

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 2018* (LCA 2018) and *Liquor Act 2019* (LA 2019).

The Commission is established by Section 5 of the LCA 2018 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 LCA 2018 and LA 2019. Responsibilities include:

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

The liquor regulatory framework is 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 LA 2019 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 LCA 2018.

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 of Liquor Licensing (Director) decisions made under the LA 2019; 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 LA 2019 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 on all matters referred to it under the LA 2019. The Commission is responsible for deciding the following matters:

- a) an application to issue a licence or an authority
- b) an application to vary the conditions of a licence or an authority;
- c) an application to substitute other premises for the licensed premises;
- d) an application to approve a material alteration to licensed premises;
- e) an application to authorize the transfer of a licence;
- f) take disciplinary action;
- g) any other matter the Director refers to the Commission.

The Commission may establish codes of practice to regulate the following matters:

- a) the advertising and promotion of liquor by licensees;
- b) the conduct of business under a licence or an authority
- c) the operation of licensed premises;
- d) the management of customers, purchasers and patrons by licensees, including the management of their safety;
- e) the establishment of ethical standards and practices for licensees.

Any established code of practice must be published in the way the Commission considers appropriate. It is a condition of a licence that the licensee comply with the provisions of any code of practice established and published by the Commission.

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 Commission 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 any electronic equipment and records.

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 alert the 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 LCA 2018 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 LCA 2018.

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 LCA 2018.

2.6 Conflicts of Interest Guidelines

Section 21 (4) of the LCA 2018 requires the Commission to make and publish guidelines specifying the types of pecuniary interests that a member must disclose.

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 LCA 2018 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, confidentiality 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 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 Industry, Tourism and Trade. The Board and Commission Support Services work unit is charged with providing secretariat services to the Commission in addition to various other Boards and Commissions. Should the Commission require information, research or any other material to assist it to properly discharge its functions, a request should be made by the Chairperson in the first instance to the Executive Director to ensure that appropriate divisional resources can be allocated to tasks.

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

Support services include the following:

- administrative support and secretarial services in accordance with the legislative frameworks of the LCA 2018 and LA 2019 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 2006* and *Financial Management Act 1995*, 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 Executive Director.

4 PROCEEDINGS OF COMMISSION

4.1 Convening of Commission and Sittings

Section 16 of the LCA 2018 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 hear and determine certain matters under the LA 2019.

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

Section 18 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 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 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 LA 2019 that apply.

4.2 Dates and Times of Meetings

The Commission must convene as often as is necessary for the exercise of its powers and performance of its functions. The Commission currently holds bi-annual meetings for attendance by all available Commissioners and panel meetings, comprised of three (3) members, are held on a needs basis to perform Commission business, for example to approve a delegation.

4.3 Late Papers

As a means of good governance, the Commission discourages the submission of late meeting 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 set the Meeting Agenda at least 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.

4.7 Out-of-Session Papers

A matter may be referred to a Commission Panel out-of-session for consideration and decision before the next meeting of the Commission. In such cases, an Out-of-Session Paper will be sent to Members and arrangements will be made for a meeting, which may include a meeting via video-conference or tele-conference, to discuss and decide the matter.

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;
- a record of any apologies;
- 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 LCA 2018 provides for the Commission to convene as often as is necessary for the exercise of its powers and the performance of its functions. This may include the convening of public hearings to make decisions under the LA 2019.

Section 21(1) of the LA 2019, provides that the Commission **may** conduct a hearing in relation to any matter on which it is to make under the LA 2019. The Commission however is mandated to conduct a hearing into a disciplinary action matter referred to by the Director under section 166 of the LA 2019.

Section 21 (2) requires any hearing conducted by the Commission to be conducted in public unless the Commission is of the opinion that it is not appropriate in the circumstances because:

- a) a public hearing is likely to cause undue hardship to a person; or
- b) commercial-in-confidence information must be protected; or
- c) the matter is not controversial; or
- d) conducting the hearing in public would not be worthwhile.

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

If the Commission is of the opinion that a public hearing is not appropriate in the circumstances, the Commission may direct that the hearing, or part of the hearing, be conducted in private or by way of written submissions only.

Under section 113 of the LA 2019, the Commission has the power on its own initiative to vary the conditions of a licence or an authority and may convene a hearing under section 115(1).

The Commission will determine the manner in which the hearing will be conducted.

5.2 Appearance at Hearings

The following persons and bodies may appear at a hearing conducted by the Commission in relation to an application:

- a) the applicant;
- b) a person who or a body that lodged an objection in accordance with section 61 of the LA 2019;
- c) a person who or a body that has not lodged a valid objection in accordance with section 61 of the LA 2019 but who is granted leave by the Commission to appear;
- d) any other person requested by the Commission under section 314 of the LA 2019 or under 22 of the LCA 2018 to give specified information or documents in relation to the matter.

5.3 Procedure for Hearings

The Commission must fix the time and place for any hearing to be conducted by the Commission and give written notice to the parties.

In conducting the hearing, the Commission may:

- a) require a person appearing before it to give evidence on oath or affirmation; and
- b) require a party to provide copies of any relevant document to any other party; and
- c) determine which documents of the Commission or the Director are to be provided to the parties; and
- d) conduct the hearing, or part of the hearing, by use of telephone or online facilities; and
- e) adjourn the hearing from time to time and to another place.

The Commission is not bound by the rules of evidence and may inform itself in any manner it considers appropriate.

All parties to the hearing will be provided an opportunity to be heard and a party may be represented at the hearing by another person.

During the hearing, all parties must comply with any rules and procedures of the Commission.

5.4 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.

5.5 Conduct of Hearing

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

Hearing proceedings will be audio 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 under record management protocols.

The Commission may require a person appearing before it to give evidence on oath in accordance with the *Oaths, Affidavits and Declarations Act 2010*.

5.6 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 LCA 2018 and LA 2019, 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.

5.7 Legal Counsel

If requested by the Chairperson, the Board and Commission Support Services Unit will facilitate the provision of legal services to the Commission through the Solicitor for the Northern Territory.

6 COMMISSION POWERS IN RELATION TO COMPLAINTS

6.1 Complaints

Section 160 of the LA 2019 provides for a person to make a complaint against a licensee on any of the following grounds:

- a) the licensee contravened a condition of the licence or authority;
- b) the licensee or the licensee's employee contravened another provision of the LA 2019 or the regulations, whether or not it constitutes an offence;
- c) the licensee or the licensee's employee contravened another law of the Territory that regulates:
 - i. the sale, supply, service or consumption of liquor;
 - ii. the location, construction or facilities of licensed premises;
- d) the licensee or, if the licensee is a body corporate, an executive officer of the body corporate, was found by a court of competent jurisdiction to be guilty of an offence against a law of the Territory that is punishable by imprisonment for 5 years or more;
- e) the licensee contravened a provision of an enforceable undertaking;
- f) the licensee contravened a direction given to the licensee under the LA 2019;
- g) the licensee's licensed premises are no longer being used:
 - i. for the sale, supply, service or consumption of liquor; or
 - ii. in compliance with the licence and authority;
- h) the licensee is not a fit and proper person to hold the licence;
- i) the licensee's nominee is not a fit and proper person and the licensee should reasonable know that;
- j) an employee of the licensee is not a fit and proper person to be an employee of the licensee and the licensee should reasonable know that;
- k) the licensee obtained the licence by fraud or misrepresentation;
- l) the licensee holds the licence for the benefit, directly or indirectly, of a person to whom the licence would not have been issued;
- m) the licensed premises were used in a way that caused:
 - i. disorderly conduct on or in the premises or in the vicinity of the premises; or
 - ii. annoyance or disturbance to persons residing, working or conducting a business in the vicinity of the premises;
- n) the licensee is no longer eligible to hold the licence.

The complaint must be lodged with the Director of Liquor Licensing (Director) in the approved form, specify the ground for the complaint and be signed by the complainant.

The Director may refuse to accept a complaint if satisfied that:

- a) the complaint is frivolous, vexatious; or
- b) the complaint is trivial: or
- c) the complaint is misconceived or lacking in substance, or
- d) no grounds exists for the complaint; or
- e) the complaint fails to disclose any conduct that contravenes, or is likely to contravene the LA 2019; or
- f) action to deal with the complaint has little or no chance of success.

The Director must decide to accept or refuse to accept the complaint within 14 days of its lodgment and give written notice of the decision within 14 days of making the decision.

Where a complaint is accepted, written notice must be given to the licence of the substance of the complaint, the Director's intention to investigate the complaint and the licensee's right to respond to the complaint. The licensee must respond in writing to a complaint within 14 days of receipt of the Director's notice.

On completing an investigation, the Director may do any of the following:

- a) take no further action if satisfied that:
- b) give the licensee a formal warning;
- c) mediate the complaint;
- d) issue and infringement notice;
- e) enter into an enforceable undertaking with the licensee;
- f) refer the matter to the Commission for disciplinary action.

The Director must give a decision to the complainant, the licensee and the Commission within 14 days of making the decision under section 163.

If the Director refers a matter to the Commission for disciplinary action the referral must specify details about the result of the investigation, any response given by the licensee and the ground for disciplinary action

6.2 Referral of Complaint

If the Director refers a matter to the Commission for disciplinary action under section 164 of the LA 2019, the referral must specify details about the result of the investigation, any response given by the licensee and the ground for disciplinary action

6.3 Conduct of Public Hearing

Section 166(2) mandates the Commission to conduct a hearing into any complaint referred to it by the Director.

The Director will prosecute the complaint.

On completing the hearing, the Commission must dismiss the matter or take disciplinary action against the licensee and as soon as practicable after making the decision, give a decision notice to the parties.

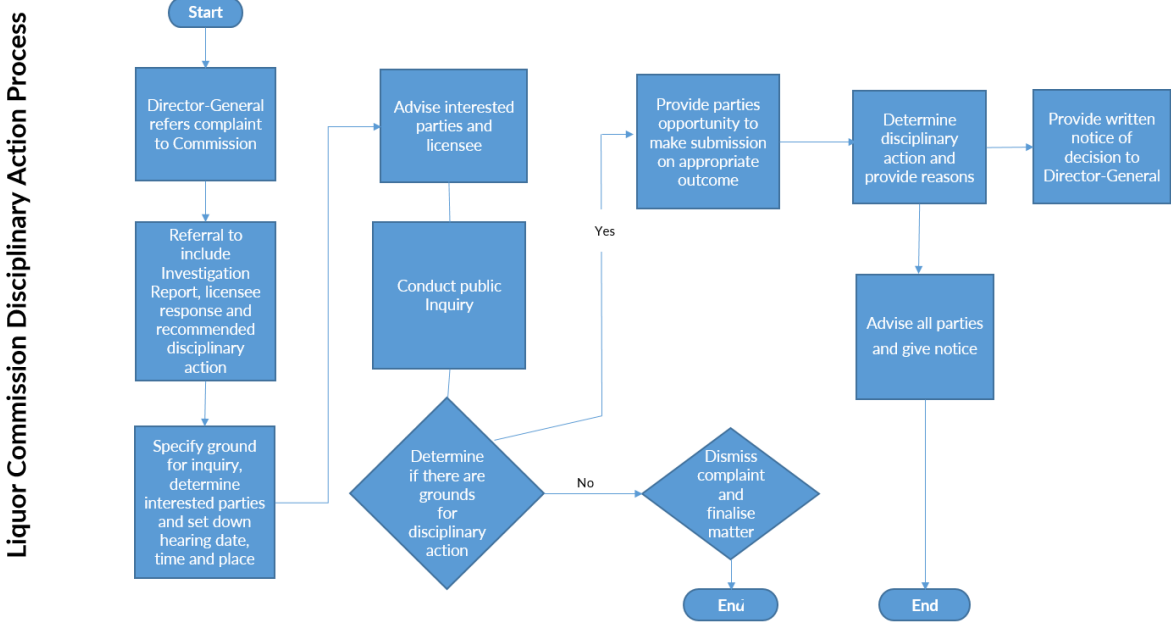
6.4 Disciplinary Action

The Commission may take disciplinary action against the licensee only if the Commission is satisfied that a ground for the disciplinary action exists and the disciplinary action is appropriate in relation to that ground.

The Commission may take any of the following disciplinary actions against a licensee:

- a) vary the conditions of the licence or impose additional condition on the licence;
- b) suspend a licence;
- c) cancel a licence;
- d) impose a monetary penalty on a licensee in accordance with section 167;
- e) direct a licensee to take, or refrain from taking, a specific action;
- f) disqualify a person from holding a licence for a specified period.

6.5 Disciplinary Action Process – Flow Chart



7 REVIEW OF DIRECTOR'S DECISIONS

7.1 Application for Review

Any decision of the Director is reviewable by the Commission except:

- a) a decision under section 161(2) of the LA 2019 (decision on the acceptance or refusal of acceptance of a complaint)
- b) a decision of a delegate of the Director that is reviewable by the Director under the LA 2019.

The following persons may apply for review of a decision of the Director:

- a) the applicant affected by a decision regarding an application;
- b) any person affected by a decision regarding disciplinary action;
- c) a licensee affected by a decision regarding the licence or authority held by the licensee;
- d) any person who made a submission, complaint or objection during the process that resulted in the decision;
- e) any other person given a right to review under the LA 2019.

An application must be made to the Commission within 28 days after the written notice of the decision of the Director is given or any later date allowed by the Commission.

The application must be in the form approved by the Commission, be accompanied by the prescribed fee (if any) and state the ground on which it is made and the facts relied on to establish the grounds.

An application for review does not stay the operation of the decision of the Director. The Commission may however stay the operation of the decision of the Director pending completion of the review.

7.2 Review of Decision

The Commission must, on receipt of an application, review the Director's decision. The Commission may reject the application if satisfied the application is frivolous or vexatious.

In reviewing the decision of the Director, the Commission must take into account any matter that the Director was required to take into account in reviewing the decision, comply with the rules of natural justice and follow the procedures for review determined by the Commission.

7.3 Decision on Review

After reviewing the decision of the Director, the Commission must confirm the decision or vary the decision or set aside the decision and substitute a new decision.

Section 33 of the LCA 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 under the Act under which the decision of the Director 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 to appeal 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 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.

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 LCA 2018 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). It is a defence to a prosecution for the above mentioned offences if the defendant has a reasonable excuse.

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;
- the matter to which the summons relates;
- 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;
- a statement of any conditions imposed by the Commission;

- signature of the Chairperson, Deputy Chairperson or Acting Deputy Chairperson; and
- the common 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

9 ANNUAL REPORT

The LCA 2018 provides transparency for the operation of the Commission by requiring that the Commission publish annual reports on its operations.

Section 38 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 of 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 Decisions;
- liquor decision notices issued;
- major activities and projects undertaken.

10 COMMON SEAL

Section 5(1) of the LCA 2018 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, 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 kept in either hard copy or electronic form.

11 DELEGATION

11.1 Power of Delegation

Section 37 of the LCA 2018 empowers the Commission to delegate its powers and functions under the LCA 2018 of the LA 2019:

- the Chairperson or another Member;
- the Director; or
- a public sector employee.

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

A delegation must in in writing.

12 PUBLIC INTEREST AND COMMUNITY IMPACT TEST

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

The Commission may only issue a licence or an authority if satisfied that:

- (a) the applicant is a fit and proper person; and
- (b) issuing the licence or authority is in the public interest; and
- (c) the licence or authority will not have a significant adverse impact on the community.

To determine whether issuing a licence or an authority is in the public interest, the Commission must consider how it would advance the following objectives set out in section 49(2) of the LA 2019:

- (a) minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;
- (b) ensuring liquor is sold, supplied, served and consumed on or in licensed premises in a responsible manner;
- (c) safeguarding public order and safety, particularly when large numbers of people would be attracted to licensed premises or an area adjacent to those premises;
- (d) protecting the safety, health and welfare of people who use licensed premises;
- (e) increasing cultural, recreational, employment or tourism benefits for the local community area;
- (f) promoting compliance with this Act and other relevant laws of the Territory;
- (g) ensuring each person involved in the business conducted at licensed premises receives training suitable to the person's role in the business;
- (h) preventing the giving of credit in sales of liquor to people;
- (i) preventing practices that encourage irresponsible drinking;
- (j) reducing or limiting increases in anti-social behaviour.

The Commission must also consider the following:

- (a) the risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the proposed licensed premises or who are using, or travelling to or from, a place of public worship, a hospital or a school;
- (b) the geographic area that would be affected;
- (c) the risk of harm from the excessive or inappropriate consumption of liquor;
- (d) the people or community who would be affected;
- (e) the effect on culture, recreation, employment and tourism;
- (f) the effect on social amenities and public health;
- (g) the ratio of existing liquor licences and authorities in the community to the population of the community;
- (h) the effect of the volume of liquor sales on the community;
- (i) the community impact assessment guidelines issued under section 50 of the LA 2019;
- (j) any other matter prescribed by regulation.

The Commission may mitigate a possible adverse impact on the community by issuing a licence or an authority with conditions that limit any of the following:

- (a) the kinds of liquor that may be sold or served;
- (b) the manner in which liquor may be sold or served;
- (c) the number or types of containers in which liquor may be sold or served;
- (d) the days and times when liquor may be sold or served;
- (e) the number of persons who may be on or in licensed premises, a part of licensed premises or an adjacent area that is under the control of the licensee;
- (f) the nature of entertainment that may be provided on or in licensed premises or in an adjacent area that is under the control of the licensee;
- (g) any promotional activities in which drinks are offered on a complimentary basis or at reduced prices.

12.2 Community Impact Assessment Guidelines

Section 50 of the LA 2019 requires the Minister to issue community impact assessment guidelines to assist in the assessment of the potential impact of issuing a licence or an authority on the community, by *Gazette* notice.

The Minister may, through the guidelines require an applicant to provide documents or other information including information about:

- (a) the suburb, local government area or other area in which the proposed licensed premises would be located; and
- (b) the benefits the proposed licence or authority would provide to the local and broader community; and
- (c) the process and result of consultation on the application.

The community impact assessment guidelines may have general, limited or varied application.

12.3 Onus on Applicant

An applicant for a licence or an authority must satisfy the Commission that issuing the licence or authority:

- (a) is in the public interest; and
- (b) will not have a significant adverse impact on the community.

An applicant must:

- (a) provide any information to assess the application required by the Commission, the Director and the community impact assessment guidelines; and
- (b) conduct any consultation on the application required by the Commission and the community impact assessment guidelines; and
- (c) comply with any other application requirement determined by the Commission.

A licensee who is applying for an authority is assumed to be a fit and proper person, in the absence of evidence to the contrary.

13 REVIEW OF COMMISSION DECISION

13.1 Review by NTCAT

Section 31 of the LA 2019 provides for the review of any decision of the Commission for which a decision notice is required to be reviewable by the Northern Territory Civil and Administrative Tribunal (NTCAT).

The following persons may apply to NTCAT for a review of the decision:

- in all cases – the Director;
- in the case of a decision regarding a licensee or a licensee's licence, authority or licensed premises – the licensee;
- in the case of a decision regarding an application – the applicant;
- in the case of a submission, complaint or objection that was the subject of a decision – the person who made the submission, complaint or objection.