

National Competition Policy Review

New South Wales *Liquor Act 1982* and *Registered Clubs Act 1976*

**Final Report
October 2003**



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## **Glossary**

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|------------|---------------------------------------------------------------------------------------------|
| ACCC       | Australian Competition and Consumer Commission                                              |
| Board      | Liquor Administration Board                                                                 |
| Court      | Licensing Court of New South Wales                                                          |
| Department | Department of Gaming and Racing                                                             |
| Minister   | Minister responsible for the NSW Liquor and Registered Clubs Acts (unless otherwise stated) |
| Minors     | Persons under 18 years of age                                                               |
| NCP        | National Competition Policy                                                                 |
| NSW        | New South Wales                                                                             |

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Executive Summary

This Report details the process and outcome of the National Competition Policy review of the NSW liquor and club management laws. The review has been undertaken by the Department of Gaming and Racing, and in accordance with the Competition Principles Agreement, to which NSW is a signatory. This Report is presented by the Department for consideration by the NSW Government.

The review has concluded that the NSW liquor and club management laws contain significant barriers to entry and restrictions on competition. Some of those barriers and restrictions are necessary to achieve the objects of the legislation – primarily the minimisation of alcohol-related harm in the community – while others are considered to be unwarranted and/or in need of substantial reform.

The review sought submissions from interested stakeholders (including the broader community), and a wide range of views was expressed. Certain industry stakeholders representing existing operators strongly support the maintenance of some of the most significant barriers to entry and restrictions on competition contained in the law (such as the “needs” test). In this regard, their position is that the status quo be maintained. Other stakeholders – including some regulatory agencies and potential new entrants – support the removal of many of those barriers and restrictions.

The review was further informed by the deliberations and resolutions arising from the Alcohol Summit, convened by the NSW Government in August 2003.

There was general agreement in submissions made to the review and opinions expressed throughout the Summit that the liquor laws and the licensing process are in urgent need of simplification, so that unnecessary complexity is eliminated and the substantial costs associated with applications and compliance are reduced.

The review has made 35 recommendations in total, and those are divided into two categories – recommendations dealing with current restrictions on competition, and proposed licensing reform options for NSW.

A summary of the recommendations made by the review is provided below, while a detailed list is contained in Chapter 8 of this report.

Current restrictions on competition

In support of the community's social standards, the review recommends the maintenance of existing harm minimisation and responsible service of alcohol principles (including the competition restrictions inherent in those principles), and the retention of existing restrictions relating to minors.

In regard to restrictions on market entry, the review's recommendations include the continuation of a comprehensive liquor licensing system, the abolition of the “needs” test, the introduction of a Social Impact Assessment process for all liquor licence applications, and a move to a more administratively-based licence application system.

In terms of restrictions that constrain market conduct, the review recommends reducing the number of liquor licence categories to seven, and the maintenance of a core set of straightforward licensing conditions – including limited trading hours for all premises except registered clubs.

Finally, the review's recommendations concerning restrictions on the operation and management of registered clubs will see all clubs continue to be subject to a comprehensive governance framework to protect members' interests, and the maintenance of a core set of club rules.

Licensing reform options for NSW

The review recommends that the future regulatory framework for liquor licensing in NSW be established under a single new Act, with a separate Act dealing with club management.

In terms of licence categories, the review recommends that the number of categories be reduced to seven, and a limited exemption be introduced for bed and breakfast and holiday farm style accommodation venues.

The review believes there is merit in a more flexible system of licensing conditions that maintain the core intent of the business. It supports the continuation of the separate *dine-or-drink* authority that currently applies to licensed restaurants, and recommends that all licensed restaurants be able to automatically operate a reception area (cocktail bar). In terms of trading hour conditions, the review recommends the application of standard hours to all venues except registered clubs, with a mechanism allowing for periodic review of extended trading and requiring those who benefit from extended trading to contribute to the extra public costs associated with that.

The review also recommends the licensing process move to a more simple, administratively based, system (incorporating a mediation process), while retaining the Licensing Court or a similar body for appeals against licensing decisions and disciplinary action.

To ensure the objectives of liquor harm minimisation, protection of the community, and industry integrity are supported, the review recommends the introduction of a Social Impact Assessment process for all liquor licence applications, while removing the “needs” test, and disallowing the right to lodge formal objections to licences.

In terms of fee and administration issues, the review recommends that entry fees be set at cost recovery levels, a fixed administration fee be payable every two years, and a system of regular contact between all licensees and the licensing authority be introduced.

Finally, the review recommends that the disciplinary system for the liquor industry focus on simplicity and ease of enforcement.

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## **1. Introduction and Background to the Review**

### **1.1 National Competition Policy and the review of laws that restrict competition**

- 1.1.1 The review of the NSW *Liquor Act 1982* and *Registered Clubs Act 1976* was undertaken by the Department of Gaming and Racing as a result of the NSW Government's commitment to the National Competition Policy under the Competition Principles Agreement. This Agreement requires that Acts that restrict competition should be reviewed and, where possible, reformed. In total, NSW listed more than 190 pieces of legislation for review, including the Liquor and Registered Clubs Acts.
- 1.1.2 The objective of the NCP is to improve the overall efficiency of the private and public sectors, and Australia's international competitiveness, thereby bringing about economic growth and better living standards for all Australians. The policy is given effect through three Inter-Governmental Agreements signed by the Council of Australian Governments in April 1995, one being the Competition Principles Agreement.
- 1.1.3 This Agreement contains the guidelines for all NCP reviews. All governments have agreed to the guiding principles that legislation should not restrict competition unless it can be demonstrated that:
- the benefits of the restriction to the community as a whole outweigh the costs; and
  - the objectives of the legislation can only be achieved by restricting competition.
- 1.1.4 This commitment to the NCP does not imply that competition objectives should take precedence over other important public policy objectives. Rather, it reflects a general recognition that Government regulation can sometimes create unwarranted restrictions that can limit consumer choice, result in higher prices to consumers, stifle innovation or reduce incentives for firms to improve efficiency.
- 1.1.5 A key part of the Competition Principles Agreement is the requirement for Government to take into account the nature and incidence of all impacts in the process of determining whether legislation or a particular restriction on competition is in the public interest.
- 1.1.6 As part of the review process, all governments have agreed that:
- the objectives of the legislation will be clarified;
  - the nature of the legislation will be identified;
  - the likely effects of restrictions on competition and the economy generally will be analysed;
  - the costs and benefits of anti-competitive restrictions will be assessed and balanced; and
  - alternative means for achieving the same result will be considered.

### **1.2 Terms of reference and process for this review**

- 1.2.1 In mid-1999, the NSW Minister for Gaming and Racing requested that the Department of Gaming and Racing conduct a review of the liquor and club management provisions contained in the *Liquor Act 1982* and *Registered Clubs Act 1976*, according to the Competition Principles Agreement. The review's terms of reference are provided in Appendix 1.
- 1.2.2 A Steering Committee chaired by the Department, and comprising representatives from NSW Treasury and The Cabinet Office, was established to guide the review process.

- 1.2.3 The review commenced in August 1999 with the publication of newspaper advertisements announcing the review and calling for submissions from interested individuals or organisations by September 1999. A general information sheet was released at that time. Information about the review was also forwarded directly to key stakeholders and other interested groups, including the peak liquor and club industry associations, Members of Parliament, and NSW Government agencies. Overall, the Steering Committee received 22 written submissions.
- 1.2.4 In February and March 2000, the Steering Committee conducted a series of interviews with key stakeholders. This provided an opportunity for further discussion about licensing reform options. A list of individuals and organisations that made written submissions to the review at that time, and a list of those organisations interviewed, are provided in Appendix 2.
- 1.2.5 A Discussion Paper, based on an interim report prepared by the Steering Committee and correspondence sent to the Government by interested groups up to December 2001, was subsequently drafted and released in June 2002. That Discussion Paper allowed for further public consultation prior to a final report and recommendations being prepared for consideration and response by the Government.
- 1.2.6 A total of 30 written submissions were received by the Department in response to the Discussion Paper. A list of individuals and organisations that made written submissions in response to the Discussion Paper is provided in Appendix 3.

### **1.3 This final report**

- 1.3.1 This final report of the review has been produced for consideration by the Minister for Gaming and Racing and the NSW Government to satisfy the review requirements under the Competition Principles Agreement.
- 1.3.2 It is based on an interim report prepared in October 2000 by the original Steering Committee established for the review, the Discussion Paper released in June 2002 (referred to above), and an advanced draft of the final report prepared in December 2002.
- 1.3.3 A decision was subsequently made to defer completion of the review until after the NSW Summit on Alcohol Abuse held in August 2003. This final report was amended to take into account all Summit proposals relevant to the review. The report takes account of the Steering Committee's analysis of issues raised during the review process, along with issues raised in submissions made to the review and debate at the Alcohol Summit.
- 1.3.4 This Report does not address the gaming machine operations of hotels and clubs. The competition policy principles associated with these operations were considered during the development of the *Gaming Machines Act 2001*. A report on the NCP implications of this legislation was considered and adopted by the Government in mid-2003.

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2. Development of the Liquor Laws and Profile of the Industry

2.1 Development of the liquor laws in NSW

- 2.1.1 The sale and supply of liquor has been regulated in NSW since colonial times. The first licence to sell liquor in Australia was issued by Governor Arthur Phillip in 1792, and the first Liquor Act (for NSW and Van Diemen's Land) was passed by the colonial legislature in 1825. The preamble to that Act said that it was required for the orderly conduct of public houses, that the character of licensees should be examined, and that it was needed to raise money for the general revenue.
- 2.1.2 Various changes were made to liquor legislation over the following decades – including the introduction of different types of liquor licences, specific trading hours, controls over the number of certain types of licences, and a minimum drinking age.
- 2.1.3 The Liquor Acts of 1898 and 1905 were repealed and consolidated into a new Liquor Act in 1912. The 1912 Act (as amended from time to time) regulated the sale and supply of liquor and operation of licensed premises in NSW until the current Act was introduced in 1983.
- 2.1.4 Until the 1970s, registered clubs were regulated under the *Liquor Act 1912*. In 1976, a separate Registered Clubs Act was introduced in response to community concerns about the management of clubs and the inappropriate use of members' property. The Registered Clubs Act commenced on 1 July 1978. The Act contains an extensive range of controls applying to the management of registered clubs, and the sale and supply of liquor on club premises.
- 2.1.5 Since the enactment of the *Liquor Act 1982* and the *Registered Clubs Act 1976*, there have been many significant amendments made in response to changing community attitudes and Government policy regarding the sale and supply of alcohol.
- 2.1.6 Perhaps the most significant changes occurred in 1996 when both Acts were amended to provide explicitly that "harm minimisation" – i.e. minimising the harm associated with the misuse and abuse of liquor – is a primary object of both Acts. This move to a harm minimisation approach for the liquor laws followed increasing concern about the extent of alcohol-related crime and violence – particularly in and around licensed venues.
- 2.1.7 As a result of these changes, the Acts place obligations on the Licensing Court of NSW, the Liquor Administration Board, the Director of Liquor and Gaming, the Commissioner of Police, licence holders, registered clubs, licensed venues, and others in regard to responsible practices in the sale, supply, service and promotion of liquor, and the prevention of activities that encourage misuse or abuse of alcohol.
- 2.1.8 Another significant package of amendments was made to the Liquor and Registered Clubs Acts in 1996 to enhance the regulatory framework applying to licensed venues. These amendments addressed enforcement deficiencies in both Acts, and followed the work of the Wood Royal Commission into the NSW Police Service.
- 2.1.9 The amendments allow more effective action to be taken against people of questionable integrity who are, or wish to become, involved in the liquor and club industries. They strengthened the enforcement capabilities of the Director of Liquor and Gaming and the police, provided for action to be taken directly against a close associate of a licensee in certain circumstances, and introduced strategic measures such as short-term closures to deal with problem premises.

- 2.1.10 There have also been many other changes to the Acts in the decades since they were introduced. Those changes have sought to ensure that licensed venues and registered clubs are managed and operated in the public interest (including the need for flexibility to meet the changing needs and demands of the public), and in a way that minimises their impact on the community.

2.2 The role of licensed venues in the community and the evolution of licensing

- 2.2.1 As at 30 June 2003, there were more than 12,000 licensed premises and registered clubs throughout NSW. The four main licence types were restaurants (3,826), hotels (2,060), registered clubs (1,560), and liquor stores (1,526).¹
- 2.2.2 Licensed venues fulfil an important role in the community in terms of hospitality and entertainment, as well as making a very significant contribution to the economy and employment. This is particularly so in regional and remote areas of NSW, where licensed venues are often the primary social venues in a community, thereby playing a leading role in maintaining community cohesion.
- 2.2.3 Under the present legislative arrangements, the type of liquor licence issued to a venue directly influences, and often determines, the type of services that can be provided. The licence is generally linked to the primary purpose of the business.
- 2.2.4 For example, a hotel may provide bar and bistro facilities, takeaway liquor, as well as have the opportunity to operate gaming machines. A liquor store is able to sell takeaway liquor, and may conduct free wine tasting on the premises. A restaurant can serve liquor with a meal, and can obtain a dine-or-drink authority enabling liquor to be served to a limited number of drinkers who do not wish have a meal. All of these types of licensed premises are open to the general public, although there are certain restrictions concerning access by minors.
- 2.2.5 One of the fundamental requirements of a registered club is that its facilities must be for use by, and limited to, bona fide members of the club and their guests (where permitted by the club's rules). A certificate of registration enables a club to supply liquor and operate gaming machines. Through membership, members have a stake in the conduct and facilities of the club, and members who have voting entitlements have representation through the election of the club's governing body.
- 2.2.6 Over the years, there have been amendments to the liquor laws so that some licensees can better meet changing community needs by providing greater flexibility in the way certain licensed premises can operate. One example is the ability for restaurants to obtain a dine-or-drink authority to serve liquor without a meal to patrons. Before the introduction of these authorities, restaurants were only able to serve liquor with a meal. That was changed in November 1998 so that restaurant licensees can apply for an authority entitling them to allocate up to 30% of dining seats for patrons who wish to drink but do not wish to have a meal.

¹ Source: Department of Gaming and Racing database.

- 2.2.7 Another change in the liquor laws in 1999 removed a restriction that prevented the licensing of restaurants with seating for less than 50 diners. This restriction prevented small restaurants and cafés from obtaining a liquor licence. As a result of the change, a liquor licence can be granted if the Court is satisfied that the premises will be operated as a bona fide restaurant. This reform was a significant change for the restaurant sector and for the community – and responded to community demands for more diversity and a greater choice of licensed venues.
- 2.2.8 The liquor laws have also evolved to introduce new licence types where a need has been identified within the community, or to streamline the regulation of the liquor industry. An example is the community liquor licence, which was introduced by the Government in 1999 as a direct response to the concerns of small remote communities about hotel closures. These concerns arose where a community's only hotel was closed, and the licence was removed to another town, leaving the community without the facilities and social opportunities that have traditionally been provided by the local hotel. The community liquor licence enables non-profit community organisations to apply for and operate a hotel style venue.

2.3 Economic contribution of the liquor and club industries

- 2.3.1 The liquor and club industries are major contributors to the State's economy – in terms of the goods and services they purchase as inputs and provide as outputs, their contribution to government revenue, the employment opportunities they create, and their contribution to hospitality and leisure opportunities. For example, it is estimated that the liquor and club industries directly employ more than 60,000 people.²
- 2.3.2 It is recognised that the liquor and club industries operate in a competitive environment (although that environment is also subject to the competition restrictions in the current law). There is support for commercial freedom, but the public expects that this be balanced against reasonable community expectations and the public interest.

2.4 Liquor licensing fees

- 2.4.1 Until 1997, licensees and registered clubs paid annual liquor licence fees to the State Government based on the amount of liquor they purchased each year. In August 1997, the High Court of Australia found that NSW tobacco franchise fees were invalid under section 90 of the Australian Constitution. This left sufficient doubt over the constitutional validity of similar business franchise fees on fuel and liquor that States and Territories made a decision to cease collecting them. Instead, these fees were collected by the Commonwealth through its wholesale sales tax – a scheme that had been sought by some sectors of the liquor industry for many years.
- 2.4.2 There were clear benefits for the liquor industry in the changes that were made following the High Court's decision. The switch to a Commonwealth sales tax based system for liquor fees resulted in an effective reduction in State fees on liquor of nearly 1%. Also, the onerous requirement of liquor licensees and registered clubs having to keep liquor purchases and/or sales records and submit annual declarations was abolished.

² NSW Parliament, NSW Summit on Alcohol Abuse, *Communiqué*, p3

- 2.4.3 Wholesale sales tax was subsequently abolished as part of the changes to the Commonwealth taxation regime associated with the introduction of the Goods and Services Tax in July 2000. This saw the disappearance of a link between the former State-based liquor licence fees and the Federal taxes paid by liquor licensees and registered clubs.
- 2.4.4 Other State revenue for liquor licensing takes the form of application fees and fees payable on the grant of a licence. The total amount of this revenue in 2002-03 was more than \$2.6 million.

3. Objectives of the Legislation

3.1 Regulatory objectives of government

- 3.1.1 Government regulation may be used to achieve many valuable economic and social objectives.
- 3.1.2 Yet, unless the objectives are clearly identified and are achieved in the most objective manner, business competitiveness and the productivity of the economy may be impaired, thereby undermining the achievement of regulatory goals³
- 3.1.3 NCP therefore requires that reviews clarify the objectives of the legislation under review, and assess the effectiveness of the legislation against achieving those objectives.
- 3.1.4 Regulatory legislation also needs to be considered in the context of government regulatory objectives generally.
- 3.1.5 COAG determined as a principle that government intervention in markets should generally be restricted to situations of market failure, and that each regulatory regime should be targeted at the market failure(s) involved.⁴
- 3.1.6 The NCC later identified various types of market failure that may warrant legislative intervention by government. One type is where market transactions have negative impacts on third parties, and where pricing mechanisms do not exist to allow the affected parties to charge for costs incurred or pay for benefits received.

3.2 When is market intervention justified?

- 3.2.1 COAG guidelines for regulatory action state that, as the first step in determining whether or not to regulate, a risk analysis should be undertaken.⁵ The guidelines suggest that the risk analysis consider:
- societal and individual risk;
 - whether the risk is avoidable (i.e. voluntary or involuntary), and whether there is adequate information about the consequences of the risk;
 - the probability of harm occurring.
- 3.2.2 A New Zealand Government agency identified four elements in a framework for assessing risk, in order to determine whether or not to regulate.⁶ The elements are:
- significance of the harm caused;
 - whether or not the harm is reversible;
 - whether assumption of the risk is voluntary; and

³ Centre for International Economics (1997) *A Framework for National Competition Policy Reviews of Gaming Legislation*

⁴ Council of Australian Governments (1991) *Report of the Task Force on Other Issues in the Reform of Government Trading Enterprises*, p22

⁵ Council of Australian Governments (1997) *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-setting Bodies*

⁶ New Zealand Ministry of Economic Development (1999) *Policy Framework for Occupational Regulation: A Guide for Government Agencies Involved in Regulating Occupations*

- the probability of the harm occurring.

3.3 Intervention in the NSW liquor and club market

3.3.1 Applying the New Zealand risk assessment framework to the NSW liquor and club environment, the potential risks were assessed as follows:

Potential for significant harm to individuals or moderate harm to a large number	For most consumers (i.e. liquor consumers and club members), the risks could generally be regarded as moderate. However, some individuals have experienced significant harm as a result of alcohol use by consumers – between 1992 and 2001, more than 10,000 deaths and more than 500,000 hospital episodes were attributable to alcohol use. At a societal level, alcohol abuse has been estimated as costing NSW more than \$7 million per day, inclusive of lost labour and productivity, the cost of crime, the cost to health and the costs associated with road trauma.
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Is the harm reversible?	In most situations, the harm is relatively small and/or potentially reversible, as the consumer may cease or modify the drinking behaviour causing concern. For some consumers, the consequences of the harm are not reversible or retrievable because of a decline in the state of health, decline in the quality of life, a permanent injury, or loss of life.
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Is the risk voluntary?	The risks in alcohol consumption will be voluntary for most consumers. For alcohol consumers who are incapable of controlling their drinking behaviour, the risks could be considered to be involuntary. The risks will also be involuntary for road users who suffer accident, injury or death at the hands of drink drivers, and patrons or other persons (such as women in domestic settings) who are harmed as a result of alcohol-related violence.
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Is there a high probability of the harm occurring?	For the majority of consumers, the probability of experiencing significant harm as a result of alcohol consumption is low. Significant harm is most likely to be experienced by consumers who are already in a vulnerable position (i.e. problem drinkers).
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3.3.2 From this risk assessment, the review considers that there is a case for government intervention in the liquor and registered club market.

3.3.3 In the distant past, an important aspect of liquor regulation was the orderly conduct of public houses and the collection of liquor taxes for Government revenue. These unstated objectives have progressively evolved in response to changing community expectations and Government policy.

3.3.4 During 1996, the Government inserted the specific object of liquor harm minimisation into the Liquor Act 1982 and the Registered Clubs Act 1976. The consultation that has been undertaken as part of this review, and the thrust of debate at the Alcohol Summit, have confirmed the continuing appropriateness of this objective. As explained below, the minimisation of harm to individuals, the protection of local amenity, and the probity of industry participants, have been identified as important considerations associated with the sale and supply of liquor.

3.4 Minimising alcohol-related harm – adults and minors

- 3.4.1 For the vast majority of adults, the consumption of alcohol is considered a form of relaxation and social entertainment. The Alcohol Summit acknowledged that there are positive social and health benefits from responsible alcohol use.⁷
- 3.4.2 However, the misuse and abuse of liquor can also have a devastating effect on individuals, their families and society in general. For example, the Alcohol Summit heard that alcohol abuse is associated with serious harm to individuals and the community. It was reported that, between 1992 and 2001, there were 10,369 alcohol-related deaths and 537,742 alcohol-related hospital episodes in NSW.⁸ The Summit also heard that alcohol abuse costs NSW \$7 million each day, inclusive of lost labour and productivity, crime and health costs and the costs associated with road accidents.⁹
- 3.4.3 Historically, both in Australia and elsewhere, governments have taken the position that the sale and consumption of liquor should not be left exclusively to market forces. In fact, all developed countries have liquor laws in place on social policy grounds. They recognise that alcohol is a drug that can have a range of harmful effects, and must therefore be regulated.
- 3.4.4 A harm minimisation approach – with emphasis on responsible service and consumption of alcohol, and responsible operation of licensed venues – is justified on public health and safety grounds. This harm minimisation object is stated in the NSW legislation in sufficiently broad terms so as to encompass harm to the health and well-being of liquor consumers, as well as the risk of “spill overs” or impacts on third parties of harm associated with the misuse and abuse of liquor. When considering reforms to liquor licensing, a balance must be struck between achieving a fairer, simpler regulatory system and consideration of the impact of liquor consumption on local communities, road safety and public health.
- 3.4.5 The harm minimisation objective of the Acts also encompasses harm to children and young people through exposure to liquor and licensed venues. In that regard, the Acts take a prohibition approach to the sale and supply (and in some cases consumption) of alcohol to and by minors. The Acts also seek to limit exposure of minors to some licensed venues in which the sale, supply and consumption of alcohol on the premises is a primary activity.
- 3.4.6 All jurisdictions in Australia, as well as governments in many other westernised countries, strictly control the sale and supply of liquor to children and young persons. These controls have been put in place over many decades in response to community concerns about the impact of alcohol on the health and behaviour of under-aged persons, who have not matured physically and socially so that consumption of even moderate amounts of alcohol poses serious risk of harm to themselves and the community.
- 3.4.7 The Alcohol Summit noted that a harm minimisation approach is consistent with the *National Alcohol Strategy: A Plan for Action 2001-2004*, to which all Australian governments are signatories and which was developed under the auspices of the Ministerial Council on Drug Strategy.

⁷ NSW Parliament (2003), NSW Summit on Alcohol Abuse, *Communiqué*, p3

⁸ National Drug Research Institute (2003), *National Alcohol Indicators Statistical Bulletin No. 6* [in press], Curtin University, Perth, WA, quoted in *Communiqué*, p3

⁹ Collins and Lapsley, *Counting the cost: estimates of the social costs of drug abuse in Australia 1998-99*, quoted in *Communiqué*, p3

3.5 Protection of local amenity

- 3.5.1 Broadly speaking, the harm minimisation approach also legitimately covers the risk of spillovers or impacts on local amenity. For example, alcohol-related nuisance, violence, crime and noise disturbances can erode the quality of life for people living or working near venues serving alcohol.
- 3.5.2 The legislation therefore seeks to protect the interests of local communities, including the protection and improvement of local amenity. In this regard, relevant issues include the satisfaction residents and visitors derive from an area, including the natural and built environment, as well as the features, facilities and services that are available in the area.
- 3.5.3 The NSW legislation contains a range of harm minimisation provisions to promote the responsible serving of alcohol in licensed venues. It also includes various public interest provisions that allow local communities, local councils, police and other stakeholders to have a say about the operation and conduct of licensed venues.

3.6 Ensuring probity

- 3.6.1 Though unstated, another key objective of the legislation is to ensure probity within the liquor and club industries, and the appropriate ownership and management of licensed venues. This is important given the often transient nature of licensed venues, and the fact that they can generate large cash flows and therefore can be attractive to persons and organisations with criminal intent.
- 3.6.2 This objective was emphasised in 1996 with the “Enforcement Package” of amendments to the Liquor and Registered Clubs Acts. These amendments have enabled firm action to be taken against irresponsible operators and persons who are unsuitable to be involved in licensed venues, where that is justified.

3.7 Protection of club members’ interests

- 3.7.1 Registered clubs are non-profit organisations that exist to serve the common interests of their members. The Registered Clubs Act contains an extensive range of unique provisions governing the establishment, operation and management of clubs, and, from the nature of those provisions, it is clear that an objective (although again unstated) of this Act is the protection of club members’ interests.
- 3.7.2 Those interests include the property owned by the members (both physical and intellectual), the benefits provided by the community to clubs on the basis that they are non-profit organisations (e.g. taxation benefits provided by Federal and State Governments), and the “image” of the club industry as a whole.
- 3.7.3 Well publicised instances of the improper use of their property in the past has led club members to expect that the operation and management of clubs will be well supervised and subject to appropriate controls which are sanctioned by law. This is particularly relevant with the growth of some registered clubs to become large enterprises in recent decades, with interests in diverse activities.
- 3.7.4 The extensive and unique regime of controls that applies to registered clubs also emphasises their different nature and role compared to most businesses in the liquor and hospitality industries, which exist as private, commercial, “for profit” enterprises. It is on this basis that the controls applying to clubs are more onerous than those applying to other licensed venues, and those controls support a view that clubs do not operate in strictly the same market as commercial venues (due to restrictions on their operation).

3.8 Transparency of objectives

- 3.8.1 The review noted that some of these objectives are explicitly stated in the Liquor Act and the Registered Clubs Act, while others are implied or inferred. The review considers that these objectives are consistent with the fundamental principle of maximising net community benefits.
- 3.8.2 The review also considers that all objectives should be expressly stated in the legislation in clear, concise and appropriate terms. By taking this approach, it will be possible to establish with ease and certainty that the objectives of the legislation support business competitiveness and economic productivity.

3.9 Other considerations and objectives

- 3.9.1 It has been put to the review that regulation of the sale and supply of liquor, and of the standard and use of premises on which liquor is sold, is an implicit objective of the legislation. However, it would seem that this form of regulation is a means to an end (i.e. the minimisation of alcohol-related harm), rather than an objective in itself.
- 3.9.2 Protection of Government revenue has also been suggested as an objective. However, the National Competition Council has confirmed that it does not consider the protection of Government revenue as a legitimate objective of this type of legislation. Furthermore, the 1997 High Court decision that questioned the validity of licence fees imposed by the State, and the more recent changes associated with the introduction of the GST in 2000, have meant that the collection of State Government revenue is no longer an aspect of the liquor and club management laws.
- 3.9.3 Finally, some have suggested that – through certain provisions such as the “needs” test – an objective of the Acts is to ensure a suitable level of competition in the liquor and registered clubs industries. However, the review considers that any impact on competition of the current provisions of the law is ancillary to the primary objective of harm minimisation. Certainly, the liquor and club management laws do not exist to ensure fair competition in the marketplace, as that is primarily a matter for the market itself, and is regulated (where necessary) via trade practices and fair trading legislation.

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## **4. Overview of the Current Regulatory Framework**

### **4.1 Liquor licensing**

4.1.1 NSW has a comprehensive liquor licensing system that regulates who, where, how and when liquor can be sold (and in some cases supplied). The components of that system are contained in the Liquor Act 1982 and the Registered Clubs Act 1976.

4.1.2 To sell liquor in NSW, a person must either be licensed, be an agent or servant of a person that is licensed, or be a club which has been issued with a certificate of registration. The definition of “sell” is wide ranging so as to capture many different types of transactions involving liquor. Generally, a licence remains in force until it is surrendered, suspended or cancelled.

#### Eligibility to Sell Liquor

4.1.3 The Liquor Act provides for 21 different licence types catering for a range of different liquor selling scenarios. The Registered Clubs Act provides for a certificate of registration to enable the sale of liquor for consumption by club members and their guests on and off registered club premises.

4.1.4 The main licence categories under the Liquor Act are hotelier, community, off-licence, on-licence, caterer, nightclub, Governor and special event. Details concerning these licence types are provided in Table 1.

4.1.5 There are also sub-categories within the off-licence and on-licence classes. Off-licences include the sub-categories of retail (liquor store), wholesale, vigneron, brewer, auctioneer and wine. On-licences include the sub-categories of restaurant, motel, function (permanent and temporary), theatre, public hall, airport, university, vessel, aircraft and wine. Details concerning these sub-categories are provided in Appendix 4.

4.1.6 Each licence type is subject to conditions that are prescribed by the legislation. The conditions depend on the type of licence involved, and control the operation of the venue (for example, trading hours, sale and supply arrangements, etc).

**TABLE 1: NSW LIQUOR LICENCES**

| TYPE OF LICENCE          | AUTHORISES THE LICENSEE                                                                                                                                                                                                                                                                            |
|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Hotelier's Licence       | To sell liquor for consumption on or off the premises, to sell liquor at a function held off the hotel premises (subject to approval), and to operate gaming machines on the licensed premises (subject to approval).                                                                              |
| Community Liquor Licence | To sell liquor for consumption on or off the premises.                                                                                                                                                                                                                                             |
| Off-Licence              | To sell liquor on the licensed premises, but only for consumption otherwise than on those premises.                                                                                                                                                                                                |
| On-Licence               | To sell liquor on the licensed premises, but only for consumption on those premises.                                                                                                                                                                                                               |
| Caterer's Licence        | To sell liquor at a function, occasion or event held on any premises on which the licensee provides catering services, but only for consumption on those premises.                                                                                                                                 |
| Nightclub Licence        | To sell liquor on the licensed premises, but only for consumption on those premises. Before 8.00 pm liquor must be sold or supplied with or ancillary to a meal consumed at a table. After that time, entertainment must be provided and a light meal must be available or be consumed at a table. |
| Governor's Licence       | To sell liquor on a limited type of premises eg, premises on Crown land, and takeaways (in a few cases).                                                                                                                                                                                           |
| Special Event Licence    | To sell liquor at an event of State or regional significance on the day or days when the event is held.                                                                                                                                                                                            |

Making of Applications

- 4.1.7 The Liquor and Registered Clubs Acts provide the framework for liquor licence and club certificate applications, most of which are dealt with by the Licensing Court. As exceptions, Governor's licences are authorised by the Governor upon the recommendation of the Minister administering the liquor legislation, and special event licences are authorised by the Minister. Both of these licences are issued (but not granted) by the Court.
- 4.1.8 Certain applications of an administrative nature are considered by the Liquor Administration Board. Examples include applications to redefine the boundaries of licensed premises, applications for authorised areas in hotels, variations of seating and conditions on reception areas in restaurants, and motel endorsements in relation to restaurants.
- 4.1.9 To safeguard the integrity of the liquor and club industries, all applicants are required to provide information about persons who will be interested in the business, or the profits of the business, carried out under the licence. The licence application process also includes probity checks of prospective licensees and those with a financial interest in the business.
- 4.1.10 The Director of Liquor and Gaming (who is an officer of the Department of Gaming and Racing) provides the required probity reports based partly on information received from the NSW Police. For new licences (and some changes to existing licences), the Director also reports on the suitability of the premises and whether the application complies with the legislation generally. For a new certificate of registration, the club's books and records are also examined (usually by the NSW Police) to enable the Court to consider the club's financial viability and bona fides.
- 4.1.11 Generally speaking, the Court is to refuse an application for a liquor licence or certificate of registration (or for certain variations to existing licences or certificates) unless it is satisfied that, as soon as the application is granted, responsible serving practices will be in place on the premises and that all reasonable steps will be taken to prevent intoxication on the premises. The Court and all other persons with functions under the Act are required to have regard to the need for harm minimisation when exercising functions under the Act.
- 4.1.12 The Liquor Act imposes training requirements upon holders of hotel, restaurant, motel, caterer and nightclub licences. The Court cannot grant an application for these types of licence unless it is satisfied that the applicant has completed a course in liquor law obligations, responsible service of alcohol, and the operation of a hospitality business, that has been approved by the Board (unless the Court has dispensed with this requirement).
- 4.1.13 The Liquor Act also requires certain licensees and staff involved in liquor service (such as in community liquor licences and some surf life saving clubs with function licences) to have completed Board-approved responsible service of alcohol training. The Court, through its general harm minimisation powers, also applies this requirement to other licences in some circumstances.
- 4.1.14 Another feature of the legislation are the requirements that have to be met by applicants in respect of certain licences. For example, in the case of a new hotelier's licence or retail off-licence, the applicant must satisfy the Court that an existing licence is not available at a reasonable market price for removal to the premises to which the application for the new licence relates. A "reasonable market price" is determined on the basis of the value of hotel or liquor store licences sold or for sale in the area, any conditions imposed by the vendor on the sale of the licence, and likely conditions that might be imposed on the licence at the new premises.

- 4.1.15 An application for a nightclub licence is subject to a “public benefit” test aimed at allowing local issues to be considered when a new nightclub is proposed. When determining the potential benefits of the granting (or removal) of a nightclub licence, the Court can take into account, but is not limited to, any of the following issues:
- whether residents in the neighbourhood where the premises are to be located will benefit from an additional entertainment venue;
  - whether the premises will result in an increased choice of entertainment for tourists and the public; and
  - whether the premises will result in increased competition or Government revenue, or both.
- 4.1.16 When determining the potential costs to the public of a nightclub licence, the Court can take into account, but is not limited to, any of the following issues:
- any social cost, such as the potential disturbance to the amenity of the neighbourhood in which the premises will be located;
  - any additional demand for public services, such as services provided by the police, public health authorities and local councils; and
  - any adverse impacts on existing businesses in the neighbourhood.

#### Objections to Applications

- 4.1.17 Objections may be lodged with the Court by the Director of Liquor and Gaming, the Commissioner of Police, people whose interests are likely to be adversely affected by the granting of the application, and other stakeholders. The right to object to the grant of a licence is intended to be a public interest safeguard, although the grounds for objecting are limited to those specified in the Liquor and Registered Clubs Acts. In some circumstances, the interests sought to be protected could more reasonably be described as private interests.
- 4.1.18 Objections to applications may be made on the grounds of probity. The fitness of an applicant and his or her associates is integral to the Court's decision whether or not to grant an application for a licence. The Court refers all applications for licences to the Director of Liquor and Gaming for investigation to establish the probity of licence applicants, and may request a report from the Commissioner of Police. It is noted that the probity grounds do not apply equally to registered clubs in that objections cannot be taken against certain persons who have an interest in the club.
- 4.1.19 Those people who will be directly affected by the application may also make objections on the grounds of public interest or amenity. For example, residents in the neighbourhood of the proposed licensed premises could claim that:
- it would not be in the public interest to grant the application;
  - the premises are in the immediate vicinity of a place of public worship, a public school or a hospital; and
  - the quiet and good order of the neighbourhood would be disturbed.
- 4.1.20 An existing licensee can also use the objection process. The most common licensee objections relate to applications for the grant of a new, or the removal of an existing, hotelier's licence or retail off-licence. They are made on the grounds that the needs of the public to which the application relates are already adequately met by existing facilities in, and outside, the neighbourhood. This is generally referred to as the “needs” test. Where such an objection is made, the onus is on the applicant – rather than the objector – to satisfy the Court that the needs of the public cannot be met by existing facilities. No other licence applications can be objected to on this basis.

- 4.1.21 Further, before these types of licences can be removed to another location outside of the neighbourhood, the Court must be satisfied that the removal will not detrimentally affect the interests of the neighbourhood where the licence currently exists – even if the licence is dormant in its current location and no objection to the removal of a licence has been lodged on this basis. This requirement does not apply when the licence is being removed to premises within the same neighbourhood.
- 4.1.22 The provisions governing the grant and removal of these licence types have been in place for some time. If an application for a retail off-licence is refused by the Court on the basis of the “needs” test, another application for the grant of such a licence may not be made for the same premises within two years of the previous application being refused.
- 4.1.23 The Registered Clubs Act also contains a form of “needs” test, which provides for an objection to be made to the grant of an application for a new certificate of registration on the grounds that the registration or conduct of the club at the proposed premises will result in “undue competition and economic waste” and/or “the club is not required to meet a genuine and substantial need”.

#### Payment of Fees and Charges

- 4.1.24 All applicants must pay a one-off fee once the Court grants a liquor licence. The fee (or part thereof) must be paid before the licence is issued and trading can commence.
- 4.1.25 Fees payable for hotel, retail off-licences, motel endorsements and motel licences are determined by the Board on a case-by-case basis. The Board usually considers various factors in setting the fee, including the size, location, nature and scale of the business, any conditions sought to be imposed on the operation of the new business, and the fees paid by other hotel or retail licence holders in the area.
- 4.1.26 These fees can vary considerably. For example, in 2001-02 the fees for a new hotel licence ranged from \$70,000 in regional NSW to \$150,000 in Sydney, although it is noted that the market value of hotel licences has fallen in recent times in response to the “de-coupling” of gaming machine rights. In 2001-02, the fee for a new off-licence ranged from \$1,500 in regional NSW to \$70,000 in Sydney.<sup>10</sup>
- 4.1.27 The fee for a Governor's licence and a special event licence is determined by the Minister (usually after a recommendation from the Board) on a case-by-case basis. The level of the fee depends on the size and purpose of the particular venue, and the nature of the proposed licence conditions.
- 4.1.28 The fees payable for all other licences are prescribed in the Liquor Act, and also vary significantly – ranging from \$500 for a restaurant on-licence, to \$60,000 for a nightclub licence. The fee for a nightclub licence depends on the location of the premises, with \$60,000 payable for a licence in the Sydney CBD; \$40,000 for metropolitan Sydney, Newcastle, Wollongong, and the Central Coast; and \$10,000 in all other areas. Similar variations exist in the case of the fee for a dine-or-drink authority in a licensed restaurant.
- 4.1.29 No annual or other periodic licence fee or charge is imposed under the law, although very small annual fees are payable for certain endorsements on a licence or certificate of registration.

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<sup>10</sup> Source: Department of Gaming & Racings, Annual Report 2001-02

### Compliance Measures

- 4.1.30 The legislation contains a range of measures to ensure compliance with the legislation and the proper conduct of licensed premises and registered clubs. These include licence conditions, offence provisions, and the taking of disciplinary action.
- 4.1.31 The range of punishable offences in the Liquor and Registered Clubs Acts serve to restrict the activities of licensees over and above the restrictions imposed by their licence conditions. For instance, it is an offence for a licensee to sell liquor to a minor or to an intoxicated person, or to permit prostitution on the premises. Offences can be committed by licensees, club secretaries, their staff, and others, and most relate to activities occurring on licensed and club premises. The legislation empowers the police, Director of Liquor and Gaming and others to bring a matter to Court for determination. On-the-spot penalty notices can be issued for a range of specific offences.
- 4.1.32 Both the Liquor and Registered Clubs Acts prescribe grounds upon which a complaint may be made, including that:
- the licensee, manager, secretary or a close associate is not a fit and proper person;
  - the continuation of the licence is not in the public interest;
  - activities likely to encourage misuse or abuse of liquor have occurred;
  - intoxicated persons have frequently been on the premises or have been seen to leave the premises; and
  - acts involving violence against persons or damage to property have frequently been committed on or near the licensed or club premises by persons who have been on the premises.
- 4.1.33 Those able to bring complaint action in the Court include:
- the owner of the licensed premises;
  - a person authorised in writing by three or more people residing in the vicinity of the licensed premises or a person who is a resident and is authorised in writing by two or more residents;
  - the Commissioner of Police (usually the local police);
  - a person authorised by the local council where the licensed premises is located; and
  - the Director of Liquor and Gaming.
- 4.1.34 The Director is empowered to undertake investigations and inquiries in order to ascertain whether a complaint should be made, and can request the police to undertake investigations. Where complaints are established, the Court can take disciplinary action in a number of ways, including:
- reprimanding the person involved;
  - disqualification;
  - a monetary fine (not exceeding \$250,000);
  - conditions being imposed on the licence; or
  - cancellation of the licence or certificate of registration.
- 4.1.35 The Acts also provide for complaints to be made to the Liquor Administration Board that the conduct of the premises and/or its patrons is causing undue disturbance to the quiet and good order of the neighbourhood. These complaints can be made by the Director of Liquor and Gaming, the police, the local council, or at least three local residents, and are dealt with through an informal Board conference to minimise costs and complexity. The Board is able to impose a range of conditions relating to issues such as noise and limits on trading hours.

### Administration of the Liquor Laws

#### ***Licensing Court of NSW***

- 4.1.36 The Licensing Court determines applications for liquor and gaming-related licences (except applications for a Governor's licence and a special event licence), and certificates of registration for clubs, as well as applications to vary those licences/certificates. Licensing Court magistrates are appointed by the Attorney General.
- 4.1.37 The Court also hears disciplinary and offence matters under the Liquor and Registered Clubs Acts involving licensed venues, licensees, club management and directors, gaming personnel, and members of the public. Therefore, the Court (along with the legislation) determines who can operate in the market and the way in which premises can operate (through conditions on licences).

#### ***Liquor Administration Board***

- 4.1.38 The Liquor Act sets out the functions, powers and structure of the Liquor Administration Board (currently comprising the four magistrates of the Licensing Court), as well as the procedures for Board meetings.
- 4.1.39 The Liquor and Registered Clubs Acts (as well as the Gaming Machines Act) confer a range of administrative and regulatory powers and functions on the Board, such as hearing complaints about undue disturbance of the neighbourhood, and regulating aspects of licensed premises. Officers of the Department of Gaming and Racing assist the Board in undertaking these activities.

#### ***Director of Liquor and Gaming***

- 4.1.40 The Director of Liquor and Gaming is an independent statutory position. The Director has the power to object to the grant of licence and other applications, as well as carry out investigations and inquiries in order to ascertain whether complaint or prosecution action should be taken against a licensee or manager of licensed premises, club manager or club director. The Director is a Special Inspector under the legislation, and is currently the Director-General of the Department of Gaming and Racing.

#### ***Department of Gaming and Racing***

- 4.1.41 The Department provides necessary administrative support to the Board, the Court, and the Director of Liquor and Gaming. The Department therefore participates actively in administering the Liquor and Registered Clubs Acts, and various other NSW statutes.
- 4.1.42 Departmental officers undertake inspections of licensed venues, and investigate complaints about premises and their staff. Officers also assist with the conduct of education programs for the liquor and club industries on the requirements of the legislation. The Department formulates policies and implements laws that enhance the integrity of the liquor and club industries and otherwise safeguard the public interest.

### Enforcement of Liquor Laws

#### ***NSW Police***

- 4.1.43 The Liquor and Registered Clubs Acts empower the Commissioner of Police to enforce the liquor laws by objecting to applications, and initiating offence and disciplinary proceedings against licensees, clubs, gaming personnel, and members of the public.

- 4.1.44 The Commissioner of Police or a police officer is empowered to enter licensed venues at any time on a reasonable suspicion that a breach of the legislation has been or is being committed on the premises. Police also have powers under the legislation to investigate breaches associated with unlicensed premises.
- 4.1.45 Police officers may take action before the Court for all offences. For certain specified offences, police may issue an on-the-spot penalty notice. They may also apply to the Court for a closure order to apply to a specific licensed venue.

### ***Special Inspectors***

- 4.1.46 The Liquor Act empowers the Minister to appoint special inspectors who are responsible for undertaking a range of investigative activities under the Acts. For example, inspectors are empowered to enter premises at any time where there is reasonable suspicion that a breach of the legislation is being committed. They can issue penalty notices to licensees and others for specified offences. Inspectors are officers of the Department.
- 4.1.47 While the liquor laws provide police officers and inspectors with similar powers, the investigative roles of the two agencies – NSW Police and the Department – are discrete. A Memorandum of Understanding between the two agencies has been developed to help delineate the two roles at a practical level.
- 4.1.48 On the one hand, NSW Police is responsible for overall enforcement of liquor laws on a state wide basis. On the other hand, Departmental inspectors monitor licensed venues on a targeted basis to ensure that Government policy and laws are being implemented, to educate licensees about their obligations under the legislation and to supervise compliance with harm minimisation strategies. The Department's inspectors also play a role in securing industry integrity through investigations into inappropriate management conduct by licensed venues (particularly registered clubs).

## **4.2 Club management**

- 4.2.1 The Registered Clubs Act provides for the registration and governance of clubs. As previously mentioned, a certificate of registration authorises a club to sell and supply liquor to club members and their guests – rather than the general public. Clubs have strict rules relating to membership and the entry of members and their guests onto club premises, and some of these are specified in the legislation.
- 4.2.2 The Act provides for three classes of club membership – full members, honorary members and temporary members, and sets out certain requirements so that clubs keep a record of the details of these members (and their guests). Where a club rule allows for temporary membership, the law does not allow a person to be admitted as a temporary member if that person resides within a five-kilometre radius of the club premises.
- 4.2.3 The five-kilometre rule is a minimum requirement, and a club's rules may provide for a greater distance. The rule does not apply where a person is a member of another registered club with similar objects, or is a member of another registered club and is participating in an organised sport or competition between the two clubs.
- 4.2.4 While the membership and entry requirements for registered clubs are strict, they are necessary to ensure that clubs are available only to members and their bona fide guests. Clubs gain taxation benefits from operating in this way through the “mutuality principle”, which emanates from the historical concept that a person cannot make a profit from selling to him or herself. This concept has been extended to defined groups of people (such as registered clubs) who contribute to a common fund, controlled by the group for common (rather than individual) benefit.



- 4.2.5 The Act also imposes other restrictions on membership – such as limits on the minimum and maximum number of members that a club may have.
- 4.2.6 Other restrictions and controls that apply to the operation and management of registered clubs include:
- Purposes for which a club is established: A club may only be established for certain purposes (including social, literary, political, sporting or athletic purposes, and for the purpose of providing accommodation for its members and their guests).
  - Functions held on club premises: Only certain types of functions may be held on club premises.
  - Club advertising and promotion: Promotions and advertising by clubs must include a statement to the effect that the matter is for the information of the members and their guests.
  - Probity of club secretaries: A person may not act as a club secretary/manager unless the Court has given its approval. The Court may not approve a person as a club secretary unless satisfied that, as soon as the application is granted, responsible serving practices will be in place on the premises, and that all reasonable steps are taken to prevent intoxication on the premises. An application may also be refused on the grounds of the fitness of the applicant to hold office.
  - Conduct of club elections: The Court can order that the Electoral Commissioner conduct an election of the governing body of a club.
  - Disclosure of interests of members of a governing body: A member of a governing body is required to disclose any interests in contracts entered into by the club with suppliers.
  - Provision of financial statements: All registered clubs are required to lodge with the Liquor Administration Board a balance sheet and details of profit and loss, or income and expenditure, each year.
  - Limitation on benefits to directors and employees: The secretary, manager, or an employee or member of the governing body or any committee of the club, is not entitled to receive, either directly or indirectly, any payment associated with the sale, supply and consumption of liquor, or the keeping or operation of gaming machines.
  - Clubs must be corporations or co-operatives: The Act requires that a club must be a company within the meaning of the (Commonwealth) *Corporations Act 2001*, a co-operative under the *Co-operatives Act 1992* (in the case of certain older clubs), or a corporation constituted by another Act. Clubs are therefore subject to the extensive controls established under those Acts, as well as the controls in the Registered Clubs Act.

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5. Restrictions on Competition

5.1 Background

- 5.1.1 Competition is simply the degree of rivalry between sellers (or potential sellers) in a market to procure the business of buyers. In the absence of evidence to the contrary, the National Competition Policy presumes that competition best serves the public interest by making businesses use resources more efficiently, and be more responsive to consumer choice. This acts as a spur for better service provision and lower prices.
- 5.1.2 Legislation can restrict the dynamics of competition in a number of ways, either directly or indirectly, by changing the structure and composition of the market or the behaviour of market participants. Some common examples of restrictions on competition are:
- Rules on business ownership.
 - Conditions or restrictions on market entry or exit.
 - Prescribed fees or charges.
 - Prescribed professional and ethical standards, and related disciplinary procedures.
 - Controls on production levels or prices.
 - Controls on the type of inputs used in the production process.
 - Limitations on the quality, level or location of goods and services available.
 - Limitations on consumers' access to facilities.
 - Limitations on advertising and promotional activities.
- 5.1.3 An NCP review may observe that legislative provisions that restrict competition are not necessarily bad or in some way flawed. It may be that constraints are necessary to meet public policy objectives. The purpose of the NCP review process is to assess whether identified legislative restrictions on competition are anti-competitive, whether they generate a net public benefit, and whether they do so in a manner which least restricts competition.
- 5.1.4 The NSW liquor licensing and club management provisions fall into two general categories of restrictions. First, there are restrictions that support the community's social standards such as the legal minimum age for drinking. Because these provisions do not substantially restrict competition, the National Competition Council has not questioned them.
- 5.1.5 The other category includes provisions that restrict competition in the liquor retailing market either by limiting the entry of potential sellers or constraining market conduct; many of which also impose significant compliance costs. To achieve compliance with the Competition Principles Agreement, NSW needs to demonstrate that these restrictions provide a net public benefit and could not be achieved through other means.
- 5.1.6 The NCP benchmark of public benefit is set out in clause 1(3) of the Competition Principles Agreement. The clause 1(3) test allows all relevant factors to be considered when deciding whether restrictions on competition are warranted.
- 5.1.7 It is also NSW Government policy that NCP reviews take into account the full range of public benefits and costs, as well as stakeholder views.

- 5.1.8 Although a quantitative assessment of benefits and costs is not always necessary, the task for government is to make judgements on the importance of each factor in a public benefit assessment. In determining where the public interest lies, social and environmental matters are as important as economic considerations.

5.2 Analysis of costs and benefits of current restrictions on competition

- 5.2.1 A public benefit assessment of the current restrictions in the liquor and club management legislation follows.
- 5.2.2 The assessment takes into account the likely benefits and costs of these restrictions, in qualitative terms, as well as their potential severity. The first part of the assessment provides general comments on each restriction. This is followed by a table that:
- expresses the objective of the restriction;
 - provides a description of the costs and benefits of the restrictions in qualitative terms;
 - summarises the submissions made to the review in relation to the restrictions;
 - analyses the information presented; and
 - states conclusions and recommendations.

5.3 Restrictions that support the community's social standards

Responsible service of alcohol and harm minimisation

- 5.3.1 Licensees and clubs are required to serve and supply alcohol responsibly, operate their premises in a responsible manner, and encourage responsible consumption of alcohol and responsible behaviour by their patrons. These restrictions deny licensees and clubs the opportunity to profit from selling liquor and other goods (and services) to persons in certain circumstances. They may also place burdens on licensees and clubs and result in them having to incur additional costs, as well as deny members of the public the opportunity to behave in a particular way.
- 5.3.2 More specifically, the legislation prohibits a licensee or club from selling or supplying liquor to, or allowing a person to enter or be on licensed premises, if they are intoxicated, violent, quarrelsome, or engaged in certain activities, including prostitution, using illicit substances, etc. These restrictions also deny licensees and clubs the opportunity to profit from these persons.
- 5.3.3 However, as has been pointed out earlier in this report, the costs of alcohol-related harm to the community – in terms of violence, anti-social behaviour, crime, and health and social problems – are significant. Therefore, the benefits of responsible service of alcohol and harm minimisation requirements to the public overall – in terms of minimising alcohol-related harm to individuals and the community and encouraging the responsible service and consumption of alcohol – are considered to vastly outweigh the costs to licensed venues and individuals.

Restrictions on minors

- 5.3.4 The legislation prohibits a licensee or club from selling or supplying liquor to a person under the age of 18 years, and prohibits the presence of minors on licensed premises and clubs, except in limited circumstances. Licensees and clubs are also prohibited from allowing a person under the age of 18 years to sell or supply liquor.

- 5.3.5 Such a restriction has two types of consequences. First, it denies licensees and clubs the capacity to employ persons under the age of 18 years, and employers may therefore face higher labour costs than would otherwise be the case. Second, young people could have fewer employment and socialising opportunities.
- 5.3.6 The major benefit is that under-aged persons, who may not always understand their own best interests and/or account for their impact on others, are discouraged from drinking or being on licensed premises. It can also be argued that under 18s are not mature enough to make required decisions on selling liquor. Further, there is a strong community expectation that under-aged drinking should be discouraged on the social policy grounds of harm minimisation and protection of local amenity.
- 5.3.7 Finally, the likely impact on competition of restrictions that support the community's social standards is “contained” because these provisions must be observed by all licensees and clubs.

5.4 Restrictions on market entry

The licensing system

- 5.4.1 The current liquor licensing system restricts who can own or operate a business, and therefore controls the number of operators (and potential competition) within the liquor industry. It creates barriers to entry for certain types of businesses, particularly hotels, liquor stores and nightclubs.
- 5.4.2 The current system also denies entry where the applicant for a licence (or the applicant's associates) is not considered a fit and proper person or does not have an adequate knowledge of the liquor laws. Finally, entry into the market is governed by the outcome of the application process, as well as the costs associated with obtaining a licence. However, once a licence is obtained, it can become a valuable asset.
- 5.4.3 Restrictions on how and where certain types of liquor businesses may be operated are a characteristic of the current system. For example, mixed small businesses, convenience stores and petrol stations can only apply for and be granted a liquor licence in very limited circumstances. There is a legal requirement that the take away liquor operation must be physically separated from the primary purpose of the business (a requirement applying to all retail liquor stores, including supermarkets), and applications for a licence cannot be granted if other takeaway liquor facilities are available and/or there are concerns about alcohol-related harm.
- 5.4.4 The current licensing system imposes additional costs on businesses (through their need to comply with its requirements), and consumers have fewer licensed premises to choose from (because market entry is restricted or denied in certain circumstances).
- 5.4.5 However, the unregulated sale of liquor has the potential to cause significant harm to the community. In addition, the requirement for probity checks relating to licence applications is an important integrity measure. Further, a licensing system allows issues such as minimising alcohol-related harm to be considered before the sale of liquor is permitted, so that problems are not allowed to develop unchecked before action is taken.
- 5.4.6 A licensing system also allows more effective action to be taken if a liquor seller or supplier does not operate in a responsible manner and to a standard expected by the community, through encouragement and/or by facilitating their removal from the market.
- 5.4.7 For these reasons, the benefits of some form of licensing system to the community as a whole are likely to outweigh the costs involved.

Removal of licences

- 5.4.8 The removal of a licence to another location, once granted in respect of a particular venue, is restricted, or in some cases expressly prohibited, by the legislation. For example, a restaurant licence cannot be removed, unless it is also subject to a dine-or-drink authority, in which case the licence can only be moved to other premises in the immediate area. The removal of a nightclub licence or an Australian wine licence is restricted to the immediate area of the existing licensed premises, whereas a caterer's licence cannot be removed at all.
- 5.4.9 A restriction applies to the removal of an hotelier's licence and a retail off-licence in that an application for their removal cannot be granted by the Court unless satisfied that the removal of the licence will not detrimentally affect the interests of the public in the neighbourhood of the premises from which it is proposed to remove the licence.
- 5.4.10 While these restrictions might seek to minimise harm and protect the interests of the local community, the substantial difficulties and costs associated with removing a licence, or the prohibition on removal, create an obvious barrier to entry. These restrictions could well have the effect of increasing the market price of existing licences, although not necessarily the price of services supplied. In most other industries, competitive market forces determine the process of industry adjustment. Further, most other Australian jurisdictions provide for the removal of liquor licences.
- 5.4.11 However, provided removal of a licence is optional across all licence categories, and other current related barriers to market entry are addressed, there may be benefits to licensees in seeking to remove an existing licence rather than applying to have a new licence granted.

"Needs" and "public benefit" tests

- 5.4.12 Clearly, community interest provisions are warranted in a comprehensive licensing system. However, these provisions must be targeted and effective in reducing harm.
- 5.4.13 The current system relies partly on two statutory "tests" to achieve this objective. The "needs" test allows people who would be affected by a licence application to make objections on the ground that the needs of the public are met by existing facilities. The "public benefit test", which applies to nightclub applications, is aimed at allowing local issues to be considered when a new nightclub is proposed.
- 5.4.14 These statutory tests seek to protect community interests by controlling the number of licensed premises (i.e. supply) in any one neighbourhood, and thus it is thought the level of consumption and alcohol-related problems. However, these tests can raise issues that are more appropriately dealt with through planning controls over land use exercised by local councils or other local consent authorities, which extend to the location of licensed premises and the activities they may carry out.
- 5.4.15 Whether these tests succeed in protecting community interests, or are the most appropriate way to promote the harm minimisation objectives of the legislation, is open to question. The majority of "needs" objections are made by existing or potential business operators who understandably have a desire to limit competition. Industry representatives who support the continuation of "needs" objections point to licensed businesses "doing their bit" to protect the public interest by taking such objections (while acknowledging that they are also seeking to protect their own commercial interests).

- 5.4.16 However, the review considers that it is inappropriate that the community should rely on action taken by commercial objectors to protect the public interest, even though those objectors may have the community's interests at heart. It is preferable that the public interest is promoted by those charged with protecting it – i.e. the Government agencies and community groups which represent the community.
- 5.4.17 Further, it has been suggested to the review that the pattern of alcohol use, the environment in which drinking occurs, and the management practices of a licensed venue, are more important determinants of harm than the number of outlets. The review does acknowledge evidence that outlet density is one factor in the level of alcohol-related harm in a community (among many others). However, if outlet density is an issue it should be specifically considered in the application process as an amenity and welfare issue, rather than a commercial impact issue.
- 5.4.18 From a competition policy perspective, the best form of industry regulation is that which meets the objectives of the legislation, while imposing the least possible burden and transaction costs upon the businesses which compete or wish to compete in that industry. In the current liquor licensing system, the statutory tests create a very significant barrier to market entry and represent a restriction on competition. At a minimum, the delay to applications associated with "needs" based objections imposes very significant legal costs on applicants and objectors.
- 5.4.19 Last year, the Australian Competition and Consumer Commission commenced an investigation into alleged anti-competitive agreements between new operators of hotel and retail liquor outlets and established operators to share sections of the NSW marketplace. This investigation followed complaints that in some situations applicants for liquor licences, when faced with significant financial losses from delays while a competitor's objections are waiting to be heard by the Court, may have agreed to certain restrictions (proposed by that competitor) on their future trading activities. It is understood that, in some cases, aspects of these restrictions may have subsequently been applied as conditions on the applicant's liquor licence by the Licensing Court. According to the investigation, in return for the alleged agreement to restrict the applicant's future trading activities, the competitor agreed to withdraw the objection.
- 5.4.20 Agreements by businesses not to compete with each other are generally unlawful and the ACCC is concerned that some of the alleged agreements of which it is aware may breach the Trade Practices Act 1974. The ACCC also expressed concern that consumers may have been forced to pay higher prices for take-away liquor in many local areas, including rural and regional areas, as a result of these alleged agreements – plus consumers have had lesser choice and convenience due to fewer competing liquor outlets.
- 5.4.21 It is clear that much of the benefits of the current "needs" and "public benefit" test arrangements have flowed to existing operators of liquor businesses. Any restriction on the number of licensed premises in a given local area would obviously help to protect the market share held by existing licensees.

Cost of applications

- 5.4.22 The licence application process described in Chapter 4 is highly prescriptive and complex, with an element of duplicated or very similar functions being performed by the Court and local government. The inflexibility of a court system also means that all proposals irrespective of their nature or risk must go through the same process. The application of a court system to a business licensing regime has also limited flexibility and scope for innovation: for example the use of new business licensing technology such as the Internet to lodge applications.

- 5.4.23 The time and cost of getting a licence application through this process, especially when objections are involved, act as a barrier to entry and restrict the industry's ability to adapt to changing market conditions. Typically, an applicant for a licence incurs significant legal expenses, and there can be a lengthy period between lodgement of an application and its determination by the Court, during which an opportunity cost can be incurred.
- 5.4.24 Also, the review notes advice that many applications are subject to objections intended solely to frustrate and/or delay a potential competitor. While the Court has issued various "Practice Directions" to address these tactics, it would be preferable if the licensing system were better able to prevent such objections adding to the costs of an application.
- 5.4.25 The cost of the application process also means that resources that could be used by a business operator to improve standards and service for consumers must instead be allocated to that process (a similar situation applies to the licensing authority). The same level of protection of the public interest could be achieved with a much more simple and efficient process.
- 5.4.26 Once the Court grants a liquor licence, a one-off fee must be paid before the licence is issued and trading can commence. These fees vary significantly depending on the type of licence involved. These entry costs are often substantial, with a greater relative impact on the cash flow of smaller businesses. Overall, the high entry costs pose a deterrent to future industry growth and development.
- 5.4.27 The Board determines fees for hotel and bottle shop licences on a case-by-case basis after consideration of factors such as the size, location, nature and scale of the business, and the fees paid by other hotel or bottle shop licensees in the area. While the calculation of fees in this way may be indicative of the value of these licences, it creates uncertainty that may act as a barrier to new entrants. The high cost associated with licences may also result in some venues adopting irresponsible trading practices in order to recoup those costs in the shortest possible time.
- 5.4.28 Given the significant barrier to entry associated with these costs, it is clear that the current liquor licensing process needs to be streamlined. This could be achieved by moving to a faster, less expensive licensing approach based on risk assessment in certain circumstances, and cutting back on unnecessary paperwork.

5.5 Restrictions that constrain market conduct

Licence categories

- 5.5.1 Licence categories are anti-competitive in so far as they restrict the range of business activities to be carried out on the licensed premises to those defined by the licence. This could impose a relatively high opportunity cost on those businesses wishing to capitalise on new market opportunities or innovative ways of service delivery. Consumers may have a more limited mix of services at the point of sale. Licence categories also tend to limit competition between businesses holding different types of licences.
- 5.5.2 To avoid the constraints of particular types of licences, a licensee has the option of applying for another type of licence, but this process is expensive, the outcome is uncertain, and some features of the existing licence may not be available.

- 5.5.3 In terms of associated benefits, it is often argued that different types of liquor outlets have different potential for harm, and licence categories are necessary to manage these differences in a targeted way. The licence categories would also help to protect local amenity by facilitating local planning decisions. In order to protect community interests, it is necessary that the intended nature of the business be identified. However, under a simplified system of licence categories, some harm reduction measures could be agreed at the local community level through local council planning processes.
- 5.5.4 Although the use of different licence categories is likely to have a net public benefit, it is clear that licensed premises need more flexibility to respond to changing industry conditions and consumer demands. This is not just a matter of modifying the number of licence categories, but also considering the conditions that may attach to each category.

Licence conditions

- 5.5.5 The evidence suggests that conditions on licences serve a useful public purpose, such as assisting with the policing of licensed premises, if they are aligned with the objects of the legislation. There are also attractions in the considerable flexibility that exists through the setting and application of licence conditions.
- 5.5.6 From a competition policy perspective, the conditions attached to individual licences are anti-competitive in so far as they determine how a business is operated. Some conditions imposed on licences exist merely to maintain the distinction between licence categories. Others are highly restrictive and do not necessarily relate to the objects of the legislation. Restrictions applying to trading hours (see below), table and seating arrangements, and how and where liquor may be supplied on the premises, are often cited as examples of unjustifiable regulation. Issues related to the premises themselves, such as the standard of toilets in restaurants, overlap with the local government planning process.
- 5.5.7 Current licence conditions and restrictions prevent certain types of businesses – such as “bed and breakfast” accommodation venues, holiday farms, and innovative types of hospitality venues – from selling liquor. Conditions also restrict the operation of businesses so that they cannot meet evolving community desires or adapt to industry changes – one example being the conditions currently applying to vignerons which have not kept up with significant changes in the winemaking and tourism industries.
- 5.5.8 If a licensee wishes to conduct activities falling outside the terms and conditions of the licence, then an application must be made for an additional licence that specifically entitles the licensee to conduct those activities. The opportunity cost of foregone income, and the high cost of obtaining further approvals, could well discourage or prevent the business operator from responding to new or innovative business opportunities or operating the business in a more flexible way. This, in turn, means that consumers may experience a limited range of services and/or added costs.

Restrictions on trading hours

- 5.5.9 Restricted trading hours have been in place for many decades to promote harm minimisation and protection of local amenity. It is clear that unrestricted trading hours for all licensed premises would involve a net public cost, particularly in terms of the impact on the amenity of local neighbourhoods. The Liquor Act prescribes hours during which liquor venues may trade. Although extensions are granted by the Court on a case-by-case basis, extended trading is generally not an automatic right – except in the case of registered clubs where trading hours are generally not restricted by the liquor laws (although they may be restricted under the club’s rules).

- 5.5.10 Restrictions on trading hours are inherently anti-competitive. First, consumers are offered a restricted range of purchasing times generally. Second, the hours prescribed by the legislation may not coincide with those that may be sought by individual licensees on purely commercial grounds, if they had the opportunity to do so. Third, there are costs involved in applying for extended trading hours. And fourth, the impact of restricted trading hours is not neutral on all licensees. Some types of venues are, as a general rule, lawfully permitted to trade for longer periods than others undertaking essentially the same activity, and this variation could affect competition.
- 5.5.11 Again, in undertaking any reform of the current system, a balance must be found between dealing with onerous and inconsistent trading restrictions on the one hand, and preserving local amenity, promoting responsible drinking and harm reduction objectives on the other.

5.6 Restrictions on the management of registered clubs

- 5.6.1 The Registered Clubs Act contains liquor control requirements that are, in many respects, the same as or similar to provisions in the Liquor Act. The Act also includes a range of club management provisions.
- 5.6.2 As a club is a body or association of persons established for a common purpose, there is merit in regulating club management from the community perspective. However, the current legislative approach has the potential to create additional compliance costs.
- 5.6.3 It is clear that the duties and responsibilities of club directors and secretaries under the Registered Clubs Act superimpose the requirements of the Corporations Act and other legislation affecting clubs (which are either corporations or co-operatives). A standard governance framework therefore applies to all clubs, irrespective of their size and the degree of responsibility and risk involved. This can place an undue burden on smaller clubs, and it has therefore been suggested that there could be some benefit in having a tiered approach based on the varying complexity of clubs.
- 5.6.4 The legislation imposes a string of requirements that must form part of a club's rules. It also lays down requirements that should be met by an association applying to become a registered club. The requirements include membership conditions, the application of revenues, the keeping of accounts and records, as well as other matters referred to in sections 10 and 30 of the Act.
- 5.6.5 Some of these requirements recognise that clubs are not intended to be public bars. Clubs exist to provide facilities for members and their guests, rather than the public at large. While posing a restraint on competition, this stipulation is seen as an essential point of distinction between a club and other licensed premises.
- 5.6.6 It is important to note that clubs generally have more beneficial gaming opportunities, which can generate significant revenue for the club. In return, it is vital that proper systems of control and accountability are in place to protect this revenue and ensure it is utilised in the interests of club members and the community, and that the activities of clubs are undertaken in a way that does not erode members' interests.
- 5.6.7 Most present day clubs were constituted as a corporation under the Corporations Act or its predecessors. The remainder were constituted as co-operatives, and there are still about 100 of these clubs today. The review considers that the continued existence of co-operative clubs does not generally represent a restriction on competition at this time.

ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE LIQUOR AND REGISTERED CLUBS ACTS						
Restriction	Objective	Costs	Benefits	Submissions	Analysis	Recommendation
RESTRICTIONS THAT SUPPORT THE COMMUNITY'S SOCIAL STANDARDS						
Responsible service of alcohol and harm minimisation requirements	Minimise alcohol-related harm to individuals and the community as a whole.	<p>Licensees and clubs are denied the opportunity to profit from certain persons who the community expects not to be served/supplied.</p> <p>Places certain burdens on licensees and clubs thereby resulting in them having to incur additional costs.</p> <p>Members of the public are denied the opportunity to behave in a certain way.</p>	<p>Alcohol-related harm (and its associated costs) to individuals and the community is minimised by encouraging the responsible service and consumption of alcohol, and responsible conduct of licensed venues.</p> <p>Local amenity is enhanced.</p>	Submissions strongly supported the continuation of these restrictions.	<p>The review agrees that the community would strongly oppose the removal or weakening of these restrictions, and that the likely impact on competition of these restrictions is "contained" because they must be observed by all licensees and clubs.</p> <p>The review considers that the benefits associated with these restrictions very much outweigh the costs, and therefore recommends they continue.</p>	Existing principles of responsible service of alcohol and harm minimisation continue to apply to persons and entities involved in the sale, supply and service of liquor in NSW.
Restrictions on minors	Minimise alcohol-related harm to minors, and minors' exposure to alcohol.	<p>Licensees and clubs are denied the opportunity to profit from sales made to minors.</p> <p>Licensees and clubs are denied the capacity to employ minors, and may therefore face higher labour costs than would otherwise be the case.</p> <p>Young people have fewer employment and socialising opportunities.</p>	<p>Under-aged persons are discouraged from drinking or being on licensed premises.</p> <p>Alcohol-related harm to minors is minimised.</p> <p>Local amenity is enhanced.</p>	Submissions strongly supported the continuation of these restrictions.	<p>The review agrees that the community would strongly oppose the removal or weakening of these restrictions, and that the likely impact on competition of these restrictions is "contained" because they must be observed by all licensees and clubs.</p> <p>The review considers that the benefits associated with these restrictions very much outweigh the costs, and therefore recommends they continue.</p>	Existing restrictions on the sale, supply and service of liquor to and by minors continue to apply in NSW.

ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE LIQUOR AND REGISTERED CLUBS ACTS						
Restriction	Objective	Costs	Benefits	Submissions	Analysis	Recommendation
RESTRICTIONS ON MARKET ENTRY						
The licensing system	<p>Ensure that persons and venues involved in selling and supplying liquor meet and/or comply with certain standards.</p> <p>Ensure there is a public record of persons and venues authorised to sell and supply liquor.</p>	<p>Number of operators and competition is restricted.</p> <p>Entry to market is denied to certain persons.</p> <p>Restrictions apply to how and where liquor businesses may operate, resulting in increased compliance costs and/or lost business opportunities.</p> <p>Additional costs associated with having to apply for and operate under a licence, as well as costs associated with a court-based regime.</p> <p>Consumers have fewer licensed venues to choose from, and the diversity of venues may be restricted.</p>	<p>Alcohol-related harm to community is reduced (unregulated sale of liquor would not require venues to comply with minimum community standards).</p> <p>Enhances integrity of industry by ensuring that persons of questionable background are excluded.</p> <p>Allows harm minimisation issues be considered before permitting the sale of liquor, so that problems are not allowed to develop before action is taken.</p> <p>More effective action can be taken in cases of irresponsible behaviour or failure to meet standards.</p>	<p>Submissions strongly supported the continuation of some form of licensing system as best serving the community's and liquor industry's interests.</p> <p>However, a range of views was expressed on the exact nature of that system – from retention of the current court system through to a much more streamlined administrative system with no court involvement at all.</p>	<p>The review considers that some form of licensing system is necessary in order to achieve the objectives of the legislation.</p> <p>The review considers that the benefits of some form of licensing system to the community as a whole outweigh the costs involved.</p> <p>Further information is provided in Chapter 7.</p>	Some form of comprehensive liquor licensing system continue to apply in NSW.
Removal of licences	<p>Ensure local communities are not left without a hotel or liquor store.</p> <p>Support the integrity of the current licensing regime.</p>	<p>The market price of existing licences may be increased.</p> <p>Costs associated with obtaining a licence may be increased.</p> <p>It may be more difficult to obtain a liquor licence.</p>	<p>The needs of a local neighbourhood are considered before a hotel or retail liquor store licence is removed from that neighbourhood (particularly important in remote areas of NSW where hotels make a vital social and economic contribution to the community).</p> <p>The integrity of the existing licensing system is supported.</p>	<p>Many submissions supported the removal of these restrictions, subject to the nature of the licensing system to come out of the review. Concerns were expressed that local neighbourhoods not be disadvantaged by any changes.</p> <p>Other submissions supported the maintenance of the current liquor licensing system overall, and as a consequence, the retention of these restrictions, which were considered necessary to support the value of a liquor licence and the needs of local neighbourhoods.</p>	<p>The review notes restrictions on the removal of liquor licences are intimately associated with the nature of the licensing system.</p> <p>The review also notes that, provided removal of existing licences is optional rather than mandatory, there should be no adverse effects on competition.</p> <p>Therefore, the review considers that removal of licence provisions should be retained if the other recommendations contained in this Report are accepted and implemented.</p>	Removal of licence provisions be retained, as an option that existing licensees may wish to use depending on the particular circumstances of their case.

ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE LIQUOR AND REGISTERED CLUBS ACTS						
Restriction	Objective	Costs	Benefits	Submissions	Analysis	Recommendation
"Needs" and "public benefit" tests	<p>Limit the number of hotel and retail liquor outlets in a neighbourhood.</p> <p>Limit alcohol-related harm in a neighbourhood.</p>	<p>Very significant barrier to market entry.</p> <p>Delays to applications associated with "needs" based objections generally result in significant legal costs for applicants and objectors.</p> <p>Protects existing operators from potential competition.</p> <p>Consumers have fewer licensed venues to choose from.</p> <p>Industry innovation and the diversity of venues may be restricted.</p>	<p>Number of licensed venues associated with potential alcohol-related problems in a neighbourhood is reduced.</p>	<p>There was strong support for the restriction from industry associations representing existing registered clubs, liquor stores and hotels. Those associations felt that the restriction helps to protect existing investments. Also, independent liquor store and hotel submissions suggested that the "needs" test must be retained to promote competition, and that its removal would result in a lessening of competition as it would allow "chain" operators to gain a much greater share of the market.</p> <p>Clubs also felt that their "special place" in the community (non-profit organisations providing assistance to communities) means they are deserving of some form of protection from increased competition.</p> <p>Other submissions called for the restriction to be removed, as it represents a very significant and unnecessary barrier to entry and restriction on competition. Those submissions commented that the liquor harm minimisation objectives of the legislation could be achieved through more effective provisions that do not allow commercially based objections to become barriers to entry.</p>	<p>The review considers that much of the benefits of the current "needs" and "public benefit" test arrangements have flowed to existing operators. Any restriction on the number of licensed venues in an area obviously helps to protect the market share of existing operators.</p> <p>The review notes there are circumstances where the "needs" test has been manipulated by existing businesses to exclude new operators, with little or no public benefit from the outcome.</p> <p>The review is not convinced that the restriction is an effective harm minimisation measure, as it did not prevent the Government having to introduce a raft of significant liquor harm minimisation laws in 1996.</p> <p>The review considers that the costs to the public of this restriction in its current form outweigh the benefits. The review feels that an amended "public benefit" test that considers the social impact of an application is a better model for dealing with harm minimisation and local amenity/resource issues, and should be considered – with appropriate changes – as a replacement for the "needs" test.</p>	<p>The "needs" and "public benefit" tests be phased out over a suitable period and replaced with provisions which focus on liquor harm minimisation and protection of the local amenity, and do not allow consideration of the economic impact of applications on existing businesses.</p>

ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE LIQUOR AND REGISTERED CLUBS ACTS						
Restriction	Objective	Costs	Benefits	Submissions	Analysis	Recommendation
Cost of applications associated with current licence application system	Consequence of the current licensing regime	<p>Current licence application process is highly prescriptive and complex.</p> <p>Inflexibility means that all proposals must go through the same process.</p> <p>Court system tends to limit innovation.</p> <p>Applicants can incur significant legal costs, and there may be lengthy application periods during which an opportunity cost can be incurred.</p> <p>Resources that could be used to improve standards and service for consumers must instead be allocated to the application process.</p> <p>Significant one-off fees and application costs result in substantial entry costs, which are a deterrent to industry development and flexibility.</p> <p>Fees for hotel and retail licences determined on a case-by-case basis, leading to uncertainty and a barrier to entry.</p> <p>High cost associated with licences may result in some venues adopting irresponsible trading practices.</p>	<p>Thorough liquor licensing regime in which the public has a high level of trust and comfort.</p> <p>Enhanced stability and integrity of industry operators.</p>	<p>Some submissions disputed the level of costs claimed to be associated with the current licence application system, expressing the view that those costs are appropriate and are a relatively minor component of the (significant) setup costs of a business.</p> <p>Those submissions – which were made by representatives of existing operators – tended to support the existing system as being an appropriate means of supporting the objectives of the Acts, and helping to maintain stability and certainty in the market.</p> <p>Other submissions pointed to the significant costs associated with the application process as generally being excessive and unnecessary. Those submissions supported a streamlining of the process so that costs are significantly reduced</p>	<p>The review considers the costs associated with the current application regime are a significant barrier to entry, and the process needs to be streamlined by moving to a faster, less expensive licensing system based on risk assessment, and cutting back on unnecessary paperwork.</p> <p>The review therefore recommends that the licence application system move to a more administrative approach.</p>	The licence application system move to a more administrative approach.

ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE LIQUOR AND REGISTERED CLUBS ACTS						
Restriction	Objective	Costs	Benefits	Submissions	Analysis	Recommendation
Restrictions applying to drive-in cinemas, convenience stores and service stations	<p>Ensure the takeaway liquor sales area is separate from other areas in certain retail stores, thereby assisting with supervision and compliance.</p> <p>Ensure convenience stores and service stations may only sell takeaway liquor in exceptional circumstances.</p> <p>Reduce the potential for access to liquor by minors through less supervised liquor sales.</p> <p>Reduce the potential for drink driving.</p>	<p>Operators of retail liquor stores are forced to incur additional costs in setting up a dedicated liquor sales area.</p> <p>Certain business operators are denied the opportunity to apply for a liquor licence.</p> <p>Consumers have fewer licensed venues to choose from, and the diversity of venues may be restricted.</p>	<p>Public perception of liquor as a “special product” that may cause harm to the community and therefore necessitates special controls is supported.</p> <p>Potentially higher level of supervision over take away liquor sales.</p> <p>Reduced potential for drink driving and alcohol-related harm.</p>	<p>Some submissions made on behalf of existing licensees supported the retention of current restrictions as appropriate in terms of minimising access to alcohol by minors and ensuring responsible service of alcohol.</p> <p>Submissions from those wishing to enter the market supported a relaxation or removal of these restrictions given their anti-competitive nature.</p>	<p>The review notes concerns expressed in submissions and in the community about the sale of liquor from certain types of venues – such as convenience stores, service stations and drive-in cinemas – due to the attractiveness of these venues for minors, the association of drinking with driving, the potential for liquor to become an impulse purchase, and potential physical separation difficulties. The review also notes that allowing hundreds of service stations and convenience stores to sell liquor would significantly increase regulatory costs given the rise in the number of licensed venues.</p> <p>The review notes that the current law allows a liquor licence to be issued to a service station or convenience store only in isolated circumstances where there is a genuine community need, and that such situations already exist.</p> <p>The review agrees with the concerns expressed above about concern about proliferation of liquor licences in these types of venues.</p>	Current restrictions applying to the issue of retail liquor licences to convenience stores, service stations, and drive-in cinemas continue, and the social impact of liquor licences in these venues be assessed in future before further licences are granted.

ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE LIQUOR AND REGISTERED CLUBS ACTS						
Restriction	Objective	Costs	Benefits	Submissions	Analysis	Recommendation
Requirement that takeaway liquor sales be made from a separate area where primary purpose of business is not the sale of liquor.	<p>Ensure appropriate supervision of liquor sales.</p> <p>Reduce access to alcohol by minors.</p> <p>Contribute to harm minimisation focus of law.</p>	<p>Potential for some inconvenience for consumers.</p> <p>Additional compliance costs for business (including physical setup of separate area and staffing).</p>	<p>Better supervision of liquor sales area.</p> <p>More control by licensee over to whom liquor is sold/supplied.</p> <p>Less chance of impulse purchasing of liquor.</p>	<p>This requirement was referred to generally in some submissions.</p> <p>Some existing interests supported the continuation of the requirement, while others who are presently excluded from applying for a licence saw it as unnecessary.</p> <p>The requirement was supported by some regulators, while the Liquor Administration Board did not support its retention.</p>	<p>This provision can be said to prevent the “liquor next to the corn flakes” outcome in supermarkets.</p> <p>The review notes that strong community concerns have been expressed about liquor availability within supermarkets, and that existing controls have strong support. The review also notes that others do not support these controls, claiming that other less restrictive and costly controls can achieve the same outcomes.</p> <p>The review considers that the costs of these controls are not excessive, and that they have considerable benefit to the community in helping to minimise alcohol-related harm and ensuring proper supervision and control over alcohol sales. The review therefore considers that the benefits of this restriction outweigh the costs, and recommends the restriction be retained.</p>	<p>Continue the requirement that takeaway liquor sales be made from a separate area where the primary purpose of the business is not the sale of liquor</p>

ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE LIQUOR AND REGISTERED CLUBS ACTS						
Restriction	Objective	Costs	Benefits	Submissions	Analysis	Recommendation
RESTRICTIONS THAT CONSTRAIN MARKET CONDUCT						
Licence categories	<p>Ensure industry and public can adequately differentiate between different types of licensed venues.</p> <p>Assist with enforcement of licence requirements.</p> <p>Protect benefits of certain licence types.</p>	<p>Licence categories are anti-competitive as they restrict the range of business activities.</p> <p>Can impose a high opportunity cost on those businesses wishing to capitalise on new market opportunities.</p> <p>Consumers have a more limited mix of services.</p> <p>Licence categories can limit competition between businesses.</p>	<p>Different types of liquor outlets have different potential for harm, and licence categories help to manage these differences in a targeted way.</p> <p>Helps to protect local amenity by facilitating local planning decisions.</p> <p>Helps to protect community interests by clearly identifying intended nature of the business.</p> <p>A standardised system of licence requirements assists with enforcement.</p>	<p>Submissions to the review supported some system of licence categories because of the need to differentiate between types of venues, protect investments made in the industry, and assist with enforcement of the law. The suggestion in the Discussion Paper that the number of categories be reduced to seven was generally supported.</p>	<p>The review considers that the protection of community interests requires that the intended nature of a business be identified.</p> <p>The review also considers that the use of different licence categories is likely to have a net public benefit, although more flexibility to respond to changing industry conditions and consumer demands is required.</p> <p>The review considers that the suggestion in the Discussion Paper of a reduction in licence categories to seven is appropriate, and notes that this would result in the replacement of Governor's and special event licences with a licence dealt with through an administrative procedure.</p>	<p>Distinctive liquor licence categories continue, with the number of categories reduced to seven.</p>

ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE LIQUOR AND REGISTERED CLUBS ACTS						
Restriction	Objective	Costs	Benefits	Submissions	Analysis	Recommendation
Licence conditions	<p>Ensure industry and public can adequately differentiate between different types of licensed venues.</p> <p>Assist with enforcement of licence requirements.</p> <p>Protect benefits of certain licence types.</p> <p>Ensure sale and supply of liquor and operation of licensed venue is sensitive to local issues.</p>	<p>Conditions attached to individual licences are anti-competitive as they determine how the premises may be operated through restrictions applying to a range of activities and operations.</p> <p>Current licence conditions and restrictions prevent certain types of businesses from selling liquor (e.g. "bed and breakfast" accommodation venues, holiday farms, and innovative types of hospitality venues).</p> <p>Businesses cannot meet evolving community desires or adapt to industry changes (e.g. changes in the vigneron industry).</p> <p>The opportunity cost of foregone income, and the high cost of obtaining further approvals, could discourage or prevent business operators from responding to new or innovative business opportunities.</p> <p>Consumers may experience a limited range of services and/or added costs.</p>	<p>Greatly assists with the policing of licensed premises.</p> <p>Considerable flexibility exists through the setting and application of licence conditions.</p> <p>An efficient and effective mechanism for ensuring minimum standards of conduct to protect the community from alcohol-related harm.</p>	<p>Submissions to the review recognised the importance of licence conditions in terms of supporting the harm minimisation objective of the Acts, assisting with enforcement of the law, and providing appropriate flexibility.</p> <p>Some submissions expressed concern about the impact that greater flexibility through too many licence conditions may have on enforcement of the law.</p>	<p>The review considers that some licence conditions are necessary to clearly differentiate between licence categories, assist with enforcement of the law, and provide operators with some level of flexibility.</p> <p>The review is concerned that licence conditions not be so excessive and variable that they hinder enforcement of the law.</p> <p>Overall, the review considers that the benefits of licence conditions outweigh the costs. It therefore recommends that a core set of licence conditions continue to apply to each category of licence, that those conditions be made as simple as possible, and that the licensing regime be flexible enough so there is no need for excessive conditions to meet the objectives of the Act.</p>	<p>A core set of licence conditions continue to apply to each category of licence, and those conditions be made as simple as possible while also being flexible enough so there is no need for excessive conditions to meet the objectives of the Act.</p>

ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE LIQUOR AND REGISTERED CLUBS ACTS						
Restriction	Objective	Costs	Benefits	Submissions	Analysis	Recommendation
Restrictions on trading hours	<p>Minimise alcohol-related harm to the community.</p> <p>Protect amenity of local neighbourhoods.</p> <p>Assist with enforcement of the law.</p>	<p>Consumers are offered a restricted range of purchasing times generally.</p> <p>The hours prescribed by the legislation may not coincide with those desired by individual licensees on purely commercial grounds.</p> <p>There can be significant costs involved in applying for extended trading hours.</p> <p>The impact of restricted trading hours is not neutral on all licensees, with some types of venues lawfully permitted to trade for longer periods than others undertaking essentially the same or similar activity.</p>	<p>Alcohol-related harm is minimised given that research indicates alcohol-related problems in and around licensed venues are more likely to occur late at night and in the early morning.¹¹</p> <p>The amenity of the local neighbourhood is protected, particularly during sensitive times of the night when most residents are sleeping.</p> <p>Enforcement of the law is easier and more efficient with standardised trading hours.</p> <p>Less community resources are required to supervise venues.</p>	<p>There were considerable differences in submissions. Most supported standard hours set down in the law with an opportunity to apply for extended hours, while submissions from the club industry supported the current position where club trading hours are generally not restricted.</p> <p>On the issue of extended trading, some submissions (including from the Police) supported a renewal system where the impacts of extended trading would be regularly assessed. Other submissions were opposed to this approach, and supported the current system.</p>	<p>The review notes that widely differing views were expressed in submissions relating to trading hours.</p> <p>The review is aware that the Department of Gaming and Racing and local police have expressed the view that extended trading is associated with a higher degree of disturbance to the neighbourhood and anti-social behaviour, due to increased levels of alcohol consumption by patrons, and the increased sensitivity of neighbourhoods to disturbance in the early morning hours.</p> <p>The review considers that the benefits to the community of restrictions on trading hours greatly outweigh the costs, and recommends that limited hours continue to apply to most licensed venues.</p>	<p>Limited trading hours continue to apply to most licensed venues.</p> <p>These trading hour arrangements should be closely monitored, and further reviewed if necessary.</p>

¹¹ In a submission to the Review, Mr Neil Donnelly (NSW Bureau of Crime Statistics and Research) and Professor Tim Stockwell (National Drug Research Institute, Curtin University of Technology) refer to recent Australian research in both the Northern Territory and Western Australia demonstrating that extended trading hours for hotels and nightclubs is associated with increased levels of problems (such as public disorder, assaults in and around licensed venues, and alcohol-related road crashes). The submission also refers to a recent study conducted by the Bureau of Crime Statistics and Research which found that inner-Sydney hotels which had higher numbers of recorded on-premises assaults were also more likely to have extended trading hours.

**Final Report – NCP Review of the Liquor & Registered Clubs Acts
Restrictions on Competition**

ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE LIQUOR AND REGISTERED CLUBS ACTS						
Restriction	Objective	Costs	Benefits	Submissions	Analysis	Recommendation
Restrictions on sub-letting of the right to sell liquor or of the licensed premises	<p>Ensure licensees and clubs retain adequate control over the sale and supply of liquor.</p> <p>Ensure that persons who have not been subject to probity and fitness testing cannot sell and supply liquor.</p>	<p>Licensees and clubs may not be able to take advantage of cost savings and/or increased income from sub-letting their venues.</p> <p>Reduced flexibility for licensees and clubs in the way they operate their businesses.</p>	<p>Licensee or club is responsible for the conduct of the sale and supply of liquor, and can be held to account.</p> <p>There is proper supervision of the sale and supply of liquor by an appropriately qualified and approved entity.</p>	Submissions to the review Discussion Paper did not specifically refer to this restriction.	<p>The review considers that this restriction is necessary to ensure licensees have adequate control over their premises, and are actually involved in the sale/supply of liquor. The review also believes that to remove this restriction would allow untested and unqualified persons to sell and supply liquor, thereby undermining other controls in the liquor licensing process.</p> <p>The review considers that the benefits of this restriction outweigh the costs, and recommends that it should continue.</p>	Existing restrictions on the sub-letting of premises continue.
Restrictions on applications for another licence where an application for a retail licence has previously been refused on "needs" grounds	<p>Ensure that public resources are used efficiently.</p> <p>Support the "needs" test provision of the Act.</p> <p>Ensure objectors are not frequently harassed by frivolous applications</p>	<p>Consumers may be denied increased competition and choice.</p> <p>Building owners may be denied income from leasing their premises.</p>	<p>Public resources are not wasted dealing with applications that have little or no prospect of being approved.</p> <p>Enhanced stability for existing licensees.</p>	This issue was briefly referred to in a submission to the review, where the benefits of prohibiting further applications for a retail licence for 2 years where an application is refused was questioned.	<p>The future of this restriction is intimately associated with the future of the "needs" test. If the "needs" test is not retained, this restriction should no longer be necessary.</p> <p>However, the review also recognises that the restriction can prevent a waste of public resources and concerns resulting from frequent applications which have little chance of success.</p> <p>The review considers that the costs of this restriction as it is currently applied outweigh the benefits, and therefore recommends that it should be replaced with a restriction that is more sensitive to community and competition needs.</p>	Existing restrictions on applications for another licence where an application for a retail licence has previously been refused be replaced with restrictions that are more sensitive to community and competition needs.

ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE LIQUOR AND REGISTERED CLUBS ACTS						
Restriction	Objective	Costs	Benefits	Submissions	Analysis	Recommendation
Restrictions on applications for another licence where a restaurant, theatre, or caterer's licence has been cancelled	Prevent hidden interests from continuing to operate a business after it has been closed because of disciplinary action.	Consumers may be denied increased competition and choice. Building owners may be denied income from leasing their premises.	Hidden interests are not able to continue to profit from a licensed venue following serious disciplinary action.	A submission from the restaurant sector recommended that this provision be abolished.	This restriction supports the disciplinary measures in the Act. However, it may unnecessarily disadvantage "innocent" premises owners, and contribute to community degradation. The review considers that the costs of this restriction outweigh the benefits, and recommends that it should be replaced with a restriction that is more sensitive to community and competition needs.	Existing restrictions on applications for another licence where a restaurant, theatre, or caterer's licence has been cancelled be replaced with restrictions that are more sensitive to community and competition needs.
RESTRICTIONS ON THE OPERATION AND MANAGEMENT OF REGISTERED CLUBS						
Application of a standard governance framework to all clubs, irrespective of the size of the club and degree of responsibility and risk involved.	Ensure appropriate controls apply to all clubs to protect members' interests. Ensure consistency in club governance. Achieve a level playing field between clubs.	Can place an undue cost burden on smaller clubs.	Members' interests are protected. Common governance framework can assist with education of directors/club staff who may be employed by a number of clubs over time. Standardised requirements are easier for regulators and club members to appreciate and administer.	There was strong support for the maintenance of a separate and comprehensive club governance framework which recognises the "special position" of clubs as non-profit entities owned by their members. There was some support from club industry representatives for a tiered governance framework so as to minimise compliance costs for smaller clubs. However, other club industry representatives opposed such a change.	The review acknowledges that the current "one size fits all" governance framework may be seen as a burden for smaller clubs. However, the review also acknowledges that standardisation has benefits in terms of protecting members' interests, and the club industry has not been able to clearly detail how a tiered approach may operate. There appears to be no agreement on the detail of a tiered structure. The review therefore considers that the benefits of this restriction outweigh the costs, and recommends that the current governance framework be maintained.	All clubs continue to be subject to a comprehensive governance framework to protect members' interests.

**Final Report – NCP Review of the Liquor & Registered Clubs Acts
Restrictions on Competition**

ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE LIQUOR AND REGISTERED CLUBS ACTS						
Restriction	Objective	Costs	Benefits	Submissions	Analysis	Recommendation
Standard requirements to be met by an association applying to become a registered club (including membership limits and requirements, reasons for establishment, need for accommodation, need for a proper bar, restrictions on operating a take-away liquor outlet, annual reporting requirements, restrictions on having a financial interest in a hotel, etc).	<p>Ensure appropriate controls apply to all clubs to protect members' interests.</p> <p>Ensure consistency in club governance.</p> <p>Achieve a level playing field between clubs.</p>	<p>May prevent some clubs obtaining a certificate of registration.</p> <p>May unduly restrict the operation of some clubs.</p> <p>Potential for increased application and compliance costs.</p>	<p>Integrity of club registration system is protected.</p> <p>Provision of certain benefits to the club sector is supported.</p> <p>Members' interests are protected.</p> <p>Members have access to appropriate information about their club.</p> <p>Corruption and inappropriate influence of Directors is minimised.</p> <p>Alcohol-related harm to members and the community is minimised.</p>	<p>There was strong support for the maintenance of separate and comprehensive requirements to apply to clubs which recognise the "special position" of clubs as non-profit entities owned by their members.</p> <p>Submissions also pointed to the need for simplification of the law, application requirements, and the licensing system.</p> <p>One submission from club industry representatives called for restrictions on the operation of drive-through take-away liquor facilities and having a financial interest in a hotel to be lifted.</p>	<p>The review considers that standard requirements are appropriate to ensure the integrity of clubs and the registration system. However, the current requirements need to be simplified and updated, and certain requirements may be unnecessary.</p> <p>The review considers that the overall benefits of these restrictions outweigh the costs, and therefore recommends that the restrictions be maintained with appropriate changes to minimise their impact on competition.</p>	Maintain standard requirements to be met by an association applying to become a registered club, with appropriate changes to minimise their impact on competition.
Imposition of certain requirements that must form part of a club's rules (including membership requirements and requirements concerning election of office holders, restrictions on entry to clubs, restrictions applying to minors, restrictions on advertising, etc).	<p>Ensure appropriate controls apply to all clubs to protect members' interests.</p> <p>Ensure consistency in club governance.</p> <p>Achieve a level playing field between clubs.</p> <p>Protect the integrity of the club registration system.</p>	<p>May prevent some clubs obtaining a certificate of registration.</p> <p>May unduly restrict the operation of some clubs.</p> <p>Increased compliance costs.</p> <p>Reduced access to club premises by members of the public.</p>	<p>Integrity of club registration system is protected.</p> <p>Provision of certain benefits to the club sector is supported.</p> <p>Members' interests are protected.</p> <p>Alcohol-related harm to members and the community is minimised.</p> <p>Standard minimum set of rules assists with compliance and enforcement of the law.</p>	<p>There was strong support for the maintenance of current requirements applying to clubs, including minimum club rules as part of a separate and comprehensive regulatory system which recognises the "special position" of clubs as non-profit entities owned by their members.</p> <p>Submissions also pointed to the need for simplification of the law, application requirements, and the licensing system.</p>	<p>The review notes that the minimum rules applying to clubs have been developed over time to take account of the special needs of clubs and their members, and to support the integrity of the club registration system – including the special benefits available to clubs. The review also notes that the rules apply to all clubs, and their impact on competition within the club industry is "contained".</p> <p>The review considers that the benefits of these restrictions outweigh the costs, and recommends they be retained.</p>	Maintain the core set of requirements that must form part of a club's rules (including requirements concerning membership, election of office holders, restrictions on entry to clubs, restrictions applying to minors, restrictions on advertising, etc).

ANALYSIS OF COSTS AND BENEFITS OF CURRENT RESTRICTIONS ON COMPETITION IN THE LIQUOR AND REGISTERED CLUBS ACTS						
Restriction	Objective	Costs	Benefits	Submissions	Analysis	Recommendation
Operation of some clubs as a cooperative.	Recognise the historical differences in terms of how some clubs were created.	Increased administration and enforcement costs for government and industry given different compliance regimes.	Resources that would be required to be directed towards a changeover may be used for other purposes. Registration as a cooperative may be more suitable for some clubs.	Submissions recognised the benefits of changing cooperative clubs over to corporation clubs. However, it was noted there would be resistance from clubs due to concerns about changes to voting arrangements and the cost of changing the legal status from a co-operative. It was suggested that a simplified mechanism may reduce some of the resistance to conversion, and any mechanism would require education on new requirements, and need to reduce inconvenience and cost (suggest a “conversion pack” produced by Government for clubs).	The review notes that most present day clubs were constituted as a corporation under the Corporations Act or its predecessors. The remainder were constituted as a co-operative, and there are still about 100 of these clubs today. The review considers that the continued existence of co-operative clubs does not generally represent a restriction on competition, and that the future of these clubs is a matter to be considered separate to this review. The review therefore recommends that no action be taken in regard to this issue in the context of this review.	No action be taken in the context of this review in regard to the future status of “co-operative” registered clubs.

6. Alternative Approaches

6.1 Background

- 6.1.1 The Competition Principles Agreement requires the Government to demonstrate that the least restrictive form of intervention is being used to achieve the objectives of the legislation under review. The most common alternatives to comprehensive Government licensing of an industry are deregulation, self-regulation, co-regulation and negative licensing. These alternatives have been explored by the review, and the review's findings are presented below.

6.2 Deregulation

- 6.2.1 This alternative involves the removal of licensing altogether, with the result that any person or business, irrespective of their character or financial standing for example, would be able to sell liquor to, or operate a club for, any consumer or group of consumers. The performance and conduct of service providers would be determined by market forces and general consumer and land use legislation. Sources for consumer redress would include common law remedies, and remedies conferred by the *Fair Trading Act 1987* and other trade practices legislation.
- 6.2.2 Removal of the licensing system would increase competition within the industry and provide business opportunities for new entrants into the market.
- 6.2.3 However deregulation is not an appropriate policy alternative. The review considers that the costs to the community as a whole from total deregulation would outweigh the benefits that may accrue to individuals. The potential costs arising from deregulation would include a very significant lessening of local amenity and increase in alcohol-related harm. This view was supported in all submissions made to the review, and in the tenor of debate at the Alcohol Summit, as reflected in the Summit Communiqué..
- 6.2.4 There is a strong community expectation that the advances achieved so far by Government, industry bodies and consumer advocates, in terms of the responsible serving and consumption of alcohol and all forms of harm minimisation, must be preserved. These gains would be threatened by the absence of some form of regulation which compels those involved with the sale and supply of liquor to act responsibly and in the public interest (rather than purely in their own commercial interests), and allows effective sanctions to be applied where that does not occur.

6.3 Self-regulation

- 6.3.1 Self-regulation can take place when an industry association or body assumes responsibility for setting standards and supervising the conduct of persons involved in an industry, rather than the industry being regulated by government.
- 6.3.2 Self-regulation could increase competition within the industry and business opportunities for new entrants into the market. It can be an efficient means of regulation, and can help to improve and maintain the perception of an industry that is responsive to community attitudes and needs.
- 6.3.3 However, given the nature of the hospitality industry (i.e. a large industry with a wide variety of businesses competing in a uncertain market), and the harm that can be associated with liquor, the level of control over the sale and use of liquor through a self-

regulatory system would not satisfy industry, community and government expectations.

- 6.3.4 Practical difficulties and sector interests would make it difficult to determine a single industry association or body that should or could assume responsibility for standards and policing. There would be significant difficulties in ensuring compliance with standards and proper supervision of the industry on a day to day basis. The potential costs to the community from a lessening of regulation would include significantly increased harm to individuals and communities, as well as lower standards of conduct and operation.
- 6.3.5 Further, most of the key liquor industry associations have advised the review that they would not be prepared to take on the responsibility for standards and policing.

6.4 Co-regulation

- 6.4.1 A more advanced form of self-regulation is co-regulation, whereby the standards, codes of practice and other arrangements used to “regulate” businesses are developed through industry, consumer and government liaison. Generally, co-regulation would involve the industry in an open and competitive structure with reduced level of government regulation.
- 6.4.2 There are a number of ways in which co-regulatory options could be implemented. There may be substantial or total devolution of regulatory options to an industry association, requiring that body to take responsibility for enforcing its own code of practice. Government could seek to retain the power to invoke regulatory means in the event that an industry association is unable to satisfactorily manage its members.
- 6.4.3 In some co-regulatory models, there may be some transfer of government control to the co-regulatory body but there still must be a legislative base to enable prosecutions. There would need to be a parallel government regulatory body for non-affiliated operators and for an appeal mechanism from the industry body.
- 6.4.4 It can be argued that the liquor industry is already subject to a form of co-regulation and that important initiatives (e.g. the development and adoption of harm minimisation measures in the responsible serving of alcohol) have been achieved through collaboration. The current practice of involving various peak bodies in supporting these sorts of initiatives is encouraged.
- 6.4.5 However, for much the same reasons as detailed earlier in respect of a self-regulatory system, it would appear that co-regulation alone would not ensure comprehensive industry coverage and deliver outcomes acceptable to the community. This is particularly so in terms of ensuring compliance with standards and proper supervision of the industry on a day to day basis.

6.5 Negative licensing

- 6.5.1 Negative licensing is a regulatory regime whereby the Government establishes (through legislation) a set of core requirements for entry and continuation within an industry, but where there is no review or approval process prior to entry. The term “negative” refers to a disciplinary process that results in the exclusion or banning of an individual or entity from a particular area or marketplace. It is often an alternative to a licensing regime.
- 6.5.2 Where the legislative provisions governing conduct in an area of activity have been breached, one disciplinary option is to ban the offending party from operating in that area again.

- 6.5.3 Under this approach, there is no restriction on industry entry, other than for persons excluded for non-compliance with the legislation. Therefore, regulatory resources can be shifted away from the up-front licensing system to education, monitoring and enforcement efforts.
- 6.5.4 A viable complaints and disciplinary framework is paramount for the operation of a negative licensing scheme. Reporting, investigation and audit systems are also required to effectively identify non-compliance.
- 6.5.5 It is possible that this approach could include a significant degree of co-regulation with industry establishing the control, audit and performance review processes supported by a regulatory regime that allows action to be taken based on industry verified evidence.
- 6.5.6 By cutting red tape, this approach is likely to impose fewer costs on the industry and new entrants. However, negative licensing would not achieve the objectives of the liquor and club legislation. For example, there would be no screening process to preclude from the industry those persons considered an inappropriate risk to consumers and detrimental to law abiding operators, such as persons with a record for crimes involving fraud or dishonesty. It would also be difficult to ascertain exactly who is participating in the industry.
- 6.5.7 Further, there would be no consideration of specific harm minimisation measures that may need to be put in place for a licensed venue prior to that venue selling and supplying liquor. This would result in a reactive regulatory system which could be subject to significant public criticism.

6.6 Comprehensive licensing system

- 6.6.1 Comprehensive licensing is currently in place. The opinion was put forward in most submissions to the review that, while a licensing system restricts competition, it is the only valid way of achieving the objectives of the legislation. It provides a robust and consistent framework for regulation of the liquor industry and an instrument for enforcing that regulation. All Australian and other developed jurisdictions require the licensing of liquor sellers, although the specifics of those licensing regimes differ in some respects.
- 6.6.2 That is not to say that the current approach cannot or should not be modified and streamlined to improve its operation. On balance, the evidence suggests that the greatest net public benefit would arise from a comprehensive but streamlined licensing model. Licensing reform options are discussed in Chapter 7.

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## **7. Licensing Reform Options for NSW**

### **7.1 Background**

- 7.1.1 A number of licensing policy options have been identified and canvassed with key stakeholders during the course of the review. The focus of these options is on the removal of restrictions that do not serve an identifiable community interest, as well as consequential improvements to the liquor licensing system. They stem from the “restriction on competition” issues identified and the recommendations made in Chapter 5.
- 7.1.2 The options presented below have been refined by the public benefit assessment and consideration of developments in other jurisdictions (noting that circumstances may be different in NSW) and consideration of debate at the Alcohol Summit. They align more closely with the primary objects of the legislation. It is intended that the options will minimise complexity and cost while creating incentives for more efficient business practices and diversity within the NSW liquor industry, thereby providing consumers with better outcomes.
- 7.1.3 The first part of this Chapter provides a general discussion from the review’s perspective of the options. This is followed by a table providing a more specific cost/benefit analysis of each recommended option, a summary of the submissions made to the review Discussion Paper in relation to each option, and the review’s recommendations.

### **7.2 Regulatory framework**

- 7.2.1 There is a significant public benefit in requiring all persons selling liquor to be licensed, and subject to appropriate controls. However, the review considers that the current regulatory framework is far too complex, leading to confusion, unnecessary cost, and compliance difficulties.

#### One Liquor Act for NSW

- 7.2.2 One suggestion is that NSW should consolidate the current liquor selling provisions (including those applying to registered clubs) into a single Act, with a separate Act containing club management (non-liquor related) provisions. In this way, all of the liquor-related provisions of the law would be found in one place (thereby assisting compliance and enforcement), while the unique nature of the club management provisions would be preserved by their placement in a separate Act.
- 7.2.3 The proposed new liquor legislation would be based on the objectives of harm minimisation, protection of local amenity, and probity, and would continue to rely on licensing as the main regulating instrument.

#### Duration of licences

- 7.2.4 The review has considered a proposal that licences apply for a fixed term. In submissions to the review, industry and some Government agencies did not support fixed term licences, as that would threaten investment in the industry and the viability of businesses. On the other hand, community and regulator submissions supported fixed term licences, as that would allow a periodic review of their impact and an audit of the venue.

- 7.2.5 The review considers that fixed term licences, while having obvious benefits, would introduce an unacceptable level of uncertainty into the liquor industry. The review notes that there are other effective means of considering the impact of a licensed venue on the community, and for stakeholders to take action to address alcohol-related harm. The review considers the costs of this proposal would outweigh its benefits, and has therefore not recommended that the proposal be adopted.

### **7.3 Licence categories**

#### Number and type of licence categories

- 7.3.1 It is clear that licensed venues need greater flexibility to respond to changing industry conditions and consumer demands. One suggestion is that NSW should have a single liquor licence regime with conditions tailored to the individual trading needs of each licensee or venue. However, virtually all stakeholders do not consider the single licence approach to be a viable alternative.
- 7.3.2 A single licence format could require up to forty conditions to be imposed on each licence. Therefore, any advantage gained by having one licence would be offset by a complex series of conditions. A further consideration is that the resources required to implement a single licence scheme would be considerable, as more people would be needed to assess applications and negotiate with potential licensees.
- 7.3.3 The majority of stakeholders agree that there continues to be a need for specific categories of liquor licences with specific operating rights attached by way of licence conditions ordained by legislation. They also agree that there is merit in reducing the existing number of licence categories in order to achieve greater flexibility and simplicity.
- 7.3.4 The review considers that the most appropriate option is to collapse the existing licence categories into seven types – general, club (currently a registered club), package, on-premises, producer, limited, and special facility (as shown in Table 2). The operation of each type of licence would be governed by a set of conditions specified in the legislation, with scope for additional conditions to be imposed on a licence at the time of grant, or at a later time.

**TABLE 2: PROPOSED REDUCTION OF LICENCE CATEGORIES**

| PROPOSED LICENCE CATEGORY | ACTIVITIES                                                                               | CURRENT LICENCE CATEGORY                                                                                                                       |
|---------------------------|------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| General licence           | On and off sales<br>A primary activity of the business must be sale and supply of liquor | Hotel, community licence                                                                                                                       |
| Club                      | On and off sales                                                                         | Registered club                                                                                                                                |
| Package                   | Off sales only<br>The sale of packaged liquor by venues deemed unsuitable is restricted. | Off-licence retail                                                                                                                             |
| On-premises               | On sales only<br>Conditions to reflect business type                                     | Restaurant, caterer, nightclub, motel, certain s.18(4)(g), vessel/aircraft, airport, Australian wine licence, theatre, university, public hall |
| Producer                  | Conditions to reflect business type                                                      | Vigneron, brewer, wholesale                                                                                                                    |
| Limited                   | On sales only (in most cases)                                                            | Function, special event                                                                                                                        |
| Special Facility          | Conditions to reflect business type                                                      | Governor's, certain s.18(4)(g)                                                                                                                 |

Community concerns about the sale of liquor in certain venues

- 7.3.5 The Government has indicated that it is committed to retaining current restrictions on the sale of liquor through drive-in cinemas, convenience stores and service stations. There are also other venues thought to be inappropriate for alcohol sales by the community. This policy recognises that the responsible service of alcohol and responsible operation of the premises are likely to be higher priorities for an operator where the business focuses on the sale and supply of liquor, rather than liquor sales being an ancillary business.
- 7.3.6 The review notes that, while this policy would continue to restrict competition, it responds in a positive way to community concerns about the sale of liquor through inappropriate venues. At the same time, it is also recognised that there continues to be a need for some of these types of multipurpose venues in certain remote and regional areas.
- 7.3.7 With the modification of licence categories as shown in Table 2, the underlying objective should be to strike an acceptable balance between harm minimisation and flexibility that caters for industry innovation and changing community needs, while avoiding the creation of multiple sub-categories of licence.

Sale/supply of liquor by bed and breakfast, farm stay and similar accommodation venues

- 7.3.8 Finally, the issue of supply and sale of liquor by bed and breakfast, farm stay and similar accommodation venues has been considered.
- 7.3.9 The review notes that in some jurisdictions, these venues have been allowed to apply for a limited form of liquor licence, and that the licensing process has been made relatively simple. On the other hand, other jurisdictions have introduced an exemption from the licensing process for these types of venues on the basis that they are accommodation venues catering for a very small number of persons with limited liquor provided as an accompaniment to food and hospitality services.
- 7.3.10 Having considered the alternatives, the review favours the exemption system adopted in some jurisdictions, as it provides the minimum restriction on competition and minimum cost to stakeholders with adequate levels of control given the very limited supply of liquor involved. Any exemption would be subject to controls such as accommodation not exceeding 6 adults, no liquor supply to minors, liquor to be purchased from a retail outlet, supply to be ancillary to the provision of accommodation/meal/picnic basket, responsible service of alcohol training be required, and some form of notification to the licensing authority so that records of these venues are maintained.
- 7.3.11 Larger bed and breakfast and farm stay venues should be required to obtain a suitable liquor licence, such as the proposed on-premises licence.

## **7.4 Licensing conditions**

Flexible licence conditions

- 7.4.1 The review considers that liquor licences (including the proposed new club licence) should continue to be subject to specific conditions as these are necessary to clarify the operating requirements of licences and to assist with the policing of licensed premises.
- 7.4.2 However, licence conditions should focus more clearly upon the harm minimisation, local amenity and probity objects of the legislation, rather than being overly restrictive. Issues related to the premises themselves (such as the standard of toilets) should be left to the planning process where possible.

- 7.4.3 The review considers that greater flexibility is needed in respect of licence conditions to cater for innovation and community needs. One way of achieving this is to allow a licensee to add more "trading options" through the addition of specified conditions. It is not intended that this approach break down all of the differences between licence types in a multiple licence environment. As an example, the proposed arrangement would allow a vigneron to sell wine at remotely located wine shows, without the need for another licence.
- 7.4.4 The review recognises that the types of conditions to be imposed on licences will need to be further considered at the time the amended licensing system is being introduced. It also recognises that licence conditions cannot become too extensive or complicated, as that will lead to difficulties for enforcement. Therefore, the flexibility that is proposed should be easily administered and disclosed (such as through signage and other measures to assist enforcement officers and members of the public).

#### Sale of liquor without meals and reception areas in licensed restaurants

- 7.4.5 The review has considered whether the move to greater flexibility for licensees should result in the removal of the current requirement that a restaurant only serve liquor with meals unless the restaurant holds a *dine-or-drink* authority. This condition is restrictive, and the current high cost of *dine-or-drink* authorities may prevent restaurateurs from operating their restaurant in a more flexible way.
- 7.4.6 This particular condition should be carefully considered in the light of NCP principles. It is important that there be an emphasis on the "primary purpose" of restaurants as dining venues, including requirements that the predominant activity must be the preparation and serving of meals for consumption on the premises. This helps to promote harm minimisation and responsible service of alcohol (given the important role that the consumption of food can play in ameliorating the effects of alcohol on the body), as well as ensuring that there are no unexpected (and potentially detrimental) impacts of liquor law changes on the restaurant sector of the hospitality industry.
- 7.4.7 The review considers that there are benefits with the current *dine-or-drink* authority regime, particularly in terms of encouraging compliance (especially as *dine-or-drink* venues are known to the licensing agency and police) and limiting alcohol-related harm. There are concerns that unrestricted access to sale of liquor without a meal in restaurants will add to the compliance burden, with a much greater number of venues seeking to "push the boundary" of the primary purpose requirement. This could lead to problems such as irresponsible sale and promotion of liquor as more restaurants seek to operate as bars. A separate authority allows issues unique to the venue to be properly considered (which may not be possible with blanket measures) so as to minimise the likelihood that problems will occur once the restaurant begins to sell liquor without a meal.
- 7.4.8 While the review recognises that the current *dine-or-drink* authority regime is a barrier to entry, it considers that the principles behind the regime are sound, and that it should continue to apply. At the same time, the review recommends that the fee for authorities be reduced in line with the recommendation that significant fees-on-grant in general be abolished. This will have the result of significantly reducing the barrier to entry inherent in the current scheme.
- 7.4.9 Restaurants can also operate a reception area under the current law. This area is more commonly referred to as a "cocktail bar" where patrons can consume alcohol prior to and after consuming a meal in the dining area. It is separate from the dining/dine-or-drink area of the restaurant. Reception areas are subject to a number of (sometimes very complex) restrictions, including physical separation, limits on seating and the number of persons allowed, restrictions on placement, and a maximum of one area only per restaurant.

- 7.4.10 The review recognises that these restrictions are anti-competitive, as they limit the manner of operation of a restaurant and the ability of a licensee to respond to consumer demands. While they exist to support the “primary purpose” of a restaurant, they result in significant cost and complexity for the industry, regulators, and the public.
- 7.4.11 The review considers that the “primary purpose” principle can be supported in much less restrictive and costly means. It therefore recommends that the reception area provisions be discontinued, and that all restaurants be able to operate a reception area as part of their liquor licence (subject to appropriate controls set down in the law).

#### Trading hour restrictions

- 7.4.12 Some stakeholders have also identified the trading hour restrictions as a competition issue. For example, there is a view that the trading hour restrictions imposed on nightclub licences are unwarranted, while others consider extended trading arrangements in general require an overhaul.
- 7.4.13 The review has considered the current trading hours arrangements, and the alternatives that might be considered to enhance the controls already available to local communities in respect of late trading venues – for example, objections to licence applications for loss of amenity, and the informal noise complaint process. This has been considered in the light of research that clearly shows extended liquor trading hours are associated with an increase in alcohol-related problems, and that the majority of problems occur during late trading periods.<sup>12</sup>
- 7.4.14 In considering the trading hours issue, the review also notes that standard trading hours for most categories of licence are presently 5.00 am to midnight – although some categories have lesser hours, and there are some licences with greater hours.
- 7.4.15 The review considers that the available research and the experience of police and the regulatory agency heavily favour the continuation of set standard hours for all licence types, although in the slightly reduced bandwidth of 9.00 am to midnight. This represents a reduction in trading (mostly in the 5.00 am to 9.00 am period) for some categories of licence. This reduction is considered appropriate so that liquor trading is brought into line with expectations that trading should be sensitive to local community concerns and support the harm minimisation objectives of the law.
- 7.4.16 If trading outside of the standard hours is desired, the licensee would be required (as part of the application process) to actively consult the local council, residents and police about the proposal prior to its grant, through the proposed new Social Impact Assessment process. It is also proposed that this consultation process become an on-going requirement to occur every three to five years in order for the licence to continue trading early or late. Through this regular review, local communities will have an opportunity to say whether and how early and/or late trading venues impact on the amenity of neighbourhood.
- 7.4.17 These requirements would also apply to licensees of existing early and/or late trading venues, meaning that they would be required to undertake a Social Impact Assessment process if early and/or late trading is to continue to apply. This SIA requirement should be phased in for existing licensees within three to five years of the new liquor regime commencing. In the meantime, existing licensees would continue to be able to exercise their current trading entitlements.

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<sup>12</sup> Refer to analysis of restrictions on trading hours in Chapter 5.

- 7.4.18 Finally, given that research demonstrates late trading premises are associated with a disproportionate level of alcohol-related problems in the community, these premises can place a larger burden on regulatory and enforcement resources. With this in mind, the review suggests that a fee be payable for late trading applications on a cost recovery basis. The fee should be set at a level to cover the cost of processing the SIA, the cost of ongoing regulation and enforcement, and the extra costs to public services associated with late trading. This will result in a fee that is proportionate to the amount of extra trading sought.
- 7.4.19 In terms of late trading by registered clubs, the review appreciates that the courts have historically sanctioned the principle that club members should have unfettered access to their own property (i.e. the club premises and its products/services). This principle has been applied under the law for many decades.
- 7.4.20 An argument can be made that club trading should not be considered in terms of “competitive neutrality”, as clubs do not strictly compete with other licensed venues. This is because club entry is limited to members and their guests – whereas entry to other venues such as hotels, restaurants and nightclubs is open to the general public.
- 7.4.21 However, in view of the strong arguments raised during the course of the Alcohol Summit regarding the link between late trading premises and crime and anti-social behaviour, the review considers that it would be in the public interest to subject late trading clubs to the same requirements as other late trading venues such as hotels – i.e. standard hours from 9 am to midnight, with any extension to be subject to the SIA process.

## **7.5 Licensing process**

### A new administrative system

- 7.5.1 The review acknowledges the need for a structured and consistent approach to the handling of licence applications. However, the review considers that NSW needs to adopt a more streamlined, timely and less expensive process. The current system often results in the need for applicants, and any person wishing to object to an application, to obtain legal advice and engage legal representation, which can result in significant costs (and is in itself a barrier to entry). Applications can take many months to be dealt with, especially where there are objections, and this time factor adds to the cost.
- 7.5.2 It is important to point out that any alternative to the current court system would continue to be a barrier to entry, but to a lesser extent depending on how the process is structured. One suggestion favoured in many submissions and accepted by the review is that the licence application process should be dealt with administratively wherever practicable.
- 7.5.3 Under this approach, an office within the relevant government agency would be responsible for determining Social Impact Assessments and licence applications, while the Court or a similar body would be responsible for hearing appeals in respect of administrative decisions relating to the grant of applications, and disciplinary proceedings against licensees.
- 7.5.4 The review considers that this new process would:
- Simplify the administrative aspects of applications (e.g. minimising and simplifying documentation requirements);
  - Allow existing business processes to be significantly reengineered, where appropriate;
  - Allow for the lodgement and storage of digitised plans of licensed premises (the Department could provide a digitising service for an appropriate fee);

- Assist with the enforcement and administration of liquor licences; and
- Provide better service to regional and rural NSW, with country applications dealt with more quickly and efficiently.

7.5.5 It is important to acknowledge that this new administrative system will require access to appropriate information and intelligence, and needs to be properly resourced.

7.5.6 The proposed new approach would allow the specialist nature of the Court (or equivalent) to be preserved for appeals and disciplinary matters, and at the same time allow initial applications to be dealt with administratively, thereby reducing current barriers to entry.

## **7.6 Basis of assessment of licence applications**

### Assessment of social impact and public benefit

7.6.1 The review notes that the *Gaming Machines Act 2001* includes a social impact assessment process where an application is made to increase the number of gaming machines in a venue. The issues which need to be considered under that process, including the opinions of various local government and non-government agencies, are consistent with the local amenity interests that could be considered in a process for granting a liquor licence and imposing conditions on a licence.

7.6.2 The review considers that the social impact and/or public benefit of a major liquor licence should be properly assessed at the time of application – a position agreed to in most submissions to the review. The current law achieves this to some degree, although that process could be made more responsive to the public interest. A significant proportion of the submissions made support this view.

7.6.3 The review proposes the establishment of a tiered Social Impact Assessment (SIA) process, to apply before a new liquor licence can be granted. A comprehensive SIA would be required for any proposed new hotel, club or bottle shop, while restaurants and other venues that are not traditionally associated with excessive anti-social behaviour, would be required to undertake a less detailed process.

7.6.4 Comprehensive SIAs would also be required in relation to venues that applied for extended trading beyond the standard trading hours. The more comprehensive assessments would also be required for applications to establish liquor outlets in potentially high risk venues such as service stations or convenience stores.

7.6.5 The SIA process will also address probity checks relating to licence applications as an important integrity measure.

7.6.6 The SIA process would be modelled on the Public Impact Assessment process in place in Queensland. The Queensland Liquor Licensing Division has issued guidelines which provide applicants with the information needed to complete a Public Impact Assessment. While the guidelines specify the information that should be included in the different types of PIA, and the consultation process that should be followed, there is sufficient flexibility in the process to allow these requirements to be varied on a case by case basis.

7.6.7 In moving towards a new Social Impact Assessment process in NSW, it is recognised that the process should be as efficient as possible, and impose the minimum cost on stakeholders (including regulators).



### Objections

- 7.6.8 Objections are currently based on community and industry interest grounds, including the need for the proposed licence.
- 7.6.9 Statutory tests that place artificial barriers between different licence types should be removed. In this context, the review considers there is little public interest justification to support objections on the grounds of adverse financial impact upon existing licensees, and provisions in the legislation which allow this to occur – such as the “needs” test – should be deleted.
- 7.6.10 The proposed new Social Impact Assessment process will allow for local residents, local councils and local police to have some influence over the initial grant of liquor licences, and the operation of licensed premises in their community.
- 7.6.11 The review favours reform of the current arrangements so that the public interest criteria to be considered during the Social Impact Assessment process focus on:
- The impact on the amenity of the local area, including noise and other disturbance problems for residents;
  - The impact on the welfare of residents and visitors to the neighbourhood (including employment, the economy, local transport, public safety and community perception of safety, and violence);
  - The differing impacts on particular communities (such as indigenous people, people on low-incomes, women, specific ethnic communities, etc);
  - Local crime issues and alcohol-related problems;
  - Whether the proposed licensee and associates are fit and proper (including the performance record of other licences held by the applicant and associates).
- 7.6.12 The review considers that, provided these matters are addressed adequately through the Social Impact Assessment process, and there is sufficient opportunity for community input, there is no need to retain a formal right to object to a liquor licence.
- 7.6.13 Arguments have been put to the review that the removal of the “needs” test could lead to an undesirable increase in the number or density of licensed venues, the sale of liquor in certain inappropriate venues, and a consequent increase in alcohol-related harm.
- 7.6.14 The measures proposed in this report address these concerns, as they will restrict the availability of liquor licences in a way that is more effective and less punitive than at present.
- 7.6.15 Requiring that the sale and supply of liquor be a primary activity, focusing licence conditions more clearly on harm minimisation and local amenity (including measures such as responsible service of alcohol training), and properly considering the views of various local stakeholders with an interest in protecting the local amenity and minimising alcohol-related harm, will all help to ensure that the licensing system does not permit excessive numbers of venues or the sale of liquor by inappropriate businesses.

## **7.7 Fees and administration issues**

### Licence and administration fees

- 7.7.1 The review considers that, from a competition policy perspective, the current fee system is in need of an overhaul. Some submissions supported significant change such as a move towards annual rather than up-front licence fees, while other stakeholders favoured an incremental approach such as a revised fee structure reflecting improved efficiencies.
- 7.7.2 Lower fees for licences would certainly benefit the industry and consumers. Lower fees could also assist in strengthening tourism infrastructure in NSW. However, some hotels and bottle shops are concerned that changes in the current fee structure could diminish the investment value of their licences.
- 7.7.3 It has been suggested that there is a strong public policy interest in a “proper value” being paid for a government-granted privilege (i.e. the ability to sell liquor), and that the fee-on-grant should equate to the operating rights of the licence. Of course, there are widely differing views on what a “proper value” is, with little evidence (other than what has been payable for some time) to support the current level of fees.
- 7.7.4 On the other hand, charging substantial fees for licences is a significant barrier to entry, it artificially distorts the licensing process, and it may encourage inappropriate behaviour as licensees attempt to recoup that significant cost in a limited time (through undesirable practices that may increase profits but also increase alcohol-related harm).
- 7.7.5 Interstate liquor licensing jurisdictions have varying requirements in respect of fees for liquor licences. For example, an application fee and a fee-on-grant is payable in some jurisdictions. In Victoria and the ACT, there is an application fee, no fee-on-grant and an annual renewal fee for licences.
- 7.7.6 The abolition of the “needs” test will possibly have a flow-on effect for the level of fees-on-grant. Applicants for hotel and bottle shop licences in NSW currently pay a significant fee-on-grant primarily because the Liquor Act serves to restrict the number of available licences within these two categories. Removal of restrictions on competition as a result of the NCP review will likely have an impact on the value of hotel and bottle shop licences, as some of that value is underpinned by these restrictions. A more equitable fee-on-grant for hotel, bottle shop and other licences would therefore be necessary to reflect that change.
- 7.7.7 An important issue when considering fees is the ongoing cost to Government (and the public) of maintaining the liquor licensing system, the cost of enforcing the law, and costs associated with increased demand for public services (such as health and welfare services). Other licensing systems recoup these costs through annual or ongoing fees (driver’s and business licences are an example).
- 7.7.8 The review considers that these issues support some form of annual fee. Licensees and clubs are granted a privilege by the Government on behalf of the public when they are issued with an authority to sell and supply liquor. The review considers it fair to expect that operators should contribute periodically towards the maintenance of that system of privileges, and the costs to the public that result from it.

- 7.7.9 Therefore, the review favours the payment of an application fee, along with an annual administration fee, which is set in law on a cost recovery basis only. These fees should not act as a barrier to entry, with the application fee intended to cover the cost to Government of processing an application, and the annual fee set at a reasonable level to cover the cost of maintaining and administering the liquor licensing system, and the costs associated with the increased demands on public services.
- 7.7.10 The review has made recommendations elsewhere in this report concerning fees payable for applications to trade after midnight (see paragraph 7.4.18).

#### Accuracy of licensing records

- 7.7.11 The need to ensure that licensees and clubs make regular contact with the licensing authority so that the authority's records are kept up to date is becoming a critical issue. Under the present regime, some liquor licences are abandoned where they are no longer required, and the licensing authority is unaware of this (in certain cases for some years) because there is not regular contact between the authority and the licensee. This has severely undermined the accuracy of licensing records in NSW.
- 7.7.12 Regular contact is vital if accurate records are to be maintained, as parts of the liquor and hospitality industries can be transient – with businesses established and ceasing to exist on a frequent basis.
- 7.7.13 The payment of some form of administration fee – as recommended above – will facilitate regular contact between the licensing authority and licence holders, and that will help to ensure the accuracy of records.

### **7.8 Disciplinary measures**

- 7.8.1 The review agrees with those submissions which pointed out that the current disciplinary provisions – which are vital in encouraging compliance with the liquor laws by recalcitrant and irresponsible operators – are cumbersome and in need of extensive review. This is even more important given the review's recommendations that current barriers to entry (such as "needs" tests and large fees) be removed and replaced with provisions that are more sensitive to community and competition needs – something which may facilitate easier entry into the marketplace.
- 7.8.2 The current disciplinary provisions are complex and inflexible – thereby discouraging enforcement and making court action difficult and expensive for all parties. The review considers there is merit in a disciplinary system which focuses on simplicity and ease of enforcement, and encourages greater compliance while also ensuring procedural fairness.
- 7.8.3 The review feels that an enhanced disciplinary system will encourage greater compliance and lead to better outcomes for the community, as well as for those in the industry who act responsibly and comply with the law.
- 7.8.4 Various options for streamlining and reforming the disciplinary provisions were raised in the course of the Alcohol Summit, including a recommendation that a 'tiered liability regime' be introduced to deal with repeat offenders. The government's position on this and other recommendations arising from the Summit is still to be determined. Accordingly, the review proposes that it would be appropriate to defer the details of any reforms to the disciplinary measures in the liquor laws for consideration as part of the outcome of the Summit.

## **7.9 Removal of liquor licences**

- 7.9.1 The current restrictions on the removal (i.e. the relocation) of liquor licences fall into two categories – those that apply to licences that can be removed, and the absolute prohibition on removals that applies to other licence types.
- 7.9.2 Clearly, the restrictions that apply to those licences which can be removed at present – such as removal permitted only within the neighbourhood, and removal not permitted where the interests of the public in the existing neighbourhood are detrimentally affected – are anti-competitive, and the public benefit assessment does not support their retention. Where the principles behind these restrictions are considered appropriate, those principles could be achieved by other means (that do not restrict competition).
- 7.9.3 On the other hand, the absolute prohibition on licence removals that applies to certain licences may impose difficulties for some licensees under the proposed arrangements for Social Impact Assessments. For example, a prohibition on being able to remove a liquor licence in future could mean that the only way that a hotel can move from one side of a street to another is to undergo a comprehensive Social Impact Assessment. In such a limited case, the impact of the change in venue on the local community would be expected to be minimal, and it may be appropriate to allow the existing licence to be removed, subject to a basic SIA being completed.
- 7.9.4 The majority of submissions to the review suggested that the removal of all types of liquor licences should be permitted, and it is noted that most interstate licensing legislation provides for the removal of licences. Accordingly, the review proposes to permit the removal of all licence types to be removed as an option available to licensees.

| ANALYSIS OF COSTS AND BENEFITS OF PROPOSED LICENSING REFORM OPTIONS                                    |                                                                                                                                                                              |                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                            |
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| <b>REGULATORY FRAMEWORK</b>                                                                            |                                                                                                                                                                              |                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                            |
| Introduce a new Act for the regulation of liquor sales in NSW, and a separate Act for club management. | <p>Simplify and standardise liquor control and regulation provisions.</p> <p>Assist licensees, law enforcers and the public to better understand and appreciate the law.</p> | <p>Potential industry/public confusion and uncertainty associated with significant changes to the law and licensing regime.</p> <p>Resource issues for Government associated with significant changes to the law and licensing regime.</p> | <p>All liquor control provisions located in one place will assist the liquor industry, law enforcers and the public to better understand and appreciate the law.</p> <p>More effective control over the sale and supply of liquor.</p> <p>Better promotion of the harm minimisation objective.</p> | <p>Submissions generally supported this proposal, so long as there remains appropriate recognition of the “special nature” of registered clubs as non-profit community organisations owned by their members.</p> <p>There was strong support for the maintenance of a separate and comprehensive club governance framework for clubs.</p>                                                                                                                                                                                                                       | The review notes the support for this proposal, and considers that the benefits outweigh any costs.                                                                                                                                                                                                                                                                                                                  | Introduce a single new Act for the regulation of liquor sales in NSW, with a separate club management Act for the governance of registered clubs (other than liquor laws). |
| <b>LICENCE CATEGORIES</b>                                                                              |                                                                                                                                                                              |                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                            |
| Reduce the current number of licence categories from twenty-one to seven.                              | <p>Simplify and standardise liquor control and regulation provisions.</p> <p>Assist licensees, law enforcers and the public to better understand and appreciate the law</p>  | <p>Potential for less differentiation between types of licensed businesses.</p> <p>Potential for less flexibility in licensing system.</p> <p>There may be less diversity in licensed venues.</p>                                          | <p>Better understanding and appreciation of law by industry, law enforcers and the public.</p> <p>Reduce cost of administration and enforcement of the law.</p> <p>More effective control over the sale and supply of liquor.</p> <p>Potential for greater diversity in licensed venues.</p>       | <p>All submissions did not support the introduction of a single licence category.</p> <p>Most submissions supported the reduction of licence categories along the lines proposed in the Discussion Paper, with the majority of those supporting the proposal for seven categories (a few supported less or more than seven).</p> <p>A few submissions pointed out the need for the current licence categories to sufficiently distinguish between the style and operation of licensed venues, and to assist with administration and enforcement of the law.</p> | <p>The review considers this proposal to be beneficial in terms of simplifying the law and reducing compliance and administrative costs.</p> <p>The review considers that the benefits of this proposal to the community as a whole outweigh the costs. It therefore recommends that the proposal be adopted, and notes that this would lead to the abolition of Governor’s licences and special event licences.</p> | Reduce the current number of licence categories from twenty-one to seven.                                                                                                  |

| ANALYSIS OF COSTS AND BENEFITS OF PROPOSED LICENSING REFORM OPTIONS                                                                                             |                                                                                                                                                                                                                           |                                             |                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                     |
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| Introduce a limited capacity for bed & breakfast and holiday farm style venues to supply liquor in certain circumstances without the need for a liquor licence. | <p>Ensure these venues can meet the needs of their customers.</p> <p>Support the viability of this growing accommodation sector.</p> <p>Ensure liquor supplies are subject to appropriate harm minimisation controls.</p> | Limited potential for alcohol-related harm. | <p>Consumer needs and expectations are met.</p> <p>Competitive restrictions are removed.</p> <p>Enhance the viability of this hospitality sector.</p> <p>Provides a similar option to that currently available for hospitals and nursing homes.</p> | <p>A submission from representatives of this sector supported an exemption from the current need for a liquor licence for these venues, subject to certain controls (accommodation does not exceed 8 adults, supply of liquor is complimentary, no supply to minors, liquor purchased from holder of retail style licence, supply ancillary to provision of accommodation/meal/picnic basket).</p> <p>The submission did not oppose some form of notification to the licensing authority so that records of these venues are maintained.</p> <p>The submission also referred to the need for a simplified administratively based procedure for licence application for larger B&amp;B and farm stay venues.</p> | <p>The review recognises the need to resolve the situation with the sale and supply of liquor in bed &amp; breakfast and farm stay establishments.</p> <p>The review does not support a licensing requirement for small venues, as the costs of that would considerably outweigh the benefits. The review therefore recommends that the suggestion made in the submission by this sector be adopted (although accommodation be limited to 6 adults as has been adopted in Victoria, and responsible service of alcohol training be required).</p> <p>The review further recommends that penalties for breaches of the law be significant (including a means of prohibiting the sale and supply of liquor at the premises for a period of time).</p> | Introduce a limited capacity for bed & breakfast and holiday farm style venues to supply liquor in certain circumstances, without the need for a liquor licence, but with appropriate sanctions for non-compliance. |

| ANALYSIS OF COSTS AND BENEFITS OF PROPOSED LICENSING REFORM OPTIONS |                                                                                                          |                                                                                                                                                                                                 |                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                 |
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| <b>LICENSING CONDITIONS</b>                                         |                                                                                                          |                                                                                                                                                                                                 |                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                 |
| Introduce a more flexible system of licence conditions.             | <p>Ensure licences cater for changing industry and community needs.</p> <p>Reduce costs to industry.</p> | <p>Potential for increased confusion and uncertainty surrounding the operation of specific licensed venues.</p> <p>Some venues may be subject to unexpected competition from another venue.</p> | <p>Licences cater for changing industry and community needs.</p> <p>Competitive restrictions are removed.</p> <p>Compliance costs to industry may be reduced.</p> <p>More innovative venues available to consumer.</p> <p>Increased consumer choice.</p> | <p>Some submissions expressed concern that this proposal was somewhat vague, and could lead to confusion and administration and enforcement difficulties. Concerns were also expressed that it may undermine the licensing framework, thereby disempowering the community.</p> <p>Other submissions supported this proposal, so long as the core intent of the business and licence remains in place. It was suggested that licence options should therefore be limited and of a specified nature (and easily disclosed through signage or other means).</p> <p>A wine making industry submission referred to the need for vigneron licences to be more flexible and cater for changing industry and community needs.</p> | <p>The review considers this a worthwhile proposal so long as the core intent of the original business and licence remains in place, and conditions can be administered and enforced efficiently, effectively and without confusion. The review notes the special need of the wine-making industry to ensure that vigneron licensing reflects changing industry and community needs.</p> <p>The review considers the benefits of this proposal considerably outweigh the costs, and therefore recommends that it be adopted subject to the abovementioned requirements.</p> | <p>Introduce a more flexible system of licence conditions so long as the core intent of the original business and licence remains in place, and conditions can be administered and enforced efficiently, effectively and without confusion.</p> |

| ANALYSIS OF COSTS AND BENEFITS OF PROPOSED LICENSING REFORM OPTIONS                                                                               |                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                       |
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| Allow all licensed restaurants to serve liquor without meals – subject to ‘primary purpose’ provisions and minimum table and seating requirements | <p>Ensure restaurants can cater for changing social conditions.</p> <p>Enhance the viability of the restaurant sector.</p> <p>Provide greater choice and diversity of venues for consumers.</p> | <p>Potential erosion of the value of some existing licensed businesses (particularly hotels).</p> <p>Potential adverse financial impact on existing restaurants with a <i>dine-or-drink</i> authority (which have paid a larger fee for the authority).</p> <p>Potential for increase in alcohol-related harm as some restaurants focus on bar operations.</p> | <p>Simpler licensing provisions applying to restaurants.</p> <p>Greater consumer choice of drinking venues.</p> <p>Encourage diversity and innovation in the industry.</p> <p>Potential for some reduction in alcohol-related harm where drinking occurs in restaurant rather than hotel venues.</p> | <p>Some submissions supported this proposal, although concern was expressed about the need for a “primary purpose” requirement. It was commented that the proposal would enhance tourism and service to consumers.</p> <p>Other submissions (principally from non-restaurant liquor industry sectors) opposed this proposal, given its potential competition and financial impact on the industry, and the possible increase in alcohol-related harm associated with unrestricted access to “bar” style sales by thousands of restaurants.</p> | <p>The review is aware of concerns in another jurisdiction that allowing all licensed restaurants to serve liquor without meals has been associated with an increase in irresponsible behaviour by some venue operators and an increase in alcohol-related harm (such as anti-social behaviour and intoxication).</p> <p>The review considers that there are benefits with the current <i>dine-or-drink</i> authority regime, particularly in terms of encouraging compliance and limiting alcohol-related harm. However, the review recognises that the current fee structure is a barrier to entry.</p> <p>Given the comments made in Chapter 7 of this Report, the review considers that the costs of this proposal outweigh the benefits, and recommends that it not be adopted. However, the review recommends that the fee for <i>dine-or-drink</i> authorities be reduced in line with the recommendation that large fees-on-grant in general be reduced.</p> <p>The review notes that this recommendation will see the primary purpose of restaurants continue to be supported through the current legislative requirements – i.e. a general “primary purpose” requirement with appropriate definitions, and a general requirement that liquor be sold with a meal.</p> | <p>Maintain the current <i>dine-or-drink</i> authority for licensed restaurants and nightclubs, with entry fees set at a level which reflects the cost to Government of processing an application and administering the scheme.</p> <p>The operation of <i>dine-or-drink</i> authorities be closely monitored, and further reviewed if necessary.</p> |



| ANALYSIS OF COSTS AND BENEFITS OF PROPOSED LICENSING REFORM OPTIONS                              |                                                                                                                                                                                        |                                                                  |                                                                                                                             |                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                        |
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| Allow all restaurants to automatically operate a reception area as part of their liquor licence. | <p>Ensure restaurants can meet the needs of their customers.</p> <p>Enhance the viability of the restaurant sector.</p> <p>Reduce cost and complexity for industry and regulators.</p> | Potential threat to “primary purpose” principle for restaurants. | <p>Reduced costs and complexity for industry and regulators.</p> <p>More efficient use of private and public resources.</p> | A submission from the restaurant sector suggested that these restrictions be removed because of their complexity, cost, and inflexibility. | <p>The review considers that these restrictions are anti-competitive, as they limit the operation of a restaurant and the ability of a licensee to respond to consumer demands. They result in significant cost and complexity for industry, regulators, and the public.</p> <p>The review considers that the costs of these restrictions outweigh the benefits, and recommends they be abolished.</p> | Allow all restaurants to automatically operate a reception area as part of their liquor licence (subject to appropriate controls set down in the law). |

| ANALYSIS OF COSTS AND BENEFITS OF PROPOSED LICENSING REFORM OPTIONS |                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                    |
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| Apply standard trading hours for all licence types.                 | <p>Ensure trading hours reflect community needs.</p> <p>Protect local neighbourhoods from alcohol-related harm.</p> | <p>Financial impact on some venues where liquor trading hours are reduced.</p> <p>Consumers are offered a restricted range of purchasing and socialising times generally.</p> <p>The hours prescribed by the legislation may not coincide with those desired by individual licensees on purely commercial grounds.</p> <p>There can be significant costs involved in applying for extended trading hours.</p> | <p>Alcohol-related harm is minimised given that research indicates alcohol-related problems in and around licensed venues are more likely to occur late at night and in the early morning.</p> <p>The amenity of the local neighbourhood is protected, particularly during sensitive times of the night when most residents are sleeping.</p> <p>Enforcement of the law is easier and more efficient with standardised trading hours.</p> <p>Public will have better appreciation and understanding of the controls applying to liquor trading.</p> <p>Less community resources are required to supervise venues.</p> | <p>There was mixed support in submissions for this proposal. Some industry submissions (particularly from the club sector, but also from those representing independent retailers) strongly opposed standard trading hours, or any reduction in current trading entitlements.</p> <p>Other liquor industry submissions, as well as from community and regulator submissions, supported standard hours. Some submissions (not from industry) also supported some form of regular review of extended trading.</p> <p>The Alcohol Summit made a recommendation that the impact of 24-hour trading be evaluated.</p> | <p>The review notes there is mixed support for standard trading hours, although the reasons for having standard hours (particularly ease of administration and enforcement, protection of local amenity, harm minimisation) are compelling.</p> <p>The review considers that the benefits of standard trading hours considerably outweigh the costs, and recommends that hours be standardised as far as possible.</p> <p>The review recognises the need for venues to be able to apply for extended liquor trading hours, especially as late night/early morning hospitality venues are popular with a significant section of the community. However, such applications should be subject to Social Impact Assessment and fees that take account of the costs to the Government and the community of late night liquor trading.</p> | <p>Apply standard trading hours for all licence types, and require Social Impact Assessments to be undertaken for all applications for extended trading hours.</p> |

| ANALYSIS OF COSTS AND BENEFITS OF PROPOSED LICENSING REFORM OPTIONS                                  |                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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| Introduce a mechanism to enable periodic review of late night/early morning extended liquor trading. | <p>Minimise alcohol-related harm.</p> <p>Assist law enforcers.</p> <p>Protect local amenity.</p> <p>Ensure input by local stakeholders concerning extended liquor trading during sensitive times of the day.</p> <p>Encourage responsible venue and patron behaviour.</p> | <p>Financial impact on some venues where liquor trading hours are reduced.</p> <p>Consumers may be offered a restricted range of purchasing and socialising times/venues.</p> <p>There can be costs involved in applying for extended trading hours.</p> <p>Cost for business operators, local stakeholders, and regulators of periodic review of extended liquor trading.</p> | <p>Alcohol-related harm generally is minimised.</p> <p>Alcohol-related harm to local neighbourhoods is minimised and local amenity is enhanced.</p> <p>More effective law enforcement.</p> <p>Local stakeholders have input concerning extended liquor trading during sensitive times of the day.</p> <p>More responsible venue and patron behaviour.</p> | <p>Most industry submissions did not support a regular review of extended liquor trading, given the potentially severe financial implications for business.</p> <p>Most other submissions supported a system of periodic review to allow regular input from local stakeholders as to the impact of extended trading on their neighbourhood.</p> <p>The Alcohol Summit made recommendations favouring greater scrutiny of late trading venues.</p> | <p>The review notes research has shown that late night and early morning liquor trading is associated with a disproportionate level of alcohol-related problems in and around licensed venues. Such trading also has the potential to severely affect the amenity of local neighbourhoods.</p> <p>The review therefore considers that the benefits of controls over extended liquor trading outweigh the costs. The review further considers that the level of additional harm associated with extended liquor trading warrants the introduction of a mechanism for periodic review (e.g. every three to five years) of extended trading for venues. The review would require new Social Impact Assessments to be undertaken, thereby allowing local stakeholder input.</p> <p>The review also recommends that a fee – proportionate to the amount of extra trading – be imposed on all late trading approvals/renewals to enable recovery of costs associated with late trading.</p> | <p>Introduce a mechanism to enable periodic review of late night/early morning extended liquor trading by requiring regular Social Impact Assessments of late trading venues, which allows local stakeholder input and recognises that extended trading is critical to the business of some licensed venues.</p> <p>A fee be payable for late trading applications proportionate to the amount of extra trading sought to enable recovery of costs associated with late trading – including the cost of processing the application, the cost of ongoing regulation and enforcement, and the extra costs to public services associated with late trading.</p> |

| ANALYSIS OF COSTS AND BENEFITS OF PROPOSED LICENSING REFORM OPTIONS                                                                                                                                                           |                                                                                                                                                                                                                                           |                                                                            |                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                       |
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| <b>LICENSING PROCESS</b>                                                                                                                                                                                                      |                                                                                                                                                                                                                                           |                                                                            |                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                       |
| Introduce a licensing system whereby non-contested licence applications are dealt with administratively and the Licensing Court is responsible for hearing formally contested applications, appeals and disciplinary matters. | <p>Minimise the complexity, time and costs associated with a licence application.</p> <p>Ensure the most efficient use of public resources.</p> <p>Ensure concerns and objections from relevant stakeholders are properly considered.</p> | Administrative position in Department would require appropriate resources. | <p>Licensing system is more responsive to industry and community needs.</p> <p>Complexity and time involved in licence applications is minimised.</p> <p>Public resources are utilised more efficiently.</p> <p>Stakeholders have better access to, and are more inclined to participate in, the licensing system.</p> <p>Court resources are utilised more effectively.</p> | <p>Most submissions supported the need for a simplified and less costly licensing system. This proposal was generally supported on the proviso that adequate resources and intelligence is available to the new administrative system.</p> <p>Some industry submissions supported retention of the current system, with increased delegation to the Principal Registrar of the Licensing Court to deal with certain licence applications.</p> | <p>The review considers that the current licensing process needs to be simplified, and costs need to be reduced, to reduce barriers to entry and ensure efficient use of business, community and public resources.</p> <p>The review considers that the benefits of dealing with licence administratively outweigh the costs, and therefore recommends that an administrative process be introduced to deal with all licence applications, with appeals and disciplinary matters being dealt with by the Court.</p> | Introduce a licensing system whereby all licence applications are dealt with administratively, and the Licensing Court or a similar body is responsible for hearing appeals and disciplinary matters. |

| ANALYSIS OF COSTS AND BENEFITS OF PROPOSED LICENSING REFORM OPTIONS                                                                                          |                                                                                                                                                                           |                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                |
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| <b>BASIS OF ASSESSMENT OF LICENCE APPLICATIONS</b>                                                                                                           |                                                                                                                                                                           |                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                |
| Require the social impact and/or public benefit of a major liquor licence to be assessed at the time of application, with criteria specified in legislation. | <p>Minimise alcohol-related harm.</p> <p>Ensure views of local stakeholders are taken into account.</p> <p>Support and enhance public confidence in licensing system.</p> | <p>Increased application costs for industry.</p> <p>Increased costs to licensing agency in processing applications.</p> | <p>More thorough and responsive assessment of impact of major liquor licence application.</p> <p>Better support for harm minimisation objective by making applicant consider a wider range of issues than “need”.</p> <p>Assessment process driven by regulators and community rather than competitors.</p> <p>Community does not need to rely upon competitors’ objections in order for public interest issues to be considered.</p> | <p>Some industry submissions opposed this proposal, particularly where it is associated with the removal of the “needs” test, expressing concerns about cost and resource issues.</p> <p>Other non-industry submissions generally supported this proposal on the basis that it would allow more appropriate consideration of the impact of a licence on local stakeholders. Caution was expressed about adopting a similar social impact process as applies for gaming machines as that process is expensive, time consuming, resource intensive, and of questionable value.</p> | <p>The review considers that the social impact and/or public benefit of a major liquor licence should be properly assessed at the time of application. The current law achieves this to some degree, however, that process could be made more responsive to the public interest.</p> <p>The review proposes the establishment of a tiered Social Impact Assessment process, to apply before a new liquor licence can be granted.</p> <p>The process should be as efficient, and impose the minimum cost on stakeholders.</p> | <p>Establish a tiered Social Impact Assessment process, to apply before a new liquor licence can be granted. A comprehensive SIA would be required for any proposed new hotel, club or bottle shop, while restaurants and other venues that are not traditionally associated with excessive anti-social behaviour, would be required to undertake a less detailed process.</p> |

| ANALYSIS OF COSTS AND BENEFITS OF PROPOSED LICENSING REFORM OPTIONS                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                        |
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| <p>Introduce the following application and objection framework for licence applications:</p> <ul style="list-style-type: none"> <li>• Impact on the amenity of the local area;</li> <li>• Impact on the welfare of residents and visitors to the neighbourhood;</li> <li>• The differing impacts on sub-communities;</li> <li>• Local crime issues and alcohol-related problems;</li> <li>• Whether the proposed licensee and associates are fit and proper.</li> </ul> | <p>Minimise alcohol-related harm.</p> <p>Ensure views of local stakeholders are taken into account.</p> <p>Support and enhance public confidence in licensing system.</p> <p>Eliminate delays associated with competition-related issues.</p> | <p>Increased application costs for industry.</p> <p>Increased costs to licensing agency in processing applications.</p> <p>Financial impact of a new licence on existing businesses not considered.</p> <p>Certain persons and/or entities not permitted to participate in market.</p> | <p>Liquor licensing system responsive to community needs and concerns.</p> <p>Objection process focuses on liquor harm minimisation.</p> <p>More efficient use of public resources.</p> <p>Clearer and simpler objection regime.</p> | <p>While supporting the proposed grounds of objection in principle, industry submissions generally opposed this proposal if it would result in the abolition of the “needs” ground of objection.</p> <p>Other submissions generally supported the proposal as a more effective and responsive licensing regime. Questions were raised about requiring liquor sales to be the primary activity for some businesses, as this was felt to be anti-competitive and not in accordance with the harm minimisation objective.</p> | <p>The review is aware of the need, in the context of a National Competition Policy review, to ensure that the licence assessment process does not create an expectation that any criteria other than those directly impacting upon harm minimisation, probity and local amenity will be considered.</p> <p>With this in mind, the review considers that the proposed new Social Impact Assessment process will allow for local residents, local councils and local police to have some influence over the initial grant of liquor licences, and the operation of licensed premises in their community.</p> <p>The review considers that the public interest criteria specified in the option should be adequately addressed through the Social Impact Assessment process, and hence there is no need to retain a formal right to object to a liquor licence.</p> | <p>Provided public interest issues are adequately addressed through the Social Impact Assessment process, there is no need to retain a formal right to object to a liquor licence.</p> |

| <b>ANALYSIS OF COSTS AND BENEFITS OF PROPOSED LICENSING REFORM OPTIONS</b>                     |                                                                                                        |                                                                                                                                                                                                                                                |                                                                                                                      |                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                   |
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| Require licence applicants to obtain planning permission before applying for a liquor licence. | Eliminate confusion and delays associated with planning approval issues.<br><br>Assist local councils. | May delay liquor licence applications, with potential opportunity cost for industry.<br><br>Applicants may incur sufficient financial costs in satisfying planning requirements, only to have the application refused through the SIA process. | Greater certainty that planning issues have been properly dealt with.<br><br>More efficient use of public resources. | This proposal was supported in almost all submissions (with an exception for function licences). A submission from the hotel sector contained an alternative proposal that all necessary council approvals must be obtained before commencing operation of the licensed premises. | The review considers this proposal could impose unnecessary costs and delays on applications that will not be able to satisfy the Social Impact Assessment.<br><br>The review considers that the costs of this proposal outweigh the benefits, and therefore recommends that it be rejected. | Do not require licence applicants to obtain planning permission before applying for a liquor licence.<br><br>However, all necessary council approvals must be in place before the licence can be finally granted. |

| ANALYSIS OF COSTS AND BENEFITS OF PROPOSED LICENSING REFORM OPTIONS                                                                                                                                                                             |                                                                                                                                                                                                          |                                                                                                                                                                             |                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                          |
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| <b>FEES AND ADMINISTRATION ISSUES</b>                                                                                                                                                                                                           |                                                                                                                                                                                                          |                                                                                                                                                                             |                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                          |
| Continue to require the payment of an application fee, with an annual fee also payable by licensees and clubs (these fees should not act as a barrier to entry, with the application and annual fees intended to cover the cost to Government). | <p>Ensure that those who directly benefit from the liquor licensing system contribute to its operation and maintenance.</p> <p>Reduce the burden of the liquor licensing system on public resources.</p> | <p>Increased costs for some licensees.</p> <p>Potential for reduction in the value of certain liquor licences, and therefore reduction in the value of some businesses.</p> | <p>Comply with Competition Principles Agreement.</p> <p>Reduced barrier to entry for new businesses.</p> <p>Increased diversity and choice for consumers.</p> <p>Reduced burden on public resources.</p> <p>Increased integrity of licensing system and accuracy of public records.</p> | <p>Most industry submissions supported the current fee arrangements (i.e. fee-on-grant and no further licence fees payable), with some raising the possibility of compensation if certain fees are reduced due to reduced value of businesses.</p> <p>Other submissions supported a reduction in large entry fees and more regular fee payment system to properly reflect the cost of maintaining and operating the licensing system (i.e. “user pays” principle).</p> | <p>The review notes that large entry fees are clearly anti-competitive and a barrier to entry, and any harm minimisation objective they may purport to underpin can be achieved in much more effective ways.</p> <p>The review considers that the cost of large entry fees substantially outweigh the benefits, and therefore recommends that entry fees be set at cost recovery levels.</p> <p>The review considers that licensees who benefit from the licensing system should contribute towards its ongoing cost (similar to the fee payable for other types of licences).</p> <p>Therefore, the review recommends that a fixed administration fee be payable every two years, and that fee be set on a cost recovery basis and reflect CPI increases. The review notes that similar arrangements operate in other Australian jurisdictions.</p> <p>These fees should not act as a barrier to entry, with the application fee intended to cover the cost to Government of processing an application, and the annual fee comprising a reasonable fee to cover the cost of maintaining and administering the liquor licensing system, and the costs associated with the increased demands on public services.</p> | <p>Entry fees be set at levels which reflect the cost to Government of processing an application and administering the licensing regime (reflecting different regulatory and enforcement requirements).</p> <p>A fixed administration fee be payable by licensees and clubs every two years, and that fee be set on a cost recovery basis and reflect CPI increases.</p> |



| ANALYSIS OF COSTS AND BENEFITS OF PROPOSED LICENSING REFORM OPTIONS                                                                                                                                                                          |                                                                                                                                                                                               |                                                                                                                                 |                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                     |
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| Ensure there is regular contact between the licensing authority and all licence holders.                                                                                                                                                     | To maintain accuracy of the licensing authority's records.                                                                                                                                    | Imposition on business.                                                                                                         | Licensing records are accurate.<br><br>Facilitates better enforcement and administration of the law. | This issue was not raised in the majority of submissions.<br><br>The few submissions that did raise this issue questioned whether it is a real concern.                                                                                                                                                                                                                                                   | The review notes there are currently serious problems associated with the absence of a system requiring regular contact with the licensing authority in terms of maintaining accurate records of licences. The licensing authority's records currently include licences that no longer exist, as well as incorrect names and addresses of venues. This obviously has a negative impact on enforcement.<br><br>The review therefore supports the view that a system of regular contact between the authority and all licensees needs to be in place.<br><br>The review considers that the benefits of such a system outweigh the costs, and recommends that it be introduced. | Introduce a system of regular contact between the licensing authority and all licensees.                                                                                                                                                                            |
| <b>DISCIPLINARY MEASURES</b>                                                                                                                                                                                                                 |                                                                                                                                                                                               |                                                                                                                                 |                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                     |
| Introduce a disciplinary system which focuses on simplicity and ease of enforcement, and encourages greater compliance while also ensuring procedural fairness (including a points system so that action is taken against repeat offenders). | Minimise alcohol-related harm.<br><br>Encourage greater compliance.<br><br>Facilitate easier enforcement action.<br><br>Ensure repeat offenders are not allowed to continue to flout the law. | Resources required to administer points system.<br><br>Economic cost where Industry participants are disqualified or suspended. | Objectives of option are met.                                                                        | Some submissions pointed to the need for an overhaul of the current disciplinary system (because it is overly complex and costly for all parties), and the need to ensure that easier entry to the marketplace is balanced by easier exit.<br><br>A suggestion was made that a points system be introduced for licensed venues similar to the system that operates for licences to drive a motor vehicle. | The review agrees that the current disciplinary system needs to be overhauled, (for the reasons set out earlier in this report).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Introduce a disciplinary system which focuses on simplicity and ease of enforcement, and encourages greater compliance while also ensuring procedural fairness, with details to be deferred for consideration in the context of the outcomes of the Alcohol Summit. |

| ANALYSIS OF COSTS AND BENEFITS OF PROPOSED LICENSING REFORM OPTIONS                                                                          |                                                        |                                                                                                                                                                                                                                                                                        |                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                       |                                                                              |
|----------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|
| Option                                                                                                                                       | Objective                                              | Costs                                                                                                                                                                                                                                                                                  | Benefits                  | Submissions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Analysis                                                                                                                                                                                              | Recommendation                                                               |
| <b>REMOVAL OF LIQUOR LICENCES</b>                                                                                                            |                                                        |                                                                                                                                                                                                                                                                                        |                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                       |                                                                              |
| Discontinue removal of licence provisions in association with removal of the “needs” test and the lowering of certain licence fees-on-grant. | Ensure remote communities can obtain a liquor licence. | An absolute prohibition on licence removals may add to the cost of moving certain businesses such as hotels and clubs to another location, by forcing them to undergo a comprehensive Social Impact Assessment, even if the business is being moved to an alternative location nearby. | Simpler licensing regime. | <p>Some concerns were expressed about this proposal as it is associated with the removal of the “needs” test and a reduction in entry fees (which were opposed in the same submissions).</p> <p>Other concerns focused around the need to ensure remote communities are able to realistically apply for or continue to operate a hotel given the important social and economic benefits to those communities.</p> <p>Submissions recognised that this issue is dependent on the nature of the licensing system to come out of the review.</p> | Given the review recommendations made above, it is considered that removal of a licence may assist some businesses to relocate within a certain area, and hence optional removals should be retained. | Permit the removal of all licence types as an option available to licensees. |

## **8. Conclusions and Recommendations**

### **8.1 Conclusions**

- 8.1.1 The review has concluded that there are significant barriers to entry and restrictions on competition in the existing liquor and club management laws. The laws also impose significant compliance costs on businesses.
- 8.1.2 Some of the restrictions and barriers are required to effectively support the objectives of the legislation, and provide very significant benefits to the community as a whole in terms of minimising alcohol-related harm, protecting local amenity, ensuring probity, and protecting the interests of members of registered clubs. Other restrictions and barriers warrant amendment or removal under National Competition Policy principles.
- 8.1.3 The review's specific recommendations regarding current restrictions on competition and licensing reform options for NSW are detailed in the cost/benefit analyses in Chapters 5 and 7 of this report. Those recommendations are repeated below.
- 8.1.4 The review notes that the recommended changes will result in there being fewer restrictions on the issue of hotel licences by the regulatory authority, and that could result in a larger number of potential gaming venues – although recent gaming machines legislation will ensure that there is no increase in the overall number of these machines. The social impact assessment processes in the gaming machine laws may need to be further considered in this light.
- 8.1.5 The review also notes that submissions contained a wide range of views and suggestions concerning the future of the liquor licensing and club management laws, and appreciates that some stakeholders will have concerns about or may be opposed to some of the recommendations made in this report. However, the review sees its role as having to balance the competing views of different stakeholders while seeking to achieve the outcomes agreed to in the Competition Principles Agreement, which are in the public interest overall.

### **8.2 Review recommendations**

- 8.2.1 The following is a list of the recommendations made by the review and detailed earlier in this report in Chapters 5 and 7.

#### Current restrictions on competition

- 1. Existing principles of responsible service of alcohol and harm minimisation continue to apply to persons and entities involved in the sale, supply and service of liquor in NSW.
- 2. Existing restrictions on the sale, supply and service of liquor to and by minors continue to apply in NSW.
- 3. Some form of comprehensive liquor licensing system continue to apply in NSW.
- 4. Removal of licence provisions be retained, as an option that existing licensees may wish to use depending on the particular circumstances of their case.

5. The “needs” and “public benefit” tests be phased out over a suitable period and replaced with provisions which focus on liquor harm minimisation and protection of the local amenity, and do not allow consideration of the economic impact of applications on existing businesses.
6. The licence application system move to a more administrative approach.
7. Current restrictions applying to the issue of retail liquor licences to convenience stores, service stations, and drive-in cinemas continue, and the social impact of liquor licences in these venues be assessed in future before further licences are granted.
8. Continue the requirement that takeaway liquor sales be made from a separate area where the primary purpose of the business is not the sale of liquor.
9. Distinctive liquor licence categories continue, with the number of categories reduced to seven.
10. A core set of licence conditions continue to apply to each category of licence, and those conditions be made as simple as possible while also being flexible enough so there is no need for excessive conditions to meet the objectives of the Act.
11. Limited trading hours continue to apply to most licensed venues (these trading hour arrangements should be closely monitored, and further reviewed if necessary).
12. Existing restrictions on the sub-letting of premises continue.
13. Existing restrictions on applications for another licence where an application for a retail licence has previously been refused be replaced with restrictions that are more sensitive to community and competition needs.
14. Existing restrictions on applications for another licence where a restaurant, theatre, or caterer’s licence has been cancelled be replaced with restrictions that are more sensitive to community and competition needs.
15. All clubs continue to be subject to a comprehensive governance framework to protect members’ interests.
16. Maintain standard requirements to be met by an association applying to become a registered club, with appropriate changes to minimise their impact on competition.
17. Maintain the core set of requirements that must form part of a club’s rules (including requirements concerning membership, election of office holders, restrictions on entry to clubs, restrictions applying to minors, restrictions on advertising, etc).
18. No action be taken in the context of this review in regard to the future status of “co-operative” registered clubs.

Proposed licensing reform options

19. Introduce a single new Act for the regulation of liquor sales in NSW, with a separate club management Act for the governance of registered clubs (other than liquor laws).
20. Reduce the current number of licence categories from twenty-one to seven.
21. Introduce a limited capacity for bed & breakfast and holiday farm style venues to supply liquor in certain circumstances, without the need for a liquor licence, but with appropriate sanctions for non-compliance.
22. Introduce a more flexible system of licence conditions so long as the core intent of the original business and licence remains in place, and conditions can be administered and enforced efficiently, effectively and without confusion.
23. Maintain the current *dine-or-drink* authority for licensed restaurants and nightclubs, with entry fees set at a level which reflects the cost to Government of processing an application and administering the scheme (the operation of *dine-or-drink* authorities be closely monitored, and further reviewed if necessary).
24. Allow all restaurants to automatically operate a reception area as part of their liquor licence (subject to appropriate controls set down in the law).
25. Apply standard trading hours for all licence types, and require Social Impact Assessments to be undertaken for all applications for extended trading hours.
26. Introduce a mechanism to enable periodic review of late night/early morning extended liquor trading by requiring regular Social Impact Assessments of late trading venues, which allows local stakeholder input and recognises that extended trading is critical to the business of some licensed venues.
27. A fee be payable for late trading applications proportionate to the amount of extra trading sought to enable recovery of costs associated with late trading – including the cost of processing the application, the cost of ongoing regulation and enforcement, and the extra costs to public services associated with late trading.
28. Introduce a licensing system whereby all licence applications are dealt with administratively, and the Licensing Court or a similar body is responsible for hearing appeals and disciplinary matters.
29. Establish a tiered Social Impact Assessment process, to apply before a new liquor licence can be granted. A comprehensive SIA would be required for any proposed new hotel, club or bottle shop, while restaurants and other venues that are not traditionally associated with excessive anti-social behaviour, would be required to undertake a less detailed process.
30. Provided public interest issues are adequately addressed through the Social Impact Assessment process, there is no need to retain a formal right to object to a liquor licence.
31. Do not require licence applicants to obtain planning permission before applying for a liquor licence. However, all necessary council approvals must be in place before the licence can be finally granted.

32. Entry fees be set at levels which reflect the cost to Government of processing an application and administering the licensing regime (reflecting different regulatory and enforcement requirements).
33. A fixed administration fee be payable by licensees and clubs every two years, and that fee be set on a cost recovery basis and reflect CPI increases.
34. Introduce a system of regular contact between the licensing authority and all licensees.
35. Introduce a disciplinary system which focuses on simplicity and ease of enforcement, and encourages greater compliance while also ensuring procedural fairness, with details to be deferred for consideration in the context of the outcomes of the Alcohol Summit.

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Appendix 1

National Competition Policy Review – Terms Of Reference

1. To conduct the review of the liquor licensing provisions of the *Liquor Act*, the Registered Clubs Act and the associated Regulations in accordance with the principles for legislation reviews set out in the Competition Principles Agreement. The guiding principle of the review is that legislation should not restrict competition unless it can be demonstrated that:
 - (a) the benefits of the restriction to the community as a whole outweigh the costs; and
 - (b) the objectives of the legislation can only be achieved by restricting competition.
2. Without limiting the scope of the review, the review is to:
 - (a) clarify the objectives of the legislation;
 - (b) identify the nature of any restriction on competition;
 - (c) analyse the likely effect of any identified restriction on competition on the economy generally;
 - (d) assess and balance the costs and benefits of any restrictions; and
 - (e) consider alternative means for achieving the same results, including the use of non-legislative approaches.
3. When considering the matters in (2), the review should also:
 - (a) identify any issues of market failure which need to be, or are being addressed by the legislation; and
 - (b) consider whether the effects of the legislation contravene the competitive conduct rules in Part IV of the *Trade Practices Act 1974* and the NSW Competition Code.
4. The review shall consider relevant regulatory schemes in other Australian jurisdictions and any recent reforms or reform proposals, including those relating to competition policy in those jurisdictions.
5. The review shall consult with and take submissions from liquor industry, consumer and Government stakeholders and other interested parties.

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## **Appendix 2**

### **List of submissions and interviews – 1999/2000 Steering Committee process**

#### Written Submissions

1. Mr Kevin Morris, Thirlmere
2. Ms Ruth and Mr David Fagan, Cowra
3. Restaurant and Catering NSW
4. Department of Urban Affairs and Planning
5. Convenience Stores Australasia
6. Blacktown City Council
7. ClubsNSW
8. Department for Women
9. NSW Police
10. NSW Department of Community Services
11. Grant's Seafood Centre & Café, Nowra
12. Regional Communities Consultative Council, Orange
13. NSW Department of Aboriginal Affairs
14. Liquor Stores Association of NSW
15. Australian Hotels Association (NSW)
16. Franklins Ltd
17. NSW Wine Industry Association
18. Blue Line Cruises
19. Binnie Fiatarone Pty Ltd (for Eden Nightclub, Darlinghurst)
20. Minister for Small Business, Minister for Tourism
21. Liquor Administration Board
22. Council of the City of Sydney

#### Stakeholder Interviews

1. Australian Hotels Association (NSW)
2. ClubsNSW
3. Convenience Stores Australasia
4. Franklins Ltd
5. Liquor Administration Board
6. Liquor Stores Association of NSW
7. NSW Police Service
8. NSW Wine Industry Association
9. Restaurant and Catering NSW

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Appendix 3

List of submissions – 2002 Discussion Paper

1. Mr Kevin Morris, Thirlmere
2. Australasian Association of Convenience Stores
3. Australian Hotels Association (NSW)
4. Baulkham Hills Shire Council
5. Bed and Breakfast Council of NSW Inc
6. Club Managers Association, Australia
7. ClubsNSW
8. Department for Women
9. Department of Aboriginal Affairs
10. Gosford City Council
11. Independent Liquor Group Distribution Co-operative Limited
12. Independent Liquor Stores Association
13. League's Clubs Association of NSW
14. Liquor Administration Board
15. Liquor Stores Association of NSW
16. Nambucca Shire Council
17. Mr Neil Donnelly, NSW Bureau of Crime Statistics & Research
18. Drug Programs Bureau, NSW Health
19. Organised Crime (Gaming & Liquor), NSW Police
20. Sgt Garry Bowden, NSW Police – Wagga Wagga Local Area Command
21. NSW Wine Industry Association
22. Orange City Council
23. Randwick City Council
24. Responsible Use of Alcohol in Castle Hill
25. Restaurant & Catering NSW
26. Roads and Traffic Authority
27. Services Clubs Association Limited
28. Shoalhaven City Council
29. Sydney Convention and Exhibition Centre
30. Weddin Shire Council

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## **Appendix 4**

### **Off-licence and on-licence sub-categories under current system**

#### Off-Licence Sub-Categories

The Liquor Act includes the following sub-categories of off-licence, which allow liquor to be sold for consumption off the licensed premises:

1.     Retail  
  
        Allows the operation a retail liquor store or bottle shop selling liquor directly to the public.
2.     Vigneron  
  
        Allows a wine maker to sell wine by wholesale and retail (subject to certain limits on quantity) at the premises where the wine is made and/or fruit is grown.
3.     Sale of liquor to persons authorised to sell liquor  
  
        Allows the operation of a wholesale liquor business, selling liquor to other liquor licensees and registered clubs, but not directly to the general public.
4.     Brewer  
  
        Allows the operation of a brewery, and the sale of liquor to other liquor licensees, registered clubs, and employees of the licensee, but not directly to the general public.
5.     Auction  
  
        Allows the licensee to auction liquor on behalf of a person who is not authorised to sell liquor.
6.     Wine  
  
        Allows the operation a retail liquor store or bottle shop selling wine only directly to the public. No new wine licences may be granted.

#### On-Licence Sub-Categories

The Liquor Act includes the following sub-categories of on-licence, which allow liquor to be sold for consumption on the licensed premises.

1.     Airport  
  
        Allows the sale of liquor for consumption by members of the public on premises at an airport. An “airport” is a public airport established and maintained by a local council. The sale of liquor may only occur in conjunction with the arrival and departure of flights at the airport, and the airport must have proper facilities available for the sale, supply and consumption of liquor.

2. Public Hall

Allows the sale of liquor for consumption by members of the public in a public hall which has a “place of public entertainment” approval. Liquor may only be sold or supplied to persons who are seated at tables, and are attending a dinner, reception, convention, seminar or the like, or a ball conducted by or on behalf of a body or association of persons. The public hall must have adequate fittings, furniture and equipment for the accommodation of at least 300 persons, and have proper facilities available for the sale, supply and consumption of liquor.

3. Restaurant

Allows the sale of liquor with or ancillary to the consumption of a meal by members of the public in a restaurant. Restaurants may operate a reception area (“cocktail bar”) for guests to consume liquor prior to and at the conclusion of their meal. They must be open to the general public, and cannot operate as a private club. Restaurants may apply for a *dine-or-drink* authority, which allows up to 30% of dining seats to be allocated to persons who wish to consume liquor without a meal. The sanitary facilities in the restaurant must comply with planning consent requirements.

A restaurant licence can also be used to sell liquor in guests’ rooms and in a function centre within a motel that has at least 15 self-contained bedrooms with en-suite facilities.

4. Motel

Allows the sale of liquor for consumption by members of the public in a motel room that has en-suite facilities. The liquor may only be sold to a person accommodated at the motel via “mini-bar” facilities in the motel room, and the volume may not exceed two litres per day.

5. Theatre

Allows the sale of liquor for consumption by members of the public attending entertainment in a theatre (not a drive-in or open air theatre) which has a “place of public entertainment” approval. Liquor may only be sold when the theatre is open to the public so they may attend entertainment of the stage or cinematographic entertainment. The theatre must be primarily and regularly used for entertainments of the stage and/or for cinematographic entertainment, must have proper facilities to operate as a theatre (for example, appropriate seating having regard to the size and location of the stage or screen), and must have proper facilities available for the sale, supply and consumption of liquor.

6. Premises within a university that are occupied by a union, association or club within the university

Allows the sale of liquor for consumption by members and invited guests of a union, association or club in a university (established by an Act). A light meal must be available in a room on the licensed premises for consumption by patrons. Membership of the union, association or club that occupies the licensed premises must be open to the whole of the student body of the university, and the licensed premises must be available for use by all members of the student body (whether or not a member of the union, association or club).

7. Vessel

Allows the sale of liquor for consumption by members of the public on a vessel that is proceeding on a voyage. The voyage must not be as a ferry within Sydney Harbour.

8. Aircraft

Allows the sale of liquor for consumption by members of the public on an aircraft that is proceeding on a flight (not a flight that is only over Sydney and its suburbs).

9. Any premises certified by the Liquor Administration Board under section 74A

Allows the sale of liquor for consumption by members of the public on premises that are certified as suitable for the sale, supply and consumption of liquor by the Liquor Administration Board. The premises must not be operated as a private club, and the Board must be satisfied that another type of liquor licence (except a Governor's licence) is not suitable for the premises.

10. Function

Allows the sale of liquor for consumption by persons attending a function held by a non-proprietary (i.e. non-profit) association, or a trade fair. There are two types of on-licence (function) – a permanent licence and a temporary licence.

11. Wine

Allows the sale of wine, beer or spirits for consumption by members of the public (i.e. the operation of a "wine bar"). The conditions applying to an on-licence (wine) are similar to those applying to an hotelier's licence. No new wine licences may be granted.

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