

February 2014

## Focus on Harm: A Review of the Liquor Control Act

Allowing extended trading hours on Sundays that precede public holidays; requiring an increased emphasis on harm minimisation; and secondary supply offences for adults that supply alcohol to juveniles. These are just some of the 141 recommendations for changes to the *Liquor Control Act 1988* (WA) made in the report of the Independent Review Committee as presented to the Minister in December 2013.

### Licence Fees to Target Large 'High Risk' Premises

While some of the recommendations contained in the report will help progress the emerging small bar scene in Perth, the large hotels, taverns and liquor stores will pay the price, literally. The Independent Review Committee has recommended that liquor licences be split into two categories – those pertaining to low risk and those pertaining to high risk venues. The current lack of categorisation was introduced following the major review of the Act performed ten years ago. Under the proposed changes, high risk venues will not only be subject to greater restrictions than the low risk premises, but large high risk venues (more than 200 square metres) will be required to pay extra licensing fees based purely on their size. There will be no consideration given to the quality of the management of the venue or its prior record when it comes to alcohol-related harm.

If adopted, these changes would appear to illustrate a change in focus of the regulator resulting in operators of smaller low risk venues being favoured.

### Key Emphasis on Harm Minimisation

The proposed increased emphasis on harm minimisation is also reflected in suggested changes to the objects of the Act to stress the importance of responsible management of premises. New offences have been advocated for the secondary supply by adults to juveniles and liquor stores selling liquor where it is reasonably suspected the liquor will be consumed unlawfully. The report also suggests that high risk venues be required to lodge a community impact assessment which requires the applicant to undertake community consultation before submitting the application.

### It's Not All Bad...

There have been some positive recommendations which attempt to address the issue of delays in the determination of applications. The report has suggested that an online tracking program be developed so that applicants can track the progress of their application. Time frames have also been recommended for the Director to refer an application to the Commission. Other positive recommendations for the industry include allowing country liquor stores to open on Sundays and allowing extended trading hours for taverns, hotels and small bars on Sunday nights before public holiday Mondays. It has also been suggested that the process for removal of a licence from one premises to another be relaxed, and that where the licence is moved within 500 meters of the premises, the process be administrative only.

The report has recommended a lot of changes which, if implemented will result in a liquor system that focuses on harm minimisation rather than supporting the development of the hospitality and tourism industry. It is now up to the Parliament to determine which of the recommendations will be adopted into law – watch this space!



## Liquidator Power to Terminate Leases Confirmed

### The Implications of the Willmott Growers Decision

On 4 December 2013 the High Court handed down its decision in *Willmott Growers Group Inc v Willmott Forests Limited (Receivers and Managers Appointed (In Liquidation))* [2013] HCA 51 (**Willmott Growers case**), clarifying the scope of a liquidator's statutory power of disclaimer.

The High Court held that liquidators of a company have the power to disclaim leases granted by the company, terminating the landlord's obligations and the tenant's correlative rights under the leases. The decision raises a number of questions about the protection afforded to property rights in the face of liquidation. In particular, it is unclear whether registering a lease will protect a tenant from having its landlord's liquidator terminate the lease.

For further information on the decision and its implications, [click here](#).



## Property Due Diligence in Western Australia: New Landgate Property Interest Report

On 30 October 2013 Landgate introduced a new version of the Property Interest Report (**PIR**), which, as the name suggests, provides information about property located in Western Australia.

The major impact of the new PIR is that many State Government departments that provide information to the PIR are no longer accepting "catch-all" due diligence enquiries. The departments will, however, accept specific enquiries based on questions that arise from the PIR. Therefore, obtaining a PIR is now the first step of any due diligence enquiries for real estate transactions in Western Australia.

### Using the New PIR

The major benefit of the new PIR is that it collates information from many different sources into one document, which in most cases is provided through the Landgate online system within a matter of minutes.

However, users need to be aware that there are several enquiries that are not currently available on the PIR, including Worksafe WA and ATCO Gas. Also, due to differences between the source land databases of the various departments and Landgate, the information covered by the PIR is not always accurate. For example, where property boundary lines have been updated by Landgate, but not by the relevant department.

### How We Can Assist

The new PIR is, in practice, only a new first step in the due diligence process. It does not provide all the answers, but will become a necessary part of the preparation for any property dealing. The PIR will certainly serve as a useful single source of information and a good starting point in due diligence enquiries, but we are more than ready to assist in making that information useful to you for the next stage of your transactions.

## Update: E-Conveyancing Bill Introduced in Western Australia

The *Electronic Conveyancing Bill 2013 (WA)* was introduced late last year. The proposed legislation is the first step towards e-conveyancing in Western Australia.

The national e-conveyancing system was developed by National Electronic Conveyancing Development Limited. The system is known as PEXA, which stands for "Property Exchange Australia". PEXA is a web-based service which will facilitate the preparation and settlement of property transactions including the electronic lodgment of documents at the relevant land title registry and the payment of funds for the associated financial transaction.

**Release 1:** PEXA is already in use in Victoria, New South Wales and Queensland for transactions involving the big 4 banks such as mortgages, discharges and refinancing.

It is expected that the Western Australian parliament will pass the *Electronic Conveyancing Bill 2013 (WA)* and make e-conveyancing available through Landgate in the first quarter of 2014.

**Release 2:** The ability to perform other transactions such as online settlements, transfers and the lodgment of caveats will commence in Victoria and New South Wales in the second half of 2014. For Western Australia, this is not expected to occur until 2015.

PEXA will be a secure site and only registered subscribers such as lawyers, conveyancers and financial institutions will be able to use the system on behalf of their clients.

Please contact us if you would like more information on PEXA or e-conveyancing.

## Pastoral Lease Renewals: Making Sense of the "New" Conditions

All pastoral leases in Western Australia are due to expire in 2015. The Minister of Lands has offered to renew many of the leases, subject to conditions. The new leases are proposed to include amendments to GST clauses and provide greater detail on rights, obligations and interests under the lease. Pastoral industry representatives and leaseholders have expressed concern regarding the conditions of renewal and the terms of the draft lease.

Leaseholders need to be aware of the conditions of renewal and whether they are compliant. For more information on the conditions of renewal and the terms of the new draft pastoral lease, [click here](#).

Please contact us if you have any concerns regarding the recent developments.



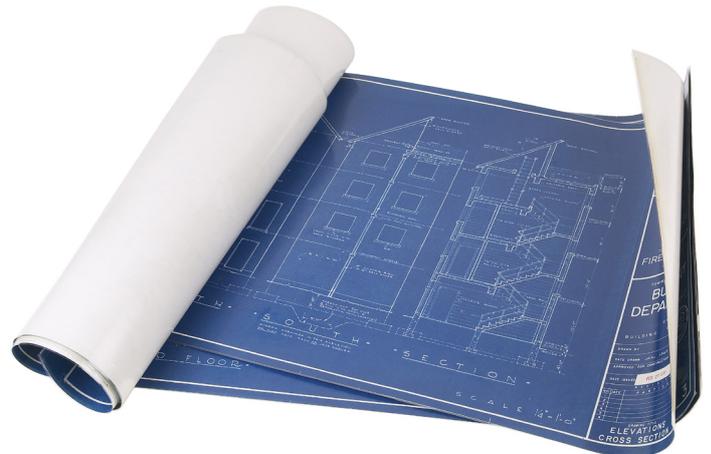
# REAL ESTATE MATTERS

## Update: Strata Title Reform

The Western Australian Government has defined the scope and timeframe for delivering reforms to the *Strata Titles Act 1985* (WA) on a fast track basis, directing the reforms to be delivered in 2015.

The proposed reforms include changes to tenure arrangements, to allow more flexible staged development procedures, as well as permitting layered strata schemes for managing multiple uses in one building. The reforms are intended to meet the State's needs in light of future growth.

Drafting of the legislative amendments is expected to be prepared for Western Australian Cabinet approval in late 2014.



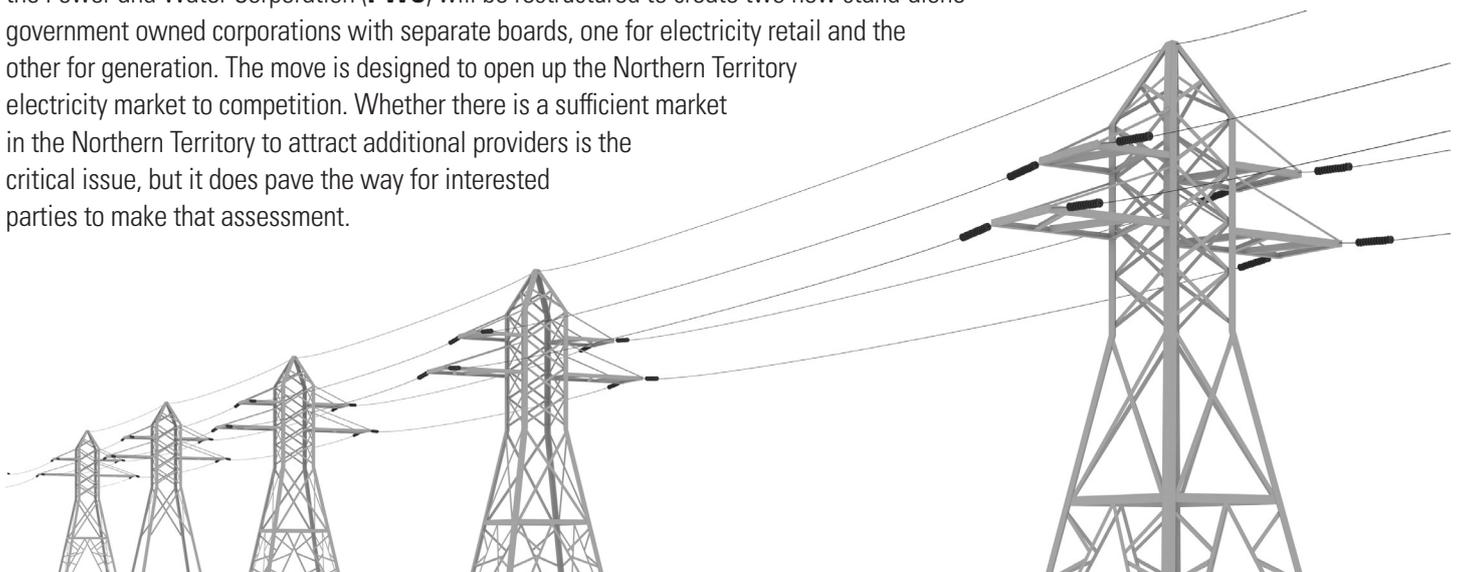
## Gove Alumina Refinery to be Closed, but Mining Will Continue

After very public debates and private negotiations between Rio Tinto and the Northern Territory and Federal Governments about the viability of gas supply arrangements and the desire for the construction of a gas pipeline to Gove, in December Rio Tinto announced that it would be closing its alumina refinery in Gove by the middle of 2014. While the refinery operation will be closed, the bauxite mining operation will continue on Gove. Rio Tinto only recently

renewed its lease covering the mining operations in 2011 and has another 40-odd years to run. While the lease and its terms are not publicly available, there is speculation surrounding what requirements it imposes on Rio Tinto for the remainder of the term, including its remediation obligations for the land previously used for the refinery activities.

## Reforms to Power Water Corporation Make Way for a Competitive NT Electricity Market

Just before Christmas, the Northern Territory Government formally announced that from 1 July 2014 the Power and Water Corporation (**PWC**) will be restructured to create two new stand-alone government owned corporations with separate boards, one for electricity retail and the other for generation. The move is designed to open up the Northern Territory electricity market to competition. Whether there is a sufficient market in the Northern Territory to attract additional providers is the critical issue, but it does pave the way for interested parties to make that assessment.



# REAL ESTATE MATTERS

## Meet Our Team ...



Jennifer Tropiano is an associate in the real estate and finance team in Perth. Jenn has recently returned from an eight-month break which she spent travelling the world.

### **Q: What is one of the most memorable experiences from your recent travels?**

A: Tough question. I had so many memorable experiences while I was away! One of my favourite places was the Amazon Jungle in Peru. I have always wanted to go there and it didn't disappoint.

We stayed at a jungle lodge which was only accessible by motorised canoe. The canoe often broke down while we were on our way somewhere, and it always took a long time to get fixed. Meanwhile, we would continue to float along the river at an alarming rate. Sometimes, I thought we were going to float down a waterfall or to Bolivia! Once we were in the jungle, there was beautiful scenery, strange animals, massive birds, unusual trees, tropical storms, and frogs and monkeys everywhere. I loved it.

### **Q: What did you miss about home?**

A: I missed my friends and family (although many of my friends and family actually managed to visit me overseas!). I also missed the amazing beaches we have here in WA. And of course vegemite.

### **Q: What is an interesting deal or matter that you've worked on?**

A: One of the more challenging matters was a re-financing deal based in the UK. I had to negotiate with a partner at another law firm in Sydney, our client was in the UK and I was also dealing with people working in Washington. Managing the different time zones involved along with the rest of the negotiations was quite a challenge! I certainly learnt a lot from the experience.

### **Q: What do you hope to achieve in 2014?**

A: Work-wise, I would love to get involved in some of the projects which are changing the face of Perth city.

In my personal life, I would like to run a marathon (I have already done a half marathon, so I am halfway there!) and learn one good karaoke song.

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