



REVIEW OF THE
SOUTH AUSTRALIAN
LIQUOR LICENSING ACT, 1985

Mr T. R. ANDERSON Q.C.

October 1996

Adelaide, South Australia

To the Honourable Attorney-General and Minister for Consumer Affairs

I have pleasure in submitting to you the attached report reviewing the *Liquor Licensing Act, 1985* and its administration in accordance with the Government's commission dated 30 March, 1996 (reference MCON 20-96).

A handwritten signature in black ink, appearing to read 'T. R. Anderson', written in a cursive style.

T. R. ANDERSON QC

23 October, 1996

CONTENTS

		Page
CHAPTER 1 -	EXECUTIVE SUMMARY	1
CHAPTER 2 -	INTRODUCTION	12
CHAPTER 3 -	TERM OF REFERENCE I	17
	LIQUOR LICENSING AND REGULATORY REGIME	
CHAPTER 4 -	TERM OF REFERENCE II	21
	THE DESIRABILITY OF INCORPORATING RESPONSIBLE SERVICE AND CONSUMPTION PRINCIPLES AND STRATEGIES IN THE LEGISLATION	
CHAPTER 5 -	TERM OF REFERENCE III	26
	THE NUMBER OF CLASSES OF LIQUOR LICENCE, THE NEED TO RETAIN CATEGORY A AND B LICENCES WHETHER THE "NEED" PROVISIONS RELATING TO CATEGORY A SHOULD BE RETAINED, AND THE DESIRABILITY OF MAINTAINING THE REGULATION OF PRODUCERS IN THE WINE INDUSTRY	
CHAPTER 6 -	TERM OF REFERENCE IV	29
	THE USE AND AVAILABILITY OF GENERAL FACILITY LICENCES	
CHAPTER 7 -	TERM OF REFERENCE V	32
	CURRENT TRADING HOURS AND LICENSEES OBLIGATIONS	

CHAPTER 8 -	TERM OF REFERENCE VI	44
	THE SALE AND SUPPLY TO AND CONSUMPTION OF LIQUOR BY MINORS	
CHAPTER 9 -	TERM OF REFERENCE VII	48
	ENTERTAINMENT ON LICENSED PREMISES	
CHAPTER 10 -	TERM OF REFERENCE VIII	50
	ENFORCEMENT OF THE LEGISLATION	
CHAPTER 11 -	TERM OF REFERENCE IX	52
	THE CONSUMPTION OF LIQUOR IN PUBLIC PLACES AND DRY AREAS	
CHAPTER 12 -	TERM OF REFERENCE X	57
	THE INTER-RELATIONSHIP BETWEEN THE LIQUOR LICENSING ACT AND ITS ADMINISTRATION WITH GAMING ADMINISTRATION AND RELATED ISSUES	
CHAPTER 13 -	TERM OF REFERENCE XI	61
	THE APPROPRIATENESS OF THE COURT STRUCTURE AND IN PARTICULAR THE DIVISION OF POWERS BETWEEN THE LIQUOR LICENSING COMMISSIONER AND THE COURT AND APPELLATE STRUCTURE	
CHAPTER 14 -	TERM OF REFERENCE XII	66
	INTER-RELATIONSHIP OF THE LIQUOR LICENSING LAW AND PLANNING AND DEVELOPMENT APPROVALS WITH PARTICULAR REGARD TO THE DETERMINATION OF THE SUITABILITY OF PREMISES	

ANY OTHER RELEVANT MATTER

LIQUOR LICENSING REVIEW

CHAPTER 1

EXECUTIVE SUMMARY

1. OBJECTS OF ACT:

The Liquor Licensing Act, 1985 ("the Act") should be amended to specifically include objects which state the purpose for regulating and controlling the sale and supply of liquor.

The objects of the Act should be to:-

- 1.1 minimise the harm associated with misuse and abuse of liquor (such as harm arising from violence and other anti-social behaviour);
(In my view it should be made clear that this is to be a primary object of the Act.)
- 1.2 ensure that the regulation and control of licensed premises benefits the community as a whole;
- 1.3 balance the promotion of tourism and economic growth in South Australia with a responsible approach to the sale and consumption of liquor;
- 1.4 assist in the development of a diversity of licensed premises to reflect contemporary tastes and preferences;
- 1.5 The objects stated above must be considered by the licensing authority before it grants, transfers, removes or varies the conditions of any licence.

2. NATIONAL COMPETITION POLICY

- 2.1 The Competition Principles Agreement (signed by the South Australian Government in April 1995) requires the review and, where appropriate, reform of all legislation which restricts competition, by the year 2000. While the objective of the Agreement is to achieve world competitive regulatory regimes, it must be borne in mind that the benefits of some restrictions may outweigh the costs to the community of removing the restrictions. Some restrictions in the Act may have to be maintained in order to achieve the objects of the Act.

2.2 In reviewing this Act it has been necessary to weigh the removal of many of the anti-competitive aspects of the Act against the consequences which may flow from removing the restrictions. For instance, the restriction on issuing a licence to a "fit and proper person" is necessary to ensure that persons of good character are permitted to sell and supply liquor to the members of the public. Further, the restriction on the types of outlets which can sell liquor ie supermarkets, service stations and delicatessens, has been maintained to prevent an increase in availability of liquor. I am concerned that an undue proliferation of liquor outlets may lead to harmful practices to meet the increased competitive pressures.

2.3 The following are examples of matters in the Act which are anti-competitive and not in the broader community interest:

- s.38 in relation to the Retail Liquor Merchants Licence.
- The condition that a club must purchase its liquor from a hotel or bottle shop.
- The clubs specifically named in section 34(5) clearly enjoy a privileged position at the expense of other clubs and this is not for the benefit of the broader community.
- Retail Liquor Merchants at present are authorised to sell liquor to 6pm except on days on which late trading is permitted, while Hotel Bottle Shops can trade until midnight.
- it is quite apparent that some producers are avoiding paying a licence fee. Whilst they should continue to be exempt from a licence fee for genuine cellar door sales, up to a total of \$20,000 per year, they should pay a fee for sales in excess of that amount and for all mail order sales because they are then acting as either a wholesaler or retailer.
- Because of the conditions attached to the grant of some general facility licences some 'restaurants' have trading advantages over others in being able to provide liquor without a meal.

- Section 34(d) places the holder of a club licence at a disadvantage unless the holder is also the holder of a gaming machine licence pursuant to the *Gaming Machines Act, 1992*.
- In relation to a general facility licence section 44(3) requires the licensing authority to take into account the probable effect of the grant, removal or variation on the trade of other licences in the locality.
- Likewise, in relation to a general facility licence section 44(1)(f) is anti-competitive.
- For the existing limited licence section 47(1) is also anti-competitive.

3. SHOULD THERE A BE "NEED" REQUIREMENT FOR ANY LICENCE

- 3.1 I have recommended that "need" remain as a test to be fulfilled before the grant of a Hotel licence or a Retail Liquor Merchants licence to be renamed as an OFF licence (retail). In my view the "need" test should be the same for both licences and in the same terms as it now exists.
- 3.2 I have decided that the "need" test remain for those two licences because of the possible harm that could be caused by an undue proliferation of liquor outlets. I am also convinced that for the general benefit of the community and the good of the economy, the high standards of premises and service which prevail should not be compromised.
- 3.3 I have also recommended that there no longer be proof of "need" required for the equivalent of the existing entertainment venue and wholesale licences nor for the suggested new "Special Circumstances" licence.
- 3.4 In relation to all applications whether category A or B, the licensing authority should no longer take into account any likely economic impact on other licensees in the locality.

4. NUMBER OF LICENSES REDUCED

The existing licences are in two categories.

4.1 *Category A*

- hotel licence;
- retail liquor merchant's licence;
- wholesale liquor merchant's licence;
- entertainment venue licence;
- general facility licence.

4.2 *Category B*

- club licence;
- producer's licence;
- residential licence;
- restaurant licence;
- limited licence.

4.3 I recommend that the proposed new licences be named as follows:

- HOTEL licence (on/off)
- ON licence (club, restaurant, residential, entertainment)
- OFF licence (retail, wholesale and producers)
- SPECIAL CIRCUMSTANCES licence
- LIMITED licence

4.4 Only the Hotel licence and the OFF licence (Retail) should remain as Category A licences. The rest will be Category B.

4.5 The existing general facility licence is to disappear and be replaced by a "special circumstances" licence.

5. TRADING HOURS AND CONDITIONS

It is my view that there should be a general freeing up of hours of trading to accord with modern trends and preferences and related to the law of supply and demand but with a particular emphasis in providing an orderly system which will encourage, rather than impede, the Government's economic development strategy and the growth of tourism.

- 5.1 There should be no distinction for trading hours on any licence for any day of the year including Sunday, Good Friday and Christmas Day.
- 5.2 Licensees should not have compulsory trading hours but should be able to elect whether and when they wish to trade within the hours appropriate to the licence in question. Market forces will determine whether they make the correct choice.
- 5.3 Consumption of liquor on premises should be allowed as of right until midnight. Beyond midnight a licensee will have to establish that any extended trading is in accordance with the objects of the Act. It should also be a condition that meals are made available during the period of extended trading. The conditions should apply to all licences, including a Limited Licence, where liquor is to be consumed on the premises beyond midnight.
- 5.4 Restaurants should be able to seek an endorsement to sell liquor without the necessity of having a meal.
- 5.5 Bottle shops should be able to trade every day until 9.00pm.

6. NOTIFICATION OF APPLICATION

- 6.1 All applications lodged with the licensing authority should be considered by the licensing authority for the purpose of notification to the relevant local council as soon as the application is lodged. If the licensing authority considers there may be some impact on the local amenity the council should then notify ratepayers of any potential interference with the amenity of the locality. This is in keeping with the intention of the suggested legislation which places special emphasis on the broader community interest.
- 6.2 In addition to the local councils acting as a conduit to notify rate payers of any potential interference with the amenity of the locality the councils will be better informed as to specific trading conditions being sought and may seek on an increased basis to object or intervene under the Act.
- 6.3 The requirement to advertise on premises or on vacant land in respect of an application should be in the style of a large and informative notice such as is required in Queensland but on a sign not less than 1.2 metre x 900 mm with lettering not less than

50mm in height. The community should be better informed than at present.

7. RESPONSIBLE SERVICE STANDARDS

7.1 In New South Wales liquor licensing legislation has just been amended to take effect from 1 October 1996. My suggestions are taken directly from that legislation because I believe that they very accurately summarise my views.

7.2 The licensing authority should refuse an application for a new liquor licence or a transfer, removal or variation of conditions unless the licensing authority is satisfied that (as soon as the application is granted):

- practices will be in place at the licensed premises to ensure (as far as reasonably practicable) that liquor is sold, supplied and served responsibly on the premises; and
- all reasonable steps will be taken to prevent intoxication on the premises and that those practices will remain in place.

7.3 In conjunction with the above, I recommend that regulations should be prepared requiring the adoption of responsible practices in the sale, supply, service and promotion of liquor. Such regulations will cover amongst other things:

- restrictions or prohibitions on the conduct of promotions or other activities (including discounting or supply of liquor free of charge) that could result in misuse or abuse of liquor, such as binge drinking or excessive consumption;
- standards to be observed on licensed premises in the sale and service of liquor, for the purpose of preventing misuse or abuse of liquor; and
- requirements that, licensees, managers and other persons engaged in the sale, supply, service and promotion of liquor and other activities on licensed premises, will undergo courses of training that will promote responsible practices in those activities.

- 7.4 The regulations could also adopt or incorporate standards contained in any industry code of practice regarding the sale, supply, service and promotion of liquor, eg AHA standards.
- 7.5 It should also become an offence to engage in irresponsible service practices. I suggest fines up to \$5,000 would not be inappropriate. This is the fine for irresponsible service practices in New South Wales in their new legislation.
- 7.6 New grounds for complaint should be created so that the Liquor Licensing Commissioner or the Commissioner of Police can bring a matter before the licensing authority to demonstrate that the licensee or manager has engaged in conduct or activities that are inconsistent with responsible services practices. I have also referred later on to a "last drinks survey" and clearly if particular licensed premises habitually appear in such a survey the Liquor Licensing Commissioner or the Commissioner of Police should take action. This will ensure that acts of damage to persons or property when linked with a particular licensed premise, will involve an enquiry into the serving practices of that licensee.

8. COMMUNITY CONSIDERATIONS

- 8.1 Organisations for the protection and care of persons affected by liquor or the prevention or minimisation of drug and liquor abuse should be entitled to object and to intervene where it is considered by the licensing authority that their particular interests are also in the broader community interest. They should be entitled to be represented by one of their number and not necessarily by counsel.
- 8.2 Objections should be allowed in the discretion of the court inside the 7 days prescribed if there are good reasons for allowing a late objection.
- 8.3 All applications will involve a careful consideration by the licensing authority as to whether the result is for the benefit of the community as a whole in accordance with one of the stated objects of the Act.
- 8.4 Any person should be entitled to object to any application on the grounds that:-

8.4.1 the application is not in accordance with the objects of the Act;

8.4.2 the applicant is not a fit and proper person.

9. ENFORCEMENT

- 9.1 The licensing laws and regulations and restrictions on specific licences should be made less complicated so that it is easier for the Police to enforce the legislation. The formats of all licences and in particular, limited licences should be simplified and some work on this has already taken place.
- 9.2 Licensees must be made aware by the Liquor Licensing Commissioner that any breaches of the Act in relation to the sale and supply of liquor to minors or to intoxicated persons will be enforced more strictly and that licences will be placed in jeopardy.
- 9.3 The licence containing details of all trading conditions should be permanently displayed at or adjacent to the main entry to the premises. The plan of the licensed premises must be kept on the licensed premises.
- 9.4 The Police should be encouraged to move freely in and around licensed premises rather than merely wait outside for offenders and take action. It should be a pro-active role to reduce offences on and around licensed premises. I believe there should be a return to a specialised licensing squad to best enforce the objects of the Act.
- 9.5 Statistics should be collected relating to what is later described as "the last drink survey" so that licensed premises which are habitually featuring can be targeted for disciplinary action by either the Police, the Commissioner or both.
- 9.6 The Licensing Court should be used more often to deal with disciplinary matters against licensees and should be able to quickly initiate procedures for discipline. ~~Recently there has been an increased use of this procedure by the Police with apparent success.~~

- 9.7 Managers of licensed premises should be required to enrol in and complete a course approved by the Licensing Court before taking up their responsibility. Any manager who in the opinion of the Court requires a refresher course can be ordered by the Court to attend such a course as a condition precedent to holding a manager's "ticket".
- 9.8 The Commissioner should be increasingly involved in the investigation and discipline of offending licensees. The Commissioner already has wide powers under the Act and I believe they should be used more often, especially having regard to the new focus on minimisation of harm and responsible service of liquor.

10. LICENSING AUTHORITY

- 10.1 The licensing authority at present is constituted by the Court and the Commissioner. The Court is presided over by the Licensing Court Judge.
- 10.2 The Court is currently responsible for the grant or removal of Category A licences. Under my recommendations there will only be two Category A licences to be dealt with by the Court.
- 10.3 It is my view that it should be the Court which deals with all applications for extended trading beyond midnight, including Category B licences.
- 10.4 As a result of my other recommendations it is apparent that the Court may have an increase in its workload because it will be dealing with all contested applications and some increased disciplinary matters.
- 10.5 I recommend that the existing structure of the licensing authority remain, but that any contested matter should be referred to the Court.
- 10.6 The Commissioner under my recommendations should have an increased supervisory role. The Commissioner should also be actively involved in promoting the education and training of licensees and be an ex-officio member of the Liquor Education and Advisory Board which I have recommended.

10.7 It is my recommendation that the right of appeal from both the Commissioner and the Licensing Court should remain. In relation to appeals from the Licensing Court, they are presently with the leave of a single Judge of the Supreme Court. Almost invariably an appeal will involve questions of mixed law and fact. It is for that reason that I believe that the requirement to obtain leave from a single judge is superfluous. I recommend that the appeal be as of right from the Licensing Court to the full Court of the Supreme Court on all matters.

11. LIQUOR EDUCATION AND ADVISORY BOARD

- 11.1 The object would be to implement and monitor harm minimisation and responsible service principles. The board should be involved with extensive TV and other advertising including advertisements in hotels and other licensed premises directed to:-
- (a) service to intoxicated persons;
 - (b) service to minors;
 - (c) safe drinking principles;
 - (d) transport arrangements.
- 11.2 Such a body should be representative of Police, Local Government, Drug and Alcohol related organisations and the liquor industry. The Liquor Licensing Commissioner should be an ex-officio member.
- 11.3 It could be funded from revenue collected from licence fees, or by a levy. It should employ people to work in conjunction with the liquor industry and the Police department and relevant local government authorities with the aim of implementing and monitoring the objects of the Act.
- 11.4 The principle objects of the Act and rights and obligations under the Act should be widely promoted by the Board with informative booklets to assist licensees, newcomers, the general public and minors in particular in understanding and complying with the Act. This has become the norm in other jurisdictions.
- 11.5 The body should meet regularly and report regularly to the Minister for Consumer Affairs.

12. TRANSITIONAL

- 12.1 No licensee should receive any less trading rights than those held under an existing licence.
- 12.2 As an example a restaurant with a general facility licence with the right to serve liquor without a meal will become an ON licence (Restaurant) with an endorsement for liquor to be served without a meal.
- 12.3 Obviously many licences will need to be converted and a period of 12 months should be allowed for this.
- 12.4 Those licences which currently allow trade after midnight will be subject to a condition to make meals available.

LIQUOR LICENSING REVIEW

CHAPTER 2

INTRODUCTION

1. TERMS OF REFERENCE

The Attorney-General and Minister for Consumer Affairs for South Australia has requested me to review the *Liquor Licensing Act 1985* and its operations and without limiting that review, give particular attention to:

- (i) The liquor licensing and regulatory regime;
- (ii) The desirability of incorporating responsible service and consumption principles and strategies in the legislation;
- (iii) The number of classes of liquor licence, the need to retain Category A and B licences whether the need provisions relating to Category A should be retained, and the desirability of maintaining the regulation of producers in the wine industry.
- (iv) The use and availability of general facility licences;
- (v) Current trading hours and licensees' obligations;
- (vi) The sale and supply to and consumption of liquor by minors;
- (vii) Entertainment on licensed premises;
- (viii) Enforcement of the legislation;
- (ix) The consumption of liquor in public places and dry areas;
- (x) The inter-relationship between *Liquor Licensing Act* and its administration with gaming administration and related issues;
- (xi) The appropriateness of the court structure and in particular the division of powers between the Liquor Licensing Commissioner and the Court, and appellate structure;
- (xii) Inter-relationship of the liquor licensing law and planning and development approvals with particular regard to the determination of the suitability of premises;
- (xiii) Any other relevant matter.

2. I am instructed that in conducting the review I shall have regard to:

- 2.1 The fact that the *Liquor Licensing Act* has not been comprehensively reviewed since its enactment in 1985. (Ad hoc amendments have been made in the past 10 years).

- 2.2 Those issues which arise under National Competition Policy as well as mutual recognition requiring the framework of the Act to be reviewed.
 - 2.3 A concern that decisions relating to the granting of licences seem to favour existing licensees or operators in the industry notwithstanding that newcomers are applicants of substance and ability.
 - 2.4 The Government's economic development strategy, tourism development and the interests and needs of the South Australian community.
3. The *Liquor Licensing Act* has not been reviewed except for a number of ad hoc amendments since 1985. Since 1985 social circumstances have continued to alter and public demand has continued to require a relaxation in trading conditions to allow liquor to be sold both on and off premises.
 4. A good example of this is a continued emphasis on outdoor eating facilities because of an ideal climate in which to promote such activities. Furthermore, there has been an increased demand by younger people, who wish to go out later in the evening, for late night entertainment. It is now not uncommon for young people to eat at home and then go out at around 10.30 p.m. to drink, dance and then maybe for another meal later on. Likewise it is not uncommon for people of all ages to want to either have a drink or a meal, or both, after they have been out for the evening, having attended functions such as the cinema, theatre or sporting events.
 5. All of these matters require a continuing flexibility in the licensing legislation but at the same time an attention to the social consequences of allowing for more liberated trading conditions.
 6. It is quite apparent that the community, and community groups generally are now focussing more on the effects of the abuse of liquor and the inherent risks to health and disruption of orderly life which the abuse of liquor both publicly and privately may cause.
 7. It seems to me therefore, that the Act should be amended so as to focus on minimising the harm which may result to the community (as a result of abuse of liquor) and that minimisation of harm principles should be at the forefront of any new legislation. In the granting, transfer, removal or variations of conditions of any licence, the licensing authority should be directed to refuse such grant, transfer, removal or variation if, in the

opinion of the licensing authority, the grant, transfer, removal or variation may result in harm to the community generally or to any particular section of the community.

8. Minimisation of harm principles become particularly important when reforms are suggested which to some extent free up the availability of liquor to the public by liberalisation of hours. Put simply, to enable the public to have better access to a wider range of facilities, including longer trading hours, there must be a balancing exercise to ensure that the community interest in minimising harm caused by liquor is taken into account.
9. In the past there has been a trend in Australian legislation dealing with liquor, to deal with social and harm minimisation principles in legislation other than liquor legislation. For instance, in the last South Australian review in June 1984, the conclusion was that:

"The best licensing laws are those which allow the industry to get on with the job ... too much interference in these economic times can be the difference between making the business viable or not".

This has been the theme in various debates regarding new liquor legislation but I do not agree with the sentiments expressed above. In my opinion, there should be a focus and continuing emphasis upon minimisation of harm principles and these principles should be the business of liquor laws and indeed should be a predominant theme in the liquor legislation. It is noteworthy that the most recent amendments in New South Wales on 1st October 1996 incorporate these sentiments. I have discussed that legislation as a suggested model in Chapter 7.

10. As can be seen from my recommendations in this report, it is imperative that enforcement procedures, particularly relating to intoxicated persons and minors, are clearly laid out and followed by the Police and the Liquor Licensing Commissioner. Licensees who are not prepared to abide by responsible service principles, as discussed later, must realise that their licences are at risk.
11. The conclusions which I have reached in relation to each term of reference have been based on a variety of factors.

• Submissions were invited by a Public Notice appearing in the Advertiser (Appendix "A").

- I have read the submissions which were received by the Attorney-General's Department and a complete list of individuals and bodies making these submissions is annexed to this Report (Appendix "B").
- In addition I have had discussions with most of the leaders within the liquor industry in most areas of the industry. I have sought input from the industry generally and I have had discussions with them at various stages of my inquiry regarding possible alternatives. As a result of these discussions some supplementary submissions have been made.
- I have also spent a considerable time discussing drug and liquor-related problems with the formal bodies responsible, including the Drug and Alcohol Council of South Australia and the Department of State Aboriginal Affairs.

The Department of State Aboriginal Affairs suggested that I might benefit from inspecting the situation in Coober Pedy. I did go to Coober Pedy and I believe it was helpful in my overall assessment of liquor related problems.
- In addition, I have relied in part on my overall knowledge of the liquor industry in South Australia. I have been involved as counsel for many industry groups and individuals over 26 years, and have acted both for and against all the liquor industry groups. I have seen the various legislative amendments come into force over the years and observed the effect the amendments have had on the industry and specific sections of it.
- In 1982 I was appointed as the Acting Judge of the Licensing Court for about 12 months I believe this earlier experience assisted me in my overall understanding of the workings of the industry, the administration and the Court structure.
- I have received very helpful written and oral submissions from the Judge of the Licensing Court and the Liquor Licensing Commissioner and I am grateful for the discussions which we have had which have been of great assistance.
- I have also had the benefit of speaking with administrators

and judges in other Australian States and New Zealand. I visited New Zealand and inspected their liquor licensing system as it involved a total deregulation of the industry in 1990. I was much assisted by that visit and the information I obtained regarding their drug and alcohol program.

Finally I have had the benefit of lively and informative debate with Ms Anni Foster, Legal Officer of the Attorney-General's Department. I would like to acknowledge her kind assistance.

LIQUOR LICENSING REVIEW

CHAPTER 3

TERM OF REFERENCE I

LIQUOR LICENSING AND REGULATORY REGIME

1. THE EXISTING SYSTEM

- 1.1 The existing system involves regulation in regard to hours of trading, obligations of licensees, control over licensees, their fitness to hold licences and controls over the standard of premises.

It also involves the concept of proof of need in relation to some types of licence (Category A).

- 1.2 One of the directives I have in considering the Terms of Reference is that I shall have regard to issues arising under the National Competition Policy.

- 1.3 At the outset, therefore, it is apparent that there is a choice between retaining the existing system, deregulating the system in its entirety or something in between. Many submissions have been made on the basis that it will not be for the benefit of the South Australian economy and development generally if total deregulation occurs but that there should nevertheless be some deregulation. Some submissions advocate no changes at all. Other submissions advocate almost total deregulation.

2. WHY HAVE ANY "NEED" CONCEPT AT ALL?

- 2.1 I have very seriously considered a system in South Australia with no "need" requirements at all.
- 2.2 My terms of reference require me to have regard to "those issues which arise under National Competition Policy as well as mutual recognition requiring the framework of the Act to be reviewed." On the face of it that could mean abolishing the "need" requirements entirely.

- 2.3 But I am also instructed to have regard to "the Government's economic development strategy, tourism development and the interests and needs of the South Australian community."
This involves a balancing exercise in simple terms.
- 2.4 One proviso to the principles of the National Competitive Policy is that there may be circumstances where it can be shown that the benefits of the restriction to the community outweigh the disadvantages of the restriction.
In other words it involves a concept of the broader community interest or benefit.
- 2.5 With a concept of a broader community interest incorporated into the Act, as I have recommended, I believe on balance that South Australia will be best served at least in the short term (say up to the year 2000) by maintaining the "need" provision for Hotels and Bottle Shops only. In my view the "need" test should be the same for both licences.
- 2.6 In the case of bottle shops sections 38(1) and 38(2) should be removed. I can see no justification for those sections any longer and it is clearly a prime example of what the National Competitive Policy seeks to remove.

3. WHY NOT TOTAL DEREGULATION?

- 3.1 It is submitted by some that persons who hold liquor licences should be in no different position than anyone else who has invested in a business and suffers the experience of another setting up in competition nearby.
- 3.2 As I have discussed elsewhere, there are many anti-competitive facets of the Act as it now exists, but probably the major restriction which, on the face of it, may offend the National Competition Policy is the requirement to establish "need".
- 3.3 An example of this is the amendments in 1985 to the Act regarding restaurant licences. Previously proof of "need" was required, but this was changed in 1985. My own assessment, and one shared by most of the liquor industry, is that the overall standard of restaurants has risen since that time.

- 3.4 However, I am concerned that hotels and bottle shops should be regarded differently. There are several reasons, in my view why proof of "need" should still be required for both these licences.
- 3.4.1 First, there is some truth in the proposition that a total deregulation could literally result in a bottle shop or hotel on every street corner and that would, in my view, be inconsistent with the minimisation of harm principles which I have recommended.
- 3.4.2 Secondly, there have been submissions both for and against the proposition that sales of liquor should be allowed in supermarkets. Up to now the Licensing Court has interpreted Section 38(3) to mean that supermarkets cannot sell liquor in South Australia. On the face of it it seems to me an anomaly that someone can purchase liquor from a bottle shop which is immediately adjacent to, but separate from, a supermarket, but not within the same four walls.
- 3.4.3 However, once again, having regard to the principles of minimisation of harm, I am of the view, but very marginally, that this situation should prevail at least in the short term, but that it should be subject to a very thorough review in three or four years' time. By then there should be information available from interstate experience which will show whether there has been any increase in liquor abuse as a result of allowing sales of liquor in supermarkets.
- 3.5 I am convinced from my own inspections and discussions within the industry throughout Australia that the standard of hotels and bottle shops in South Australia is the highest in Australia. I am concerned that an immediate total deregulation by removing the "need" concept and allowing the sale of liquor in supermarket's and elsewhere, may not be in the best interests of the government's economic development strategy and tourism development and the wider needs and interests of the South Australian community.

3.6 I have also taken into account the fact that holders of ON licences may wish to apply for a Hotel licence with proof of "need" removed, to enable gaming machines to be introduced. I do not believe this would be in the best interests of the liquor industry or the economy of South Australia because of the relative immaturity of the Gaming Industry.

3.7 RECOMMENDATION:

3.7.1 Some of the regulatory measures in the Act should be removed. I deal with these matters in Chapter 7.

3.7.2 The "need" concept should be removed, except for the hotel licence and what is now the Retail Liquor Merchant's Licence.

3.7.3 The whole area of "need" should be reviewed again with the benefit of interstate experience in three or four years time.

3.7.4 With proof of "need" retained for only two licences the Act should be amended to provide that the licensing authority must not take into account the economic impact on existing licences in the locality.

3.7.5 The Act should also be amended to ensure that there is no trade in certificates granted under section 64. At present an applicant can establish a particular "need", but then sell the certificate. The purchaser can then commence to operate a business which is in no way related to the type of "need" which was proved.

LIQUOR LICENSING REVIEW

CHAPTER 4

TERM OF REFERENCE II

**THE DESIRABILITY OF INCORPORATING RESPONSIBLE SERVICE
AND CONSUMPTION PRINCIPLES AND STRATEGIES
IN THE LEGISLATION**

1. It is a fact of life that the community as a whole suffers emotionally and financially from the abuse of liquor.
 - Liquor has been shown to be the root cause of road accidents, loss of productivity and work accidents, damage to health, domestic violence and other crimes involving violence.
 - I have been advised that approximately 80% of Police taskings are liquor related.
2. Responsible service principles must be an integral part of my proposed new licensing scheme. These should include:
 - offering alcohol-free and low alcohol drinks and making this well known to patrons;
 - offering plenty of good solid food after midnight;
 - skills in monitoring the amount of liquor consumed by patrons and in assessing their level of intoxication;
 - methods of identifying under-age drinkers;
 - ways of dealing with violent or disruptive patrons;
 - tips on helping patrons drink within legal limits and to avoid driving illegally and assisting with transport arrangements;
 - strategies on how to refuse service;
 - working within the liquor licensing laws;
 - a house policy outlining the house rules on responsible serving practices implemented by the manager and discussed in detail with all staff;
3. The Australian Hotels Association and indeed the clubs, bottle shops and Restaurant Association have all indicated to me that they are supportive of such principles. How to implement them and whether to make them part of the legislation is another matter.

4. In the Executive Summary I have set out my ideas, encapsulated in the New South Wales legislation, which came into force on the 1st October, 1996. The actual responsible service standards should become part of regulations and should include details which will guide licensees in relation to this matter. If a person holding a licence is not prepared to abide by these principles, they should not be granted a licence in the first instance, and if in the conduct of their business they show a disregard for the responsible service standards, action should be taken against them on the basis that they are not a fit and proper person to hold a licence.
5. If one of the primary objects of the Act is to regulate and control the sale of liquor with the overall aim of minimising harm caused by liquor abuse then it seems to me that the principles of responsible service and consumption should be embodied in the Act and regulations.
6. Bar staff should be trained by their manager who in turn should have a "ticket" approving him or her to act as manager. This managers ticket would not just be in respect of one particular licensed premise but would be a general ticket enabling him or her to move within the industry. This should take the form of some specific training which would involve a reasonably detailed course including lectures on the liquor legislation, the affect of service to minors and intoxicated persons and general host responsibility topics.
7. If a licensee is not complying with responsible service principles then complaints should be brought against him or her by the Commissioner and Commissioner of Police. Continued failure to comply with these principles should result in the suspension or cancellation of the licence.
8. Part of the responsible service and consumption principles in New Zealand, requires an arresting police officer to record details of an offender's last place of drinking, "the last drinks survey". Any offence for which an arrest is made, whether the offence be trespass, assault, urinating in a public place, burglary, theft of a car, driving under the influence of liquor, possession of drugs etc. is related back to where the person purchased their last drink and the data is recorded.
 - 8.1 I have seen details of this "last drinks survey" which operates in Auckland, New Zealand and it shows which hotels and other licensed premises have provided an offender's "last drink". It does seem that persons affected by liquor who commit various offences are frequenting some hotels and other licensed premises more than others. This "last drinks survey" is particularly successful in New Zealand and I believe it should be adopted

here. It requires of course the co-operation of the Police Department. I have discussed it with the Police in South Australia and they are enthusiastic about it. I have given the Attorney-General and the Police copies of the survey.

- 8.2 In New Zealand details are provided monthly by the Police to the local liquor licensing authority and then the local health officer is involved in writing letters inviting the licensee to confer with the authority regarding responsible service and consumption principles. Licences can and have been taken away under this regime, but usually after a warning. If the licensee chooses not to respond to requests from the relevant authority then they are regarded as not being fit and proper to hold a licence and the licence is either cancelled or suspended.

In my view, provided this scheme has the total co-operation of the Police Force, it can be a very effective means of ensuring that a liquor licensee is not permitted to avoid his or her responsibilities.

9. Host responsibility or patron care concepts are already covered to some extent by the existing legislation, for instance, the requirements to provide food, a minimum age of patrons and the offence of service to an intoxicated person. I think those aspects can be extended as I have suggested.
10. The host responsibility program in New Zealand is actively pursued by the Police in conjunction with the Alcohol Advisory Council of New Zealand and to my observations, very successfully. The Alcohol Advisory Council in New Zealand, is a statutory body and allocated annually approximately \$6m. to enable it to achieve its objectives. My recommendation is that a similar body (I suggest a Board) be established and that funds be made available to the Board by using part of the revenue collected from licence fees. If necessary, the licence fee could be increased to enable that to happen. I believe that if there is to be a more liberal approach in the trading conditions, as I have recommended then the balancing factor must be a Board such as I have suggested to implement advertising and promotional activities to ensure that responsible service and consumption principles are well known and understood by both the public and licensees. In particular licensees must realise that they are vulnerable if they do not co-operate in ensuring that the objectives of the legislation are met.

11. In my view the requirement for training of new managers as discussed in paragraph 2.6 of this chapter or those who need to be re-educated on basic principles should be mandatory.
As an example even the most experienced manager who commits a breach should be required to undergo a mandatory re-training program as specified by the licensing authority.
12. As I have already indicated I believe that it is important for the liquor industry for there to be a requirement that the manager of all licensed premises have a "ticket" which is obtained as a result of compulsory attendance at a course. There are such courses available in South Australia and these range in duration from three to eight hours. The project is conducted by the Tourism and Hospitality Training Group in South Australia and indicates through its publications the various courses which can be offered.
13. Obviously some courses are more appropriate for employees in some particular areas of the industry than others but overall there should be a course requirement to enable people to be involved in the service of liquor. The new Board I have suggested should be involved in creating and coordinating such a program in conjunction with industry groups.
14. If it can be shown that liquor was not served responsibly, the licensee or manager should be required to re-attend for a further course.
15. I have been impressed by the information from New Zealand and other Australian States and Territories where programs involving responsible service and host responsibility have been introduced. Each of the programs involve a wide range of publications and promotional material which is lacking in South Australia. It is for this reason that I suggest that the Board be involved in education and promotion of responsible service and consumption principles. In my view South Australia is behind most of the states in the way it promotes safe drinking and responsible service principles.
16. **RECOMMENDATION:**
 - 16.1 A provision be specifically incorporated into the Act, so that in addition to the objects in the Act, the licensing authority should not grant, transfer, remove or vary the conditions of any licence, unless satisfied that responsible service principles will be adhered as already stated in paragraph 7.2 of the Executive Summary in Chapter 1.

- 16.2 Regulations under the Act should be drafted incorporating responsible service principles.
- 16.3 A "last drinks survey" should be established in cooperation with the Police Department.
- 16.4 A statutory body, or Board, should be actively involved in all areas of responsible service and consumption of liquor and in educational promotions.
- 16.5 It should be funded by part of the revenue collected from licence fees.
- 16.6 In relation to managers I recommend:-
- At all times when the licensed premises are operating the premises must be personally supervised or managed by the licensee or an approved manager;
 - more than one person may be approved in respect of the same premises as a manager for this purpose;
 - a person be able to be approved as a manager in respect of more than one licensed premises;
 - an approved manager must, while carrying out his or her duties on the licensed premises, wear an identification card
 - (a) that is in the form approved by the Commissioner; and
 - (b) that is clearly visible to other persons

consideration be given to requiring a licensee to also wear approved identification at all times that he or she is carrying out his or her duties.

LIQUOR LICENSING REVIEW

CHAPTER 5

TERM OF REFERENCE III

**THE NUMBER OF CLASSES OF LIQUOR LICENCE, THE NEED TO
RETAIN CATEGORY A AND B LICENCES WHETHER THE "NEED"
PROVISIONS RELATING TO CATEGORY A SHOULD BE RETAINED,
AND THE DESIRABILITY OF MAINTAINING THE REGULATION OF
PRODUCERS IN THE WINE INDUSTRY**

1. At present there are eleven classes of licence divided into two categories.
 - 1.1 In relation to Category A licences there is a requirement to prove "need". There is no "need" requirement for Category B licences.
 - 1.2 At the present time Category A licences include Hotel, Retail Liquor Merchants Licence, Wholesale Merchants Licence, Entertainment Venue Licence and General Facility Licence.
 - 1.3 The Category B licences are as per paragraph 4.2 of the Executive Summary.
2. I am recommending that the classes of licence be reduced to five as follows:
 - Hotel
 - On
 - Off
 - Special Circumstances
 - Limited
3. The ON licences will incorporate the existing Restaurant Licence, Club Licence, Residential Licence, Entertainment Venue Licence and most General Facility Licences. I am recommending the abolition of the General Facility Licence and a full discussion of that licence is dealt with in Chapter 6.
4. The OFF licences will include the existing Retail, Wholesale and Producers licences.

5. I have already dealt with the "need" requirements in my discussion of the regulatory regime in Chapter 3.
6. I deal in Chapter 7 with the details of how I envisage the new licences would operate as to their terms and trading conditions.
7. In relation to my suggested abolition of the General Facility Licence it will be necessary for those who hold a General Facility Licence at present, to have their licence converted. Because of the new trading hours which I am suggesting, it appears that most General Facility Licences will fall into an obvious category and where they do not, they are obviously a candidate for conversion of their General Facility Licence to the suggested Special Circumstances Licence. The Special Circumstances Licence is to take up those existing licences that do not easily fit into obvious categories and to allow the Court in its discretion to grant such a licence where special circumstances exist and no other licence is appropriate. It will not however require proof of "need" in the same manner as category A licences.

In the conversion of licences into new names it should be made clear, that no licensee will lose any entitlement under the existing licence but existing licensees who wish to continue to trade past midnight will have to have meals available. This will be a condition of any trade beyond midnight. Other criteria for trade after midnight are dealt with in Chapter 7.

8. New applicants for an ON licence will have to meet the requirements for extended trading which are discussed in paragraph 9.1 in Chapter 7.
9. PRODUCERS LICENCES AND THE NEED FOR REGULATION
 - 9.1 The producers of wine in South Australia are a vital cog in the economic and tourist development of South Australia.
 - 9.2 The former producers licence should now become an OFF licence with appropriate conditions attached.
 - 9.3 The licence should be capable of endorsement to allow consumption on the premises by way of tasting with or without a fee.
 - 9.4 Since 1985 the producer who makes retail cellar door sales is exempt from the payment of a normal licence fee and only pays \$179.00 per annum.

- 9.5 The industry has changed a lot since 1985 and now some producers operate large mail order businesses.
- 9.6 Smaller producers should continue to be exempted from the payment of a normal licence fee but should pay a nominal statutory licence fee. The cut off in the amount of sales should be about \$20,000 per annum.
- 9.7 I am advised that on present figures it would mean about half the producers in South Australia would be paying the nominal statutory licence fee.
- 9.8 On the face of it all cellar door sales are retail sales and should be assessable in the normal way. But large mail order businesses operating under a producers licence should not have the same exemption as a small producer. Therefore I have suggested a nominal cut-off point.
- 9.9 It has been submitted that there needs to be a definition of "producer", that "fermentation" should be defined and that the definition of "adjacent premises" needs attention. I deal with these matters in Chapter 7.

10. **RECOMMENDATION:**

I recommend that producers remain subject to regulation and that retail sales should be treated the same as other retail sales for the purpose of fixing a fee.

LIQUOR LICENSING REVIEW

CHAPTER 6

TERM OF REFERENCE IV

THE USE AND AVAILABILITY OF GENERAL FACILITY LICENCES

1. At present, a general facility licence authorises the licensee to sell liquor on the licensed premises at such times as are specified in the licence and subject to any conditions as are specified in the licence.
2. According to the Act, a general facility licence may be granted where special trading conditions are, in the opinion of the licensing authority, necessary for any one or more of the following purposes:
 - to provide adequately for the needs of those attracted to premises that, in the opinion of the licensing authority, are or will prove to be a substantial tourist attraction;
 - to provide adequately for the needs of those attending receptions;
 - to provide adequately for the needs of patrons of a cinema or other theatre at which cinematographic or theatrical entertainment of a high standard is provided;
 - to provide adequately for the needs of passengers in a ship, train, vehicle or aeroplane;
 - to enable a mining or construction company or authority that is undertaking a project in a remote area to provide adequately for the needs of its employees working in that area;
 - to enable the following sporting authorities to provide adequately for the needs of those attending sporting events and other functions at the following sporting grounds;
 - (i) the South Australian National Football League in respect of Football Park;
 - (ii) the South Australian Cricket Association in respect of Adelaide Oval;

(iii) the South Australian Jockey Club in respect of Morphetville Race Course;

- to enhance the use of premises that are of national, historic or architectural significance and have at some time in the past been licensed as a hotel;
 - to enable tertiary educational institutions to provide adequately for the needs of students, staff and visitors.
3. The Act provides that a general facility licence shall not be granted if, in the opinion of the licensing authority, some other licence would be reasonably adequate for the purposes for which the general facility licence is sought.
 4. Before granting an application for the grant or removal of a general facility licence, or for variation of a condition affecting the trading right conferred by such a licence, the licensing authority shall take into account the probable effect of the grant, removal or variation on the trade conducted from other licensed premises in the relevant locality.
 5. The general facility licence has been granted in a wide variety of circumstances, including boats, sporting clubs, pool halls, accommodation, universities, function centres, bottle shops, markets, mining clubs, caterers, buses, entertainment venues, wineries, limousines, cafes and restaurants, theatres and hotels. Clearly, many of the grants have been within the appropriate subsections of the Act.
 6. However, it is my view that many of the grants of general facility licences have required a strained interpretation of the Act which has led to a broader range of premises successfully gaining the licence. This has achieved either an extension of trading hours or imposing certain conditions because there was no other appropriate licence. Judicial inventiveness in this area however, has led to some confusion as to the width and purpose of the general facility licence. It has become difficult for the Police to know exactly how to enforce the many and varied conditions of these licences.
 7. As a result of my recommendations, especially in relation to trading hours and conditions for hotels and restaurants, a great number of general facility licences which now exist will automatically revert to either an Hotel licence or an ON licence, with appropriate conditions. It has been suggested to me that approximately 60% of the total number of general facility licences are as a result of a conversion from a hotel licence because of a need to trade on Sunday after 8.00pm without the necessity of a meal.

8. As this report recommends the removal of the requirement for hotels to provide entertainment after 12.00 midnight and the removal of the restrictions on Sunday trading and also allows for the potential consumption of liquor without a meal in a restaurant subject to an endorsement being granted, the main reasons for applications for a general facility licence from hotels and restaurants will have been removed.
9. However, there are many other facilities i.e. boats, limousines, pools halls, theatre and function centres to name a few, which may be unable to obtain a licence to sell and supply liquor if this type of licence were removed completely. The licence has been used very much as a "licence of last resort" in circumstances where novel enterprises wish to obtain a liquor licence and cannot fit within any of the traditional categories. To abolish the licence completely because of its wide and varied interpretation in the past would be to not recognise the advantages which this type of licence has provided.
10. **RECOMMENDATION:**
 - 10.1 The general facility licence should be renamed "special circumstances licence" which makes it clear that the licence is only appropriate in instances which are novel and/or new and not as an "add-on" to an existing traditional category licence to circumvent the restrictions and conditions which apply to that licence.
 - 10.2 Further there should be no equivalent of section 43(3) which requires the licensing authority to take into account the probable effect of the grant, removal of variation on the trade conducted from other licensed premises in the relevant locality. This provision is not in accord with the National Competition Policy Principles and as such should be removed from the Act.
 - 10.3 In addition to my recommendation in paragraph 10.2, I consider that this new special circumstances licence should not require proof of need, in other words, it is not to be a Category A licence.
 - 10.4 I discuss the licence again in paragraph 13.9 in Chapter 7 and in particular how a changeover to another licence in a transitional period 12 months should be allowed.

LIQUOR LICENSING REVIEW

CHAPTER 7

TERM OF REFERENCE V

CURRENT TRADING HOURS AND LICENSEES OBLIGATIONS

1. I have recommended more liberal trading hours, which will be balanced by stricter obligations on licensees. These extended trading hours will not be granted unless the applicant is able to satisfy the Court of the matters which I have set out hereunder.
2. A licensee's obligation will now very much involve an acceptance by the licensee of responsible service standards and failure to comply with those standards could mean the potential for the licence to be suspended because the licensee is not a fit or proper person.
3. In the course of my review I became familiar with the patterns of trading in other States and in New Zealand and it is fair to say that whilst initially there was a general relaxation of trading hours so that licences could potentially operate throughout 24 hours, the move has more recently been away from that trend. This has occurred because of difficulties encountered, especially in the early hours of the morning, when people coming to work are confronted by intoxicated persons emerging from premises which trade late.
4. The New South Wales government is presently undertaking a review of late trading specifically because of these types of problems.
 - 4.1 Late trading generally impacts on local neighbourhoods and involves liquor related violence and anti-social behaviour which more often than not takes place in the early hours of the morning.
 - 4.2 As I have said, this involves a problem for people going to work who are confronted with people affected by liquor emerging from late night trading premises.
 - 4.3 There have been concerns expressed to me about 24 hour trading by those responsible in other States and in New Zealand for administering the Liquor Licensing laws. As a result 24 hour trading has been restricted by interpretations of the respective

Acts which have resulted in closing hours in many cases around 3.00am.

5. Much of the anti-social behaviour, which occurs in and around late trading venues in the early hours of the morning, cannot be said to be in the broader community interest because it tends to create unsafe precincts.
6. Late trading leads to all of the problems which should be avoided by the responsible service of liquor including:
 - intoxicated patrons moving from one late trading premises to another;
 - patrons continuing to drink for as long as the premises stay open;
 - venues stay open only because their competitors do;
 - some licensees are willing to serve intoxicated patrons;
 - the behaviour of intoxicated patrons when refused admission to premises;
 - the problems with policing and the costs associated with policing in the early hours of the morning;
 - noise, violence and anti-social behaviour.
7. As against this of course there are some obvious benefits from late night trading. There is an increased consumer choice for recreational and entertainment opportunities for the general community, a choice of venues for particular community groups including shift workers and the development of tourism that is important to the South Australian economy.
8. I have had to balance all of these factors in forming my conclusion that it is in the general interest of the broader community that late night trading be permitted but only subject to strict requirements. An applicant for trading for consumption on licensed premises after midnight should have to have to prove certain matters rather than it be an automatic right just because the premises are deemed to be of high standard and provide entertainment.
9. I have therefore attempted to place all types of licence which may wish to trade after midnight on the same footing. Trading after midnight should only be allowed by the licensing authority if it is satisfied that the trading is in accordance with the following criteria:
 - 9.1. the licensing authority is to refuse an application for extended trading unless the authority is satisfied that (as soon as the application is granted)

- practices will be in place at the licensed premises (to ensure as far as reasonably practicable) that liquor is sold, supplied and served responsibly on the premises, and
- all reasonable steps will be taken to prevent intoxication on the premises and that those practices will remain in place

9.2 the extended trading is for the benefit of the general community and, in particular, that the extended trading would be unlikely to result in undue offence, annoyance, disturbance, noise or inconvenience.

9.3 Meals are made available during any extended trading and that this fact is prominently displayed.

10. It seems to me that if those principles are applied to all venues which engage in late night trading then the licensing authority will be in a good position to monitor and control the grant of any extended trading and to impose sanctions upon those not willing to comply with the responsible service principles. In appropriate cases where the criteria set out above can be established then it may be possible to trade 24 hours.

11. In relation to paragraph 9.3, the meal should not be a token meal but should be a meal of some substance and I recommend guides to acceptable types of meals should be the subject of regulations which form part of the responsible service principles as already discussed.

12. Licensees Obligations Regarding Service to Intoxicated Persons

12.1 In some of the interstate legislation the question of service to intoxicated persons is dealt with by incorporating guides to this in the regulations relating to responsible service of liquor.

12.2 The question has been raised as to whether "intoxication" should be defined. I have come to the view that it is impossible of definition, but that the signs of intoxication are well known in relation to a patrons physical and/or mental condition. The question of intoxication has been a matter of interpretation by the Courts over many years, to quote a few examples:

- "Impartial people of common sense, who are themselves sober, are able to make such a decision".

- "Intake of a quantity of alcohol which exceeds the individuals tolerance and produces behavioural or physical abnormalities"
- "Simple observation of people intoxicated with alcohol suggest that their ability to react to the environment is impaired"
- "The amount of alcohol required to achieve a given level of effect (for instance a certain state of intoxication) will be smaller for the novice drinker."
- "To be intoxicated, in the legal sense, it is not necessary to be dead drunk any more than to be ill it is necessary to be dying. It suffices that an individual be affected by alcohol to the point of no longer having his normal control, his judgment, or in a word, that he no longer has the use of all his intellectual or physical faculties."
- "to be very materially affected by liquor, including drunkenness and is such that a person's mental or bodily faculties are so far disturbed by the influence of liquor that an average person who is neither a republican or a prohibitionist would say that is improper for him or her to be supplied with more liquor".

12.3 The Act in section 115a states "if liquor is sold or supplied on licensed premises to a person who is intoxicated, the licensee, the manger of the licensed premises and the person by whom the liquor is sold or supplied are each guilty of an offence. However it is a defence to a charge for such an offence for the defendant to prove:

(a) if the defendant is the person by whom the liquor was sold or supplied - that he or she believed on reasonable grounds that the person to whom it was supplied was not intoxicated; or

(b) if the defendant is the licensee or manager of the licensed premises and did not personally sell or supply the liquor - that he or she exercised proper diligence to prevent the sale or supply of the liquor in contravention of subsection 1".

12.4 In the Northern Territory in a recent amendment the offence of serving to intoxicated persons has been made a regulatory offence. In summary in the Northern Territory:-

- The prosecution must establish that the customer was intoxicated.
- It is no longer necessary for licensees or their staff to have knowingly or intentionally served liquor to an intoxicated person to be guilty of an offence.

- To defend a prosecution the licensee must prove the customer was not intoxicated and under this regime licensees are liable for offences committed by their employees. The Courts in the Northern Territory will accept readings from breath analysis machines as evidence. I recommend that South Australia should follow this legislation.
- 12.5 The question of refusal of service to intoxicated persons should be made simpler for licensees and their staff. Staff should be able to simply point out the likely consequences to customers and that can be made easier by prominent notices displayed in licensed premises regarding the penalties for service to intoxicated persons.
- 12.6 There are many suggested signs which indicate intoxication and these are set out in numerous publications put out by each of the States and Territories under their responsible service of liquor programs. Licensees and staff should be educated as to the appropriate techniques to use to advise patrons immediately their behaviour becomes unacceptable. The suggested Board should be actively involved in education and monitoring of this requirement and should prepare a number of informative publications on this topic.

13. RECOMMENDED CONDITIONS OF LICENCES

- 13.1 I am now including a summary of how in my view the licences which I have recommended should operate in relation to my suggested trading conditions.
- 13.2 **Hotel Licence**
 - 13.2.1 The licensee of the hotel should be authorised to sell liquor on the licensed premises for consumption on or off the licensed premises;
 - (a) on any day of the year between 5.00 a.m. and midnight; and
 - (b) to sell liquor for consumption on the licensed premises after midnight if the licence is endorsed so that it is a condition of the licence that meals must be available to the public continuously after midnight until trading ceases or until 5.00 a.m. whichever is the later.

- 13.2.2 The licensing authority must be satisfied on the application of any licensee who holds a hotel licence and who wishes to trade beyond midnight that the criteria set out in paragraph 9.1 of this chapter have been satisfied.
- 13.2.3 The question of entertainment on licensed premises is dealt with under Term of Reference VII in Chapter 9, but all entertainment must be approved by the licensing authority.
- 13.2.4 The holder of a hotel licence should no longer have an obligation to provide meals during certain hours but must have meals available if the licence is to operate beyond midnight.
- 13.2.5 The holder of a hotel licence should no longer have an obligation to provide accommodation.

13.3 ON Licence (Previously Residential)

I cannot see any reason to alter this licence in respect of its trading hours or obligations except to ensure that the same criteria for extended trading, as set out in paragraph 9.1 of this chapter are satisfied. It would also be consistent with my views that section 28(1)(b) be deleted and that section 29(1)(b) be likewise deleted.

13.4 ON Licence (Restaurant)

- 13.4.1 For trading under the basic licence the conditions should be the same but again subject to the same criteria that applies to all trade after midnight and as set out in paragraph 9.1 of this chapter.
- 13.4.2 There should be available the potential for the holder of a restaurant licence to seek an endorsement to enable liquor to be served without a meal.

It should be subject to these provisions:

- if the predominant business is the supply of meals to the public for consumption off the premises (take-away) an endorsement shall not be granted.
- the holder of a restaurant licence, where the predominant business is the supply of meals for consumption on the premises, may apply to the licensing authority for an endorsement enabling the

licensee to sell liquor without meals providing that it is a condition of the licence that:

- (i) the endorsement cannot be applied for unless the applicant has been trading, in the premises the subject of the application for endorsement, for a period of at least one year;
- (ii) the applicant must establish the matters set out in paragraph 7.2 of chapter 1.
- (iii) As this is an application to vary the conditions of a licence the applicant will have to satisfy the licensing authority of the fact that the endorsement is in accordance with the objects of the Act, see Chapter 1, paragraph 1.

13.4.3 With regard to B.Y.O. it is my view that the existing section be amended so that there is no longer an endorsement but that it be a condition of all restaurant licences that liquor may be consumed on the licensed premises.

13.5 ON Licence (Entertainment)

It should be the same as an ON (Restaurant) Licence except that entertainment must be provided and must be approved by the Court. If a licensee seeks to trade after midnight the licence should be subject to the same criteria as set out in paragraph 9.1 of this chapter for extended trading. The entertainment approval must stipulate the times when entertainment can be provided and the part or parts of the licensed premises in which it can be provided.

13.6 ON (Club Licence)

13.6.1 Again if there is to be trade after midnight the same criteria in paragraph 9.1 of this chapter must be satisfied.

13.6.2 The existing provision dealing with OFF premises sales should remain. Section 34(5)(b) should be removed. Clubs with an existing authority should apply within 12 months to establish their entitlement under section 34(5)(c) or their authorisation would expire at the end of 12 months.

- 13.6.3 The distinction between restricted and unrestricted club licences should be removed.
- 13.6.4 All holders of a club licence should be able to purchase their liquor from any wholesale or retail source and wholesale purchases should be assessable for the purpose of licence fees.
- 13.6.5 All clubs whether they have gaming machines licences or not should be entitled to the same trading conditions subject of course to satisfying other requirements as to extended trading etc.
- 13.6.6 The requirements regarding visitors, the number of visitors and the visitor's books, should be made optional. Clubs can then make their premises available for receptions and private functions without the artificial "signing-in" requirements which are now observed in the breach.
- 13.6.7 Clubs should be able to operate their own booths in and around the licensed premises by supplying their own liquor instead of applying for a limited licence.
- 13.6.8 A club should have the exclusive right of occupancy of the licensed premises but only during the those times when the licence is in force.
- 13.6.9 Section 34(5)(a) is anti-competitive and should be removed. Those clubs should retain their existing approved hours but if none are approved they should be subject to the ordinary criteria as set out in paragraph 9.1 of this chapter.
- 13.6.10 Entertainment should not be provided on club premises without the consent of the licensing authority.

13.7 OFF (Retail)

- 13.7.1 This licence should authorise the licensee to trade between 8.00am and 9.00pm every day of the year. This makes section 37(2) superfluous.
- 13.7.2 The licence shall authorise the holder to conduct tastings in the licensed premises during such times as the licensed premises are open and to charge a fee for such tastings.
- 13.7.3 I recommend that sub sections (3),(4) and (5) of section 38 remain but that sections 38(1) and (2) be deleted.

13.8 OFF (Wholesale)

I believe this licence should remain in its present form, except that in the case of sales to liquor merchants the 4.5 litre minimum quantity be removed. Some merchants wish to purchase smaller amounts of expensive wines and should be permitted to do so. The 4.5 litre limit should remain for sales to unlicensed persons under the 10% rule.

13.9 OFF (Producers)

13.9.1 The holder of a producer's licence should be authorised to trade every day of the year including Good Friday where there is a significant tourist demand for cellar door sales.

13.9.2 The holder of a producer's licence should be authorised to charge a fee for tastings.

13.9.3 Section 41(4) should be amended to provide that production be defined as:-

- (a) in the case of beer; if it was brewed by or under the control or direction of that person and is uniquely that person's product;
- (b) in the case of spirits - if it was distilled by or under the control or direction of that person and is uniquely that person's product;
- (c) in the case of wine
 - (i) if it was fermented by or under the control or direction of that person and is uniquely that person's product;
 - (ii) if it was produced by blending and a substantial proportion of the wine used for the purpose of blending was fermented from produce grown or produced in Australia.

Section 41(5) should in my opinion be amended to provide that:-

"in determining whether the wine was fermented, maturation of the wine after final bottling shall be disregarded".

13.9.4 I suggest that an applicant for a producers licence be required to satisfy the licensing authority

- (a) that the person produces or will produce liquor of the kind sought to be authorised for sale under the licence in accordance with section 41(4) (as discussed above)
- (b) that the operation undertaken in pursuance of the licence is or will be primarily and predominantly the production and sale of liquor.

13.9.5 I suggest that provision also be made for guidelines or principles of production to be prescribed in regulations and that in satisfying itself as to the criteria the licensing authority must have regard to these. If this is adopted I recommend that principles or guidelines be developed in conjunction with the industry.

I recommend that provision be made "for liquor produced by a related body corporate to be deemed to have been produced by the licensee."

I recommend that a producer's licence authorise the licensee:

- (a) to sell liquor produced by the licensee to a liquor merchant, at any time, on the licensed premises for consumption off the licensed premises; and
- (b) to sell liquor produced by the licensee to a person who is not a liquor merchant, from 5.00am to midnight on the licensed premises for consumption off the licensed premises.

13.10 Special Circumstances Licence

13.10.1 A special circumstances licence should authorise the licensee to sell liquor on the licensed premises -

- (a) at such times as are specified in the licence; and
- (b) subject to such conditions as are specified in the licence.

13.10.2 A special circumstances licence may be granted where in the opinion of the licensing authority special circumstances exist which require the sale and supply of

liquor to members of the public.

- 13.10.3 A special circumstances licence shall not be granted if, in the opinion of the licensing authority, some other licence would be reasonably adequate for the purpose for which the special circumstances licence is sought.
- 13.10.4 For any extended trading the criteria set out in paragraph 9.1 of this chapter should also apply. Entertainment must also be approved by the licensing authority.
- 13.10.5 The holder of any existing general facility licence should have 12 months to convert to another type of licence including a special circumstances licence if that is appropriate.

13.11 Limited Licence

- 13.11.1 The limited licence in my view should be limited to only two circumstances as follows:-
- (1) Where a licensee seeks to extend his or her trading rights for a special or one off occasion by either adding hours or adding area to the licensed premises.
 - (2) In relation to the sale of liquor by unlicensed persons for a special occasion.
- 13.11.2 Applicants for a limited license should be required to satisfy the same criteria as to the objects of the Act, including any trading after midnight. For instance an application should not be granted unless the authority is satisfied that meals will be made available. Section 46(3) would then be superfluous.
- 13.11.3 My recommendation is that a document be prepared which sets out the details of the regulations regarding responsible service. An applicant for a limited licence should then be required to sign a statutory declaration before being granted the licence indicating that he or she has read and understood the principles of responsible service of liquor. This would not apply of course to an existing licensee but only to an unlicensed person.

- 13.11.4 Section 47(1) is anti-competitive and should be removed and so also should section 47(2).
- 13.11.5 Section 48(1)(c) should be reworded to provide that the authority may refuse an application where in its opinion the frequency of such limited licences is such that the activity would best be authorised by the grant of a primary licence or by the imposition of conditions on an existing licence.
- 13.11.6 The forms for a limited licence should be simplified from the existing six or seven forms which I understand can be used. There should be one form for any application to extend the licensee's rights and another form for an unlicensed person seeking to sell liquor.
- 13.11.7 It has been suggested that the limited licence should revert to a previous description, namely, a "permit to sell liquor". I think that it is probably important to call it a licence so that anyone taking the responsibility for selling or supplying liquor is not under the impression that it is something minor. This is especially so having regard to responsible service principles.
- 13.11.8 Submissions have been made as to the necessity for obtaining a limited licence to consume liquor if someone has supplied the liquor, for instance at a wedding reception in a hired hall, or where people bring their own liquor, for instance a quiz night in a school hall.
- 13.11.9 Public interest considerations consistent with the objects of the Act in my view still require regulation of liquor in a public building. With the exception of "dry areas" under section 132, members of the public can drink liquor in public places - parks and gardens for instance.
- 13.11.10 There is the concept of regulated premises in the Act. These are defined in section 4. If controls over consumption were deregulated then it would allow for no control over the consumption of liquor in public halls.
- 13.11.11 I recommend that insofar as regulated premises are concerned that consumption of liquor continue to be regulated.

LIQUOR LICENSING REVIEW

CHAPTER 8

TERM OF REFERENCE VI

**THE SALE AND SUPPLY TO AND CONSUMPTION
OF LIQUOR BY MINORS**

1. Part VII of the current Liquor Licensing Act is generally in my view a reasonably workable section.
2. Because of the emphasis on minimisation of harm and responsible service and consumption principles to be incorporated into the legislation, minors and intoxicated persons are the obvious potential customers in respect of which a licensee should be required to take a stand. Licensees should implement rigid systems of control by continually reminding staff of their responsibilities in not serving those persons.
3. It is well known that minors are at present being sold and supplied liquor on licensed premises and it is my view that this matter should be dealt with even more harshly by the licensing authority.
4. There are a number of offence provisions in the Act which deal with sale and supply of liquor to minors and areas of the licensed premises which may be declared out of bounds to minors. Where liquor is sold or supplied to a minor on licensed premises, the licensee, the manager of the licensed premises and the person by whom the liquor is sold or supplied are each guilty of an offence.
 - 4.1 This offence attracts a penalty of up to \$15,000 if the person is the licensee or the manager and \$4,000 for any other person.
 - 4.2 It is a defence to this charge to prove that, if the defendant is the person who sold the minor liquor, he or she believed on reasonable grounds that the person was above 18 years and that the person was actually above 17 years. The licensee or manager must prove that the business was not conducted in such a way as to entice minors to the part of the premises in which the liquor was sold to the minor. Further, it must be shown that the licensee and the manager exercised proper diligence to prevent the sale or supply of liquor to the minor.

5. If the person by whom the liquor is sold or supplied (or a member of the Police Force) suspects on reasonable grounds that the minor is under 18 years of age, he or she may require the person to produce evidence, to his or her satisfaction, of the person's age.
- 5.1 At present, a proof of age card can be obtained from the Registrar of Motor Vehicles, upon presentation of one primary proof document and one secondary proof document. Appendix "C" is an "Application For Proof of Age Card" and indicates what constitutes a primary and secondary proof document. The card can then be collected from the local police station and the same documents are to be produced when the card is available for collection. This procedure is to lessen the instance of proof of age cards being obtained illegally.
- 5.2 It is recommended that the defences for sale or supply of liquor to a minor be removed and that the offence become a strict liability offence. It is my view that sale or supply of liquor to a minor is of such gravity that the legislation should reflect this. Such an amendment would ensure that licensees, managers and employees would deal with this matter with the upmost care and take time and effort to ensure that a person is over the age of 18 years. The proof of age should be by one of the following:
- South Australian proof of age card;
 - interstate proof of age card;
 - South Australian Drivers Licence;
 - interstate Drivers Licence;
 - passport.
- This will ensure that licensees, managers and employees have a reliable system by which to ascertain the age of a person requesting liquor if there is a doubt that he or she is of or above the legal age.
- The only defence available for sale or supply of liquor to a minor should be where the proof of age document has either been obtained fraudulently or fraudulently interfered with.
6. The existing penalties for a manager and other staff are already severe and should be maintained in the same form and with the existing penalties. With an increased emphasis on responsible service any licensee should be in the position of being brought before the licensing authority to show cause why he or she should not have that licence suspended or cancelled when found in breach of the Act in serving a minor.

- 6.1 I recommend that the licensee should be dealt with expeditiously by the licensing authority and subject to a suspension of his or her licence, even for a first offence. Accordingly, it is my view that the licensing authority should consider suspending the licence for a period as considered appropriate by the licensing authority, in addition to the fine already imposed in the section.
7. It is already an offence if the licensee permits a minor to consume liquor on the licensed premises, punishable by a \$15,000 fine.
8. A person who, acting at the request of the minor, purchases liquor on behalf of the minor on licensed premises, is also guilty of an offence (as is the minor) and liable for a fine of \$2,000.
- 8.1 It is my view that this provision is too low and that the penalty for purchasing liquor on behalf of a minor should be doubled to \$4,000 (or division 6 fine).
9. There are also provisions in the Act in section 119(1) which provide that a licensee, with the approval of the licensing authority, may declare certain areas to be out of bounds to minors. A notice indicating this must be erected at the entrance to that part of the licensed premises. If a minor enters this area, the licensee, the manager, an employee of the licensee or a member of the Police Force may require the minor to leave and, if the ~~minor refuses to do so, exercise reasonable force to remove him or her~~
This should be retained.
10. Further, there are provisions which prevent a minor entering or remaining on certain licensed premises. These include a part of licensed premises defined in a late night permit at any time when liquor may be sold in pursuance of the permit, or in a licensed premises holding a general facility licence (between midnight and 5.00am) unless a designated dining area or an approved area for minors, and in licensed premises holding an entertainment venue licence and selling liquor.
- 10.1 These latter provisions were recently amended (Liquor Licensing (Miscellaneous) Amendment Act, 1995, No 31 of 1995) to standardise the requirements in this area for general facility licences and to strengthen the conditions in many licences which specifically restrict minors on licensed premises. These provisions should be retained in relation to the equivalent new licences recommended.
- 10.2 As has been stated elsewhere in this submission, a general facility

licence will be replaced by a special circumstances licence. There will also no longer be a need for a late night permit. It is my view that the same restrictions on minors being present on the licensed premises should still apply.

- 10.3 Licensees should also be permitted to make application to the licensing authority to have certain areas approved for minors and such approval may be granted if the licensing authority in its discretion considers such approval appropriate to the individual circumstances. This would allow minors to attend dances in country towns where it may be a community or family occasion.
11. Minors undertaking a prescribed hospitality industry course of trading should be able to sell, supply or serve liquor as part of their work experience.
12. A minor who is an employee or performer should be allowed on licensed premises after midnight if engaged in the course of employment.
13. I recommend that minors who are charged with any offences in Part VII of the Act should be liable to have the appropriate penalty expiated.
12. **RECOMMENDATION:**
 - 12.1 The provisions dealing with minors should be further strengthened by removing the defences (other than fraud) to the sale and supply of liquor to minors and requiring a licensee to show cause why his or her licence should not be suspended when such an offence is committed.
 - 12.2 I also recommend that the penalty for the offence of purchasing liquor on behalf of a minor should be increased to \$4,000 (equivalent to a division 6 fine).
 - 12.3 The penalty for a minor charged with offences under the Act should be expiable.

LIQUOR LICENSING REVIEW

CHAPTER 9

TERM OF REFERENCE VII

ENTERTAINMENT ON LICENSED PREMISES

1. The Act defines "entertainment" to mean a dance, performance, exhibition or event (include a sporting contest) calculated to attract and entertain members of the public.
2. An entertainment venue licence authorises the licensee:
 - (a) to sell liquor at any time to a diner for consumption on the licensed premises, in a designated dining area, with or ancillary to a meal provided by the licensee;
 - (b) to sell liquor on the licensed premises for consumption on the licensed premises at any time between 9pm of one day and 5am of the next, being a time at which live entertainment is being provided on the licensed premises.
3. The holder of an entertainment venue licence is not authorised to sell liquor on the premises at certain times, including Sunday after 9pm, Christmas Day and various times over the Easter break.
4. The Act provides that an entertainment venue licence shall not be granted in respect of, or removed to, premises unless the licensing authority is satisfied that the premises are of an exceptionally high standard and that the grant or removal of the licence is unlikely to result in undue offence, annoyance, disturbance, noise or inconvenience.
5. An entertainment venue licence is subject to a number of conditions, namely that the licensee maintain the premises so as to ensure that they do not cease to be of an exceptionally high standard, that liquor is consumed with or ancillary to a meal (in a designated dining area) and at a time when live entertainment is being provided on the licensed premises.
6. In my view the licensing authority should retain the role of approving all forms of entertainment on all licensed premises both as to the type of entertainment and as to the hours during which entertainment is to be provided.
7. In the Act, entertainment has become the condition precedent for a hotel to obtain late night trading conditions. Live entertainment has to be provided to

qualify for a late night permit as an endorsement to a hotel licence. Many submissions which have been made point out the irony in being able to trade after midnight, but only with live entertainment. This means that noisy bands then intrude on the peace and quiet of the locality.

8. It is my view that it is quite inappropriate to require hotels especially those situated in residential areas to create noise after midnight to entitle them to have longer trading hours. Many of the contested matters in court involving noise disturbances relate to hotels with late night entertainment.

9. **RECOMMENDATION:**

9.1 Therefore, I recommend that live entertainment as a prerequisite for late night trading be discontinued and that the criteria which I have set out in paragraph 9.1 of Chapter 7, become the relevant criteria to determine whether a hotel or any other licence for consumption on premises, should trade beyond midnight.

9.2 I further recommend that the licensing authority should retain the role of approving all forms of entertainment on all licensed premises and authorising the times when such entertainment can be provided.

LIQUOR LICENSING REVIEW

CHAPTER 10

TERM OF REFERENCE VIII

ENFORCEMENT OF THE LEGISLATION

1. In the submissions made to me I have received a mixed response as to whether there should be either or both the Liquor Licensing Authority and the Magistrates Court as the means of enforcement of the Act.
2. I have discussed these matters with many people including the Chief Justice, the Licensing Court Judge, the Liquor Licensing Commissioner, industry groups and the Police.
3. I have had some submissions which put the view that all enforcement should be by the licensing authority. The majority view is that penalties are quite often very light in the Magistrates Court because it is said that it requires a specialist knowledge of the workings of the liquor industry to assess the significance of some of the offences.
4. Because of the predominance of recommendations of responsible service and accountability by licensees, I believe that there should be an increased number of matters brought before the licensing authority. There should be some means of getting before the licensing authority in a summary way with a "show cause" procedure. The ultimate sanction which impacts on a licensee is a suspension or cancellation of the licence and this power already resides in the licensing authority. It should be availed of more frequently.
5. Where a licensee is guilty of an offence which illustrates a disregard for responsible service principles and in particular where a licensee serves liquor to intoxicated persons or to minors, or where he or she trades without due consideration for those who reside nearby, the licensing authority should be the body to deal with that licensee.
6. Section 125A of the Act has only recently been introduced and now provides the disciplinary procedures which I am endorsing. This new provision rectifies an existing deficiency in the Act whereby disciplinary actions can only be maintained against existing licensees. The amendments will result in the ability of the Licensing Court to discipline persons other than existing licensees, ie approved or former approved

managers, persons who occupy or have occupied positions of authority in bodies corporate holding licences and persons deriving financial benefit from a liquor licence.

There will now be the option of a maximum fine of \$15,000 and an extended ability for the Licensing Court to impose periods of suspension and disqualification from being approved or licensed under the Act.

Provision is also made for a person in authority to be vicariously liable for misconduct on the part of the licensed body, unless the person could not have prevented the misconduct by real diligence. I would hope that the procedure would be availed of increasingly by the Liquor Licensing Commissioner, by the Commissioner of Police and by the council in whose area the licensed premises are situated, or indeed by any person aggrieved by the subject matter of a complaint. The penalties are severe. Recent use of this provision before the Licensing Court has on all accounts been successful.

7. **RECOMMENDATION:**

- 7.1 The Licensing Court should deal with all offences under the Act and with offences committed by licensees under the *Gaming Machines Act, 1992*.

LIQUOR LICENSING REVIEW

CHAPTER 11

TERM OF REFERENCE IX

THE CONSUMPTION OF LIQUOR IN PUBLIC PLACES AND DRY AREAS

1. The control of consumption or possession of liquor in public places is dealt with in section 132 of the Act and by the use of by-laws under the *Local Government Act* pursuant to sections 667.8 IV and XXXI.

Section 132 states as follows:

"A person who, in a public place

(a) consumes liquor; or

(b) has possession of liquor,

in contravention of a prohibition imposed by regulation is guilty of an offence."

Each council has the power under the *Local Government Act* to make a by-law controlling the possession and consumption of liquor in public areas they control or manage ie squares, plantations, ornamental gardens, parklands and reserves and parts of the foreshore or its reserves.

2. On 3 December, 1990 Cabinet approved guidelines for the approval of dry areas. These guidelines which are still in use provide that no new dry areas will be declared except:-
 - (a) on application of the Commissioner of Police, the Liquor Licensing Commissioner, or a council, for specific events, where the prohibition is designed to assist in control of substantial crowds or to ensure public safety;
 - (b) on the application of a council which must submit with its application a broad local level strategy to address public nuisance and for preventing anti-social behaviour and/or providing appropriate care and rehabilitation for individuals abusing liquor;
 - (c) on application from the group who will be the principal target of the prohibition. Further, the group must submit a broad local strategy and a family impact statement, as would a council.

3. Since 1991, a number of areas have been declared dry by regulation. One view which has been expressed, is that applications under section 132 have been allowed without being accompanied by a well developed prevention plan based on consultation or co-ordination of resources. Further, it is claimed that the 12 month ban period has become an annual renewal rather than a demonstration by the council that other measures are in place to address the issue of liquor abuse in conjunction with the dry area.
4. A number of different bodies and organisations have made submissions in relation to dry areas. Some of these views are summarised as follows:

4.1 Local Government

- 4.1.1 The Local Government Association made a submission, based on existing LGA policy and on comments received from councils, that councils should have the power to declare a dry area to prohibit the consumption of liquor and confiscate liquor on reserves, roads and all land vested in council. It was further submitted that where the declaration of a dry area will affect certain members of the community, the council should consult with the parties affected.
- 4.1.2 The City of Port Augusta have put in a submission which notes that it was the first local government authority to approach the State Government for the declaration of areas prohibiting the consumption of liquor in public. The submission states that, in agreeing to implement the dry area, the Government did not immediately implement the other recommendations contained within the council's submission i.e. a Sobering-Up Centre or Detoxification Centre to allow for the accommodation of people in a detoxification program without having to return to the environment in which their alcoholic problems began.

While the establishment of a Sobering-Up Centre at Port Augusta did follow some years later, there has been no further development of facilities for the care of those suffering from chronic liquor and drug abuse.

Port Augusta has now established a Mobile Assistance Program and employed a social worker to co-ordinate a series of initiatives which are targeted at those suffering from drug and particular liquor abuse.

It is the view of the City of Port Augusta that the State and Commonwealth Government's must direct some of the revenue raised as a result of the sale and supply of liquor back to local councils to enable appropriate programs to be instituted to deal with the causes of liquor abuse.

4.2 **Police**

4.2.1 The Police have made submission that there are many functions at which problems occur as a result of liquor abuse. The Police have requested that the Commissioner of Police be empowered to declare an area a dry zone, prohibiting the consumption of liquor on a temporary basis in respect of a special event.

4.3 **Aboriginal Groups**

4.3.1 **ALRM**

This submission notes that a number of Aboriginal groups in South Australia support the imposition of dry areas and a number do not. The submission requested that an imposition for a breach of the dry areas regulation should be balanced with an effective control of supply from licensees to drinkers. A number of issues were raised in this context as needing to be addressed including "sly grogging", illegal resale of liquor by unlicensed persons and the supply of take-away liquor contrary to the dry area regulation.

4.3.2 **Pitjantjatjara Council Inc**

Anangu Pitjantjatjara, under the Pitjantjatjara Land Rights Act, 1981, effected the Pitjantjatjara Land Rights (Control of Alcoholic Liquor) By-Laws 1987. This By-Law prohibits Anagu from possessing or consuming liquor on any part of the Lands.

This submission is also made on behalf of the Ngaanyatjarra Lands, Imanpa, Docker River, Mutitjulu and the Fink community.

This submission argues very strongly for the retention of dry areas on the basis that it allows a measure of control for Aboriginal communities over the problems and consequences of drinking in the community. In particular, the direct link between availability of liquor and the incidence of domestic violence is raised.

It is also submitted that dry areas would operate more effectively if in combination with other structures to restrict the availability of liquor i.e. restrictions on sale of liquor from surrounding outlets and more enforcement of the prohibitions against illegal resale of liquor and "sly grogging".

While it is acknowledged that most of the Aboriginal people represented in this submission are not within the South Australia area, it is noted that the concerns raised and arguments put would be just as applicable in the South Australian context.

4.3.3 Department of State Aboriginal Affairs

This submission notes that, since 1985, a number of Aboriginal communities and country towns with Aboriginal members have utilised section 132 of the Liquor Licensing Act, 1985 to declare an area "dry" and thereby address the social consequences of abuse of liquor.

However, it is submitted that dry areas have had a negative impact insofar as it has resulted in Aboriginal drinkers coming into contact with the criminal justice system. It is also argued that dry areas lead to drinkers migrating to neighbouring areas to access liquor, resulting in violence and other social problems.

DOSSA argues that the application of dry areas should be balanced with increased vigilance in the areas of sly grogging, illegal sale and supply of liquor and the provision of credit facilities by licensees who receive direct payment through social security cheques.

DOSSA is of the view that encouraging liquor consumption in moderation would seem a preferred option when compared with prohibition.

5. COOBER PEDY

- 5.1 It was suggested by representatives of DOSAA that I travel to Coober Pedy, where a dry area came into effect on 13th August, 1996. I met with members of the local community to discuss the problems of liquor abuse in the town and the effects of the recently imposed dry area.
- 5.2 I met with representatives of the Umoona Community Council, local licensees and the local crime prevention officer at Coober Pedy.
- 5.3 I learned that there had been a significant problem within the township with public intoxication and its attendant consequences, ie violence, road accidents etc etc, until the imposition of the dry area. Licensees reported that the removal of intoxicated people from in and around their premises, had led to a much improved trading atmosphere which would be of appeal to tourists.

- 5.4 The local Aboriginal members reported, however, that the problems associated with liquor had now been forced back into the Aboriginal community and that there was an increase in violence and disruption in the community. Umoona Community Council should consider making an application for a dry area for its community under the *Lands Trust Act*. It was clearly put to me that a dry area must operate in conjunction with long-term programs to address the underlying causes of liquor abuse. It was stated that the dry area cannot operate alone as it will simply relocate the problem from one area to another.
6. Most of my attention in relation to dry areas has been directed to country centres where there as been a general public intoxication problem and involving some aboriginal communities.
- 6.1 However aside from these issues the declaration of dry areas for public safety and convenience, for instance, on foreshore areas, appear to have worked well and should be retained for the wider community good.
7. **RECOMMENDATION:**
- 7.1 I recommend that the present system pursuant to section 132 of the Act should remain because in my view there is evidence to show that the imposition of such areas has been successful in reducing the incidence of public intoxication.
- 7.2 However, the imposition of dry areas should not operate as a stand alone measure and must work in co-ordination with programs and policies to address the underlying causes of liquor abuse.
- 7.3 I, therefore, recommend that detoxification centres with appropriate medical and counselling services should be implemented in conjunction with a dry area. It is only when all of these matters are adequately addressed that dry areas will operate to the optimum level.
- 7.4 With regard to the submission by the Police I think that they should be permitted at short notice to apply to the licensing authority if they want a particular function declared dry. For this purpose section 132 of the Act should be amended to allow the licensing authority to deal with applications on an ad hoc basis. The local council would of course need to be involved.

LIQUOR LICENSING REVIEW

CHAPTER 12

TERM OF REFERENCE X

**THE INTER-RELATIONSHIP BETWEEN THE LIQUOR LICENSING ACT
AND ITS ADMINISTRATION WITH GAMING ADMINISTRATION AND
RELATED ISSUES**

1. I have discussed the potential breadth of this term of reference with the Attorney-General and noted that to delve too deeply into this area would involve a separate review in itself. Therefore, I have only dealt with matters strictly relating to the inter-relationship of the administration of both the Act and the *Gaming Machines Act, 1992*.
2. **ADMINISTRATION**
 - 2.1 The *Gaming Machines Act, 1992* (the Gaming Act) makes the Liquor Licensing Commissioner responsible for the following:
 - 2.1.1 determination of all applications under the Gaming Act, including applications for a gaming machine licence, a gaming machine dealer's licence and approval of persons in a position of authority;
 - 2.1.2 approving gaming machines, gaming equipment and the computerised monitoring system;
 - 2.1.3 determining the number of machines per licensed premises and the authorised gaming hours;
 - 2.1.4 disciplinary action against licensees, including the power to reprimand, suspend or cancel a licence;
 - 2.1.5 review of barrings of persons by licensees;
 - 2.1.6 inspection, monitoring and scrutiny of gaming machine operations;
 - 2.1.7 receipt of gaming tax, recovery of unpaid gaming tax and remission of late payment fines.

2.2 In addition to the licensing function, the Commissioner is also responsible for approving:

2.2.1 gaming machine managers;

2.2.2 gaming machine employees;

2.2.3 agents of State Supply Board.

3. ELIGIBILITY

3.1 The holder of an hotel, club or general facility licence (in certain circumstances) is eligible to hold a gaming machine licence.

4. FITNESS AND PROPRIETARY

4.1 In addition, the Liquor Licensing Commissioner is responsible for determining the following:

4.1.1 the fitness and proprietary of an applicant;

4.1.2 transfers of gaming machine licences;

4.1.3 hearing objections;

4.1.4 taking disciplinary action.

5. The Commissioner has an unqualified discretion to revoke an approval of a manager, employee or person in a position of authority on such ground or for such reason as is thought fit.

6. REPORT OF GAMING SUPERVISORY AUTHORITY (GSA)

6.1 It has recently come to my attention that the GSA has tabled in Parliament a Report of an Inquiry pursuant to section 13(1)(a) of the Gaming Supervisory Authority Act, 1995.

6.2 The GSA reports that there are four stages involved in the regulation of the gaming machine industry in South Australia. First, the approval/licensing stage, secondly the monitoring and supervisory role, thirdly, the enforcement process and finally, the appellate stage where persons aggrieved by any decision are provided with a right of appeal against that decision or to have it otherwise reviewed.

- 6.3 It is the view of the GSA that, as far as reasonably practicable, the responsibility for each of the four stages should be separate from one another to ensure that there are checks and balances at all stages of the regulatory process to avoid, and hopefully eliminate, any possible manipulation of use of the gambling medium for unlawful purposes.
 - 6.4 At present, the GSA reports that the Commissioner is involved extensively and closely in at least each of the first three stages identified above and has some regulatory powers also.
 - 6.5 While not impugning the character of the Commissioner in any way, the GSA concludes that the current model is not the ideal model for the regulation of the gaming industry in South Australia and further states that "it is undesirable as a matter of principle and logic, and has at least the potential to undermine the integrity of the regulatory system".
 - 6.6 The GSA recommends that a more effective model would enable the GSA to establish its own system of regulation and monitoring, leaving the Office of the Liquor Licensing Commissioner to regulate the industry through approvals and licences. The GSA also recommends a joint system of enforcement between the Commissioner and the GSA.
 - 6.7 The above model is offered as a compromise, as the GSA acknowledges that a better model would require not only the wholesale rewriting of all of the relevant legislation but also a significant expansion of the Office of the Liquor Licensing Commissioner, clearly involving substantial cost implications.
 - 6.8 The above report of the GSA concurs with my own view in this matter. I have also outlined my concerns regarding possible conflicts of interest in the liquor licensing area when a number of functions are performed by one person wearing several hats. The same concerns also hold true for the administration of the gaming machines legislation. I make it quite clear as did the Gaming Supervisory Authority that this concern is a general one and not related to the existing Commissioner.
7. I have received a number of submissions which have raised the above matter, that is conflict, in relation to both liquor licensing and gaming administration.
 - 7.1 These submissions emphasise the point regarding conflicts of interest and I agree with the views put forward.
 - 7.2 It has been submitted and it is also my view that the administrative role required for both Acts, should not also include a judicial function. The situation has inevitably lead to one individual having a variety of roles

including administrator, investigator, prosecutor and sometimes arbitrator.

7.3 These various roles give rise to the possibility, if not probability, of conflicts of interest. Whether these conflicts are potential or real, it is my view that it is contrary to the public interest to allow them.

8. **RECOMMENDATION:**

8.1 I can see no conflict problem in the same person administering both the liquor licensing regime and the gaming machines legislation and indeed because of the close relationship I think this desirable to achieve continuity.

8.2 For both liquor and gaming, however, the administrative functions should be separated from the judicial functions;

8.3 all disciplinary matters and contested applications under the Act should be dealt with by the Licensing Court;

8.4 disciplinary matters, involving breaches by a licensee of the *Gaming Act*, should also be dealt with by the Licensing Court;

8.5 I agree with the conclusions of the Report of the GSA in the following respects:-

8.5.1 the Office of the Liquor Licensing Commissioner should regulate the industry through approvals and licensing;

8.5.2 the Gaming Supervisory Authority should fulfil the supervisory and monitoring role;

8.5.3 a joint system of enforcement, shared between the Gaming Supervisory Authority and the Office of the Liquor Licensing Commissioner, should be established.

8.6 I deal further with the role of the Commissioner under the Act in Chapter 13.

LIQUOR LICENSING REVIEW

CHAPTER 13

TERM OF REFERENCE XI

**THE APPROPRIATENESS OF THE COURT STRUCTURE
AND IN PARTICULAR THE DIVISION OF POWERS BETWEEN
THE LIQUOR LICENSING COMMISSIONER AND THE COURT
AND APPELLATE STRUCTURE**

At present, the Act is administered as follows:

1. **THE LICENSING AUTHORITY**

The Licensing Court of South Australia is presided over by the Licensing Court Judge and the Liquor Licensing Commissioner.

2. **THE LICENSING COURT OF SOUTH AUSTRALIA**

The Licensing Court is responsible for the following matters:

- applications for the grant or removal of Category A licences (*removal* means physical relocation of the licensed premises);
- an application for approval of a proposed alteration to licensed premises covered by a Category A licence;
- applications for variation or revocation of conditions of Category A licences;
- applications by holders of hotel licences for a light night permit or for exemption from the obligation to provide accommodation;
- any other matter which under the *Liquor Licensing Act, 1985* (the Act) is to be heard by the Court - i.e. reviews of decisions of the Liquor Licensing Commissioner (the Commissioner), disciplinary matters and noise complaints referred to the Court by the Commissioner.

3. **THE LIQUOR LICENSING COMMISSIONER**

- 3.1 All other matters are determined by the Commissioner, who is also vested with responsibility for the administration of the Act.

- 3.2 The Commissioner is responsible for the following matters:
- hearings of applications for a *Category B* licence;
 - judicial functions assigned to the Commissioner under the Act;
 - conciliation of complaints;
 - intervention in matters before the Licensing Court;
 - inspection of licensed premises to ensure standards are maintained;
 - assessment and collection of liquor licence fees;
 - financial examinations;
 - provision of administrative support to the Court;
 - making recommendations in respect of requests for dry areas.

4. THE NEED FOR A COURT OR A JUDGE

- 4.1 The question of the court structure is dependent upon whether the liquor laws are totally deregulated or whether there remains some proof of "need". Because I favour the latter, I think a judge is required. This is because difficult decisions involving a specialist knowledge of a complicated industry are required. This involves in my experience a careful evaluation and weighing of evidence. Grants of licences after a hearing relating to "need" can mean the difference to the winner or loser of anywhere between \$500,000 and \$1,000,000. For this reason it is my view that a court structure with a judge experienced in the jurisdiction is required. This view is supported by the majority of submissions and by the Liquor Licensing Commissioner.
- 4.2 Other submissions have been made that there is no need for a judge as such but that there should be a tribunal consisting of a legally trained chairperson (not necessarily a member of the judiciary) and two lay people. The reason for the lay people it is said is to introduce an element of commerciality from experience in commerce and industry. This may be a viable alternative provided the same quick access for a hearing is available, but that

is unlikely because the chairperson would probably have other commitments.

- 4.3 Another suggestion which may have been appropriate should there be total deregulation, was a sole commissioner or administrator and no judge. In view of my recommendations that is not appropriate.
- 4.4 It is my view that, although many of my suggested changes go down a deregulation path, a judge is still required and especially because of an increased emphasis on new concepts which require a balanced judicial consideration from a specialist in the industry.
- 4.5 It has also been submitted, strenuously by some, that it is appropriate to have a two tiered structure but that the two tiered structure should include a Judge and a Magistrate. In other words those submissions say that it is inappropriate for the Commissioner to be involved with judicial decision-making having regard to his other roles. I deal with this in more detail shortly.
- 4.6 I think the two tiered structure is unnecessary because I believe that if the existing court arrangements remain, that is the specialist judge sitting two weeks in each month, the workload will be adequately dealt with. In my discussions with the present judge, I have raised my likely recommendations with him and he has agreed that the present sitting arrangements of the Court should be adequate to cater for my recommendations.

5. ANY PROBLEMS WITH THE PRESENT STRUCTURE

- 5.1 It has been suggested that the Commissioner in his present roles has a conflict of interest because of the number of different hats he is required to wear.
- 5.2 I think there clearly is the potential for conflict which can be avoided if all contested matters are heard by the court. If a matter initially uncontested becomes contested before the Commissioner it should then be referred to the court.
- 5.3 I recommend that the role of Commissioner be emphasised as dealing with administrative and supervisory matters much like the old Superintendent of Licensed Premises but the Commissioner should continue to hear uncontested matters unless it is a new

application for extended trading which should be heard by the Licensing Court whether the licence is category A or B.

6. THE JUDGE OF THE COURT

- 6.1 Although the judge is known as such it is inappropriate in my view that he is subject to s.12(2)(c) whereby the Governor may vary or revoke his appointment by proclamation.
- 6.2 The judge should be in no different position than any other judge and the section should be removed.

7. DECISIONS FAVOURING EXISTING LICENSEES

- 7.1 I am asked to have regard to a concern that decisions relating to the granting of some licences seem to favour existing licences rather than newcomers.
- 7.2 I have no evidence nor has it been suggested to me, except in one submission, that this is the case.
- 7.3 The submission which made the suggestion was influenced in my view by understandable disappointment and a commercial notion of unfairness but it has no substance. The majority of submissions have expressed confidence in the role played by the Licensing Court.

8. THE APPELLATE STRUCTURE

- 8.1 In relation to the appellate structure I think it should remain as it is except there should be a right of appeal to the Full Court of the Supreme Court without the necessity of seeking leave from a single judge of the Supreme Court as at present.
- 8.2 In practice these leave applications merely waste time and money and are invariably granted. They have not acted as a filter which was clearly the object of the section.
- 8.3 I suspect that the likely reason for this is that most if not all licensing appeals involve of necessity questions of mixed law and fact. The appeal therefore should not be limited just to matters of law.

8.4 Once again because of the money involved in any single decision it seems to me important that the matter be finally dealt with by the Full Court rather than a single Judge on appeal.

9. RECOMMENDATION:

9.1 The existing Court and Commission structure remain.

9.2 The Court should hear all contested and disciplinary matters.

9.3 Appeals from the Court should be to the Full Court of the Supreme Court as of right on any matter.

LIQUOR LICENSING REVIEW

CHAPTER 14

TERM OF REFERENCE XII

**INTER-RELATIONSHIP OF THE LIQUOR LICENSING LAW AND
PLANNING AND DEVELOPMENT APPROVALS WITH PARTICULAR
REGARD TO THE DETERMINATION OF THE SUITABILITY OF
PREMISES**

1. The following provisions of the Act are of significance in this instance.

- 1.1 Section 62(1) of the Act provides:

An applicant for a licence (not being a limited licence) must satisfy the licensing authority by such evidence as it may require

- (a) that the premises in respect of which the licence is sought are, or, in the case of premises not yet constructed, will be, of sufficient standard for the purpose of properly carrying on business in pursuance of the licence; and
 - (b) that the operation of the licence would be unlikely to result in undue offence, annoyance, disturbance or inconvenience to those who reside, work or worship in the vicinity of the licensed premises.

- 1.2 Section 62(2) of the Act provides:

An application for a licence (not being a limited licence) in respect of premises or proposed premises shall not be granted unless the licensing authority is satisfied

- (a) that any approvals, consents or exemptions that are required under the law relating to planning to permit the use of the premises or proposed premises for the sale or liquor have been obtained; and

- (b) that any approvals, consents or exemptions that are required by law for the carrying out of building work that is to be carried out before the licence takes effect have been obtained.

1.3 Section 62(3) of the Act provides:

An applicant for a limited licence must, if the licensing authority so requires, produce evidence establishing that the premises in which liquor is to be sold or consumed under the licence are suitable for that purpose.

- 2. Pursuant to section 50 of the Act, the licensing authority has power to impose conditions (in addition to those prescribed by the Act) as it thinks fit, including conditions to ensure that the noise emanating from the premises is not excessive and conditions intended to minimise the offence, annoyance, disturbance or inconvenience that might be suffered by those who reside, work or worship in the area.

3. Section 83(2) of the Act provides:

A council in whose area licensed premises or premises proposed to be licensed are situated may intervene in proceedings before the licensing authority for the purpose of introducing evidence, or making representations

- (a) on the question of whether the premises are suitable premises to be, or to continue to be, licensed;
- (b) on the question of whether a proposed alteration to the premises should be approved;
- (c) on the question of whether, if a particular application were granted, persons who reside, work or worship in the area would be likely to suffer undue offence, annoyance, disturbance, noise or inconvenience.

- 4. The licensing authority must be satisfied pursuant to section 62(2) of the Act that the relevant building and planning matters have been considered and approved before proceeding to consider the application for a liquor licence. As the licensing authority also has to be satisfied as to the standard of the premises and that the operation of the licence will not result in disturbance to those who live and worship nearby, the local residents who may have been unsuccessful in objecting before the local council are then able to be heard a second time before the licensing authority.

5. It has been submitted that the liquor licensing and planning issues should be clearly separated. It has been asserted that the local council should deal with the planning and building matters and the licensing authority should deal with the terms and conditions of trading.
6. However as has also been put to me, it is not possible to allocate these issues exclusively to one jurisdiction or to the other. I agree that, as far as possible, planning matters should be dealt with in the planning jurisdiction and matters relating to the ongoing conduct of licensed premises are best dealt with in the Licensing Court.
7. It is my recommendation that the local council, in the discretion of the licensing authority, be sent a copy of any application for the grant, removal or variation of conditions of a licence to ensure that the council is aware of the proposed trading conditions, including hours and details of the entertainment to be provided.
8. The local council should notify ratepayers and seek input from local residents. The recommendation that the local council makes regarding trading conditions and hours, should be the maximum that the licensing authority may allow. Of course, the licensing authority should have the power to reduce the hours and conditions approved by the local council if the longer hours are not for the general benefit of the community.
9. I am aware that, in some instances, there is duplication of evidence concerning local amenity issues which are raised at a planning level and then repeated in the Licensing Court. Whilst I originally believed that it may be possible to legislate against the potential duplication, I have now decided that that is not practical. It is not practical because if my suggestions are implemented there will be an increasing emphasis on the broader community interest and it would be inconsistent with such an interest to not allow "amenity" issues to be aired in the licensing authority.
10. **RECOMMENDATION:**
 - 10.1 I recommend that the present provisions relating to planning remain.
 - 10.2 I recommend that it now becomes a requirement that the licensing authority must consider whether it should provide to the local council, at the same time as the application is lodged with the licensing authority, a copy of the application. I would hope that this would be done in all applications where there was a remote chance of interference with the local amenity.

LIQUOR LICENSING REVIEW

CHAPTER 15

TERM OF REFERENCE XIII

ANY OTHER RELEVANT MATTER

1. THE QUESTION OF LANDLORDS' RIGHTS

- 1.1 Submissions have been made to me that a tenant who holds a licence should be free from intervention by a landlord in relation to an application for the removal of a licence to other premises. The reason for this it is said is because landlords are refusing to negotiate with a tenant when the lease is drawing to an end and then either demanding "key" money or placing unreasonable terms or conditions in negotiating for a new lease. It is submitted that if there is to be any restriction at all as to the landlord being able to prevent a tenant from removing his licence, it should only apply during the term of a lease and not on its expiration. In other words, if the landlord will not negotiate a new lease and the lease is then determined the tenant should be free to remove the licence to other premises.
- 1.2 While many of these matters raised above have particular application to bottle shops, I do not believe it is possible to introduce legislation in the Act which covers all types of licence and includes the sentiments expressed by the parties submitting on behalf of the bottle shops. In relation to hotels in particular, I am aware of the extent to which landlords are committed by having contributed to the capital of the hotel. They clearly must have some rights in relation to any application for removal of a licence and I can see nothing wrong with the existing legislation in that respect.
- 1.3 These matters have all been tested of course in the High Court in the Rizzon decision (see 141 CLR 552). The High Court made it quite clear that although a tenant may be in breach of the lease in applying to remove the licence, without the consent of the landlord, nevertheless that will not prevent the Licensing Court from ordering the removal of the licence if it considers it to be in the public interest. The landlord has his remedies at law for breach of contract and I can see no reason why that should be altered by amending the Act.
- 1.4 Because landlords have rights under the Act they should also have obligations and I recommend that they should also be joined with the

licensee in relation to responsibility for the state of the premises. The Commissioner has suggested the Western Australian legislation as a model and I agree that it is appropriate.

2. ENTERTAINERS AND PERIODS OF SUSPENSION

2.1 Submissions have been made to me regarding the rights of entertainers who perform on licensed premises and who may be affected in the event of a suspension of the licence. It is put that they should be consulted by the licensing authority before a decision to suspend a licence is made. The basis of that (I think) is that they may have their livelihood affected if the licence is suspended and they have no work for that particular week or whatever the period of suspension.

2.2 I find no merit in this submission whatsoever. If the submission had any merit it would logically mean that taxi drivers, the butcher, the baker, the cleaners or any other person who may lose their job temporarily, including casual bar staff, would all have to be consulted prior to the court imposing a suspension.

3. OBJECTION - WHERE ANOTHER LICENCE IS IN JEOPARDY

3.1 It has been suggested that there should be a ground of objection added to the effect that where it can be demonstrated that the grant of a new licence may in effect result in the loss of another licence then that should be a ground in the general community interest for refusing the application.

3.2 I do not believe that this is consistent with the principles of the National Competition Policy and in my view if an applicant is successful in a Category A application in establishing the onus of proof, that is, need having regard to licensed premises which already exist in the locality, then it should not be part of the licensing authority's function to protect a licensee whatever the history of the licence. Put simply, if the decision is that there is a need for a new licence it should be granted, subject of course to satisfying the objects of the Act.

4. COSTS

4.1 There has been considerable discussion as to whether costs should be reintroduced into the jurisdiction on the simple basis that they should follow the event. A modification of that suggestion is that they should follow the event only where there are commercial interests opposed in the application but not where there are community interests groups or individuals involved.

- 4.2 At present of course costs can only be awarded against an unsuccessful applicant or objector where in the opinion of the Licensing Court the application or the objection has been brought frivolously or vexatiously. I think that there should be some discretion in the Court to award costs if there has been a commercial contest that cannot be categorised as either frivolous or vexatious. Costs should not necessarily follow the event but in a case where it is the view of the Licensing Court that proceedings were brought or an objection was pursued, for instance merely to delay, or where, although not frivolous or vexatious, there was absolutely no merit in the application or the objection, then the Court should have power to exercise a discretion and award costs.
- 4.3 Costs should never be awarded against anyone other than a commercial party, in other words not against any person or group representing the community or public interest because of the emphasis that I have recommended be placed on these aspects.

5. SEALED CONTAINERS

- 5.1 In the course of my visit to Coober Pedy it was pointed out to me that two out of the three licensed premises entitled to sell liquor for consumption off the premises were selling bulk port in containers which they filled by decanting port from a barrel. They then placed a screw top on the flagon or plastic milk carton. Some of these containers, the full contents of which amounted to two litres, were being filled in the case of one licensee to the half way mark so that a litre of bulk port could be purchased. It was considerably cheaper than port could be purchased by any other means.
- 5.2 Apart from any obvious question of health requirements I consider this as an example of an irresponsible service practice by a licensee. It can only encourage and did encourage, in my view, intoxication by making more readily available liquor with a high alcoholic content at a cheaper price.
- 5.3 The definition of "packaged liquor" in the Act is "liquor in sealed containers for consumption off licensed premises". I am told that it has been interpreted as allowing the licensees to continue with their existing practice provided they provide new containers each time and do not use the customers' container.
- 5.4 In my view this is not the sale of packaged liquor in sealed containers. Just because a lid is put on by the licensee, does not mean it is a sealed container. In my view the legislation should be amended if it is not already clear that this practise is inappropriate for the holder of any

licence who sells take off liquor. In my view the holder of a licence which authorises the sale of packaged liquor is trading other than according to the tenor of that licence by using this method.

6. LICENCE FEES GENERALLY

6.1 The Commissioner has made several practical suggestions on the topic of fees, including double payment, initial fees and records and returns.

6.2 I have no expertise in this area at all and recommend that consideration be given to adopting each of his suggestions. They are set out in detail in his submission and I will not deal with them individually. They are matters for Treasury and not part of my terms of reference.

7. PARTY TO PROCEEDINGS

The Act should be amended to make it clear that an existing licensee is a party to proceedings because the definition in section 4 merely states that it includes an intervener or an objector.

APPENDIX "A"

LIQUOR LICENSING ACT REVIEW

The Attorney-General and Minister for Consumer Affairs of South Australia has appointed Mr T Anderson QC, to undertake a review of the Liquor Licensing Act 1985 and its operation.

Written submissions **ONLY** are invited and should be sent to:

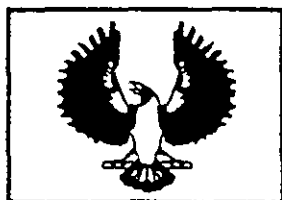
Liquor Licensing Act Review

Box 464 GPO

Adelaide SA 5001

Submissions should address the issues in the Terms of Reference. Copies of the Terms of Reference can be obtained by telephoning (08) 207 1723.

SUBMISSIONS should be received by no later than 31st May 1996.



The Government
of South Australia

APPENDIX "B"

1. T J Hentschke
Chairperson
Victor Harbor Crime Prevention Committee
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2. J Bradley, Fire Commander
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3. John C Bryant, President
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4. Heinz Baumert
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5. The Hon Rob Kerin MP
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40. Mr Jack Clarke LLB
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on behalf of Wholesale Liquor Merchants Association of SA
41. Mr Jack Clarke LLB
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42. Mr Graham Strathearn
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66. Mr Peter Parfitt
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70. Mr David J Rathman
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71. His Honour Judge Kelly
Licensing Court of SA
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72. Mr C K Ow
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73. Mrs Linda Caruso
Salisbury Country Golf Links
74. P Gregg
Reception and Convention
Centre's Association of SA Inc
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75. Dr Bob Such MP
Minister for Employment, Training and Further Education
Minister for Youth Affairs
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ADELAIDE SA 5001

76. Mr Bill Pryor
Liquor Licensing Commissioner
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ADELAIDE SA 5000
78. D F Bengier
Chairman
Clare Valley Tourist Association Inc.
The Town Hall
229 Main North Road
CLARE SA 5453

APPENDIX "C"

REGISTRATION AND LICENSING 60 Wakefield Street ADEL AIDE 5000 and OFFICES

APPLICATION FOR PROOF OF AGE CARD

AN APPLICANT FOR A PROOF OF AGE CARD MUST BE 18 YEARS OF AGE OR MORE

About you Please print in BLOCK LETTERS

Surname or Family Name		Given Name/s		Date of Birth	Sex
				/ /	M / F /
Town/City of Birth			Eye Colour	Height	
				cm.	
Where you live					
Number and Street			Suburb/Town		Postcode

Information Privacy Principle - This information is required to enable a proof of Age Card to be prepared. The information will not be disclosed except for law enforcement purposes.

This application must be accompanied with **ONE PRIMARY** proof document and **ONE SECONDARY** proof document. These documents are to be produced when collecting your card from your local police station. You will be advised in writing when the card is available for collection.

PROOF OF IDENTITY DOCUMENTS (Original documents only)

Primary Documents

- full birth certificate or certified extract of birth
- naturalisation or citizenship certificate
- current passport
- immigration papers or other documents issued by the Commonwealth Department of Immigration
- baptismal certificate showing date of birth

Secondary Documents

- current entitlement card issued by any Commonwealth Government department or Authority (eg. Medicare card)
- certificate of accomplishment from a recognised educational institution or a letter not more than 12 months old from the Principal of such an institution
- current bank building society or credit union card, passbook or statement not more than 12 months old
- electoral enrolment card or other evidence of enrolment
- taxation assessment notice not more than 12 months old
- telephone gas or electricity account not more than 12 months old
- water or local rate notice not more than 12 months old

Once sighted, original documents will be returned to the applicant.

Organ donor consent

An organ donor acknowledgement can be affixed to a Proof of Age Card. This facility is identical to that applying to photo licences. If you wish to obtain further information, ask one of our officers.

Declaration

I hereby declare that the above information and the supporting proof of identity documents I have provided are true and correct in every detail.

Signature of Applicant

Date

Heavy penalties apply where false or misleading information is provided.

Office use only

PROOF OF IDENTITY DOCUMENTS SIGHTED

Client Number

FMP
AGE

Primary

Secondary

Signature of Verifying Officer

Date