hearing and be heard. Hearings will normally be held in private [section 13(6)].

Applicants and their legal representatives will not be able to meet with the Director to discuss potential applications, or the progress of any application. Other senior officers are available to clarify these issues.

## Other Preliminary matters

The Director will determine the following threshold issues:

- (a) the suitability/propriety of the applicant;
- (b) the suitability of the proposed premises;
- (c) the validity and relevance of objections in accordance with the provisions of section 74; and
- (d) whether late objections will be accepted [section 73].

## Plans

The applicant will not be entitled to lodge amended plans of the proposed premises without leave of the Director, and the section 40 certificate from the local government authority or development approval lodged in lieu of a section 40 certificate must have been issued in respect of the same plans as lodged with the licensing authority.

## Written Submissions

If the Director decides that an application is to be determined on the basis of written submissions, instructions and relevant timeframes will be issued to the parties. The applicant and objectors/interveners must exchange copies of the submissions and any evidence to be relied upon.

The Director is not precluded from convening an oral hearing, if it transpires from the written submissions that there are issues which are better examined in that manner.

## Teleconferences

Where appropriate, a teleconference may be held in lieu of a hearing. This option offers significant cost savings, especially for applications in respect of premises located outside the metropolitan area.

## Conciliatory Conferences

The purpose of a conciliatory conference is for the Director to resolve issues or objections. The Director will conciliate with the aim of finding a common ground, and may suggest ways to resolve the matter.

Conciliatory conferences are not to be adversarial in nature, and the Director is not bound by any agreement reached between the parties at such a conference.

## Hearings before the Director

If the application is to be determined by way of a hearing, a hearing date will be set by the Director.

All parties should note that the matter will be listed expeditiously and hearings will not be allowed to be unduly delayed by any party. Every effort will, however, be made to list matters on a date and at a location which is convenient to all parties.

In some circumstances, the Director may choose to have a pre-hearing conference. The purpose of this conference will be to review the documentation submitted, set a hearing date and make any ancillary orders to facilitate the orderly conduct of the hearing. Legal counsel attending these conferences must be sufficiently versed in the application and objections to deal with any matters that may arise.

Hearings are inquiries into the merits of an application or matter, and sworn evidence may be taken if the Director thinks it is necessary. The calling of witnesses and the examination and cross examination of a witness is at the discretion of the Director. Hearings will be conducted informally and expeditiously and will not be adversarial in nature.

All evidence and submissions that the parties intend to rely upon must be filed and served well in advance of the hearing. Directions will be issued to the parties concerning the relevant timeframes for the lodgement of this material.

## **Representation**

Section 17 of the Act provides that a party to proceedings may appear:

- (a) personally;
- (b) by counsel;
- (c) if the party is a member of an association — by an officer or employee of that association;
- (d) if the party is a body corporate — by an officer of that body corporate approved by the licensing authority; or
- (e) by any other person approved by the licensing authority.

## **Written Decisions and Reviews/Appeals**

The Director will provide a written decision in respect of all applications determined. Decisions may also be posted on the Department's website ([www.rgl.wa.gov.au](http://www.rgl.wa.gov.au)).

Where a person who is a party to proceedings is dissatisfied with a decision made by the Director, then under section 25 of the Act, that person may apply to the Liquor Commission for a review of the decision. That application must be made within one month after the applicant receives notice of the decision, or such longer period as the Commission may allow.

**DIRECTOR OF LIQUOR LICENSING**