



Council Policy

Liquor Control Act 1988
Provisions



Liquor Control Act 1988 Provisions

Policy scope

This policy identifies the principles and processes on the criteria for support to members of the community, when the community submits complaints or objections under the *Liquor Control Act 1988*.

Policy statement

Complaints about the operation of licensed premises

Complaints about licensed premises can be referred to several different agencies. In most cases complaints are referred to the Police, Office of Racing, Gaming and Liquor or the City. The Police have a wide range of offences that can be loosely referred to as being of a criminal or behavioural nature. The Office of Racing, Gaming and Liquor (Liquor Licensing Division) are the responsible State agency for issuing the actual liquor license. They are also responsible for administration of the *Liquor Control Act 1988*, which has its objective to "...regulate the sale, supply and consumption of liquor, the use of premises on which liquor is sold, and the services and facilities provided in conjunction with or ancillary to the sale of liquor, to minimize harm or ill-health caused to people, or any group of people due to the use of liquor...".

The City relies on legislative support through the Local Planning Scheme, the *Food Act 2008*, *Health (Miscellaneous Provisions) Act 1911*, *Tobacco Products Control Act 2006*, *Liquor Control Act 1988* and some other Local Laws (that apply to the whole community).

Importantly the Liquor Licensing Director can, and often does, respond to complaints by holding a hearing. These hearings are reasonably formal but can have outcomes that can affect the licensee or the premises. The concerns that some members of the community have with the process is the formal process that is identified in the *Liquor Control Act 1988* for submitting a complaint, the time delay in having a hearing and the legalistic manner of the process. If the complaint procedure is not followed as prescribed then the complaint may not be heard.



The Principles to apply when Council is considering support to residents who have complaints about licensed premises

- 1 Council recognises the right of any citizen to lodge a complaint about licensed premises in their own right independently of Council.
- 2 The City may lodge formal complaints to the Director of Liquor Licensing when it is considered to be in the Council's interest to do so.
- 3 Complainants should be able to substantiate any complaints by evidence such as statements, photographs, video, audiotape or diary notes that are quite detailed and correct.
- 4 Complainants should give a written undertaking to support any legal action that Council initiates against a licensee by appearing in any hearing or in a court, without costs to the City of Fremantle.
- 5 At any hearing of Liquor Licensing matters, the decision making on Council's behalf is through a Council officer who may be authorised by Council to agree or not to agree with suggestions from the bench, or the City's solicitors. For this reason complainants should consider the benefits of independently initiating their own complaint procedure action. If this independent action is taken then it is quite separate from the Council action and therefore no financial support can be supplied unless specifically authorised by Council.
- 6 The Complainant should ensure as far as possible that the grounds of complaint are in accordance with section 117 of the *Liquor Control Act 1988*.

The Processes to apply when Council is considering support to residents who have complaints about licensed premises

- 1 The complainant should satisfy the Manager Field Services that a licensee has had reasonable opportunity to address the complaint before the Manager Field Services initiates any formal complaint procedure. It is possible that the Manager Field Services can initiate action or proceedings as a proactive measure (i.e. advertising an event or operation of the venue that is out of the ordinary).
- 2 The Manager Field Services can exercise the delegation provided by Council to lodge formal complaints to the Director of Liquor Licensing when the officer is of the opinion that it is in the Community's or Council's interest to do so. In some cases the only support required is information about legislation and procedural matters in which case the information is provided in good faith. This should not be interpreted as the City obtaining specific legal advice for a complainant. Any support at officer level will be to the extent that is deemed to be reasonable in the opinion of the Manager Field Services.



- 3 If the complainant objects to the action taken by the Manager Field Services, then the complainant can request that the matter be referred to Council for consideration and direction.
- 4 If a complainant has not been able to advance a complaint through the Manager Field Services, then the complainant can request in writing that the matter be referred to Council for direction. This written request should be supported by evidence supporting the complaint and the submission should include a statement specifying the extent of support requested.
- 5 If a complainant would like to proceed with a formal action independently then any costs should be borne by the complainant. Requests for retrospective financial support from Council are unlikely to be successful.
- 6 If a complainant requests financial support from Council prior to lodging a formal complaint then a submission should be made providing as much information as possible so that Council can make a decision based on the evidence or submission.

The approval of new licensed premises and/or extensions or alterations to existing licensed premises

This section is not addressing the aspect of Planning Approval which is a separate matter. The intention is to outline the City's position after planning approval has been obtained. Whilst it is reasonable to assume that an application having received planning approval should be in a strong position to obtain a Liquor License, this would be a false assumption as the Licensing Authority (Office of Racing, Gaming & Liquor) has certain obligations and criteria that are quite separate to the planning process. The City generally requires commitment to management plans from the applicant or intended licensee. This management plan can be requested as a condition of planning approval. It may be that on planning grounds Council cannot refuse an application but it is still possible that objections can be lodged to the Director of Liquor Licensing. The grounds of objection are specified in section 74 of the *Liquor Control Act 1988*.

The Principles to apply when Council is considering support or otherwise to residents who seek Council's confirmation of their position in regard to the:

- approval of new licensed premises and/or
 - extensions or alterations to existing Licensed Premises
- 1 Council recognises the rights of any citizen to object to the Director of Liquor Licensing regarding the establishment of a new licensed premises or extensions or alterations to existing Licensed Premises.
 - 2 Objectors may request Council to support their objection through access to officers of Council or financial support. If financial support is requested then a written submission should be made including as much evidence as possible so that Council can make a determination. Requests for retrospective financial support from



Council are unlikely to be successful. Support at officer level will be to the extent that is deemed to be reasonable in the opinion of the Manager Field Services.

- 3 In some cases it may be in the community's interest for as many objectors as possible to submit objections to a new licensed premise. This approach does enable individuals to pursue their own objective which may be different to others. For example some residents may not oppose the playing of acoustic music whilst other would be opposed to playing of any music after 11 pm. Council will need to take a reasonable and balanced approach and therefore when these instances occur the Council officer who has authority from Council to agree or not to agree with suggestions from the bench, the Director of Liquor Licensing or the City's solicitors, will decide the best position to take.
- 4 The objector should ensure that the grounds of objection are in accordance with section 74 of the *Liquor Control Act 1988*.
- 5 Where the residents are supporting a council decision (including an authorised decision of the Manager Field Services), Council will provide financial support by meeting any legal costs awarded from a court against a resident and, in addition, by providing the services of Council's solicitor. This commitment is on the understanding that the Manager Field Services is fully conversant with and supports the actions proposed by the residents.
- 6 Council will not provide any additional financial assistance for any costs incurred in travelling, loss of wages, independent legal representation or any other costs.
- 7 Where the Council position and the residents' positions are different, Council will not provide any financial assistance whatsoever.

The Processes to apply when Council is considering support to residents who seek confirmation of their position in regard to the:

- approval of new licensed premises and/or
 - extensions or alterations to existing Licensed Premises
- 1 Any objector should satisfy the Manager Field Services that it is in the community's interest for both the City and objector to lodge a formal objection to the new licensed premises or extensions or alterations to existing Licensed Premises.
 - 2 The Manager Field Services may lodge formal complaints to the Director of Liquor Licensing when the officer is of the opinion that it is in the Community's or Council's interest to do so. In some cases the only support required is information about legislation and procedural matters in which case the information is provided in good faith. This should not be interpreted as the City obtaining specific legal advice for sole use by an objector. If the objector is dissatisfied with the action taken by the Manager Field Services then the objector can request in writing that the



matter be referred to Council for consideration and direction. This written request should be supported by evidence supporting the objector's position and should include a statement specifying the extent of support requested.

- 3 If the objector would like to proceed with a formal action independently then any costs should be borne by the complainant. Requests for retrospective financial support from Council are unlikely to be successful.

Definitions and abbreviations

Nil

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