



Dan Murphy's Wins Popularity Contest

On 1 October 2013, the Supreme Court of Appeal delivered its decision regarding the application by Woolworths for a Dan Murphy's liquor store in Bicton. This has been a long drawn out fight to acquire approval for this licence.

The licence was applied for in early 2011 before being referred to the Liquor Commission. On 30 August 2011, the Liquor Commission refused Woolworths' application on the basis that there was no 'general principle' to the effect that the popularity of a business model in other localities justified the grant of a new licence in another locality.

Woolworths appealed to the Supreme Court of Western Australia, who dismissed the appeal. Woolworths then appealed to the Court of Appeal.

Despite there being nine commercial liquor outlets in the locality, including a First Choice liquor store, and the Liquor Commission finding that there was insufficient evidence of consumer demand for the massive 1,843m² liquor store, the Court of Appeal found that the Liquor Commission failed to properly apply the public interest test.

The Court of Appeal determined that *"the Commission did not, anywhere in its reasons, refer to the notorious fact that, in contemporary Australian life, one-stop shopping in large suburban shopping centres is of great importance. The only conclusion reasonably open is that the Commission did not regard the evidence as to the popularity of the Dan Murphy's business model elsewhere as evidence which, in combination with evidence as to the demographics of the Bicton locality, could form a foundation in fact for inferring the existence of relevant consumer requirements in the Bicton locality."*

Despite only lodging 11 letters of support and evidence from six members of the Wine Club, the fact that other Dan Murphy's stores in WA have attracted substantial custom was sufficient evidence to establish suburban consumer requirements for the 4,000 liquor product line superstore in Bicton.

The decision means that the Liquor Commission will need to review its decision in accordance with the law and principles set down in the unanimous Court of Appeal decision in particular, the finding that *"the evidence adduced by the appellant before the Commission was capable, in law, of supporting a finding that there were relevant consumer requirements in the Bicton locality for the range of products and services which the appellant proposed to provide and that granting the appellant's application was in the public interest."*

If you have any queries on liquor licensing, please contact Murfett Legal by telephone on +61 8 9388 3100, via our website at www.murfett.com.au or email one of the following directors:

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