

# **NORTHERN TERRITORY LICENSING COMMISSION**

## **Licensing Commission Hearings – What You Need To Know**

As at 25 May 2009

### **On what matters does the Licensing Commission conduct hearings?**

The Commission conducts hearings to:

- Consider applications for licences under the various Acts the Commission is responsible for such as, the *Liquor Act*, the *Gaming Machine Act* and the *Private Security Act*; and
- To consider and decide on complaints against the holders of licences under those acts.

Complaints may be made by a member of the public or by the Director of Licensing.

Applications for new licences are referred to the Commission who decides whether or not the licence should be granted.

When the Director receives information about a possible breach of one of the Acts he and/or his Licensing Inspectors investigate the complaint and then refer it to the Commission for consideration as to whether the matter needs to go to Hearing.

Applications or complaints are heard by a panel of either one or three Commissioners who consider the evidence put before them by the parties and make a decision based on that evidence.

At the conclusion of a Hearing the Commission will usually retire to consider the evidence and submissions and hand down their decision in writing at a later date.

### **Where are the Hearings held?**

Most Hearings take place in either the Hearing room in Darwin at Enterprise House on the corner of Knuckey and WoodStreets or in Alice Springs at Belvedere House on the corner of Bath and Parson Streets. However, in some circumstances the Commission will hold Hearings at the site of the application or complaint, such as Tennant Creek, Borroloola or Mataranka.

The Commission tries to hold the Hearing at the most convenient location for the parties involved.

The Hearing itself is a semi-formal legal proceeding and the hearing rooms in Darwin and Alice Springs are set up is similar to a Court room. It is possible to view the Hearing room prior to your attendance, if you wish to do so please contact Ms Robyn Power on 08 8999 1826 to make the necessary arrangements.

### **Who attends a Licensing Commission hearing?**

Hearings are generally open to the public and the media sometimes attend to cover the Hearing.

However, any filming or recording of Hearings will need the consent of the Commission.

A “typical” Hearing will usually include a panel of one to three commissioners, the Licensee or applicant and/or their representative, the Director of Licensing and the complainant (sometimes the complainant is the Director of Licensing). Witnesses may be also called to give evidence at a hearing.

All Hearings are recorded by the Commission and transcripts of the Hearing can be sought from the Commission at the cost of the party requesting the transcript.

### **When you are a complainant against a licence holder or an objector to an application for a licence at a Hearing**

At Hearing you can either represent yourself or engage a solicitor to act for you.

If you are a complainant or an objector you will be required to sit at the Bar table and tell the Commission panel about your complaint or objection. The Commission, unlike the Courts, does not require people to stand whilst giving evidence. You may tell your story (“submissions”) in your own words and you may ask questions of the licence holder or the applicant, as well as any person they may bring to the Hearing as a witness.

Members of the Commission sitting on the Hearing Panel may, and often do, ask questions in respect of your objection or complaint.

Generally, the applicant or licence holder is not entitled to ask you questions directly. They are however entitled to make submissions to the Commission that are contrary to your submissions.

The Chairman or Presiding Commissioner will give directions as to the order of the proceedings and you can ask questions regarding the process at any time.

If you have objected to an application then you should be ready to tell the Commission why you object.

If you have lodged a complaint against a licence holder you should be prepared to provide the Commission with the details of the matters that caused you to make the complaint.

To support your submissions you may make a written statement and rely upon the statement by handing it up to the Commission. You may also bring along any relevant witnesses, documents or references that support your case.

If you bring a witness to a Hearing you should inform that person of the requirements for witnesses at a Hearing, set out below,

If you intend to submit documents or references you should make sure you have enough copies to give to the other parties (the licence holder or applicant) as well as to the Hearing Commissioners.

Objectors are not necessarily required to be present for the whole of the Hearing and may schedule their attendance by contacting the Executive Officer, Ms Robyn Power on 08 8999 1826.

### **When you are a witness at a Hearing**

A person giving evidence at a Hearing must enter the witness box and take an oath to tell the truth to the Commission. This can be done either by swearing on the Bible or making an affirmation. This involves the Chairman or Presiding Commissioner (the Commissioner sitting in the middle of the Hearing panel) reading out the oath and then asking you to swear or affirm to tell the truth.

If you are a witness for an objector or a complainant, that person or their legal representative will ask you to tell your story to the Commission and may ask you questions about your evidence. The Commissioners may also ask you

questions. Following that, the applicant or the person complained about (or their legal representatives) may ask you questions about your evidence.

Once you have completed giving your evidence you are free to leave the Hearing. Generally, you are entitled to remain until the conclusion of the Hearing if you wish to do so.

If you are a witness in support of an applicant or a person complained against the same procedure applies except that you will first be questioned by the applicant or complainant, or their legal representatives, and then by the objector or complainant. Special care is taken with any witnesses who are minors or who have language difficulties.

### **Appearing the person complained about**

If a complaint has been lodged against you, you will usually be summonsed to appear at a Hearing before the Commission. You are required to attend the Hearing and may engage a legal representative or other person to speak on your behalf. If the complaint relates to a serious matter you should carefully consider whether or not you will engage a solicitor. The penalties available to the Commission can be severe, including cancellation of a licence in the most serious cases.

Generally, but not always, the person making the complaint is the Director of Licensing. At a hearing the Director is represented by a prosecutor, either a solicitor or a Licensing Inspector. At the commencement of the Hearing the prosecutor reads out a summary of the complaint. Following that you will be asked by the Commission whether you admit or deny the complaint as read out. If you admit the complaint you will be given the opportunity to tell the Commission about any matters you wish to have taken into account in deciding the appropriate penalty. The prosecutor and the Commissioners are entitled to ask you questions in respect of any matters you may raise. After hearing from you the Commission will ask the prosecutor to make submissions on the appropriate penalty. In doing so the prosecutor may refer the Commission to any previous offences you may have committed and any other matters the Commission may take into account.

If you do not admit the complaint, following the reading of the summary of the complaint, the prosecutor will call witnesses to give evidence on behalf of the person making the complaint. You or your solicitor will be given an opportunity to ask questions of any witnesses.

Once the prosecutor has finished with his or her witnesses you will be given an opportunity to present any evidence you wish in your defence, including calling witnesses who will testify on your behalf. You may also provide the Commissioners with copies of any documents you wish them to take into account in determining the complaint.

At the conclusion of the evidence from both sides the Commission will usually adjourn to consider its decision on whether or not the complaint has been proven. The decision of the Commission is usually published, including reasons for the decision.

If the complaint is not proven that is the end of the matter and there will be nothing further for you to do.

If the complaint is proven you will be required to appear at a further Hearing at which you can make submissions to the Commission as to the appropriate penalty. Again, you may be represented at that hearing by a solicitor or another representative of your choice.

Once the Commission has heard all the evidence on the appropriate penalty it will normally adjourn again to allow the Commission to reach its decision on penalty and to publish a formal decision.

### **What evidence can be presented**

In proceedings before a Court there are rules relating to what evidence can or cannot be admitted in a case. These are known as the Rules of Evidence. For hearings before the Commission, the Rules of Evidence do not apply and the Commission determines what evidence it will hear as it sees fit. However, the Commission is bound to ensure Hearings are fair and equitable. so that no party suffers any unfair disadvantage due to unfair evidence being admitted or irrelevant matters being raised.

Although the Rules of Evidence do not apply to Commission Hearings and the Commission may inform itself by any means, the Commission does aim to ensure each party is heard and that the evidence or material heard by the Commission is relevant to the matter to be decided.

The Commission also aims to ensure each party is treated fairly and is given the opportunity to have their say.

That said it is a general policy of the Commission to make sure there are no 'surprises' to a party and if there are, and the matter is relevant, the Commission will likely grant an adjournment to allow the 'surprised' party time to consider the evidence of material.

Submissions made to the Commission are limited to matters relevant to the Hearing and, in the case of valid Objectors to applications, to those matters raised specifically in the written objections.

To avoid any delays it is a good idea to let the other side have a copy of all the documentation (except business or financial records that are confidential to a business or person) that you are going to rely on and a general outline of what you will be arguing. That does not mean you have to provide the specifics of your evidence or submissions, just enough information so the other side is not surprised and needs to seek an adjournment.