

COMMISSIONER FOR LICENSING

Guideline of circumstances that liquor licence applications may be referred to the Tasmanian Liquor and Gaming Commission

In considering an application for a liquor licence, the Commissioner for Licensing reviews each application on its merits and, amongst other things, is required to determine whether granting the licence is *in the best interests of the community* (section 24A of the *Liquor Licensing Act 1990*).

In some instances, while the Commissioner may be satisfied that an applicant is qualified to hold a licence, the application may be referred to the Tasmanian Liquor and Gaming Commission for determination where the Commissioner is of the opinion that it would be in the public interest to do so (section 24(2)(b) of the Act). After referring an application to the TLGC, the Commissioner will provide the applicant and objectors with written notice of the referral.

When determining what 'public interest' considerations impact on an application, the Commissioner's decision will be limited to those matters within the scope of the Act. Private interests, even if controversial, are not matters which the Commissioner would ordinarily consider.

For example, objections from licensed premises on the basis that the proposal would impact on their businesses would be difficult for the Commissioner to base a decision on, as the commercial interest of competitors is not generally a relevant consideration under the Act. However, the potential for alcohol-related anti-social behaviour or crime may be considered relevant as the Act has a strong harm minimisation focus.

The following is guidance information only and aims to provide clarity on the more common circumstances which may be relevant in the Commissioner referring an application to the TLGC. As circumstances are not limited and largely depend on the individual nature of each application, this guidance does not detract from the Commissioner's authority to refer applications in all other circumstances where considered in the public interest.

Unique and complex applications

The Commissioner will, amongst other things, refer to past decisions of similar applications as a guide to assist in determining whether the granting of a licence is in the best interests of the community. The Commissioner may decide to refer an application to the TLGC where a precedent has not been established and the matter is considered sufficiently complex to warrant a joint determination.

Conflicts of interest

A conflict of interest is where a reasonably perceived, potential or actual clash arises for the Commissioner between private interests and interests of public duty. Conflicts can include financial and non-financial interests, and private interests are often associated with family members, friends or associates.

Examples of when a potential conflict may arise with regard to the Commissioner considering liquor licence applications might include:

- the application relates to a neighbouring property near the Commissioner's personal residence;
- an applicant is a friend or family member of the Commissioner; or
- a senior colleague, that has known ties with a key objector of the application, could be perceived to be in a position to influence the decision.

Where a conflict of interest is identified, the Commissioner will take necessary steps to resolve the conflict including referring the application to the TLGC for determination.

Broad public concerns

The Commissioner may determine that broader public concerns warrant a matter being heard by the TLGC. As an example, there may be contentious circumstances surrounding an application where there is sufficient division of public opinion that it would be in the public interest for the matter to be heard directly by the TLGC. As noted previously, matters of contention that fall outside the scope of the Act are not matters upon which the Commissioner will ordinarily refer an application.

Hearing powers

The Commissioner has authority to undertake inquiries regarding an application for a liquor licence as deemed necessary or expedient for a proper consideration of the application (section 24(1A) of the Act).

Under Division 2, of Part 5 of the Act, the TLGC, however, holds hearings in respect of referred applications and can require a person to attend a hearing to give evidence or produce at a hearing documentation or anything else it specifies. Witnesses attending hearings are bound to answer questions they would be required to answer in a court and must answer correctly (fines can be imposed on persons in violation of the TLGC's requirements).

Therefore, the Commissioner may refer an application where it is considered that the greater powers of the TLGC are needed to properly evaluate an application.

Representations regarding referral

Applicants and/or respondents may request that a matter, due to circumstances such as those above, be referred to the TLGC for determination. Such requests will be considered by the Commissioner and an application will be referred where sufficient justification and/or evidence has been provided for the Commissioner to be satisfied that it is in the public interest to do so.

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