

NORTHERN TERRITORY LICENSING COMMISSION

INFORMATION PAPER

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CHAIRMAN
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The Licensing Commission had its genesis as the Northern Territory Liquor Commission. The Liquor Commission was created at the time of self-government for the Territory in 1978. The promulgation of the *Liquor Act* dispensed with the South Australian Liquor Ordinances and moved responsibility for the regulation of licensed premises from Local Courts to the Commission. The Commission operated as a quasi-judicial tribunal and as a department of the Northern Territory Government. The Chairman of the Commission was the Chief Executive Officer of the department of the Liquor Commission.

Following the replacement of betting shops with the NT TAB, the Liquor Commission became the Racing, Gaming and Liquor Commission.

The Commission reverted to its former status as a single Act commission following the introduction of gaming machines and the establishment of the Racing & Gaming Authority as a separate department of Government.

In April 1998 the former Liquor Commission became responsible for the *Kava Management Act*.

In October 1998, the CLP Government restructured the public sector as one of its "Planning for Growth" initiatives and the Liquor Commission was subsumed within the newly formed Department of Industries and Business. The Commission subsumed the Racing & Gaming Authority to form the Racing, Gaming & Licensing Division of the Department. The Chairman combined his existing duties with those of Deputy CEO of the Department and head of its Racing, Gaming and Licensing Division.

The Liquor Commission retained its functions as a quasi-judicial tribunal with responsibility for liquor and kava licensing. In November 1998 its Chairman was appointed as Chairman of the Racing Commission.

During 1999 the Chair and all Members of the Liquor Commission were appointed as the membership of the Private Security Licensing Authority (PSLA). Formerly a responsibility of the Office of Consumer Affairs, the PSLA had responsibility for the licensing of crowd controllers ("bouncers"), security guards and companies licensed to provide these services.

The Licensing Commission came into being on 14 February 2000, upon the gazettal of the *Northern Territory Licensing Commission Act*.

The Chairman and Members of the former Liquor Commission were directly appointed as the Chair and Members of the Licensing Commission pursuant to the transition provisions of the *Northern Territory Licensing Commission Act*.

During 2000, several Members of the Licensing Commission were appointed as the full membership of the Racing Commission.

Members of the Licensing Commission were also appointed as the membership of the Escort Agency Licensing Board. Later amendments to the *Prostitution Regulation Act* disbanded the Board and shifted responsibility for the licensing of escort agencies to the Licensing Commission.

The Racing Commission remained as an entity, separate from the Licensing Commission but with a common chair, membership and meeting schedule.

The Racing Commission formerly had responsibility for the supervision and regulation of the NT TAB. Its General Manager reported directly to the Racing Commission Chair. The Commission financed the racing industry from TAB profits. On 1 July 2000, concurrent with the sale of the NT TAB to QTAB, the Government signed an agreement with the Darwin Turf Club, as Principal Club, giving effect to a system of direct grants to the racing industry.

The continuing responsibilities of the Racing Commission are minimal. It does however licence sports-betting entities. These operate internationally via the internet. Very thorough probity assessments are demanded by the legislation and overseen by the Commission.

The Licensing Commission became the licensing authority for the operations of QTAB following its purchase of the NT TAB. The former Government planned to disband the Racing Commission and transfer its responsibilities to the Licensing Commission when convenient to do so by amendment to the *Racing and Betting Act*.

In October 2000, the Licensing Commission Chair, originally appointed as Chairman of the Liquor Commission in October 1996, ceased to be Deputy CEO and the head of the Racing, Gaming & Licensing Division of the Department of Industries and Business.

The incoming Government transferred the Commissions and the Racing, Gaming & Licensing Division to Treasury. An appropriate degree of separation exists between the Commissions and Treasury.

Legislation:

The Licensing Commission is a quasi-judicial tribunal with responsibility for licensing and related matters pursuant to the legislation listed below.

- *Northern Territory Licensing Commission Act*
- *Racing and Betting Act* (as the Racing Commission)
- *Totalisator Licensing and Regulation Act*
- *Gaming Control Act*
- *Gaming Machine Act*
- *Liquor Act*
- *Kava Management Act*
- *Private Security Licensing Act*
- *Prostitution Regulation Act*

Powers:

- The *Licensing Commission Act* requires the Commission to perform as described at Section 5 of that Act. The same section provides the Commission's powers.

(1) The Commission must perform the functions imposed on it under this Act or another Act and do any thing that is necessary or convenient to be done for the proper performance of those functions.

(2) The Commission has the power to do all things that are necessary or convenient to be done for or incidental to the performance of its functions.

- The role, functions and powers of the Chairman are described at Section 7.

(1) The Chairperson

(a) administers the affairs of the Commission; and

(b) must perform the functions imposed on him or her under this Act or another Act.

(2) The Chairperson has the power to do all things that are necessary or convenient to be done for or incidental to the proper administration of the affairs of the Commission and the proper performance of his or her functions.

As is apparent from the above, the legislature has provided considerable powers to the Commission and its Chairman for the performance of their functions. The powers, while appearing to be unfettered are nonetheless subject to the restraints imposed on all Courts and Tribunals. The Commission must follow the principles of common law and as a creature of statute must not exceed its jurisdiction. The Commission's decisions can be subject to judicial review. During the tenure of the current Chairman and its Legal Member, the Commission has not lost a matter before the Supreme Court.

The Commission is body corporate with perpetual succession, it has a common seal and can sue and be sued. The legislation does not provide for the Minister to direct the Commission in the performance of its statutory functions. The Minister appoints the Chairman and Members. The Minister can appoint any number of persons to be Members of the Commission.

The Commission has its own letterhead and is a separate legal entity to Treasury although it is housed within and maintains a close working relationship with Treasury and its officers at all levels. The Chairman provides regular reports to the Minister for Racing, Gaming & Licensing via the CEO/Under Treasurer and originates briefing minutes on major issues.

Agencies of Government appear before the Commission and make submissions or give evidence on licensing and related matters. Such agencies include the Police,

Territory Health Services and the Department of Lands, Planning and the Environment.

Many of the decisions of the Commission are delegated. Delegates include its Chairman, the Director of Licensing, Deputy Directors of Licensing, the Manager of Racing and staff of Treasury's Racing, Gaming and Licensing Division. All decisions made by delegates remain, in law, as decisions of the Commission for which it, and its members, remain liable.

Members:

Mr Peter Allen	Chairman
Mr John Withnall	Legal Member
Mrs Shirley McKerrow	
Mrs Mary Ridsdale	
Mrs Annette Milikins	
Mr Brian Rees	
Mrs Barbara Vos	
Mr Allen Furber	
Mr Andrew Blackadder	
Dr Jan Savage	

The Chairman and Dr Savage are executive contract employees of the Northern Territory Public Sector. The other Members are "part-time". They receive sitting fees and other allowances pursuant to the *Remuneration (Statutory Authorities) Act*.

Procedures:

The increased responsibilities of the Licensing Commission, compared with the former Liquor Commission, has led to an increase in the number of Members, from 5 to 10 and a degree of specialisation within the membership. The increased number of Members allows the Commission to deal with a range of matters simultaneously and at different locations throughout the Territory.

- The *Licensing Commission Act* requires the Chairman to allocate members to matters before the Commission. The relevant section of the Act is Section 15:

Section 15. Constitution of Commission

The Chairperson must, in respect of each matter or class of matter to be dealt with by the Commission -

- select the members to constitute the Commission; and*
- select one of those members to preside when the Commission convenes.*

Using the powers provided by Section 15 the Chairman has established “sub-sets” of the Commission in order to ensure it fulfils its duties across the breadth of the legislation.

- The Chairman, the Legal Member and five other Members deal with Gaming, Liquor and Private Security matters and sit on Hearings pursuant to the *Liquor Act*.
- The Chairman, the Legal Member and three other Members sit as the Racing Commission to deal with matters arising pursuant to the *Racing and Betting Act*.
- The Legal Member and three others including Dr Jan Savage deal with Escort Agency licensing matters. The Legal Member presides. Dr Savage is Director of the AIDS/STD Program at Territory Health Services. She participates only in matters arising pursuant to the *Prostitution Regulation Act*.
- The Legal Member, and Members McKerrow and Vos deal with all Kava licensing matters pursuant to the *Kava Management Act*. Member McKerrow presides.
- Mr Blackadder, a long serving Member of the Racing Commission participates only in matters arising pursuant to the *Totalisator Licensing and Regulation Act* and the *Racing and Betting Act*.

The formal Hearings of the Commission are normally presided over by the Chairman or the Legal Member. The Chairman is required to chair all Hearings on which he sits.

The Commission is required by legislation to keep records and minutes of all meetings. Its decisions are published on the Treasury web site.

The Commission’s monthly business meetings are normally two days in length. Most meetings are held in Darwin, others in Alice Springs. Special meetings, usually restricted to a quorum of three, are conducted on an ad hoc basis to deal with urgent matters.

The Commission is often thought to employ Licensing Inspectors, responsible for the inspection of licensed premises. This is not the case. Licensing Inspectors are staff members of Treasury’s Racing, Gaming and Licensing Division. They report to the Director of Licensing.

The Director’s staff prepare applications, objections, complaints and reports for consideration by the Commission. The Director is responsible for the conduct of investigations. The Commission is able to issue directions to the Director of Licensing, but does not direct the Director in the day to day performance of his duties. The Director reports to the Assistant Under Treasurer, Mr Andrew Smith.

The Commission has three staff members who facilitate the operations of the Commission. They manage the Commission’s logistics and travel with its Members to locations across the Territory. They maintain archives, legal records and data bases, prepare summons and subpoenas, record and distribute minutes of meetings,

electronically record all hearings, prepare correspondence and conduct essential liaison with Counsel, the Director's staff, community organisations and the Police.

Community and Industry Liaison:

In addition to its more formal role the Commission operates as a commission-at-large.

Members meet on a frequent basis with town and community councils; with Chambers of Commerce and Industry, regional Tourist Associations, the Australian Hotels' Association and the Liquor Stores' Association, Land Councils and other Aboriginal organisations, health service providers and executives of major liquor, gaming and security organisations.

In its liaison role the Commission normally concentrates on consultation with the community whereas the Director of Licensing normally focuses on the industry.

The Chairman is frequently interviewed by the media regarding liquor issues affecting Aboriginal people and the broader Territory community.

Peter R. Allen
CHAIRMAN

8 August 2002