

**Liquor Commission of Western Australia
(*Liquor Control Act 1988*)**

Applicant: Tybel Nominees Pty Ltd

Intervener: Commissioner of Police
(*represented by Mr Jesse Winton of State Solicitor's Office*)

Commission: Mr Jim Freemantle (Chairperson)
Mr Seamus Rafferty (Deputy Chairperson)
Mr Eddie Watling (Member)

Premises: Merriwa Tavern, 36 Baltimore Parade,
Merriwa

Matter: Review pursuant to section 25 of the *Liquor Control Act 1988* of the decision of the Director of Liquor Licensing to refuse an application for variation of entertainment condition on the licence.

Date of Determination: 24 September 2013
(determined on the papers)

Determination: The application for review is dismissed.

Determination

- 1 On 13 December 2012, an application was made to vary the licence of the Merriwa Tavern by allowing nudity as an entertainment condition.
- 2 On 12 June 2013, the Delegate of the Director of Liquor Licensing ("the Director") refused the application on the basis that the applicant had not discharged its onus pursuant to section 38(2) of the *Liquor Control Act 1988* ("the Act").
- 3 By way of application dated 8 July 2013, the applicant sought a review of the decision before the Liquor Commission ("the Commission") on papers pursuant to section 25 of the Act.
- 4 The application to vary the licence must satisfy public interest considerations. This is an application to which section 38(1)(c) of the Act applies. As such, the applicant must positively establish that it is in the public interest to grant the variation on the balance of probabilities.
- 5 The Commission has outlined in a number of judgments what constitutes the public interest. For the purpose of this application there is no need to review the principles that apply to such applications.
- 6 The evidence in support of the application is:
 - (a) letter of Mr Ian Stroker, Managing Director of the Merriwa Tavern dated 20 September 2012;
 - (b) letter of Mr Steven Zielinski, owner of Raunchy Promotions;
 - (c) Questionnaire of patrons at the Merriwa Tavern asking if they would object to or attend a stripper show at the hotel once a month.
- 7 The evidence falls well short of establishing that the variation of the licence is in the public interest. Whilst "Dan the Man", "Show me pussy", "Robbo", "Marshy", "Bob", "Jacko", "Swanny", "Fido", and others may want to see strippers at the hotel based on their signing of the questionnaire, there is nothing before the Commission that is capable of establishing that the variation of the licence is in the public interest.
- 8 A number of objections and an intervention to the variation were filed with the Director at first instance. Each of these objections raises valid concerns, however as the applicant has not discharged its onus, there is no need for the Commission to address those matters.
- 9 The application to vary the entertainment condition is refused.



MR JIM FREEMANTLE
CHAIRPERSON