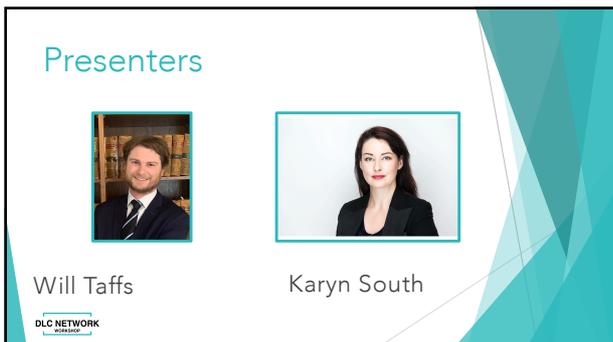
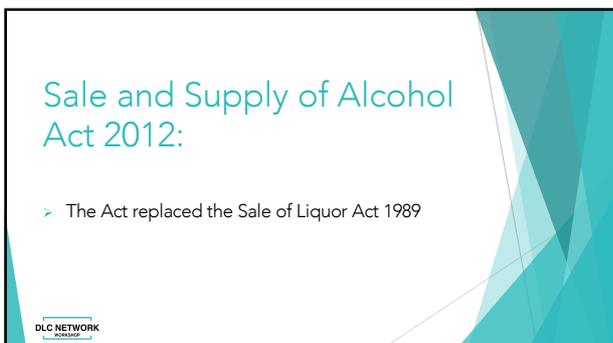




1



2



3

The Act's background –
Law Commission Report

- In April 2010, the Law Commission released its report titled
Alcohol in our Lives: Curbing the Harm.

DLC NETWORK

4

- The Court of Appeal in Vaudrey characterised the new Act as signalling a “new community-orientated approach”:
[23] The new Sale and Supply of Alcohol Act signals a new community-oriented approach incorporating both purpose and object provisions.

DLC NETWORK

5

Key provisions

6

Purpose and Object

- The purpose (s 3) and object (s 4) sections are cornerstones of the Act.
- They underpin decision-making and the evaluative process.
- Case law commonly gives paramourty to the purpose and object of the Act

DLC NETWORK

7

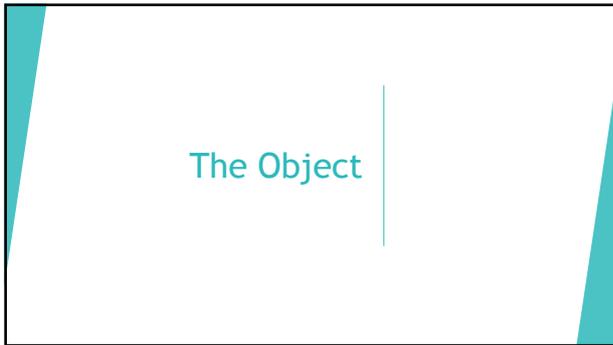
The purpose

8

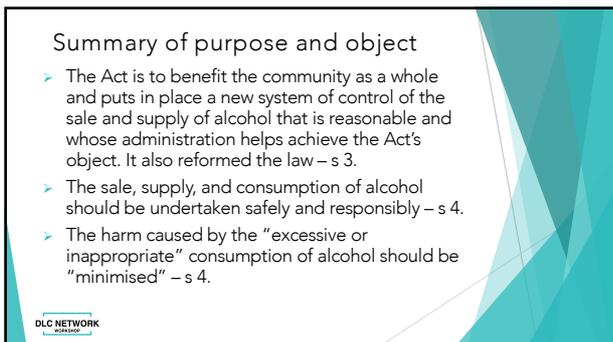
- An observation: purpose s 3(2):
- Refers to a "new system"
- A characteristic of the new system is that its administration helps to achieve the object of the Act.
- The other identified characteristic of the Act is that it is "reasonable."

DLC NETWORK

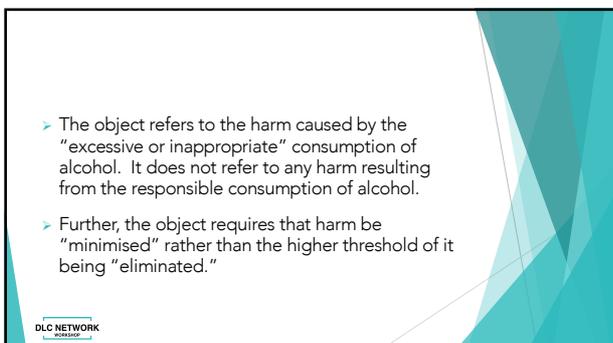
9



10



11



12

The Act's decision-making process

- In the section of the High Court decision in Vaudrey titled "Scheme of the Act," the Court outlined the general purpose of the Act, its object, and went on to broadly summarise the steps taken in the licensing process by an applicant and other parties at [31] and following.
- Recommend reading this for a high-level summary of the decision-making process. While Vaudrey was appealed, this part remains of general applicability.

DLC NETWORK

13

Criteria for issuing licences – ss 105 and 106

- Sections 105 and 106 are key provisions prescribing the criteria for the issue of licences.
- The DLC exercises an "evaluative" role and is required to make a merits-based determination of an application – High Court in Vaudrey

DLC NETWORK

14

Criteria for issuing licences – ss 105 and 106

- Section 105 requires the DLC to "have regard to" several matters

DLC NETWORK

15

Renewal

- Renewal is provided for in s 131
- The criteria for renewal of a licence overlap with those in s 105

DLC NETWORK

16

Amenity and good order

- Section 106 governs the amenity and good order of the locality and expands on ss 105(1)(h) and 131.
- It applies to both the issue and renewal of licences.

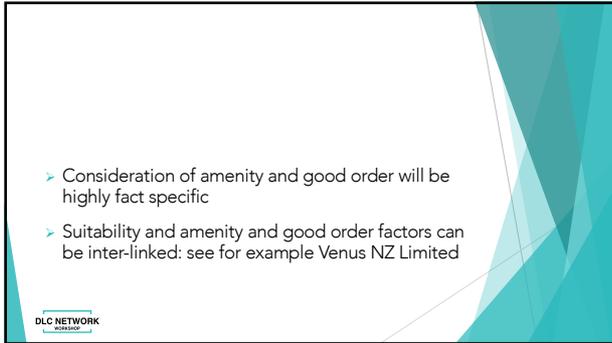
DLC NETWORK

17

- Section 5 defines "amenity and good order"
- Section 106 expands on amenity and good order

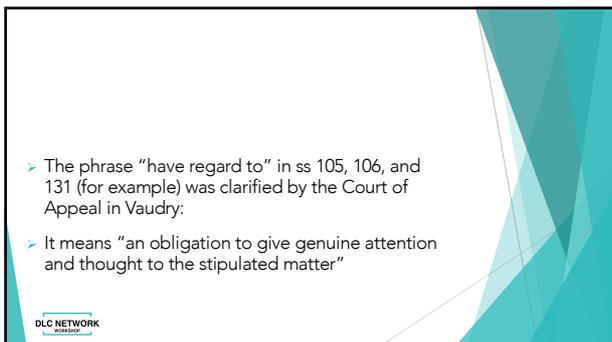
DLC NETWORK

18



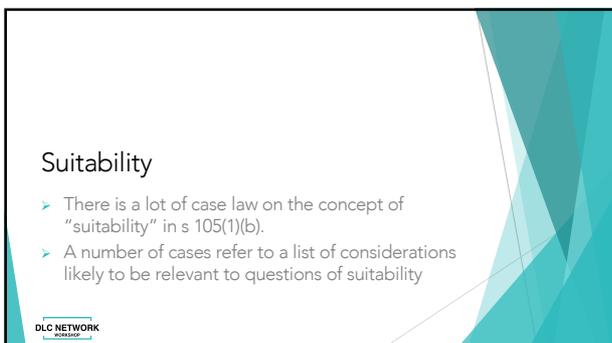
Slide 19 content: A presentation slide with a teal geometric background on the right. It contains two bullet points: 'Consideration of amenity and good order will be highly fact specific' and 'Suitability and amenity and good order factors can be inter-linked: see for example Venus NZ Limited'. The 'DLC NETWORK' logo is in the bottom left corner.

19



Slide 20 content: A presentation slide with a teal geometric background on the right. It contains two bullet points: 'The phrase "have regard to" in ss 105, 106, and 131 (for example) was clarified by the Court of Appeal in Vaudry:' and 'It means "an obligation to give genuine attention and thought to the stipulated matter"'. The 'DLC NETWORK' logo is in the bottom left corner.

20



Slide 21 content: A presentation slide with a teal geometric background on the right. The title 'Suitability' is at the top left. It contains two bullet points: 'There is a lot of case law on the concept of "suitability" in s 105(1)(b).' and 'A number of cases refer to a list of considerations likely to be relevant to questions of suitability'. The 'DLC NETWORK' logo is in the bottom left corner.

21

What does "alcohol related harm" mean?

- The "harm caused by the excessive or inappropriate consumption of alcohol" is referred to in the Act's object (s 4).
- Alcohol-related harm is defined in s 5

DLC NETWORK

22

Powers of DLC to summons witnesses & gather information

- The Act gives a DLC the powers of a commission of inquiry – s 201.
- As part of this, the DLC may summons witnesses to appear before it, require the production of documents, or the performance of any other act preliminary or incidental to the hearing of any matter – s 201(3).
- A DLC may also rehear any matter that it has determined at any time if it thinks it fit to do so – s 201(4).

DLC NETWORK

23

Procedure

- The Act gives a DLC the ability to regulate its procedure in such a manner as it thinks fit, subject to the Act and regulations - s 203(9).

DLC NETWORK

24

Publication

- Parts of a public hearing may be held in private if the DLC thinks it proper to do so having regard to: the interests of persons appearing and being heard, and to the public interest, – s 203(3).
- The DLC can make non-publication orders of any report or description of any part of the proceedings – s 203(5).
- A non-publication order cannot prohibit the publication of names and descriptions of the parties to the matter or of the particulars of any premises affected – s 203(5).

DLC NETWORK

25

Evidence

- A DLC may receive as evidence anything that in its opinion may help it to deal effectually with any matter before it whether or not the item would be admissible in a Court - s 207(1).
- Subject to this, the provisions of the Evidence Act 2006 apply as if the DLC were a court – s 207(2).

DLC NETWORK

26

Conditions vs undertakings

- The Act provides for various conditions, including discretionary conditions under s 117.
- Do not use undertakings where a condition can be imposed – the s 117 power, for example, can often be used and a condition is easier to enforce than an undertaking.

DLC NETWORK

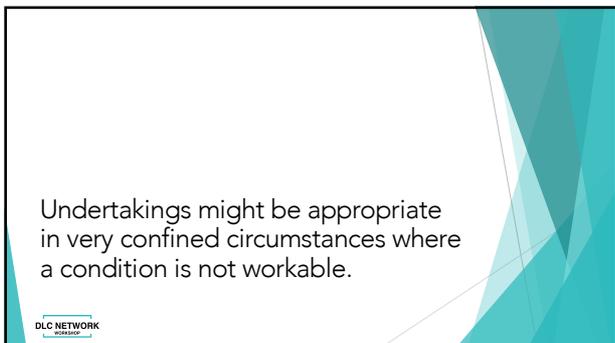
27



28



29



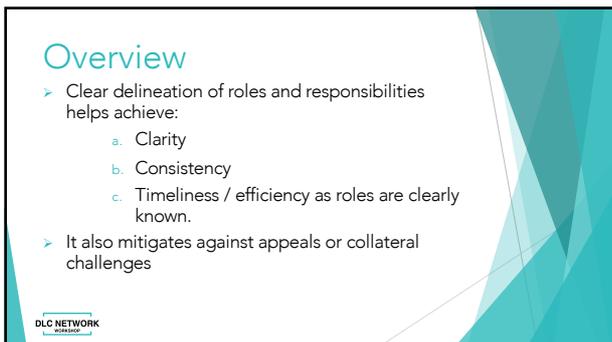
30



DLC NETWORK
WORKSHOP

Roles and responsibilities

31

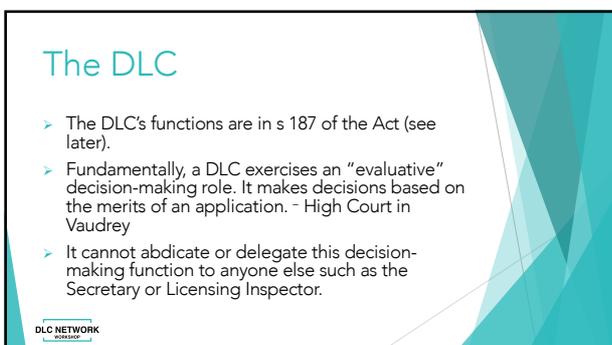


Overview

- Clear delineation of roles and responsibilities helps achieve:
 - a. Clarity
 - b. Consistency
 - c. Timeliness / efficiency as roles are clearly known.
- It also mitigates against appeals or collateral challenges

DLC NETWORK WORKSHOP

32



The DLC

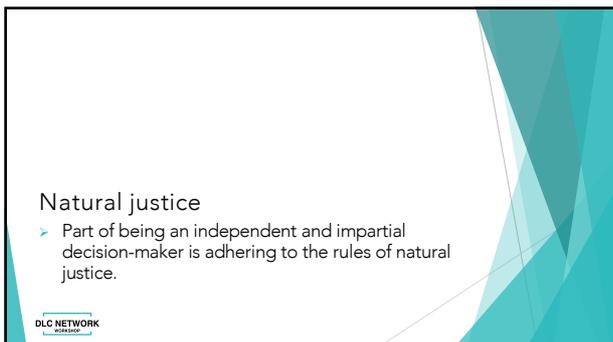
- The DLC's functions are in s 187 of the Act (see later).
- Fundamentally, a DLC exercises an "evaluative" decision-making role. It makes decisions based on the merits of an application. - High Court in Vaudrey
- It cannot abdicate or delegate this decision-making function to anyone else such as the Secretary or Licensing Inspector.

DLC NETWORK WORKSHOP

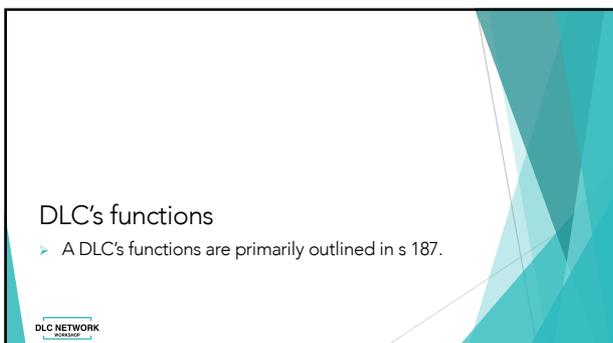
33



34



35



36

DLC composition

- A DLC's composition is outlined in s 189.



37

DLC - voting and quorum

- Quorum required is three – s 191(1).
- Decision is via the majority of valid votes where three members are present – s 190(2).
- A DLC can sit as one person who must be the chairperson in certain circumstances.



38

DLC Secretary

1. The DLC Secretary has various functions under the Act including:
 - a. Being a conduit between the DLC and the parties
 - b. Administrative functions
 - c. Record keeping.



39



40



41



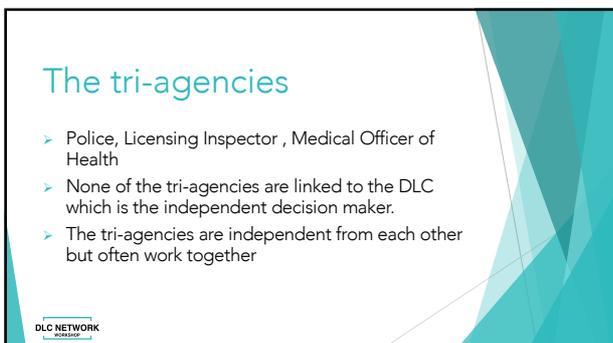
42



43



44



45

➤ Observation: it is not unusual in smaller centres for the Inspector to be based in the same building or office as the DLC

➤ However, the Inspector is a statutorily independent role and s 197(4) provides that they must:

.... act independently when exercising and performing their functions, duties, and powers and each territorial authority must take steps to ensure that its inspector or inspectors are able to act independently.

DLC NETWORK

46

Objectors

DLC NETWORK

47

➤ Objectors and the Khandallah decision

- Proposed decision
- Final decision

DLC NETWORK

48

Interested parties

- Section 204(2) provides for the ability of certain persons to appear and be heard with the leave of the DLC's Chairperson.

DLC NETWORK
WORKSHOP

49

The media

DLC NETWORK
WORKSHOP

50

DLC NETWORK
WORKSHOP

Hearing management

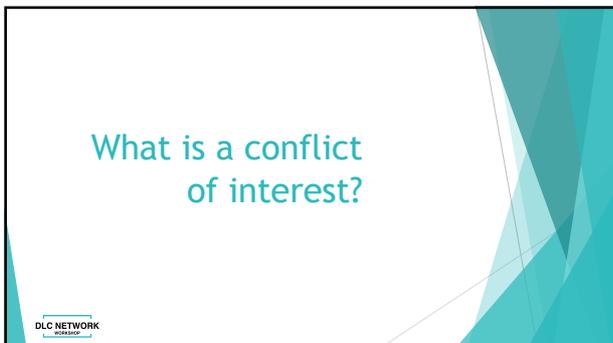
51



52



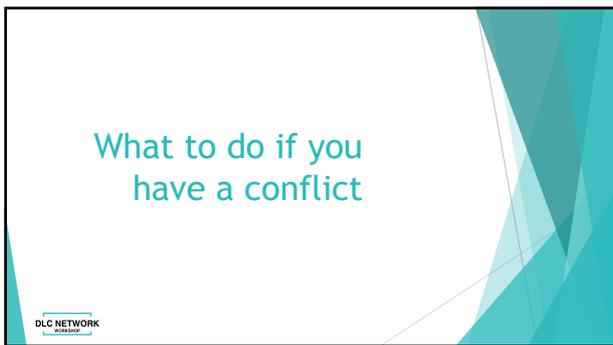
53



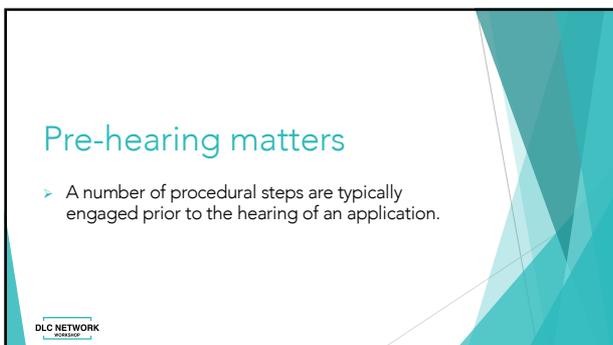
54



55



56



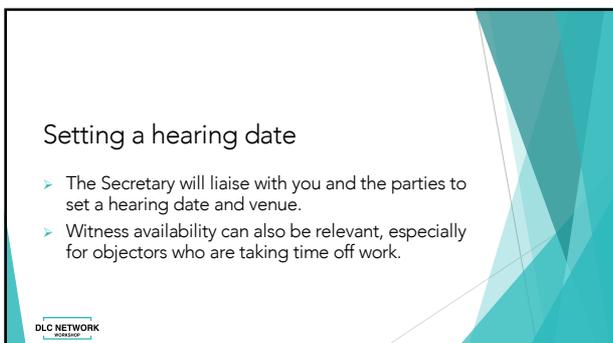
57



58



59



60

Timetabling

- Timetabling is very case specific and comments here are general
- Timetabling includes timetabling witnesses as some might have taken time off work (for example, objectors)
- There may be other timetabling steps such as for any telephone conferences to deal with matters arising.

DLC NETWORK

61

What is a Minute?

- A Minute is a generally a short formal record from the DLC circulated to all parties by the Secretary.
- Often it is in relation to an administrative or procedural matter but can e.g. include notice of a special licence application for a large event.

DLC NETWORK

62

Managing confidential/commercially sensitive information

DLC NETWORK

63

Managing vulnerable/unrepresented parties

- For some parties proceedings before a DLC will be unknown and daunting in terms of procedure and substance.
- A DLC might find it helpful to give such parties more information during the hearing to help the proceeding run smoothly.

DLC NETWORK

64

Site visits

- A site visit can be helpful to orientate the DLC to the premises in question.
- Timing of the site visit, who is in attendance, and whether the applicant is present can vary widely depending on the application (new or opposed), whether the DLC is familiar with the location including proximity to sensitive sites, and a range of other matters.

DLC NETWORK

65

Adjournments

- Proceedings sometimes need to be adjourned.
- An adjournment is generally preferable to completing a hearing and the outcome being compromised.
- Adjournments will often be formally recorded via a Minute.

DLC NETWORK

66

The hearing

- A neutral venue is preferable where possible.
- Beforehand, the Secretary should check that the hearing room has adequate seating and is accessible for all participants.

DLC NETWORK

67

- The procedure can vary considerably from hearing to hearing.
- A DLC has the ability to regulate its procedure as it sees fit as long as this is done in accordance with the Act and any regulations (s 203(9)), and also follows the rules of natural justice.

DLC NETWORK

68

Inquisitorial jurisdiction

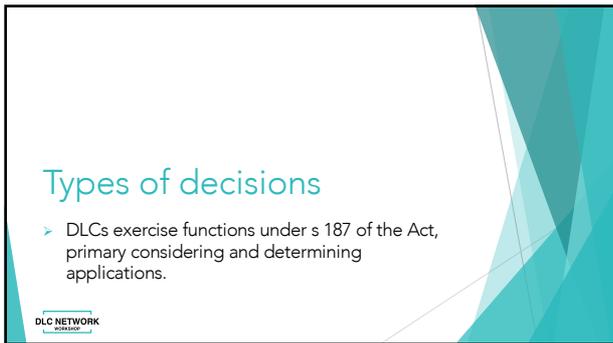
- A DLC has the powers of a commission of inquiry: s 201.

DLC NETWORK

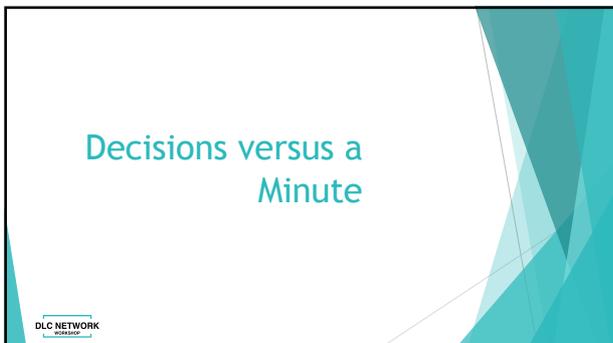
69



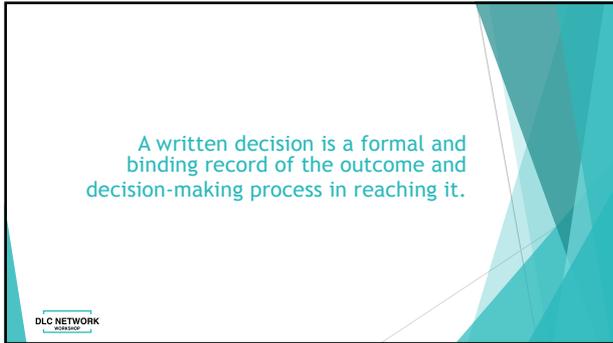
70



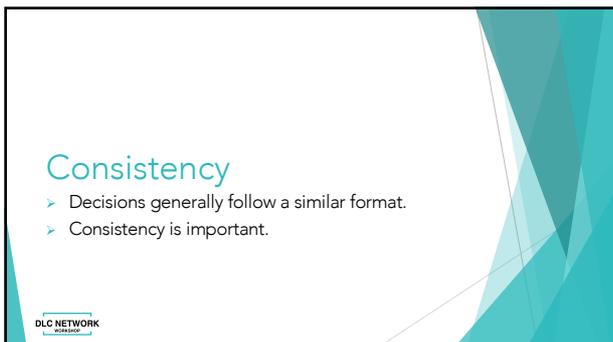
71



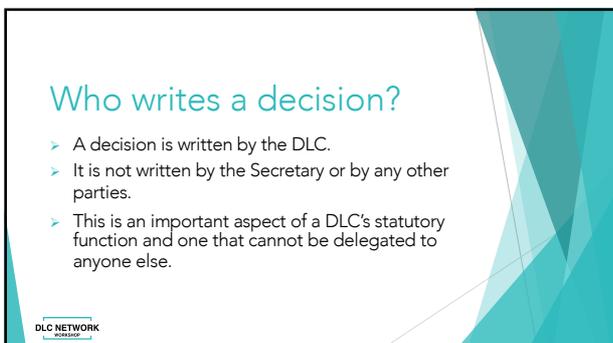
72



73



74



75

Decision template

- Any template for DLC decisions will be entirely a matter for each DLC.
- Certain matters must be included in a decision:
 1. The reasons
 2. What reports on the application were received
 3. The attitude towards the application of every report: s 211(1).

DLC NETWORK

76

Typical decision structure

DLC NETWORK

77

Language

- Formal.
- Spelling and other particulars = correct.
- Language should be plain, clear, and unambiguous in its meaning.

DLC NETWORK

78

Overarching principles

- Certain sections of the Act will generally be included in decisions because they apply to your decision making on most matters.
- Other key sections are often engaged.



79

Case law

- Including case law helps ensure consistency with other DLCs/ ARLA/ the High Court/ Court of Appeal and that you are following binding authority
- A DLC is bound by decisions of ARLA, the High Court, and the Court of Appeal.



80

Where to find case law

- Judicial decisions online.
- Ministry of Justice ARLA website.
- DLC websites sometimes have a link to decisions.
- Ask your peers.



81

Summarising submissions and evidence

- Decisions will summarise submissions and evidence – both documentary and oral.
- Summary of submissions.
- Summary of evidence.



82

Conditions

- Various sections of the Act enable you to place conditions on licenses.
- Is important before imposing any conditions that you give the parties an opportunity to be heard and comment on the potential condition.
- This is part of natural justice.



83

Appeals

- Even the best decision can be appealed!
- But – a well-reasoned decision helps minimise a successful appeal or criticism.
- Appeals will usually succeed where there has been a mistake about the law, its application, or allegedly improper weight placed on evidence.



84

Appeals from the DLC will be heard by ARLA, then the High Court, then the Court of Appeal.

The High Court will give "respect" to the views of the DLC as a first-instance decision-maker:

[59] ... As specialist tribunals, the views of both the Committee and Authority deserve considerable respect from this Court.

Lyger Investments Limited v Young & The Commissioner of Police



85

Timeframe for issuing decisions

- Given the commercial interests at stake, decisions ideally should be released as soon as possible.
- DLCs can have a heavy caseload and it is more important to get a decision right than it is to rush getting it out.



86

Non-publication orders

- Section 203(5) of the Act permits a DLC to make an order prohibiting the publication of any report or description of any part of the proceedings.
- Non-publication orders will tend to relate to commercially sensitive information or private matters relating to individuals.



87

Distribution

- A copy of the decision must be given to:
 1. The applicant
 2. Each objector who appeared at the hearing
 3. Any other objector who requests a copy
 4. The tri-agencies who were sent the application: s 211(3).
- Every TA must take all reasonably practicable steps to ensure copies of all DLC decisions are publically available: s 211(5).



88

DLC NETWORK

www.districtlicensing.org
<https://www.facebook.com/groups/dlcnetwork/about/>



89
