



# Policy

## Complaints Lodged under Section 117 of the *Liquor Control Act 1988*

### 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

This policy provides guidance as to the legislative and operational requirements associated with complaints lodged under section 117 of the *Liquor Control Act 1988* ("the Act").

Section 117 of the Act provides that a complaint may be lodged in writing with the Director of Liquor Licensing alleging that-

- the amenity, quiet or good order of the neighbourhood of the licensed premises is frequently unduly disturbed by reason of any activity occurring at a licensed premises; or
- the-
  - behaviour of persons on the licensed premises;
  - noise emanating from the licensed premises; or
  - disorderly conduct occurring frequently in the vicinity of the licensed premises on the part of persons who have resorted to the licensed premises,

is unduly offensive, annoying, disturbing or inconvenient to persons who reside or work in the vicinity, or to persons in or making their way to or from a place of public worship, hospital or school.

This document provides guidance as to the process that will be followed in proceedings before the Director under section 117 of the Act.

### Legislative Provisions

In any proceedings held under the Act, the licensing authority is required to act without undue formality and is not bound by the rules of evidence. However, it may obtain information in any manner in order to make a decision, having regard to the objects of the Act.

Section 117 of the Act provides that a complaint may be lodged by —

- the Commissioner of Police; or
- the local government authority of the district in which the licensed premises are situated, or of any other district adjacent to the licensed premises and appearing to the Director to have an interest in the amenity, quiet or good order of the neighbourhood of the licensed premises; or

- a government agency or statutory authority; or
- a person who —
  - resides, works or worships;
  - attends, or is a parent of a child who attends, a school; or
  - attends, or is a patient in, a hospital,

in the vicinity of the licensed premises concerned. However, in this case, the complaint must be signed by 3 unrelated adults (including the complainant), unless the Director otherwise approves.

## On receipt of a complaint

When the complaint is initially lodged with the licensing authority, the Director will give a copy of the complaint to the licensee.

The Director will then attempt to settle the matter by conciliation or negotiation. This process involves a Department Inspector investigating the complaint to establish the circumstances and validity of the complaint and its grounds. The inspector will assist the parties to negotiate and conciliate to reach an agreement to resolve the complaint. It is important that all of the parties make every effort to settle the complaint by way of conciliation or negotiation.

However, there may be occasions when a party or parties to the complaint are not prepared to engage in conciliation of the complaint. In this case, the party so inclined will be asked to write to the Director outlining their position and demonstrating why their complaint should proceed.

It should be noted that the Act allows the Director to determine that a complaint is frivolous or vexatious and in such cases, the Director may dismiss the complaint.

## Determination of Complaints

If the matter cannot be settled by conciliation or negotiation, the Director is to give the complainant, the licensee, and any other person who has a relevant interest in the matter, an opportunity to be heard or to make submissions.

Where the Director is of the opinion that the complaint is established on the balance of probabilities, and the licensee has failed to show cause why an order should not be made, the Director may make an order in accordance with section 117(5) of the Act, but otherwise shall dismiss the complaint.

In determining the complaint, the Director may have regard to, but is not limited to, the following factors:

- any alteration, including any structural change, made —
  - to the licensed premises; or
  - if the complainant is a person referred to in section 117(2)(d) — to any relevant premises where the complainant resides, works, worships, attends or is a patient; or
- any changes that have taken place over time to the activities that take place on the licensed premises; or
- the kind of business conducted under the licence and how that business is managed; or
- if the complainant is a person referred to in section 117(2)(d) — whether the complainant began to reside, work, worship, attend or be a patient at any relevant premises before or after the licensee began to conduct business at the licensed premises; or
- any provision of the *Environmental Protection Act 1986*, or of any regulations made under that Act, that is relevant to the subject matter of the complaint.

Section 117(4b) entitles the Director to —

- defer making a determination for any period the Director considers appropriate; and
- make an interim order that has effect for that period for any purpose for which an order may be made under section 117.

If a complaint is successfully made out, section 117(5) empowers the Director to —

- vary the existing conditions of the licence;
- redefine, or redesignate a part of, the licensed premises;
- prohibit the licensee from providing entertainment or any other activity of a kind specified by the Director during a period determined by the Director or otherwise than in circumstances specified by the Director;
- impose that prohibition as a condition to which the licence is to be subject; or
- otherwise deal with the matter in such a manner as is likely, in the opinion of the Director, to resolve the subject matter of the complaint.

For information on the conduct of hearings before the Director, please refer to the Director's policy "*Proceedings before the Director of Liquor Licensing*", a copy of which can be obtained from the Department's website at [www.rgl.wa.gov.au](http://www.rgl.wa.gov.au) or by contacting the Department on (08) 6551 4888.

**DIRECTOR OF LIQUOR LICENSING**