

Liquor and Accommodation Review
Group

Liquor and Accommodation
Act 1990
Final Report

December 2002

Appendices contain 6 pages

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1 Introduction

1.1 Background

At the meeting of the Council of Australian Governments on 11 April 1995, the Tasmanian Government (along with the Commonwealth and other State and Territory governments) signed three inter-governmental agreements relating to the implementation of National Competition Policy (NCP).

One of these agreements, the Competition Principles Agreement (CPA) requires all State and Territory Governments to review and, where appropriate, reform all legislation restricting competition. Accordingly, the Tasmanian Government developed a Legislation Review Program (LRP), which outlines both a timetable¹ for the review of all existing legislation that imposes a restriction on competition and a process to ensure that all new legislative proposals that restrict competition or significantly impact on business are properly justified.

In accordance with the LRP timetable, an independent Liquor and Accommodation Review Group (the Review Group) was constituted by the Government to review the *Liquor and Accommodation Act 1990* (the Act). An independent Reference Group, consisting of industry representatives, is supporting the Review Group. Membership of the Review Group and the Reference Group is detailed in Appendix A.

1.2 Principles underpinning the review

The free operation of competitive markets, where there are no restrictions on buyers and sellers, is generally regarded as the most effective way of allocating resources. This encourages efficiency in production, product innovation and the provision of a wide range of goods and services. In turn, it tends to lead to greater output, lower prices and higher employment, compared with the situation where there are major restrictions on competition.

However, there are many cases where it is desirable to restrict competition and to not allow market forces to operate unhindered. Such restrictions may be necessary in cases where:

- decisions by producers or consumers impose costs on others in the community who are not compensated, such as with the pollution of rivers;
- the absence of restrictions would lead to over-exploitation of the resource, eg. open access fishing;
- consumers cannot be expected to have sufficient information about a product or the provider of a good or service to know that it meets quality, safety or hygiene standards;

¹ All governments have subsequently agreed to extend the original deadline of 30 June 2000 to 30 June 2002.

- competition would be wasteful due to the duplication of infrastructure, such as having two sewerage pipelines or two sets of electricity wires in the same street, in which case it is preferable to have a single, regulated firm to supply the entire market demand; and
- there are certain goods that, due to their special characteristics, are not likely to be provided by the market, such as defence services and street lighting, where everyone enjoys the benefit, whether or not they 'purchase' the good.

The examples listed above are known as cases of 'market failure' and usually require government regulation in some form, often involving restrictions on competition. It should be pointed out that there is also 'government failure', which occurs when the form of regulation imposed, including the administration of that regulation, leads to greater problems than if the market was left to operate unhindered.

Restrictions on competition are, therefore, not necessarily undesirable, but it is necessary to assess whether they are in the public benefit. For this reason, NCP requires all jurisdictions to examine restrictions on competition to ensure that only those that are in the public benefit remain. This involves examining the costs and benefits associated with the restrictions and assessing whether the community as a whole is better off retaining or removing them.

In considering the 'public benefit', NCP reviews are generally expected to consider employment, social welfare and equity considerations, such as those set out in Clause 3 of the CPA or Section 88 of the *Trade Practices Act 1974*.

1.3 Overview of the restrictions in the Act

The Review Group has identified the following restrictions on competition contained in the Liquor and Accommodation Act and the Liquor and Accommodation (Amendment) Act:

- Restriction 1:** The requirement to possess a licence or permit for the sale of liquor
- Restriction 2:** The number and types of licences and permits available for the sale of liquor
- Restriction 3:** Supermarkets prohibited from selling alcohol
- Restriction 4:** Nine litre minimum purchase, trading hour restrictions and principal activity requirements applying to off-licence premises
- Restriction 5:** Restrictions in general licences that limit the location of bottleshops
- Restriction 6:** Conditions contained in the draft Liquor Regulations, and the Board's associated discretionary powers
- Restriction 7:** Qualifications for licensees and permit holders

- Restriction 8: Good Friday trading hours
- Restriction 9: Amenity and condition of premises
- Restriction 10: Accommodation licensing scheme
- Restriction 11: Proposed industry strategic plan
- Restriction 12: Applications to be based on sound commercial principles
- Restriction 13: Proposed structure of the Licensing Board
- Restriction 14: Conditions applying to club licences

1.4 Review process

The review process commenced with the Review Group preparing a Discussion Paper, which identified the objectives of the legislation and the restrictions on competition in the legislation. The paper also outlined the key issues in relation to the restrictions. The Discussion Paper was released publicly, after input from the Reference Group, and invited interested parties to make submissions in response to the issues raised. Nineteen written submissions were received in response to the Discussion Paper.

The Review Group held discussions with several key stakeholders in order to obtain additional information, some of which was provided on a commercial-in-confidence basis.

In addition to this comprehensive consultation process, the Review Group also initiated a survey of Tasmanian households in order to build into the evaluation an independent and statistically valid understanding of the views of the Tasmanian community on issues relating to alcohol and liquor licensing.

This process culminated in the public release of the RIS on the 26 August 2002, which presented the Review Group's analysis, findings and draft recommendations. A further period of 60 days was provided to allow interested parties to lodge written submissions in response to the RIS. Twenty-two written submissions were received in response to the RIS. A list of stakeholders who responded to the RIS is included at Appendix C.

The process now requires this Final Report to be prepared and presented to the Treasurer, as Minister responsible for liquor licensing, outlining the Review Group's final findings and recommendations.

1.5 Summary of Terms of Reference

In summary, the Review Group is to review the *Liquor and Accommodation Act 1990* having regard to the following guiding principle as specified in the CPA:

"That legislation should not restrict competition unless it can be demonstrated that:

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

The Review Group's evaluation of the Act against this guiding principle was documented in the RIS.

The complete Terms of Reference for the review are reproduced in **Appendix B**.

1.6 Purpose and structure of the Final Report

This Final Report is one of three volumes that will be presented to Government in response to the Terms of Reference, the second volume being the RIS and the third volume being the Discussion Paper. These three documents collectively provide a full and complete record of the deliberations of the Review Group.

All written submissions received in response to the RIS have been compiled, copied and provided to the Treasurer. Original submissions, including those in response to the Discussion Paper, are retained with the Department of Treasury and Finance.

The purpose of the RIS was to document the substantive analysis, findings and draft recommendations of the Review Group in response to the Terms of Reference.

The primary purpose of this Final Report is to document the final findings and recommendations of the Review Group, taking into account the 22 submissions that have been received in response to the RIS. Accordingly, the Final Report also presents an account of the submissions that have been received following public release of the RIS. **Appendix D** contains a summary of the stakeholder responses in terms of their support or opposition to the RIS recommendations.

The Review Group has not sought to reproduce all the analysis documented in the RIS in this report, rather it has focussed on addressing new issues raised by stakeholders in response to the RIS. Where stakeholders have raised issues previously considered by the Review Group, the Final Report highlights where, in the RIS, the issues have been discussed and it summarises the Review Group's conclusions.

The Final Report has been structured as follows:

Section 2 presents an Executive Summary of the Review Group's final findings and recommendations. These include any changes to the findings and draft recommendations in the RIS arising from the Review Group's consideration of stakeholder submissions.

For ease of analysis, the Review Group's recommendations have been separated into major restrictions and minor restrictions. Section 3 contains the results of the Review Group's assessment of the major restrictions included in the Act, while Section 4 contains the Group's assessment of the minor restrictions. For each restriction, the sections contain:

- a summary of the findings and recommendations contained in the RIS;
- an account of the issues raised by stakeholders in response to the RIS recommendations;
- the Review Group's assessment of the issues raised by stakeholders; and
- a final conclusion and Review Group recommendations.

2 Executive summary

2.1 Major restrictions

2.1.1 Restriction 3 - Supermarkets prohibited from obtaining a licence

2.1.1.1 *Nature of the restriction*

The Act serves to prevent the sale of liquor in supermarkets in two ways:

- the Board's Guidelines specify that off-licences will only be issued for the sole purpose of liquor retailing, effectively preventing supermarkets and all other retail outlets from selling packaged liquor (the 'principal activity' requirement); and
- Section 25A of the Act specifies that the Board must not direct the granting of a liquor licence in connection with the activities of a supermarket.

2.1.1.2 *Stakeholder submissions*

Of the 22 submissions received, 21 commented on the issue with only one submission supporting the removal of the restriction.

Those arguing against the recommendation did so primarily on the following grounds:

- economic impact; and
- social impact resulting from increased availability.

2.1.1.3 *Final Report findings and recommendations*

The Review Group has not been provided with any evidence that it believes warrants a change to its initial recommendations.

In summary, the Review Group concludes that the net impact of removing the restrictions applying to supermarkets would be negligible, with the likely cost to current industry participants being offset by consumer gains. Issues of safety can be adequately addressed in the licensing conditions and through the enforcement of existing laws.

Recommendation 1

It is recommended that:

- Section 25A of the Act, which prohibits the Board from granting a licence in connection with activities of a supermarket, be repealed and supermarkets be permitted to apply for a liquor licence for off-premise sales; and
- licence conditions for supermarkets be included in the Regulations, which specify RSA training for serving staff and physically sectioned-off sales, display and checkout area for alcohol sales.

2.1.2 Restriction 4 - Restrictions applying to Off-licences

2.1.2.1 *Nature of the restriction*

Off-licences allow the sale of liquor from premises in quantities of at least nine litres (except for Tasmanian wine) and are restricted in their hours of operation compared with general licences.

In addition, the Liquor Guidelines specify that the premises to be licensed must be self-contained, in that the sale of liquor will not form part of any other retail business. Under the terms of the Amendment Act, this requirement will be amended so that "...the principal activity of the premises is the sale of liquor".

2.1.2.2 *Stakeholder submissions*

Nine submissions addressed the Review Group's recommendations in relation to off-licences. While all stakeholders recognised the issues associated with the anomalous nine-litre restriction, six stakeholders objected to the Review Group's proposals and three supported them.

Stakeholders opposed to the recommendations argued that, like the issue of supermarkets, there would be negative economic and social implications associated with removing the restrictions to off-licences.

A number of the stakeholders opposed to the Review Group's proposals have suggested that the off-licence category be abolished and existing licence holders be given the option of retiring the licence, converting to a general licence or becoming a wholesale licence. This proposal has the support of the AHA and its members.

Under the terms of the proposal, existing licensees would have the option to elect to convert the licence to either a wholesale or a general licence, with a phase in of approximately two years to allow licensees and surrounding businesses to plan for the changes.

2.1.2.3 *Final Report findings and recommendations*

The Review Group has not been provided with any additional information that warrants a review of its initial conclusions contained in the RIS concerning the economic and social implications of removing the nine litre restrictions and principal activity requirements.

With regard to the AHA's proposal, the Review Group found there was some appeal in terms of removing the nine-litre restriction anomaly with minimal disruption to existing operators.

However, the Review Group is bound by the NCP principles to reject the proposal on the basis that it will increase, rather than reduce, restrictions in the Tasmanian liquor market, as the result would be the abolition of the only off licence category that currently exists in Tasmania, with no identifiable net public benefit.

Furthermore, in a practical sense, the Review Group is also concerned that the proposal assumes that the existing nine litre outlets can readily convert to general licence establishments.

The Review Group therefore sees no reason to alter its draft recommendations in relation to removing restrictions applying to off-licences.

In order to clarify its position concerning the removal of the principal activity requirement, the Review Group concluded, however, that it is important to emphasise that all applicants for an off licence will be required to meet the 'fit and proper person' and 'training and qualifications' requirements that currently apply to general and off licences.

Recommendation 2

It is recommended that:

- the nine-litre minimum purchase requirement for off-licences contained in Section 9(a) be removed immediately;
- the restrictions applying to the hours of operation for off-licences in Section 9 be amended to mirror the hours of operation restrictions applying to general licences;
- the requirement contained in the draft Liquor Regulations limiting the principal activity of the premises to the sale of liquor be removed; and
- all applicants for an off licence, under the proposals contained in this recommendation, be required to meet the 'fit and proper person' and 'training and qualifications' requirements that currently apply to general and off licences.

2.1.3 Restriction 5 - Personal and effective control requirements

2.1.3.1 *Nature of the restriction*

Whilst a general licence may provide for both on and off premise sales, the "personal and effective control" requirements contained in Section 22 (1)(b)(ii) prevent the establishment of bottleshops separate from a hotel. This restriction does not, however, prevent a person from holding more than one licence if they can demonstrate to the Commissioner that "...they have the structure and strategies in place to be able to exercise personal and effective control"².

The restriction effectively prevents the establishment of stand-alone bottleshops.

2.1.3.2 *Stakeholder submissions*

Nine stakeholders commented on this matter, with three submissions supporting the Review Group's recommendations.

Those opposed to the recommendations did so primarily on the basis of the social implications of increasing availability and the economic impact on existing operators.

² O'Sullivan, P, and Thomas D., p4.

2.1.3.3 *Final Report findings and recommendations*

The Review Group's conclusions in relation to the economic and social implications of freeing up the restrictions applying to off-licences have already been discussed at length.

These conclusions are also relevant in terms of the removal of the personal control requirements, which will allow for the separation of a licence into a hotel and separate bottleshop.

The Review Group therefore sees no reason to alter its draft recommendation.

Recommendation 3

It is recommended that the 'personal and effective' control requirements contained in Section 22(1)(b)(ii) be amended to require 'effective control' over the licensed premises.

2.1.4 **Restriction 6 - Licensing Board and public interest test**

2.1.4.1 *Nature of the restriction*

Restriction 6 relates to the operations of the Licensing Board and its assessment, under the Liquor Guidelines, of the 'public interest test'.

The Liquor Guidelines state that the Board is to grant a licence or permit unless, among other things, it believes it is contrary "...to the interests and concerns of the community"³.

In addition, Section 216 of the Act, as amended, will require the Board or Commissioner to make decisions with regard to licence and permit applications that "...will best aid and promote the economic and social growth of Tasmania by encouraging and facilitating the orderly development of the hospitality industry in the State".

2.1.4.2 *Stakeholder submissions*

Six stakeholders commented on this restriction. All six submissions objected to the removal of Section 216 and reference to public interest, with some of the submissions objecting to other elements of the recommendations, such as removal of an independent review body.

Those that objected to the removal of Section 216 and reference to the public interest did so primarily on issues of safety and the social impact of liquor. Comments were generally restricted to statements to the effect that not considering the social, economic and

³ As indicated by their title, the Licensing Board is not obliged to apply the Liquor Guidelines.

community consequences when assessing a licence application would be 'wrong' and 'bad for Tasmania'.

2.1.4.3 *Final Report findings and recommendations*

No new arguments were presented to the Review Group in relation to Section 216 and the public interest test.

There already exists a range of State and local government planning and health and safety requirements that potential licensees must meet prior to being considered for a licence.

The Review Group is concerned to ensure, however, that in any liberalisation of the licensing arrangements it needs to be accompanied by a fair, but strong, sanctions and enforcement regime.

The Review Group notes that an Administrative Appeals Division of the Magistrates Court was established on 1 July 2002.

The Review Group therefore sees no constraints to the proposal to abolish the Board and transfer responsibility for hearing appeals to the new Administrative Appeals Division.

Recommendation 4

It is recommended that:

- Section 216 of the Act, which requires the Commissioner or the Board to approve an application only if it will "...best aid and promote the economic and social growth of Tasmania ... (having) ... regard for the legitimate interests and concerns of the community as a whole", be repealed;
- the requirement contained in the draft Liquor Regulations to grant a licence or permit only if it is in the public interest to do so be repealed;
- the Act be amended to remove reference to the Licensing Board and to place administrative responsibility with the Commissioner for Licensing;
- the sanctions and penalties contained in the Act be reviewed to ensure they are strong, but fair;
- resources for the Licensing Branch be matched with any increased policing and enforcement roles for the Branch;
- the hearing of appeals in relation to decisions of the Commissioner be conducted by the Administrative Appeals Division of the Magistrates Court;
- the Liquor Regulations cease to have effect and the Act be amended where necessary; and
- prior to repealing the Regulations, arrangements be made with Local Government, the Tasmania Fire Service and other relevant regulators to ensure that the proposed assessment process is understood and accepted.

2.2 Minor Restrictions

2.2.1 Restriction 1 - Licence and permit system

2.2.1.1 *Nature of the restriction*

The liquor licensing system provides for limits to market entry, the regulation of the industry and provides a vehicle for enforcing that regulation.

2.2.1.2 Stakeholder submissions

Only three submissions addressed the Review Group's draft recommendation, with all three agreeing to its inclusion.

2.2.1.3 Final Report findings and recommendations

The Review Group sees no reason to alter its draft recommendation.

Recommendation 5

It is recommended that the existing liquor licence and permit system be maintained.

2.2.2 Restriction 2 - Licence and permit categories

2.2.2.1 Nature of the restriction

The licences that are issued reflect the different circumstances surrounding the sale of liquor. The least restrictive of the licences is the general licence. Additional restrictions apply to each of the other licences for the specific conditions to which they relate.

The issuing of permits also provides for the consumption of alcohol in certain specific cases, either as an extension to existing licence conditions where appropriate, or where it is not the intention of the permit holder to undertake the sale of liquor in the manner allowed by the permit, on a more permanent basis.

The main alternative to a system of specific licence categories is to have a single licence category for all liquor providers.

2.2.2.2 Stakeholder submissions

Only three submissions addressed this draft recommendation, with all three agreeing to its inclusion.

2.2.2.3 Final Report findings and recommendations

The Review Group sees no reason to alter its draft recommendation.

Recommendation 6

It is recommended that a range of licence and permit categories, tailored to specific service types, be retained.

2.2.3 Restriction 7 – Qualifications for licensees and permit holders

2.2.3.1 Nature of the restriction

Under Sections 22 and 31 of the Act and the Amendment Act, licences and permits can only be granted to persons who meet the following criteria:

- attained the age of 21 years;
- in the opinion of the Commissioner for Licensing, is 'fit and proper' to hold a licence or permit;
- can exercise 'personal and effective' control over the sale and consumption on the licensed premises; and
- has successfully completed a course or traineeship approved by the Commissioner or has relevant qualifications.

2.2.3.2 Stakeholder submissions

Only three submissions addressed the Review Group's draft recommendations, with all three agreeing to its inclusion.

2.2.3.3 Final Report findings and recommendations

The Review Group therefore sees no reason to alter its draft recommendation.

Recommendation 7

It is recommended that Section 22(1)(a) of the Act, which restricts the granting of a licence to persons who have attained the age of 21 years, be amended to reduce the age restriction to 18 years, in line with the age restriction applying under the *Gaming Control Act 1993*.

2.2.4 Restriction 8 - Good Friday trading restrictions

2.2.4.1 *Nature of the restriction*

Section 65 of the Act restricts the hours of trading of general licence and on-licence holders (usually hotels and taverns) on Good Friday to between 11:00 am and 9:00 pm.

2.2.4.2 *Stakeholder submissions*

Only three submissions addressed this draft recommendation, with all three agreeing to its inclusion.

2.2.4.3 *Final Report findings and recommendations*

The Review Group sees no reason to alter its draft recommendation.

Recommendation 8

It is recommended that the Good Friday trading restrictions contained in Sections 65 (1)(c) and (1)(d) and 2(f) of the Act be repealed.

2.2.5 Restriction 9 - Amenity and condition of premises

2.2.5.1 *Nature of the restriction*

Sections 47 – 50 of the Act specify conditions of amenity and other requirements, such as needing the Commissioner's approval before any alterations can be made to the premises, and requiring that the establishment, its furniture and its fittings are in good repair.

2.2.5.2 *Stakeholder submissions*

Only five submissions addressed the issue during this round of consultations, and only one of those objected to the Review Group's draft recommendations.

2.2.5.3 *Final Report findings and recommendations*

At present, Local Government is responsible for all health and building inspections, except those that relate to licensed accommodation. The Licensing Branch performs these inspections.

In addition, Local Government inspectors are qualified in the area of health or planning and are therefore well equipped to identify problems.

The Review Group therefore sees no reason to alter its draft recommendation.

Recommendation 9

It is recommended that:

- Section 48 (Licensee to keep premises in good repair), Section 49 (Furniture and equipment, &c., to be provided) and Section 50 (Licensee to keep premises clean), be repealed; and
- Section 47, which prohibits a licensee from altering the premises without approval, be amended so that
 - an alteration requiring the prior approval of the Commissioner is restricted to only those alterations that result in an addition to, or reduction in, the area of the premises; and
 - all other lawful alterations, whether structural, decorative or otherwise; or any substantial change in the use of the premises which do not result in an addition or reduction in the licensed area of the premises should be left to the discretion of the licensee/owner concerned.

2.2.6 Restriction 10 - Accommodation licensing scheme

2.2.6.1 *Nature of the restriction*

Currently the Liquor and Accommodation Act establishes a comprehensive accommodation licensing scheme. Under the Amendment Act, an amended accommodation scheme is proposed, which will give accommodation operators the option of operating under an approved industry accreditation scheme instead of operating under the licensing scheme.

The Commissioner would still retain a power to licence accommodation operators that do not belong in an approved accommodation scheme.

2.2.6.2 *Stakeholder submissions*

Of the four submissions that commented on these draft recommendations, only one submission did not agree with the Review Group.

2.2.6.3 *Final Report findings and recommendations*

The Review Group found, based on the evidence and indicators available, that the current scheme does not make a marked difference to accommodation services and standards in Tasmania.

It also found that the alternative accommodation licensing system contained in the Amendment Act would provide no real benefits compared with the current scheme.

The Review Group is also mindful that the submissions from tourism accommodation peak bodies and private accommodation providers were either supportive of the removal of the scheme or they did not comment on the Review Group's draft recommendations.

In summary therefore, the Review Group sees no reason to alter its draft recommendation.

Recommendation 10

It is recommended that:

- the accommodation licensing scheme cease;
- all reference to accommodation and the accommodation licensing scheme be removed from the Act;
- it be noted that accommodation establishments will instead be covered by industry accreditation schemes, if they so choose; and
- assessment and approval of establishments and monitoring of health and safety standards be conducted solely by the appropriate State and/or Local Government authorities.

2.2.7 **Restriction 11 – Proposed industry strategic plan**

2.2.7.1 *Nature of the restriction*

The Amendment Act requires the Minister to prepare an industry strategic plan, in consultation with the industry.

that the Review Group understands it is intended that the plan will be used by the Board to assist in its licence application assessment process.

2.2.7.2 *Stakeholder submissions*

Four stakeholder submissions addressed this restriction, with only one submission opposing the Review Group's draft recommendations.

2.2.7.3 *Final Report findings and recommendations*

The development of an industry strategic plan is a matter for industry to develop, not an issue that should be included in legislation and the Review Group sees no reason to alter its draft recommendation.

Recommendation 11

It is recommended that:

- Section 6 of the Amendment Act, which requires the Minister to prepare a strategic plan in respect of the sale of liquor, be repealed;
- if it is not withdrawn, responsibility for the preparation and implementation of the plan be allocated to industry representatives; and
- if responsibility for development and maintenance of the industry strategic plan is to remain within government, it should be allocated to the Department of Economic Development, to be advanced in the context of the Government's Industry Development Plans, and should contain no restrictions on competition.

2.2.8 **Restriction 12 – Applications to be based on sound commercial principles**

2.2.8.1 *Nature of the restriction*

It is proposed under the Amendment Act that licence applicants be required to submit a business plan with their application to illustrate that their proposal is based on sound commercial principles.

This proposal means that some licence applications could be rejected on the basis of dubious commercial prospects.

2.2.8.2 *Stakeholder submissions*

Only three submissions addressed this issue, with all three supporting the Review Group's draft recommendation.

2.2.8.3 *Final Report findings and recommendations*

The Review Group sees no reason to alter its draft recommendation.

Recommendation 12

It is recommended that Section 10 of the Amendment Act, which requires the demonstration of sound commercial principles for licence applicants, be repealed.

2.2.9 *Restriction 13 – Proposed structure of the Licensing Board*

2.2.9.1 *Nature of the restriction*

Under the Amendment Act, membership of the Board will be expanded to include a range of persons nominated by the Minister after consultation with specific interest groups.

While not expressly restrictive, expanding the Board's membership to include Ministerial appointments, determined after consultation with selected industry bodies, provides the opportunity for restrictive practices to emerge to protect those groups.

2.2.9.2 *Stakeholder submissions*

Only three submissions addressed this issue, with all three supporting the Review Group's draft recommendation.

2.2.9.3 *Final Report findings and recommendations*

The Review Group sees no reason to alter its draft recommendation.

Recommendation 13

It is recommended that the proposal contained in Section 21 of the Amendment Act, which expands the membership structure of the Licensing Board that it be repealed.

2.2.10 Restriction 14 - Conditions applying to club licences

2.2.10.1 Nature of the restriction

Club licences provide special interest groups (ie sporting and social clubs) with the opportunity to purchase and consume liquor as an adjunct to their primary club activity.

The Amendment Act proposes that a licensed club may only sell alcohol "...to prescribed persons".

The Amendment Act also specifies that licensed clubs may only sell alcohol "...subject to any conditions specified in the licence".

2.2.10.2 Stakeholder submissions

Five submissions addressed the issue of club licences, three of which supported the recommendations without comment.

Clubs Tasmania advanced two proposed amendments to the current restrictions applying to licensed clubs:

- introduction of the 'traveller rule'; and
- allowing not-for-profit organisations (NFPOs) to use premises.

Under a 'traveller rule', visitors from outside a certain distance would be allowed to sign in and, subject to the club's constitution, have unrestricted access to the club's facilities for that day.

Clubs Tasmania has proposed that the legislation be amended to allow NFPOs to hold functions and meetings on club premises without the requirement for the club to apply and pay for a permit. This would relieve the financial and administrative burden placed on clubs and allow them to continue to provide community services.

2.2.10.3 Final Report findings and recommendations

The Review Group acknowledges the benefits of applying a traveller rule in limited instances, to bone fide visitors.

However, the Review Group does not agree that a person residing five kilometres from a licensed club represents a bone fide visitor. Rather, adoption of a traveller rule should only apply for those people who are visitors to the State.

In terms of the suggestion that NFPOs be allowed to hold functions and meetings on club premises without the requirement for the club to apply and pay for a permit, the Review Group believes the practical implications of adopting the suggestion are minimal.

If Club Tasmania's proposal is accepted, the Review Group believes there would be a benefit to these NFPOs, a minor benefit to licensed clubs and no impact for other licensed establishments.

Recommendation 14

It is recommended that:

- the Regulations be amended to include a 'traveller rule', which would permit interstate visitors to sign into a club and, subject to the club's constitution, have unrestricted access to the club's facilities for that day;
- the Regulations be amended to allow bone fide not-for-profit organisations to access club bar facilities for meetings or functions, in accordance with the relevant club's constitution, without the need to apply for a permit; and
- options be considered to remove reference to "...conditions specified in the licence..." and to incorporate requirements contained in Schedule 1 of the Guidelines into clubs' constitutions.

2.3 Other issues raised in the RIS

2.3.1 Objectives of the Liquor and Accommodation Act

2.3.1.1 Issue

In order to make recommendations on whether the restrictions on competition contained in the *Liquor and Accommodation Act 1990* should be removed, retained or modified, the Review Group was required, as part of the Terms of Reference, to "...clarify the objectives of the legislation". Any restrictions on competition needed to be assessed against the defined objectives of the legislation.

2.3.1.2 Stakeholder submissions

Only four submissions addressed the issue of the Statement of Objectives, with all four agreeing to its inclusion.

2.3.1.3 *Final Report findings and recommendations*

The Review Group concluded that its draft recommendation should remain unchanged.

It notes, however, that if the Government accepts the Review Group's recommendations in relation to Restriction 10 (Accommodation Licensing Scheme), all reference to 'accommodation' should be removed from the title of the Act and the Statement of Objectives.

Recommendation 15

It is recommended that the following Statement of Objectives be included in the Act:

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

2.3.2 *Definition of 'licence applicant'*

2.3.2.1 *Issue*

In response to the Review Group's Discussion Paper, a number of stakeholders argued that the current licensing system is deficient in that it focuses solely on the licence applicant and does not allow for an assessment to be made of the suitability of associates of the applicant.

It was therefore suggested that the Act should be extended to include associates, and the influence they may have over the licensee.

2.3.2.2 *Stakeholder submissions*

Of the few stakeholders that commented on this recommendation, only one did not support its inclusion.

2.3.2.3 *Final Report findings and recommendations*

The Review Group concluded that its draft recommendation should remain unchanged.

Recommendation 16

It is recommended that the definition of 'licence applicant' be expanded to include known associates, similar to the licence requirements imposed under the *Gaming Control Act 1993*.

2.3.3 Qualifications and training

2.3.3.1 Issue

The Amendment Act contains training requirements for licence applicants that the Review Group supports. However, it is concerned to ensure that competency through existing experience is included in the definition of qualifications.

In addition, the Review Group considers it anomalous for the training requirement to apply only to the licensee and not to those employed to serve alcohol.

2.3.3.2 Stakeholder submissions

Of the three stakeholders that commented on this proposed recommendation, all were in favour of the Review Group's draft recommendations.

2.3.3.3 Final Report findings and recommendations

The Review Group sees no reason to alter its draft recommendation.

Recommendation 17

It is recommended that:

- the definition of 'qualifications' be expanded to include competencies obtained through experience;
- a condition of issuing a licence be that all staff serving alcohol in general, on and off-licence establishments be trained in RSA, with such requirements for special licences to be assessed upon application; and
- a period of three months' grace should apply, following the commencement of trading by the licensed establishment, to allow for the training of all staff to be completed.

3 Major restrictions

3.1 Introduction

This section deals with what the Review Group has termed the “major restrictions” to competition. The major restrictions are:

- Restriction 3 - Supermarkets prohibited from obtaining a licence;
- Restriction 4 - Restrictions applying to off-licences;
- Restriction 5 - Personal and effective control requirements; and
- Restriction 6 - Licensing Board and public interest test.

Outlined below for each restriction is a discussion of the Review Group’s RIS findings and recommendations, a summary of the issues raised by stakeholders in their submissions and the Review Group’s final assessment and recommendation.

3.2 Restriction 3 - Supermarkets prohibited from obtaining a licence

3.2.1 RIS findings and recommendations

The Act serves to prevent the sale of liquor from supermarkets in two ways:

- the Board’s Guidelines specify that off-licences will only be issued for the sole purpose of liquor retailing, effectively preventing supermarkets and all other retail outlets from selling packaged liquor (the ‘principal activity’ requirement); and
- Section 25A of the Act specifies that the Board must not direct the granting of a liquor licence in connection with the activities of a supermarket.

Whilst the Board’s Guidelines have served as an effective means for preventing non-liquor retailers from obtaining an off-licence, some ‘specialist’ retailers have been successful in obtaining a special licence for limited alcohol sales. In addition, the Board is not compelled to apply the Guidelines if it believes the overall interests of the community will not be served by their application. Section 25(A) has therefore resulted in the Board not granting either an off-licence or a special licence to the major supermarket chains.

The Review Group recommends, in Section 3.3, that the ‘principal activity’ requirement be removed. Adoption of this recommendation would mean that all retail outlets would be eligible to apply for an off-licence (unless specifically precluded by other sections of the

Act), and the merits of their application would be assessed against the relevant requirements of the Act.

Section 25A, however, ensures that, even if the 'principal activity' requirement is removed, supermarkets would continue to be precluded from selling liquor.

If both the 'principal activity' requirement and Section 25(A) were repealed, supermarkets would be able to apply for any type of licence they consider best met their needs (ie an off-licence or a special (Tasmanian wines) licence).

The Review Group undertook an extensive analysis of the potential benefits and costs of repealing the 'principal activity' requirement and Section 25(A). The Review Group considered the likely impact on:

- price;
- quality;
- safety;
- consumer convenience; and
- economic impact.

It found there are a number of counter-balancing benefits and costs associated with maintaining the restriction applying to supermarkets.

The Review Group identified benefits of removing the restriction in terms of increased convenience and diversity. It concluded that the short-term impact on price would be a marginal financial benefit for consumers, while the medium to long term price implications are impossible to measure. It also concluded there would be no impact on quality.

These benefits must be weighed against the potential economic, social and safety costs of removing the restrictions on supermarkets. Whilst the Review Group has estimated that the economic cost to the State is in the order of \$3m per annum in lost profits, the impact for rural regions would be more acutely felt. Conversely, the removal of the 'principal activity' requirement would free up other retailers to apply for an off-licence, thereby reducing the estimated level of profit leakage.

In summary, the Review Group concluded that the net impact of removing the restriction prohibiting supermarkets from selling liquor for off-premise consumption would be negligible. On one hand, there would be some leakage of profits from the State and potentially negative implications for some regional communities. However, consumers would obtain greater convenience and, if prices fall, they would have increased disposable income. The Review Group estimates that a price fall of 0.5% is all that would be required

to offset the cost of profit leakage. While expanding access to alcohol raises some issues of safety, the Review Group believes these issues can be adequately addressed and that supermarkets present no greater threat to safety than other licensed outlets.

Therefore, in accordance with the NCP principles, in instances where there is no net benefit of maintaining the restriction, the Review Group concluded that there are no sound reasons for maintaining the restriction.

The Review Group also considered other less restrictive alternatives including:

- permit supermarket sales, but impose a limit on total market share;
- permit supermarkets to sell Tasmanian wine only; and
- remove restrictions applying to off-licences, thereby allowing supermarkets to licence bottleshops adjacent to their supermarket site.

In doing so, the Review Group concluded that, if the restrictions were not removed, an appropriate, less restrictive alternative to the current arrangements could be:

- to amend Section 25A of the Act to allow supermarkets to sell Tasmanian wines only; and
- to remove restrictions applying to off-licences thereby allowing stand alone bottleshops, which could be co-located with supermarkets.

The Review Group therefore recommended in the RIS that:

- Section 25A of the Act, which prohibits the Board from granting a licence in connection with the activities of a supermarket, be repealed and supermarkets be permitted to apply for a liquor licence for off-premise sales; and
- if it is not repealed, that Section 25A be amended to permit supermarkets to apply for a special licence to sell Tasmanian wines.

3.2.2 Stakeholder submissions

The restrictions prohibiting supermarkets from selling alcohol represent the most contentious issue in terms of the potential impact and in responses from stakeholders to the recommendations contained in the RIS.

Of the 22 submissions received, 21 commented on the issue with only one submission supporting the removal of the restriction.

Those arguing against the recommendation did so primarily on the following grounds:

- the likely economic impact; and
- the social impact of increased availability.

A number of stakeholders also argued against the change on the basis that the Tasmanian liquor market is already well catered for and the consumer does not want an additional liquor outlet choice.

3.2.2.1 Economic impact

Economic arguments primarily related to the following issues:

- impact on the tourism sector;
- regulatory certainty;
- leakage of income from the State;
- impact on price; and
- the impact on employment in existing family owned businesses.

Impact on the tourism sector

The Tourism Council Tasmania (TCT) has noted the significance of the Liquor and Accommodation Act RIS to the tourism industry overall. It is firmly opposed to the proposal to make alcohol available in supermarkets due to the detrimental impact this would have on hotels, particularly in terms of their role in the tourism industry.

The TCT points to the broad range of services provided by hotels at the regional level, including food, accommodation and entertainment. It suggests that any policy measures that curtail the level of economic activity and profitability of hotels such that their ability to invest is similarly impaired, will be to the detriment of the tourism industry. They note that this could be particularly the case in many smaller locations, where the role of the local hotel in providing these services is critical.

Some operators, such as J Bleasel (Nine/Eleven), A Giacon (Brooker Inn Hotel) and R Tabor (Kingston Hotel), support this argument, stating that profit from retail liquor sales is used to offset other operations such as food and accommodation. They argue that it would result in money being taken out of the hospitality industry and transferred to the retail sector – the bulk of which are interstate owned companies.

The TCT and Bleasel also suggest that a policy initiative with such an outcome would be contrary to Government policy with respect to the tourism industry, especially regional tourism initiatives.

Looking to the future, the TCT and other stakeholders, such as Bleasel and the AHA, are concerned at the threat to future investment in hotels that would result from the proposal. They point to the recent investment in the new TT Line twin ferry service and the need for an expansion of services and facilities to accommodate the increase in visitor numbers. In this regard they argue that the potential increase in income from providing accommodation services would not be sufficient to offset the anticipated loss from liquor sales. Any reduction in packaged liquor sale margins will reduce the capacity of hotels to cross-subsidise between operations.

Regulatory certainty

Some existing operators noted that they have undertaken investments, in good faith, under a regulatory environment that has been in place for 12 years and, in regard to the exclusion of supermarkets, with the unanimous support of Parliament. The AHA suggests that many hotel properties have undergone significant reinvestment in the past two years in preparation for the anticipated increase in tourist numbers – investment that otherwise may not have proceeded.

J & P Cretan (Kriticos Nominees) assert that "...we can categorically state that our \$3.5 million refurbishment of the Shoreline Hotel would not have proceeded had this recommendation been seen as likely to be adopted". They go on to note that, because these funds are now invested, their ability to compete with supermarkets on an even footing would be significantly compromised – a situation they believe would be anti-competitive.

A number of hoteliers point to the premium they have paid to obtain entry to the market, based on the current regulatory framework, and supermarkets would effectively be permitted entry without the need to pay such a premium. S Jones (Derwent Park Cellars), argues, "...as a small business employing Tasmanians, buying in Tasmania and keeping all of our profits in Tasmania, why should national companies be allowed to compete on a like for like basis without having to purchase the premium every other entrant in the industry had to pay..."

The issue of compensation for existing operators was also raised in this context. EconTech, which was commissioned by the AHA, suggests that compensation of approximately \$8.8 million would be required to facilitate the exit of existing businesses.

A Williams (Gateway Inn) argues that the State needs certainty for investors and that retrospective or ad hoc changes to regulations will damage investor confidence at a time when Tasmania can least afford it.

Leakage of income from the State

In the RIS, the Review Group concluded that the primary economic cost of the proposal would be the leakage of profits – estimated at approximately \$2.9 million per annum – from the State. This estimate was based on an expected shift of 25% packaged liquor sales turnover from existing outlets to supermarkets.

A number of stakeholders have argued that the Review Group has underestimated the impact, both in terms of the magnitude of the shift in turnover and in the flow-on impact of profit leakage in terms of reinvestment in the State.

Bleasel points to the UK, where the liquor retailing system has evolved into a different state, and approximately 80% of wine retailing is through the major chains. Given that the major chains have that degree of market share in grocery retailing, Bleasel suggests the same would happen with liquor. T Forrester (Gasworks Bottleshop) notes that in Victoria, the two major chains control almost 40% of the retail alcohol market, despite the cap on licences being raised from 8% to 10%. He suggests that this will rise significantly when the cap is abolished. When translated to the Tasmanian scenario, Forrester estimates that the likely impact would be a shift in turnover in the order of 60%, rather than the 25% estimated by the Review Group.

Stakeholders such as J & P Cretan have suggested that the leakage of profit from the state represents foregone investment opportunities that would have other flow-on benefits. In this context, the 'headline' leakage estimate of \$2.9 million recognises only the direct impact and not the foregone multiplier associated with the profits.

Impact on price

On behalf of the AHA, EconTech's assessment of the economic issues associated with the proposal concluded that:

- a relatively high level of availability of alcohol already exists in Tasmania;
- Tasmania's alcohol prices are competitive, with transport costs being the main reason for the slightly higher prices in Tasmania; and
- profit margins are competitively low in Tasmania, as there is no cap on the number of outlets selling alcohol.

It therefore argues that the impact on price of removing the restriction would be negligible.

Recognising that Woolworths is already actively involved in the liquor market through its general and off-licence establishments, Jones argues that Woolworths has demonstrated that it does not sell alcohol more cheaply than other industry participants. He suggests that, with

the exception of loss-leading products (which are only short term specials), its prices are often dearer than the normal shelf price in his establishment.

J Bleasel argues that prices would rise under the proposal. He points to the current price differential between Tasmania and mainland states for groceries in order to hypothesise what would happen if supermarkets were allowed to sell liquor. He argues that freight costs are not the reason for the large grocery price differential, but rather "...the major chains charge as much as they can get away with, and they don't have much competition from the minor grocers who are Tasmania's only alternatives". He goes on to note "... there is no benefit to Tasmania in letting the major chains do to the state's liquor consumers what they are already doing to the state's grocery consumers".

Impact on employment in existing family owned businesses

A number of hotel operators have suggested that the proposal will reduce their margins, which will automatically translate into reduced employment, particularly in regional areas, and ultimately lead to small business closures. Tabor suggests that "...when you look through the names of the operators of hotels in Tasmania you will find that the vast majority are family owned businesses and if you ask them what this change will have, most would say it could quite likely cause them to close down..."

EconTech (on behalf of the AHA) estimates that, with the introduction of a retail licence, about 30% of the current bottleshops (ie approximately 35 establishments) would go out of business.

3.2.2.2 Social impact

A number of stakeholders argue that removal of the restriction would see an increase in the availability of alcohol and a resulting increase in consumption and alcohol related harm.

In this regard, the Review Group was somewhat disappointed that most, if not all submissions received were from stakeholders that are involved in the industry. No submissions were received from community groups or drug and alcohol service providers that could have provided a more 'balanced' or theoretical input on the issue of the social impact of alcohol.

Some stakeholders, such as the AHA, R Barnett from St Ives Hotel and J Bleasel from Nine/Eleven, believe that the Review Group has placed too much focus on economic issues and it has failed to adequately recognise that alcohol is a drug and, as such, its availability should be restricted (like pharmaceuticals and tobacco) to avoid abuse - it should not be treated as just another supermarket product.

Ron Tabor, from the Kingston Hotel, argues that the proposal would compromise Tasmania's "...unique family lifestyle...". He suggests that alcohol in supermarkets will

drastically increase the number of outlets that sell alcohol, and will create problems such as drunken behaviour around shopping centres where supermarkets are located. Children of supermarket customers would be exposed to people under the influence of alcohol while their parents are shopping for groceries. In addition, he questions who would police the selling of alcohol when, he argues, quite often the staff in supermarkets are only juniors at the checkout.

The issue of potential problems with enforcement of licensing laws in supermarkets was also raised by Stuart Jones, from Derwent Park Cellars, and by the proprietors of the Derwent Tavern.

Derwent Tavern has also argued that the market is already adequately catered for, suggesting that any increase in availability will increase problems related to excess consumption and under-age drinking. They cite a media report that one in three young persons aged 12 years have already had access to alcohol.

Youth access to alcohol was also raised as a concern by D Backhouse, from the Valem Hotel, who stated that there have been calls in New Zealand and New South Wales to increase the drinking age to 21 years due to issues of increased availability.

Royce Jessup was concerned to ensure that, if the recommendations are implemented, they are accompanied by appropriate planning assessments and on going monitoring by the Licensing Branch. He also commented on the level of assaults and violence that take place around shopping centres and car parks and suggests that people carrying alcohol to their cars could become targets for this type of behaviour.

Other stakeholders, such as A Williams from the Gateway Inn and the AHA, point to various surveys and opinion polls, including the survey undertaken by the Review Group, that indicate that a majority of the Tasmanian community does not want liquor in supermarkets.

The AHA, through EconTech, argues there are two main social impacts expected – the impact on under-age drinking and the impact on serving alcohol to intoxicated people.

EconTech's report notes that the reform would increase access to alcohol from supermarkets and bottleshops relative to hotels, which it argues is more likely than hotels to sell alcohol to minors and intoxicated persons due to:

- hotels facing a higher probability of being detected if they serve minors or intoxicated persons;
- the penalty of licence suspension affecting hotels more severely than supermarkets, as it would result in their closure, while supermarkets could continue to operate their business.

3.2.3 Final Report findings and recommendations

The Review Group has carefully considered each of the issues raised by stakeholders and its response to each is outlined below.

3.2.3.1 *Economic issues*

Impact on the tourism sector

The Review Group acknowledges the important role the hotel sector plays in the tourism industry and the broad range of services that these establishments provide. In the RIS, the Review Group highlighted the role many hotels play within the local community that could not be replicated by retail outlets⁴. In some instances, such as the example of Scottsdale cited in the RIS, the impact on the local hotels could be significant. In this context, the capacity for these establishments to provide other services may be hampered.

However, there is a significantly larger number of small towns where the major supermarkets are not present – there is a total of 44 major supermarkets throughout the State, the majority of which are located in the major population centres. In this regard, the Review Group believes that the large majority of rural and regional hotels will not be affected by the presence of liquor in supermarkets and they will not be adversely affected in their capacity to provide for the potential increase in tourists.

Furthermore, in those instances where the presence of competition from supermarkets threatens to reduce margins from liquor sales, the Review Group believes the projected increase in visitor numbers represents an opportunity for these establishments to diversify into other areas of service provision in order to maintain and increase their turnover.

The Review Group therefore believes that the likely impact on the provision and development of tourist facilities would not be as great as indicated by some stakeholders and that most rural hotels would be unaffected by the proposal.

Regulatory certainty

The Review Group is conscious of the desirability of providing a stable regulatory regime in order to maintain investor and business confidence and consumer confidence. However, it does not support the retention of a 'flawed' regulatory regime simply to maintain certainty.

It also does not agree with the proposition that the industry has been operating in an environment where there was no likelihood of changes to the legislation. To the contrary, Governments throughout Australia have been obliged, since 1996, to review all legislation that impacts on competition and this review has been foreshadowed since that time. Participants in the industry have had adequate warning that these issues would need to be

⁴ For more information see page 87 of the RIS.

considered in the context of National Competition Policy (NCP). The Review Group must assume, therefore, that investments made during the last five or six years have been done so with the knowledge that the anti-competitive elements of the Act would be subject to review and could be removed, especially as these restrictions do not exist in some other States.

The issue of compensation is not one that the Review Group is required to consider directly. The actual payment of compensation for existing operators is a political issue that is not part of an NCP review.

In terms of the entry premium paid by existing operators, the Review Group notes that supermarkets will require additional space and fit-out and/or the removal of existing stock lines in order to enter the market, the cost of which is effectively an 'entry premium'.

Leakage of income from the State

As noted, the Review Group concluded that there would be approximately \$2.9 million per annum of profit leakage from the State.

However, those that believe this is understated have not provided any detailed analysis to support their claims.

The example of the UK provides no real insight into the likely outcome, as the two systems have evolved over time under entirely different regulatory structures.

The example of Victoria, which has already undertaken such deregulation, is relevant to the Tasmanian case. As Forrester notes, the two major chains now control almost 40% of the retail alcohol market. However, available information indicates, in fact, that there has been an increase in all licence types in Victoria since the reforms, with the most significant increase being in on-premises licences⁵. The number of packaged and general licences has grown marginally over the past five years.

Additionally, the Review Group based its assessment of profit leakage on the assumption that only the major supermarket chains would enter the liquor market. If, however, the independent supermarkets were to also be included within the definition of supermarkets, the likely profit leakage out of the State would not be as great as estimated in the RIS. The extent that independent supermarkets achieve market share would represent a shift in profits between Tasmanian businesses.

In summary, whilst the major supermarket chains are embarking on an aggressive campaign to obtain a greater share of the liquor market, the Review Group does not believe that sufficient evidence has been provided by stakeholders to justify a change from its initial conclusions, which were based on detailed analysis and costings.

⁵ www.liquor.vic.gov

Impact on price

The Review Group acknowledged that the likely impact on price of removing the restriction would be negligible. Some stakeholders supported this view.

It does not believe, however, there will be an increase in prices, particularly in the short to medium term, as suggested by some stakeholders.

In this regard, there appears to be a contradiction in the argument. On the one hand, there is an assertion that the major supermarkets will take away market share from existing participants, but on the other hand it is argued that their prices are no cheaper than hotels and they would actually seek to raise prices for non-sales lines. The Review Group cannot reconcile how supermarkets could obtain, and retain, market share at the expense of hotels if they are not as competitive as hotels in their pricing. In the absence of more competitive prices, such a shift could only occur as a result of increased convenience for customers, which would indicate a significant public benefit.

Whilst Bleasel's comments in regard to the grocery pricing strategies of major supermarkets may also apply to liquor, the Review Group is satisfied that the level of competition in the liquor market is such that the major supermarkets could not achieve the same level of dominance as in the grocery market and then 'cartelise' its prices. The dominance of the hotel sector in Tasmania is such that the major supermarkets would be unable to position themselves such that they could "...charge as much as they could get away with".

It is important to also note that Woolworths is already an active participant in the liquor market through its Cheaper Liquor chain, which means that customers should already be receiving the pricing benefits from their participation.

The issue of Tasmania's freight cost disadvantage has been noted on a number of occasions for explaining any price differences between Tasmania and the mainland States. However, this argument ignores the fact that most turnover (approximately 70-75%) is in beer, which is locally produced. Therefore, relative to States such as Queensland and Western Australia, Tasmania has a freight cost advantage.

Impact on employment in existing family owned businesses

The Review Group's analysis recognised the likely impact on employment and existing operators in determining the extent of profit leakage from the state. Again, any assessment of the employment loss in one sector must be considered against the gains to other sectors.

If, as indicated by many stakeholders, the supermarkets actively seek to enter the market, they will need to employ additional staff, particularly those with liquor handling experience. Requirements of training and Responsible Serving of Alcohol (RSA) would also apply to supermarkets.

Whilst EconTech has estimated that about 30% of the current bottleshops (ie approximately 35 establishments) would go out of business if the reforms were introduced, the Review Group questions the robustness of the methodology and the assumptions that have been applied in arriving at the estimate. EconTech has assumed that 117 hotels⁶ significantly rely on packaged liquor sales. It has then assumed that there would be a 30% shift in turnover to supermarkets (based on their survey of ACT purchasing patterns) and that this would translate into a 30% reduction in the number of hotels.

3.2.3.2 *Social impact*

The Review Group paid particular attention in the RIS to the issue of harm and the link between alcohol and availability⁷.

In summary, those opposed to the proposal argue two main points in relation to supermarkets and harm:

- the licensing of supermarkets will increase availability which will directly translate to increased consumption and harm, particularly for under-aged and problem drinkers; and
- supermarkets are inherently less able to serve alcohol responsibly than traditional outlets.

The Review Group rejects these assertions on the basis of the extensive research it has undertaken. It also notes that the only submissions received that object to the removal of these restrictions were from industry participants with an interest in maintenance of the status quo. Given that no submissions from community or welfare groups were received, the Review Group has assumed the absence of comments indicate an acquiescence, or that there is no strong opposition to the proposals, among such groups.

Availability and consumption

As discussed in the RIS, the relationship between availability and consumption is not as clear as the traditional public health position asserts. In fact, issues of greater importance relate to:

- patterns of use; and
- the context of use.

In terms of availability and under-age consumption, research conducted in New Zealand provides the most recent empirical analysis that supports this position⁸. New Zealand

⁶ This figure includes the 17 off-licences currently on issue.

⁷ For further details see Chapter 3 of the RIS (Alcohol Consumption and Associated Social Issues).

⁸ See for example Alcohol Advisory Council of New Zealand, April 2002 and August 2002 at www.alcohol.org.nz/resources/publications.

reduced the minimum drinking age from 21 to 18 years in 1999. An Assessment of the *Health Impacts of Lowering the Minimum Legal Age for Purchasing Alcohol* found that while the overall proportion of drinkers in the New Zealand population has remained fairly steady, the proportion of 14 to 19 year old drinkers has fluctuated. The report cited other research that concluded that, when the drinking age in Massachusetts was increased from 18 to 20 years, the average daily consumption of alcohol in the 16 to 19 year age group did not decline⁹.

The report found that a range of other factors affect under-age drinking, for example, price. A study noted in the report concluded that the frequency of consumption is inversely related to the real price of beer and that this effect is larger than the impact of the drinking age¹⁰. The report found that a combination of peer influence, low family interaction and low social skills appear to have the largest effects on teenage alcohol consumption.

The report concludes that the most effective risk management interventions in reducing the numbers of young people drinking and drinking heavily include:

- price elasticities, particularly with regard to increasing the price of beer;
- raising the drinking age or purchase age to at least 20 years;
- policing and enforcement of sale of alcohol to underage young people and drink/drive laws;
- introducing tougher drink driving laws for young people; and
- community based alcohol harm education programs.

It is important to note that the report does not consider the option of limiting availability for all of the population in order to address the issues related to a small proportion of the population. Rather, it focuses on issues of enforcing the current laws and education.

Responsible service

A number of stakeholders believe that supermarkets would be inherently less responsible in terms of the sale of alcohol than traditional liquor outlets. This perception is also widely held among members of the Tasmanian community.

However, it is a perception that is not supported by available evidence. National research into underage access to alcohol consistently shows that the most common source of supply is parents and friends (80% - 95%). The younger the age group, the more likely the source

⁹ AACNZ, *Health Impacts of Lowering the Minimum Legal Age for Purchasing Alcohol*, p36.

¹⁰ *ibid*, p37.

identified is parents. In fact, much of this drinking is undertaken with the permission of and in the presence of parents¹¹. This is particularly so for 'light drinkers'.

For the small proportion of the underage drinking population that purchase alcohol, bottleshops are consistently the most frequently mentioned outlet from which alcohol is obtained. As noted in the ALAC Youth Drinking Monitor, "...in fact, all other outlets, including *supermarkets* and *sports clubs* were hardly mentioned."¹²

This reflects the fact that supermarkets are generally brightly lit and in high pedestrian traffic areas where there is a high likelihood of underage people purchasing alcohol being identified by family or friends. They are far more likely to seek out a less prominent outlet, such as a bottleshop. This also applies to intoxicated people, where they are far more likely to come to the attention of authorities (ie security guards) if they are in or around a supermarket.

There also appears to be an assumption by those opposed to supermarkets selling alcohol that they will not be subject to the same licence conditions and RSA requirements as those applying to existing licensees. As indicated in the RIS, the Review Group strongly supports the need to accompany supermarket licensing with appropriate conditions to ensure harm minimisation and RSA requirements can be maintained (eg alcohol only areas and check-outs).

3.2.3.3 *Conclusion*

The Review Group has not been provided with any evidence that it believes warrants a change to its initial recommendations.

In summary, the Review Group concludes that the net impact of removing the restrictions applying to supermarkets would be negligible, with the likely cost to current industry participants being offset by consumer gains. Issues of safety can be adequately addressed in the licensing conditions and through the enforcement of existing laws.

¹¹ AACNZ, *Youth and Alcohol, ALAC Youth Drinking Monitor*, August 2002, p64

¹² *ibid*, p57.

Recommendation 1

It is recommended that:

- Section 25A of the Act, which prohibits the Board from granting a licence in connection with activities of a supermarket, be repealed and supermarkets be permitted to apply for a liquor licence for off-premise sales; and
- licence conditions for supermarkets be included in the Regulations, which specify RSA training for serving staff and physically sectioned-off sales, display and checkout area for alcohol sales.

3.3 Restriction 4 - Restrictions applying to Off-licences

3.3.1 RIS findings and recommendations

Off-licences allow the sale of liquor from premises in quantities of at least nine litres (except for Tasmanian wine) and are restricted in their hours of operation compared with general licences.

In addition, the Liquor Guidelines specify that the premises to be licensed must be self-contained, in that the sale of liquor will not form part of any other retail business. Under the terms of the Amendment Act, this requirement will be amended so that "...the principal activity of the premises is the sale of liquor".

As noted in Section 3.1, this latter restriction effectively serves to prevent other retail outlets, such as supermarkets, restaurants and delicatessens, from being able to obtain an off-licence.

In the first instance, the Review Group concluded in the RIS that the restrictions imposed on off-licences are not designed to address any of the three objectives of the Act.

In terms of costs and benefits, the primary beneficiaries of the existing off-licence restrictions are general licensees, at the expense of consumers.

The Review Group also found there are no valid reasons why the nine-litre and trading hour restrictions applying to off-licences should not be removed immediately.

In terms of the 'principal activity' requirements contained in the Guidelines, the Review Group concluded they serve to limit diversity and choice in the off-licence market and the safeguards it provides are already adequately provided for in other areas of the Act.

The Review Group therefore recommended in the RIS:

- the immediate removal of the nine-litre minimum purchase requirement for off-licences contained in Section 9(a);
- the restrictions applying to the hours of operation for off-licences contained in Section 9 be amended to mirror the hours of operation restrictions applying to general licences; and
- the removal of the requirement contained in the Liquor Guidelines limiting the principal activity of the premises to the sale of liquor.

3.3.2 Stakeholder submissions

Nine submissions addressed the Review Group's recommendations in relation to off-licences. While all stakeholders recognised the issues associated with the anomalous nine-litre restriction, six stakeholders objected to the Review Group's proposals and three supported them.

Stakeholders opposed to the recommendations argued that, like the issue of supermarkets, there would be negative economic and social implications associated with removing the restrictions to off-licences. The Review Group notes that those opposed to the recommendations are all industry participants with a personal interest in maintaining the restriction.

A number of the stakeholders opposed to the Review Group's proposals have suggested that the off-licence category be abolished and existing licence holders be given the option of retiring the licence, converting to a general licence or a wholesale licence. This proposal has the support of the AHA and its members.

Under the terms of the proposal, existing licensees would have the option to elect to convert the licence to either a wholesale or a general licence, with a phase in of approximately two years to allow licensees and surrounding businesses to plan for the changes. For those licensees that choose to surrender their licences, the AHA has suggested compensation would be payable. The AHA argues that this proposal would provide "...additional competition without encouraging the irresponsible expansion of the liquor retail sector to dangerous levels in Tasmania..."

In voicing its support for the removal of the restriction and the freeing up of the off licence category, the Liquor Stores Association of Victoria (LSAV) argues that many of its members express interest in opening business in Tasmania, but the regulations deny them, many of whom are skilled retailers, the opportunity to enter the market.

3.3.3 Final Report findings and recommendations

In terms of the general issues associated with the economic and social implications of the Review Group's recommendations, the commentary contained in Section 3.1 is also

applicable. That is, the Review Group has not been provided with any additional information that warrants a review of its initial conclusions contained in the RIS concerning the economic and social implications of removing the nine litre restrictions and principal activity requirements.

With regard to the AHA's proposal, the Review Group found there was some appeal in terms of removing the nine-litre restriction anomaly with minimal disruption to existing operators.

However, the Review Group is bound by the NCP principles to reject the proposal on the basis that it will increase, rather than reduce, restrictions in the Tasmanian liquor market, with no quantifiable net public benefit.

If the AHA's proposal were implemented, the result would be the abolition of the only off-licence category that currently exists in Tasmania. If so, Tasmania would be the only State in Australia not to allow for the licensing of establishments for off-premise consumption only. This would be a highly restrictive move and one that would not be accepted by the National Competition Council (NCC) unless a clear public benefit could be demonstrated.

Furthermore, in a practical sense, the Review Group is also concerned that the proposal assumes that the existing nine litre outlets can readily convert to general licence establishments – that is, they are able to serve liquor on the premises. Even if the Review Group's recommendations in relation to Restriction 9 (Amenity and Condition of Premises) were accepted, nine litre outlets would still be required to meet local government planning conditions, in terms of providing bar and related services, in order to convert their licence. The costs and practicalities of this may be prohibitive.

In conclusion, therefore, the Review Group sees no reason to alter its draft recommendations relating to the restrictions applying to off-licences.

With regard to the principal activity requirement, the Review Group has argued previously that other sections of the Act, and Local Government planning requirements, provide sufficient safeguards against inappropriate licenses being issued. To reinforce this point, the Review Group has concluded it would be appropriate to include a recommendation that these safeguards continue to apply under the proposed off-licence model.

Recommendation 2

It is recommended that:

- the nine-litre minimum purchase requirement for off-licences contained in Section 9(a) be removed immediately;
- the restrictions applying to the hours of operation for off-licences in Section 9 be amended to mirror the hours of operation restrictions applying to general licences;
- the requirement contained in the draft Liquor Regulations limiting the principal activity of the premises to the sale of liquor be removed; and
- all applicants for an off licence, under the proposals contained in this recommendation, be required to meet the 'fit and proper person' and 'training and qualifications' requirements that currently apply to general and off-licences.

3.4 Restriction 5 - Personal and effective control requirements

3.4.1 RIS findings and recommendations.

Whilst a general licence provides for both on and off premise sales, the "personal and effective control" requirements contained in Section 22 (1)(b)(ii) prevent the establishment of bottleshops located separately from a hotel. This restriction does not, however, prevent a person from holding more than one licence if they can demonstrate to the Commissioner that "...they have the structure and strategies in place to be able to exercise personal and effective control"¹³.

The current restriction is designed to ensure that the licensee maintains active control over the licensed premises, and this enhancement to safety is clearly the greatest benefit of the restriction.

However, this benefit comes at the cost of reduced diversity and limited outlet options for consumers, as the restriction effectively prevents the establishment of stand alone bottleshops.

The Review Group noted that the issue of split licences also exists in Queensland, and the issue was dealt with at some length under the Queensland Liquor Review¹⁴. Under the Queensland legislation, general licensees are able to apply to have other premises from

¹³ O'Sullivan, P, and Thomas D., p4.

¹⁴ Queensland Government, p56.

which they may sell liquor for consumption off the premises – these are referred to as detached bottleshops. Restrictions applying to these shops include:

- the licensee may have no more than three detached bottleshops; and
- they can be no further than five kilometres by road from the main general licence¹⁵.

The Review Group considered this restriction from two perspectives. The first relates to the narrow issue of ‘personal and effective control’. The second relates to the broader issue of stand-alone bottleshops.

In the first instant, the Review Group concluded that the ‘personal and effective control’ requirements are too restrictive and the term ‘personal’ appears to be open to subjective definition by the Commissioner.

In terms of stand-alone bottleshops, the Review Group concluded that it is not appropriate for this restriction to be used as a mechanism to prevent the establishment of stand-alone facilities. The Review Group believes the appropriate mechanism to regulate the types of establishments is through the range of licence categories available, rather than through the applicant assessment process.

The Review Group therefore recommended in the RIS that the ‘personal and effective’ control requirements contained in Section 22(1)(b)(ii) be amended to require ‘effective control’ over the licensed premises.

3.4.2 Stakeholder submissions

Nine stakeholders commented on this matter, with three submissions supporting the Review Group’s recommendations.

Those opposed to the recommendations did so primarily on the basis of the social implications of increasing availability and the economic impact on existing operators.

3.4.3 Final Report findings and recommendations

The Review Group’s conclusions in relation to the economic and social implications of freeing up the restrictions applying to off-licences have already been discussed at length.

As noted by O’Sullivan and Thomas, the Commissioner already applies a liberal definition to “personal and effective” control that gives licensees the flexibility to hold more than one licence if they can demonstrate appropriate management structures. In the future, however, a

¹⁵ The five kilometre limit was increased to 10 kilometres as a result of a recommendation of the Queensland Liquor Review Group.

Commissioner may apply a more rigid definition that could disadvantage these licensees. It is preferable, therefore, that the flexibility be conferred through the legislation, rather than through the Commissioner's discretion.

The Review Group therefore sees no reason to alter its draft recommendation.

Recommendation 3

It is recommended that the 'personal and effective' control requirements contained in Section 22(1)(b)(ii) be amended to require 'effective control' over the licensed premises.

3.5 Restriction 6 - Licensing Board and public interest test

3.5.1 RIS findings and recommendations

Restriction 6 relates to the operations of the Licensing Board and its assessment, under the Liquor Guidelines, of the 'public interest test'.

Discussion in this section is complicated by changes contained in the Amendment Act that will convert the Guidelines to Regulations. As the Amendment Act is yet to be proclaimed, the discussion below relates to the Liquor and Accommodation Act as it currently operates.

The Liquor Guidelines state that the Board is to grant a licence or permit unless, among other things, it is contrary "...to the interests and concerns of the community"¹⁶. The Guidelines define this phrase to mean:

- representations made to the Board by the Council of the municipality in which the application relates, or by any other person;
- the extent to which the businesses carried on under the licences and permits in the area to which the application relates are satisfying the need intended to be satisfied by the applicant; and
- whether the grant of the application is likely to have an adverse effect on the interests of the community in that area.

The Guidelines go on to specify that the phrase does not have regard to:

- whether the business of any other licensee or permit holder may be adversely affected by the grant of the application; or

¹⁶ The Licensing Board is not compelled to apply the Guidelines.

- whether the business proposed to be conducted under the licence or permit would be successful.

In addition, Section 216 of the Act, as amended, will require the Board or Commissioner to make decisions with regard to licence and permit applications that "...will best aid and promote the economic and social growth of Tasmania by encouraging and facilitating the orderly development of the hospitality industry in the State".

It should be noted that reference to "...encouraging and facilitating orderly development of the hospitality industry..." will be repealed under the Government's Amendment Act. At present, the inclusion of this reference in Section 216 is somewhat contradictory to the exclusions contained in the Board's Guidelines.

The assessment of licence and permit applications based on 'the public interest', as defined by the Board, provides significant latitude for restrictive practices, and is commonly referred to as the "needs criterion".

This discretionary power of the Board is an important anti-competitive barrier, and may be seen as the fundamental issue in liquor licensing.

The Review Group is of the view that, once the Board has considered the issue of the suitability of the licence applicant, issues associated with the suitability of the premises should be dealt with under the Building Code of Australia, and issues associated with amenity should be dealt with by local government. There is no need for a separate authority to consider whether a licence should be issued in exercise of a general discretion.

In terms of protecting 'the public interest', the Act is sufficiently served by the Board's capacity to limit the use of premises or activities of licensees if problems arise.

While a number of other jurisdictions have a similar 'needs' criterion, Victoria, the ACT and New Zealand have all removed their licensing authority's discretionary powers and it would appear these changes have been introduced without contributing to an increase in harm associated with alcohol consumption. The Northern Territory, as part of its NCP Review, is also considering removing its needs test.

The Review Group noted that the 'public interest' assessment process represents a duplication of existing local government planning requirements and, as such, it raises the potential for Board decisions that are inconsistent with such requirements.

In summary, therefore, whilst it is recognised there are benefits associated with the current discretionary powers of the Board, the Review Group identified costs in terms of:

- the potential for inconsistent determinations by the Board;

- the potential for the discretionary powers to be applied to prevent market entry for reasons other than safety, quality and diversity;
- duplication between issues dealt with by the Board under the topic of 'public interest' issues dealt with under existing State or local government regulations; and
- the market uncertainty created by the discretionary powers of the Board.

The Review Group concluded there is significant merit in the simplified licensing administration system, in terms of:

- administrative simplicity;
- removal of a potentially anti-competitive power;
- certainty and consistency in licence application decisions; and
- reduced duplication with other areas of government and regulation.

The Review Group therefore recommended in the RIS that:

- Section 216 of the Act, which requires the Commissioner or the Board to approve an application only if it will "...best aid and promote the economic and social growth of Tasmania ... (having) ... regard for the legitimate interests and concerns of the community as a whole", be repealed;
- the requirement contained in the draft Liquor Regulations to grant a licence or permit only if it is in the public interest to do so be repealed;
- the Act be amended to remove reference to the Licensing Board and to place administrative responsibility with the Commissioner for Licensing;
- the Liquor Regulations cease to have effect and the Act be amended where necessary; and
- prior to repealing the Regulations, arrangements be made with Local Government, the Tasmania Fire Service and other relevant regulators to ensure that the proposed assessment process is understood and accepted.

3.5.2 Stakeholder submissions

Six stakeholders commented on these recommendations. All six submissions objected to the removal of Section 216 and reference to public interest, with some of the submissions objecting to other elements of the recommendations, such as removal of an independent review body.

3.5.2.1 *Public interest*

Those that objected to the removal of Section 216 and reference to the public interest did so primarily on issues of safety and the social impact of liquor. Comments were generally restricted to statements to the effect that not considering the social, economic and community consequences when assessing a licence application would be 'wrong' and 'bad for Tasmania'.

3.5.2.2 *Appeals mechanism*

Bleasel argued that the assessment of licence applications is such an important task that it should not be left to an individual or group wholly within government.

O'Sullivan and Thomas support the retention of the Licensing Board on the basis that it "...not only considers applications but is the appeals body for persons aggrieved by the Commissioner's decisions - to suspend and cancel licences and refusal to give and approval". They argue that maintenance of the Board, as opposed to an administrative tribunal, would better serve consistent and informed decision-making and procedural fairness.

3.5.3 *Final Report findings and recommendations*

3.5.3.1 *Public interest*

No new arguments were presented to the Review Group in relation to Section 216 and the public interest test. The comments of stakeholders are primarily predicated on the view that:

- the licensing authority is the only body responsible for assessing the 'public need' for licensed establishments; and
- in the absence of the current assessment there would be a significant increase in the number of licensed establishments and in the availability of liquor, which would increase harm and impact negatively on the liquor market.

As discussed in the RIS, there already exists a range of State and local government planning and health and safety requirements that potential licensees must meet prior to being considered for a licence. Through local government planning processes, developments must be consistent with the approved purpose. Local communities have the opportunity to appeal against a proposed development once it has been lodged with the local authority.

In terms of an anticipated significant increase in the number of licensed establishments, the Review Group believes that, firstly, the risks associated with entering a liquor market, which the industry argues is at 'saturation point', are such that the impact will be negligible and, secondly, ultimately such decisions should be based on the proponent's assessment of its

financial viability (ie left to market forces), within the constraints of local planning requirements.

The Review Group is concerned to ensure, however, that in any liberalisation of the licensing arrangements it needs to be accompanied by a fair, but strong, sanctions and enforcement regime. The community needs to feel confident that if a licensee does not abide by the conditions of their licence, firstly, the breach would be identified and reported and, secondly, it would be responded to with the full weight of the law.

3.5.3.2 Appeals mechanism

The Review Group notes that an Administrative Appeals Division of the Magistrates Court was established on 1 July 2002.

The Review Group therefore sees no constraints to the proposal to abolish the Board and transfer responsibility for hearing appeals to the new Administrative Appeals Division.

3.5.3.3 Conclusion

The Review Group believes that the Guidelines and discretionary powers to assess 'need' should be removed.

If they were removed, the Commissioner for Licensing would only be responsible for assessing the suitability of the licence applicant, while issues associated with the location of the premises, impact on the community and other businesses would be considered under the relevant local authority's planning laws.

Under this model, the role of the Licensing Branch would be focussed on administering the Act and assisting the Commissioner in assessing the suitability of licence applicants. In particular, the Commissioner would become responsible for determining liquor restriction orders (Section 39).

There would be no need for a Board, except to hear appeals, and with the establishment of the Administrative Appeals Division of the Magistrates Court, that requirement no longer exists.

In concluding that the needs test and the Board should be abolished, the Review Group believes that the revised licensing arrangements would need to be accompanied by a fair, but strong, sanctions and enforcement regime and that the Licensing Board is adequately resourced to police the Act. Such additional resourcing could be funded through savings in the area of accommodation inspections, if Restrictions 9 and 10 are removed.

Recommendation 4

It is recommended that:

- Section 216 of the Act, which requires the Commissioner or the Board to approve an application only if it will "...best aid and promote the economic and social growth of Tasmania ... (having) ... regard for the legitimate interests and concerns of the community as a whole", be repealed;
- the requirement contained in the draft Liquor Regulations to grant a licence or permit only if it is in the public interest to do so be repealed;
- the Act be amended to remove reference to the Licensing Board and to place administrative responsibility with the Commissioner for Licensing;
- the sanctions and penalties contained in the Act be reviewed to ensure they are strong, but fair;
- resources for the Licensing Branch be matched with any increased policing and enforcement roles for the Branch;
- the hearing of appeals in relation to decisions of the Commissioner be conducted by the Administrative Appeals Division of the Magistrates Court;
- the Liquor Regulations cease to have effect and the Act be amended where necessary; and
- prior to repealing the Regulations, arrangements be made with Local Government, the Tasmania Fire Service and other relevant regulators to ensure that the proposed assessment process is understood and accepted.

4 Minor restrictions

4.1 Introduction

In addition to the major restrictions discussed in Section 3, there are a number of other restrictions that impact on competition and that were subject to review. These restrictions, as numbered in the RIS, are:

- Restriction 1 - Licence and permit system;
- Restriction 2 - Licence and permit categories;
- Restriction 7 – Qualifications for licensees and permit holders;
- Restriction 8 - Good Friday trading restrictions;
- Restriction 9 - Amenity and condition of premises;
- Restriction 10 - Accommodation licensing scheme;
- Restriction 11 – Proposed industry strategic plan;
- Restriction 12 – Applications to be based on sound commercial principles;
- Restriction 13 – Proposed structure of the Licensing Board; and
- Restriction 14 - Conditions applying to club licences.

The Review Group's final assessment in relation to these restrictions is provided below.

4.2 Restriction 1 - Licence and permit system

4.2.1 RIS findings and recommendations

Alcohol is a drug and there is a general community expectation that its sale and use should be regulated. The existence of a licensing system enables a coherent structure for regulation of the industry and provides a vehicle for enforcing that regulation.

As a result of its analysis, the Review Group concluded that the benefits of maintaining the licensing and permit system significantly outweigh the costs of the system and there are no satisfactory alternatives to regulation.

The Review Group therefore recommended in the RIS the retention of a liquor licence and permit system.

4.2.2 Stakeholder submissions

Only three submissions addressed this draft recommendation, with all three agreeing to its inclusion.

4.2.3 Final Report findings and recommendations

The Review Group sees no reason to alter its draft recommendation.

Recommendation 5

It is recommended that the existing liquor licence and permit system be maintained.

4.3 Restriction 2 - Licence and permit categories

4.3.1 RIS findings and recommendations

The Review Group was also required to consider whether the provision of different licence categories in the Act creates competitive restrictions.

There are currently five types of licences and four types of permits available that relate to the sale of liquor.

The licences that are issued reflect the different circumstances surrounding the sale of liquor. The least restrictive of the licences is the general licence. Additional restrictions apply to each of the other licences for the specific conditions to which they relate.

The issuing of permits also provides for the consumption of alcohol in certain specific cases, either as an extension to existing licence conditions where appropriate, or where it is not the intention of the permit holder to undertake the sale of liquor in the manner allowed by the permit, on a more permanent basis.

The main alternative to a system of specific licence categories is to have a single licence category for all liquor providers, similar to that provided for in the Northern Territory. However, the Review Group noted that, in practice, a single licence system requires conditions specific to the individual applicant. Under a system of categories, applicants and the community have a degree of certainty in the conditions that will apply.

After considering the costs and benefits of maintaining separate licence and permit categories, the Review Group concluded that the benefits of maintaining a system of licence and permit categories outweigh the costs associated with the system.

The Review Group therefore recommended in the RIS that a range of licence and permit categories, tailored to specific service types, be retained.

4.3.2 Stakeholder submissions

Only three submissions addressed this draft recommendation, with all three agreeing to its inclusion.

4.3.3 Final Report findings and recommendations

The Review Group sees no reason to alter its draft recommendation.

Recommendation 6

It is recommended that a range of licence and permit categories, tailored to specific service types, be retained.

4.4 Restriction 7 – Qualifications for licensees and permit holders

4.4.1 RIS findings and recommendations

Under Sections 22 and 31 of the Act and the Amendment Act, licences and permits can only be granted to persons who meet the following criteria:

- attained the age of 21 years;
- in the opinion of the Commissioner for Licensing, is 'fit and proper' to hold a licence or permit;
- can exercise 'personal and effective' control over the sale and consumption on the licensed premises; and
- has successfully completed a course or traineeship approved by the Commissioner or has relevant qualifications.

The issue of 'personal and effective' control has been dealt with separately as Restriction 5.

With regard to the 'fit and proper person' requirements, the Review Group agrees this is essential to the licensing system, and is a key mechanism by which licences are allocated.

In terms of the age-based restriction, the Review Group was concerned that the 21-year minimum was not consistent with the commonly accepted age-based restriction of 18 years, which applies to the consumption of alcohol. It also noted that it was inconsistent with the Gaming Control Act, which imposes a licensing restriction to those aged under 18 years.

The Review Group therefore recommended in the RIS that Section 22(1)(a) of the Act, which restricts the granting of a licence to persons who have attained the age of 21 years, be amended to reduce the age restriction to 18 years, in line with the age restriction applying under the *Gaming Control Act 1993*.

4.4.2 Stakeholder submissions

Only three submissions addressed this draft recommendation, with all three agreeing to its inclusion. In supporting the recommendation, however, O'Sullivan and Thomas noted there is a significant difference in terms of the maturity of a 21 year old relative to an 18 year old.

4.4.3 Final Report findings and recommendations

Whilst the Review Group acknowledges the views and experience of O'Sullivan and Thomas in terms of the maturity of a 21 year old relative to an 18 year old, the issue is primarily one of consistency. In addition, the Group considers that the removal of the restriction would only impact on a very small number of prospective applicants, most of which would be for permits.

The Review Group therefore sees no reason to alter its draft recommendation.

Recommendation 7

It is recommended that Section 22(1)(a) of the Act, which restricts the granting of a licence to persons who have attained the age of 21 years, be amended to reduce the age restriction to 18 years, in line with the age restriction applying under the *Gaming Control Act 1993*.

4.5 Restriction 8 - Good Friday trading restrictions

4.5.1 RIS findings and recommendations

Section 65 of the Act restricts the hours of trading of general licence and on-licence holders (usually hotels and taverns) on Good Friday to between 11:00 am and 9:00 pm.

This restriction is inconsistent with the objectives of the Act in terms of:

- the restriction is selective in its application – other licence holders that may be in direct competition with hotels and taverns, such as the State’s two casinos and larger hotels that hold special licences are not subject to Section 65;
- forced early closing encourages excessive consumption and the mass ejection of patrons creates disturbance and a risk to safety; and
- the restriction reduces consumer choice.

The Review Group therefore recommended in the RIS that the Good Friday trading restrictions contained in Sections 65 (1)(c) and (1)(d) and 2(f) of the Act be repealed.

4.5.2 Stakeholder submissions

Only three submissions addressed this draft recommendation, with all three agreeing to its inclusion.

4.5.3 Final Report findings and recommendations

The Review Group sees no reason to alter its draft recommendation.

Recommendation 8

It is recommended that the Good Friday trading restrictions contained in Sections 65 (1)(c) and (1)(d) and 2(f) of the Act be repealed.

4.6 Restriction 9 - Amenity and condition of premises

4.6.1 RIS findings and recommendations

Sections 47 – 50 of the Act specify conditions of amenity and other requirements, such as needing the Commissioner’s approval before any alterations can be made to the premises, and requiring that the establishment, its furniture and its fittings are in good repair.

Under normal market conditions, such issues would be the sole business decision of the establishment concerned. Tasmania is one of the few States to impose, through its Liquor Act, amenity standards on licensed establishments¹⁷.

When this issue was initially raised in the Review Group's Discussion Paper, most stakeholders expressed the view that the amenity requirements ensure that minimum safety standards are maintained, which is of benefit to consumers, particularly tourists. Only two submissions responded by supporting the removal of the restrictions.

However, the restrictions do impose costs on the industry, particularly licensees, which are then passed on to customers. In addition, existing State and Local Government planning requirements already cater for a number of conditions imposed on licensees, in terms of maintaining health, safety and amenity standards.

Further, a number of the conditions imposed on licensees do not directly relate to 'quality' and are open to very broad interpretation.

While some level of regulation over physical alterations to licensed premises is required in order to ensure that license conditions are not breached, the Review Group believes there is opportunity to significantly amend the provisions of Section 47 so that licensees and/or owners of licensed premises can be relatively more innovative and the industry in general is more exposed to the benefits of commercial outcomes from competition.

The Review Group therefore recommended in the RIS that:

- Section 48 (Licensee to keep premises in good repair), Section 49 (Furniture and equipment, &c., to be provided) and Section 50 (Licensee to keep premises clean), be repealed; and
- Section 47, which prohibits a licensee from altering the premises without approval, be amended so that
 - an alteration requiring the prior approval of the Commissioner is restricted to only those alterations that result in an addition to, or reduction in, the area of the premises; and
 - all other lawful alterations, whether structural, decorative or otherwise; or any substantial change in the use of the premises which do not result in an addition or reduction in the licensed area of the premises should be left to the discretion of the licensee/owner concerned.

¹⁷ The Western Australian Liquor Licensing Act imposes similar restrictions, however, its Review Group has recommended that these be removed.

4.6.2 Stakeholder submissions

Given the level of stakeholder support for retaining the restriction that was expressed after the release of the Discussion Paper, the Review Group was surprised that only five submissions addressed the issue during this round of consultations, and only one of those objected to the Review Group's draft recommendations.

O'Sullivan and Thomas have argued strongly for the retention of the amenity requirements on the basis that it supports the tourist industry and the objectives of safety and quality, by providing industry with a competitive advantage and protection for visitors.

They suggest that the current licensing system reduces other forms of bureaucracy and ensures consistency. Licensed premises are exempt from the recently implemented Public Health Act (Places of Public Assembly) because the Commissioner undertakes inspections. If Local Government were to take on this role, O'Sullivan and Thomas argue that the plethora of local government bodies and their health and building inspectors would provide inconsistent and ad hoc interpretation of the laws and lead to a further regime of fees and charges.

4.6.3 Final Report findings and recommendations

At present, Local Government is responsible for all health and building inspections, except those that relate to licensed accommodation. The Licensing Branch performs these inspections. For example, a hotel that provides accommodation is subject to local government health and building inspections for food and liquor serving areas, whereas the Licensing Branch performs the inspection of accommodation.

Discussions with the Health Branch of the Hobart City Council indicate that the current system of inspections means that complaints relating to accommodation standards (eg rising damp) are rarely made to the Licensing Branch, rather they are directed to the relevant Local Government authorities.

In addition, Local Government inspectors are qualified in the area of health, or planning and are therefore well equipped to identify problems.

The Review Group therefore sees no reason to alter its draft recommendation.

Recommendation 9

It is recommended that:

- Section 48 (Licensee to keep premises in good repair), Section 49 (Furniture and equipment, &c., to be provided) and Section 50 (Licensee to keep premises clean), be repealed; and
- Section 47, which prohibits a licensee from altering the premises without approval, be amended so that
 - an alteration requiring the prior approval of the Commissioner is restricted to only those alterations that result in an addition to, or reduction in, the area of the premises; and
 - all other lawful alterations, whether structural, decorative or otherwise; or any substantial change in the use of the premises which do not result in an addition or reduction in the licensed area of the premises should be left to the discretion of the licensee/owner concerned.

4.7 Restriction 10 - Accommodation licensing scheme

4.7.1 RIS findings and recommendations

Currently the Liquor and Accommodation Act establishes a comprehensive accommodation licensing scheme. Under the Amendment Act, an amended accommodation scheme is proposed, which will give accommodation operators the option of operating under an approved industry accreditation scheme instead of operating under the licensing scheme.

The Commissioner would still retain a power to licence accommodation operators that do not belong in an approved accommodation scheme.

When this issue was initially raised in our Discussion Paper, stakeholders overwhelmingly supported the retention of an accommodation standards scheme of some form in order to support and maintain quality (i.e. minimum standards) in the tourism industry.

However, the Review Group identified a number of issues of concern including:

- the overlap and duplication with existing State and Local Government legislative requirements; and

- the lack of evidence to suggest that the scheme has provided any 'competitive advantage' to the State, in terms of ensuring a 'superior quality' tourism product.

It therefore concluded that, on balance, the costs of maintaining the accommodation licensing scheme outweigh the perceived benefits of the regulation.

In terms of the proposed model contained in the Amendment Act, it represents a compromise approach between the current compulsory system and a negative licensing system. The Review Group could see no real benefits in adopting this approach.

The Review Group therefore concluded there was merit in reducing the degree of overlap between the Liquor and Accommodation Act and other legislative requirements and for the orderly withdrawal of the liquor licensing authority from involvement in setting and monitoring tourist accommodation standards.

The Review Group therefore recommended in the RIS that:

- the accommodation licensing scheme cease;
- all reference in the Act to the scheme be removed; and
- assessment and approval of establishments and monitoring of health and safety standards be conducted solely by the appropriate State and/or Local Government authorities.

4.7.2 Stakeholder submissions

Of the four submissions that commented on these draft recommendations, only one submission, from O'Sullivan and Thomas did not agree with their inclusion.

O'Sullivan and Thomas strongly disagree with the draft recommendation, reinforcing the arguments they advanced in their initial submission concerning the importance of the scheme to maintaining minimum standards. In addition, they also noted that both Queensland and NSW are investigating administrative structures to implement a regime to licence/register accommodation through government.

Before any repeal of relevant sections of the Act, O'Sullivan and Thomas suggest that research should be undertaken to obtain data to ascertain if there is a public benefit in maintaining the accommodation licensing scheme. They believe anecdotal evidence suggests there is.

In summary, they observe that the scheme delivers simple support and structure to the hospitality industry and, with the introduction of the new ferries and resulting increase in tourists, there is arguably further grounds to maintain a simple licensing scheme to filter out unscrupulous operators.

4.7.3 Final Report findings and recommendations

In response to the comments made by O'Sullivan and Thomas, it should be noted that the Review Group did undertake research into the effectiveness of the accommodation licensing scheme during the course of the RIS and it found, based on the evidence and indicators available, that the scheme does not make a marked difference to accommodation services and standards in Tasmania.

The Review Group is also mindful that the submissions from tourism accommodation peak bodies and private accommodation providers were either supportive of the removal of the scheme or they did not comment on the Review Group's draft recommendations. Given the significance to the industry of the removal of the scheme, the lack of comment from the industry must be interpreted as supporting the draft recommendations.

The Review Group also saw no merit in adopting the amended accommodation licensing scheme that is contained in the Amendment Act.

In summary therefore, the Review Group sees no reason to alter its draft recommendation.

Recommendation 10

It is recommended that:

- the accommodation licensing scheme cease;
- all reference to accommodation and the accommodation licensing scheme be removed from the Act;
- it be noted that accommodation establishments will instead be covered by industry accreditation schemes, if they so choose; and
- assessment and approval of establishments and monitoring of health and safety standards be conducted solely by the appropriate State and/or Local Government authorities.

4.8 Restriction 11 – Proposed industry strategic plan

4.8.1 RIS findings and recommendations

The Amendment Act requires the Minister to prepare an industry strategic plan, in consultation with the industry.

The Review Group understands the plan will be used by the Board to assist in its licence application assessment process.

Whilst the Review Group noted the benefits that will accrue to existing and potential participants of having relevant information on which to plan their investment decisions, the use of such a plan to determine licence applications presents a potential cost in that it could be used to prevent market entry.

The Review Group also raised the issue of who should be responsible for preparation of an industry strategic plan, expressing the view that it should rest with the industry.

The Review Group therefore recommended in the RIS that:

- Section 6 of the Amendment Act, which requires the Minister to prepare a strategic plan in respect of the sale of liquor, be withdrawn or, if already enacted it be repealed;
- if it is not withdrawn, responsibility for the preparation and implementation of the plan be allocated to industry representatives; and
- if responsibility for development and maintenance of the industry strategic plan is to remain within government, it should be allocated to the Department of State Development, to be advanced in the context of the Government's Industry Development Plans, and should contain no restrictions on competition.

4.8.2 Stakeholder submissions

Four stakeholder submissions addressed this restriction, with only one submission opposing the Review Group's draft recommendations.

The Gateway Inn argued that this review represents a plan of action and, as such, a Strategic Plan would allow for a rational, equitable and timely agenda for implementation. A Strategic Plan would ensure that change can be managed.

4.8.3 Final Report findings and recommendations

The Review Group appreciates the views advanced by the Gateway Inn and supports its comments regarding the need for an implementation plan for any major reforms emerging from this review.

However, in the context of a broader industry Strategic Plan, the Review Group is unchanged in its view that the imposition of such a requirement in legislation raises the prospect of restrictions on competition.

The Review Group therefore sees no reason to alter its draft recommendation.

Recommendation 11

It is recommended that:

- Section 6 of the Amendment Act, which requires the Minister to prepare a strategic plan in respect of the sale of liquor, be repealed;
- if it is not withdrawn, responsibility for the preparation and implementation of the plan be allocated to industry representatives; and
- if responsibility for development and maintenance of the industry strategic plan is to remain within government, it should be allocated to the Department of Employment and Development, to be advanced in the context of the Government's Industry Development Plans, and should contain no restrictions on competition.

4.9 Restriction 12 – Applications to be based on sound commercial principles

4.9.1 RIS findings and recommendations

It is proposed under the Amendment Act that licence applicants be required to submit a business plan with their application to illustrate that their proposal is based on sound commercial principles.

This proposal means that some licence applications could be rejected on the basis of dubious commercial prospects.

The Review Group noted the benefits of ensuring that licence applicants have undertaken a thorough self-assessment, but it had strong concerns about the rationale of imposing such a requirement through the licensing legislation.

In the first instance, the licensing authorities have no experience or skills in the area of financial analysis and business principles. Secondly, it raises the issue of potential litigation if the Board were to reject an application on the basis of dubious commercial prospects, or conversely, if it approves a proposal on the grounds of commercial soundness, which subsequently proves to be uncommercial.

The Review Group therefore recommended in the RIS that Section 10 of the Amendment Act, which requires the demonstration of sound commercial principles for licence applicants, not be introduced and if they are, that they be repealed.

4.9.2 Stakeholder submissions

Only three submissions addressed this issue, with all three agreeing to the draft recommendations.

4.9.3 Final Report findings and recommendations

The Review Group sees no reason to alter its draft recommendation.

Recommendation 12

It is recommended that Section 10 of the Amendment Act, which requires the demonstration of sound commercial principles for licence applicants, be repealed.

4.10 Restriction 13 – Proposed structure of the Licensing Board

4.10.1 RIS findings and recommendations

Under the Amendment Act, membership of the Board will be expanded to include:

- a person with experience in the hotel industry nominated by the Minister after consultation with the AHA;
- a person with experience in the management of clubs nominated by the Minister after consultation with Clubs Tas;
- a person nominated by the Minister after consultation with the Australian Liquor, Hospitality and Miscellaneous Workers' Union;
- a person nominated by the Minister after consultation with the Restaurant and Caterers' Association; and
- a person nominated by the Minister after consultation with the department responsible for the *Public Health Act 1997*.

While not expressly restrictive, expanding the Board's membership to include Ministerial appointments, determined after consultation with selected industry bodies, provides the opportunity for restrictive practices to emerge to protect those groups.

The Review Group was also concerned that the inclusion of industry nominated representatives would remove the perceived independence of the Board and could potentially undermine the credibility of the licensing system.

The Review Group therefore recommended in the RIS that the proposal contained in Section 21 of the Amendment Act to expand the membership structure of the Licensing Board not proceed and, if already enacted, that it be repealed.

4.10.2 Stakeholder submissions

Only three submissions addressed this issue, with all three agreeing to the draft recommendations.

4.10.3 Final Report findings and recommendations

The Review Group sees no reason to alter its draft recommendation.

Recommendation 13

It is recommended that the proposal contained in Section 21 of the Amendment Act, which expands the membership structure of the Licensing Board, be repealed.

4.11 Restriction 14 - Conditions applying to club licences

4.11.1 RIS findings and recommendations

Club licences provide special interest groups (ie sporting and social clubs) with the opportunity to purchase and consume liquor as an adjunct to their primary club activity.

The Amendment Act proposes that a licensed club may only sell alcohol "...to prescribed persons". "Prescribed persons" are defined in the draft Regulations as:

- a member of the club;
- a guest of that member who attends a social function or meeting of the club, or is invited by a member of the club;
- a guest of that member who attends a private function at the premises;
- a person who competes or has competed on that day in any event conducted at those premises;
- a person who is or has been a spectator on that day at any event conducted on those premises; and

- a member of another club incorporated under the *Associations Incorporation Act 1964* who attends a meeting of the club.

The Amendment Act also specifies that licensed clubs may only sell alcohol "...subject to any conditions specified in the licence".

The restrictions currently applying to club licences serve to maintain the spirit and intent of the licence category by restricting access to liquor sales to members, guests and specific individuals. Whilst this limits the market opportunities of clubs, and the purchasing options of certain individuals, the nature of the establishments is such that:

- as not-for-profit organisations, providing services, rather than maximising market share/profit, is their main objective; and
- these services are primarily focussed on members and their guests.

Relative to other States, licensed clubs in Tasmania are some of the least restricted in Australia in terms of off-premise sales. Victoria and Western Australia restrict take away sales from licensed clubs to members only, while take-away sales from licensed clubs in South Australia are only permitted to lodgers and to members if not readily available in the area. In NSW, where club licences provide for the sale of take-away liquor to members and guests only, such licences are not covered under the *Liquor Act 1982*, but under a separate *Registered Clubs Act 1976*.

In terms of on-premise sales, most States apply similar restrictions, although a number allow entry and sales to 'travellers' – residents of the State that live more than a defined distance (eg 20kms) from the licensed club. Victoria also allows entry to non-members for gaming purposes only.

In terms of issues for inclusion in the RIS, the Review Group was concerned that the amendments included in the Amendment Act adequately captured the intent of the existing restrictions contained in the Act.

The Review Group therefore recommended in the RIS that:

- the restrictions applying to licensed clubs be maintained; and
- options be considered to remove reference to "...conditions specified in the licence..." and to incorporate requirements contained in Schedule 1 of the Guidelines into clubs' constitutions.

4.11.2 Stakeholder submissions

Five submissions addressed the issue of club licences, three of which supported the recommendations without comment.

The Hospitality and Tourism Industry Association of Tasmania Inc (HATIAT) noted that clubs are private facilities and they should not advertise meals or takeaway liquor. The Association suggests that, while some clubs do not advertise, many do. It also suggests that some clubs have drive-in liquor facilities open to the public.

Clubs Tasmania provided a comprehensive submission to the Review Group that included:

- an overview of Clubs Tasmania and the scope of organisations it represents;
- a synopsis of clubs in Tasmania, including their demographics, historical development their social role and restrictions governing their operations;
- details of the taxation and operating environment of licensed clubs;
- the costs and benefits of a healthy club industry; and
- interstate comparisons.

The submission advanced two proposed amendments to the current restrictions applying to licensed clubs:

- introduction of the 'traveller rule'; and
- allowing not-for-profit organisations (NFPOs) to use premises.

4.11.2.1 Traveller rule

Under a 'traveller rule', visitors from outside a certain distance would be allowed to sign in and, subject to the club's constitution, have unrestricted access to the club's facilities for that day.

Clubs Tasmania argues that clubs are now forced to turn away potential guests such as tourists who prefer the club atmosphere to that of pubs and hotels. They argue that all other States except for Tasmania and Western Australia have a traveller rule, as indicated below.

Statistics gathered by Clubs Tasmania show that an estimated 86% of Tasmania's clubs have had to turn away tourists/visitors from entering their club due to current restrictions. They estimate that on average, about 3,500 tourists were turned away from Tasmanian clubs in the 2001 tourist season.

State	Traveller Rule admittance
New South Wales	Yes – from greater than 5km
Victoria	Yes – from greater than 5km for metro gaming visitors and from greater than 10km for country
Queensland	Yes – from greater than 25km
Western Australia	No
South Australia	Yes – gaming licence holders only
ACT	Yes – interstate

4.11.2.2 Use of premises by NFPOs

Clubs Tasmania argues that clubs already provide a great deal of support to NFPOs while carrying the burden of permit fees and paperwork.

Clubs Tasmania has proposed that the legislation be amended to allow NFPOs to hold functions and meetings on club premises without the requirement for the club to apply and pay for a permit. This would relieve the financial and administrative burden placed on clubs and allow them to continue to provide community services.

It argues that the change would have no impact on hotels or pubs, as NFPOs currently use hotels and pubs for meetings where allowed and the return to the premises in which they hold their meetings is generally low.

Clubs Tasmania suggests that the change would assist clubs to remain viable while continuing to support the activities of these small, non-profit, community based organisations with cost-free premises for meetings and functions.

4.11.3 Final Report findings and recommendations

The Review Group acknowledges the benefits of applying a traveller rule in limited instances, to bone fide visitors.

There would be benefits to licensed clubs, in terms of increased patronage from visitors and for tourists, in terms of increased choice. The costs of such a proposal would include the impact on existing licensees and the cost of regulating.

The Review Group does not, however, consider that a person residing five kilometres from a licensed club represents a bone fide visitor. Rather, adoption of a traveller rule should only apply for those people who are visitors to the State. Tasmanian residents do not, in the

Review Group's view, constitute visitors for the purposes of the Liquor and Accommodation Act.

Given this restricted definition of 'visitor' the potential impact on existing licensees is expected to be negligible. The cost of regulation would also be marginal and would occur as part of any licensing check of licensed clubs. However, the benefit for clubs, in terms of providing an additional potential client group, could be significant.

In terms of the suggestion that NFPOs be allowed to hold functions and meetings on club premises without the requirement for the club to apply and pay for a permit, the Review Group believes the practical implications of adopting the suggestion are minimal. At present, NFPOs use club facilities for meetings and functions. If they wish to access the club's bar facilities, the NFPO is required to apply for a permit and pay a \$26 permit fee. The Licensing Branch has indicated that such permit applications are invariably approved.

If Club Tasmania's proposal is accepted, the Review Group believes there would be a benefit to these NFPOs, a minor benefit to licensed clubs and negligible impact on other licensed establishments.

Recommendation 14

It is recommended that:

- the Regulations be amended to include a 'traveller rule', which would permit interstate visitors to sign into a club and, subject to the club's constitution, have unrestricted access to the club's facilities for that day;
- the Regulations be amended to allow bone fide not-for-profit organisations to access club bar facilities for meetings or functions, in accordance with the relevant club's constitution, without the need to apply for a permit; and
- options be considered to remove reference to "...conditions specified in the licence..." and to incorporate requirements contained in Schedule 1 of the Guidelines into clubs' constitutions.

5 Other issues raised in the RIS

5.1 Introduction

In addition to the restrictions on competition outlined in Sections 3 and 4, three other issues of concern were raised in the RIS that are not currently included in the Act, namely:

- determining the objective of the Act;
- defining licence 'applicant'; and
- training and qualification requirements.

Determining the objectives of the Act was a key element of the RIS. The objectives of the Act, as defined, served to determine the criteria against which restrictions could be assessed.

In terms of defining the licence applicant and determining training and qualification requirements, these issues are not a part of the Review Group's terms of reference, however, enhancements in these areas would serve to enhance the safety objectives of the Act.

5.2 Objectives of the Liquor and Accommodation Act

5.2.1 RIS findings and recommendations

In order to make recommendations on whether the restrictions on competition contained in the *Liquor and Accommodation Act 1990* should be removed, retained or modified, the Review Group was required, as part of the Terms of Reference, to "...clarify the objectives of the legislation". Any restrictions on competition needed to be assessed against the defined objectives of the legislation.

The Review Group concluded that the objectives of safety, quality and diversity accurately reflect the intent of the legislation and adequately address, where appropriate, the issues raised by stakeholders.

The Review Group therefore recommended in the RIS that the following Statement of Objectives be included in the Act:

The objectives of the Liquor (*and Accommodation*) Act are to encourage safety, quality and diversity in the provision of liquor (*and accommodation*) for the benefit and enjoyment of both the Tasmanian community and visitors to the State¹⁸.

5.2.2 Stakeholder submissions

Only four submissions addressed this draft recommendation, with all four agreeing to its inclusion.

Only one submission, from O'Sullivan and Thomas, provided any commentary on content of the proposed Statement of Objectives. They have suggested that the Statement should include the phrase 'harm minimisation', as it has become common usage in other liquor acts and the issue of harm minimisation has become an important focus for all licensing authorities throughout Australia.

5.2.3 Final Report findings and recommendations

Whilst 'harm minimisation' is a term that has been applied by some jurisdictions in their liquor legislation, the Review Group believes that the term 'safety' is broader and stronger in its intent than 'harm minimisation' and the word is one that is more commonly used and understood by members of the community.

The Review Group therefore concludes that its draft recommendation should remain unchanged.

It should be noted that, if the Government accepts the Review Group's recommendations in relation to Restriction 10 (Accommodation Licensing Scheme), all reference to 'accommodation' should be removed from the title of the Act and the Statement of Objectives.

Recommendation 15

It is recommended that the following Statement of Objectives be included in the Act:

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

¹⁸ Italics denotes that, if the Government agrees to the abolition of the Accommodation Licensing Scheme, all reference to 'accommodation' should be removed from the Statement of Objectives.

5.3 Definition of 'licence applicant'

5.3.1 RIS findings and recommendations

In response to the Review Group's Discussion Paper, a number of stakeholders argued that the current licensing system is deficient in that it focuses solely on the licence applicant and does not allow for an assessment to be made of the suitability of associates of the applicant.

It was therefore suggested that the Act should be extended to include associates, and the influence they may have over the licensee.

While the Review Group noted the difficulties of defining 'associates' and of undertaking assessments of known associates, it considered that the current arrangements are deficient and open for manipulation.

It therefore recommended in the RIS that the definition of 'licence applicant' be expanded to include known associates, in line with the requirements imposed under the Gaming Control Act.

5.3.2 Stakeholder submissions

Of the few stakeholders that commented on this recommendation, only O'Sullivan and Thomas did not support its inclusion.

They argue that the current Act provides sufficient safeguards in relation to the operation of licensed premises without needing to expand the definition to include associates. They suggest that the administration of transfers and licence applications would increase paperwork without any real benefit.

5.3.3 Final Report findings and recommendations

The Review Group is not convinced by the comments of O'Sullivan and Thómas in terms of the adequacy of the current provisions. The Review Group is aware of instances where persons who would not otherwise qualify for a licence have entered into business arrangements designed to circumvent the fit and proper person requirements.

In terms of the added complexity in undertaking such assessments, the Review Group notes that the *Gaming Control Act 1993* contains similar requirements and it contains a detailed definition of 'associate'. Given the degree of overlap between the two licensing regimes, the Review Group believes it would not add greatly to the complexity of the process and the concept would already be understood by a large number of industry participants.

The Review Group therefore concludes that its draft recommendation should remain unchanged.

Recommendation 16

It is recommended that the definition of 'licence applicant' be expanded to include known associates, similar to the licence requirements imposed under the *Gaming Control Act 1993*.

5.4 Qualifications and training

5.4.1 RIS findings and recommendations

The Amendment Act contains training requirements for licence applicants that the Review Group supports. However, it is concerned to ensure that competency through existing experience is included in the definition of qualifications.

In addition, the Review Group considers it anomalous for the training requirement to apply only to the licensee and not to those employed to serve alcohol. This is particularly relevant if the Review Group's recommendations relating to the 'personal and effective control' requirements are accepted.

Given the practicalities of meeting this requirement, the Review Group believes it would be appropriate to provide the licensee with a period of three months, after commencement of operations, in which to ensure all staff are appropriately trained.

The Review Group therefore recommended in the RIS that:

- the definition of qualifications be expanded to include competencies through experience; and
- a condition of issuing a licence requires that all staff serving alcohol in general, on and off-licence establishments be trained in RSA, with such requirements for special licences to be assessed upon application; and
- a period of three months' grace applies, following the commencement of trading by the licensed establishment, to allow for the training of all staff to be completed.

5.4.2 Stakeholder submissions

Of the three stakeholders that commented on this proposed recommendation, all were in favour.

O'Sullivan and Thomas noted that this requirement is gradually being implemented in all other States and they have not identified any practical issues associated with its implementation in Tasmania.

5.4.3 Final Report findings and recommendations

The Review Group sees no reason to alter its draft recommendation.

Recommendation 17

It is recommended that:

- the definition of 'qualifications' be expanded to include competencies obtained through experience;
- a condition of issuing a licence be that all staff serving alcohol in general, on and off-licence establishments be trained in RSA, with such requirements for special licences to be assessed upon application; and
- a period of three months' grace should apply, following the commencement of trading by the licensed establishment, to allow for the training of all staff to be completed.

Appendix A - Review Group and Reference Group membership

The Review Group

The Review Group, as constituted by the Government, comprises:

- Martin Rees - Partner, KPMG (Chair)
- Peter Bennett – Assistant Director, Department of Premier and Cabinet
- Deb Lewis – Manager, Industry Services and Training, Tourism Tasmania.

Additional research has been undertaken by KPMG, while the Department of Treasury and Finance has provided secretarial support.

The Reference Group

The Reference Group, as constituted by the Government, comprises:

- Daniel Leesong, State Director, Australian Hotels Association
- Michael Roberts, General Manager, Tourism Council Tasmania
- Peter Coe, Commissioner for Licensing
- Phil Capon, Restaurant and Caterer's Association
- Michael Watts, Secretary, Clubs Tasmania

Appendix B - Terms of Reference

INTRODUCTION

At the meeting of the Council of Australian Governments (COAG) on 11 April 1995, the Tasmanian Government (along with the Commonwealth and all other State and Territory governments) signed three inter-governmental agreements relating to the implementation of a national competition policy (NCP). The agreements signed were:

- • the Conduct Code Agreement;
- • the Competition Principles Agreement; and
- • the Agreement to Implement the National Competition Policy and Related Reforms.

The Competition Principles Agreement (CPA), among other things, requires the State Government to review and, where appropriate, reform by the year 2000 all legislation restricting competition. This requirement is outlined in clause 5.

The State Government's Legislation Review Program (LRP) meets Tasmania's obligations under clause 5 of the CPA by, *inter alia*, outlining both a timetable for the review of all existing legislation that imposes a restriction on competition and a process to ensure that all new legislative proposals that restrict competition or significantly impact on business are properly justified. Further, the LRP details the procedures and guidelines to be followed by agencies, authorities and review bodies in this area. Details of the LRP's requirements are contained in the *Legislation Review Program: 1996-2000 Procedures and Guidelines Manual* (the "Manual").

TERMS OF REFERENCE

The Liquor and Accommodation Review Group (Review Group), as detailed in Attachment 1, will conduct a major review of the Liquor and Accommodation Act 1990 and all subordinate legislation under that Act, having regard to the following guiding principle: "That legislation should not restrict competition unless it can be demonstrated that:

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

Review Requirements

As a minimum, the review shall:

- clarify the objectives of the legislation;
- identify the nature of the existing restrictions on competition;
- consider whether the existing restrictions should be retained by:

- analysing the likely effect of the existing restrictions or any other form of restriction on competition within the liquor industry, the accommodation industry and on the economy generally;
 - assessing and balancing the costs and benefits of the restrictions; and
 - considering alternative means for achieving the same result, including non-legislative approaches; and
- identify the broader impact of the legislation on business and assess whether this impact is warranted in the public benefit.

In addition, the Terms of Reference for the Review Group may be expanded during the course of the review to include consideration of any proposed legislation to amend the Liquor and Accommodation Act 1990.

The review shall not consider matters relating to restrictions in the Act or its subordinate legislation that limit the availability of liquor to minors.

In undertaking the review, regard will be had to legislative restrictions on liquor, accommodation and wine production industries in other Australian States and Territories, and, where possible, the outcome of legislation reviews elsewhere.

The Review Group shall take other broad policy considerations of the Tasmanian Government into account when determining whether legislative restrictions on competition or significant impacts on business are warranted. These considerations include, but are not limited to:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally or a class of consumers;
- the competitiveness of Australian businesses; and
- the efficient allocation of resources.

Format of the Review

The Review Group must complete a Regulatory Impact Statement (RIS) in accordance with the proforma contained in Appendix 3 of the Manual. The RIS should explain:

- the objectives of the legislation;
- the issues surrounding any restriction(s) on competition;
- the benefits and costs which flow from those restriction(s); and
- the broader impact of the legislation on business and whether this impact is warranted in the public benefit.

Reporting Requirements

The Review Group must produce a final review report in accordance with the Manual. The final review report must contain:

- a copy of the RIS;
- clear recommendations on the possible actions that can be taken by the Government, including retaining, amending or repealing the specific legislative restriction(s) on competition in question. Where retention or amendment is recommended, the report must include a clear demonstration of the benefit to the public;
- clear recommendations on any possible actions that can be taken by the Government in relation to the broader impact of the legislation on business; and
- an outline of any transitional arrangements, which may be required under the recommended course of action and the rationale for these arrangements.

The Date of Completion

The Review Group shall provide a copy of both the completed review report and RRU endorsement of the RIS to the Treasurer and the Portfolio Minister by 30 June 2002.

Appendix C - Submissions received

Submission Number	Organisation	Contact
1	Brooker Inn Hotel	Mr A Giacon
2	Kingston Hotel	Mr R Tabor
3	Derwent Tavern	Ms A Barnes & Mr D Pope
4	Fountainside Motor Inn	Ms R Burke
5	-	Royce Jessup
6	Derwent Park Cellars	Mr S Jones
7	Valern Hotel	Mr D Backhouse
8	St Ives Motel Apartments	Ms S Wilkinson
9	Gasworks Bottleshop	Mr T Forrester
10	Elwick Hotel	Ms J Little
11	St Ives Hotel	Mr R Barnett
12	Jimmy's Liquor, Pindari Cellars and St Helens & Scottsdale Liquor Markets	Rae and Partners
13	Clubs Tasmania	Mr M Watts
14	Kriticos Nominees Pty Ltd	Mr J & Mr P Cretan
15	Gateway Inn	Mr A Williams
16	Nine Eleven Tasmania p/l	Mr J Bleasel
17	Tourism Council Tasmania	-
18	-	Mr P O'Sullivan & Mr D Thomas
19	Australian Hotels Association	Mr D Leesong
20	Furner's Hotel	Mr M Best
21	Hospitality & Tourism Industry Assn of Tasmania	Mr J Taylor
22	Liquor Stores Association of Victoria Inc	Mr P Wilkinson

Appendix D - Summary of submissions

Name	Restrictions - Stakeholder support or opposition to RIS recommendations													
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Brooker Inn Hotel			Oppose	Oppose	Oppose	Oppose								
Kingston Hotel			Oppose											
Derwent Tavern			Oppose											
Fountainside Motor Inn			Oppose						Agree	Agree				
Royce Jessup			Oppose											
Derwent Park Cellars			Oppose	Oppose										
Valern Hotel			Oppose			Oppose								
St Ives Motel			Oppose		Oppose									
Gasworks Bottleshop			Oppose											
Elwick Hotel			Oppose			Oppose								
St Ives Hotel			Oppose		Oppose									
Rae and Partners			Oppose	Agree	Oppose									
Clubs Tasmania														Oppose
Kriticos Nominees Pty Ltd			Oppose											
Gateway Inn			Oppose	Oppose							Oppose			
Nine Eleven Tasmania p/l	Agree		Oppose	Oppose	Agree	Oppose	Agree		Agree	Agree	Agree	Agree	Agree	
Tourism Council Tasmania			Oppose											
Peter O'Sullivan and David Thomas	Agree	Agree	Agree	Agree	Oppose	Oppose	Agree	Agree	Oppose	Oppose	Agree	Agree	Agree	Agree
Australian Hotels Association	Agree	Agree	Oppose	Oppose	Agree	Oppose	Agree	Agree	Agree	Agree	Agree	Agree	Agree	Agree
Furner's Hotel			Oppose		Oppose									
Hospitality & tourism Industry Assn of Tasmania			Oppose											
Liquor Stores Association of Victoria Inc			Oppose	Agree	Agree									