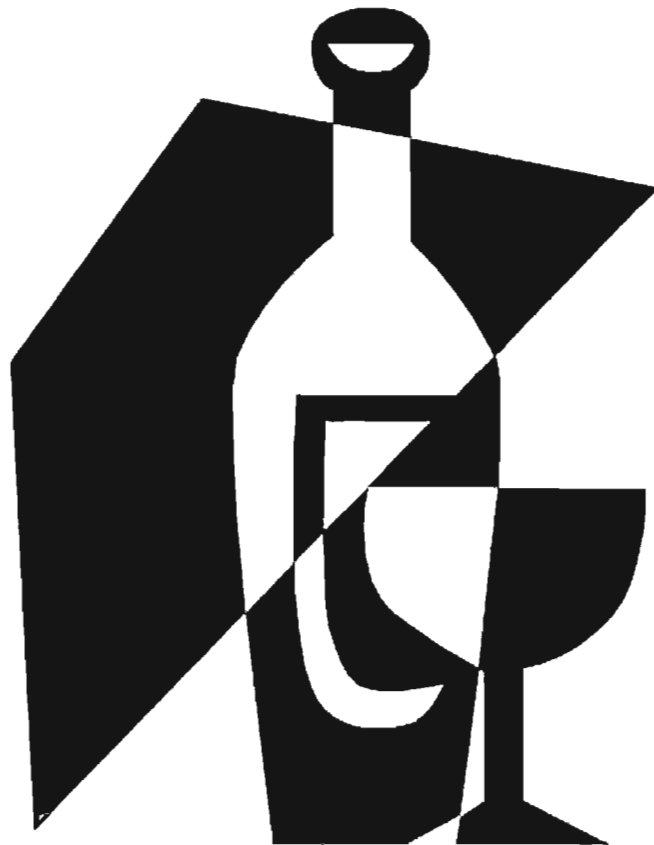


Northern Territory Treasury

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LIQUORACT



*National Competition Policy Review
– Final Report (March 2003)*

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EXECUTIVE SUMMARY

1.1 THE PURPOSE OF THE REPORT

Scope of the Review

The *Liquor Act* has been identified as legislation that contains anti-competitive provisions and must therefore be reviewed in accordance with the National Competition Policy (NCP) Principles. This Report is the result of that NCP Review process thus far.

National Competition Policy

National Competition Policy is given effect through inter-governmental agreements signed by the members of the Council of Australian Governments in 1995. The Reviews are contained in the *Competition Principles Agreement*. This agreement requires that legislation should not restrict competition unless it can be shown that the benefits of regulation to the community outweigh the costs, and further, that the objectives of the legislation could not be achieved in a non-regulatory way. It is *not* the task of the Review to evaluate the rationale of NCP. Rather, it is to determine whether, according to the guidelines, the restrictions in the Act can be justified in terms of being necessary to achieve the objectives.

The NCP presumes that markets should not be subject to anti-competitive restrictions, unless there is a public interest case for the retention of restrictions. This requires the identification of the objectives of the Act and the provisions of the Act that might be seen to restrict competition. These provisions are to be evaluated and should be removed if:

- (1) their benefits do not outweigh their costs; and
- (2) the objective could be better achieved by alternative less-regulatory means.

The Review Process

A *Consultative Paper* has been produced that identified the issues relevant to the Review and sought public comment on those issues. This *Draft Report* combines an analysis of that Paper and the comments received.

The General Objective of the Act

The Act limits the availability of liquor in the community and controls the manner in which liquor may be obtained. The Review, as required for NCP reviews, has assessed the main object of the Act as being that of minimising harm arising from the consumption of liquor. The Review accepts that the way in which liquor is sold and distributed needs to protect the amenity of community life (on a local, regional or Territory-wide basis).

The Review has developed definitive objects under which the Act should operate. It has also identified 38 restrictions that may impede on competition. Whilst the majority of those restrictions have been deemed to be justified in the public interest or are of a trivial nature not requiring review, some restrictions have been determined to be completely or partially unjustifiable under the NCP principles and recommendations have been made for those restrictions to be removed or modified.

Of particular significance is the finding in relation to the licensing restriction, particularly in respect to the matters to be considered in determining whether to grant a new liquor licence or not and the grounds upon which an objection to a liquor licence application can be made. Whilst recognising the need for a licensing regime is justified, the Panel has determined that the over-riding “needs and wishes” criteria should be replaced with a more certain “public interest” criterion when determining issues relating to new licence applications.

Other areas of the Act that have been identified as containing restrictions on competition relate to market entry and exit, business decisions of licence holders and discrimination between licence holders who essentially carry on the same business but who are required to trade under different conditions. One restriction that is of great significance with respect to the latter class of restriction is the ban on Sunday Trading for take away liquor outlets that do not operate under a tavern or club liquor licence. The Review Panel has found this restriction to be unjustifiable and has recommended that restrictions on Sunday trading should be abolished.

The overall objective of this Review has been to make reforms to the Act that will enable liquor industry participants to carry on their business in an environment as free from bureaucratic restrictions as possible, whilst ensuring the licensing system of regulation upholds the aims of harm minimisation and the amenity of community life.

1.2 SUMMARY OF RECOMMENDATIONS AND ASSOCIATED LEGISLATIVE CHANGES

A variety of restrictions have been identified and evaluated under this Review. The following is a summary of the recommendations and proposed amendments to the *Liquor Act* where such amendments are required to implement the changes.

Objectives of the *Liquor Act*

It is recommended that the following objectives be incorporated in the Act:

1. The primary objective of the *Liquor Act* is to minimise the harm associated with the consumption of liquor by encouraging responsible attitudes that reflect community expectations towards the promotion, sale, supply, consumption and use of alcohol;

Further objects are:

2. To promote the sale and supply of alcohol in such ways as to contribute to, and not detract from, the amenity of community life;
3. To facilitate the development of a diversity of licensed premises and related services for the benefit of the community; and

4. To regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

Restriction 1: It is recommended that the licensing system of regulation is the most appropriate means of ensuring the objectives of the Act are implemented and enforced and should be retained.

Restriction 2: It is recommended that section 25(1) be amended to read:

- “A body corporate shall not hold a licence unless that body corporate is a corporation within the meaning of the *Corporations Act 2001*”.

Restriction 3: It is recommended that the restriction on a licensee who’s licence has been cancelled by the Licensing Commission applying for a new licence within 3 years of the cancellation without permission of the Commission, and the restriction on the use of the premises the subject of a cancellation under section 26A is a duplication of other provisions of the Act, is unnecessarily restrictive and should be repealed.

Restriction 4: It is recommended that the restriction requiring an applicant who is a natural person, and persons with an interest in the applicant that is a body corporate, demonstrate they are a “fit and proper” person to hold, or maintain an interest in, a liquor licence under section 28 should be maintained, subject to a legislative change to more closely mirror the broader requirements contained under section 25 of the *Gaming Machine Act*.

Restriction 5: It is recommended the restriction that a licence application can be refused on grounds contained under section 29 of the Act be maintained, subject to legislative changes required to bring the restriction in line with other recommended changes contained in the Review that impact directly on the application of the restriction. Those changes are:

- That the Commission may only consider issues related to the objects of the Act in determining whether premises are suitable for the proposed purpose but may not consider other issues such as town planning.

Restriction 6: It is recommended that the restriction allowing forced exit from the liquor industry through licence cancellation or suspension under section 30 should be retained. No legislative change is required.

Restriction 7: It is recommended the restriction allowing the Licensing Commission to place conditions deemed necessary or desirable in the public interest to an individual licence application under section 31 should be retained, subject to the following legislative amendment:

- That the Licensing Commission should be tasked with establishing specific licence categories for each type of licensed activity under the Act;

- That the Licensing Commission formulate general conditions that should attach to each licence category, including hours of trade and general licensing requirements; and
- That the system of applying conditions to individual licence applications be limited to address public interest issues in the affected community, as expressed in concerns raised in bona fide objections to the granting of the liquor licence.

Restriction 8: It is recommended that the restriction on the number and types of licensed premises in any given area under section 32 should be amended by deleting the current criteria and inserting criteria addressing the “public interest” when determining whether or not a liquor licence should be issued.

Restriction 9: It is recommended that the restriction that the Licensing Commission can impose further conditions on existing licenses under section 33 should be amended to include the right of a licensee to apply to the Commission to vary the conditions or type of licence issued, subject at all times to the public interest.

Restriction 10: It is recommended that Division 3 of Part III of the Act that relates to prescribed fees be repealed.

Restriction 11: It is recommended that the restriction on the transfer of a liquor licence under section 40 should be amended to include that the Licensing Commission shall have regard to the public interest in authorising any application for the transfer of a liquor licence.

Restriction 12: It is recommended that the restriction that a person seeking to obtain or acquire a beneficial interest in an existing liquor licence be a “fit and proper person” under section 41 should be maintained, subject to the recommendations in respect to sections 28 and 32, as set out under Restrictions 4 and 6 respectively.

Restriction 13: It is recommended that the restriction on the transfer of a licence in circumstances as set out under section 43 of the Act should be retained. No legislative change is required.

Restriction 14: It is recommended that the restriction on the substitution of premises from which a licensee can operate under section 46A be maintained, subject to an amended that:

- a properly submitted application will be approved by the Licensing Commission without further consideration where no objections to the application have been lodged; and
- an application that attracts objections shall be dealt with under the procedures proposed in the amendments to section 48 of the Act.

Restriction 15: It is recommended that the restriction requiring the appointment of a temporary licensee in circumstances where the licensee is unable to conduct the business of the licensee under section 47 should be maintained. No legislative change is required.

Restriction 16: It is recommended that the restriction on who can apply to carry on the business of a deceased licensee under section 47C should be retained. No legislative change is required.

Restriction 17: It is recommended that the restriction on who can apply to carry on the business of a bankrupt licensee under section 47D should be retained. No legislative change is required.

Restriction 18: It is recommended that the restriction prohibiting a person nominated under sections 47C and 47D from selling or cancelling a liquor licence to which those sections relate, under section 47E, should be repealed. Section 47E should therefore be amended by deleting sub-section (3) of section 47E.

Restriction 19: It is recommended that the restriction allowing the Commission to cancel a licence under the circumstances set out in sections 68 to 72 should be maintained. No legislative change is required.

Restriction 20: It is recommended that the restriction that wholesalers of liquor who are not licensees be registered is justified and should be retained. No legislative change is required.

Restriction 21: It is recommended that the restriction prohibiting a person from selling liquor without a licence under section 115 should be maintained. No legislative change is required.

Restriction 22: It is recommended that Section 119 be amended by:

- Inserting a clause defining a “material alteration” to be an alteration that affects the harm minimisation or public amenity objects of the Act, or which increases or decreases the actual area of licensed premises that is utilised by the public for the sale or consumption of alcohol; and
- Including a provision that the process for an application for a “material alteration” includes a requirement for the application to be advertised at the discretion of the Licensing Commission.

Restriction 23: It is recommended that the restriction on a licensee seeking to transfer a liquor licence contained under section 44 of the Act should be maintained. No legislative change is required.

Restriction 24: It is recommended that the restriction in relation to objections against new licence applications and complaints against the operations of current licenses be retained.

Restriction 25: It is recommended that the restriction that the Commission may amend or alter a liquor licence that has been the subject of a breach under section 49(4) should be retained. No legislative change is required.

Restriction 26: It is recommended that the restriction that a licensee may be directed to perform, or refrain from performing, a specified action under section 65 should be retained, subject to the reviewed complaint process outlined in Restriction 24 (above).

Restriction 27: It is recommended that the restriction on the sale, supply and possession of liquor in restricted areas under Part VIII of the Act should be maintained, subject to the following legislative amendments:

- Sections 78-80 be amended to include objections to restricted area applications;
- Section 81 be amended to include consideration of the public interest; and
- A new provision be made for forfeiture of vehicles in cases where:
 - (i) An offender who owns the vehicle fails to appear before the courts on the date allotted to answer charges in relation to the seizure of the vehicle; or
 - (ii) The owner of a vehicle seized from a 3rd party against whom a prosecution has been commenced, has not made an application for the return of that vehicle within 30 days of the vehicle being seized.

Restriction 28: It is recommended that the restriction that a licensee must adhere to the conditions of that licence under section 110 should be maintained, subject to the proposals put forward earlier in the Review with regards to the use of generic licensing categories and uniform conditions for like licenses.

Restriction 29: It is recommended that the restriction allowing the Administrator to make regulations with respect to the operation of liquor licences be maintained, however the following amendment should be made to the Regulations:

- Regulation 4(1AA) of the Regulations prevents a store licence from trading on Sundays. Uniform takeaway trading hours should apply across the different types of outlet. Regulation 4(1AA) should be repealed and regulation 4(1) be amended to include a store licence as being a type of licence that can trade on Sundays.

1.3 GENERAL ADMINISTRATIVE MATTERS

1.3.1 Process

The *Draft Report* is to be presented to the Minister who will seek Cabinet endorsement of the submissions contained therein. The Report, once endorsed, will become the Final Report.

1.3.2 Terms of Reference

This review shall:

- (a) clarify the objectives of the legislation;
- (b) identify the nature of the restriction on competition;
- (c) analyse the likely effect of the restriction on competition and on the economy generally;
- (d) assess and balance the costs and benefits of restriction; and
- (e) consider alternative means for achieving the same result, including non-legislative approaches.

When considering the matters referred to in (b) above, the review should identify any issues of market failure which need to be, or are being addressed by the legislation, and determine whether the effects of the legislation contravene the competitive conduct rules in Part IV of the *Trade Practices Act 1974* and the Northern Territory Competition Code.

The review should consider the efficiency and appropriateness of the Northern Territory's system of liquor regulation, including its relationship and possible overlap with other legislation and regulatory systems that apply to licensed premises.

The review should consider and take into account relevant regulatory schemes in other Australian jurisdictions and any recent reforms or reform proposals, including those related to competition or competition policy in those jurisdictions.

The review shall consult with and take submissions from those organisations and individuals with an interest in the Northern Territory Liquor Industry, including:

- liquor licensees, liquor industry bodies and affected members of occupations associated with the liquor industry;
- relevant Northern Territory Government departments and agencies, including NT Treasury, NT Police, NT Health and Community Services and NT Department of Justice;
- organisations and agencies that provide liquor related harm minimisation services, or other relevant services to consumers; and
- consumers and members of the wider community.

1.3.3 The Approach of the Review Team

The approach of the Review has been to:

- Examine the Terms of Reference to determine the requirements of the Review;
- Identify the inferred objects of the Act;
- Identify and examine the effect of the restrictions on competition in the Act;
- Obtain information from other Australian States and Territories and countries with similar cultural characteristics regarding their approach to the regulation of the sale of liquor;
- Produce and distribute a *Consultative Paper* to inform interested parties of the Review, the matters under investigation, and criteria prescribed by NCP;
- Seek written submissions from the liquor industry, public health and welfare groups, and other parties who may have an interest in the matters before the Review;
- Examine the research literature which investigates the relationship between the availability of liquor and the incidence of harm;
- Investigate the likely consequences of the removal of restrictions on competition;
- Examine the written submissions to the Review; and
- Produce this Report.
- Present the Report to the Minister who will seek Cabinet endorsement of the submissions contained therein.

1.3.4 Conduct of the Review

The review has been conducted by Robert Perry of the Racing, Gaming and Licensing Division of the NT Treasury.

The Review process has been overseen by a steering committee comprising:

Mr Michael Eckermann, NT Treasury
Mr Robert Bradshaw and later Mr Robert Chamberlain, Justice Department
Mr Donald Hudson, Department of Business, Industry and Resource Development.

Industry members did not participate in the review process or sit on the steering committee because one of the principles of an NCP review is that the review process should be independent of the industry. Industry members and the wider community are involved through the consultation stage (in developing the issues) and in the report finalization stage, through public exposure of the provisional conclusions in this review paper.

1.4 BACKGROUND TO THE REVIEW

1.3.1 National Competition Policy

The Review of the *Liquor Act* is a result of the Northern Territory Government's commitment to the National Competition Policy. NCP has its origins in the *National Competition Policy* Report by the Independent Committee of Inquiry, chaired by Professor Hilmer and widely known as the Hilmer Report.

Much of the Report is directed towards anti-competitive structures, which are sustained and supported by government intervention, and with general questions concerning the desirability of de-regulation.

In considering market conduct and performance, the Report found:

Competition provides the spur for businesses to improve their performance, develop new products and respond to changing circumstances. Competition offers the promise of lower prices and improved choice for consumers and greater efficiency, higher economic growth and increased employment opportunities for the economy as a whole. [at p.1]

However, in recognition that some markets might not be efficient in a climate of unfettered competition, the Report noted:

Competition policy is not about the pursuit of competition per se. Rather, it seeks to facilitate effective competition to promote efficiency and economic growth while accommodating situations where competition does not achieve efficiency or conflicts with other social objectives. These accommodations are reflected in the content and breadth of application of pro-competitive policies, as well as the sanctioning of anti-competitive arrangements on public benefit grounds. [at p. xvi]

The Report therefore takes the view that a competitive market is *prima facie* the best outcome, and that regulation can only be justified where a market based on competition "fails", although regulation of an industry carries its own costs.

NCP requires that all Acts, whether Commonwealth, State, or Territory, that prescribe regulations that may inhibit competition, should be reviewed and, where necessary, amended or repealed. NCP is given effect through three intergovernmental agreements signed by the Council of Australian Governments in 1995.

These agreements are:

- The *Conduct Code* that commits governments to apply uniform competition laws;
- The *Competition Principles Agreement* that establishes consistent guidelines for the pro-competitive reform of government business enterprises and regulations; and
- The *Agreement to Implement National Competition Policy and Related Reforms* that specifies a timetable for reform and makes provision for additional general purpose payments to the States and Territories conditional on compliance with the reform agenda and timetable.

The guiding principles for NCP Reviews are contained in the *Competition Principles Agreement*. Those principles require that legislation should not restrict competition unless it can be shown that the benefits of regulation to the community outweigh the costs, and further, that the objectives of the legislation could not be achieved in another way. The principles of NCP, while recognising the importance of competition, do not indicate that competition is more important than other policy objectives.

The principles are based on the proposition that, provided certain conditions are met, competitive markets are efficient in three important ways. The efficiency concepts are outlined below, and are illustrated with examples from other markets:

- *Allocative efficiency* means that the product or service is readily available to those who are willing to pay the cost of its supply. For example, a sales tax on products in the white goods market causes the consumer price to be greater than the production and distribution cost; this is not allocatively efficient because some consumers who are willing to pay the supply cost, are unable to pay the tax-inclusive price and, therefore, buy fewer of these products.
- *Technical efficiency* means that average production costs are minimized. For example, in the air transport industry this means that airlines use planes with the lowest cost per passenger kilometre, taking into account load factors on particular routes.
- *Dynamic efficiency* means that businesses are flexible and adjust their output and product mix according to changes in the tastes and preferences of consumers. For example, in the passenger motor vehicle market, if demand switches from a preference for larger cars to smaller cars, firms respond by expanding their ranges of small cars and reducing the range of large cars. They do not raise the prices of small cars.

The Competition Principles Agreement recognises, however, that markets can “fail” if left to the unfettered effects of competition, in some cases calling for government intervention to redress socially undesirable outcomes including, but not limited to, regulation.

In the case of liquor, the most likely source of market failure is the presence of *externalities*, which means that some costs and/or benefits fall on parties other than the direct consumers and producers of the product. For example, externalities in air travel means that the costs of noise pollution to nearby householders is not paid for by airline passengers or the airlines, not are the householders usually compensated for the disturbance.

1.3.2 Criteria for the Evaluation of Restrictions on Competition

The methodology to be used in reviews of this nature is defined in the Competition Principles Agreement.

The first stage of the Review is the identification of those provisions of the Act that restrict competition. By way of illustration, the following are examples of potentially anti-competitive legislative provisions:

- Legislation that conflicts or appears to conflict with Part IV of the *Trade Practices Act* (e.g., enabling price fixing, exclusive dealing and the establishment of statutory monopolies);
- Legislation that creates structures that affect competition;
- Legislation that restricts market entry or exit;
- Legislation that creates competitive advantages or disadvantages for publicly or privately owned market participants;
- Occupational and professional regulations; and
- Legislation underpinning regulatory systems that reduce competition (including the imposition of significant costs), or that inhibits business innovation (e.g. through technical discrimination).

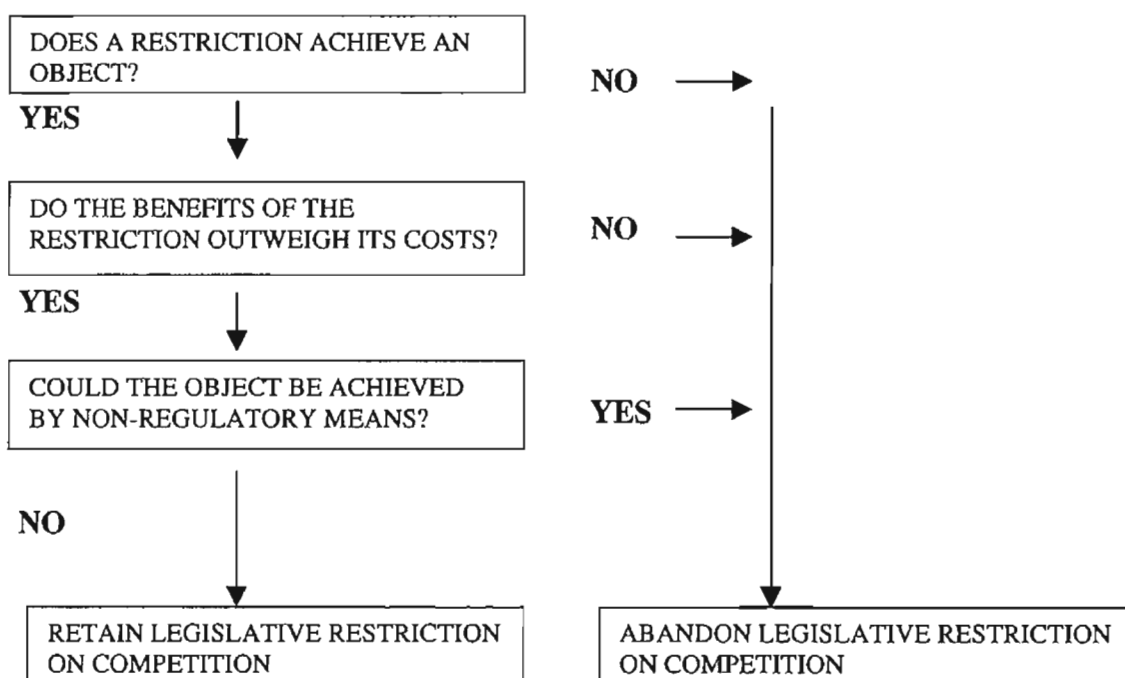
Other examples of legislative provisions having anti-competitive effects are provisions that, directly or indirectly:

- Control prices or production levels;
- Restrict the quantity, level or location of the goods or services available;
- Restrict advertising and promotional activities;
- Restrict price or type of inputs used in the production process;
- Are likely to confer significant costs on business; and

- Provide advantages to some firms over others, e.g. by sheltering some activities from the pressure of competition or by restricting the scope of supply.

Legislative provisions must also be assessed to determine the extent that any lack of transparency in the administrative structure may affect competition. An important aspect is the extent of accountability and oversight, and provision for adequate review and appeal mechanisms.

After this, the practical effect of each provision is examined according to the following general scheme:



The guidelines suggest that any restriction which does not achieve an object should be removed from the Act. Where a restriction goes some part of the way to achieving an object, but fails the cost-benefit test, there may be a case for redrafting the provision, or replacing it with an alternative provision in this Act or another Act.

The assessment of the costs and benefits of the restriction is made with respect to the “public benefit”. The factors that constitute “public benefit” are not exhaustively defined and will turn on the facts and circumstances of each piece of legislation. Nevertheless, it is helpful to note that the interpretation of the Competition Principles Agreement (cl.1) explicitly considers the term.

Without limiting the matters that may be taken into account, where this Agreement calls:

- *for the benefits of a particular policy or course of action to be balanced against the costs of the policy or course of action; or*

- *for the merits or appropriateness of a particular policy or course of action to be determined; or*
- *for an assessment of the most effective means of achieving a policy objective; the following matters shall, where relevant, be taken into account:*
- *government legislation and policies relating to ecologically sustainable development;*
- *social welfare and equity considerations, including community service obligations;*
- *government legislation and policies relating to such matters as occupational health and safety, industrial relations and access and equity;*
- *economic and regional development, including employment and investment growth;*
- *the interests of consumers generally, or a class of consumers;*
- *the competitiveness of Australian business; and*
- *the efficient allocation of resources.*

The benefit of a regulation is measured by the social gain it produces. This, for example, may include reductions in community health costs and improvements in local amenity.

Regardless of the benefits, regulation has an administrative cost falling on the government and ultimately the taxpayer, and a compliance cost borne by businesses. Although de-regulation clearly reduces the administrative burden, it is less certain what the compliance costs would be if government regulation was replaced by self-regulation.

The following have been widely identified as principles that underlie a Competition Policy Review:

- there must be a presumption against statutory intervention and the onus of proof should be on the proponent of intervention;
- the direct costs of regulation should be borne by the immediate beneficiaries of the regulation; and

- co-regulation, self-regulation and codes of conduct are all valuable regulatory mechanisms but are potentially subject to capture. There are regulations with minimal statutory support that are very targeted and cost effective. The provision of information is important. Ordinary market mechanisms should generally not be inhibited, subject to active enforcement of ordinary fair trading and other laws.

At first glance, the liquor industry may appear to have escaped the cost of the industry regulation as the fees provisions under Part III of the Act are now defunct (see sections 35 to 38, generally). The issue of fees is discussed later in this Report.

A second type of cost occurs if regulations cause markets to become inefficient by restricting competition, even though their intention may be to promote efficiency by reducing negative externalities. Restrictions that successfully reduce the adverse effects of excessive consumption may create other problems such as making the industry less innovative or less responsive to the preferences of consumers.

The scope of the *Liquor Act* is focussed on regulation of the liquor industry. As such, the clause of the Competition Principles Agreement that is considered relevant for review of the Act is clause 5(1), which states that legislation (including Acts, enactments, ordinances or regulations) should not restrict competition unless it can be demonstrated that:

- (i) the benefits of the restriction to the community as a whole outweigh the costs; and
- (ii) the objectives of the legislation can only be achieved by restricting competition.

Provisions of the Act are thus potentially important in:

- (a) restricting the individuals or organisations in society that can benefit from the sale and commercial supply of liquor;
- (b) imposing costs on individuals or organisations engaged in the sale or commercial supply of liquor; and
- (c) influencing competition between persons engaged in the liquor industry and generally in the tourism and hospitality industries.

Although the costs and benefits of restrictions are identifiable, many are unable to be quantified in dollar terms. Any weighing up of costs and burdens identified in the liquor industry must therefore be a matter of judgement.

The above generic descriptions of potential restrictions on competition are utilised in this Report to identify specific restrictions in the Act and regulations.

If a restriction is to be maintained, the review process must demonstrate the only practical way of attaining the objective is through the use of legislation.

The aim of the Review is, therefore, to establish a concise and annunciated set of objectives and to analyze each restriction contained in the Act against those objectives to assess its worth and determine whether the restriction is justified or not and whether it should be retained, modified or discarded.

2. HISTORY AND OVERVIEW OF THE *LIQUOR ACT*

2.1 History

The *Liquor Act 1978* ("the Act"). commenced operation on 12 February 1979 and repealed 57 Licensing Ordinances, which were enacted by the Commonwealth for application in the Northern Territory between 1939 and 1978.

The Act established an independent statutory authority called the Liquor Commission of the Northern Territory and transferred responsibility for the control of liquor licensing matters to the Commission from the Local Courts.

At that time, the Commission consisted of a full-time Chairman and two part-time members, one of whom had to be a legal practitioner of not less than five years experience.

The differences between the Act and the legislation it replaced were considerable and the basis of liquor licensing was substantially changed. The Commission was given very wide powers of discretion in the issue of licences and in the nature of conditions that could be attached to those licences.

The Act was intended to be more than a piece of administrative legislation. It was the outcome of a Legislative Assembly report and embodied social elements by vesting it with powers to control access to liquor and by requiring the Commission to be responsive to community needs and wishes. In addition, it made provision for the Commission to declare restricted areas in which alcohol could be partly, or wholly, excluded. This was largely, though not exclusively, to meet the needs of Aboriginal communities.

The Act did not establish specific licence classifications. The conditions attached to licences were used to apply different requirements to different premises, such as hotels, taverns, clubs, restaurants, stores, vessels, etc. Minor variations in conditions were applied to reflect the different characteristics of premises within groups, for example, to distinguish between public and private hotels, or between stores (supermarkets) and specialized liquor merchants.

This system provided a means for the Commission to reflect the needs and wishes of the community (as determined through the application and hearing process) and to make provision for some of the unique characteristics of the Northern Territory's liquor industry and the Northern Territory community. For example, the need for basic services in the more remote parts of the Northern Territory was addressed by the inclusion of conditions requiring the licensees of roadside inns to provide fuel, meals, accommodation and communication services on demand, 24 hours per day.

Flexibility was provided by the capacity to issue special licences. These licences authorise the sale and supply of liquor for a temporary period, subject to whatever conditions that the Commission considers appropriate.

Initially, the Commission had no formal involvement in alcohol education or rehabilitation, however underage drinking and excessive consumption of liquor (contributing to the breakdown of Aboriginal communities), were recognised problems. Related issues included the sale of liquor on credit and the cashing of social security cheques at licensed premises. In its 1978/79 Annual Report, the Commission made a number of recommendations, including recommended amendments to the Act, to deal with the problems of the day.

Since their commencement in 1979, both the Act and the Commission have undergone many changes. In 1979, the Commission was increased in size to a Chairperson plus three members and increased again in 1983 to a Chairperson plus four members. The requirement for a legal member remains unchanged. The membership of the Commission also provides for regional representation, with two of the five members usually being appointed from the southern region of the Northern Territory.

The Act has been amended on 34 occasions since 1978. While the original form and intent of the Act have been maintained and the majority of amendments have been minor in nature, several new sections have been added that increase the jurisdiction and powers of the Commission.

Examples include:

- Increased authority and power for Deputy Directors (then Deputy Registrars) and Inspectors;
- Provisions to address the continuation of licensed activities after the death or bankruptcy, etc., of the licensee;
- More stringent controls on underage drinking and the presence of minors on licensed premises;
- More extensive Commission discretion in applying conditions to licences; and
- More flexible licence hearing, application and transfer arrangements.

Significant changes arose out of the formation of the Department of Industries and Business ("DIB") in late 1999 and the Northern Territory Licensing Commission in February 2000.

The Northern Territory Licensing Commission was created out of the merging of the Liquor Commission, the Gaming Machine Commission, the Gaming Control Commission and the Private Security Licensing Authority.

2.2 Overview of the Industry

2.2.1 Licensing Commission Structure

The Northern Territory Licensing Commission ("the Commission") is an independent, statutory body established under Section 4 of the *Northern Territory Licensing Commission Act*.

The Commission currently consists of a Chairman and eight members. The functions of the Commission are to perform functions imposed on it under the *Northern Territory Licensing Commission Act*, *Racing and Betting Act (as the Racing Commission)*, *Totaliser Licensing and Regulation Act*, *Gaming Control Act*, *Gaming Machine Act*, *Liquor Act*, *Private Security Act*, *Prostitution Regulation Act* and *Kava Management Act*.

This Overview concentrates exclusively on the Licensing Commission's functions in respect of the *Liquor Act*. References to statistics for the Commission in the 1999/2000 fiscal year include figures of the then *Liquor Commission*.

The Commission has conducted 69 sittings in 2000/2001 compared to 67 in the previous financial year. Tables 1 and 2 summarise and compare the number and nature of Commission Sittings in 2000/2001 and 1999/2000.

Table 1 - Commission Sittings

Sitting Type	2000/2001		1999/2000	
	Number	Total Days	Number	Total Days
Commission Meetings	13	26	14	22
Special Commission Meetings	9	10		
Hearings	45	90	45	132
Conferences	2	8	1	4

Table 2 – Nature of Hearing

Hearing Type	Number	
	00/01	99/00
Application for a restricted area (withdrawn before going to hearing in 2000/01)	1	2
Application for the grant of a Liquor Licence	10	10
Complaint pursuant to Section 48 – 106(A)(1) of the <i>Liquor Act</i> (minors on premises)	0	1
Complaint pursuant to Section 48 – 121(1) of the <i>Liquor Act</i> (intox on premises)	3	1
Complaint pursuant to Section 48 – 102 of the <i>Liquor Act</i> (sold liquor to intoxicated persons)	5	8
Complaint pursuant to Section 48 – Other, (e.g. breach of licence conditions)	10	4

Application for cancellation of Liquor Licence	4	2
Application for variation of trading hours/conditions	7	16
Substitution of premises	0	1
Others	8	0

During 2000-2001, the Commission conducted 18 hearings into complaints against licences under Section 48 of the *Liquor Act*, compared to 14 in 1999-2000.

2.2.2 Licensing

Licences may be applied for under Part III of the Act. These are intended to permit the licence to engage in the full range of licensed activities, including the wholesale purchase and retail sale of liquor. Licences are subject to the conditions imposed by the Commission and remain in force until surrendered, suspended or cancelled.

The Commission is allowed wide discretion in determining the conditions that may apply to any licence. These licence conditions give rise to the common perception that there are different categories or types of licence.

The outcome is four categories of licence (excluding special licenses):

- Off licence;
- On licence;
- Club licence; and
- Roadside Inn.

Off Licences

These apply to premises where liquor may only be sold for consumption away from the premises. These premises include stores and liquor merchants.

On Licences

These apply to premises where liquor may be sold for consumption on, at or away from the premises. This licence category covers a wide range of premises and is the most proliferate in the Northern Territory.

Club Licences

These apply to premises operated by organisations incorporated under the *Associations Incorporation Act* of the Northern Territory, whose members have joined together for common purposes, e.g. sporting and social pursuits.

Roadside Inns

These apply to premises usually located in the more remote localities of the Northern Territory. These premises may be required to provide fuel, food and accommodation to the travelling public on demand, 24 hours per day.

Special Licences

Part VI of the Act provides for the issue of special licences that authorise the holder to sell liquor during the period or periods, on or at the premises and subject to the conditions specified in the licence. These special licences are available to anybody, but in particular to non-profit organisations that wish to raise money from the sale of liquor.

Special licences are most commonly issued for one-off occasions and can cover an event for up to ten consecutive days. The Commission requires seven days notice for the grant of a special licence. Hours of trade are generally limited to a period of 10.00am to 2.00am the following day, although they may be extended by application to the Director of Licensing. The holder of a special licence must purchase liquor from a retail outlet.

However, the Commission also issues what are referred to administratively as continuing special licences. These are available to sporting and non-profit organisations for a sporting season or a period up to 12 months. Trading is usually restricted to sporting events or a work social club. Liquor must be purchased from a retail outlet.

2.2.3 Restricted Areas

Restricted Areas are areas in which the sale, consumption and possession of liquor are generally prohibited in accordance with section 75 of the Act. In the Northern Territory, such areas are usually found in the outback. Similar powers are found in other jurisdictions to declare suburban areas of cities “dry” in the context that no liquor outlets can operate within that prescribed area. Police in remote Aboriginal communities provide the primary enforcement of the “dry area” provisions of the Act.

Residents in a restricted area are able to apply under section 87 of the Act for permission to possess and consume liquor in that area. Some communities have authorised the issue of permits to the majority of residents, as a means of controlling who can bring liquor into the community.

Under section 95 of the Act, conveyances (vehicles, vessels or aircraft) used to breach the restricted area provisions, by introducing or importing liquor into restricted areas, are seized and impounded on behalf of the Commission. The liquor involved is also seized.

Locations of Restricted Areas

(“Com.” means Community)

Aboriginal Trust	Aherrenge Land Trust	Alcoota
Ali Curung	Alpururulam Com.	Amanbidji
Ammaroo (Atnwengerrpe)	Angula & Mulga Bore	Angurugu (Groote Eylandt)
Animburra Com.	Anningie	Anyungyumba Com.
Apiwentye Com.	Areyonga	Atitjere
Barunga	Bathurst Island	Beswick
Binjari Com.	Bujana Outstation	Bulla Com.
Canteen Creek	Croker Island	Daguragu
Daly River	Daly River Mission	Docker River
Elsie Station	Eva Valley	Finke
Five Mile Camp	Galaru	Galiwinku (Elcho Island)
Gapuwiyak (Lake Evalla)	Goulburn Island	Hermannsburg
Hodgson Downs	Hodgson River Station	Ikuntji Com. (Haasts Bluff)

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Imanpa Com.	Jabiru	Junkaji Greenwood Com.
Kalano Farm	Kalkaringi	Kalumpurla and Bluebush Com.
Karlantijpa	Kunuyungku	Kybrook Farm
Lajamanu	Mainoru	Mamukala
Maningrida	Marlinja Com.	Maryvale
Mataranka Transient Camp	Mbunghara	Milikapati
Milingimbi	Mistake Creek	Mount Allan Station
Mpweringe - Arncliffe	Mudginberri	Mungkarta
Murray Downs	Mutitjulu	Myatt Com.
Napperby Station	Ngalpa Ngalpa Camp	Ngkur
Numbulwar	Nyirripi	Oenpelli
Old Top Springs	Papunya	Port Keats
Pularumpi	Ramingining	Robinson River
Rockhole Com.	Roper Valley Station	Santa Teresa
Stirling (Wilowra)	Tanami Downs Station	Tara
Ti Tree	Tingkarli Town Camp	Ukaka
Umbakumba (Groote Eylandt)	Urapunga Pastoral Lease	Urapunga Station
Urlampe	Utopia	Village Sorry Camps
Wartijilpungara Camp	Warumungu (Nguraminyi – Ngurratiji)	Werrenbum Com.
Wilgie Beach	Willowra	Wunara Com.
Wuppa Town Camp	Wutungurrura (Epenarra)	Yarralin
Yirrkala	Yuendumu	

3. THE OBJECTS OF THE ACT

3.1 The Present Model

The Act does not explicitly state its objectives, other than to state in the long title that the Act is to “provide for the regulation and sale of liquor”. However, that statement is a description rather than a statement of what the Act hopes to achieve. There is a need for a “purpose” to be explicitly included in the Act, which should focus on the minimisation of harm.

In the past, an important aspect of liquor licensing has been the collection of excise by the Territory Government as a source of revenue. Because of a High Court decision in 1997 making the imposition of certain types of licence fees by the States and Territories is unconstitutional, the collection of excise has been taken over by the Commonwealth and re-distributed to the States and Territories.

3.2 Objects and Aims

In many cultures, including that of the Northern Territory, there are very long traditions which seek to control or mediate the consumption of liquor. This is a consequence of the possible effects of the consumption of liquor on safety, social behaviour and public health. It is reasonable to assume that the community maintains such an expectation.

3.3 Development of a Statement of Objectives

3.3.1 Community input

A previous, incomplete Review contained an assessment of the current objectives based on the many public submissions that have addressed the issue and the Statements of Objects contained in similar Acts in other Australian States and Territories.

The 1998 Review recommended that:

- any purpose or object should focus on harm minimisation; and
- that it be explicitly declared in the Act.

This theme is consistent in the public submissions to this Review as well as being a common theme in the objects clauses of other State and Territory Acts that regulate the liquor industry and in the various NCP Reports conducted in relation to those Acts.

Overall, strong support has been received for a Statement of Objectives to be included in the Act. Those submissions varied in their content, but the general under-current of opinion was that such a Statement should include:

- the need for a regulatory system that achieves harm minimisation;

- the protection of public health and safety;
- the upholding of community standards; and
- the implementation of strategies that strive to achieve the optimum development of the tourist, liquor and hospitality industries of the Northern Territory.

3.3.2 Objects in other States and Territories

New South Wales

The sale of liquor in New South Wales (NSW) is regulated by the *Liquor Act 1982*. The Act aims to regulate the sale and supply of liquor, to regulate the use of premises on which liquor is sold, and for certain other purposes.

While the Act does not specifically define its objectives, it is clear that the primary object is the minimisation of harm associated with misuse and abuse of liquor.

Victoria

The Victorian Government's NCP review of its liquor legislation has resulted in the introduction of its *Liquor Control Reform Act 1998*. The Act includes the following three objectives:

- effective regulation of the sale and consumption of liquor;
- encouragement of responsible attitudes to the sale and consumption of liquor, including the protection of community amenity; and
- promotion of diversity and responsible development of the industry.

Queensland

The objectives of the Queensland *Liquor Act 1992* are specified, in detail, in Section 3 of the Act. In summary, the overall objective of the Queensland legislation is "...the provision of appropriate licensing arrangements for the sale of liquor, balanced against community expectations and interests and taking into consideration issues arising from the misuse of liquor".

The Act contains two fundamental "streams" of regulation, the first dealing with the responsible service of liquor and community and social issues, and the second concentrating on "who can sell what, and in what circumstances" issues.

Western Australia

The sale of liquor in Western Australia is regulated by the *Liquor Licensing Act 1988*. The objectives of the Act are divided into two categories, primary objectives as specified in the long title of the legislation and enforced under s. 5(2) of the Act, and a list of further objectives listed in s. 5(1) of the Act.

As such, the primary objects of the Act are to:

- (a) regulate the sale, supply and consumption of liquor; and
- (b) minimise harm or ill-health caused to people, or any group of people, due to the use of liquor.

Other objects of the Act are to:

- (a) regulate, and to contribute to the proper development of, the liquor, hospitality and related industries in the State;
- (b) cater for the requirements of the tourism industry;
- (c) facilitate the use and development of licensed facilities reflecting the diversity of consumer demand;
- (d) provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
- (e) provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.

South Australia

The sale of liquor in South Australia is governed by the *Liquor Licensing Act 1997*. The Act, which was introduced following its NCP review of liquor legislation, contains the following objectives:

- to encourage responsible attitudes towards the promotion, sale, supply consumption and use of liquor, to develop and implement principles directed towards that end and minimise the harm associated with the consumption of liquor;
- to further the interests of the liquor industry and industries with which it is closely associated within the context of appropriate regulation and controls;
- to ensure that the liquor industry develops in a way that is consistent with the needs and aspirations of the community;
- to ensure as far as practicable that the sale and supply of liquor contributes to, and does not detract from, the amenity of community life; and
- to encourage a competitive market for the supply of liquor.

Tasmania

The sale of liquor in Tasmania is currently regulated by the *Liquor and Accommodation Act 1990*. The objective of the Act is not defined in the Act. The introductory clause of the Act describes it as “an Act to regulate the sale of liquor, to provide for the licensing of certain accommodation and to provide an appellation system for Tasmanian wine”.

In its review of the Act, the *Liquor and Accommodation Review Group* identified the objectives set out in the Second Reading speech for the Act as being appropriate for inclusion as a Statement of Objectives in the Act, namely:

“The objectives of the Liquor and Accommodation Act are to encourage safety, quality and diversity in the provision of liquor and accommodation services for the benefit and enjoyment of both the Tasmanian community and visitors to the State.

Australian Capital Territory

The sale of liquor in the Australian Capital Territory is regulated by the *Liquor Act 1975*. The objective of this Act, which is contained in the Act, is to promote and encourage responsibility in the sale and consumption of liquor through the establishment of a scheme of liquor licences and permits.

In general, the primary objective of liquor laws across jurisdictions is the minimisation of harm associated with the abuse of alcohol, and the consequential provision of adequate controls over its sale and consumption.

In addition, a number of jurisdictions have applied their liquor laws to the objectives of promoting proper development of the industry and diversity in response to consumer needs. These objectives are in recognition of consumers’ expectations about the availability of liquor and the commercial expectations of the various participants in the liquor retailing industry.

As a result, licensing laws in most States contain “public interest” requirements that restrict competition in the supply of liquor.

3.3.3 Conclusion

A statement of objectives is usually considered necessary to ensure the ultimate intent of the legislation has direction and focus. If the Act is to be used as a primary vehicle for minimising harm arising from liquor, or to reflect the needs and wishes of the community, a statement of objectives becomes essential.

In the second reading speech for the passing of the bill (see *Hansard*, Debates – Wednesday 20 September 1978, p.239), the Minister made reference to the matters contained in section 32 of the proposed Act as being relevant to all liquor licenses to be issued by the then Liquor Commission.

Those matters are:

- the location of the licensed premises;
- the location and conditions of any licensed premises in the vicinity of the premises which are the subject of an application for a licence;
- the nature of any business associated with the licence applied for that it is proposed to conduct on the premises in respect of which the application is made;
- the needs and wishes of the community;
- except where the Commission is satisfied that an applicant for a licence does not propose to conduct any business under the licence applied for, the financial and managerial capacity of the applicant for a licence to conduct any business associated with the licence applied for; and
- where –
 - (i) the premises which are the subject of an application for a licence are located in a community government area; and
 - (ii) the community government council for that community government area has the power to make by-laws with respect to liquor –
advice offered by that community government council, including advice with respect to any intended exercise of the power referred to in sub-paragraph (ii); and
- any other matter that the Commission thinks fit.

Notwithstanding any findings in this Review with respect to the future operation of section 32 of the Act, reference to the matters contained in that section in the second reading speech demonstrate the intention that the Act address matters relating to the development of the liquor and related industries.

By considering submissions from industry and community groups and individuals, the second reading speech of the original bill and from reference to the objectives of similar legislation in other jurisdictions, the review team has proposed the following formulation of a Statement of Objectives for inclusion in the *Liquor Act*:

1. *The primary object of the Liquor Act is to minimise harm associated with the consumption of liquor by encouraging responsible attitudes that reflect community expectations towards the promotion, sale, supply, consumption and use of alcohol.*

Further objects are:

- 2. To promote the sale and supply of alcohol in such ways as to contribute to, and not detract from, the amenity of community life;*
- 3. To facilitate the development of a diversity of licensed premises and related services for the benefit of the community; and*
- 4. To regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.*

4 RESTRICTIONS ON COMPETITION

4.1 General Definition of Restrictions on Competition

Before reviewing the legislation to determine potential restrictions on competition, it is necessary to define what would in general constitute a restriction on competition within the context and scope of the legislation.

The scope of the *Liquor Act* is focussed on regulation of the liquor industry. As such, the clause of the Competition Principles Agreement that is considered relevant for review of the Act is clause 5(1), which states that legislation (including Acts, enactments, ordinances or regulations) should not restrict competition unless it can be demonstrated that:

- (i) the benefits of the restriction to the community as a whole outweigh the costs; and
- (ii) the objectives of the legislation can only be achieved by restricting competition.

The Act requires licensing of premises associated with the sale and commercial supply of liquor and places limitations on who can apply and hold such a licence. Provisions of the Act are thus potentially important in:

- (a) restricting the individuals or organisations in society that can benefit from the sale and commercial supply of liquor;
- (b) imposing costs on individuals or organisations engaged in the sale or commercial supply of liquor; and
- (c) influencing competition between persons engaged in the liquor industry and generally in the tourism and hospitality industries.

These generic descriptions of potential restrictions on competition were utilised in the review process to identify and analyse the anti-competitive aspects of the Act and the specific restrictions contained therein.

4.2 Identification of Anti-competitive Aspects of the Act

4.2.1. The Licensing Restriction - the need to be licensed to sell liquor

Licensed Persons

The Act requires a person to obtain a licence in order to be able to participate in the wholesale and retail liquor industries. Applications are determined through a process based on the proposed location of the business, the location of other licensed premises, the needs and wishes of the community, the financial and management capacity of the applicant, the views of any relevant community government council and any other matter the Licensing Commission considers relevant.

The application process also requires advertising of the intention to seek a licence, provides for the lodging of objections to a licence application and sets out the procedure for the conduct of hearings into licence applications by the Commission.

All liquor licenses are subject to core licence conditions and provision is made for additional conditions to be placed on a particular licence or licence type at the discretion of the Commission.

Other controls imposed through the licensing regime include the need for a licensee to seek the approval of the Commission to transfer the licence to a third person, in situations where the licensee is unable to conduct the business of a licensee or where the licensee dies or becomes bankrupt.

The cumulative effect of the licensing regime is that a liquor licence cannot be freely transferred or used as security and each licensed business must be supervised by an approved or licensed person (including in circumstances where the licence is held by a corporation).

Various other minor issues arise in respect to the operation of a liquor licence, such as the requirement to keep a copy of the licence on the premises and to produce the licence on demand.

The licensing requirement is anti-competitive because it includes, or potentially includes, the following restrictions:

1. Governs the entry or exit of firms or individuals into or out of markets (including the types of business structure, form of ownership and size of a business);
2. Controls prices or production levels;
3. Restricts the quality, level or location of goods and services available;
4. Restricts price or type of input used in the production process;
5. Is likely to confer significant costs on business; or
6. Provides advantages to some firms over others by, for example, shielding some activities from pressures of competition.
7. A broad power to impose conditions that has been used to create various licence categories that have the effect of providing advantages to some types of business over rival outlets and the imposition of varying compliance costs based on licence type.

Premises

The licensing regime also effectively requires the premises from which the licence holder operates to be licensed through provisions which restrict alterations to and substitution of the premises from which the licensee operates without the approval of the Licensing Commission.

These provisions are anti-competitive because they impose, or may potentially impose, the following restrictions:

1. Restrict the quality, level or location of goods and services available;
2. Restrict price or type of input used in the production process;
3. Is likely to confer significant administrative and other costs on business; or
4. Provide advantages to some firms over others by, for example, shielding some activities from pressures of competition.

Licensing Fees

There is an apparent absence of licensing fees for the administration of the licensing regime other than for the initial application. Although the Act reads as if annual licensing fees are provided for (Division 3 of Part III, sections 35 to 38 refer), the system of imposing fees under that Part has been ceased and no other fee regime has been introduced.

The absence of annual fees and the low dollar value imposed on new licence applications may be anti-competitive in terms of the NCC's criteria because:

1. Some firms may be advantaged over others by shielding some activities from pressures of competition; or
2. The absence of fees advantages the selling of liquor over all other regulated businesses that are often required to pay (via licence fees) for the costs of regulation. Additionally, it seems to offend the basic NCP principle that regulated industries which benefit from the regulation should incur the costs of administering that regulation.

4.2.2 Restrictions on Business Decisions

Effect of Licence Conditions

The Licensing Commission can impose any conditions it considers necessary or convenient on a liquor licence to protect the public interest. This may include restrictions on the type, quantity or quality of liquor that may be sold under a licence, the hours during which a licence can operate and the type of business that can operated under that licence. Restrictions may be imposed based on objections received to a new licence application or complaints received in respect of existing licensed premises. This is anti-competitive because:

1. Controls prices or production levels;
2. Restricts the quality, level or location of goods and services available;
3. Restricts price or type of input used in the production process;
4. Is likely to confer significant costs on business; or
5. Provides advantages to some firms over others by, for example, shielding some activities from pressures of competition.

Restricted Areas

Part VIII of the Act provides that the Licensing Commission may declare areas of land to be restricted areas. The effect of such a declaration is that it can be illegal to sell or consume liquor in a restricted area. This is anti-competitive because:

1. Entry and exit of persons into and out of the market are controlled or limited;
2. Prices and production levels may be controlled;
3. The quality, level and/or location of goods and services available to an affected area are controlled, including the kinds of conduct of entrepreneurs and consumers permitted in that area and the kinds and types of services and products available;
4. Advertising and promotional opportunities are restricted;
5. Price or type of input used in the production process may be restricted;
6. It is likely to infer significant costs on business; or
7. Some firms may be advantaged over others through effects such as the shielding of some activities from pressures of competition.

Maintaining of Records

A licensee is required to keep and maintain detailed records of all purchases of liquor and to make written returns every 3 months. This is anti-competitive because it is likely to confer significant costs on business.

4.2.3 Regulatory Restrictions

The Act provides for the Administrator to make regulations under the Act prescribing all matters that are required or permitted by the Act to be prescribed or which are necessary or convenient to be prescribed for giving effect to the Act. The majority of the Regulations relate to the calculation of fees under the now defunct Part III licensing fee regime. Regulation 4 however, prescribes the hours under which takeaway liquor may be sold and distinguishes between store licenses trading hours and the trading hours for other takeaway liquor outlets. This is anti-competitive because:

1. Controls prices or production levels;
2. Is likely to confer significant costs on business; or
3. Provides advantages to some firms over others by shielding some activities from pressures of competition.

4.3 Summary of Restrictions

The general restrictions outlined in 4.2 above have been used to identify those sections of the Act which have anti-competitive characteristics and are restrictive in their application. Restrictions identified as “major” or “minor” are analysed under Part 6 of the Review. Restrictions identified as “trivial” maintain strong *prima facie* public benefit cases for their retention as they clearly relate to harm minimisation, so that whilst they may be of a nature that possibly imposes significant compliance costs on industry participants, there is no need for detailed assessment and NCP justification.

The trivial anti-competitive provisions identified are:

- A licensee may have its business operations restricted or suspended by the Licensing Commission for up to one week (section 48A).
- A licensee may be prohibited from trading under a suspension notice issued by the Licensing Commission (section 66).
- A licensee is prohibited from selling liquor to intoxicated persons, thereby limiting the consumer base with the business may interact with (section 102).
- A licensee is prohibited from selling adulterated liquor, thereby restricting the range and quality of products a business can make available to consumers (section 103).
- Licensees are prohibited from allowing riotous and other unruly conduct on or at licensed premises, thereby restricting business practices on the premises (section 105).
- Persons are not allowed to purchase liquor from any person not licensed to sell liquor (section 116).
- The Licensing Commission can prohibit minors from being allowed onto licensed premises or to be sold or supplied with liquor (sections 106 to 106E, section 117 and section 118).
- Licensees face additional costs through the imposition of penalties by the Licensing Commission and the Courts (sections 124, 124AAA and 124AA).

- A licensee must exclude or remove intoxicated or otherwise anti-social patrons from their premises (section 121).

4.3.1 The licensing restriction

Restriction 1

The Licensing Commission may issue a licence for the sale of liquor which vests personally in the licensee to whom it was granted (section 24).

Restriction 2

The Licensing Commission may issue a licence to a body corporate that is incorporated or registered as a foreign company (section 25).

Restriction 3

A licensee whose licence has been cancelled by the Licensing Commission cannot, unless approval is given by the Commission, apply for a new licence for three years. No other person can, without permission by the Commission, apply for a licence with respect to the premises for which the licence was cancelled within that three-year period (section 26A).

Restriction 4

An applicant who is a natural person, and persons with an interest in an applicant that is a body corporate, must demonstrate they are a “fit and proper” person to hold or be a beneficiary under a liquor licence (section 28).

Restriction 5

The Licensing Commission can refuse a licence application properly submitted based on the personal qualities of the applicant, such as whether the applicant is a “fit and proper” person, has a demonstrated knowledge relevant to the managing of licensed premises and whether the nominated premises are suitable for the proposed purpose of the licence (section 29).

Restriction 6

The Licensing Commission may cancel or suspend the operation of a licence independent of any decision of the licensee (section 30).

Restriction 7

A person seeking to enter or exit the liquor industry, or benefit from the proceeds of a liquor industry related business, through the transfer of a liquor licence, is reliant on the transferee or other such beneficiary proving to be a “fit and proper” person to hold a licence (section 41).

Restriction 8

The Licensing Commission can place any conditions deemed necessary or desirable in the public interest to an individual licence application (section 31).

Restriction 9

The Licensing Commission can limit the number and type of licenses in any given area, based on the location of the proposed licensed premises, the location and conditions of any other licensed premises in the vicinity, the nature of the business proposed, the needs and wishes of the community and any other matter the Commission thinks fit. (section 32).

Restriction 10

The Licensing Commission can impose further conditions on existing licences that can effect the trading capability of a licensee (section 33).

Restriction 11

Prescribed licence fees are imposed on licensed premises (Division 3 of Part III, sections 34 to 38).

Restriction 12

The entry and exit of individuals and firms into and out of the market through the transfer of an existing liquor licence is governed by the Licensing Commission (section 40).

Restriction 13

The Licensing Commission can refuse an application for the transfer of a liquor licence, even if the applicant meets all the requirements of the Act (section 43).

Restriction 14

The Licensing Commission can prevent a licensee substituting the premises from which a licensed business is run, restricting a licensee in endeavours to expand or improve the fiscal capacity of the business (section 46A).

Restriction 15

An acting licensee must be appointed in circumstances where the licensee is unable to conduct the business of the licensee (section 47).

Restriction 16

Only certain classes of person can be assigned to continue the business of a deceased licensee (section 47C).

Restriction 17

Only certain classes of person can be assigned to continue the business of a licensee who has entered into bankruptcy proceedings with respect to the licensed premises (Section 47D).

Restriction 18

An assignee of a licence under sections 47C or 47D cannot surrender or transfer the licence unless it has been transferred to that person to hold on his own behalf (Section 47E).

Restriction 19

The Licensing Commission may cancel a licence, thereby preventing a person from participating in the liquor industry (sections 68 to 72).

Restriction 20

Wholesale liquor merchants are required to be registered under the Act before they can engage in the sale of liquor to retail licensees (section 113A).

Restriction 21

Persons are prohibited from selling liquor without a licence, creating an artificial barrier to entry into the industry and influencing market fluctuations through the control of competition (section 115).

Restriction 22

A licensee is restricted in the extent and manner of expansion of that business enterprise because material alterations may not be made to licensed premises without the express consent of the Licensing Commission (sections 119 and 120).

4.3.2 Restrictions on business decisions

Restriction 23

A licensee seeking to transfer a licence may have that licence cancelled where the transfer application has been refused (section 44).

Restriction 24

A licensee may be restricted in the operation of licensed premises based on objections to a proposed new licence or complaints in relation to the business practices of established licensed premises (section 48).

Restriction 25

A licensee may have a liquor licence amended or altered, or its scope of operation restricted by the Licensing Commission (section 49).

Restriction 26

The Licensing Commission may direct a licensee to perform, or refrain from performing, a specified action, thereby limiting the type of business enterprise undertaken at licensed premises (section 65).

Restriction 27

The Licensing Commission can restrict the sale, supply and possession of liquor in a given geographical area, thereby limiting or prohibiting the business practices and scope for financial gain of persons in those areas (Part VIII, sections 73 to 101).

Restriction 28

A licensee must adhere to the conditions of that licence (section 110).

4.3.3 Regulatory Restrictions

Restriction 29

The Administrator may make regulations under the Act with respect to hours of trade, types and quantities of liquor available to the public, competition in the liquor industry, the providing of credit for liquor sales and any other matter related to the operation of a liquor licence (Section 128). One such regulation that has been identified as anti-competitive is Regulation 4, which discriminates between businesses carrying on similar functions under different types of licenses.

5 SUBMISSIONS TO THE REVIEW

A consultation program was undertaken to invite submissions to the Review.

Invitations to make submissions to the review were made by written advice to persons and organisations with a known interest in the liquor industry and by way of public advertisement.

5.1 Contributors to the Review Process

Submissions were received from the following persons and organisations:

1. Office of the NT Anti-Discrimination Commissioner;
2. Jabiru Town Council
3. Curtin Springs Wayside Inn
4. Darwin City Council
5. Katherine Town Council and NT Chamber of Commerce and Industry (Katherine Branch).
6. Australian Hotels Association – NT Branch
7. Council for Aboriginal Alcohol Program Services Inc.
8. Liquorland (Aust) Pty Ltd
9. Liquor Stores Association of the NT
10. Darwin Community Legal Service
11. Living with Alcohol – Darwin
12. Woolworths Ltd
13. Kakadu/West Arnhem Gunbang Action Group
14. ATSIC
15. Foundation of Rehabilitation with Aboriginal Alcohol Related Difficulties
16. Amity Community Services
17. Living with Alcohol – Tennant Creek
18. NT Police, Fire & Emergency Services

19. Tangentyere Council
20. Janet McIntyre
21. Shirley McKerrow
22. NT Tourist Commission
23. John Withnall
24. Alice Springs Town Council
25. Northern Land Council
26. Office of the Director of Licensing
(Northern Region)
27. Menzies School of Health Research
28. NT Licensing Commission
29. Tyeweretye Clubs Inc.

5.2 Summary of Submissions

The submissions made to the Review have been summarised as follows.

1. Review of the Act under the NCP

One opinion was put forward that the Act should be excluded from the NCP Review on the grounds of “public benefit”.

All other comments generally agreed to the review, but justified the retention of regulation including anti-competitive measures based on the very same grounds of “public benefit”, as well as “harm minimisation”.

2. Should a Clear and Comprehensive Statement of Objectives be Incorporated into the Act

Nearly all the respondents agreed that a Statement of Objectives should be incorporated into the Act, though views varied as to what the content of the Statement should be.

Submissions on the formulation of the Statement of Objectives were:

- A prime objective of the Act is to minimise harm arising from misuse of alcoholic beverages;

- The purpose of the Act is to establish a regulatory framework that permits appropriate development of the liquor industry under a system of effective regulatory controls that minimises harm arising from the consumption of liquor and that reflects the needs and wishes of the community;
- The purpose of the Act is to ensure harm minimisation from the consumption of liquor and reflect the needs and wishes of the community as a priority over the elimination of competition restrictions;
- The objective of the Act is to establish a Commission to regulate the promotion, sale, supply and consumption of alcohol in the NT consistent with harm minimisation and with the intention of encouraging the development of a responsible and sophisticated liquor industry throughout the Northern Territory;
- The objectives of the Act are to ensure harm minimisation, public health and safety and the administration of the liquor industry through regulation, community consultation and community education;
- The purpose of the Act is to ensure harm minimisation, including the encouragement of effective industry self-regulation and responsible attitudes and practices in the promotion, sale, supply and consumption of liquor;
- The objective of the Act is to manage the availability of alcohol within the community and according to the community's needs and wishes, in order to minimise the harm and economic, social and personal costs to the whole community; and
- The objective of the Act is to facilitate and regulate the sale of liquor to achieve the optimum development of the tourist, liquor and hospitality industries of the Northern Territory, having regard to the welfare, needs and interests of the community;
- Other comments, while undefined, support the inclusion of a Statement of Objectives as a way of enabling effective strategies for harm minimisation to be developed, tested, implemented and evaluated; as a means of emphasising a long term and broad based public policy; and as including an emphasis on liquor retailers to abstain from over-supplying of alcohol that leads to community harm;
- Only one submission argued against the inclusion of a Statement of Objectives, on the ground that to include such a Statement would only complicate the interpretation of the Act.

3. *Transparency of the Application of the Act*

Comment in this area relates to the delegation of powers in certain instances. Public submissions generally agreed that some devolution of Commission powers to the Chairman and Director and Deputy Directors of Licensing could be of benefit to the

administration of the Act. However in any case of delegation of powers, the principles of natural justice and administrative law principles would apply.

Another point considered in the submissions is that the Act should provide for individual Commission members to sit in a “pre-hearing directions capacity” to determine matters such as points in issue, witness availability, the need for legal representation, etc.

4. Industry Regulation

All the groups and individuals who made submissions to the review support the view that the benefits of regulation far outweigh the costs associated with the restrictions on free trade.

Three broad methods of industry regulation were suggested in the Consultative Paper:

- Legislative regulation through licensing;
- Co-regulation between government and the liquor industry; and
- Self-regulation of the industry through the development and adoption of a code of ethics.

The overwhelming view of most respondents was that regulation by government must be retained to protect the public interest. Whilst there is some support for co-regulation and even one submission supporting self-regulation constrained by enacted penalties for breaches of an agreed Code of Ethics, the popular view is that regulation through licensing of liquor retailers should be retained.

The main argument in favour of the retention of the licensing system of regulation is that regulation protects the public interest and the licensing requirement allows interested and effected parties to comment and/or object to the issuing of a particular licence with respect to public interest issues, including harm minimisation.

Another benefit perceived as supporting the retention of the licensing regime is that alcohol consumption can be directly linked to availability and the licensing system is seen as an effective method of containing the number of liquor outlets within a geographical area, as well as prescribing the trading hours of those premises on an individual licence basis, having regard to issues of public benefit and harm minimisation.

Another view put forward was that the licensing regime, in considering the costs associated with harmful levels of alcohol consumption, protects the community health and safety through harm minimisation whilst considering the financial viability of a responsible liquor industry.

As stated above, co-regulation has also received some support as a means of producing effective supply restriction and demand management strategies. Co-regulation is seen by some to be acceptable, provided the industry is not driven by profit alone. Peculiarly, a licensing regime was seen as the best way of achieving this. There was also a suggestion that co-regulation through an Industry Code of Practice, regulated by way of pecuniary penalties provided for in the Act, would be an alternative means of regulation.

It has also been submitted that the Act specify a fixed time frame for the commencement of trading from proposed premises not yet completed. The recommended time frame is twelve months from the granting of the licence, with the provision for an application for an extension of time in special circumstances.

Submissions have also been received arguing the merits of section 32 of the Act. It has been submitted there should be a re-working of the section to clearly define the criteria under which a licence should or should not be granted, including a specific definition of the “needs and wishes” criteria, including a test that incorporates reference to issues of locality and a demonstrated presently unsatisfied need for the proposed licence.

It has also been suggested the onus of proof should be reversed so that the applicant must prove all the criteria are met, in particular the issue of “needs and wishes”. There was also a suggestion that applicants for new and amended liquor licenses be required to commission a “social impact statement” along the same lines as environmental impacts statements are required for urban development submissions.

Other comments have been received that support the current section 32 provisions and the open ended nature of the “needs and wishes” criteria.

There is general consensus that licensees should keep accurate sales records that assist the Commission to determine community issues related to harm minimisation and community benefit.

5. Review of Liquor Licenses

Submissions have been received suggesting that the Act should provide for a statutory review of liquor licenses by the Commission on its own initiative or at the request of a community. It is proposed that licenses should be awarded for a fixed term subject to periodical review by the Commission, with representation by affected community groups and other interested parties.

Another submission is that licenses should be reviewed by the Commission, with respect to the needs and wishes of the community they service. The emphasis should be on updating the conditions of a licence in light of the changing needs and wishes of that community, rather than whether an individual licence should be renewed.

6. Incorporation of other Acts into Liquor Licenses

Two submissions were received stating that the Act should include as a mandatory requirement, compliance with the NT Anti-Discrimination Act 1992, the Disability Discrimination Act (Cth) and the Building Code of Australia to ensure fair access and safety for disabled and other affected persons.

It was also submitted that the Act be amended to ensure land owner's consent, where applicable, is obtained in accordance with the provisions of the Aboriginal Land Rights (NT) Act 1976 (Cth).

7. Sunday Trading Restrictions

The submissions that deal with this issue were split on the view of if and how Sunday trading should be regulated.

On the one hand, those who do not support deregulation of Sunday trading argue such deregulation would increase exposure of liquor products to at-risk groups and under aged and intoxicated persons, would place heavy financial penalties on hotels and lead to a loss of jobs and subsequent loss of tax revenue to the NT.

Other submissions suggested there should be no change to the Act that supports or permits an increase in per capita sales of alcohol products, and that Sunday trading should only be permitted from hotels, clubs, restaurants and wayside inns. It is argued any increase in availability would result in greater alcohol related harm and social costs.

On the other hand, those in favour of deregulation of Sunday trading claim the continued restriction of Sunday trading on liquor stores is unjustifiably discriminatory and anti-competitive.

It is argued the prohibition is historically based and was originally implemented at a time when supermarkets generally were prohibited from trading on Sundays – the *Liquor Act* restrictions simply mirroring other restrictive legislation. It is argued the restriction is redundant given supermarkets and other outlets are now free to trade on Sundays.

One submission even suggested the Act be amended to allow for flexible trading hours of a continuous 12 hour period from between 8.00am and 10.00pm seven a days a week for all take-away liquor outlets.

8. Regulation of E-Commerce Sales of Liquor

One view expressed in the submissions is that the issue of e-commerce in the liquor industry should be reviewed and incorporated into the Act. Another view is that the present approach to the matter is appropriate, however consideration may be given to legislating for a coordinated approach with other jurisdictions.

Another submission suggests the use of internet or e-commerce transactions should not be allowed to widen the scope of the distribution of liquor, but only to improve the levels of service in the industry. In other words, only current licence holders should be able to operate via e-commerce transactions and safeguards must be put in place to protect at risk groups.

One submission is concerned that e-commerce sales could have a detrimental effect in restricted areas, while another suggests e-commerce sales of liquor should be banned, as regulation would be impossible.

9. Amending Licence Conditions under Section 33 of the Act

Submissions have been received in which it was suggested section 33 of the Act should be restricted to operate only at the request of a licensee or in response to a breach of the conditions set out in section 31(2)(a) – (k) of the Act.

A further submission suggested all applications by licensees for a variation liquor licence conditions should be advertised.

Another view was that the Act should be amended to specifically provide for a licensee to apply to have their licence varied to any extent they consider necessary or convenient for the operation of the licence, subject to the Commission having power to conduct inquiries similar to those for a new licence application, including the need to advertise the proposed variations.

10. Licence Categories

Submissions are divided on whether liquor licence categories should be specifically defined under the Act. There is strong support for the retention of the “free form” licensing system, under which it is claimed the needs and wishes of the relevant community are best addressed.

Flexibility in tailoring the terms and conditions of individual licenses allow progressive change in licence conditions to achieve harm minimisation and enable the Commission to tailor individual licenses to the needs of the licensee and the community.

It has also been suggested that the rationalisation or expansion of licence categories are restrictive and would act against ensuring the needs and wishes of particular communities and in ensuring the objectives of the Act are met.

On the other hand, some submissions have favoured the introduction of specific licence categories to varying degrees. It has been suggested the current system of generic licenses being issued with conditions being included by the Commission determined by the particular circumstances of the applicant is inequitable and difficult to regulate.

It has also been suggested that licence categories should be set down in the Act, with conditions remaining flexible and not confined under the Act. The conditions under each category should remain flexible to reflect the needs of local communities.

One submission also suggested the application fee for liquor licenses be reviewed and a scale of fees be implemented for different licence categories, ranging from a substantial outlay for a full night club, tavern or hotel licence and reducing for more restricted licence categories down to a nominal fee for a “one off” special licence application.

11. Restricted Area Provisions

All respondents to the Consultative Paper who addressed this issue are supportive of the legislation to varying degrees. Most respondents, including indigenous group representative bodies, consider the legislation is an aid to harm minimisation and should be retained.

Criticism of the legislation referred mainly to procedural matters. One criticism was that the process for applying for a restricted area declaration does not allow for objections to be properly heard, allowing only for a person to “express an opinion regarding an application”.

It has been submitted that the process for Restricted Area applications be revised to more closely follow the process set out for an application for a liquor licence.

Another criticism is that the procedures relating to the disposal of goods seized under the Act is at the present cumbersome and the legislation should be streamlined to reduce the time such goods, and in particular vehicles, are retained by police in remote areas.

An issue regarding the protection of the NT Police Service against actions for compensation over damage incurred to property whilst seized and in the possession of Police for Restricted Area offences has also been raised in another forum. Currently, it is arguable as to whether Police are indemnified under section 23 of the Act.

Another comment was that the Restricted Area legislation is not suited to inclusion in what is chiefly a licensing Act, and should be removed from the *Liquor Act* and established as an Act in its own right as an important piece of legislation.

All but one submission are in favour of the retention of a flexible permit system.

The Restricted Area provisions of the Act are seen as a good tool in promoting harm minimisation in remote communities and should be retained. Little or no benefit would be achieved in removing the provisions from the Act and establishing a separate “Restricted Area” legislative regime.

12. Section 14 - Assessors

One submission has suggested that section 14 of the Act be repealed, as the Commission has never sought or considered the use of Assessors as provided for.

13. Review of the Relationship between a Nominee and Corporate Licensee

A request for review was submitted with respect to the relationship between a nominee and corporate licensee, in particular the effect of a finding against a nominee as being not fit and proper to hold a licence on a corporate licensee.

14. Rights and Liabilities of Receivers/Managers and Liquidators under the Act

A submission has been put forward that provision should be made in the Act for the rights and liabilities of a receiver, receiver/manager and liquidator of a corporate liquor licence.

15. Section 28 - Probity Checks

It has been suggested that section 28 be amended to more closely reflect the provisions of the *Gaming Machine Act* in requiring probity checks to be carried out on all persons associated with a business on licensed premises. Such persons would include all company directors and other company officers, as defined in the *Corporations Act 2001* and would include “ghost” and “defacto” directors.

16. Sections 35 and 36 – Licence Fees and Penalties

Comment has been made that section 35 of the Act is redundant with respect to licence fees and should be repealed. It has also been submitted section 36 be amended to make it relevant to liquor returns only.

17. Section 40 - Liquor Licence Transfers

It is suggested the transfer provisions under section 40 of the Act be strengthened to provide the Commission with the same powers that it has in relation to an application for a new liquor licence. This power is sought for occasions where a licence transfer provides the Commission with difficulty in determining the merit of transferring a liquor licence.

18. Section 48 – Objections and Complaints

There were several submissions commenting on the objection and complaint mechanisms under section 48 of the Act.

Submission proposals included a recommendation that the complaint mechanism should be amended to allow a process for reviewing alcohol sales on the ground of social impact, health and economic harm grounds within a community.

Another submission called for the objection mechanism to be reviewed to protect objectors from the intimidation that can be experienced when exposed to cross-examination by trained legal representatives acting for licensees.

It was also submitted that the present complaint mechanism is ineffective and should be streamlined to allow police to receive complaints. The grounds for complaints should be stipulated in the Act and the form of a complaint should be expanded to include complaints made over the phone, by e-mail, face to face or by letter.

Another submission suggested that the Act should stipulate conciliation as a first step in the resolution process, with full hearings by the Commission being a last resort.

19. Section 48A – Suspension of Licence

One submission to the Review proposed that the Commission's power under section 48A be varied by increasing the period of suspension from 7 days to 14 days.

20. Introduction of Monetary Penalties and Infringement Notices for Breaches of the Act

This proposal received a number of comments in the submissions. Some comments are that monetary penalties should be used in conjunction with licence suspensions, not as an alternative. There is also some support for the introduction of infringement notices for minor breaches of licence conditions. Another view is that sanctions by way of fines may be an alternative for minor offences, with repeat offenders being subject to a disciplinary hearing by the Commission.

Another view of the introduction of standardised fines for specific offences was that such a system would have a differing impact on individual licensees, having regard to the nature and size of their business, and their ability to absorb such financial burdens. Also on this point, one submission suggested that such monetary penalties in lieu of suspension may be beneficial in so far as an imposed penalty was greater than the revenue lost due to a suspension period.

Others commented that the present regime of sanctions under the Act is a more effective system than the introduction of monetary penalties and infringement notices.

Other comments included a recommendation that sanctions under the Act should be reviewed, including an increase in penalties for regulatory offences, such as selling liquor without an appropriate licence.

21. Section 51 – Hearing Procedures

It has been submitted in the Review that some aspects of the hearing procedures under section 51 of the Act should be reviewed. These include an amendment to section 51(2A) to give the Chairman an unfettered power to determine the number of Commissioners to constitute a hearing panel.

Another submission recommended the Act stipulate that membership of the Commission should be altered to include at least one Aboriginal person and members with local knowledge of their region, with the goal of achieving a broader and more effective representation of minority groups and regional areas.

It was also proposed that sections 51(10A), (10B) and (10C) be repealed as they are an unnecessary duplication of the right to review under section 28 of the *Northern Territory Licensing Commission Act*.

22. Section 56 – Privative (Ouster) Clause

It has been submitted that the ouster clause contained in section 56 of the Act is redundant in light of the provisions of the Licensing Commission Act and should be repealed.

23. Section 121(1A) – Removal of Intoxicated Bona Fide Resident from Licensed Premises

A submission has been received suggesting this section should be re-worded to mirror a licensee's obligation under s. 121(1) to remove intoxicated persons from licensed premises. The submission suggests the section should provide that the licensee or his employee should be obligated to remove a bona fide resident who is intoxicated from that part of the premises where alcohol is served and consumed in a public environment and if necessary, escorted to their bedroom or other area in consideration of their and others safety.

24. Section 102 – Selling Liquor to Intoxicated Person

One submission has suggested section 102 should be amended to allow for the Commission to hear a complaint against a licensee where the licensee or an employee of the licensee has been charged with an offence of sell/supply liquor to an intoxicated person.

Other submissions on section 102 propose that the section should be broadened to allow liquor outlets to breath-test customers before permitting a sale, based on a prescribed reading level fixed by the Commission or by the Regulations.

A further submission was that the reverse onus of proof under the section is unfair, unjust and impracticable and should be amended to place the onus of proving an offence under the section back on the prosecution.

It was further submitted that in fairness to a licensee or employee of a licensee who is the subject of a matter under section 102, the Act should stipulate that complaints should in the first instance be brought to the attention of the licensee or his employee, at the time the complaint is made or as soon as possible thereafter, before it can be considered by the Commission.

25. Section 104(3)(d) – Invited Guests on Premises After Hours

It has been submitted that this section provides difficulties on some occasions where a licensee permits people to remain on premises after hours on the pretext those persons are invited guests. It has been suggested this section should be reviewed and tightened up to ensure the privilege is not abused.

26. Section 106A – Minors on Licensed Premises

It has been submitted that this section should include penalties against minors found unlawfully on licensed premises, without reducing the responsibility of licensees in this regard. It was also noted similar provisions could also be made for intoxicated persons.

27. Section 115 – Sale of Liquor without a Licence

One submission suggests section 115 of the Act should be expanded to include supplying liquor. The submission acknowledges such a re-wording would encompass home brewing activities, but argues the Commission would not be interested in seeking to prosecute that kind of activity.

The submission also suggested the Commission should be given a clear power to prosecute a person breaching section 115 by taking court action against that person.

28. Section 124AA – Regulatory Offences

One submission has been received suggesting that section 124AA should be re-written to provide that offences described as regulatory offences under that section may be heard by a Court or the Licensing Commission.

29. Section 124B – Results of Breath Analysis as Evidence

One submission has been received stating section 124B should be amended to include Commission proceedings as being able to obtain blood alcohol certificates for evidentiary purposes.

Another submission was that section 124B should be repealed, as evidence of blood alcohol content being prima facie evidence of intoxication is unreasonable, given the uncertainty of the term “intoxicated” and the fact that different people act differently at various blood alcohol levels. The submission infers that such evidence is unsafe.

30. Section 126 – Determination of Procedures by the Commission

It has been submitted section 126 may be redundant in light of the provisions of the NT Licensing Commission Act and possibly should be repealed or re-worded. The concern is that the section as worded restricts the Commission in determining the manner in which it conducts its business to those matters listed in the section.

5.2 Comment on Public Submissions

Many of the submissions received relate to issues that are either defined as “trivial” or of a nature that does not impact on NCP issues. Those submissions have not been taken any further under this Review, but are considered in a separate, “Administrative Review” that has been undertaken parallel to the NCP Review.

6 ASSESSMENT OF RESTRICTIONS ON COMPETITION

6.1 Definition of the Market

Restrictive legislative provisions affect the level of competition. To accurately assess the impact of any restrictions, it is helpful to define the market and thereby better describe the level of competition in that market.

A market may be defined in the following terms:

The area of close competition between firms or the field of rivalry between them...Within the bounds of the market there is substitution – substitution between one product and another and between one source of supply and another – in response to changes in prices. So a market is the field of actual and potential transactions between buyers and sellers amongst whom there can be strong substitution, at least in the long run, if given sufficient price incentive.

Hence, a ‘market’ is the area of trade or traffic in a commodity or service. The competitiveness of a market will vary according to how different the offered products are from one to another in character or use, and the degree of substitution or products that may occur if a sufficient price incentive is present.

Substitution may occur on the supply side, where producers will switch to the production of different products in response to changing prices, and may occur on the demand side, where consumers may change to the consumption of different products as a result of a change in price.

It is also possible to define the boundaries of a market with reference to:

- The nature of the product;
- The geographical “reach” of supply;
- Where the product appears in the chain of production; and
- The levels of actual and potential competition – the latter requiring an estimation of what may occur in the future.

Accordingly, the nature of the product is liquor, defined in the Act as a beverage that contains more than 1.15% by volume of ethyl alcohol. The Act’s jurisdiction is the Northern Territory, however the geographical reach of supply is made more complex by the frequency of interstate transactions and the movement of liquor across state borders.

Retail liquor can be purchased from two broad categories of licence – licences for sale of liquor for consumption on the premises and licenses for the sale of liquor for consumption away from the premises, i.e. take-away liquor outlets. Different licensing conditions apply for the two different categories of licence. Some premises are permitted to sell liquor under both sets of conditions.

The vast majority of liquor consumed in the Northern Territory is imported from liquor wholesalers located in other Australian states. Local production of liquor product is minute.

The Northern Territory's liquor market shows robust competition. Most retailers sell similar or identical products and small pricing variations often have a strong impact on the volume of sales. However market influences are highly variable across the Northern Territory.

General factors affecting market competition include geographic influences (e.g. freight/refrigeration costs), demographic factors (urban versus rural/remote) and cultural differences. Other influences include the location and concentration of licensed outlets, licence conditions (e.g. trading hours) and restricted area provisions. This represents a direct impact of the Act on market behaviour.

The Northern Territory's retail market can be divided into three sectors. The market is dominated by the activities of the two major supermarket chains. At this level, competition is directed towards market share across the Northern Territory and sales are influenced by extensive marketing and promotional activities. Scale efficiencies at this level can, on occasion, lead to liquor sales at retail prices below those that can be offered by smaller outlets.

The next level of competition is between hotel outlets and small to medium liquor retailers. Pricing variations, quality of service and regional influences tend to dominate competitive strategies and licensees are careful to guard and maintain any perceived competitive advantage. Liquor licence conditions impact most strongly at this level.

Finally, rural/remote regional outlets are primarily affected by demographic, geographical and cultural influences. Large price variations between premises and irregular price fluctuations can occur. These are often explained by changes in the cost of freight, refrigeration and other overheads. On occasion, licensees may inflate prices to control excessive consumption or to recover other costs.

The increasing quality and extent of the Northern Territory's transport infrastructure will have a significant effect on many of the factors influencing competition. For example, the establishment of a rail transport link through the Northern Territory to Darwin is likely to reduce freight costs and provide many flow-on market efficiency improvements. However, this is unlikely to alter the relative competitiveness of market participants.

6.2 Analyses of Restrictive Provisions

The following assessment of the costs and benefits of the restrictions identified in the Act have been made against the proposed Statement of Objectives as set out at p.23 (3.3.3) above, being:

1. *The primary object of the Liquor Act is to minimise harm associated with the consumption of liquor by encouraging responsible attitudes that reflect community expectations towards the promotion, sale, supply, consumption and use of alcohol.*

Further objects are:

2. *To promote the sale and supply of alcohol in such ways as to contribute to, and not detract from, the amenity of community life;*
3. *To facilitate the development of a diversity of licensed premises and related services for the benefit of the community; and*
4. *To regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.*

RESTRICTION 1: The Licensing Commission may issue a licence for the sale of liquor which vests personally in the licensee to whom it was granted (section 24).

Licensing systems are common throughout the world as a mechanism for controlling the availability and supply of goods and services, either for social or economic reasons, or both.

The objects that this restriction address are object 1, to minimise harm associated with the consumption of liquor by encouraging responsible attitudes that reflect community expectations towards the promotion, sale, supply, consumption and use of alcohol; object 2, to promote the sale and supply of alcohol in such ways as to contribute to, and not detract from, the amenity of community life; object 3, to facilitate the development of a diversity of licensed premises and related services for the benefit of the community; and object 4, to regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

The National Competition Council has, in its 3rd *Assessment of Governments' Progress in Implementing the National Competition Policy and Related Reforms June 2001*, recognised and accepted the need for regulation of the liquor industry to minimise harm associated with the sale, supply, consumption and use of alcohol in the community and that licensing is the most appropriate form of regulation for the industry.

The Council reported at page 21.7 of that Assessment:

The public interest objective of regulation should be to minimise the harm from alcohol consumption, implying that some limitations will always be necessary on the sale of alcohol. The provisions in licensing laws that support the objective of harm minimisation must be carefully differentiated from those that serve to restrict competition without minimising harm.

On one hand, licensing laws prescribe the legal minimum age for drinking and require liquor retailers to be suitable persons with an adequate knowledge of the relevant Act. They also place limits on trading hours, forbid practices that encourage excessive consumption and prevent the sale of alcohol to intoxicated persons. These regulations have a clear public benefit rationale and have been supported in NCP reviews. Ideally, regulations of this type should apply to all sectors of the liquor industry similarly, with licenses granted to those who meet the prescribed standards.

On the other hand, regulations that prevent responsible sellers from entering the industry, discriminate between sellers of similar products/services and impose arbitrary restrictions on seller behaviour are irrelevant to harm minimisation. This requires careful analysis of the evidence. As an example, increased availability of alcohol equals increased consumption, which leads to an increase in alcohol-related problems. However, evidence shows no clear relationship between the availability of liquor (number of outlets) and the level of consumption. Australia, Canada and New Zealand are among many developed countries to have experienced a general downward trend in average consumption levels since the late 1970's. This trend occurred at a time of considerable deregulation of the alcohol industry, generally greater availability of alcoholic beverages, and increased numbers of liquor outlets (source acknowledged).

Research also suggests that the pattern of alcohol use, particularly the environment in which drinking occurs, rather than the number of outlets and level of consumption, is the most important determinant of the level of harm (source acknowledged).

This Review takes as an opening proposition the acceptance by the National Competition Council for the need to maintain regulation of the liquor industry through a properly implemented and maintained licensing regime, that seeks to enforce effective harm minimisation through "best practice initiatives", whilst also ensuring fair competition and public benefit are not unduly restricted.

All States and Territories in Australia maintain liquor-licensing systems, all with similar restrictive characteristics. The reasoning behind the maintenance of restrictive licensing in liquor is that alcohol is not just another commodity, but one that has the potential to cause harm to individuals and the community and its supply should therefore be regulated with respect to both economic and social activity.

Public Submissions

All the groups and individuals who made submissions to the review support the view that the benefits of regulation far outweigh the costs associated with the restrictions on free trade.

The overwhelming view of most respondents was that regulation by government must be retained to protect the public interest. Whilst there is some support for co-regulation and even one submission supporting self-regulation constrained by enacted penalties for breaches of an agreed Code of Ethics, the popular view is that regulation through licensing of liquor retailers should be retained.

The common thread in favour of the retention of the licensing system of regulation in the submissions is that regulation protects the public interest and the licensing requirement allows interested and effected parties to comment and/or object to the issuing of a particular licence with respect to public interest issues, including harm minimization.

Another benefit perceived as supporting the retention of the licensing regime is that alcohol consumption can be directly linked to availability and the licensing system is seen as an effective method of containing the number of liquor outlets within a geographical area, as well as prescribing the trading hours of those premises on an individual licence basis, having regard to issues of public benefit and harm minimisation.

Another view put forward was that the licensing regime, in considering the costs associated with harmful levels of alcohol consumption, protects the community health and safety through harm minimisation whilst considering the financial viability of a responsible liquor industry.

As stated above, co-regulation has also received some support as a means of producing effective supply restriction and demand management strategies. Co-regulation is seen by some to be acceptable, provided the industry is not driven by profit alone. Peculiarly, a licensing regime was seen as the best way of achieving this.

There was also a suggestion that co-regulation through an Industry Code of Practice, regulated by way of pecuniary penalties provided for in the Act, would be an alternative means of regulation.

Costs of the restriction

The licensing system of the liquor industry restricts the lawful sale and commercial supply of liquor to people who are specifically licensed for that purpose. It impacts on potential market entrants who must apply for the grant of a licence and established merchants who must comply with their licence conditions.

The effect of a licensing system includes a higher administrative cost for licensees that can impact on consumer benefit by imposing higher retail prices for liquor products through the passing on of these costs to the consumer.

The licensing system also provides existing market participants with limited protection from competition by acting as a barrier to entry by potential competitors. Consumers therefore have less choice as to where to purchase liquor products.

Benefits of the Restriction

The licensing system creates consumer certainty about the quality of products and services at licensed premises in that the risk of consumers being exposed to tainted or adulterated alcoholic products is reduced.

Restrictions on the availability of liquor imposed through the licensing system impacts on the consumption of liquor by making liquor products available only from licensed premises and between certain times. The Act requires licensees to ensure that liquor is sold in a responsible manner and to control consumption of liquor on licensed premises.

Assessment of Public Benefit

The existence of the liquor licensing system is, by definition, anti-competitive since it presupposes that access to the market of selling and supplying liquor needs to be regulated. The Act restricts the lawful sale and commercial supply of liquor to people who are specifically licensed for this purpose.

The licensing restriction also has an effect on the distribution of products through limiting the facilities available for distribution and consumption of alcoholic beverages, by affecting the pricing structure of liquor, and of restricting or preventing the entry of new distributors to the industry.

The effect of this restriction is that existing market holders are protected from competition and are able to earn higher profits through setting higher prices, which in turn leads to lower demand and consumption, and favours producers at the expense of consumers.

The economic costs to Australia from the hazardous use of alcohol are substantial. Different studies on the subject have reported these costs to be between a conservative estimate of \$4.5 billion to \$17.4 billion per annum, with a “best estimate” of \$12.05 billion.

In the Western Australian NCP Review into the *Liquor Licensing Act 1988 (WA)*, it was reported that “if these are costs already associated with alcohol in a regulated market then the social costs in a deregulated market can only increase. One can only speculate how much of the projected \$23 billion per annum or \$1500 per household in wealth will be spent on dealing with the increase in alcohol related harm.”

The licensing restriction also imposes administrative costs to government through the need to maintain the licensing and administrative regime of the Licensing Commission and the Licensing Division of the Northern Territory Treasury.

Other impacts of the licensing restriction are less tangible. A restriction that creates a low density of licensed premises may have the impact of increased distances for drinkers to travel, increasing the likelihood of alcohol-related motor vehicle accidents and other personal injury and large and overcrowded venues dedicated solely to the consumption of alcohol. Too many premises may lead to the irresponsible serving and promotional practices leading to increases in excessive consumption and harm. Whilst relevant, these issues are not rated highly by the public and were not considered in the public submissions to the Review.

There are also costs of not effectively restricting the number of licensed premises if any system of regulation at all is to be maintained. More premises increases monitoring and enforcement costs, while too many premises may also, as outlined above, lead to excessive consumption and increased harm.

A flow-on effect of the licensing restriction is increased certainty about the quality of products and services, the relevant public objectives being harm minimisation and the maintaining of a high standard of services for the benefit of the community.

In social terms, a licensing system enhances industry accountability and allows for the implementation of harm minimisation strategies, provides structure for industry regulation, allows for the exclusion of unsuitable operators and deters inappropriate and irresponsible behaviour.

The requirement that persons wishing to sell liquor be licensed enables the Government to impose standards that are considered to be in the community interest through the provisions of the licensing scheme.

Associated effects considered undesirable and in the community interest to minimise or avoid include:

- the detrimental social effect of alcohol and the potential adverse effects on the individual;
- disruptive behaviour due to the excessive consumption of liquor; and
- noise that may emanate from licensed premises where there are large gatherings of people, especially if entertainment is being provided for patrons.

The licensing system allows for the control and limitation of undesirable effects of excessive liquor consumption, provides an enforcement mechanism that enables the policing of the sale and public consumption of alcohol (such as the requirement that liquor is not sold to persons under 18 years of age) and enables the Government to address certain community expectations with respect to the services that should be associated with the provision of liquor, such as appropriate security arrangements and people that should be allowed to sell liquor (fit and proper person provisions, discussed below).

The Act establishes a system whereby the Licensing Commission develops policy aimed at upholding the public interest and meeting the objectives that have been inferred into the Act in the past and as stipulated in the proposed *Statement of Objects* included in this Review, as well as granting licenses to applicants.

The matters which the Commission must consider in the granting of a liquor licence are contained in section 32 of the Act. These are discussed in under Restriction 8 (below).

Alternatives to Licensing

Alternatives to the positive licensing approach put forward under the Review are:

- (a) **self-regulation** – standards set and enforced by industry through an industry association;
- (b) **co-regulation** – standards set and enforced by industry through an industry association but subject to government oversight or ratification;
- (c) **registration** – simple inclusion on a register of industry participants without any restriction on entry to the market;
- (d) **public education**; and
- (e) **negative licensing** – no restrictions on entry to the market but removal from the market where specified standards are breached.

These alternatives have been discussed in depth in NCP Reviews submitted by other jurisdictions and the NCC has already determined that a positive licensing approach to the liquor industry is a valid and effective means of regulating that industry. No analysis of the alternatives has therefore been undertaken in this Review.

Conclusion

On balance, it is the belief of the Review Panel that the most appropriate policy response for this industry is the retention of the licensing requirement of liquor merchants. The licensing system is necessary to achieve regulation of the sale, supply and consumption of liquor and to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor. Although some of the above mentioned alternatives or a combination thereof, are worthy of consideration, it is not believed that they are, or could be, a satisfactory alternative to the current licensing requirement.

On the basis of the above considerations, the conclusion reached is that the licensing system of regulation of the liquor industry is justified as the most appropriate means of ensuring the objectives of the Act are implemented and enforced.

RESTRICTION 2: The Licensing Commission may issue a licence to a body corporate that is incorporated or registered as a foreign company (section 25).

This restriction is considered anti-competitive because it imposes a barrier on the entry of body corporate entities seeking to enter the liquor industry. The section also imposes a further restriction by requiring the body corporate to nominate a manager, approved by the Commission, to operate the business of the corporation. The corporation cannot change the manager without the consent of the Licensing Commission.

The objects addressed are object 1, to minimise harm associated with the consumption of liquor by encouraging responsible attitudes that reflect community expectations towards the promotion, sale, supply, consumption and use of alcohol; object 2, to promote the sale and supply of alcohol in such ways as to contribute to, and not detract from, the amenity of community life; and object 4, to regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

Public Submissions

No public submissions were received in relation to this restriction.

Costs of the Restriction

The costs of a licensing system are discussed under Restriction 1 (above) and relate to this Restriction. The cost of incorporation is controlled by the *Corporations Act 2001* and outside the scope of this Review.

Additional costs are incurred by bodies corporate seeking to participate in the liquor industry through the requirement to employ a person to act as the manager of that body corporate's licensed business affairs. The body corporate is then restricted in carrying on its business through the nominated manager and cannot trade if the person appointed manager is unwilling to perform the duties of a manager. The body corporate can not appoint a new manager unless the Licensing Commission approves the change.

Benefits of the Restriction

The benefits of a licensing system are discussed under Restriction 1 (above) and relate to this Restriction.

The requirement that a manager be appointed creates a focal point of responsibility for the conduct of the business for which the body corporate has been granted a licence.

Assessment of Public benefit

The public benefit associated with a licensing system of regulation of the liquor industry is discussed under Restriction 1 (above) and is relevant to body corporate applicants for liquor licenses.

The current wording of section 25(1) is outdated as it relates to the way the corporations law operated prior to the enactment of the *Corporations Act 2001*. That Act binds all corporate entities, regardless of where they are incorporated, when operating in Australia.

The requirement that a properly registered body corporate employ a person to be nominated as the holder of the licence (the nominated manager) is pertinent to the accountability of the corporation when its business practices may be called into question by the Director of Licensing.

As stated earlier in this Review, the National Competition Council has recognised the need for regulation of the liquor industry and that a licensing regime is the most effective means of implementing that regulation, however the extent of regulation should be limited to matters involving harm minimisation and related strategies.

The appointment of a manager to act as the licensee *in personum* allows the Director of Licensing to refer matters of complaint and other concerns to a person who is either readily contactable at the premises at all times the licence is in operation, thereby ensuring harm minimisation and public amenity procedures are being properly complied with.

Alternatives

No alternatives to the proposed amendment have been identified under the Review.

Conclusion

The Review Panel has concluded that:

- The licensing restriction as it applies to corporations is justified and should be retained.
- Section 25(1) be reworded to recognise the recently enacted *Corporations Act 2001*.

On the basis of the above considerations, the conclusion reached is that section 25(1) should be amended to provide:

- “A body corporate shall not hold a licence unless that body corporate is a corporation within the meaning of the *Corporations Act 2001*.”

RESTRICTION 3: A licensee whose licence has been cancelled by the Licensing Commission cannot apply for a new licence for three years unless the Licensing Commission gives approval. No other person can, without permission by the Commission, apply for a licence with respect to the premises for which the licence was cancelled within that three-year period (section 26A).

This restriction is considered anti-competitive because it imposes a further barrier on participants in the industry over and above the usual application requirements.

The objects addressed are object 2, to promote the sale and supply of alcohol in such ways as to contribute to, and not detract from, the amenity of community life; and object 4, to regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

Public Submissions

No public submissions have been received in relation to this restriction.

Costs of the restriction

The costs of this restriction are threefold. Firstly, a person who has experience in the industry as a licensee can be prevented from applying for a licence with respect to new premises without an application being considered on its merits for up to three years, thereby depriving the would be applicant the opportunity to participate in the industry.

Secondly, a new applicant is restricted in the available premises from which to operate a licensed business, regardless of whether that business is of the same or different type to one that had previously operated from those premises.

Thirdly, if the premises had been leased from a property owner, that owner is restricted in the type of tenant that can operate from premises available for lease.

Benefits of the Restriction

Persons who have had their licence revoked for unscrupulous or irresponsible business activities, or who have proven themselves incapable of operating licensed premises in accordance with the conditions of their licence or under the provisions of the Act are removed from the industry, thereby maintaining a high standard of service to the public.

Assessment of Public Benefit

The public can be confident that unscrupulous and irresponsible entrepreneurial activities are discouraged in the liquor industry, and that serious offenders are prevented from re-entering the industry.

Alternatives

The Licensing Commission has an unfettered discretion in refusing a person a licence where that person is considered not a “fit and proper” person under sections 28, 29 and 41 of the Act.

Section 32(1) provides that the Licensing Commission shall have regard to the location of the proposed licensed premises in any application before it, as well as giving consideration to any other matter it thinks fit.

Conclusion

Section 26A places restrictions not only on persons who have previously held a liquor licence, but potential entrants to the industry and owners of properties available for commercial ventures. The provisions under the section that prevent re-entry into the industry by previous licensees is an unnecessary duplication of sections 28, 29 and 41 and should be repealed.

The provisions limiting the use of commercial premises are a duplication of the considerations the Licensing Commission is required to have regard to in any application for a liquor licence as well as being discriminatory with respect to commercial property owners and should be repealed.

On the basis of the above considerations, the conclusion reached is that Section 26A of the Act is a duplication of other provisions under the Act, is unnecessarily restrictive and should be repealed.

RESTRICTION 4: An applicant who is a natural person, and persons with an interest in an applicant that is a body corporate, must demonstrate they are a “fit and proper” person to hold, or be a beneficiary under, a liquor licence (section 28).

This restriction is considered anti-competitive because it requires the Licensing Commission to make judgements about applicants, which directly affects whether or not they can participate in the liquor industry.

The object addressed is object 4, to regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

Presently, all applicants for a liquor licence who are natural persons and officers of corporate applicants are required to undergo probity checks. Proposed licensees and nominees of corporate applicants are also required to satisfactorily complete a written test in relation to their obligations under the *Liquor Act* as an operator of licensed premises.

Historically, the conducting of background checks into applicants for liquor licenses have been to ensure applicants are of suitable character and background to possess such a licence. Today, the vetting of applicants also addresses the same issue, but the purpose has expanded to the minimization of the incidence of persons obtaining a licence to exploit the ready gain from selling and supplying liquor, which may be available, in such a way that the public interest is damaged. The availability of gaming machines by hotels, taverns and clubs has also impacted on the requirement for probity checks into licence applicants.

The point with respect to the public interest was addressed by the South Australian Review into its Liquor Licensing Laws:

A license is a legal authority for a person to sell a potentially harmful, often abused, drug to the adult public. Because of the nature of liquor, and the opportunities for making considerable revenue from its sale, it is essential that undesirable persons not be licensed.

Liquor has, in Australia, only ever been permitted to be sold by specific authorization from the Government or an authority established by Government. It is incumbent on the Licensing Authority to ensure that this privilege is extended only to suitable persons.

Section 28 provides for the Licensing Commission to conduct such investigations “as it thinks fit” to determine whether an applicant for a license is a “fit and proper person”. This section requires the making of subjective judgements about applicants without any clear guidelines. Whilst it is desirable for the Licensing Commission to be free to make any inquiries it deems necessary in respect to an applicant, the inclusion of guidelines would give potential applicants an idea of what standards are desired of them in order to be successful in applying for a liquor licence.

The Victorian Government Review into the *Liquor Control Act 1987* acknowledged a lack of definition in the “fit and proper” requirement at page 84 of that Review:

The Review notes that the Act does not clearly define the meaning of “suitable person”. In practice, it appears that applicants who may be deemed to be ‘unsuitable’, are deterred from applying by Section 71 that requires the Chief Commissioner of Police indicate whether the application should be opposed.

The issue was also addressed in the Western Australian Review of the *Liquor Licensing Act 1988*, where it was stated at page 38:

Decisions relating to fit and proper persons are inherently subjective, even where, as in the Western Australian legislation, some guidance is given (section 33). In addition, it is likely that there are other issues that should also be taken into account, for example, over the past decade, many criminal offences previously deemed to be indictable are now dealt with summarily. For instance, in some jurisdictions, drug related offences, such as the possession of cannabis, are dealt

with by way of infringement and may not be included on the person's police record. Yet these offences, as well as other types of offences (such as speeding offences, driving under the influence, or driving without a licence), could indicate that the person has a propensity to disregard the law, and is therefore unsuitable to hold a liquor licence.

The Western Australian Act contemplates these latter matters as factors in the determination of whether a person is a fit and proper person. Section 33(6) of the *Liquor Licensing Act 1988 (WA)* states:

Where the licensing authority is to determine whether an applicant is a fit and proper person to hold a licence or whether approval should be given to a person seeking to occupy a position of authority in a body corporate that holds a licence, or to a natural person acting as a manager or trustee –

- (a) the creditworthiness of that person;
- (b) the number and nature of any convictions of that person for –
 - (i) indictable offences; or
 - (ii) offences against this Act, the repealed Act or any Act repealed by the repealed Act;
- (c) the conduct of that person in respect to other businesses or to matters to which this Act relates; and
- (d) any report submitted, or intervention made, under section 69, shall be taken to be relevant and amongst the matters to which consideration should be given.

It is the importance or weight given to these offences that is often where the subjectivity and potential discrimination emerges. This is particularly due to the range of factors that can or may be considered by the decision maker, such as where the offence occurred; how many offences were committed; whether significant fines were imposed; the age of the person at the time of the offence; the person's personality traits; family background and any other mitigating circumstances. Another difficulty also arises where an applicant was born and/or resided overseas for a significant period prior to applying for a liquor licence and cannot supply a recent criminal history record from that other country. Notwithstanding those difficulties, the restriction that applicants be found to be fit and proper persons addresses the issue of "adequate controls" and is a response to the obvious harms that might result if irresponsible persons, or persons who are ignorant of the obligations of licensees are permitted to obtain licenses.

Public Submissions

No submissions were received from the public opposing control over the entrance into the market through the "fit and proper" person requirement as excessive or unwarranted.

Submissions have been received suggesting that section 28 be amended to more closely reflect the provisions of the *Gaming Machine Act* in requiring probity checks to be carried out on all persons associated with a business on licensed premises. Such persons would include all company directors and other company officers, as defined in the *Corporations Law*, and would include “ghost” and “defacto” directors.

It has been suggested the effect of the proposed amendments would be to prevent persons who would otherwise be deemed unsuitable to carry on or maintain licensed premises from maintaining control of such premises through corporate structures.

Costs of the Restriction

Applicants found not to be fit and proper can be denied access to the liquor industry, the process is subjective and may not be applied the same in every case and there is a cost to licensees in obtaining relevant training for themselves or approved managers where the licensee is a body corporate.

Benefits of the Restriction

Undesirable persons are excluded from participating in the liquor industry, thereby maintaining a high level of integrity in the industry and consumer confidence. Current licensees also benefit through the enhanced reputation of the industry.

Key personnel are required to be suitably trained to take on the responsibilities associated with the service of alcohol and supervising the service of alcohol, thereby addressing public health concerns associated with alcohol use.

Consumers can enjoy a greater range of properly run licensed premises and the local community benefits from an enhanced local amenity through licensee awareness of the obligations attached to a liquor licence under the Act.

Assessment of Public Benefit

While the Act does not clearly define the meaning of “fit and proper person”, in practice applicants are required to undergo a criminal history check, complete a written *Liquor Act* test and undertake a Responsible Service of Alcohol course through an accredited course provider.

There is no specific data available relating to the number of applicants with criminal histories and the proportion of those applicants denied a liquor licence (if any). In WA, however, it was reported in that State’s Review of the *Liquor Licensing Act 1988* at page 43:

In 1997/98, 38 of a total of 356 applicants were referred to the Director of Liquor Licensing for consideration of their criminal records. Of those considered by the Director, 31 were finally judged to be fit and proper.

The success rate of applicants obtaining licenses, despite their criminal records, would suggest that the legislative requirement pertaining to the character and fitness test is not unduly restrictive. It is possible however, that those persons with serious convictions or extensive criminal records are aware that the liquor industry is regulated and may not have applied for a licence in the first instance.

It is quite likely that the experience in WA is mirrored in the NT and other jurisdictions. As noted above, there is public concern that the requirement for probity checks does not go far enough under the present requirements contained in the Act. It has been suggested that section 28 should be re-written to more closely reflect the broader requirements for probity checks contained in the *Gaming Machine Act*. Also, the current wording of section 28 is vague and without any clear guidelines.

Section 25(3) of the *Gaming Machine Act* states:

The Commission shall consider the application and anything accompanying it together with the results of investigations made under subsection (1) and make an assessment of –

- (a) -
- (b) if the applicant is a natural person, the financial stability, general reputation and character of the applicant;
- (c) if the applicant is a body corporate, the business reputation and financial stability of the body corporate and the general reputation and character of the secretary and executive officers of the body corporate;
- (d) if any person is referred to in an affidavit under section 44, the suitability of that person to be an associate of the applicant;
- (e) if the Commission considers it appropriate, the suitability of any other associate of the applicant to be an associate of the applicant; and
- (f) the suitability of the applicant to be a licensee.

The affidavit in section 44 of that Act provides that an applicant shall disclose to the Director any other person associated with the applicant who, through any lease, agreement or arrangement is able to influence any decision of the applicant.

Re-wording of section 28 to provide for similar requirements would give greater effect to the requirement that licensees, particularly body corporate applicants, are properly screened to determine the suitability of the applicant to hold a liquor licence, as well as providing a broader framework in determining whether an applicant that is a body corporate is deemed to be fit and proper to hold a liquor licence.

Alternative Means of Achieving the Legislative Objectives

Object 4 provides for the regulation of the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

It is not considered possible to provide for the “optimum responsible development” of the industry envisioned under object 4 unless there is a legislative requirement for persons seeking to be directly or indirectly involved in the sale, disposal and consumption of liquor to be declared as fit and proper. The use of criminal history checks through the NT Police is a necessary step in determining the suitability of a person to obtain, or be involved in the operation of, a liquor licence.

As such, no legitimate alternative to achieving the Act’s objective of providing for the responsible development of the industry has been identified in this Review.

Conclusion

Controls over persons directly or indirectly involved in the sale, disposal and consumption of liquor by requiring that applicants be found to be “fit and proper” persons provide an important safeguard to the community and should be retained.

However, the present provisions under section 28 of the Act should be re-worded to more closely reflect the requirements under section 25 of the *Gaming Machine Act*, thereby creating greater disclosure for body corporate applicants and establishing broad guidelines under which the “fit and proper” person requirements are evaluated.

On the basis of the above considerations, the conclusion reached is that section 28 should be re-worded to more closely mirror the broader requirements contained under section 25 of the *Gaming Machine Act*.

RESTRICTION 5: The Licensing Commission can refuse a licence application properly submitted based on the personal qualities of the applicant, such as whether the applicant is a “fit and proper” person or has demonstrated knowledge relevant to the managing of licensed premises and whether the nominated premises are suitable for the proposed purpose of the licence (section 29).

The restriction is considered anti-competitive because it prescribes certain persons from holding a liquor licence based on personal attributes and circumstances and subjective considerations over the suitability of proposed premises from which the applicant seeks to conduct its business.

The objects addressed are object 1, to minimise harm associated with the consumption of liquor by encouraging responsible attitudes that reflect community expectations towards the promotion, sale, supply, consumption and use of alcohol and object 4, to regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

Public Submissions

No submissions were received from the public in relation to this restriction.

Costs of the Restriction

Applicants can be denied access to the liquor industry based on a subjective assessment process. Financial investment may be restricted and consumers can be limited in their access to liquor industry related businesses.

Benefits of the Restriction

Undesirable persons are excluded from the liquor industry, thereby upholding the reputation of the industry and maintaining public confidence in the quality of service and products provided by licensees through properly run licensed premises.

Assessment of Public Benefit

The issues presented under this restriction have been addressed in depth elsewhere in this Report. The requirements that applicants be deemed “fit and proper” and have a demonstrated knowledge relevant to the management of licensed premises are necessary for the proper regulation of the liquor industry and should be retained.

The consideration of whether or not the nominated premises are suitable for the proposed purpose of the licence should be taken in the context of the public interest and limited to liquor related issues. The Licensing Commission should not concern itself with town planning issues, which are dealt with by other Government agencies prior to any licence application being considered.

As stated under the consideration of Restriction 1 (above), the NCC has recognised in its Third Report of June 2001 that licensing has been recognised as an appropriate means of regulation of the liquor industry and effective in dealing with matters related to harm minimisation from the consumption of alcohol.

However, the Committee also cautioned against the use of licensing that has the effect of preventing responsible sellers from entering the industry or which discriminates between sellers of similar products and/or services or which imposes arbitrary restrictions on seller behaviour.

In any licensing regime, there must be a threshold standard against which the regulatory body can assess the merits of a person applying to enter that industry. Any system that does not have such a requirement becomes little more than a system of registration that would defeat the licensing requirement.

The need, therefore, for a means by which otherwise properly submitted applications can be refused on probative grounds is necessary to meet the harm minimisation purpose of the licensing system of regulation of the industry. However, any consideration of extrinsic matters, such as town-planning issues for purpose built premises should be excluded from the grounds upon which the Licensing Commission can refuse a licence application.

Alternatives

No legitimate alternative to achieving the Act's objectives of harm minimisation and proper regulation of the liquor industry has been identified in this Review.

Conclusion

The restriction that applications otherwise properly submitted may be refused based on the personal qualities of the applicant or on the suitability of the proposed premises should be retained, subject to other recommendations contained in this Report that impact directly on the application of that restriction.

It is recommended therefore that section 29 be amended so that:

- The Commission may refuse to grant a licence under section 29 on probative grounds;
- The Commission should determine public interest issues in relation to premises to be used as licensed premises; and
- The Commission may only consider issues related to the objects of the Act in determining whether premises are suitable for the proposed purpose, but may not consider other matters such as town planning issues for new purpose built premises

RESTRICTION 6: The Licensing Commission may cancel or suspend the operation of a licence independent of any decision of the licensee (section 30).

This restriction is considered anti-competitive because it restricts competition by imposing forced exit on licensees in certain situations.

The objects addressed are object 1, to minimise harm associated with the consumption of liquor by encouraging responsible attitudes that reflect community expectations towards the promotion, sale, supply, consumption and use of alcohol; object 2, to promote the sale and supply of alcohol in such ways as to contribute to, and not detract from, the amenity of community life; and object 4, to regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

Public Submissions

No public submissions have been received in relation to this Restriction.

Costs of the Restriction

Licensees may incur financial costs associated with licensing requirements which, if neglected, abused or breached, may result in the cancellation or suspension of their liquor licence, which impacts on their ability to trade. The financial costs of ensuring licenses are retained may impact on the cost of liquor passed on to customers.

Consumers may be restricted in the choice of venues that may be available to them where licensees who have breached the conditions of their liquor licences are unable to trade as a result of their licence being cancelled or suspended.

Benefits of the Restriction

Licensees are required to maintain standards of service that are consistent with harm minimisation strategies and to operate in ways that contribute to public amenity and safety.

Consumers and the greater public can have confidence in an industry that operates within guidelines designed to protect their over-all welfare and maintain product quality.

Assessment of Public benefit

The licensing system of regulation of the *Liquor Act* maintains, as a necessity, certain requirements aimed at protecting the public from harmful aspects of liquor use and abuse. Any form of licensing requires the prospect of a participant in the industry that is the subject of that licensing system being ousted from, or prevented from participating in, that industry should the licensee be found to have committed specified serious transgressions. A licensing system that does not include the possibility of cancellation or suspension becomes little more than a system of registration.

Section 30 stipulates that a licence will only remain in force until it is surrendered, suspended or cancelled. It is left to other areas of the Act to specify when and how these means of market exit can be achieved.

The section is necessary to give purpose to the licensing system of registration and should be retained.

Alternatives

No practical alternatives have been identified to the requirements of section 30 of the Act.

Conclusion

The availability of forced exit from the industry through cancellation or suspension of a liquor licence is justified and should be retained.

RESTRICTION 7: The Licensing Commission can place any conditions deemed necessary or desirable in the public interest to an individual licence application (section 31).

This restriction is considered anti-competitive because it restricts competition by imposing specific trading conditions on individual liquor licences.

The objects addressed are object 1, to minimise harm associated with the consumption of liquor by encouraging responsible attitudes that reflect community expectations towards the promotion, sale, supply, consumption and use of alcohol; and object 2, to promote the sale and supply of alcohol in such ways as to contribute to, and not detract from, the amenity of community life.

Public Submissions

Submissions are divided on whether licence categories should be specifically defined under the Act. There is strong support for the retention of the “free form” licensing system as the best means for addressing the needs and wishes of the community.

It was put forward that flexibility in tailoring the terms and conditions of individual licenses allow progressive change in licence conditions to achieve harm minimization and enable the Commission to tailor individual licenses to the needs of the licensee and the community.

It has also been suggested that the rationalization or expansion of licence categories are restrictive and would act against ensuring the needs and wishes of particular communities and in ensuring the objectives of the Act are met.

On the other hand, some submissions have favoured the introduction of specific licence categories to varying degrees. It has been suggested the current system of generic licenses being issued with conditions being included by the Commission determined by the particular circumstances of the applicant is inequitable and difficult to regulate.

It has also been suggested that licence categories should be set down in the Act, with conditions remaining flexible and not confined under the Act. The conditions under each category should remain flexible to reflect the needs of local communities.

One submission also suggested the application fee for liquor licenses be reviewed and a scale of fees be implemented for different licence categories, ranging from a substantial outlay for a full night club, tavern or hotel licence and reducing for more restricted licence categories down to a nominal fee for a “one off” special licence application.

Costs of the restriction

Licence conditions hinder the commercial outcomes of competition. Market forces are prevented from determining what services and facilities licensees can provide. Licensees are required to satisfy the Commission that prescribed facilities or services are no longer required, or that restrictive conditions should be lifted.

A system that protects existing establishments is more likely to discourage investment, innovation and improvement because existing licensees, being sheltered from competition, have a reduced incentive to make improvements.

Benefits of the Restriction

Licence conditions contribute towards the proper regulation of the liquor industry, the public's certainty about the types of products and services offered at licensed premises, make it possible to determine the potential for harm that liquor outlets present and make it possible for the liquor industry to be analysed in a meaningful way.

Breaches of licence conditions are easily observed when an individual licensee is acting in a manner contrary to the conditions imposed on that type of licence, thereby effectively regulating the liquor industry.

The regulation of products and services mean consumers can have a realistic expectation of the range of products and services provided by licensed premises.

Assessment of Public Benefit

There is a generic public benefit associated with prescribed trading conditions in that members of the public have an increased certainty about the range of services and products likely to be offered at licensed premises. However, competition should be the driving force behind the facilities and services provided by the holders of liquor licences and not compliance with a statutory obligation.

Section 31 gives the Commission a broad discretion to consider the interests of the community in the broadest possible terms and to take into consideration not only the social implications of the issuing of a licence, but to also make judgements as to the consumer demand for particular services.

In other words, section 31 gives the Commission a broad discretion to make licences subject to conditions based on the public interest. The concept of “public interest” is discussed in Restriction 4 below and the conclusions there reflect on these considerations.

Unfettered competition in the liquor industry has the potential to significantly reduce the welfare of the community through the negative health and social consequences already identified.

The use of a licensing system that incorporates a flexible application of licence conditions based on the interests of the relevant community effectively addresses the objects of the Act in regulating the sale of liquor to ensure public safety, harm minimisation and public amenity.

However the need for certainty for applicants wishing to participate in the industry creates the requirement for specific licence categories so that an applicant may be able to better determine the type of licence required and what preparations that applicant will need to make to ensure the greatest chance of obtaining a licence.

Furthermore, different types of liquor outlets provide different services and attract different social and harm minimisation implications. For instance, the public amenity issues related to a takeaway liquor outlet at a suburban shopping centre are vastly different to those associated with a late night trading venue or tavern. Whilst both types of venues must deal with issues such as service to underage or intoxicated patrons, other issues such as itinerant problems and noise levels are not problems usually associated with both kinds of venues.

For the licensing regime of industry regulation to be effective, the licensing system must recognise the different needs and obligations that attach to the different categories of participants in the industry through variation of licensing conditions for different types of activities. This requirement has been recognised by the Licensing Commission through its own use of broad licence categories, as discussed above. The need for licence categories is therefore both justified and necessary.

With the above considerations in mind, it is submitted a system whereby distinct licence categories coupled with broad, basic conditions, such as hours of trade and other basic requirements to promote harm minimisation and maximise public benefit be inserted into the *Liquor Regulations*.

Licence Categories would then be subject to such further conditions allocated by the Licensing Commission, but restricted to matters defined within the proposed re-working of Section 32 (discussed under Restriction 4), which the Commission has determined are necessary to protect the public benefit of the community affected by the licence application. Such further restrictions would then be applicable to all licences issued within a licence category that apply to that particular community and would be determined through community consultation and research, including bona fide concerns put forward in any objections received in relation to an application, as provided for under the proposed re-worked objections mechanism considered under Restriction 20 (below).

Alternatives

Other jurisdictions have incorporated a system of licensing whereby generic licence types are created under the Act with specific conditions attached to each category. The arguments in favour of this type of licensing regime are public certainty in the minimum level of service and amenity in each type of licensed venue and effective regulation by comparison of the behaviour of licensees in like venues. However, such rigidity is deemed not suitable in the Northern Territory as a means of achieving the objects of the Act in communities whose needs are as diverse as those in this Jurisdiction.

Conclusion

As stated previously in this Review, the *Liquor Act* does not provide for specific licence categories, other than “special” licences. However, for administrative purposes, the Commission has developed four broad licence “categories” to which it applies a generic list of conditions that have been developed over time, as well as, where necessary, further conditions specific to the licence application being considered.

Section 24 of the Act gives the Commission a wide discretion to issue a liquor licence in any form approved by the Commission. This discretionary power, if taken in consideration with the Statement of Objectives recommended above, would appear to be sufficient to override any question of certainty raised in the submissions to the review.

Notwithstanding the sufficiency of section 24 and the broad discretion of section 31, there is a clear need for the creation of licence categories to be included in the *Liquor Regulations*, thereby giving greater certainty to the licensing process and choice to licence applicants.

The introduction of broad categories of liquor licenses would include general licence conditions that attach to all licenses issued under a specific licence category, reflecting uniform trading conditions that reflect the needs and obligations associated with that category of licensed activity (see Restriction 26, below). Such general conditions would then be augmented with further conditions deemed necessary by the Licensing Commission with respect to the specific concerns of the community in which the licence is to be issued.

On the basis of the above considerations, the conclusion reached is that:

- Specific licence categories containing general licensing conditions be established under the *Liquor Regulations*; and
- The Licensing Commission should be able to determine further conditions that apply to each licence type that reflect the special needs of particular communities, subject to the proposed re-working of Section 32 under Restriction 8.

RESTRICTION 8: The Licensing Commission can limit the number and type of licenses in any given area, based on the location of the proposed licensed premises, the location and conditions of any other licensed premises in the vicinity, the nature of the business proposed, the needs and wishes of the community and any other matter the Commission thinks fit (section 32).

This restriction is considered anti-competitive because it imposes a legislative restriction on licence proliferation in a given area, rather than allowing market forces to determine the number and type of licensed premises in a given geographical area.

The objects addressed are object 1, to minimise harm associated with the consumption of liquor by encouraging responsible attitudes that reflect community expectations towards the promotion, sale, supply, consumption and use of alcohol; object 2, to promote the sale and supply of alcohol in such ways as to contribute to, and not detract from, the amenity of community life; object 3, to facilitate the development of a diversity of licensed premises and related services for the benefit of the community; and object 4, to regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

Public Submissions

It has been submitted there should be a re-working of the section to clearly define the criteria under which a licence should or should not be granted, including a specific definition of the “needs and wishes” criteria and a test that incorporates reference to issues of locality and a demonstrated presently unsatisfied need for the proposed licence.

It has also been suggested the onus of proof should be reversed so that the applicant must prove all the criteria are met, in particular the issue of “needs and wishes”. There was also a suggestion that applicants for new and amended liquor licenses be required to commission a “social impact statement” along the same lines as environmental impact statements are required for urban development submissions.

Other comments have been received that support the current section 32 provisions and the open ended nature of the “needs and wishes” criteria.

Costs of the Restriction

Section 32 requires the Commission to have regard to specific criteria in considering an application for granting of a licence, whether or not that ground has been raised by the applicant or any objector as a relevant issue. The exercise of the Commission's authority can contribute to uncertainty in business decisions and delay in the granting of a licence, even where no objections or concerns have been raised by the Community.

The section specifies six criteria to which the Commission shall give consideration – the location of the proposed premises; the location and conditions of other licensed premises in the vicinity; the nature of the business associated with the licence application; the needs and wishes of the community; and the financial and managerial capacity of the applicant. Sub-section 1(g) broadens the scope to “any other matter” considered relevant.

The requirement that the Commission consider the location of the proposed premises can be seen as a duplication of the requirement to seek approval from the Department of Lands, Planning and Environment.

The requirement that the Commission consider the location and conditions of other licensed premises in the vicinity may place limits upon the scope of business activities an applicant for a licence can engage in.

The “needs and wishes” criterion is vague and uncertain. The lack of definition of the criterion can create uncertainty in an applicant as to what issues need to be addressed in submissions attached to the application, thereby leading to unnecessary delay in the processing of an application or the calling for a hearing into an otherwise straightforward application that has received no objections from the community.

Evidence presented to establish “needs and wishes” in terms of “reasonable requirements of the public” prior to the issue of a licence can be described as only conjecture, borne out by the fact that some licences issued in the past have not been commercially viable after their grant, notwithstanding the fact that the applicant had established that the grant of the licence met the “needs and wishes” of the community it purported to serve.

The requirement of an applicant to demonstrate their financial and managerial capacity to operate a liquor licence may expose the applicant's business strategy and resource capacity to potential or real competitors and may dissuade potential investors from entering into the industry.

The broad “any other matter” criterion is uncertain so that it is impossible for applicants to foresee what matters the Commission may see as relevant and make provision for those concerns in their application.

The restrictions act as a general barrier to entry to the liquor retailing market based generally on the existing market and community “needs and wishes”. This is unrealistic, and artificial, because only consumers, through market economics, can truly judge the reasonable needs of consumers, not the Licensing Commission.

Benefits of the Restriction

The setting out of the five criteria to be considered give guidance to an applicant and potential objectors as to what information and details need to be covered in an application for a liquor licence and what restrictions and obstacles an applicant needs to overcome to obtain a liquor licence.

A potential applicant can make preliminary inquiries to determine whether an application to obtain a liquor licence would have a good chance of being successful.

The criteria set down allow the Commission to fully assess an application in respect to the public interest and in particular the need to minimise harm and uphold community standards and amenity of community life.

The community can have confidence that the availability of liquor is circumscribed to the extent that the public interest is considered and the amenity of community life is maintained.

Assessment of Public Benefit

The requirement that the Commission shall consider factors relevant to the responsible development of the liquor industry and related businesses gives the community confidence that standards will be maintained at a high level and community amenity will not be adversely affected.

However, the factors stipulated in the Act to be considered by the Commission are overly rigid and may be misapplied to the extent that the Commission looks behind approvals granted by other government agencies with respect to building and tenancy approval.

The requirement for the Commission to consider factors such as the location of the proposed licensed premises, the location and conditions of any other licensed premises in the vicinity and the nature of the business proposed does not seem to have a direct link with harm minimisation objectives.

Licence restrictions already determine who can supply alcohol, who can buy alcohol, what forms of alcohol can be sold, the types of establishments alcohol can be sold from and when and how alcohol can be sold. These restrictions are readily justified and acknowledged by the NCC as meeting public benefit objectives.

However, just as the NCC is ready to acknowledge the public benefit in maintaining these objectives, it has just as readily challenged the merits of limiting the market supply of alcohol through limiting outlet density. The NCC has noted previously that available evidence refutes the argument that limiting outlet density has minimal bearing on harm minimisation and only serves to restrict competition at the expense of the broader community. There is also little available evidence from other jurisdictions that suggests the absence or removal of outlet density limits in other jurisdictions will increase public harm (*Retail Trading Arrangements Working Paper, October 2001*).

The requirement that the Commission consider the nature of the business the applicant proposes to undertake with respect to the licence application is also an intrusion on the entrepreneurial freedom of the persons undertaking the risk, thereby having the potential to curb business investment and economic growth in the community.

The requirement for the Commission to consider the “needs and wishes” of the community is vague and uncertain, making the task of the proposed licensee difficult in determining what issues should be addressed when putting forward an application for a liquor licence.

Because the term “needs and wishes” is largely undefined, the requirement that a “needs and wishes” test be satisfied can prove to be time consuming and resource intensive for applicants, objectors, and the Commission when determining applications for new licenses and variations to existing licenses.

The overall effect of section 32 is that the Commission must consider a licence application to sell liquor in light of the public interest in the granting or refusing of that licence. The National Competition Council’s paper, “Considering the Public Interest under the National Competition Policy”, released in November 1996, stated:

Governments also implement restrictions on competition for reasons of “market failure”. This occurs where special features of a market mean that unfettered competition reduces the welfare of the community. Governments argue that it is in the “public interest” to restrict competitive outcomes in such instances.

The paper also discussed the concept of what is the “public interest”:

A central feature of the National Competition Policy is its focus on competition reform ‘in the public interest’. In this respect, the guiding principle is that competition, in general, will promote community welfare by increasing national income through encouraging improvements in efficiency.

Despite this focus on increased competition, governments have some flexibility to deal with circumstances where competition might be inconsistent with the weighting placed by the community on a particular social objective. The aim of this paper is to point to those processes by which public interest matters can be considered in the National Competition Policy agenda. This paper offers guidance on the use of Competition Principles Agreement sub-clause 1(3) as a means of considering the community benefits and costs of reform, and discusses other mechanisms available to governments to maintain anti-competitive arrangements in the public interest.

Australians are increasingly recognising that improvements in the competitiveness of the Australian economy will improve economic efficiency and play a vital role in enhancing overall community welfare by increasing the productive base of the economy. Governments endorsed this view in signing the intergovernmental competition policy agreements in April 1995.

Nonetheless, while competition is generally consistent with economic efficiency goals and the interests of the community as a whole, there may be situations where there is in conflict with certain social objectives.

The liquor industry is one such situation in which economic goals conflict with wider community interests. As stated previously in this Report, liquor is not just another ordinary commodity but one that has the potential to cause harm to individuals and the community and its supply should therefore be regulated with respect to both economic and social activity. This is because of the negative health and social consequences associated with the misuse of liquor and the considerable tangible and intangible costs that these consequences subsequently cause to the community. The result is the existence of a licensing regime for the sale of liquor.

Unfettered competition in the liquor industry has the potential to significantly reduce the welfare of the community through the negative health and social consequences already identified. Should the premise that section 32 addresses the issue of public interest through “market failure”, consideration must then be given to whether:

- (a) section 32 adequately addresses “market failure”; and
- (b) the continuation of these restrictions can be justified in accordance with National Competition Policy principles.

The provisions of section 32 are considered anti-competitive because they constitute a barrier to entry to the liquor retail market, based on the number, standard and trading conditions of existing market players, the “needs and wishes” of the community and an applicant’s financial and managerial capacities.

As stated above, the purpose of section 32 is to attempt to address ‘market failure’ by tying it to public need. As such, the section’s provisions require an applicant for the grant of a licence to satisfy the Commission that the licence is *necessary* in order to provide for the *reasonable requirements* (or wishes) of the public for liquor related services in that area by having regard to those matters set out above.

It is often argued that restrictions which have the net effect of reducing outlet density reduces the pressure on licensees to serve irresponsibly and will reduce levels of problems by limiting overall levels of consumption. However, while increased outlet density is highly associated geographically with increased levels of consumption, there is also evidence that increased outlet density can reduce certain aspects of alcohol-related harm, such as reducing road crashes.

While increased competition may contribute to lower prices and therefore increased demand, where that demand is generated by reasonable (responsible) adult consumers, there is no apparent conflict with the Act's harm minimisation principles. Judicial comment on the intention of Parliament in other jurisdictions has described legislation in respect of liquor as being an attempt to achieve a balance between making liquor available to the community and curbing the perceived consequences of its consumption and use/misuse, i.e. resulting harm or ill-health caused to people, or groups of people.

If this is the intention of the Act, the question arises as to how the effects of competition from new market entrants can be held responsible for existing licensees undertaking illicit sales to drunken and underage persons? The argument that a new entrant into the industry will force existing licensees to engage in undesirable activities is unsustainable.

If a new entrant improves the level of service and amenity to consumers, it is illogical to conclude that the threat of such competition from a market entrant can be held to be liable, in terms of public policy, for an existing market player electing to engage in undesirable or illegal business practices.

The "needs and wishes" criteria under section 32(1)(d) appears to be inconsistent with objects 2, 3 and 4, in that the requirement can:

- (a) work against the requirements of the tourism industry in that innovative ideas to cater to tourists are required to be justified as being both necessary and desirable to provide for the reasonable requirements of the public; and
- (b) frustrate the development of licensed facilities reflecting the diversity of consumer demand because they are required to be justified as being necessary and desirable to provide for the reasonable requirements of the public.

As stated above, any attempt to arrive at a conclusion on these matters by the Commission is illusory, the general public being in the best position to determine whether a new licensed business is needed and/or desirable.

Alternatives

Public Interest as a licensing criteria

Although unfettered competition in the liquor industry has the potential to reduce the welfare of the community through negative health and social consequences, the means of addressing these problems should not be predicated upon the number of existing market players and the condition of existing licensed premises.

Generally speaking, the issue of the grant of a licence should turn on the question of whether it is in the public interest for the applicant to sell and supply liquor and not on whether the licence is necessary *per se*.

Given the proposed objects of the Act and the identified public interest of minimising harm or ill-health, the issue of the grant of licences should turn solely on the question of whether it is in the public interest for the applicant to sell and supply liquor and not on whether the licence can be considered as meeting the “needs and wishes” of the community.

As such a viable alternative to the section’s current provisions would be to shift the focus from the applicant having to satisfy the Commission that the licence is necessary and desired by the community to one where the applicant must establish that the grant or removal of the licence is in the public interest.

To a large extent, once an applicant has demonstrated that the grant of the licence is in the public interest, the market will then be better positioned to determine community “needs and wishes” for licensed premises and market forces will be able to shape which businesses satisfy the expectations of consumers.

Defining the Public Interest

Unfortunately, the term ‘public interest’ is largely as undefined as “needs and wishes”. The National Competition Council has remarked that:

Australian policy makers have left defining the ‘public interest’ for trade practices to case-by-case assessment rather than trying to be prescriptive. In this respect, anything deemed to be of value to the community could be judged to be in the public interest. Consistent with this approach, subclause 1(3) is not exclusive or prescriptive. Rather, it provides a list of indicative factors a government could look at in considering the benefits and costs of particular actions, while not excluding consideration of any other matters in assessing the public interest.

The Australian Competition and Consumer Commission (ACCC) takes a similar approach:

The ACCC examines the effect on competition in the market overall, rather than the effect on individual competitors. In making judgements about each particular case, the ACCC seeks factual evidence of benefits and costs to assess whether the net benefit to the public arises, although its absence does not mean that there are not other public benefits.

For governments facing requests from sectional interests for ‘special treatment’, the authorisation process provides a systematic, arms length assessment of the public benefit. Thus, an advantage of requiring an interested party to apply for its activities to be authorised by the ACCC is that the public benefit of the activities must be justified in an independent forum. Adoption of such an approach on a consistent basis could reduce the pressure on governments to exempt anti-competitive behaviour through a section 51 exemption or some other means.

From the above extracts, it can be seen that assessing the public interest requires examination of issues on a case-by-case basis. This is because a broad range of considerations will apply, and will not be relevant in every circumstance.

Powers of the Licensing Commission

It is important that the Commission is empowered to refuse a liquor licensing application in circumstances where the facts of the application demonstrate that the grant of the application would not be in the public interest.

In this respect where an application is the subject of a properly grounded objection, the onus should remain on the applicant to satisfy the Commission that the grant of the application is in the public interest, rather than the Commission having to justify why an application should be refused. With this in mind, the power of the Commission to make its own inquiries into the facts of an individual licence application remains an important tool in determining the merits of an application before it.

Whilst acknowledging the necessity for the Commission's discretion and powers of investigation and inquiry into licence applications, other factors must also be considered in reviewing the need for investigation into licence applications.

In its 1995 Report on an Inquiry into the Liquor Licensing Commission of Victoria, the Public Bodies Review Committee of the Victorian Parliament considered the issue of excessive delay and duplication of procedures:

Evidence considered during the Inquiry reflected that the largest hidden cost to the community in the liquor licensing process is due to excessive delays which occur through a dual application process. These problems affect applicants, municipal councils and objectors alike. Necessary approvals for a licence to establish a new business can take 12 or more months to obtain, the commercial and social cost of which are enormous.

The cost to the community cannot be measured solely in application and legal fees but also in lost revenue, sales and employment opportunities. Unnecessary delays cause business failures and loss of homes and personal assets put forward as security.

An expected benefit of a model of licensing based on the public interest would be that properly submitted licence applications that address the public needs criteria and which have not attracted any objections, and applications where objections have been received and have been resolved through a process of mediation or have been determined to be irrelevant, trivial vexatious or based on improper grounds, should be deemed to have met the public interest and should be approved without any further inquiry by the Commission.

Criteria in Assessing the Public Interest

In determining the public interest of any individual licence application, consideration may, based on the facts of each case, be needed to be given to the following criteria:

- (a) noise emanations from licensed premises not to be excessive;
- (b) the proposed business to be undertaken from the premises shall not cause undue offence, annoyance, disturbance or inconvenience to those who reside or work in the vicinity of those premises, or who are making their way to or from, or utilising the services of, a place of public worship, hospital or school;
- (c) ensure that local government authority by-laws are complied with;
- (d) where relevant, Aboriginal traditional owner consent has been obtained;
- (e) ensure that the safety, health and welfare of persons who may resort to the licensed premises is not at risk;
- (f) ensure liquor is sold and consumed in a responsible manner;
- (g) ensure all persons involved in conducting business under the licence have suitable training for attaining the primary objectives of the Act;
- (h) minimise harm or ill-health caused to people, or any group of people, due to the use of liquor;
- (i) control the use of credit in the sale of liquor;
- (j) ensure public order and safety, particularly where circumstances or events are expected to attract large numbers of persons to the premises or to an area adjacent to the premises;
- (k) limit –
 - (i) the kinds of liquor that may be sold;
 - (ii) the manner in which or the containers, or number or types of containers, in which liquor may be sold;
 - (iii) the days on which, and the times at which, liquor may be sold;
- (l) prohibition of persons, or limiting the number of persons who may be, on or on any particular part of, the licensed premises or any area which is subject to the control or management of the licensee and is adjacent to those premises;
- (m) prohibition or limitation of entertainment and/or the kind of entertainment that may be provided, on or in, an area under the control of the licensee or adjacent to, the licensed premises;

- (n) the prohibition of promotional activity in which drinks are offered free or at reduced prices, or limitation of the circumstances in which this may be done;
- (o) prohibition of any practices which encourage irresponsible drinking; and
- (p) any other consideration with respect to harm reduction that may be relevant to the application which the Commission or an objector to an application can prove is tied to the public interest.

These provisions are closely related to the proposed objectives of the Act, in particular the objective of harm minimisation, and could provide the basis for drafting effective public interest criteria for insertion within section 32 of the Act.

Conclusion

The grant of a liquor licence should not be predicated upon the concept of “needs and wishes” of the community, but rather on whether the grant of the licence is in the public interest.

Section 32 should be amended by:

- (a) deleting sub-sections (1)(a), (b), (c), (d), (e) and (g)
- (b) inserting a new sub-section requiring that in every case, the Commission shall have regard to the public interest in determining a licence application, with the inclusion of public interest criteria that the Licensing Commission shall consider, subject to (c) below; and
- (c) that in the case of a properly laid licence application being submitted without objection, or where all objections received have been dismissed and/or successfully mediated so that the application stands without any objection, the Commission shall take the lack of objections as prima facie evidence that the public interest would be met in the granting of a licence.

On the basis of the above considerations, the conclusion is that section 32 should be amended by deleting sub-sections (1)(a), (b), (c), (d), (e), and (g), inserting a new provision to direct the Commission to consider the “public interest” when hearing objections to new licence applications, and to accept a lack of objections to a properly grounded application as being prima facie evidence that an application is in the public interest.

RESTRICTION 9: The Licensing Commission can impose further conditions on existing licenses that can effect the trading capability of a licensee (section 33).

This restriction is considered anti-competitive because it imposes extra conditions on a licensee that may restrict the nature of the business conducted by the licensee, the hours of trading that the licence may operate under or amount or type of liquor that can be sold from a particular premises.

The objects addressed are object 1, to minimise harm associated with the consumption of liquor; and object 2, to promote the sale and supply of alcohol in such ways as to contribute to, and not detract from, the amenity of community life.

Public Submissions

Submissions have been received in which it was suggested section 33 of the Act should be restricted to operate only at the request of a licensee or in response to a breach of the conditions set out in section 31(2)(a) – (k) of the Act.

A further submission suggested all applications by licensees for a variation to liquor licence conditions should be advertised.

Another view was that the Act should be amended to specifically provide for a licensee to apply to have their licence varied to any extent they consider necessary or convenient for the operation of the licence, subject to the Commission having power to conduct inquiries similar to those for a new licence application, including the need to advertise the proposed variations.

Costs of the Restriction

Licensees may have the conditions of their licenses unilaterally altered, thereby limiting the type of business they can carry on at those premises, the type of service available to the public and the amount and types of liquor that can be made available to consumers.

Consumers may be restricted in the level and type of service and quantity and variation of liquor products available to them.

Benefits of the Restriction

Consumers can have confidence that the level of service and quality of product are maintained to a high standard and that individual licensed premises are required to operate in line with the changing public interest requirements of that community.

Assessment of Public Benefit

Section 33 is a discretionary power of the Licensing Commission and gives the Commission similar powers to those under section 31(2). The broad discretion is necessary to enable the Commission to perform the function of protecting the community from the adverse social effects of alcohol consumption.

The proposed objects of the Act impose on the Commission obligations to ensure harm minimisation and the protection of the amenity of community life, whilst ensuring the liquor and related industries develop in a responsible manner that produces a benefit for the community. Furthermore, should the proposed changes under sections 31 and 32 as discussed above be adopted, there is the added responsibility of ensuring decisions with regard to licence applications be made with consideration of the public interest.

In having regard to the above-mentioned obligations, there remains a requirement for the Commission to retain a broad power in its ability to impose further conditions on existing licences, subject to the criteria that would need to be considered under a revised section 32 of the Act.

Similarly, just as the Commission may deem it necessary to alter the conditions of a liquor licence, licensees may also have a need to seek alterations to their licence conditions based on changing community and economic factors, and should have the freedom to apply to the Commission to have a condition of their licence altered or withdrawn, or a new condition added.

In any case in which a licensee applies to have the licence conditions altered, and subject to the recommendations made under the assessment of Restriction 28 with respect to sections 119 and 120, the Commission should have regard to the possible impact of the alteration on the public interest and determine whether the licensee should have to advertise the proposed amendment in terms similar to those contained in section 27 of the Act.

Where it is determined the proposed change should be advertised, procedures similar to the determination of a new licence should then be undertaken, with the same consideration as to objections and public interest implications.

Alternatives

No alternative means for achieving the objective of this restriction have been identified.

Conclusion

That section 33 of the Act be amended to include:

- (a) Provision for a licensee to apply to the Commission to seek amendments to the conditions of a licence or to apply to have the licence category altered;

- (b) Provision for any such application to be advertised at the discretion of the Commission and to implement similar procedures to a new licence application in determining the merits of such applications; and
- (c) A direction that any variation to licence conditions or change of licence type be permitted only where it is considered by the Commission to be in the public interest to do so.

On the basis of the above considerations, the conclusion is that section 33 should be amended to include the right of a licensee to apply to the Licensing Commission for variations to the type or conditions of their liquor licence as well as retaining the power for the Commission to vary a licence, subject at all times to the public interest criteria as set out under section 32.

RESTRICTION 10: Prescribed licence fees are imposed on licensed premises (Division 3 of Part III, sections 34 – 38).

This Division was rendered inoperative after a 1997 High Court decision found certain excise collection by the States and Territories was unconstitutional. However, the excise that was previously collected by the various States and Territories is now collected by the Commonwealth on their behalf and returned to them. This has effectively continued the old licensing regime, albeit in an indirect manner.

There has been no move by the Northern Territory Government to introduce an alternative annual licensing fee as a means to recoup the costs of administering the Industry. Presently, an applicant must pay a \$200 application fee for a new liquor licence.

The fact that the excise is still collected arguably satisfies any NCC requirement that regulatory costs should be borne by those that directly benefit from the industry being regulated. In any event, the broader community benefits from liquor regulation (through the reduction of negative externalities) so that the current fee structure may well be considered to be appropriate.

In any event, the question of whether an annual licensing fee should be reintroduced, as well as a revision of the cost of processing fees is being conducted under a Northern Territory Treasury project and is not a question that needs to be pursued under this Review.

Conclusion

Division 3 of Part III of the Act has been rendered inoperative and should be repealed.

On the basis of the above considerations, the conclusion is that Division 3 of Part III should be repealed.

RESTRICTION 11: The entry and exit of individuals and firms into and out of the market through the transfer of an existing liquor licence is governed by the Licensing Commission (section 40).

This restriction is considered anti-competitive because it limits a licensee's ability to sell a business operated out of licensed premises and places barriers against persons who may want to invest in the liquor industry in the Northern Territory through acquiring established industry related businesses.

The object addressed is object 4, to regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

Public Submissions

It has been suggested the transfer provisions under section 40 of the Act should be strengthened to provide the Commission with the same powers that it has in relation to an application for a new liquor licence. This power is sought for occasions where a licence transfer provides the Commission with difficulty in determining the merit of transferring a liquor licence.

Costs of the Restriction

Current licensees are limited in their ability to on-sell a liquor industry related business to potential customers. Licensees may be reluctant to invest large amounts of resources in licensed premises if the increase in capital expenditure is in danger of not being recoverable by on-selling the business in the future.

Potential investors in the market have barriers placed against market entry in that the Commission may refuse to allow the transfer of an established licensed business to the applicant for transfer of the licence.

Benefits of the Restriction

Regulation of market entry and exit prevents undesirable persons from entering the market, thereby maintaining high levels of business ethics in the industry. Consumers can have confidence that they are not being exposed to unscrupulous entrepreneurs and that the levels of service and product quality are maintained.

Assessment of Public Benefit

Section 40 gives a broad power to the Commission to authorise the transfer of a licence. Section 41(2) provides that a transfer application is to be treated in the same manner as an application for a new liquor licence with respect to the suitability of the applicant to hold and operate a licence. The issue of "fit and proper person" is discussed in Restriction 4.

The propriety of the applicant notwithstanding, it has been suggested through public submissions that the section be broadened to allow the Commission to consider a transfer application for a licence in a similar manner to an application for a new licence.

The proposition to provide the Commission with powers over transfers of liquor licenses similar to those in relation to licence applications raises serious questions in relation to NCP principles, proprietary rights and compensation in instances where a transfer is refused.

By broadening Section 40 to treat transfer applications in the same way as new licence applications, licensees would be faced with the possibility that their licence would, instead of being transferred as a matter of business efficacy, be cancelled or otherwise amended, thereby affecting the value of their business on the open market.

Furthermore, business transactions involving licensed premises could face undue delay where such transactions would need to be advertised and be subject to 30-day objection periods. Such uncertainty would be of concern to potential investors and market participants and could curtail new and ongoing investment in the industry.

Owners of existing licensed premises have a legitimate expectation to be able to dispose of their business as they think fit, within proper guidelines as to the maintaining of the business within the licence category that applies to it and approval of a potential purchaser by the Licensing Commission as a fit and proper person to carry on a liquor industry related business.

Provided the Licensing Commission has set out proper probative requirements for potential industry participants (such requirements having force of law under the *Liquor Regulations*), and those requirements are properly met by a potential transferee of a liquor licence, there should be no reason why the Commission should object to the sale of licensed premises, subject to the requirements of Section 44 of the Act.

Section 44 gives the Commission the power to direct the Director to apply for the cancellation of a licence upon grounds set out in section 72 of the Act. Those grounds are:

- (a) the licensee is serving a sentence of imprisonment imposed in respect of his conviction for an offence;
- (b) the licensee has been found guilty of an offence against this Act;
- (c) the licensee has contravened or failed to comply with a direction of the Commission under section 49(4)(b) or 65; or
- (d) the licensee has contravened or failed to comply with a condition of his licence.

An amendment to section 40(2) so that an authorization to transfer a licence will be granted upon an applicant complying with probative requirements as declared by the Licensing Commission and set out under the *Liquor Regulations*, subject to section 44 of the Act, would satisfy the public interest in maintaining high industry standards, with minimal effect on bona fide business transactions. The Director and Licensing Commission would also retain adequate powers to intervene in matters that threaten the integrity of the industry.

Alternatives

As stated above, it has been suggested in the public submissions to the Review that the transfer provisions under section 40 of the Act should be strengthened to provide the Commission with the same powers that it has in relation to an application for a new liquor licence.

Imposing the same requirements for new licence applications on applications for licence transfers would create an onerous system of application, advertising, objection procedures and Commission hearings that would have the effect of causing undue delay in what would in the great majority of cases be bona fide business transactions based on market forces and economic climate.

The Review Panel is not aware of any other industry being submitted to such levels of regulation to the point that an existing business enterprise is put at risk of being extinguished by a regulatory body every time it is put up for sale or otherwise transferred. Such a proposition is not sustainable under NCP guidelines.

The issue of the transfer of liquor licenses is closely aligned to the licensing regime in total. Given the recognition of the licensing system as being the most appropriate form of regulation for the liquor industry, the Review Panel has not identified any other regulatory or non-regulatory system that could satisfactorily fulfil the requirements identified under this restriction.

Conclusion

The proposal that section 40 be amended to provide the Commission with the same powers to determine licence transfers that it does with new licence applications would be anti-competitive and unsustainable under the NCP guidelines.

However it is desirable that the Commission be able to determine whether the public interest will be met in authorizing a transfer of a licence in each particular instance.

<p>On the basis of the above considerations, the conclusion is that section 40 should be amended to include that the Licensing Commission shall approve an application for the transfer of a liquor licence upon the applicant transferee having satisfactorily met the probative requirements set down by the Licensing Commission and included in the <i>Liquor Regulations</i>.</p>
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RESTRICTION 12: A person seeking to enter or exit the liquor industry, or benefit from the proceeds of a liquor industry related business, through the transfer of a liquor licence, is reliant on the transferee or other such beneficiary proving to be a “fit and proper” person to hold a licence (section 41).

This restriction is considered anti-competitive because it has the potential to prevent free trade by narrowing the market to which a current licensee may sell a liquor industry related business, as well as barring potential entrants from participating in the liquor industry.

The objects addressed are object 1, to minimise harm associated with the consumption of liquor by encouraging responsible attitudes that reflect community expectations towards the promotion, sale, supply, consumption and use of alcohol and object 4, to regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

Public Submissions

No submissions were received from the public in relation to this restriction.

Costs of the Restriction

Current licensees are restricted in conducting the affairs of their business by not necessarily being able to sell an ongoing liquor industry related business to the most attractive potential purchaser.

Potential entrants to the market through the purchase of an established business may be barred from participating in the liquor industry.

Benefits of the Restriction

Undesirable persons are excluded from the liquor industry, thereby upholding the reputation of the industry and maintaining public confidence in the quality of service and products provided by licensees through properly run licensed premises.

Assessment of Public Benefit

The benefit to the public contained in this restriction is similar to that discussed in Restriction 4.

Alternatives

No legitimate alternative to achieving the Act’s objectives of harm minimisation and proper regulation of the liquor industry has been identified in this Review.

Conclusion

The restrictions contained in section 41 of the Act should be retained, subject to the recommendations in respect to sections 28 and 32, as set out in Restrictions 4 and 6 respectively.

RESTRICTION 13: The Licensing Commission can refuse an application for the transfer of a liquor licence, even if the applicant meets all the requirements of the Act (section 43).

This restriction is considered anti-competitive because it restricts market entry on grounds other than market forces.

The objects addressed are object 1, to minimise harm associated with the consumption of liquor by encouraging responsible attitudes that reflect community expectations towards the promotion, sale, supply, consumption and use of alcohol and object 4, to regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

Section 43 provides the Commission with means by which it shall consider an application for the transfer of a licence. As such, it is restrictive only to the extent of the provisions of section 40, discussed in Restriction 12, and should be retained.

Conclusion

Section 43 should be retained in its current form.

RESTRICTION 14: The Licensing Commission can prevent a licensee substituting the premises from which a licensed business is run (section 46A).

This restriction is considered anti-competitive because it places controls over a licensee who seeks to expand or improve the income potential of that licensee's business enterprise.

The objects addressed are object 2, to promote the sale and supply of alcohol in such ways as to contribute to, and not detract from, the amenity of community life and object 3, to facilitate the development of a diversity of licensed premises and related services for the benefit of the community.

Public Submissions

No submissions were received in relation to this restriction.

Costs of the Restriction

Licensees are restrained from expanding their business and thereby increasing their earning potential through re-location to bigger or more suitable premises.

Consumers may be denied an improved quality of service and product variety from a liquor outlet seeking to improve or vary its business activities by expanding or relocating to more suitable or accessible premises.

Benefits of the Restriction

The community in which a liquor outlet is situated can be confident that the level of amenity enjoyed by that community will not be adversely affected by expanding liquor outlets and unwanted growth in liquor sales within that community.

Assessment of Public Benefit

Section 46A allows the Commission to approve an application from a licensee to substitute the premises to which a liquor licence applies only in circumstances where the proposed new premises are in close proximity to the original premises specified in the licence, and where the Commission is satisfied that the substitution will not adversely affect the public.

The requirement that the new premises are in close proximity to the original premises specified in the licence ensures the physical moving of the licensed premises does not have an effect of altering the amenity of the community of which the licensed premises in the proximity of.

The second limb of the test which the Commission must consider is whether the substitution will adversely affect the public. This requirement is a direct application of the “Public Interest” criterion that has been discussed earlier in this Report (see generally Restriction 5, above) and should require an applicant to advertise an application for substitution of premises where the Commission determines it necessary to do so.

The consideration of the public interest in determining whether the public would be adversely affected by a substitution of premises gives certainty to the matters the Commission must consider in determining the issue, as well as giving an applicant a firm foundation upon which to form its submission in seeking a change in facilities.

Alternatives

An application of Section 46A has the potential to disrupt and hinder the growth of an individual participant in the liquor industry. The section is somewhat obscure, in that it does not set out the criteria to be followed for an application to be successful, other than the proposed new premises be in close proximity to the existing premises and that the move would not adversely affect the public.

The wording of the “close proximity” requirement is subjective and is reliant upon the facts in every case, leading to uncertainty in the commercial environment.

An alternative to the current discretion would be a rewording of the section whereby a substitution of premises would be prima facie granted without further consideration, where the licensee has notified the Commission of its intention to move to new premises, the local planning authorities have been advised of and have agreed to the proposal and where the proposal has been duly advertised in accordance with the provisions of section 27 and has not been objected to under section 48.

Where an application to substitute premises has been objected to, the Commission would then determine the matter along public interest guidelines. The re-working of section 46A in this way would more accurately reflect the proposed objects of the Act and more closely aligns the section with the proposed re-working of section 32, discussed under Restriction 4 (above).

Conclusion

The current wording of section 46A is uncertain and should be re-worded to provide greater certainty to a licensee seeking to move to better facilities within the same general location by providing that an application properly submitted, including the advertising of a proposed premises substitution, where deemed necessary by the Commission, without objection will be granted as being prima facie within the public interest.

On the basis of the above considerations, the conclusion is that section 46A should be re-worded to give greater certainty to applicants by providing that:

- a properly submitted application, including advertising where required by the Commission, will be approved by the Licensing Commission without further consideration where no objections to the application have been lodged; and
- an application that attracts objections shall be dealt with under the procedures proposed in the amendments to section 48 of the Act

RESTRICTION 15: An acting licensee must be appointed in circumstances where the licensee is unable to conduct the business of the licensee (section 47).

This restriction is considered anti-competitive because it may restrict a licensee's capacity to operate its business, thereby restricting the availability of services and products to consumers.

The objects addressed are object 1, to minimise harm associated with the consumption of liquor by encouraging responsible attitudes that reflect community expectations towards the promotion, sale, supply, consumption and use of alcohol; object 2, to promote the sale and supply of alcohol in such ways as to contribute to, and not detract from, the amenity of community life; and object 4, to regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

Public Submissions

No submissions were received from the public in relation to this restriction.

Costs of the Restriction

A licensee who for any reason is unable to perform the functions of a licensee must employ a person to act as the licensee or else will not be able to allow the business to trade, thereby imposing an additional labour cost that may be reflected in increased product prices that are passed on to the consumer.

Benefits of the Restriction

The appointment of a temporary licensee to act as the licensee in situations where the licensee cannot perform the duties of a licensee allows the Director of Licensing to refer matters of complaint and other concerns to a person who is readily contactable and who is required to be at the premises at all times the licence is in operation, thereby ensuring harm minimisation and public amenity procedures are being properly complied with.

Assessment of Public Benefit

The public benefit of requiring the appointment of a temporary licensee in circumstances where the licensee is unable to perform the duties of a licensee is similar to the benefit discussed under Restriction 2 (above) in relation to the need for a nominee to act in personum for a corporate licensee. Such an appointment ensures the Director can enforce licensing matters that impact directly on the licensee and his or her responsibilities with respect to the licensed premises, thereby maintaining harm minimisation and public amenity procedures and standards.

Alternatives

No effective alternative means of meeting the objectives of this restriction have been identified by the Review Panel.

Conclusion

The requirement for a licensee to nominate an acting licensee in circumstances where the licensee can not carry out the responsibilities of a licensee is justified and should be retained.

RESTRICTION 16: Only certain classes of person can be assigned to continue the business of a deceased licensee (section 47C).

This restriction is considered anti-competitive because it may prevent a person who has an interest other than those stated under section 47C from continuing the business of a licensee upon the death of that licensee.

The objects addressed are object 1, to minimise harm associated with the consumption of liquor by encouraging responsible attitudes that reflect community expectations towards the promotion, sale, supply, consumption and use of alcohol; and object 4, to regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

Public Submissions

No submissions were received from the public in relation to this restriction.

Costs of the Restriction

Licensed premises may be forced to close upon the death of a licensee in circumstances where no person with an interest listed under the provisions of the section can be found or is interested to carry on the business of the deceased licensee. Creditors may not be able to recoup debts owed from such a closure of an otherwise viable business and consumers may be restricted in the availability of some liquor industry related services.

Benefits of the Restriction

The Licensing Commission is able to maintain control of a liquor licence held in the estate of a deceased person, thereby ensuring harm minimisation and public amenity strategies are maintained.

Assessment of Public Benefit

Section 47C follows the basic rules of succession that apply to the administration of deceased estates under the *Wills Act 2000*. The provision for parties with a bona fide interest in the estate of a deceased licensee to be able to apply to the Licensing Commission for permission to continue the business of the licensee in the capacity of a licensee allows the Licensing Commission to maintain probity standards in the industry and ensure participants retain the level of knowledge and understanding of the Act and harm minimisation and public amenity standards that are required to operate licensed premises.

Alternatives

The alternative to defining who may continue the business of a deceased licensee is to reverse the restriction and define those who may not apply to the Licensing Commission for permission to continue the business operations of a deceased licensee, ie a form of “negative licensing”. The concept of negative licensing was discussed under Restriction 1 (above) and is not considered to be a suitable alternative to the “positive” form of licensing embraced in the *Liquor Act*. Furthermore, a negative licensing provision for approval for a person to continue the business of a deceased licensee may conflict with the principles of succession law and the administration of intestate estates.

Conclusion

The restriction on who can apply to the Licensing Commission to conduct the business of a deceased licensee is justified and should be retained.

RESTRICTION 17 – Only certain classes of person can be assigned to continue the business of a licensee who has entered into bankruptcy proceedings with respect to the licensed premises (Section 47D).

This restriction is considered anti-competitive because it may prevent a person who has an interest other than those stated under section 47D from continuing the business of a licensee upon that licensee declaring bankruptcy or seeking to take the benefit of a law for the relief of a bankrupt or insolvent debtor, or who makes an assignment of his property, interest or remuneration for the benefit of creditors..

The objects addressed are object 1, to minimise harm associated with the consumption of liquor by encouraging responsible attitudes that reflect community expectations towards the promotion, sale, supply, consumption and use of alcohol; and object 4, to regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

Public Submissions

No submissions were received from the public in relation to this restriction.

Costs of the Restriction

Licensed premises may be forced to close upon the declared bankruptcy or insolvency of a licensee in circumstances where no person with an interest listed under the provisions of the section can be found or is interested to carry on the business of the bankrupt licensee. Creditors may not be able to recoup debts owed from such a closure of a business that but for the inability to find a person with an interest as listed under section 47D might be able to trade out of its difficulties and consumers may be restricted in the availability of some liquor industry related services.

Benefits of the Restriction

The Licensing Commission is able to maintain control of a liquor licence assigned by a bankrupt or insolvent licensee to a third party, thereby ensuring harm minimisation and public amenity strategies are maintained.

Assessment of Public Benefit

Section 47D follows the provisions of the *Bankruptcy Act* 1966 (Cwth) that apply to the administration of bankrupt and insolvent estates. The provision for a trustee, assignee or other person in whom the estate of the licensee becomes vested to be able to apply to the Licensing Commission for permission to continue the business of the licensee in the capacity of a licensee allows the Commission to maintain probity standards in the industry and ensure participants retain the level of knowledge and understanding of the Act and harm minimisation and public amenity standards that are required to operate licensed premises.

Alternatives

The alternative to defining who may continue the business of a bankrupt licensee is similar to that discussed in Restriction 12 (above) and is also not considered to be a viable alternative.

Conclusion

The restriction on who can apply to the Licensing Commission to conduct the business of a bankrupt licensee is justified and should be retained.

RESTRICTION 18 – An assignee of a licence under sections 47C or 47D cannot surrender or transfer the licence unless it has been transferred to that person to hold on its own behalf (section 47E).

This restriction is considered anti-competitive because it prevents an assignee of a liquor licence from disposing of that licence by means that are available to any other person who holds a liquor licence.

The object addressed is object 4, to regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

Public Submissions

No submissions were received from the public in relation to this restriction.

Costs of the Restriction

Assignees of liquor licenses through the death or bankruptcy of a licensee will incur expenses involved in the transfer of a liquor licence and associated business registration costs into their own name for the purpose of selling or otherwise disposing of that liquor licence out of the estate of the affected nominee.

Benefits of the Restriction

No benefit outside the control and regulation of licence transfers (discussed under Restriction 9 above) have been identified in relation to this restriction.

Assessment of Public Benefit

Section 47E is concerned principally with the mechanism by which a person seeking to operate a liquor licence under sections 47C and 47D may be assigned and the period of operation of such an assignment (sections 47E(1) and (2)). That mechanism has no special significance aside from the ordinary suitability issues discussed earlier in this Review.

Section 47E(3) prohibits a person endorsed to operate a licence of a deceased or bankrupt licensee from renewing, surrendering or transferring that licence to any other person, whilst section 47E(4) empowers the Commission to transfer that liquor licence into the name of the nominated person. It is assumed that such a transfer would then give the nominated person the freedom to dispose of the liquor licence by any ordinary means available to a licensee.

The issue of the renewal of liquor licenses is at present a moot point, given there is no annual licence fee and a liquor licence presently issued in perpetuity until surrender, cancelled or suspended per section 30 of the Act (see Restriction 4 (above)).

Section 47E(3) places a restriction on an executor of an estate (or such other person nominated to carry on the business of the licensee) that may interfere with that executor's obligations under other legislation, eg the requirement of a manager in a receivership to operate a business in the best interests of the business's creditors including, where necessary or desirable, to sell that business.

As stated in the NCC Report of June 2001 (see extract under Restriction 1), the licensing system of regulation of liquor is necessary with respect to the enforcement of harm minimisation strategies, however other restrictions that impact on usual business decisions should be avoided.

With this mind, it is argued that the Licensing Commission should not be required to concern itself with the operation of a licensed business beyond the scope of those issues that impact on the objects of the Act. The powers of the Commission with respect to the transfer or cancellation of a liquor licence that is the subject of a deceased estate or bankruptcy should therefore be limited to the usual considerations of the transfer or cancellation of any other liquor licence under sections 39 and 40 of the Act.

Alternatives

No effective alternative means of meeting the objectives of this restriction have been identified by the Review Panel.

Conclusion

Section 47E(3) places a restriction on a person endorsed to carry on the business of a licensee who is deceased or bankrupt that is over and above the level of regulation necessary to ensure harm minimisation and should be repealed.

On the basis of the above considerations, the conclusion is that section 47E should be amended by deleting sub-section (3) of that section.

RESTRICITON 19: The Licensing Commission may cancel a licence, thereby preventing a person from participating in the liquor industry (sections 68 to 72).

This restriction is considered anti-competitive because it removes an industry participant's right to continue to run a business connected to the liquor industry on grounds other than market forces.

The objects addressed are objective 1, to minimise harm associated with the consumption of liquor by encouraging responsible attitudes that reflect community expectations towards the promotion, sale, supply, consumption and use of alcohol; and object 4, to regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

Costs of the Restriction

A licensee can have its right to participate in the industry cancelled, thereby losing financial investments in the business and income source.

Persons employed in the industry may be denied job opportunities.

Consumers are denied access to services and products associated with the liquor industry.

Benefits of the Restriction

Consumers can be confident of high standards of service and product quality. Amenity of community life is protected and harm minimisation strategies are maintained.

Assessment of Public Benefit

The power of the Commission to cancel a licence is limited to specific instances where a licensee has displayed behaviour considered to be unacceptable in the industry, is not in the public interest or where market forces have determined a licensed premises to be no longer viable as a going concern and the licensee has made a decision to cease trading.

In all but the last case, the power is a significant deterrent to licensees who may see unacceptable or illegal practices as a means of supplementing income, thereby ensuring the reputation of the industry is kept intact and consumer confidence in service levels and product quality remain high.

Alternatives

One of the implications of establishing a licensing system as a regulatory tool is the right of the regulating body to take away a licence to participate in the industry in instances where a licence holder has committed, or allowed to be committed, breaches of a licence of such a severe nature as to warrant the cancellation of that licensee's authority to participate in the industry.

The Act contemplates remedial action for breaches that do not warrant the severe action of rescinding a licence and the authority for the Commission to cancel a licence is specific in the causes for implementing such action.

Subject to the acceptance of a licensing regime as the most effective means of regulation of the liquor industry, no alternative means for achieving the objective of this restriction have been identified.

Conclusion

That the power of the Commission to cancel a licence in the circumstances provided for under Division 3 of the Act, namely sections 68 to 72, be retained.

RESTRICTION 20: A Wholesale liquor merchant is required to be registered as a wholesaler under the Act or be a licensee (section 113A).

This restriction is considered anti-competitive because a person may be prohibited from engaging in the wholesale sale of liquor to retailers.

The objects addressed are object 1, to minimise harm associated with the consumption of liquor by encouraging responsible attitudes that reflect community expectations towards the promotion, sale, supply, consumption and use of alcohol; and object 4, to regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

Public Submissions

No submissions were received from the public in relation to this restriction.

Costs of the Restriction

In a similar vein to the general licensing system in place under the *Liquor Act*, section 113A restricts the lawful wholesale sale and supply of liquor to people who are specifically licensed for that purpose. It impacts on potential market entrants who must apply for registration as a liquor wholesaler or the grant of a liquor licence for the sale and supply of liquor generally.

The administrative cost of applying for registration as a liquor wholesaler is minimal (\$20 per annum), however as stated in the analysis of Restriction 1 (above), the effect of a licensing system includes a higher administrative cost for licensees, which may impact on consumer benefit by imposing higher retail prices for liquor products through the passing on of these costs to the consumer.

The requirement for registration also provides existing market participants with limited protection from competition by acting as a barrier to entry by potential competitors. Retailers, and ultimately consumers, may therefore have less choice as to what liquor products are available to the market.

Benefits of the Restriction

Also similarly to the licensing system, the requirement for wholesalers to be registered creates retailer and consumer certainty about the quality of products and services at licensed premises.

Assessment of Public Benefit

The costs of registration of wholesalers of liquor products is minimal and does not impact heavily on the overall costs to consumers. The benefits associated with quality assurance are a priority in achieving the overarching strategies of harm minimisation and public amenity by ensuring products are safe for human consumption, meet prescribed alcohol content limits and are supplied by bona fide merchants to licensed retailers.

The requirement for the registration of wholesalers is far less stringent than the licensing system of retail outlets, supported by the fact that wholesalers have no direct contact with consumers and are therefore removed from the direct potential of harm associated with alcohol abuse and mismanagement

Alternatives

The alternatives to the registration of wholesale liquor merchants are similar to those discussed in relation to the licensing system of liquor industry regulation. As such, no suitable alternative to the registration of wholesalers has been identified.

Conclusion

The requirement that wholesalers of liquor products who are not also licensees should be registered is necessary to the effective implementation of harm minimisation strategies and should be retained.

RESTRICTION 21: Persons are prohibited from selling liquor without a licence (section 115).

This restriction is considered anti-competitive because it imposes a licensing regime on liquor merchants. Section 4 of the Act defines “sell” to include acts to offer or expose for sale, keep or possess for sale or supply for or in expectation of any reward.

The objects addressed are object 1, to minimise harm associated with the consumption of liquor by encouraging responsible attitudes that reflect community expectations towards the promotion, sale, supply, consumption and use of alcohol; and object 4, to regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

While acknowledging that liquor is a legal and socially acceptable drug, it is also important to recognise that it is also open to wide scale abuse. The public objective impacted is prevention of public ‘bads’. Closely related to this effect is a reduction in the risk of illness, injury or fatality associated with the consumption of liquor.

The licensing restriction can be seen as being a valuable tool for limiting harm through control over the availability of alcohol, and has been described as one of the most significant powers at the disposal of governments for limiting alcohol problems.

Entry to the liquor market is restrictive, for no person may trade in liquor without the grant of a licence. The licensing requirement is also seen as encompassing an additional barrier of perceived difficulty in terms of time, cost and procedure, a perception that is almost customarily associated with the application process.

While the need to have a licence imposes licensing and compliance costs on licensees, these are relatively minimal and do not impact unduly in comparison with other “start up” costs of a business in the liquor industry. The fees associated with lodging an application impose a minor financial burden on licence applicants, however it is not considered sufficient to establish a barrier to entry.

Costs of Restriction

The lawful sale and commercial supply of liquor is restricted to people who are specifically licensed for this purpose. This cost impacts on market entrants who must apply for the grant of a licence and established liquor merchants who must comply with their licence conditions.

The licensing requirement increases the administrative costs of market participants, resulting in higher product prices and reduced consumption, impacting on both liquor merchants and consumers, who bear the burden of inflated product costs.

Existing market holders have a limited assurance of protection from competition through the licensing requirement, which acts a barrier to entry to the industry, thereby restricting competition. The impact of this cost is that consumers have less choice of where to purchase liquor products.

Benefits of the Restriction

There is an increased consumer certainty about the quality of products and services at licensed premises, reducing uncertainty and risk as to the quality of service and product availability.

The licensing requirement contributes to a reduction in drug abuse through restrictions on the availability of liquor, which impacts on its subsequent consumption. The restriction applies through making liquor products available only through licensed liquor outlets at certain times and by ensuring liquor is sold in a responsible and controlled manner on and from licensed premises.

Assessment of Public Benefit

The existence of the liquor licensing system is anti-competitive, since it presupposes that access to the market of selling and supplying liquor needs to be regulated, thereby restricting the lawful sale and commercial supply of liquor to people who are specifically licensed for this purpose.

The licensing restriction also has an effect on the distribution of products through limiting the facilities available for distribution and consumption of alcoholic beverages, by affecting the pricing structure of liquor, and of restricting or preventing the entry of new distributors to the industry. Existing market holders are protected from competition and are able to earn higher profits through setting higher prices, which in turn leads to lower demand and consumption, and favours producers at the expense of consumers.

Stacked against the costs of the restriction is the benefit of reducing the harmful effects on consumers and the broader community in restricting access to liquor. As discussed earlier in this Report, studies into the economic costs to Australia from the hazardous use of alcohol are substantial. Various studies have estimated those cost as being between \$4.5 billion and \$17.4 billion, with a 'best estimate' of \$12.05 billion.

A flow-on effect of the licensing restriction is increased certainty about the quality of liquor products and related services, resulting in lower uncertainty and risk to consumers.

Alternatives

Alternatives to the licensing regime of restriction are self-regulation, co-regulation, registration, public education and negative licensing. These alternatives have been discussed previously in Restriction 1.

Conclusion

The requirement that a person can not sell liquor unless authorized by a licence is justified and should be retained.

RESTRICTION 22: A licensee is restricted in the extent and manner of expansion of that business enterprise because material alterations may not be made to licensed premises without the express consent of the Licensing Commission (sections 119 and 120).

The restriction is considered anti-competitive because it limits a licensee's ability to change the image and capacity of licensed premises to suit changing consumer demands.

The objects addressed are object 2, to promote the sale and supply of alcohol in such ways as to contribute to, and not detract from, the amenity of community life; object 3, to facilitate the development of a diversity of licensed premises and related services for the benefit of the community; and object 4, to regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

Public Submissions

No submissions were received in relation to this Restriction.

Costs of the Restriction

Licensees are constrained in their ability to alter licensed premises and present them as a 'new' or 'improved' venue that the licensee believes would be of financial benefit by changing the appearance of a venue to make it more attractive to potential and existing patrons, thereby increasing the clientele utilising the venue.

Benefits of the Restriction

Licensed premises are not altered in a manner that conflicts with the proper development of the liquor industry. Alterations to licensed premises are subject to standards imposed on licensed premises by the Licensing Commission.

Assessment of Public Benefit

Section 119 of the Act is silent as to what constitutes a 'material alteration' to licensed premises. Section 77(3) of the *Liquor Licensing Act 1988* (WA) defines an alteration as changes that comprise or consists of –

- (a) a material change, whether structural, decorative or otherwise, affecting the premises or the accommodation or facilities provided;
- (b) a substantial change to the use of any premises, accommodation or facilities; or
- (c) an addition to, or reduction in the area of the premises.

As the Act does not provide specifically for the addition or reduction of area of premises, nor defines 'material alteration' in any way, the current wording of section 119 can be understood to have a similar meaning as that provided for in section 77(3) of the *Liquor Licensing Act 1988* (WA).

It should be noted that liquor regulating legislation in other jurisdictions (Victoria and NSW) have no requirement at all for a licensee to advise, or seek the permission of, the relevant licensing authority of those jurisdictions where that licensee intends to make alterations to licensed premises. In Queensland, a licensee must give notice of the proposed alterations, but need not seek permission to carry out those alterations. The only requirement in each of these jurisdictions is that a licensee must seek permission to vary licensed premises by either increasing or decreasing the area of the premises.

While the restriction contained in section 119 of the Act can clearly be linked back to objects 2, 3 and 4, it is difficult to justify the level of regulation in its present form. There appears to be no correlation between the level of regulation contained in section 119 and regulatory provisions of any other retail industry.

The role of the Licensing Commission includes the supervision of licensed premises through the placing of conditions on licenses that restrict the use of licensed premises to those functions that are consistent with the category of license awarded to those premises. Provided a licensee maintains licensed premises in accordance with the conditions of the licence under which those premises operate, it should not matter to the Commission if a licensee wants to change the theme of the premises, or make better use of the space available within the confines of the existing licensed area.

An example is where the proprietor of a restaurant wishes to change the theme of that restaurant from an Italian Restaurant to a Steak House, or whether the premises would be better presented by removing or adding an interior partition wall. Similarly, the operator of a tavern licence should not be prevented from changing the decor of his premises, altering the positioning of the bar area or the size of the dance floor or other material factors within the confines of the licensed area and within the limits of the conditions of a tavern licence.

The introduction of specific licence categories and uniform licence conditions for each category coupled with a shift in onus from perceived “needs and wishes” to the consideration of the public benefit, together with the requirement to ensure competition is not unnecessarily restrained through regulation renders the condition that a licensee is restrained from making material alterations to licensed premises untenable, provided the alterations do not change the type of licensed business to be operated from the premises.

While some level of regulation over physical alterations to licensed premises should be retained to ensure the objects of the Act as proposed under this Review are maintained, there is opportunity to significantly amend the provisions of section 119 so that:

- (a) licensees and/or owners of licensed premises can be relatively more innovative; and
- (b) the industry in general is more exposed to the benefits of commercial outcomes from competition.

It is recommended that the provisions of section 119 be amended to follow more closely the provisions of other jurisdictions (and similar proposed amendments in the WA Act as stated in that State’s NCP Review of the liquor industry), so that an alteration requiring approval is restricted to only those alterations that result in an addition to, or reduction in the area of the premises.

An application for alterations to the area under which a licensed premises operates would be required to proceed along the lines of a new licence application. This is because an increase or decrease in the area of licensed premises may lead to an increase in the premises’ actual or potential liquor sales and should be subject to the scrutiny of the local community serviced by those premises. This would present an opportunity for the submission of objections relative to the minimisation of harm or ill-health caused to people or any group of people, due to the use of liquor (object 1) and would also be consistent with objects 3 and 4 in that any proper development of the liquor industry must have due regard to the interests of the wider community, with consideration given to the public interest as opposed to private commercial interests.

All other lawful alterations, whether structural, decorative or otherwise and any other substantial change in the use of the premises which does not result in the addition or reduction in the licensed area of the premises and which does not alter the type of licence being operated on those premises should be left to the discretion of the licensee/owner concerned.

Alternatives

An alternative to the requirement that licensees seek permission to enlarge or reduce the licensed area of their premises would be to permit a licensee to alter premises as they see fit and without any prior approval, with the subsequent requirement that plans of the altered premises be lodged for redefinition of the licensed area. At that time, directions could then be made to the licensee in circumstances where the alteration is considered not to be up to standard.

This system is not considered to be an adequate alternative because licensees would be in a position to increase their licensed area without any independent consideration of whether the increase would negatively impact on harm minimisation concerns or the amenity of the neighbourhood.

Furthermore, the giving of directions after premises have been altered may result in more cost to the licensee concerned.

Conclusion

The current restrictions under sections 119 and 120 cannot be supported under the NCP Principles. The restriction should be modified so that a licensee need not seek approval for alterations to licensed premises that do not impact on the size of the licensed area of the premises or alter the type of business being carried on at those premises.

On the basis of the above considerations, the conclusion is that section 119 should be amended by:

- Inserting a clause defining a “material alteration” to be an alteration that in the opinion of the Commission affects the harm minimisation or public amenity objects of the Act, or which increases or decreases the actual area of licensed premises that is utilised by the public for the sale or consumption of alcohol; and
- The process for an application for a “material alteration” include a requirement for the application to be advertised at the discretion of the Licensing Commission.

RESTRICTION 23: A licensee seeking to transfer a licence may have that licence cancelled where the application for transfer has been refused (Section 44).

This restriction is considered anti-competitive because it can restrict a licensee from selling a liquor industry related business in certain circumstances.

The objects addressed are object 1, to minimise harm associated with the consumption of liquor by encouraging responsible attitudes that reflect community expectations towards the promotion, sale, supply, consumption and use of alcohol, and objective 4, to regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

Public Submissions

No submissions have been received in relation to this restriction.

Costs of Restriction

A licensee of an operating liquor outlet can, in certain circumstances, be prevented from selling or otherwise transferring that outlet and may then be excluded from further participation in the liquor industry by having that liquor licence cancelled by the Licensing Commission.

The cancellation of a liquor licence can impact on the level of choice open to consumers in a given community.

Benefits of the Restriction

Licensees are prevented from transferring a liquor licence in circumstances where they have been, or are likely to be, convicted of an offence or contravened a direction of the Licensing Commission, as provided for under section 72 of the Act.

The restriction prevents a licensee from engaging in illegal practices with a view to increasing profit margins and cash flows to make a business more attractive to a potential buyer, thereby protecting consumers and the community from the effect of such practices and ensuring the integrity of the industry.

Assessment of the Public Benefit

Section 44 provides that where an application for transfer of a liquor licence has been refused, the Licensing Commission may direct the Director to apply for the cancellation of that licence upon one or more grounds set out in section 72 of the Act.

Section 72 allows the Commission to cancel a licence in situations where the licensee is serving a term of imprisonment for an offence against the *Liquor Act* or for any other offence considered by the Commission to be of sufficient gravity to warrant the cancellation of the licence, where the licensee has been found guilty of any offence under the *Liquor Act*, where the licensee has acted in contravention of a direction of the Commission or where the licensee is in contravention of a condition of that licensee's liquor licence.

The intention of section 44 is to prevent a licensee from carrying on the business of the licensed premises in an irresponsible or illegal manner that could cause harm to consumers or effect the public amenity, through preventing an offending licensee from selling or otherwise transferring that business to a third party and thereby escaping the consequences of that licensee's transgressions.

Section 44 promotes the public interest by ensuring licensees conduct their business affairs in a proper and responsible manner, the benefits of which are discussed in greater detail earlier in this Report.

Alternatives

Section 44 is designed to compliment the general licensing restrictions placed upon licensees to ensure the principles of harm minimisation and maintenance of public amenity are upheld. As such, no legitimate alternative to achieving those objectives has been identified in this Review.

Conclusion

The restriction on licensees preventing them from transferring a liquor licence in circumstances set out under section 44 is justified and should be retained.

RESTRICTION 24: A licensee may be restricted in the operation of licensed premises based on objections to a proposed new licence or objections to the business practices of a licensee of established licensed premises (section 48 and Part V - Hearings).

This restriction is considered anti competitive because an applicant may be prevented from obtaining a liquor licence even though the applicant satisfies all the requirements of the application process, including all the financial, probative and building requirements necessary.

Also, a licensee may be restricted in the activities that can be conducted at licensed premises as a response to complaints made against those premises by any member of the public.

The objects addressed are object 1, to minimise harm associated with the consumption of liquor by encouraging responsible attitudes that reflect community expectations towards the promotion, sale, supply, consumption and use of alcohol; object 2, to promote the sale and supply of alcohol in such ways as to contribute to, and not detract from, the amenity of community life; object 3, to facilitate the development of a diversity of licensed premises and related services for the benefit of the community; and object 4, to regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

Section 48 is headed "Objections and complaints" and deals with each issue separately. Sub-sections 48(1) and 48(1A) provide for any person to object to an application for the grant of a licence on any grounds other than that the grant of the licence would or could affect the business of another licensed premises.

Sub-section 48(2) provides that any person may lodge a complaint regarding any matter arising out of the conduct of the business, the conduct of the licensee in relation to the business or on grounds that a licensee is not a fit and proper person to hold a licence.

Sub-section 42(3) stipulates that an objection or complaint must be in writing and signed by the person making the complaint.

Public Submissions

There were several submissions commenting on the objection and complaint mechanisms under section 48.

Submission proposals included a recommendation that the complaint mechanism should be amended to allow a process for reviewing alcohol sales on the ground of social impact, health and economic harm grounds within a community.

Another submission called for the objection mechanism to be reviewed to protect objectors from the intimidation that can be experienced when exposed to cross-examination by trained legal representatives acting for licensees.

It was also submitted that the present complaint mechanism is ineffective and should be streamlined to allow police to receive complaints. The grounds for complaints should be stipulated in the Act and the form of a complaint should be expanded to include complaints made over the phone, by e-mail, in person or by letter.

It was also submitted that the Act should stipulate conciliation as a first step in the resolution process, with full hearings by the Commission being a last resort.

Costs of the Restriction

OBJECTIONS: Applicants for new licenses can face long delays in the application process and incur significant monetary expenses in legal fees, loss of potential earnings and related expenses such as bridging loans and mortgages or lease payments on premises unable to be utilised while objections to an application are processed and determined.

Similarly, consumers may be denied access to new liquor outlets that which could result in the maintaining of lower service standards and higher prices through the delay/denial of increased competition in the market place.

COMPLAINTS: A licensee may incur legal expenses in defending complaints against themselves or their business activities, as well as facing the possibility of incurring fines and other penalties that may impact on the profitability of the business, as well as facing restrictions on the ways in which that business may operate, depending on the subject matter and seriousness of the complaint.

The majority of the community and consumers in particular may be restricted in their use and enjoyment of licensed premises where complaints are received from minorities, such as nearby residents of the premises concerned, through enforced shortening of trading hours, restrictions on takeaway sales or noise abatement measures.

Benefits of the Restriction

OBJECTIONS: The community affected by the application is given the opportunity to express its concerns over a proposed liquor related business. The risk of objections creates an incentive for applicants to research a proposed new venture to ensure the quality of the application is of a high standard and attractive to the community that it seeks to service.

COMPLAINTS: Consumers and members of a community affected by an existing liquor outlet can express concerns over the activities of that outlet. Licensees are encouraged to ensure the conditions of their liquor licenses are adhered to and to work within the framework of the Act, thereby ensuring a high standard of responsible service to consumers, minimising the potential for harm from alcohol abuse to consumers and the greater community. Public amenity is thereby protected from the adverse affects of alcohol.

Assessment of Public Benefit

Grounds for Objections and Complaints

As stated previously in this Review (see the Licensing Restriction generally at Restriction 1), liquor cannot be treated the same as other readily available commodities. The possible adverse effects of liquor on consumers and the broader community through irresponsible use and over exposure requires a system of regulation to ensure such harm is minimised in its impact on the public good. The provision for objections to the granting of new licenses and complaints in relation to existing licenses are a necessary aspect of any regulatory system of licensing of an industry.

Balanced against the need for allowing objections to new licence applications and complaints against existing licensed premises is the need for licensees to be confident they can carry on their business without the need to constantly defend themselves against frivolous, irrelevant or malicious intrusions upon their business activities.

As stated above, section 48(1A) provides that an objection cannot be lodged against a licence application on grounds that the granting of that licence would adversely affect the business of other licensed premises. Section 49(2) further provides that an objection or complaint that is considered by the Commission to be frivolous, irrelevant or malicious shall be dismissed.

The Act is silent on what is to be considered to be “frivolous, irrelevant or malicious”. As mentioned above, submissions have been received recommending that the grounds for complaints should be stipulated in the Act and should allow for a process for reviewing alcohol sales on the ground of social impact, health and economic harm grounds within a community.

It is submitted that the acceptance of the “public interest” criterion as being the principle upon which a liquor licence should be granted and maintained would address these concerns. Objections and complaints should be limited to those issues expressly covered in the Act, including offences against other Acts which have an impact on a licensee’s capacity as a fit and proper person as provided for in section 72 of the Act, but should not include complaints with respect to other regulatory provisions, such as building code, measurements and food preparation issues.

Each of these other areas of concern are covered by other statutory bodies and the Licensing Commission should not be able to be used as a further avenue to express concerns about issues that it has no direct function to consider or police.

The Process of Receiving and Considering Objections and Complaints

As stated above, submissions have been received suggesting that the form of complaints should be expanded to include complaints made over the phone, by e-mail or personally, as well as in writing; that the present complaint mechanism is ineffective and should be streamlined to allow police to receive complaints; that objectors should be protected from “intimidation” when exposed to cross-examination by experienced Counsel; and that the Act should stipulate conciliation as a first step in the resolution process, with full hearings by the Commission being a last resort.

No comment has been received with respect to the form of objections made against new licence applications. Given the seriousness of the consequences of considering objections to new licence applications, there is a real need for the requirements that objections be in writing and stipulate the details of the objector to be retained.

The submissions that complaints should be able to be made over the phone, by e-mail or personally, as well as in writing, have merit and are in line with complaint procedures under other regulatory regimes. Currently, a complaint cannot be acted upon unless the complainant lodges a complaint with the Director, in writing and signed by the complainant. There is no strict provision for anonymity of a complainant.

The present system of complaint making against licensees and licensed premises can deter a person from lodging a complaint for fear of retribution or other consequences. There is no reason why complaints should not be taken from persons unwilling to reveal their personal details or who wish to lodge a complaint through mediums other than in writing.

The requirement that the Director make sufficient investigations to confirm or rebut a complaint received is sufficient to ensure any complaint received is not acted upon where it is found to be frivolous, irrelevant or malicious.

Provision in the Act for the receiving of complaints by police would have a net benefit to the community by making the complaint process more accessible in remote communities and by persons who may otherwise not have the resources necessary to lodge a complaint with the Director. Such a provision should allow police to take a complaint in any form and forward it to the Director for consideration.

As stated earlier in this Review, the current licensing process can result in hearings that can be costly and over-legalistic, resulting in lengthy delays to decisions regarding new licence applications and the outcome of hearings into complaints against premises and licensees.

As stated above, for a licensing system of regulation to be effective, affected persons need to be able to object against an application for a liquor licence and make complaints against licensees who contravene the Act or their licence conditions. That need, however, has to be balanced against the requirements of licensees, who invest large amounts of resources in their applications to obtain a licence and to conduct their businesses, so that they can have confidence that the system will not be utilised to cause undue delay and expense to an application or cause unfounded harassment to properly run premises.

The comments received regarding the protection of objectors from “intimidation” by experienced counsel has merit. It is currently more the norm than the exception that parties to a hearing before the Commission, particularly applicants for new licences and licensees defending complaints made against them or their premises, are represented by legal counsel.

Although section 51(8) allows a party to be represented at a hearing by a legal practitioner, it is difficult to believe that the current situation in which licensees and corporate objectors are always represented, even when the other party is not so represented, is what was intended when the Commission was created.

The fact that the dispute resolution process was taken out of the courts and placed in the hands of a non-legalistic based Commission speaks volumes for the proposition that such hearings should, where at all possible, be conducted in an informal and cost effective manner. Nothing in the principles of administrative law suggests that a denial of legal representation in an administrative hearing is itself a denial of natural justice. In some cases such representation can even be expressly excluded by statute. The question is whether the factual and legal circumstances of a matter make it desirable that a party to proceedings be afforded such assistance – *Cains v Jenkins* (1979) 28 ALR 219; *Xiang Sheng Li v Refugee Review Tribunal* (1994) 36 ALD 273.

The current practice of referring all licence applications and complaints to the Commission for its consideration, whether or not a matter requires resolution by a hearing before the Commission, is cost intensive and anti-competitive and offends the NCP Guidelines. The process of resolving objections and complaints should be restructured such that:

In relation to new licence applications:

- Objections to new licence applications are to be made in writing and lodged with the Director of Licensing.;
- The Director shall inform the applicant for a licence of the substance of the objection and refer the application and the objections to it to the Commission for a hearing of the application and objections to it.
- The Commission shall have regard to all the circumstances of the application, the objections to that application and the persons objecting to the application, in determining whether an applicant and/or objector should be afforded the opportunity to legal representation.
- Notwithstanding its own decision with respect to legal representation of the parties before it, the Commission may in any event provide itself with Counsel assisting it in any matter placed before it with respect to an application for a licence or complaint against licensed premises or a licensee.

In relation to complaints, the following procedure is proposed:

- A complaint may be lodged with the Director by any person against the conduct of business on licensed premises that relates to the sale, possession or consumption of liquor or against the conduct of a licensee or his employee that relates to the sale, possession or consumption of liquor or the licensee's suitability as a fit and proper person to hold a liquor licence.
- A complaint may be made orally, by electronic transmission or in writing, without any identification of the complainant, either directly to the Director, or through a member of the Northern Territory Police.
- The Director shall, on receipt of a complaint, investigate the matters alleged in the complaint. Where the complaint is found to be frivolous, irrelevant or malicious in nature, the Director shall dismiss the complaint and, where such information has been supplied, forward his findings to the complainant.
- In every other case, the Director shall determine whether the matter can be settled by conciliation between the parties.

- Where a complaint is of a nature that conciliation is not appropriate, or where attempts at conciliation have been unsuccessful, the Director shall refer the matter to the Commission for its determination of the matter.
- In every case, the Commission shall have the power to refuse a party to have the assistance of legal counsel where the Commission is of the opinion it is fair and reasonable to all the parties to a matter before it that such a refusal is warranted.

The above procedures will allow a smoother and less cost intensive passage of the majority of licensing matters, particularly non-contentious licence applications and matters that are capable of swift resolution.

Alternatives

No alternatives to the provision for objections to licence applications and complaints against licensed premises and licensees as a means of regulation by licensing have been identified.

The proposition that the Commission be empowered to hear all matters pertaining to licence applications, including issues such as building permits and health issues and related complaints of licensed premises is considered to be a duplication of other processes and unnecessary.

Alternatives to the dispute resolution process proposed above would be limited to retaining the current system, which the Review Panel believes to be cost intensive and anti-competitive.

The Review Panel is therefore of the opinion no practical alternatives have been identified to the dispute resolution process proposed in this Review.

Conclusion

The provisions for objections to new licence applications and complaints against licensed premises and licensees should be retained, however the form of complaints and the manner in which they are received, as well as the objection and complaint resolution processes, should be re-written along the guidelines proposed in this Review.

On the basis of the above considerations, the conclusion is that sections 48 and 49 should be re-worded to reflect the proposed changes contained in the review of this Restriction.

Note: Amendments to the objection provisions of *Liquor Act* occurred in October 2002 (and took effect in January 2003), which amongst other things, addressed the matters raised above.

RESTRICTON 25: A licensee may have a liquor licence amended or altered, or its scope of operation restricted by the Licensing Commission (section 49).

The restriction is considered anti-competitive because a licensee can be forced to operate under conditions that are more restrictive than a competitor operating a similar business in the same geographical area.

The objects addressed are object 1, to minimise harm associated with the consumption of liquor by encouraging responsible attitudes that reflect community expectations towards the promotion, sale, supply, consumption and use of alcohol; object 2, to promote the sale and supply of alcohol in such ways as to contribute to, and not detract from, the amenity of community life; and object 4, to regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

Public Submissions

No submissions were received in relation to this restriction.

Costs of the Restriction

Licensees may be forced to conduct their business in a restricted manner in relation to other similar businesses in the same locale, not being able to compete on equal grounds that may result in lost income and higher prices to cover the cost of the restriction.

Consumers may be inconvenienced by not having access to services they might otherwise enjoy if the restrictions were not imposed. Consumers may also bear increased prices where a licensee seeks to offset the effect of restrictions through price increases.

Benefits of the Restriction

Licensees are encouraged to maintain standards of practice set by the Commission and to trade within the limits of the Act and their licenses. Harm minimisation and the level of public amenity are maintained and consumers can be confident of a high quality of service and product available to them.

Assessment of Public Benefit

Section 49(4) relates only to action taken on the Commission's finding that a complaint has been proven and the substance of that complaint is of sufficient gravity to warrant intervention by the Commission in the activities of the licensee or licensed premises that is the subject of the complaint.

As stated earlier in this Review, a licensing regime as a method of regulation is effective only where the licensing body has powers of control over the activities of those who maintain a licence under that regime. Section 49(4) is such a power of control and can only be invoked in circumstances where the public amenity, consumer confidence or harm minimisation principles have been breached by a licensee.

The effects of invoking section 49(4) that can result in a particular licensee being commercially disadvantaged in relation to competitors will only arise through the actions of the licensee and is a necessary means of ensuring licence conditions are adhered to.

Alternatives

No practical alternatives have been identified to the remedial provisions of section 49(4).

Conclusion

It is recommended that the restriction allowing the Commission to place extra conditions on a license, or otherwise alter or review a licence, that is the subject of a proven breach of the Act or a condition of that licence, should be maintained.

RESTRICTION 26: The Licensing Commission may direct a licensee to perform, or refrain from performing, a specified action, thereby limiting the type of business enterprise undertaken at licensed premises (section 65).

The restriction is considered anti-competitive because it imposes conditions on a licensee that can limit the activities a licensee can introduce on licensed premises in an effort to increase patronage and turnover, thereby effecting the potential profitability of the business venture.

The objects addressed object 1, to minimise harm associated with the consumption of liquor by encouraging responsible attitudes that reflect community expectations towards the promotion, sale, supply, consumption and use of alcohol; object 2, to promote the sale and supply of alcohol in such ways as to contribute to, and not detract from, the amenity of community life; and object 4, to regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

Public Submissions

No submissions were received from the public in relation to this restriction.

Costs of the Restriction

Licensees are restrained in the activities they can engage in to promote their business to increase sales to consumers, based on the restrictions contained in the Act (including the contravention of another law of the Territory) and the conditions of their licenses. Contravention of these restrictions allow the Commission to intervene and compel a licensee to do, or refrain from doing something, that may impact on the competitiveness and profitability of the licensee's business.

Consumers may suffer from restrictions placed on the services available to them from affected premises and may face increases in product prices aimed at offsetting financial losses of licensees.

Benefits of the Restriction

Licensees are prohibited from engaging in activities that are, or have the potential to be, harmful to the public health or that may effect the level of amenity of community life. The liquor industry is regulated to ensure it acts at, or near, the optimum level of responsibility, thereby giving confidence to consumers that "best practice" procedures and product quality are being maintained, further minimising the potential for harm resulting from alcohol abuse.

Assessment of Public Benefit

Section 65 is a penalty clause and relates only to situations where a licensee has contravened or failed to comply with a condition of a liquor licence, has allowed the licensed premises to be used for an improper or illegal use or has contravened or failed to comply with a provision of the *Liquor Act* or another law of the Territory. As such, the restriction is one that relates to the enforcement of the regulatory system recognised as being the most suitable means of regulation for the licensing system, as discussed previously in this Review.

As stated previously, a licensing regime as a method of regulation is effective only where the licensing body has powers of control over the activities of those who maintain a licence under that regime. Section 65 is such a power of control and can only be invoked in circumstances where the public amenity, consumer confidence or harm minimisation principles have been breached by a licensee.

Whilst the effects of invoking section 65 can result in a particular licensee being commercially disadvantaged in relation to competitors, such a situation will only arise by the actions of the licensee and is a necessary means of ensuring licence conditions are adhered to.

Alternatives

No practical alternatives have been identified to the remedial provisions of section 49(4).

Conclusion

It is recommended that the restriction allowing the Commission to direct a licensee to perform, or refrain from performing, a specified action upon a finding that the licensee has been guilty of a contravention of the licence, the *Liquor Act*, or another law of the Territory, should be maintained, subject to the review of the complaint process outlined in Restriction 24 (above).

RESTRICTION 27: The Licensing Commission can restrict the sale, supply and possession of liquor in a given geographical area, thereby limiting or prohibiting the business practices and scope for financial gain of persons in those areas (Part VIII, sections 73 to 101).

This restriction is considered anti-competitive because it restricts the ability of market forces to determine the level of liquor industry services and product availability in certain areas.

The objects addressed are object 1, to minimise harm associated with the consumption of liquor by encouraging responsible attitudes that reflect community expectations towards the promotion, sale, supply, consumption and use of alcohol; and object 2, to promote the sale and supply of alcohol in such ways as to contribute to, and not detract from, the amenity of community life.

Public Submissions

All respondents to the Consultative Paper who addressed this issue are supportive of the legislation to varying degrees. Most respondents, including indigenous group representative bodies, consider the legislation is an aid to harm minimization and should be retained.

Criticism of the legislation referred mainly to procedural matters. One criticism was that the process for applying for a restricted area declaration does not allow for objections to be properly heard, allowing only for a person to “express an opinion regarding an application”.

It has been submitted that the process for Restricted Area applications be revised to more closely follow the process set out for an application for a liquor licence.

Another criticism is that the procedures relating to the disposal of goods seized under the Act is at the present cumbersome and the legislation should be streamlined to reduce the time such goods, and in particular vehicles, are retained by police in remote areas.

An issue regarding the protection of the NT Police Service against actions for compensation over damage incurred to property whilst seized and in the possession of Police for Restricted Area offences has also been raised in another forum. Currently, it is arguable as to whether Police are indemnified under section 23 of the Act.

Another comment was that the Restricted Area legislation is not suited to inclusion in what is chiefly a licensing Act, and should be removed from the Liquor Act and established as an Act in its own right as an important piece of legislation.

All but one submission are in favour of the retention of a flexible permit system.

Costs of Restriction

Industry participants are restricted in gaining and in some cases denied, access to consumers. The opportunity to invest in the industry is limited in declared restricted areas, resulting in investment and job opportunities being denied to those communities.

Likewise, consumers are denied access to industry related services and products. Consumers can be required to travel great distances to obtain liquor products and are at greater risk of motor vehicle accidents and other physical harm.

Section 75 makes it an offence to bring, possess, consume, sell or otherwise dispose of liquor within a restricted area, the result of which can result in monetary fines for possessing or otherwise controlling liquor, as well as having significant assets such as vehicles being seized and forfeited under sections 96 to 101 of the Act.

The effects of the seizure and forfeiture of vehicles and other modes of transport can create hardship on remote community families by restricting their ability to travel large distances to obtain access to services such as supermarkets and health care facilities.

Benefits of the Restriction

The harmful aspects of alcohol consumption are minimized in all its aspects, personally to problem drinkers, collateral harm on family units and the broader anti-social impact problem drinking can have on the wider community.

Aboriginal communities are more likely to retain their cultural identity and history and retain their tribal customs without the interference and damage that alcohol can bring upon members of their communities.

Younger community members are not exposed to the effects of alcoholism at early ages and can be educated as to the problems that can be associated with alcohol abuse, and taught responsible drinking habits.

The permit system under sections 87 to 94 allow communities to control the extent to which they want to be exposed to liquor products and related services.

The forfeiture and seizure provisions of sections 95 to 101 provide a deterrent to persons tempted to ignore or flaunt the wishes of communities that see a need to restrict and limit alcohol consumption.

Assessment of Public Benefit

The restricted area provisions are centred around community interests in limiting the availability of liquor at those communities that seek such protection. It is submitted that retention of these provisions under the *Liquor Act*, particularly in light of the proposed objects of the Act, is favourable to having them removed and created as a separate Act.

The Federal Parliament Standing Committee on Aboriginal Affairs, after consulting with Aboriginal people in the Territory, made recommendations for the restriction of alcohol in Aboriginal communities prior to the *Liquor Act* being assented to in 1980.

It is well accepted that alcohol abuse in Aboriginal communities has resulted in disruption to community life, incidents of property damage, theft, physical violence and death. The declaration of restricted areas assists Aboriginal people to take positive action in the self-determination of how their communities are to be managed.

It is submitted the benefits of the restricted area provisions of the Act far outweigh the costs associated with them.

Applications for Restricted Area Status

With respect to an application to have an area declared a restricted area, it has been submitted to this Review that the Act does not allow for objections to an application to be properly heard, but that persons affected by the application may only submit an 'opinion' as to the merits of that application.

It is submitted that in keeping with the arguments put forward earlier in this Report with respect to applications for liquor licenses to be considered by having regard to the public interest, an application for a restricted area application should also be considered in light of the public interest, including the right of interested persons to lodge objections to any such application on public interest grounds.

Use of Permit Systems

The system of granting permits to limit the amount of alcohol available to community members has been seen as a good tool in promoting responsible use of alcohol and educating community members in the consumption of safe levels of alcohol. It is submitted the flexibility of the permit system is suited to the aims of the restricted area provisions and should be retained.

Provisions relating to Seized Vehicles

The provisions relating to seizure and forfeiture of vehicles and other modes of transport used in the conveyance of liquor into restricted areas are intentionally harsh and reflect the seriousness which the Government and the communities regard such matters.

The deterrent factor of the seized vehicle provisions is directly related to their harsh intent and application. Whilst collateral costs may be incurred by members of an offender's family through inconvenience and restrictions on travel and access to services, the benefits of strict deterrents to enforce the restricted area provisions of the Act outweigh the collateral costs incurred by individual community members.

Delays in the Disposal of Seized Vehicles

As stated above, delays are often experienced in the disposal of vehicles seized and forfeited under the Act. These delays are created for many reasons. Often, the offenders from whom the vehicles were seized move away from the area and/or do not appear at court to answer the charges laid against them, so that vehicles that would otherwise have been forfeited under the Act upon conviction of an offender remain in police custody until the offenders have been located and brought before the courts.

Provision should be made in the Act that for circumstances where an offender who is also the owner of a vehicle seized in relation to restricted area offences fails to appear before the courts to answer those charges, or where the owner of a vehicle seized under this Part does not make application within 30 days of the seizure of the vehicle from a 3rd party who has been charged with an offence. In such circumstances, the Chairman should be able, on application by a Police officer or other authorized person, to dispose of that vehicle as a vehicle forfeited under the Act.

Another factor in the delays experienced in disposing of vehicles seized under the Act is that often a person convicted of an offence will appeal the conviction, so that no decision can be made in respect of the vehicle until that appeal has been determined. In cases such as this, delays in the disposal of seized vehicles will be unavoidable.

Alternatives

No alternative means for achieving the objective of this restriction have been identified.

Conclusion

The Restricted Area provisions of the Act are seen as a good tool in promoting harm minimisation in remote communities and should be retained. Little or no benefit would be achieved in removing the provisions from the Act and establishing a separate "Restricted Area" legislative regime.

The current permit system is also a good tool in promoting harm minimisation and should be retained.

Sections 78, 79 and 80 should be amended to include objections as well as opinions to an application for a restricted area determination.

Section 81 should be amended to provide that decisions of the Commission with respect to an application for a restricted area application shall at all times be made with respect to the public interest as it relates to the Community or area that is the subject of the application.

Provision should be made to the effect that in the event of:

- (a) a person who has been charged with an offence under section 75, and who has had a vehicle that the person owns or co-owns seized under section 95, does not appear before the courts at the time and date ordered, and who does not give reasonable notice or reasons for that non-appearance; or
- (b) the owner of a vehicle seized from a 3rd party in relation to a restricted area offence and who has been properly charged in relation to that offence, does not apply within 30 days of receipt of notification of the seizure for the return of the vehicle;

that vehicle will be deemed forfeited to the Territory and shall be disposed of by the Chairman as he thinks fit.

On the basis of the above considerations, the conclusion is that the restricted area provisions under Part VIII of the Act should be retained, subject to the following amendments:

- Sections 78 – 80 be amended to include objections to restricted area applications;
- Section 81 be amended to include consideration of the public interest; and
- New provisions be included providing powers of forfeiture for vehicles owned by offenders who fail to appear before the courts to answer the charges relating to the seizure of the vehicle and owners who do not seek the return of a vehicle seized from 3rd parties.

RESTRICTION 28 –A licensee must adhere to the conditions of that licence (section 110).

This restriction is considered anti-competitive because the conditions imposed may limit the quality, level or location of goods and services that a licensee may provide to consumers.

The objects addressed are object 1, to minimise harm associated with the consumption of liquor by encouraging responsible attitudes that reflect community expectations towards the promotion, sale, supply, consumption and use of alcohol; object 2, to promote the sale and supply of alcohol in such ways as to contribute to, and not detract from, the amenity of community life; object 3, to facilitate the development of a diversity of licensed premises and related services for the benefit of the community; and object 4, to regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

Public Submissions

Submissions in respect to the licensing restriction are dealt with earlier in this Review (see Restrictions 1 and 3, above).

Costs of the Restriction

Conditions imposed on a licence by the Commission may limit the quality, level or location of services and the range and types of liquor available from licences premises to consumers.

Benefits of the Restriction

The benefits of the licensing restriction have been discussed earlier in this Review (see Restrictions 1 and 3, above). Essentially, the benefits of the restriction are harm minimization, protection of the amenity of community life, the maintenance of a high standard of responsible service in the industry and consumer confidence in the level of service offered and quality of products available to consumers.

Assessment of Public Benefit

The benefit of a licensing regime and the need for conditions to be imposed on liquor licenses are discussed earlier in this Review. The needs for regulation clearly outweigh the costs and should be retained.

Alternatives

The alternatives to the licensing regime and imposition of licence conditions have been discussed earlier in this Review. No satisfactory non-regulatory regime has been identified as being a suitable substitution for the licensing system of regulation of the industry.

Conclusion

Subject to the proposals put forward earlier in this Review with regards to the use of generic licensing categories and uniform conditions for like licenses, the Review Panel considers the restriction that a licensee must adhere to the conditions of that licence to be justified and should be retained.

RESTRICTION 29: The Administrator may make regulations under the Act with respect to hours of trade, types and quantities of liquor available to the public, competition in the liquor industry, the providing of credit for liquor sales and any other matter related to the operation of a liquor licence (section 128).

This restriction is considered anti-competitive because regulations may restrict the operation of some outlets in comparison to other outlets carrying on similar business activities, limit the hours under which a licensee may operate and determine the type and quantity of liquor a licensee may make available to consumers, thereby restricting the potential income for investors in licensed premises.

The objects addressed are object 1, to minimise harm associated with the consumption of liquor by encouraging responsible attitudes that reflect community expectations towards the promotion, sale, supply, consumption and use of alcohol; object 2, to promote the sale and supply of alcohol in such ways as to contribute to, and not detract from, the amenity of community life; object 3, to facilitate the development of a diversity of licensed premises and related services for the benefit of the community; and object 4, to regulate the liquor industry in a manner that contributes to the optimum responsible development of the liquor, hospitality and tourism industries in the Northern Territory.

Public Submissions

There have been no submissions as to the use of regulations to augment and enforce the provisions the Act, however submissions were received with respect to the issue of Sunday trading, which is an issue that is directly affected as hours of trade are specifically regulated under section 128. Those submissions are discussed under the heading of “Assessment of Public Benefit” (below).

Costs of the Restriction

The liquor industry is regulated so that licensees are limited in the type of business that can be conducted on licensed premises, the types and quantities of liquor that can be supplied to consumers and the times and days during which a licensee may operate on licensed premises. These restrictions restrain competition and the ability of licensees to operate at optimum levels of trade based on the supply/demand principle of economics. The restriction on competition therefore aids in keeping product prices artificially high, restricting the amount of product that is available to consumers.

Benefits of the Restriction

Harm minimization and public amenity objectives are reached and maintained. The industry is forced to comply with a standard of conduct that ensures a responsible and safe approach to the marketing of liquor in the community, based on the public interest.

Assessment of Public Benefit

Section 128 addresses four broad areas of regulation – hours of trade, types and quantity of alcohol, competition in the liquor industry and the provision of credit for alcohol sales. As stated previously in this Review, regulation is considered to be the most appropriate method of ensuring the objectives of the Act are met and maintained. The use of regulations as a means of assisting the Act in meeting those objectives is a necessary corollary to the licensing system of regulation and should be maintained.

However, the whole of the licensing system must also encompass the NCP Principles of fair and unfettered competition where ever possible. There is a clear need for the regulation of the liquor industry which necessarily includes some regulation of competition, including hours of trade, types and quantities of alcohol that may be sold and the provision of credit. However, the current condition under which different types of licensed premises operate under different prescribed hours of trade is considered anti-competitive, because it prevents licensees from choosing their hours of trade and differentiates between different categories of licence.

The Hours of Trade Restriction

As stated above, the objects addressed are those that strive to achieve harm minimization, the protection of the community amenity and the development of a diversity of licensed premises that benefits the community.

Limiting hours of trade for licensed premises may have the affect of allowing particular premises to trade for less hours than they would otherwise choose, based on commercial considerations if unconstrained, impeding commercial outcomes from competition. Also, trading hours are not competitively neutral because some licensees can trade for longer periods than others, particularly when undertaking essentially the same activity, e.g. a late night venue vis premises operating under a tavern licence.

Consumers are also offered a restricted range of purchasing times generally, resulting in an imbalance between shopping times for liquor and other products.

However, the restraint on the hours permitted for licensed premises to trade means that residents are able to enjoy the quiet amenity of the neighbourhood after the expiration of permitted trading hours and the associated containment of public nuisance and the like associated with licensed premises.

Restrictions on trading hours are a useful means of protecting the amenity, quiet or good order of the locality in which the premises are situated. The impact of licensed premises on the amenity of a locality depends largely on the character of the area. Areas where there is little residential development would not be affected in any great way to a licensed premises with late night or extended hours of trade, although the opposite effect would be felt in areas of high residential development. Where amenity is at risk, objections based on public benefit (as discussed in Restriction 4, above) may result in a licence application being disallowed, or conditions being attached to minimise the impact on amenity.

There is, however, a strong case for competitive neutrality between hotels and liquor stores because of the similarity of their business operations in the area of bottle shop/takeaway sales, which is discussed below.

As mentioned earlier in this Review, the Review Panel recommends the Licensing Commission be tasked with identifying generic liquor licence categories to cover all the various business operations that require licensing. Generic licence types would then attract licensing conditions that are uniform for each premises operating under that particular licence category. One of those conditions is the hours of trade during which a type of licensed premises can operate, those hours being set by having consideration to the public interest in each community.

The effect of this would be that a generic licence type such as that which deals with late night venues would allow all such venues within a community to operate within the same trading hours. Where the Licensing Commission identifies a community with a special need to have operating hours reduced or increased, all the venues within that community operating under that licence category would be affected, notwithstanding the Commission's power to add conditions to a premises' liquor licence where that venue is the subject of a breach of its licence or a provision of the Act or another law of the Territory.

Alternatives to uniform hours of trade for like premises under each licence type are generic trading hours for all licence types, unrestricted trading hours for licensed premises or the setting of individual trading hours for each licensed premises. These alternatives are not considered appropriate because of public opposition to perceived significant changes to the trading hours of licensed premises and the need under the NCP Principles for competitive neutrality between licensees who are essentially undertaking the same activity.

Notwithstanding the arguments with respect to Sunday trading for hotel takeaway outlets and liquor stores (including supermarkets), it is recommended that the restriction on trading hours for licensed premises be retained and different trading hours for each class of licence should be introduced in line with the recommendation that the Commission develop a system of specific licensing categories.

The Restriction on Sunday Trading

One area in which the regulatory power under section 128 has been used to discriminate with respect to outlets carrying on similar businesses is Sunday trading hours for hotel takeaway outlets and takeaway stores (including supermarkets). Currently, hotels are permitted to open their take away liquor stores from 10.00am to 10.00pm on Sundays, whereas other take away liquor outlets, such as local supermarkets and stand alone take away liquor outlets such as Mac's Liquor stores and Liquorland stores are prohibited from trading on Sundays completely.

Regulation 4 (1) of the *Liquor Regulations* provides for Sunday trading from premises “under a licence that authorises such sales” between the hours of 10.00am and 10.00pm, however regulation 4(1AA) prohibits premises trading under a “store licence” from trading on Sundays at all. Both types of premises operate under similar trading hours Monday to Saturday and on public holidays.

The restriction is considered anti-competitive because liquor stores are discriminated against in respect to Sunday trading.

It is difficult to relate the restriction to the proposed objects of the Act in any meaningful way. Arguments that the restriction relates to harm minimization and public amenity have been raised and are discussed hereunder, but are largely unconvincing.

The restriction appears *prima facie* to be a discriminatory one in that hotels and licensed clubs are permitted to trade in takeaway liquor on Sundays, whilst other takeaway liquor outlets cannot (regulation 4 of the *Liquor Regulations*).

The imbalance in trading hours may be seen as a fundamental impediment to competition between licensed establishments such as hotel bottle shops and liquor stores (including supermarkets) that are effectively competing for the packaged liquor market.

The trading hours for liquor stores are clearly more restricted than those of hotels. As liquor stores are in competition with hotels, this differential treatment can only be seen as restricting one sector of the industry to the advantage of another competing sector.

Arguments that support the continued restriction on Sunday trading argue deregulation would increase exposure of liquor products to at-risk groups and under aged and intoxicated persons, would place heavy financial penalties on hotels and lead to a loss of jobs and subsequent loss of tax revenue to the Territory.

It was also submitted that there should be no change to the Act that supports or permits an increase in per capita sales of alcohol products, and that Sunday trading should only be permitted from hotels, clubs, restaurants and wayside inns, as any increase in availability would arguably result in greater alcohol related harm and social costs.

At the other end of the spectrum, those who favour the removal of the Sunday trading restriction claim the continued regulation of Sunday trading on liquor stores is unjustifiably discriminatory and anti-competitive. They argue the prohibition is historically based and was originally implemented at a time when supermarkets generally were prohibited from trading on Sundays, with the *Liquor Act* and Regulations simply mirroring other restrictive legislation. It is argued that the restriction is therefore redundant given supermarkets and other outlets are now free to trade on Sundays.

One submission has also suggested the Act be amended to allow for flexible trading hours of a continuous 12 hour period between 8.00am and 10.00pm, seven days a week for all take-away outlets.

The issue of Sunday trading is a contentious issue and attracted many submissions arguing both for and against the retention of the restriction. Data was presented which demonstrates that Sunday has become the third or fourth most popular day of the week for grocery shopping and it has been suggested the continued restriction on supermarkets and liquor stores annexed to supermarkets is an unnecessary inconvenience on those Sunday shoppers.

Whilst the argument that deregulation of Sunday trading would lead to greater social harm is also persuasive, the evidence supporting that argument is largely anecdotal and speculative, especially when made in relation to outlets where a supermarket and/or liquor store is in close proximity to a tavern or hotel that operates a Sunday takeaway liquor outlet.

Even if direct evidence relating alcohol abuse to an increase in liquor outlets were able to be produced, such issues are industry wide and should not be placed at the feet of the liquor store operators only. Issues of harm minimization and public amenity relate to the industry as a whole and the adherence to harm minimization procedures as developed by the Commission should ensure public safety and amenity are maintained. In any event, Communities that experience social harm through the deregulation of Sunday trading are able to petition the Licensing Commission to address the problem as an industry concern.

The argument that Sunday trading for liquor stores would place financial burdens on hotels and taverns does not present a strong argument for the continuation of the restriction. The argument is one of cross-subsidization and is not something that is necessarily good to promote. Such protection is only sustainable where competition is limited and the impact of free trade is detrimental to the efficiency of resource allocation – an argument that is clearly not sustainable in the liquor industry.

Alternatively, the submissions arguing for the freeing up of Sunday trade are based on economic business grounds and in accordance with the principles of fair trading, as well as being in the public interest. Those submissions argue that the public are being disadvantaged by the Sunday trading restriction under regulation 4(1AA) of the Regulations because they are being denied access to liquor stores on what has become one of the most popular shopping days of the week. It is further argued that liquor stores, in being denied the right to trade on Sundays, are being denied equal rights, resulting in unfair trading that is detrimental to competition and consumer rights.

The most compelling argument in favour of deregulation, however, is the need for equity within the industry. As stated previously in this Review, there is a strong case for competitive neutrality between hotels and liquor stores because of the similarity of their bottle shop/takeaway sales and for amendment to trading hours to improve competition and achieve parity between proprietors who are essentially providing the same service – i.e. the sale of packaged liquor for consumption off the licensed premises.

A comparison of takeaway trading hours for liquor outlets in other jurisdictions is valuable in considering the issue of Sunday trading for takeaway liquor outlets. A jurisdiction by jurisdiction analysis has revealed the following trading information:

Western Australia

Hotels, taverns, clubs and liquor stores only can sell liquor. A supermarket chain can operate stand-alone liquor stores. Hours of trade for hotels, taverns and clubs are 6.00am to midnight Monday to Saturday and 10.00am to 10.00pm on Sundays. Liquor stores may trade from 8.00am to 10.00pm Monday to Saturday. Liquor stores may not operate on Sundays, Christmas Day, Good Friday or New Years Day. Note however that the WA NCP Review into their Act, published in March 2001, recommended that the restriction on liquor stores with respect to Sunday trading should be lifted.

South Australia

Hotels, taverns, supermarkets and liquor stores can sell liquor seven days a week. None may trade on Good Friday or Christmas Day (except clubs, which may trade from 9.00am to 11.00am on Christmas Day). Hotels and clubs can trade in takeaway liquor from 5.00am to midnight Monday to Saturday and 11.00am to 8.00pm on Sundays. Supermarkets and liquor stores can sell liquor 13 hours a day, seven days a week (most elect to trade from 8.00am to 9.00pm).

Victoria

Hotels, taverns, clubs, supermarkets and liquor stores can sell liquor seven days a week. Supermarkets and liquor stores may not operate on Christmas Day and Good Friday. Hotels and clubs may trade in takeaway liquor from 7.00am to 11.00pm Monday to Saturday and 10.00am to 11.00pm on Sundays. Supermarkets and liquor store hours of trade are 10.00am to 11.00pm Monday to Sunday.

New South Wales

Hotels, taverns, clubs, supermarkets and liquor stores can sell liquor seven days a week, though there is no trading at all on Christmas Day and Good Friday. A proposal has recently been put forward to allow petrol stations to sell liquor, however that proposal is being met with much resistance and objection and appears unlikely to succeed. Takeaway trading hours are 5.00am to midnight, Monday to Saturday and 10.00am to 10.00pm on Sundays, though hotels and clubs may continue to sell takeaway liquor for however long they remain open past these hours.

Queensland

Hotels, taverns, clubs, bottle-shops and service stations can sell liquor from 10.00am to midnight, seven days a week (the latter have very restrictive advertising conditions). There is no takeaway trading at all on Christmas Day and Good Friday, though on-premises trading ancillary to a meal is permitted on those days. Supermarkets do not sell liquor at all.

Australian Capital Territory

Hotels, taverns, clubs, liquor stores and supermarkets can sell liquor seven days a week, Christmas and Good Friday inclusive. There are no restrictions on takeaway liquor sales. Venues must close for three hours between 4.00am and 8.00am each

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day. A venue wanting to not trade on a given day must get approval 7 days in advance.

Tasmania

Hotels, taverns, clubs and bottle-shops can sell liquor between the hours of 5.00am and midnight, seven days a week. Bottle-shops are restricted to selling at least 9 litres of liquor (equivalent to 1 carton of beer) per sale. There are no restrictions to trade on Sundays or Christmas Day. Good Friday sales are limited to the hours of 11.00am to 9.00pm. Supermarkets do not sell liquor at all.

A comparison of trading hours for takeaway liquor facilities in each jurisdiction is made in the following chart.

TAKEAWAY LIQUOR TRADING HOURS - JURISDICTIONAL COMPARISON

MONDAY TO SATURDAY

	WA	SA	VIC	NSW	QLD	TAS	ACT ¹	
HOTEL/ TAVERN	0600 to 2400	0500 to 2400	0700 to 2300	0500 to 2400	1000 to 2400	0500 to 2400	21 hours per day	
CLUB	0600 to 2400	0500 to 2400	0700 to 2300	0500 to 2400	1000 to 2400	0500 to 2400	21 hours per day	
LIQUOR STORE	0800 to 2200	13 hours per day	1000 to 2300	0500 to 2400	1000 to 2400	0500 to 2400 ³	21 hours per day	
SUPER- MARKET	Cannot sell liquor	13 hours per day	1000 to 2300	0500 to 2400	Cannot sell liquor ⁴	Cannot sell liquor	21 hours per day	

SUNDAY

	WA	SA	VIC	NSW	QLD	TAS	ACT	
HOTEL/ TAVERN	1000 to 2200	1100 to 2000	1000 to 2300	1000 to 2200	1000 to 2400	0500 to 2400	21 hours per day	
CLUB	0600 to 2200	1100 to 2000	1000 to 2300	1000 to 2200	1000 to 2400	0500 to 2400	21 hours per day	
LIQUOR STORE	Closed ⁵	Any 13 hour period	1000 to 2300	1000 to 2200	1000 to 2400	0500 to 2400	21 hours per day	
SUPER- MARKET	Cannot sell liquor	Any 13 hour period	1000 to 2300	1000 to 2200	Cannot sell liquor	Cannot sell liquor	21 hours per day	

¹ In the ACT, all venues must close for 3 hours between 4.00am and 8.00am each day

² All takeaway hours in the NT is from 9.00am on Saturday. Restricted trading hours apply in Alice Springs, Tennant Creek and Katherine.

³ Liquor stores in Tasmania are restricted to selling liquor in quantities not less than 9 litres (9 litre rule)

⁴ Queensland permits service stations to sell liquor as per their standard trading hours

⁵ WA NCP Report has recommended Liquor Stores be allowed to trade Sundays

The comparison shows that every jurisdiction except Western Australia and the Northern Territory allows liquor stores to engage in Sunday takeaway liquor trading to some extent. Furthermore, of the five jurisdictions that allow supermarkets to sell takeaway liquor, only the Northern Territory prohibits Sunday trading completely.

Every jurisdiction in Australia allows Sunday trading in takeaway liquor to some extent. Only Western Australia and the Northern Territory ban liquor outlets other than hotels and clubs from trading on that day and the WA NCP Review of that State's Liquor Act also recommended liquor stores be allowed to trade on Sundays.

The position currently adopted by the Northern Territory on the issue of discriminatory trading practices in Sunday trading in takeaway liquor is untenable with respect to NCP principles and should be abolished.

Alternatives

The NCP principles dictate that where a restriction is deemed necessary or desirable to maintain the public "good", such restrictions should be applied uniformly to all participants in the market.

There is strong argument that the uniqueness of Northern Territory communities and culture requires a firm approach to the regulation of liquor, including the need to limit the availability of takeaway sales of liquor products. However, the requirement for a limit to be placed on takeaway liquor trading and the practice of discriminatory trading are mutually exclusive, in that the former does not require the operation of the latter.

The alternatives to the freeing up of Sunday trading for takeaway liquor stores are:

1. revise trading hours under which all takeaway liquor licensees may operate;
2. introduce a roster system for the sale of takeaway liquor on Sundays; or
3. introduce a complete prohibition on Sunday trading in liquor.

Revised Trading Hours for Sunday Trading

Currently, hotels, taverns and clubs are allowed to sell takeaway liquor between the hours of 10.0am and 10.00pm Sunday to Friday and 9.00am to 10.00pm on Saturdays.

The jurisdictional comparison chart on takeaway venue trading hours shows two approaches to Sunday trading in takeaway liquor sales by the various jurisdictions. Western Australia, South Australia, Victoria and New South Wales all have reduced trading hours on Sundays in comparison to other trading days, whereas Queensland, Tasmania and the ACT do not vary the hours of trade at all. Another interesting variation is that South Australia and the ACT give venues a discretion as to when they open, provided they do not trade in excess of a certain number of hours. The other jurisdictions allow trading between fixed hours on all days of the week. Both the restriction on hours of trade and a discretion as to between what hours a venue can trade have merit in considering revised hours of trade on Sundays in the Territory.

Whilst the National Competition Council refutes any correlation between outlet density and harm, it has nevertheless been demonstrated that in urban areas of the NT reduced outlet options have resulted in less public disturbance on Sundays. To that end, any decision to allow liquor stores and supermarkets to operate on Sundays should be coupled with reduced hours between which takeaway sales on that day can be made. Without recourse to any social analysis on optimum hours of trade for the Sunday takeaway liquor market, a reasonable reduction in Sunday trading hours may be one by a factor of a third, ie reducing the hours of trade from 12 hours to 8 hours.

It should also be noted that different outlets might want to trade at different times. The Liquor Stores Association has stated Sunday has become the third most popular day for shopping. Presumably it has also identified the hours on Sunday that attract most patronage. Similarly, hotel bottle shops and clubs would also be able to determine what part of the day is most popular for takeaway sales from their venues. With this in mind, the practice adopted by South Australia and the ACT to allow trading for a given period of time should also be considered to allow traders to best utilise their resources to meet their individual requirements.

It is recommended therefore that should the revised hours option be favoured, consideration be given to reducing the hours of trade in takeaway liquor from 12 hours to 8 hours continuous trading, subject to the restriction that such trading can only be conducted between 10.00am and 10.00pm.

Implementing a Roster System for Sunday Trading

Roster systems for the sale of restricted products are not new. The Western Australian Government operated a petrol station roster in urban areas for the sale of petrol on Sundays for many years.

The benefit of a roster system is that those venues permitted to sell on a particular Sunday will see increased profitability in that day of trade, however they will lose trade on the days they may not trade.

However, rostering Sunday trade in takeaway liquor could result in the deterioration of the amenity of the neighbourhood surrounding the rostered venue, as itinerants and any undesirable elements may be attracted to an area where a venue is rostered to sell liquor on that day. Furthermore, the co-ordination and publication of rosters would be resource intensive and costly and is therefore not recommended.

Prohibition on Sunday Trading in Takeaway Liquor Sales

While a complete ban on Sunday trading in takeaway liquor would be seen by some as a positive step in combating the social problems associated with liquor consumption, such a measure would detract from the objectives of promoting the responsible development of the liquor industry and could impact on other industries, such as tourism. However, a prohibition on all Sunday trading in takeaway liquor sales does not infringe on NCP principles and is a real option that should be considered.

Conclusion

It is recommended that the general restriction on trading hours be retained in the form of uniform trading hours for each proposed licence category.

The restriction on takeaway liquor trading on Sundays should be removed in so far as the discrimination that currently exists between hotels/taverns and clubs being allowed to trade and liquor stores and supermarkets being prohibited from trading.

Consideration should be given to either allowing all licensees with a takeaway liquor provision to trade for 8 hours between 10.00am and 10.00pm on Sundays, or imposing a complete ban on Sunday trading in the Northern Territory. A roster system for Sunday trading in takeaway liquor is not the recommended option.

On the basis of the above considerations, it is recommended that:

- Hours of trade be made uniform for each premises that operates under a particular licence category, as proposed under the assessment of Restriction 3; and
- Either Regulation 4(1AA) of the *Liquor Regulations* be repealed and regulation 4(1) be amended to include a store licence as being a type of licence that can trade on Sundays, with a uniform restriction to apply to the hours of trade so that any such venue may trade for 8 hours between 10.00am and 10.00pm on any Sunday (excluding Easter Sunday and Christmas Day); or
- A complete prohibition be imposed on Sunday trading in takeaway liquor sales.

7. ATTACHMENTS TO THE REPORT

- *Liquor Act*
- Liquor Regulations
- *Licensing Commission Act*

End of Review