25 February 2013

Executive Officer
Liquor Act Review Committee
PO Box 6119
EAST PERTH WA 6892

By email: LiqActReview@rgl.wa.gov.au

Dear Committee

BUSINESS IMPROVEMENT GROUP OF NORTHBRIDGE (INC) – LIQUOR CONTROL ACT 1988 REVIEW SUBMISSION

We refer to the Request for Submissions in relation to the Review of the Liquor Control Act 1988 (“Review”). Having regard for the Terms of Reference for the Review, we have taken this opportunity to provide substantive comments on behalf of the members of the Business Improvement Group of Northbridge (Inc) (“BigN”) Licensees Subcommittee (“Licensees Subcommittee”). Further background information is provided below.

Our submission revolves around some general comments in relation to the liquor, hospitality and tourism industries (“Industry”) in Western Australian (“WA”) and the impact of the current legislation on these industries. These comments provide the context for most of the numbered comments that appear further below and the specific suggestions that we have made in relation to improving liquor regulation in WA.

We recognise that the Terms of Reference are broad and have therefore made a comprehensive submission. We believe that we can contribute in a meaningful way to reform by sharing the experience of BigN Licensees Subcommittee members who are all long term participants in the Industry in WA and interstate.

It should be noted that a copy of the one page summary required by the Request for Submissions has been included in the covering email to this submission.

BigN Background

By way of background, the BigN was incorporated in 2003 for the purposes of identifying and implementing strategies for the improvement of Northbridge. The BigN has accepted the role of advocating and promoting Northbridge as a safe, vibrant destination for locals and visitors. Membership is derived from local business, residents and community groups and represents a diverse and committed body of interested stakeholders all striving to enhance Northbridge.

Based on forecasts prepared by Urbis Australia, Northbridge is responsible for a contribution of $691 million to Gross State Product and 1,035 direct and indirect full time equivalent jobs with $55 million in direct tourist expenditure. This is set to grow as over $4 billion is invested in improvements in the area based around the City Link Project.

In 2009, the BigN formed the Licensees Subcommittee which was constituted to represent the general body of liquor licensees in Northbridge across tavern, nightclub and special facility licences. Currently the Licensees Subcommittee comprises Michael Keiller (Chairman), Chris Brockwell (Brockwell Group), Colin Gourdis (Australian Leisure and Hospitality Group), Bob Maher (Boss Entertainment), Ben Maher (Boss Entertainment), Bill Oddy (Entertainment Enterprises), Michael
Rasheed (Marlin Group) and Ben Rasheed (Marlin Group). The relevant experience of Licensees Subcommittee members is enclosed in Appendix A.

These members own and operate a number of licensed venues in Northbridge as well as other areas and are recognized as some of the most experienced and well respected operators in Western Australia.

All of the Licensees Subcommittee members and associated stakeholders have a demonstrable long term interest in Northbridge (and more broadly the Industry) and are interested in driving real change to develop a world class entertainment precinct.

The specific objectives of the Licensees Subcommittee are summarized as follows:

- Review and comment on matters pertinent to the hospitality industry in Western Australia;
- Delineate and implement a broad strategy for the improvement of Northbridge, with an emphasis on peak periods and late night trade;
- Identify strategies for the improvement of the safety of people resorting to licensed premises and Northbridge in general;
- Maintain Northbridge as a vibrant late night entertainment precinct that caters to tourists and the general public that resort to the area;
- Ensure that government at all levels, relevant regulatory bodies, key decision makers and the general public are accurately informed of the true situation in Northbridge, the positive efforts of licensees and the measures being taken to improve the area; and
- Introduce other relevant fact based information to the public/media debate.

The BigN Licensees Subcommittee has worked closely with the City of Perth, State Government (Department of Premier and Cabinet; Minister for Racing Gaming and Liquor), Health Department, Department of Racing Gaming and Liquor (“DRGL”) and WA Police (Liquor Enforcement Unit, Central Metro) to identify and implement measures for the improvement of Northbridge and best practice for the Industry as a whole.

**Context of the Submission**

The purpose of this Submission is to provide the practical perspective of experienced liquor licensees in relation to matters relevant to the Terms of Reference of this Review.

WA is fortunate enough to have a vast array of natural wonders that could underpin one of the greatest tourism and hospitality sectors in the world. By virtue of its position in the global resources economy, WA is now on the world stage and commands significant international and interstate attention. Accordingly, the time is right to take a long term view in developing a burgeoning and sustainable tourism and hospitality sector.

We have long been faced with conservatism in liquor regulation and a long history of unintended consequences arising from ill-conceived legislation and policy (binge drinking resulting from the six o’clock swill, drink driving resulting from the ‘session’ culture of the past) that are taking generations to reverse. However, in recent years all sides of politics have started to embrace a change in community expectations which are moving towards more sophisticated offerings, something that was made possible through the enactment of major revisions to the Liquor Control Act 1988 (“the Act”) in 2007.
There remains considerable room for improvement and the intention of this submission is to outline a number of key points that we believe will assist in improving the operation and effectiveness of the Act.

The biggest risk to our Industry is the ability to attract and retain quality staff. The way in which the Act operates and the rationale for operational provisions of the Act is not understood by the general public (and to a similar extent junior staff employed in the Industry). However on a daily basis, our senior staff and management are faced with decisions that could result in them receiving a criminal record.

A number of staff employed by Licensees Subcommittee members are in the process of studying for tertiary qualifications in unrelated fields, some of which cannot afford a criminal conviction (such as a doctor, lawyer, child care worker, teacher), others are looking forward to travelling. In a lot of instances they do not want to risk prosecution and a potential criminal conviction for taking on the responsibility for a raft of obligations under what is a complex piece of legislation, and getting it wrong.

This factor has contributed towards a culture of staff not proceeding in the Industry, which is in turn promoting the transient nature of our workforce – hospitality in WA is unlike other parts of the world that see it as a career. Without the support of career minded professionals, an environment of poor service is emerging, which does not serve our Industry well.

Attracting investment is another difficult task for the following key reasons:

- Uncertainty of liquor regulation (ability for minister to regulate for hours, key decision categories of regulator not subject to review, lack of transparency in decision making process);
- Uncertainty of trading hours (ie extended trading hours regime);
- The timeframe to achieve local authority approvals;
- The cost of complying with local authority and building code requirements;
- Uncertain and lengthy timeframes in liquor licensing processes;
- High building costs and complex planning regulations;
- Lack of qualified and interested staff and management;
- Underlying criminal burden for breach of regulations (even for administrative matters), use of double jeopardy and lower standard of proof in punitive proceedings (ie section 95 proceedings).

With all of these factors combined, it is a disincentive for interests that are not fully aware of the risks of operating in this environment to invest in the sector, which reduces the universe of potential investors. Although, there have been a number of new investments in the Perth CBD, the long term viability of these businesses has yet to be seen.

For late night business models (ie trading past midnight), there is an inability for the majority of licence holders (namely hotel, tavern, tavern restricted and small bar’s) to assess the feasibility of investing. This arises due to the extended trading permit (“ETP”) regime that has evolved. There is clearly demand for late trading as evidenced by the success and vibrancy of entertainment precincts such as Northbridge and Fremantle. Without a higher degree of certainty it is impossible to factor the feasibility of these ETP hours into the planning of any development and thus reduces the
incentive to change as owners maintain the ‘well travelled path’ by continuing with the same business models without the burden of making a return on the new capital required for development.

Another key risk to the Industry is the lack of personal responsibility for those consuming alcohol and drugs. The licensee is subject to hundreds of pages of regulation, regular visitation from Police, FESA, Council and DRGL Inspectors to ensure compliance with responsible service obligations through to administrative matters (failure of which can carry a criminal penalty), and is held accountable for the actions of others. For this reason, the statistics support the fact that patrons are safer within our licensed premises than on the street. Long term change is required to make people accountable for their actions in equal measure with the requirement to ensure the Act is adhered to by licensees.

Further, we believe that there is an inattention to the problem Western Australians have with illicit drugs. This needs to form a significant part of the debate and is relevant in considering legislating for the hospitality industry. There has been a recent predisposition to regulate the sale and supply of energy drinks mixed with alcohol (in an ad-hoc manner, depending on the class of liquor licence and despite a body of research to support any conclusions being drawn), but from a first hand perspective this disappears into irrelevance when considering the interaction of alcohol with amphetamines.

WA has one of the highest rates of drug and amphetamine consumption in the world. The Education and Health Standing Committee report entitled Changing Patterns in Illicit Drug Use in Western Australia (2011) reported the following:

1. Amphetamine use in 2008 measured as 15 to 64 years of age that have taken amphetamines in the previous 12 months (see pp 38 – 44):
   a. Globally up to 1.2%
   b. United States up to 1.1%
   c. Europe up to 0.6%
   d. Australia 2.3% (from 14 years of age +)
   e. Western Australia 4.2% (from 14 years of age +).

2. The regular Drug Use Monitoring in Australia survey (DUMA), which monitors police detainees in various lock-ups around Australia, found the highest percentage of detainees who tested positive for amphetamine use in 2008 was at the East Perth site in Western Australia (see p 43):
   a. East Perth 35%
   b. Adelaide 28%
   c. Brisbane 23%
   d. Footscray 22%
   e. Southport 19%
   f. Parramatta 16%.

3. Police reported that the number of clandestine drug laboratories detected and dismantled in Western Australia rose “by 421%, from 24 in 2008 to 125 in 2009.”137 By the end of 2010, the Police had detected 132 clandestine labs (see p 41).
4. In Western Australia the total annual number of [treatment] episodes where amphetamines was the principal drug problem increased by 325%, from 942 in 1999 to 4,006 in 2006. Amphetamines have become more frequent as a problem being managed by treatment services in WA, rising from one in 10 (9.6%) in 1999 to one in five (22.3%) of the total number of episodes for all types of drug problems at all specialist service providers in 2006 (see p 47).

Liquor reform legislation needs to be cognisant of this extraordinarily high level of drug use.

Below are a series of numbered subheadings highlighting the specific areas that the Licensees Subcommittee believes are worthy of consideration in the Review process.

**Review Consideration 1. Primary Objects to Better Facilitate Industry Development**

**Overview:**

The primary objects of the Act are specified in Section 5. These objects define the scope and purpose and the Act thereby guiding all decisions made pursuant to this legislation. Accordingly these objects are vitally important.

Balancing the requirements of consumers for liquor and related services with minimising harm and ill-health is a difficult task, but one that is required to decide most liquor related applications. There is a large body of common law in relation to this aspect of the decision making process, but there is no ‘matrix’ that can be relied on to estimate the likely success of an application.

From a practical perspective, the requirements of consumers and the development of the industry has taken a secondary consideration to harm and ill-health considerations. Modification is required to re-balance these objectives and for the Act to be used as a tool in facilitating industry development as was originally intended.

Our submission in this regard was identified in Recommendation 6.10 of Reducing the Burden – Report of the Red Tape Reduction Group (2009), (colloquially known as “The Buswell Red Tape Report”).

**Submission:**

Section 5(1)(c) of the Liquor Control Act 1988 should be amended from:

“to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State”

To read (additions underlined):

“to cater for the requirements of consumers for liquor and related services, and to facilitate the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.”

**Rationale:**

The industry in general, the requirements of consumers and public expectations are constantly changing. It is therefore important that the regulatory environment is an active tool through which industry development occurs, and not just a passive observer of development.

Whilst recognising the importance of *minimising* harm and ill-health, it needs to be noted that the Act does not seek to *prevent* harm and ill-health. The Industry in Western Australia employs 40,000 people and generates expenditure in the order of $7.5 billion per annum (see
http://www.ahawa.asn.au/about_ahawa/aha_at_a_glance.phtml). The Industry is therefore important to the economy of WA.

More often than not, decisions are made erring on the side of caution and the importance of section 5(1)(c) dealing with the requirements of consumers and the development of the Industry is secondary to the importance of clarify elevate the importance of this object of the Act, whilst not denigrating from the other equally important primary object to minimise harm and ill-health.

The subtle change to the wording would assist in industry development and clarify the equal footing of this objective relative to other primary objectives.

Review Consideration 2. Improved Transparency of the Licensing Authority

Overview:

The legislation does not promote public transparency in the decision making processes under the Act. For example, Liquor Commission hearings are not open to the public.

There is often considerable delay in publishing decisions of the Licensing Authority.

Since the abolition of the Liquor Licensing Court, the general rules of court and evidence do not apply to decisions of the Licensing Authority, which has resulted in a lack of guidance in the decision making process. The Licensing Authority has the power to consider its own rules and there is limited case law governing the nature of decisions. The Supreme Court considered this matter in the case of Hancock v Executive Director of Public Health(2008) WASC 224, where Martin CJ confirmed that the decisions of the Licensing Authority were required to include the reasons for the decision and doing so served the public interest (at 63):

“The interests of the parties, the original decision maker, the industry and the public are all served by the provision of reasons by the Commission for its decisions. The provision of reasons will enable informed decisions to be made as to the likely outcome of future applications, facilitate the development of policy and foster consistency. It is unlikely that these obvious advantages would have been overlooked by the legislature, and more likely that their attainment would have been assured.”

However, in the interests of transparency, which comes to core of the stability of the regulatory regime, there should be some legislation encapsulating the requirement to publish decisions in sufficient detail to meet the objectives enunciated in the Hancock decision.

This has the impact of reducing public understanding and thus confidence in the process.

Submission:

All hearings under the Act should be open to the public.

Decisions should be published on the day they are finalised.

Decisions should be required to be prepared to a standard that “enable informed decisions to be made as to the likely outcome of future applications, facilitate the development of policy and foster consistency”.

Rationale:

As a result of limited transparency there is a lack of public understanding and trust in the process. The media have not been helpful in improving this image, which promoted the Director to release a note on applying for a new licence -
With transparency comes further public accountability as well as the improved perception of public accountability.

**Review Consideration 3. Broader Composition of the Liquor Commission**

*Overview:*

The Liquor Commission should include representation from the Industry. At present, there is a culture of opposing interests between industry and regulators.

By way of comparison, the Takeovers Panel is a peer review body that regulates corporate control transactions and delivers swift resolution of takeover disputes by administering the Corporations Act in an efficient and cost effective way. This tribunal replaces the Federal and Supreme Courts as being the decision makers in most aspects of disputes relating to corporate control in a public market environment and draws heavily on the participation of industry practitioners and regulators to provide decisions on the interpretation of the Corporations Act.

This regime has been in place for a number of years and is well accepted by regulators and market participants as providing sensible and realistic decisions, but with a transparent and binding outcome having regard for the rule of law.


*Submission:*

Legislation and regulations should be enacted to require the Liquor Commission to have members from Industry, including representatives from industry bodies and natural persons that have a demonstrable experience in the Industry.

The members drawn upon for any decision should include at least one lawyer, one regulatory appointment and one Industry appointment.

The Industry participant must have more than ten years as a Licensee or as a director of a Licensee company, be a senior member (elected or appointed) of a prescribed Industry body (including the Australian Hotels Association), or be a consultant that has been servicing the Industry for more than 10 years. These parties should also be specifically sanctioned for the role by a prescribed Industry body.

*Rationale:*

This would improve the application of the Act, having regard for a balanced interpretation from a practitioner experienced in the Industry. This would ensure that a practical perspective is provided to those Liquor Commission members that are more versed in the legal aspects of the process, in making decisions that achieve the same goals of meeting the objects of the Act and the public interest, but potentially in a manner that has regard for the practicalities of participants.

This may assist in furthering the secondary object of the Act found in section 5(2)(e) “to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.”

By having Industry participants involved in the decision making process, it will aid in building trust in the process and aid in delivering at a practical and consistent approach.
Review Consideration 4.  Consideration of Objections Early in the Application Process

Overview:
Section 74 of the Act prescribes the grounds on which objections can be made to applications.

It is not uncommon for objections that are lacking in substance to be submitted in relation to an application. However despite 73(10) of the Act providing that “the burden of establishing the validity of any objection lies on the objector”, applicants are required to respond to such objections in all but the most extreme cases.

In most instances, the decision maker will determine whether the objector has discharged its onus as part of the broader decision making process. This means that must make the case that this onus has not been met, and simultaneously introduce evidence that rebuts the objection. Given the validity of the objection is not clear until the decision is made and that applicants cannot introduce additional evidence for use in a review, the objection must be rebutted in its entirety as though it is valid.

This adds to the cost and time taken to prepare responsive submissions.

If a hearing is held, there is expense for the licensee in dealing with objections, but no requirement for objectors to attend the hearing for the objection to remain valid.

If a hearing is held, then objectors (and intervenors) should be required to attend hearings to present their case, without which their objection or intervention lapses.

Representation at hearings is an important part of the Liquor Commission being able to recognise the bona fides of an objector, particularly one that is commercially motivated. It is too simple for an objector to write a letter with the intention of just causing inconvenience to the applicant. The requirement for an objector to attend proves the bona-fides of the substance of the objection.

Submission:
The Act should be amended to require the decision maker to determine whether an objection is valid prior to the broader decision being made. If it is determined under review that the objection is later allowed, then the applicant should be permitted to introduce further rebuttal evidence.

The Act should compel objector and interveners to attend hearings, failing which the validity of the objection or intervention fails.

Rationale:
This would assist in reducing time and cost for applicants the decision makers by ensuring that responsive submissions can be focused on relevant matters.

A requirement to attend hearings would focus the attention of vexatious objectors, in that they must face the applicant in a hearing.

Review Consideration 5.  All Decisions Should be Subject to Review or Appeal

Overview:
At present, there are a number of applications and decision making processes that are not subject to review or appeal by virtue of a statutory prohibition imposed by the Act. Section 25 imposes the following specific prohibitions.

(5) This section does not apply to any decision —

(a) in respect of or incidental to —
(i) an application for or the conduct of business under an extended trading permit or an occasional licence; or

(ii) the imposition, variation or cancellation of a term or condition of an extended trading permit or an occasional licence; or

(iia) the cancellation of, or suspension of the operation of, an extended trading permit or an occasional licence; or

(iii) the assessment of a subsidy; or

(b) that by this Act is stated not to be subject to review; or

(ba) which is a decision made in the course of, or for the purposes of, an application or matter but is not the decision, or one of the decisions, disposing of the application or matter, and in particular does not apply to —

(i) a decision relating to the hearing of an objection; or

(ii) a finding of fact required to be made in order for the matter or application to be disposed of; or

(c) which is a decision made in the course of, and for the purposes of, the administrative duties of the Director not directly related to the outcome of any application or matter before the licensing authority.

(5a) Despite subsection (5)(a)(i), this section does apply to a decision in respect of or incidental to an application for an extended trading permit of a kind prescribed.

By virtue of the Liquor Control Regulations 1989 ("Regulations"), applications for ongoing extended trading permits are subject to review per section (25)(5a), however the executive has the power to eliminate this right.

This provides a lack of transparency and accountability in the decision making processes which needs to be removed so as to ensure that decision makers are accountable for even the most arbitrary of decisions.

Submission:
Delete section 25(5) and 25(5a) from the Act and make any relevant consequential changes.

Rationale:
It is unlikely that adverse day to day decisions will be appealed due to time and cost to applicants, however it will ensure that all decisions are treated in a manner that has regard to the scope and purpose of the Act, and general principals of administrative law (ie procedural fairness and natural justice).

Often decisions are made without due regard for the circumstances. Whilst recognising that a policy cannot be developed for every circumstance for delegated decision makers to use when processing applications or undertaking day to day operations, an environment that requires consideration of all factors at all times would see a closer alignment of decisions with the objects of the Act.

Such a safeguard would improve the perception of accountability and focus the decision maker’s attention on the reasons for making such decisions. This would improve stability for licensees.
Review Consideration 6. Firm Timetable for Intervention and Objection Responses

Overview:

The Act provides the Director with the power to cause an Application to be ‘advertised’, a process intended to solicit objections as well as interventions from WA Police, Health and the relevant Local Authorities.

The Director is generally prescriptive about the advertising requirements and the period for which applications must be advertised, which is generally 21 to 28 days – during which time interventions and objections are invited to be submitted to the Licensing Authority and served on the applicant.

Upon receiving any such objections or interventions, the Director imposes a further timetable for the applicant to submit a response.

The Act does not impose a time limit on intervenors to submit an intervention.

The Act requires that objections are submitted (amended, or made to comply with the form required by the Director) within the prescribed period, although section 73(5)(a)(iii) of the Act provides the licensing authority with the power to consider late objections in the context of the public interest.

This occurs regularly and results in significant delays to the application timetable. It is not uncommon for the Executive Director of Public Health or the Police to notify of their intention to intervene, but not actually make a submission by the deadline. The process then stalls awaiting these documents.

Submission:

Section 69 of the Act should be amended with the insertion of new subsection (14):

“(14) Any intervention made in accordance with subsection (6)(c), (7), (8) or (8a) must be disregarded by the Licensing Authority if it is not served on the applicant on or before the final day specified in the advertisements or notices relating to the application as the last day on which objections should be lodged.”

Section 73(5) should be deleted.

Rationale:

The application process is time consuming and expensive, which is an impediment to the development of the industry in WA. It is also a barrier to entry for new market participants including interstate and international organisations that are not experienced in operating under WA’s liquor laws.

The current legislation permits the WA Police and Executive Director of Public Health to drive the timetable of licensing applications, as the Licensing Authority will generally wait for interventions to be received. From a practical perspective, these interventions are generally repetitive ‘boiler plate’ style documents that are of limited value in the decision making process.

This is also an impediment to consummating commercial arrangements – for example, lessors are less likely to enter into a conditional lease (ie subject to obtaining a liquor licence) because of the uncertain timetable in the process.

By imposing a strict deadline:

- Intervenors will be required to triage those applications that are higher risk, or worthy of intervention, instead of a ‘scattergun’ approach to intervening to all applications;
The time to make a decision would be reduced as there would not need to be any accommodation of late submissions;

Applicants and the Licensing Authority (and intervenors) could better allocate internal time and resources knowing that they would not need to accommodate a third party at an unknown time.

**Review Consideration 7. Provisions to Facilitate Conversion of Small Bar Licenses**

**Overview:**
The small bar licence category was created as part of the last major reform of the Act. There has been a proliferation of these licences since 2008 and there is now a vast array of small bars in WA providing a diversity of offerings to patrons.

Any material modification of the small bar licence category (and any relevant conditions that may or may not be applicable) would subvert the themes underlying the primary objects of the Act, namely to minimise harm and ill-health.

However, it is important that all categories of licence are afforded the opportunity of changing in accordance with community expectations, meeting patron demand and improving their risk profile.

Therefore consideration should be given to providing safeguards for existing small bars to convert to a tavern licence, subject to meeting the public interest tests that would be applicable to that new business model, without risking the existing licence.

For example if an existing small bar operator wished to expand the business to accommodate 250 people, then there should be a specific mechanism in the Act to ensure that the existing licence (including conditions) is maintained and safeguarded if the tavern licence application fails. There is a perception that such a failed application would jeopardise the existing licence and expose it to conditions being imposed via separate proceedings under section 64 of the Act, or in fact the licence taken away as there is no clear process for such a licence exchange under such a licence category.

**Submission:**

Inclusion of legislation that:

- provides a small bar licence can be converted to a tavern restricted licence, subject to the public interest test being met for the new licence class;
- if such an application is successful, then the new licence is issued and the old licence cancelled contemporaneously;
- if the application is unsuccessful, then the old licence must remain in place in the same form as it was (ie with the same conditions) prior to the application being made;
- materials submitted in the application cannot be used against the licensee for 2 years.

**Rationale:**

Each and every small bar application has been considered in the context of the public interest having regard for the limitations of the licence, specifically:

- The intended manner of trade is identified by applicants in the PIA;
- The demand for this intended manner of trade is considered and proven;
Risks are identified in the PIA as are at risk groups;

The mitigating factors for such risks are considered (which may include licence conditions);

The potential for the impact on the amenity of the area is identified; and

Licenses are granted on conditions having regard for all of the factors above.

At present each and every decision has been predicated on this ‘low risk’ licence model – ie no more than 120 patrons, the inability to trade past midnight (or 1am with an extended trading permit), a bespoke intended manner of trade operating under a business model with an economic viability that was always skewed towards owner/operators.

Given there are now approximately 70 small bars, any significant departure from the existing restrictions would upset the current balance in liquor licensing in WA which may cause disruption from a harm and ill-health perspective and a supply balance perspective (within the small bar category). In other words, the public interest was considered in the context of that specific proposal, but by changing the category substantially, the public interest is not being considered in each specific case which may result in unintended consequences, which may include:

- Increasing the maximum occupancy would increase the ‘supply’ of existing small bar area, which may change the balance within the category and threaten the viability of some venues as there is flight to the more popular small bars that were previously full and unable to accept further occupancy;

- Potential adverse impact on the amenity of the areas (parking, traffic, noise, patronage problems, public transport) in which a number of these small bar’s are located, particularly those in suburban locations;

- Increase dispersal of patrons to areas that have emergency services (ie Police) that can currently accommodate the business models in place;

- Move away from the current owner/occupier model to being viable under management, which circumvents the rationale for providing an entry level licence that attracts a lower regulatory hurdle, which would open the door for obtaining tavern restricted licences by stealth;

- Venues are constructed in compliance with building codes and council requirements to accommodate the existing maximum occupancy and building code concessions are predicated on this lower volume, lower risk approach – a change in maximum occupancy without the commensurate increase in building requirements would increase the risks to patrons;

- Management plans and design are predicated on up to 120 patrons, however an increase may not permit the venue to be operated in the intended manner with larger volumes of patrons – eg, bottlenecking at entry and exit points, limited kitchen capacity, etc.

If changes were introduced for all new small bars only, then it in effect creates a new category of licence as the old category would be less desirable. Given the concessions available to small bars and the perception of a lower risk profile, this category would become attractive as a defacto tavern restricted category, which clearly circumvents the intention of the existing Act and current community expectations.

The proposed changes would ensure that each and every application meets the public interest, but there is incentive for those operators that have a business model that can accommodate change to
make the relevant applications with safeguards in place to ensure that if unsuccessful their existing business model is protected.

**Review Consideration 8. Electronic Incident Register**

**Overview:**

Section 116A of the Act requires licensees to maintain a register of incidents occurring on or in the vicinity of the licensed premises. The Security and Related Activities (Control) Act 1996 and regulations imposes a similar requirement on crowd controllers.

There should be provision in the Act for these registers to be kept electronically in a form that is readily accessible at the licensed venue in the same manner as the printed copies.

**Submission:**

The insertion of new section 116(2a) as follows:

“(2a) Subject to meeting all other requirements of this section, the register may be inputted, stored and retrieved electronically and verified with an electronic signature or other means of electronic verification.”

**Rationale:**

By permitting these registers to be kept electronically it would encourage the electronic input by staff and crowd controllers which may assist in making the information easily retrievable at a later date. It would also reduce the amount of physical paperwork to be kept at the licensed premises.

**Review Consideration 9. 12 Month Limit to Commence Prosecutions Under the Act**

**Overview:**

Section 169(3) of the Act prescribes a maximum period of 4 years in which a prosecution under the Act can be commenced. This is substantially longer than for other serious criminal offences, which is only one year.

**Submission:**

Section 169(3) be amended to reflect a period of one year.

**Rationale:**

There is no practical rationale for maintaining a period longer than for other serious crimes. It provides for uncertainty for the licensee and staff that may have been charged:

- Transient staff return home to other countries, but face the risk of a warrant being issued (unwittingly at a future date);
- Staff change industry and deserve certainty before entering other career – eg someone studies law and is admitted before prosecution commencing;
- Potential to impact on visa, loan and workplace applications;
- Movement of staff impacts the defence of the licensee.
Review Consideration 10. Incident Registers to be Kept for 12 Months

Overview:
Section 116A of the Act requires licensees to maintain a register of incidents occurring on or in the vicinity of the licensed premises. No period is prescribed, thus it has been interpreted that such reports are to be kept indefinitely.

This imposes an unfair burden on licensees, in that often a substantial number of reports are to be kept on site at all times.

There is also no obligation that such reports are personal to the licensee at the time of the incident – ie when a licence is transferred, the previous licensees reports must remain on the premises. This is a substantial due diligence matter.

Submission:
Section 116A(1) should be modified to read:

(1) A licensee must maintain a register on the licensed premises of the incidents, of the prescribed kind, that have taken place at the licensed premises in the previous 12 months.

Rationale:
There is little probative value in maintaining these reports for more than 12 months.

The register is subject to review by inspecting officers from time to time (so as to ensure compliance), and individual reports are requested by the relevant authorities from time to time, to assist in investigating incidents that have taken place.

Keeping boxes of records that are not relied upon for any purpose is an onerous task for licensees and imposes an impossible due diligence task for incoming purchasers in the event of a licence transfer.

Review Consideration 11. Definition of Drunk & New Defences

Overview:
Section 3A(1) of the Act states that a person is drunk when they are on licensed premises, “the person’s speech, balance, co-ordination or behaviour appears to be noticeably impaired”, and it is reasonable to believe that the impairment results from the consumption of liquor.

Section 3A(2) of the Act states that if a police officer decides someone is drunk, then they are deemed to be drunk for the purposes of the Act, which is effectively a reverse onus of proof.

This raises a set of issues for licensees and staff, who face criminal prosecution for serving someone that is drunk, or permitting them to remain on the premises.

Additionally, there is no defence available to licensees for drug affected people that meet the definition stated in the Act that may be consuming alcohol. Given the exceptionally high levels of amphetamine consumption in WA, there is a very high risk that someone consuming illicit drugs meets the definition of drunk through drug taking and forces the liability onto the licensee for activities undertaken by patrons that are beyond its control. This has the practical effect of passing on the regulatory burden for drug enforcement within the licensed premises, without increasing the powers of the licensees to do so.

The biggest industry risk is finding and retaining quality staff that are prepared to be criminally exposed, with a reverse onus offence, for something that is highly subjective to determine. Without
good management and staff, the industry is in jeopardy of employing less suitable people, which in turn is a risk to a vibrant, successful and compliant sector in WA.

Removal of the reverse onus would provide a perception by staff and licensees of integrity in the policing of the Act and assist in attracting and retaining management and staff.

Making it clear that a ‘drunk’ person can remain on the premises for a reasonable time would also ensure that someone is not singled out and removed from the relative safety of the premises (and duty of care owed to the patron by the licensee) and reduce the often adverse response of the group of people that they are with.

Submission:
Deletion of section 3A(2).
Insertion of a new section 3A (3):

(3) Notwithstanding clause 3A(1), a person is not drunk if:

a. the person’s speech, balance, co-ordination or behaviour appears to be noticeably impaired; and

b. this impairment has reasonably been caused by the consumption of drugs other than alcohol.

New section 115(1a) to be inserted:

(1a) It is a defence to subsection (1)(a)(i) if:

(a) The licensee has ceased serving alcohol to the responsible person;

(b) The licensee has informed the person that they will be asked to leave the licensed within a reasonable period having regard for the circumstances; and

(c) the person is not generally demonstrating any behaviour described by subsection 115(1)(a)(ii).

Rationale:

Given the complexities associated with determining whether someone is Drunk for the purposes of the Act, it is even more difficult to prove that they were not - particularly some time after the alleged occurrence.

Determining intoxication is not a straightforward exercise, a proposition reinforced by the High Court of Australia in C.A.L. No 14 Pty Ltd v Motor Accidents Insurance Board; C.A.L. No 14 Pty Ltd v Scott (2009) HCA 47 at 53 and 54 per Gummow, Heydon and Crennan JJ:

Expressions like "intoxication", "inebriation" and "drunkenness" are difficult both to define and to apply. The fact that legislation compels publicans not to serve customers who are apparently drunk does not make the introduction of a civil duty of care defined by reference to those expressions any more workable or attractive. It is difficult for an observer to assess whether a drinker has reached the point denoted by those expressions. Some people do so faster than others. Some show the signs of intoxication earlier than others. In some the signs of intoxication are not readily apparent. With some there is the risk of confusing excitement, liveliness and high spirits with inebriation. With others, silence conceals an almost complete incapacity to speak or move. The point at which a drinker is at risk of injury from drinking can be reached in many individuals before those signs are evident. Persons serving drinks, even if they undertake the difficult process of counting the drinks served, have no means of
knowing how much the drinker ingested before arrival. Constant surveillance of drinkers is impractical. Asking how much a drinker has drunk, how much of any particular bottle or round of drinks the purchaser intends to drink personally and how much will be consumed by friends of the purchaser who may be much more or much less intoxicated than the purchaser would be seen as impertinent. Equally, to ask how the drinker feels, and what the drinker's mental and physical capacity is, would tend to destroy peaceful relations, and would collide with the interests of drinkers in their personal privacy. In addition, while the relatively accurate calculation of blood alcohol levels is possible by the use of breathalysers, the compulsory administration of that type of testing by police officers on the roads was bitterly opposed when legislation introduced it, and it is unthinkable that the common law of negligence could compel or sanction the use of methods so alien to community mores in hotels and restaurants.

Then there are issues connected with individual autonomy and responsibility. Virtually all adults know that progressive drinking increasingly impairs one's judgment and capacity to care for oneself. Assessment of impairment is much easier for the drinker than it is for the outsider. It is not against the law to drink, and to some degree it is thought in most societies – certainly our society – that on balance and subject to legislative controls public drinking, at least for those with a taste for that pastime, is beneficial...

...Now some drinkers are afflicted by the disease of alcoholism, some have other health problems which alcohol caused or exacerbates, and some behave badly after drinking. But it is a matter of personal decision and individual responsibility how each particular drinker deals with these difficulties and dangers. Balancing the pleasures of drinking with the importance of minimising the harm that may flow to a drinker is also a matter of personal decision and individual responsibility. It is a matter more fairly to be placed on the drinker than the seller of drink. To encourage interference by publicans, nervous about liability, with the individual freedom of drinkers to choose how much to drink and at what pace is to take a very large step...

The physical elements of this definition are exceptionally subjective and provide the police with a very wide discretion to prosecute licensees.

Additionally, there is no recognition that illicit drugs play a role in intoxication. If a person is on licensed premises, then it is reasonable to believe that the impairment results from the consumption of liquor, notwithstanding that a person may have had only one drink but a quantity of illicit drugs.

It should be noted that there is no corresponding charge for patrons if they are drunk on licensed premises and it is not unusual for police to corral the support of patrons in such prosecutions as they have nothing to risk.

The risk to the industry posed by this section of the Act is probably the highest. Staff executing due care and discretion can be penalized due to an interpretive difference. Patrons that the licensee or staff believe to be at or near this definition of drunk are forced to stop selling them drinks (including non-alcoholic drinks) and cause them to leave the premises immediately. This poses a risk to the patron and forces them onto the street. The removal itself can be confrontational for the person being asked to leave and their immediate group. Patrons are safer in the controlled and regulated environment of licensed venues and licensees are cognizant of actual or perceived duty of care issues arising from injuries after ejection.

Whilst it should be an offence to serve alcohol to someone that is drunk according to the Act, it should not be an offence for a person that meets the definition in the Act to remain on the premises
for a reasonable so long as they are not causing a disturbance or are disorderly. This would alleviate confrontation upon ejection (again remembering that the determination of drunk is subjective) and the risks of subsequent problems that can arise on the street.

Further, the immediate removal of people that may meet the technical definition of ‘drunk’, notwithstanding that they are not disorderly or quarrelsome is often a problem, particularly if they are part of a larger group. Lack of understanding of the legislation, coupled with duty of care issues from isolating a patron and removing them from the premises is problematic and can result in confrontation. By allowing the licensee a reasonable time to remove such people (ie after they have consumed some water or coffee, when their friends are prepared to leave with them after their drink etc), the patron is better served as is the public interest.

In the interests of clarity, there is no intention for licensees to be permitted to serve alcohol to such patrons, but the sale of non-alcoholic beverages would be permitted for a reasonable time.

**Review Consideration 12. Equity in Infringements & Prosecutions for Liquor Offences**

*Overview:*

The fact that the manager, crowd controller and licensee can be convicted for the same offence poses difficulties for the industry.

It is not uncommon for two or three charges to be laid in relation to the same incident, despite one or two of those parties discharging their obligations in an appropriate manner and not having anything to do with the incident.

Sensible defences should be introduced for each of the parties at risk. Legislation should be amended so that each should be given specific defences listed below.

Often there is a difference of objective between staff and licensees, in that staff may wish to preserve their criminal record by pleading guilty to eliminate the risk entirely of a criminal conviction through an unsuccessful defence of a summary offence. This is then used in evidence against the Licensee as evidence of culpability and guilt if they so chose to defend the prosecution in court.

*Submission:*

So as to prevent a ‘triple dip’ for the same offence, defences to prosecution under the Act should be established as follows:

- Licensees – should not be guilty if they can prove the manager or crowd controller acted on their own accord and outside the authority vested on them by the licensee;
- Managers/Employees – should not be guilty if they can prove they were instructed by the licensee or if the situation arose as a failure of security and they can prove that security acted on their own accord outside the scope of their authority; and
- Crowd Controllers – should not be guilty if they can prove they were instructed by the licensee/manager or if the situation arose as a failure of the licensee or management and they can prove that the licensee/manager acted on their own accord outside the scope of their authority.

To prevent prosecutions arbitraging the pleas and defences of the co-accused, legislation should be amended so:

- No criminal conviction recorded where the licensee or crowd controller is also found guilty – ie if the manager/crowd controller did not act outside the scope of his/her authority; and
A guilty plea by a manager or licensee should expressly be forbidden from being used against the other party in a prosecution (ie a manager pleads guilty and the licensee doesn’t, and the manager’s plea is submitted as evidence against the licensee).

**Rationale:**

The risks apparent to quality staff are often too high, with those working towards another profession (ie law, medicine, childcare, teaching, etc) or wishing to travel, opting not to take roles of responsibility for fear of being charged.

Where a bona fide offence is committed that involves multiple parties, then the defence will not be available to those that are directly culpable.

This will assist managers in understanding that if they are not responsible for an offence then they will not be prosecuted and assist the industry in attracting and retaining quality senior staff.

The fact that staff can face criminal convictions for unsuccessfully defending a prosecution under the Act is forcing people to leave the industry and making it hard to find, retain and promote good staff.

Under the legislation if an infringement is issued and paid by staff, there is no criminal conviction. If it is unsuccessfully defended, then there is criminal conviction recorded. This has a huge ramification for staff in that the ramifications of conviction regardless of the level of culpability is too high, particularly for staff that may be students studying medicine, law, childcare or teaching etc.

Payment of the infringement by the staff member (which is usually done by the licensee on behalf of the staff member when charges have been laid despite the staff member discharging their obligations in an appropriate manner) is then used against the remaining parties that have been charged (ie crowd controller / manager / licensee / etc) as an indication of guilt.

Legislation should be amended so:

a) No criminal conviction recorded where the licensee or crowd controller is also found guilty – ie if the manager/crowd controller did not act outside the scope of his/her authority; and

b) A guilty plea by a manager or licensee should expressly be forbidden from being used against the other party in a prosecution (ie a manager pleads guilty and the licensee doesn’t, and the manager’s plea is submitted as evidence against the licensee).

**Review Consideration 13. Modification of Trading Hours & Ongoing ETPs**

**Overview:**

At present a tavern licence permits trading up to midnight on all nights except Sunday which is 10pm, however with an ETP, trading can be extended to 2am on all nights and midnight on Sundays. This process requires the licence holder to prove that the grant of the ETP is in the public interest and the Licensing Authority is empowered to grant a permit for one to five years.

At the expiry of the permit, a new application is made to renew the permit which requires a further public interest test, a process that is time consuming and expensive and provides uncertainty for licensees. This regime has been in place for decades and is merely a mechanism for regulators and legislators to keep their options open.

Most of the Licensees Subcommittee member’s tavern licences have ETPs and have had them in place since this regulatory mechanism was introduced. It is time for this regime to change and for hours to be recognised in the licence.
Submission:

Section 98 be amended to permit trading for Hotels and Taverns up to 2am for trade commencing on Monday to Saturday and midnight on Sunday, subject to an application being made to do so, and this application being considered against the objects of the Act and the public interest.

It should be clear that all new licence applications should be required to specify the hours sought, clarifying that a grant of a licence is not automatically up to 2am.

A new subsection be inserted to clarify that small bars are permitted to trade until 1am on weeknights and 11pm on Sundays as per the existing ETP policy for small bars.

Ongoing hours ETPs be removed as a category of ETP to prevent an ongoing hours ETP being sought over a licence that can trade to 2am.

Rationale:

Each time an ETP is renewed it is assessed as a fresh application and is based on a new PIA taking into account all of the relevant public interest considerations. The assessment process diverts resources from interveners and DRGL who must then reconsider the application. This has a time and monetary cost. Licensees also face a corresponding time and monetary cost in successfully achieving an application.

The relevant considerations encapsulated in the public interest test are the same for an ETP as though the hours of the underlying licence were being modified, something that cannot happen in a hotel/tavern/small bar licence application because of the limitation imposed by section 98 of the Act.

Under the proposed submission, if a tavern sought to trade to 2am on Friday and Saturday nights, then the test to do so would be the same as for an ETP application under the current legislation.

The legislation would need to be clear to ensure that there is not an immediate right to trade to 2am for all existing or new licensees in the hotel category. The hours must be sought and judged against the relevant risk profile and public interest test – ie it should be simpler to prove the public interest in trading until midnight versus trading until 2am and licensees should be encouraged to choose the hours that their business model requires.

This would enable the feasibility of business models predicated on late trading to be proven, which in turn would encourage investment and provide an incentive for change. This is something that would well serve the requirements of consumers as the industry develops to take advantage of ever changing requirements.

There are numerous mechanisms that the Licensing Authority has to ensure that licensees that are failing to meet their regulatory obligations, or are adversely affecting the amenity of the area, are held accountable resulting potentially in the cancellation of the licence, a reduction in trading hours or the imposition of other conditions restricting trading:

- Section 64 permits the Licensing Authority to ask a licensee to show cause why conditions or restrictions should not be placed on the licence;
- Section 95 provides for disciplinary action to be brought against licensees that have been in breach of their obligations (including cancelling the licence);
- Section 117 permits the Licensing Authority to impose conditions on a licence pursuant to a complaint by local community members;
- By virtue of the regulations, the Minister has the power to impose a lockout or differential licence fees.
Review Consideration 14. Equity & Fairness in Section 95 Disciplinary Proceedings

Overview:

Section 95 provides considerable power to the Liquor Commission to consider whether disciplinary proceedings should be imposed against a licensee. This process commences with a complaint by the Director, WA Police or a Local Government Authority and can have regard to a wide range of factors.

Generally a hearing is held and the complaint to be made out at the balance of probabilities standard of proof, which is lower than the beyond a reasonable doubt standard used in criminal proceedings.

The intent is that licensees that are not discharging their obligations correctly can be swiftly dealt with under the Act to ensure that any resulting harm or ill-health is contained as quickly as possible.

However a pattern has emerged where the Police have been using this clause to undertake a defacto prosecution of licensees.

It should be noted that more than half of prosecutions under the Act fail. This is a clear indication of the complexity of the Act, the training level of liquor enforcement agents and indicative of the difficulties of meeting the required standard of proof for a criminal proceeding.

The Police have therefore resorted to making section 95 complaints to circumvent the court process and have the matter heard at a lower standard of proof. It should noted that section 95 can be used subsequent to a failed prosecution, or in addition to a successful prosecution.

This is a clear case of double jeopardy and the common law and criminal code defences have yet to be tested in court.

Costs are also not awarded in these proceedings, even in the case of proceedings being dismissed or dropped prior to determination by the complainant.

Submission:

Legislation should be introduced to ensure that section 95 does not subvert a licensee or defendant’s right to natural justice and procedural fairness. Accordingly there should be an express double jeopardy defence implemented.

Any allegation in relation to a breach of the Act that is brought before the Liquor Commission in a section 95 proceeding should be required to be proven in a court proceeding at that higher standard before being able to be relied upon.

Section 95 proceedings should be disallowed from relying on matters where criminal courts have dispensed with at a higher standard of proof. Obviously findings in court should be capable of being relied upon in such a proceeding.

There should also be a clear cost recovery mechanism, akin to that used in court, for licensees to recover costs where proceedings are dispensed with.

Rationale:

These amendments would bring further integrity to the disciplinary process and ensure that due procedure is followed.

This in turn would provide confidence to licensees and assist in encouraging new market participants.
Review Consideration 15. Status Quo in Restaurant Licensing Regime

Overview:

There is a public expectation that restaurants will have a lower risk profile than other licensed premises. This arises as restaurant licences generally only permit the sale of alcohol ancillary to a meal and the business models of most restaurant operators reflect this primary characteristic.

Similarly the public has a different perception of the risk profile of taverns, even those that serve food. For example patrons may be includes to take their children to a licensed restaurant at 8pm on a Saturday night to consume a meal, but would not do so at a tavern due to this perception of risk.

Pertinent characteristics of the licence are summarised as follows:

- “the business conducted at the licensed premises must consist primarily and predominantly of the regular supply to customers of meals to be eaten there” (section 50(3)(a)), suitable kitchen facilities must be present and liquor must primarily be made available to patrons consuming meals;
- Juveniles can attend without parents and be in the presence of others consuming alcohol, although not consume alcohol themselves;
- Trading hours are unrestricted and permit the sale of alcohol “at any time except from 3am to 12 noon on ANZAC Day” (section 98F);

The existing legislation provides a licence category that is functioning well and serves community expectations.

Submission:

No change to the legislation.

Rationale:

In recent times, there has been a trend in taverns and other licence classes to provide an increased focus on food and dining within the licensed premises. This has resulted in a lower risk profile (or at least lower than for upright drinking areas only), however these licensees prefer to operate within the tavern (or small bar) licence framework due to the fact that food and meals are not always the primary focus. Accordingly when assessing the public interest, this is a very relevant factor.

If restaurant licences were modified in a manner that deregulated the sale of alcohol, this would increase the risk profile of the licence category out of step with the public’s perception of such.

It is likely that due to the other characteristics of these licences, these could be used as a defacto tavern or small bar licence that permits trading through all hours, the attendance of juveniles and the perception of a lower risk profile than is currently apparent. therefore consideration would need to be given to the other fundamental characteristics of the licence category, such as imposing other trading restrictions on hours that would make this licence class more similar in character to taverns or small bars – ie there would be a convergence between the categories as they stand now.

Operators have the ability to apply for licences of other classes if they wish to modify their business models and become more akin to taverns. This balance should remain.

Conclusion

We are supportive of measures to drive long term changes to the Industry. Our members are in the business of providing hospitality and entertainment and so long as people have a desire to socialise
and enjoy themselves in such an environment, experienced operators and new market entrants will be there to create an appropriate business model to accommodate this requirement within the regulatory framework of the day.

The last revision of the Act saw the introduction of substantive amendments that moved towards meeting the changing demands of consumers at that time. However, we believe that with some consideration of the perspective we have provided in this submission, a better framework can be established to facilitate current and future changes in community requirements.

We respectfully request the opportunity to appear before the Review Committee if hearings are to be held. We would also be pleased to provide any further information that may be considered relevant in this process.

Yours Sincerely

Business Improvement Group of Northbridge (Inc) Licensees Subcommittee

Michael Keiller
Chairman
tel: 0418 957 157
e-mail: mdk@mustangbar.com.au
Appendix A – Relevant Experience of Subcommittee Members

Michael Keiller

*Director, Mustang Bar & Northbridge Brewing Company*

Michael has over 25 years experience in the hospitality industry with approximately 14 years as a proprietor of licensed venues. He commenced his management career with Entertainment Enterprises, which operated a substantial chain of licensed venues, including hotels, taverns, bars and nightclubs throughout Western Australia. Michael is currently in partnership with Marlin Group in Mustang Bar and Northbridge Brewing Company.

Michael is at the forefront of the development of industry best practice and is committed to the improvement of the industry as a whole.

Michael is the Chairman of the Business Improvement Group of Northbridge (“BigN”) and its Licensees Subcommittee. He also a member of the Perth Liquor Accord Subcommittee and is a Board Member of the Western Australian Academy of Performing Arts.

**Current ownership interests / experience:**

- Mustang Bar, Northbridge WA
- Northbridge Brewing Company (under construction), Northbridge WA

**Previous ownership interests / experience:**

- Mustang Bar, Fortitude Valley Qld
- Score Bar, Sydney NSW
- Royal Admiral Hotel, Adelaide SA
- Coronado Hotel, Nedlands WA (Operations Manager)
- Arcadia, Northbridge WA (Operations Manager)
- Havana, Northbridge WA (Operations Manager)
- Brooklyn Tavern, Northbridge WA (Operations Manager)
- Justice Nightclub, Joondalup WA (Operations Manager)
- Paramount Nightclub, Northbridge WA (Operations Manager)
- Beldon Tavern, Beldon WA (Operations Manager)
Michael Rasheed  
*Managing Director, Marlin Group*

Michael has been involved in the hospitality sector throughout Australia for most of his life. Michael established the Marlin Group in 1985, with the acquisition of the Old Melbourne Hotel in the Perth CBD. Over the years, his exposure has spanned the full spectrum of the hospitality sector in Australia, including rural, city and suburban hotels, nightclubs, restaurants, motels and cafes. He has had considerable hospitality experience in other states, most recently in Queensland.

Marlin Group is a skilled developer of hospitality opportunities, having acquired and redeveloped a large number of hospitality enterprises and landholdings over the years, including the acquisition and redevelopment of underperforming businesses, freehold development of surplus land, change of use scenarios, construction and renovation of freehold interests, greenfield leasehold and freehold developments and value adding through improvement of trading hours and liquor licence conditions.

**Current ownership interests / experience:**
- Mustang Bar, Northbridge WA
- Universal Bar, Northbridge WA
- Left Bank Bar & Cafe, East Fremantle WA
- Ravenswood Hotel Motel & Caravan Park, Ravenswood WA
- Northbridge Brewing Company (under construction), Northbridge WA

**Previous ownership interests / experience:**
- Mustang Bar, Fortitude Valley Qld
- Old Swan Brewery, Crawley WA
- Score Bar, Sydney NSW
- Royal Admiral Hotel, Adelaide SA
- Aberdeen Hotel, Northbridge WA
- Aqua Late Nite Bar, Northbridge WA
- Moon Cafe, Northbridge WA
- Old Melbourne Hotel, Perth WA
- Beaconsfield Tavern, Beaconsfield WA
- Jurien Bay Hotel, Jurien WA
- Murchison Club Hotel, Cue WA
Chris Brockwell  
*Managing Director, Brockwell Hospitality Investments*

Chris Brockwell is a second generation Hotelier. He has over 35 years experience in the Hospitality and Industrial Catering Industry and is the managing director of Brockwell Hospitality Investments Pty Ltd and a number of other family associated companies.

In 1990 Chris joined with his brother Maurice in forming the Wentworth Ltd Partnership in purchasing the Wentworth Plaza Hotel Perth and the creation of the Moon & Sixpence, the first British Theme Pub in Perth and Bobby Dazzlers, Perth’s first Australian Theme Pub. This was the start of a number of syndicates established by the brothers throughout WA and Victoria (and other states) which positioned them as leading Theme Pub innovators.

Currently Chris controls the majority of the Rosie O’Grady’s, Bridie O’Reilly’s, Moon & Sixpence and Elephant & Wheelbarrow brands established throughout Australia. He also controls a number of non-themed venues in Perth, Fremantle and Victoria.

As Managing Director, Chris is responsible for overseeing the successful operation of the Group and driving further growth through redevelopment, renovation and new acquisitions.

**Current ownership interests / experience:**
- Boheme Bar & Restaurant, Perth WA
- Moon & Sixpence, Perth WA
- Wentworth Hotel, Perth WA
- Rosie O’Grady’s, Northbridge WA
- Rosie O’Grady’s, Fremantle WA
- Elephant & Wheelbarrow, Northbridge WA
- Bridie O’Reilly’s, South Yarra Vic
- Bridie O’Reilly’s, Brunswick Vic
- Bridie O’Reilly’s, Melbourne Vic
- Elephant & Wheelbarrow, Melbourne Vic
- Elephant & Wheelbarrow, St Kilda Vic
- Platform 28, Docklands Vic
- Glenferrie Hotel, Hawthorn Vic

**Previous ownership interests / experience:**
- Elephant & Wheelbarrow, Sydney NSW
- Elephant & Wheelbarrow, Fortitude Valley Qld
- Moon & Sixpence, Woodvale WA
Colin Gourdis
*Operations Manager, Australian Leisure & Hospitality Group WA*

Colin has had extensive experience in the Western Australian hospitality industry, which has culminated in the operational oversight of all 28 venues in ALH’s Western Australian portfolio. His senior roles with ALH have included:

- 2012- present Operations Manager Australian Leisure & Hospitality Group
- 2005 – 2012 State Manger ALH Group
- 1998 – 2005 Senior Venue Manager/ Relief Area Manager for Balmoral Tavern, Brass Monkey Hotel, Sail & Anchor Hotel, Belgian Beer Café.

Colin has further contributed to the industry as a State Councillor with the Australian Hotels Association (WA) (2008 to 2012) and Board Member of Hospitality Group Training (2009 to 2011).

**Current ownership interests of ALH / experience:**

- Albion Hotel, Cottesloe WA
- Balmoral Hotel, Victoria Park WA
- Belgian Beer Cafe, Perth WA
- Belmont Tavern, Cloverdale WA
- Brass Monkey Hotel, Northbridge
- Brighton Hotel, Mandurah WA
- Brooklands Tavern, Southern River WA
- Bull Creek Tavern, Bull Creek WA
- Captain Stirling Hotel, Nedlands WA
- Carine Glades Tavern, Duncraig WA
- Como Hotel, Como WA
- Dunsborough Hotel, Dunsborough WA
- Gosnells Hotel, Gosnells WA
- Greenwood Hotel, Greenwood WA
- Herdsman Lake Tavern, Wembley WA
- Highway Hotel, Bunbury WA
- Hyde Park, North Perth WA
- Kalamunda Hotel, Kalamunda WA
- Lakers Tavern, Thornlie WA
- Leisure Inn, Rockingham WA
- Peel Alehouse, Halls Head WA
- Peninsula Tavern, Maylands WA
- Queens Tavern, Highgate WA
- Sail and Anchor, Fremantle WA
- The Saint George Hotel, Innaloo WA
- Royal Palms Resort, Busselton WA
- The Vic Hotel, Subiaco WA
- Wanneroo Villa Tavern, Wanneroo WA
William Oddy  
*Group Manager, Entertainment Enterprises*

William Oddy has been part of the hospitality and liquor industry for more than thirty five years, in which time he has established, developed and operated a number of WA’s most popular venues. As Group Manager of Entertainment Enterprises he is currently responsible for approximately 150 personnel, and has been directly involved in the creation of hundreds of other jobs in the industry.

Entertainment Enterprises has considerable land and property holdings in Northbridge, the Perth CBD and surrounding suburbs and its commitment to the hospitality industry in WA has always been focused on the long term.

William has vast experience across most of the key licence categories and is current responsible for Hotel, Tavern and Cabaret/Nightclub licences in WA in Perth, Northbridge and surrounds. Entertainment Enterprises has always been committed to responsible service of alcohol and is active in advancing the orderly development of the liquor industry and its regulation.

**Current interests / experience:**
- Paramount Nightclub, Northbridge WA
- The Library Nightclub, Northbridge WA
- Varga Lounge Tavern, Northbridge WA
- Tiger Lil’s Tavern, Perth WA
- Empire Bar (previously Rivervale Hotel), Rivervale WA

**Previous interests / experience:**
- Coronado Hotel, Nedlands WA
- Arcadia, Northbridge WA
- Havana, Northbridge WA
- Brooklyn Tavern, Northbridge WA
- Justice Nightclub, Joondalup WA
- Paramount Nightclub, Northbridge WA
- Beldon Tavern, Beldon WA
- O’Connors Wine House & Restaurant, Canning Vale WA
- Eagle One Nightclub, Perth WA
- Hannibal's Nightclub, Northbridge WA
- Red Parrot Nightclub, Northbridge WA
- The Palladium Nightclub, Northbridge WA
- Novak’s Tavern, Northbridge WA
- Newport Hotel, Fremantle WA
Robert (Bob) J Maher
Chairman, Boss Entertainment

Bob first entered the entertainment industry in 1967. He made his way from a barman to a club manager, and eventually owner. The first venue he owned and directed was Pinocchios Nightclub.

Bob was the first unofficial Co-ordinator and Chairman of the Cabaret Owners Association, and instrumental in commencing the official Association (now called the WA Nightclub Association). Bob started the West Australian Rock Awards (which is now the Government controlled WAMI Awards).

In 1980, Bob was asked by Stuart Wagstaff and Paul Hogan to set up the West Australian region of the entertainment industry’s charity, The Variety Club Australia. He did so and was West Australia’s inaugural Chairman.

Boss Entertainment has been responsible for the creation and operation of a wide range of hospitality opportunities spanning most of the differing licence classes.

Current ownership interests / experience:
- The Deen Hotel, Northbridge WA
- Black Bettys (previously Post Office Nightclub), Northbridge WA
- Eurobar, Northbridge WA
- Varsity Bar (previously Basement on Broadway), Nedlands WA

Previous ownership interests / experience:
- Pinnocchios, Perth WA
- Beethovens, Perth WA
- Gobbles, Perth WA
- Tiffanys Piano Bar, Perth WA
- The Melbourne Hotel, Perth WA
- The Fitzgerald Hotel, Perth WA
- The Rhodes Hotel, South Perth WA
- F-Scotts, Perth WA
- F-Scotts, Melbourne Vic
- The Racquet Club, Northbridge WA
- The Hip-e Club, Leederville WA
- Exit, Northbridge WA
Ben Maher  
*Managing Director, Boss Entertainment*

Ben has been working in his family owned business since 1993. During this time, Ben has gained extensive experience in operating and managing licensed premises and is now the Managing Director of the group.

Boss Entertainment has been responsible for the creation and operation of a wide range of hospitality opportunities spanning most of the differing licence classes and Ben has been involved in the redevelopment of a number of licensed premises, most recently having developed the Varsity Bar in Nedlands in the old Basement on Broadway premises.

**Current ownership interests / experience:**
- The Deen Hotel, Northbridge WA
- Black Bettys (previously Post Office Nightclub), Northbridge WA
- Eurobar, Northbridge WA
- Varsity Bar (previously Basement on Broadway), Nedlands WA

**Previous ownership interests / experience:**
- Pinnocchios, Perth WA
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- Tiffanys Piano Bar, Perth WA
- The Melbourne Hotel, Perth WA
- The Fitzgerald Hotel, Perth WA
- The Rhodes Hotel, South Perth WA
- F-Scotts, Perth WA
- F-Scotts, Melbourne Vic
- The Racquet Club, Northbridge WA
- The Hip-e Club, Leederville WA
- Exit, Northbridge WA
Ben Rasheed  
*Group General Manager, Marlin Group*

Ben commenced in a senior role at the Marlin Group in 1994 where he gained experience at the administrative and operational level and was responsible for the oversight of two licensed venues. After 5 years in this capacity, Ben commenced a position with KMPG Corporate Finance, where he was involved in a number of private capital raising, valuation and M&A transactions spanning various industry sectors. Following this, Ben joined the Investment Banking Group of Macquarie Bank (as it was then known), where for the next 6 years he executed M&A and public market capital raising transactions in a number of industry groups with an aggregate transaction value in the order of $2 billion.

In 2008 Ben rejoined the Marlin Group in the capacity of Group General Manager. He is responsible for the operation and future development of the Group. He has oversight of all of the operating businesses and is driving the execution of the development pipeline.

Ben is particularly focused on regulatory and compliance matters and is very active in pursuing the development of the industry and all facets of its regulatory regime.

**Current ownership interests / experience:**
- Mustang Bar, Northbridge WA
- Universal Bar, Northbridge WA
- Left Bank Bar & Cafe, East Fremantle WA
- Ravenswood Hotel Motel & Caravan Park, Ravenswood WA
- Northbridge Brewing Company (under construction), Northbridge WA

**Previous ownership interests / experience:**
- Mustang Bar, Fortitude Valley Qld
- Old Swan Brewery, Crawley WA
- Score Bar, Sydney NSW
- Royal Admiral Hotel, Adelaide SA
- Aberdeen Hotel, Northbridge WA
- Aqua Late Nite Bar, Northbridge WA
- Moon Cafe, Northbridge WA
- Old Melbourne Hotel, Perth WA
- Beaconsfield Tavern, Beaconsfield WA
- Jurien Bay Hotel, Jurien WA
- Murchison Club Hotel, Cue WA