

LIQUOR LICENSING ACT 1988

**REPORT OF THE INDEPENDENT REVIEW
COMMITTEE**

MAY 2005

PRESENTED TO THE MINISTER FOR RACING AND GAMING

Contents

1. Foreword	1
2. Executive Summary	4
3. Summary of Recommendations	9
4. Alcohol and the Community	23
5. Effectiveness of the Operation of the Licensing Authority	31
6. Public Needs Test Vs Public Interest	57
7. Objects of the Act and Current Licence Classification System	65
7.1 Objects of the Act	65
7.2 Licence classification system	77
7.3 The use of extended trading permits	94
7.4 Banning products from sale	98
7.5 The hours that packaged liquor is available	99
7.6 Vocational training and juveniles	100
7.7 Miscellaneous	102
8. The Impact of Market Domination on the Liquor Industry	105
9. Enforcement, Security and Control of Special Events	110
10. Technical Amendments	118
11. Matters Warranting Further Consideration	145
12. Evolution of Liquor Control in Western Australia	149
Appendix	
Terms of Reference	155
Submissions Received or Referred	158
Individuals or Local Groups Consulted	161

1. Foreword

Pursuant to section 178 of the *Liquor Licensing Act 1988*, the Minister shall carry out, or cause to be carried out, a review of the operation of the Act as soon as practicable after the expiration of 5 years from the commencement of section 95 of the *Liquor Licensing Amendment Act 1998*.

Consequently, the Hon Nick Griffiths LLB MLC, Minister for Racing and Gaming, appointed an independent review committee in September 2004, consisting of Mr Jim Freemantle (Chairman), Mr George Bray and Ms Wendy Silver. Mr Peter Minchin was appointed as the Executive Officer to the committee.

In conducting the review, the committee was to have regard to and consider –

1. the effectiveness of the operations of the licensing authority; and
2. such other matters as appear to the Minister to be relevant to the operation and effectiveness of the Act.

The Terms of Reference (appendix 1) required the committee to examine and consider those matters that appeared relevant to the operation and the effectiveness of the Act, having regard to –

- the interests and needs of the Western Australian community;
- the interests and needs of persons selling and supplying liquor;
- the interests and needs of liquor consumers;
- the interests and needs of the tourism industry in Western Australia; and
- the trends and experiences of other Australian and overseas jurisdictions.

These matters included:

1. The appropriateness of the objects of the Act and the current licence classification system and the associated trading hours, having regard to changing community needs and attitudes relating to the accessibility of liquor and related services, including –
 - the minimisation of harm or ill health caused to people, or any group of people, due to the use of liquor;
 - the use of extended trading permits;
 - the times during which liquor is available at hotels and liquor stores and the distinction between the services offered by hotels and cabarets;
 - the role of club licences and the requirement that liquor only be sold to club members and their guests;
 - the extent to which a restaurant licence should allow liquor to be consumed without a meal;
 - the availability of packaged liquor;
 - the ability to ban a specific product or class of liquor products from sale and distribution; and
 - any specific needs of non-metropolitan licensed premises and communities.
2. The merits of a public interest test in comparison to the public needs test and the relative implications for the licence classification system.
3. The impact of market domination on the liquor industry.
4. Security issues associated with the operation of licensed premises and the control of special events.

Prior to the formation of the committee, the Minister had already announced and received submissions in respect of the “Review of the Structure and Operations of the Licensing Authority”. These submissions were referred to the committee as part of its deliberations on the effectiveness of the operation of the licensing authority. Similarly, matters relating to National Competition Policy were also referred for the committee’s attention.

The committee sought to obtain input and comments from a wide cross-section of the community on the matters raised in the Terms of Reference. A request for public submissions was published in *the West Australian* newspaper on 16 October 2004 and committee members travelled throughout country Western Australia. The committee also visited Victoria, New South Wales, Queensland and the Northern Territory to examine the operation of the licensing authorities including trends and issues in those jurisdictions. Subsequent to the receipt of the written submissions, the committee, during February and March 2005, conducted a number of follow-up interviews with relevant stakeholders.

The committee was also very conscious of the issues facing rural communities and took this into consideration when forming its recommendations.

It was not possible for the committee to specifically address every issue raised in the various submissions received. Many suggestions can already be accommodated under the existing provisions of the Act or were matters that the committee considered but did not support. Additionally, when addressing individual matters, the committee has sometimes chosen to only reference a representative sample of the submissions received.

The committee would like to express its appreciation and thank all those persons and organisations who lodged submissions or gave their time to meet with committee members.

2. Executive Summary

The risk of harm associated with the consumption of alcohol is well recognised, researched and documented. Historically this relationship has led Governments to acknowledge that alcohol is not just another consumer product and that its supply and consumption needs to be regulated. The vast majority of people who consume alcohol do so in moderation, with enjoyment and in a manner that causes no problems for themselves or the community generally.

In reviewing the laws that control the sale and consumption of alcohol, the committee sought to balance the objective of harm minimisation against minimising the impact on responsible drinking activities. In seeking this balance it came to the view that harm minimisation should be the overriding objective of the Liquor Licensing Act 1988, which should be amended to make it clear that where there is any conflict between this object and other objects, the objective of harm minimisation should prevail. The committee also recommends that the title of the Act be changed to the Liquor Control Act to reflect the wider focus of the legislation, away from liquor licensing *per se*.

Whilst previous reviews have recommended the establishment of a more community responsive Commission, Western Australia is still operating with an expensive and legalistic system of liquor licensing which, for a range of differing reasons, does not appear to enjoy a high level of support across most interest groups.

The committee is therefore recommending the establishment of a Liquor Licensing Commission which would be structured to provide a less costly and more community friendly environment for dealing with appeals of administrative decisions, disciplinary matters and periodic review of departmental policy guidelines. Ancillary to this, the Director General of the Department of Racing, Gaming and Liquor should become the statutory position responsible for decisions and the administration of the Act, other than those aspects of administration that relate to the Commission.

The current “needs test” is a significant disincentive for the provision of new types of services and has the effect of protecting present operators from those wishing to enter the industry to more adequately meet changing community demands.

It is recommended that the needs test be replaced with a broad public interest test which would be much better able to address a wider range of conflicting interests and ensure that harm minimisation and community issues are thoroughly addressed in the decision-making process. This approach will bring Western Australia into line with most other jurisdictions in Australia.

There is clear evidence of social and cultural change over recent years in the environments in which alcohol is consumed. The committee believes more should be done to encourage an environment for consumption which is more relaxed, flexible and conducive to less harmful outcomes.

One of a number of initiatives being recommended by the committee is a move towards a restaurant/cafe culture which would encourage the consumption of alcohol in a more moderating climate and provide greater flexibility in meeting the needs of the general public and tourists. The principal recommendation in this regard is relaxing the restrictions currently applying to restaurants that wish to serve liquor without a meal.

The growth of alfresco dining and the encroachment of residential development into traditional entertainment and commercial precincts have led to new challenges in accommodating the often competing interests of the operators of licensed premises and the residents who live nearby. As a result, greater emphasis needs to be placed on consultation and conflict resolution in the decision making process rather than maintaining the present adversarial system.

In response to changing work and social patterns, the committee has formed the view that closing times for hotels and cabarets on Sundays should be brought into line with other days of the week. However, consistent with minimising alcohol related harm, the

committee recommends that the sale of packaged liquor should cease at 10.00pm and hotels that want to trade past 12 midnight should be subject to a public interest assessment.

Legislative change in itself without adequate enforcement of the Act will not achieve the desired outcomes. Additionally, the Liquor Act in isolation cannot solve all liquor related problems in the community. Other government agencies such as police, health, transport, Aboriginal affairs and local government must coordinate their activities to achieve a whole of government approach to minimise the negative impact that alcohol can have, including reducing the level of associated crime.

The current Act provides for a range of enforcement options including suspension or cancellation of licences. The committee believes there should be greater use of these provisions in situations where the Act or licence conditions are breached.

Taking account of a changing social environment impacting on the operations of membership based clubs, the committee is of the view that a more flexible interpretation of the current Act, rather than particular changes to it, is necessary. Clubs should be able to offer wider reciprocal membership to like clubs and have some increased ability to accommodate non-member events. These changes would be particularly welcomed by clubs in rural communities.

It is well accepted that the effects of consuming alcoholic beverages can be reduced by interspersing them with non-alcoholic drinks. To ensure access to non-alcoholic drinks is always available, it is recommended that potable water be made available free of charge at all licensed premises. Also the committee has recommended the extension of training in the responsible service of alcohol to cover all employees of licensed premises.

Voluntary alcohol accords have been developed and successfully implemented in a number of communities. They have not always been successful very often because of the voluntary nature of present arrangements. It is recommended that the licensing authority

be empowered to impose conditions on licences in response to local accords where it can be demonstrated that there is a meaningful level of support across relevant stakeholder groups.

The present provisions that restrict the sale of packaged liquor on Sundays to hotel bottle shops are not supported by the committee which views them as anti-competitive and discriminatory. Whilst recognising the competing views within the industry, the committee found no reason to maintain the present monopoly for hotels at the expense of consumers and other sellers of liquor. The broad interests of the community, including tourists, would be better served if liquor stores were permitted to operate on Sunday with special provisions to take account of community views in small country towns.

Security at venues such as hotels and nightclubs, particularly those which operate after midnight, is an important issue. It is recommended that any hotel or nightclub that operates after midnight be required to have adequate CCTV and other forms of security. The standards to apply should be prescribed in the Regulations. Other recommendations to improve security include giving licensees the power to confiscate forged or suspect evidence of age documents and for certain undesirable people to be banned from licensed premises. Removing the obligation for a licensee of a hotel to receive people onto their premises will also give them greater control in keeping disreputable and offensive patrons from their premises. Persons refused entry or removed from licensed premises should be required to vacate the immediate proximity of the premises, including the car park.

The committee recognises the complex issues associated with the consumption of alcohol in Aboriginal and Torres Strait Islander communities and acknowledges that licensing laws are of limited effect in preventing harm in these communities. However, it is recommended that where an Aboriginal and Torres Strait Islander community decides to impose liquor restrictions in their community, the licensing authority be empowered to formalise the restrictions in the Regulations. Any breaches then become enforceable under the Act.

To assist those communities who wish to prohibit alcohol, it is also recommended that an offence be committed when a person takes liquor into any area designated as a “dry area”.

Whilst street drinking is an offence, the law is liberally applied in situations where it is conducted in a low key, socially acceptable manner. However there are some events and locations where anti-social behaviour associated with outdoor drinking causes real concerns to the community and enforcement problems for police. The annual Australia Day Sky Show is a prominent example. To enhance police powers in these situations, the committee has recommended that the Minister be empowered to declare special events or locations, which would provide for additional police powers including the power to seize and dispose of any liquor in a person’s possession.

Other significant recommendations made by the committee are to create an offence for supplying liquor to a drunken person at BYO restaurants; creating an offence for supplying liquor to a juvenile at a private residence without the consent of the juvenile’s parent or guardian and the use of “lock outs” to prevent entry to nightclubs after 3.00am as a mechanism for reducing anti-social behaviour.

The recommendations made in this report have been considered in the light of the overriding objective of harm minimisation associated with the consumption of liquor, support for a sound and viable liquor industry that can respond flexibly to changing consumer requirements whilst imposing minimum restrictions on the vast majority of the community who consume liquor responsibly and with enjoyment.

The committee believes that the recommendations in this report are consistent with the National Drug Strategy, as endorsed by the Ministerial Council on Drug Strategy in May 2004.

3. Summary of Recommendations

1. The title of the Act be changed to the Liquor Control Act. (Page 119)
2. A Liquor Licensing Commission replace the Liquor Licensing Court. (Page 55)
3. The Director General of the Department of Racing, Gaming and Liquor become the statutory position responsible for decisions and the administration of the Act, other than those aspects of administration that relate to the Commission. (Page 55)
4. Appeals to the Commission to be determined on the evidence presented to the Director General. (Page 55)
5. A decision of the Commission on the grant of a licence may only be appealed to a single judge of the Supreme Court on a question of law. (Page 55)
6. Section 38 of the Act be amended to replace the current “needs test” with a public interest test. (Page 64)
7. The objects of the Act be amended to make it clear that where there is any conflict between the primary objective of harm minimisation and the other objects, promoting the principles of harm minimisation shall prevail. (Page 70)
8. All licensees and managers must complete an accredited training course approved by the licensing authority. (Page 71)
9. All servers of alcohol on licensed premises must be trained in the responsible service of alcohol (to be phased in over 12 months). (Page 71)

10. Licensees must maintain and make available for inspection a register with each staff member's name and a copy of their certificate showing they have completed responsible service of alcohol training. (Page 71)
11. During trading, an approved manager must always be present on the licensed premises. (Page 71)
12. For functions conducted under an occasional licence, if the function is for less than 100 people, training is not required, where the function is for 101-300 people, the licence holder must be trained in responsible server practices, and if the function is for more than 300 people the licence holder and all servers of liquor must be trained in the responsible service of alcohol. (Page 71)
13. Section 64 of the Act be amended to remove the requirement for the licensing authority to conduct an inquiry before imposing conditions on a licence and this provision be replaced with a "Notice of Intention" requiring a licensee to show cause why conditions should not be imposed. (Page 73)
14. Section 64 of the Act be amended to allow the licensing authority to impose licence conditions at the request of local accord members. (Page 73)
15. The Act be amended to require licensees to provide potable water free of charge at all times liquor is sold and supplied on the licensed premises. (Page 74)
16. The Act be amended so that the licensing authority may incorporate guidelines in the Regulations on the responsible promotion of liquor and a condition be imposed on all licences requiring compliance. (Page 75)
17. All licensees are to have and maintain an incidents register. The form and content of the register should be prescribed in the Regulations. (Page 75)

18. Additional offence provisions be created under the Act for the illegal sale of liquor to Aboriginal communities, with strong deterrent penalties, including the forfeiture of any vehicle used in the commission of the offence. (Page 76)
19. Where an Aboriginal community want to impose liquor restrictions within their community, the Director General of the Department of Indigenous Affairs may apply to the licensing authority and have those restrictions and related enforcement provisions placed in the Liquor Licensing Regulations which would include penalties for breaches of the restrictions. (Page 77)
20. The Act be amended to remove the current distinction between category A and B licences. (Page 78)
21. The obligation that requires the licensee of a hotel (tavern, hotel restricted) to receive people on to the premises during permitted trading hours be removed and the complaint provisions under section 115(9) be consequently amended. (Page 78)
22. The permitted trading hours for hotels on Sundays be amended to 10.00 am to 12 midnight. (Page 79)
23. The designation of 'cabaret' licence be changed to 'nightclub' licence. (Page 80)
24. The permitted trading hours for cabarets be reduced by requiring them to close at 5.00am. (Page 80)
25. The permitted trading hours for cabarets on Sundays be amended to 6.00 pm to 5.00 am the following morning. (Page 81)

26. The Act be amended to provide for the payment of monthly subscriptions fees by club members. (Page 83)
27. Club restricted licences be permitted to purchase their liquor from wholesalers. (Page 83)
28. The Act be amended to authorise liquor stores to trade on Sundays between 10.00 am and 10.00 pm with provision for a local government in small rural towns to conduct a poll, the procedures of which should be prescribed in the Regulations or the Local Government Act. Where a local community does not support Sunday trading, the licensing authority shall prohibit the liquor store from trading on Sunday. (Page 87)
29. The authority for a restaurant licence to sell liquor without a meal not be restricted to 20% of the seating capacity, however appropriate conditions be imposed to maintain the integrity of the predominant use as a restaurant. Such a permit should be easy to cancel if the licensee trades contrary to the permit conditions. (Page 90)
30. A new provision be inserted into the Act relating to regulated premises (including BYO restaurants), creating an offence for serving liquor to a drunken person or allowing a drunken person to consume liquor. (Page 91)
31. Western Australia continue to collect wholesale sales data, the content of which should be reviewed and continue to support the re-introduction of the national collection of the data. (Page 92)
32. Section 55(1)(a)(iii) of the Act be amended to remove the requirement that producers of beer can only sell packaged liquor in quantities of not less than 9 litres. (Page 93)

33. The provisions of the Act relating to special facility licences revert to the provisions which prevailed prior to the 2001 amendments. (Page 94)
34. The Act be amended to stipulate that extended trading permits for on-going hours cannot be granted past 2.00am unless a declaration has been made by the Minister in respect of a special event or in relation to a particular precinct. (Page 97)
35. All applications for an extended trading permit for on-going hours be subject to a public interest test, the details of which should be prescribed in the Regulations. (Page 97)
36. Any on-going hours permit past 12 midnight have standard conditions imposed in respect of minimum requirements for security and CCTV. These minimum requirements should be prescribed in the Regulations. (Page 97)
37. The Act be amended to authorise the licensing authority to prescribe in the Regulations that specified liquor products or classes of liquor products are banned from sale or distribution in Western Australia where such action is considered to be in the public interest. (Page 99)
38. The Act be amended so that the authority to sell packaged liquor under a hotel, club or liquor store licence be restricted to 8.00am to 10.00pm Monday to Saturday and 10.00am to 10.00pm Sundays. (Page 100)
39. A new licence be created for Vocational Education and Training providers. (Page 102)

40. With the approval of the licensing authority, students engaged at licensed premises be permitted to serve liquor provided –
- a. the provision of liquor is ancillary to a meal.
 - b. the student has turned 17 years of age.
 - c. the student is supervised at all times.
 - d. the activity the student is undertaking will be assessed for the purposes of an accredited hospitality qualification in which they are enrolled.
- (Page 102)
41. “Vocational Educational and Training” provider as defined under the *Vocation Education and Training Act 1996* replace terms such as ‘post secondary or tertiary educational institution’ throughout the Act and Regulations. (Page 102)
42. Section 5(2)(a) of the Act be amended to include a reference to the live music industry. (Page 103)
43. Section 167(5a) of the Act be repealed. (Page 104)
44. Section 115(3) of the Act be amended so that a person is deemed to be drunk due to the use of liquor, if the person is on licensed or regulated premises and their speech, balance, co-ordination or behaviour is noticeably affected. (Page 112)
45. Where a person is refused entry or removed from licensed premises that person be required to vacate the immediate proximity of the premises, including the car park and failure to do so be an offence. (Page 113)
46. The police be empowered to move-on individuals who may disturb the peace in the immediate proximity of licensed premises. (Page 113)

47. The Act be amended so that the character of a person's associates can be taken into consideration in determining whether they are fit and proper under the Act. (Page 114)
48. The Act be amended to facilitate the use of police intelligence (protecting the confidentiality of that information) and any appeals be heard in closed session. (Page 114)
49. The licensing authority be empowered to prohibit a person from being employed on licensed premises if the Commissioner of Police provides a certificate stating that the person's criminal record is such, or they are associated with organised crime and their employment at the premises is not in the public interest. (Page 114)
50. The licensing authority be empowered to prohibit a person from being on specified licensed premises if the Commissioner of Police provides a certificate stating that their criminal record is such, or they are associated with organised crime and their presence on licensed premises is not in the public interest. (Page 114)
51. The police, for identity and probity purposes, be empowered to request the licensing authority to require an applicant to provide fingerprints. (Page 115)
52. The Act be amended so that forged or suspect evidence of age may be seized or confiscated by a licensee, however the Regulations should detail the processes and time frames for providing the seized documents to police. (Page 115)
53. A lock out condition be imposed on all nightclub licences prohibiting entry after 3.00am. (Page 116)

54. Where a person is consuming liquor in a public place contrary to the Act, the police be empowered to simply seize and dispose of any open container. (Page 117)
55. The Minister be empowered to make a declaration in respect of a special event or in relation to a particular area or precinct which would invoke Regulations, to stipulate specific areas or zones and specific times, and empower the police to seize any liquor in the possession of a person or exercise such other powers considered appropriate by the Minister. (Page 117)
56. The definition of “licensed premises” be amended so that a licence can only be issued in respect of a single premises. (Page 119)
57. The definition of “liquor” be amended to encompass alcohol without liquor (AWOL) products and other novelty liquor products that might arise from time to time. (Page 120)
58. The definition of “meal” be amended to:
- “meal means food that-
- a. is eaten by a person sitting at a table, or fixed structure used as a table, with cutlery provided for the purpose of eating the food;
 - and
 - b. is of sufficient substance as to be ordinarily accepted as a meal.
- (Page 121)
59. The definition of “sell” be amended to ensure that the sale of liquor through a call centre must be authorised by a licence or permit. (Page 122)
60. The Act be amended to provide an exemption from the definition of “sell” for small social transactions of liquor. These exemptions should be prescribed in the Regulations. (Page 123)

61. The Act be amended to include a definition of “sample” with a measurement prescribed in the Regulations. (Page 124)
62. The Act be amended to include a definition of “consumption”. (Page 124)
63. Section 3(2)(b) of the Act be amended to include the words “or device”. (Page 125)
64. Section 4(8) of the Act and Regulation 6 of the Regulations be repealed. (Page 125)
65. Section 16(14) of the Act be amended to replace “licensee or manager” with “person”. (Page 126)
66. The Act be amended so that the provisions of section 37(5) apply irrespective of whether or not a licence is under suspension. (Page 126)
67. The word “receive” in section 41(5)(a) be replaced with the word “admit”. (Page 126)
68. The Act be amended so that the licensing authority may substitute an alternative type of licence where an applicant seeks the grant of a special facility licence, but in the view of the licensing authority a licence of another class would be adequate for the purpose. (Page 127)
69. The Act be amended to clarify that a conditionally granted licence cannot be removed. (Page 127)

70. The Act be amended to clarify that a licensee can lodge an application to vary any condition of the licence (other than those specifically imposed by the Act). (Page 128)
71. The Act be amended to clarify that a special facility licence cannot be varied to such an extent that a licence of another class, with or without permits, would achieve the same purpose. (Page 128)
72. Section 76(1)(d) of the Act be deleted. (Page 129)
73. Section 69(11) of the Act be amended to put beyond doubt the authority of the Director General (Racing, Gaming and Liquor) to intervene in matters before the Commission. (Page 129)
74. Section 72 of the Act be amended so that owner/lessor consent is only required in respect of applications for alteration or redefinition of licensed premises. (Page 130)
75. Section 77(1) of the Act be amended so that only applications that result in an increase or decrease in the licensed area or a change in use of an area of the licensed premises requires the prior approval of the licensing authority. (Page 130)
76. Section 77(6) of the Act be repealed so that the advertising of all applications is covered under the provisions of section 67(2). Page (131)
77. Section 84(3) of the Act be amended to require that a copy of the notice of application must be provided to the licensee at least three days before the application is approved. (Page 131)

78. Section 87(1) of the Act be amended to remove the exclusion that applies to liquor stores. (Page 132)
79. Section 90 of the Act be repealed. (Page 133)
80. Section 93 of the Act be amended so that a licence is deemed to be cancelled if it is suspended for more than 28 days, unless otherwise approved by the licensing authority. (Page 133)
81. Section 102 of the Act be amended to provide that a body corporate that holds a licence is also liable for offences relating to changes of the structure of the body corporate without the prior approval of the licensing authority. (Page 134)
82. Section 102(b) of the Act be amended so that a person who has already been approved as a person in a position of authority in respect of a body corporate may increase or decrease their shareholding without prior approval, provided notice of the change in shareholding is provided within 14 days. (Page 134)
83. Section 104 of the Act be amended so that a licensee can enter into any reasonable arrangement in respect of the management of licensed premises provided the obligations of the licensee are not abrogated and the “management party” can also be held liable for any offence under the Act. (Page 135)
84. Section 105(1) of the Act be amended to remove the obligation to maintain a lodgers register and replace it with a provision that the burden of establishing that a person is or was a lodger lies with the licensee and any other person charged with an offence under this section. (Page 135)

85. Section 106 of the Act be amended to delete the numbers limitation (6) so that the number of guests per lodger is determined on a case-by-case basis. (Page 136)
86. Section 108(3) of the Act be deleted and replaced with:
- (3) A licensee has reasonable cause to refuse to admit a person to licensed premises, or to sell liquor there to a person, if the person is a person who under section 115(4) may be refused admission to, or asked to leave, the licensed premises. (Page 136)
87. The reference to a certificate of exemption in the title of section 110 of the Act (or elsewhere) should be deleted. (Page 137)
88. Section 110 of the Act be amended to create an offence provision for a licensee, manager or a person employed or engaged by the licensee who allows the premises to be used in conjunction with an illegal activity (e.g consumption of drugs or prostitution). (Page 137)
89. Section 110(6) of the Act be amended so that a person who has purchased liquor for consumption ancillary to a meal may remove any unconsumed portion of the liquor from the licensed premises. (Page 137)
90. Section 114 of the Act be amended to make it clear that the police can prohibit the sale of packaged liquor in order to prevent civil disorder, a breach of the peace or otherwise in the interests of maintaining the peace or ensuring public safety. (Page 138)
91. Section 115(1)(b) of the Act be amended to delete the requirement of a licensee to allow an undesirable person, especially a supplier of unlawful

drugs, to enter and remain on the licensed premises for the purpose of obtaining reasonable refreshment. (Page 139)

92. Section 117 of the Act be amended so that the licensing authority may defer the determination of a complaint, issue an interim order or provide for a complaint to remain open for a specified period. (Page 140)

93. Section 117 of the Act be amended so that the licensing authority may on its own motion or upon the application of any party, adjourn the hearing or further hearing of any application or matter from time to time. (Page 140)

94. Section 117(4) of the Act be amended so that the licensing authority may defer determination of a complaint pending an attempt to resolve the complaint by conciliation or negotiation or to allow for the issuing of an interim order. (Page 140)

95. Section 121(5)(b) of the Act be amended to create an application process (and subsequent fee) for allowing unaccompanied juveniles on licensed premises and where entertainment is provided, to ensure such entertainment should be solely for juveniles. (Page 142)

96. The Act be amended to create an offence for any person to supply liquor to a juvenile at a private residence without the consent of the juvenile's parent or guardian, with the burden of proof regarding whether the supply of liquor was authorised by the parent or guardian to lie with the person supplying the liquor. (Page 143)

97. Section 127 of the Act be amended to clarify that the annual prescribed licence fee is payable whether or not the licence is under suspension. (Page 143)

98. Division 2 of Schedule 2 of the Act be amended to remove reference to the specific address details of the Air Force Association. (Page 143)
99. Regulation 10 of the Regulations be amended to provide that the applicant must be the sole occupier of a vineyard to which the licence will apply if granted. (Page 144)
100. Regulation 11 of the Regulations be amended to enable any person capable of preparing plans to the required standard to draw plans to accompany an application. (Page 144)

4. Alcohol and the Community

(i) The Cost of Alcohol to the Community¹

Misuse of alcohol is recognised by the National Drug Strategy as one of the most significant causes of drug related harm in Australia². Consequently, the sale of liquor has been regulated in one form or another in this State since European settlement.

A diverse industry has developed over more than 150 years encompassing production, distribution and sale of alcoholic beverages. The industry makes a measurable contribution to the economy and to the overall enjoyment of the community.

Thus, in addressing its terms of reference, the committee found itself often having to balance competing interests to arrive at its view of the changes to the licensing regime that it considered would provide the greatest net benefit to the community overall.

In its 2004 submission to the Productivity Commission's Enquiry into National Competition Policy, the Alcohol and Other Drugs Council persuasively argued that alcohol was no ordinary commodity. It is a drug that has been shown to cause considerable social and physical harm especially when it is consumed in binge quantities over a short period. Its misuse places an enormous impost on the Australian community.

¹ In addressing issues of harm or the minimisation of harm caused by alcohol which are summarised in this section we particularly acknowledge the work produced by the National Drug Research Institute on which we have drawn heavily, particularly Australian Alcohol Indicators 1990 - 2001, and NT Living with Alcohol Program 1992 - 2002.

The discussions with Associate Professor Gray and Dr Chikritzhs from the Institute were most helpful and enlightening.

This section draws extensively on Counting the Cost: estimates of the social costs of drug abuse in Australia 1998-9 by David J. Collins and Helen M. Lapsley of Macquarie University and University of New South Wales.

² National Drug Strategy: Australian Integrated Framework 2005 - 2009 Commonwealth of Australia 2005.

In the ten years from 1992, an estimated 31,133 deaths were caused by alcohol related disease and injury in Australia and in 1998-99 alone, alcohol misuse is estimated to have cost the West Australian community over \$750 million.³

In a recent publication of data from the National Alcohol Indicators Project, it was reported that of all the alcohol consumed by Australians in 2001, at least 80% was consumed in ways that put the drinker at risk of acute and/or chronic alcohol related harm.⁴

Furthermore, alcohol misuse is also highly correlated with crime. For example, police reports of incidents attended over a four week period in Eastern Sydney showed high levels of alcohol involvement across a number of offence types including street offences (77% of incidents were alcohol related), malicious damage (58%), domestic violence (40%) and noise complaints (59%).⁵ Discussions with police indicate that Western Australia mirrors the Eastern Sydney experience.

(ii) The Concept of Harm Minimisation

The Liquor Licensing Act 1988 sets out as a primary objective, the minimisation of harm or ill health caused by the use of liquor.

As alcohol is no ordinary substance in that it has the power to cause major potential and actual harm, it follows that it is this fact that leads to the need to carefully regulate the supply and consumption of alcohol. Indeed, if alcohol were not a harmful substance, a specific Act and Regulations governing its use would not be required and it could be sold as any other consumable.

³ Alcohol and other Drugs Council of Australia – Submissions to the Productivity Commission Inquiry into National Competition Policy. June 2004.

⁴ Chikritzhs T; Catalano P; Stockwell T; Donatti S; Ngo Hanh; Young D & Matthews S. Patterns of Alcohol Use and Related Harms in Australian States and Territories. Australian Alcohol Indicators 1990 – 2001.

⁵ *ibid*

One of the principal overall objectives of the National Drug Strategy 2004 – 2009⁶ is the prevention and minimisation of harm caused by licit drugs (of which alcohol is the major one).

It is acknowledged that the Liquor Licensing Act cannot of itself, however comprehensive, well-founded and well-drafted, solve the problems flowing from the use and more particularly, abuse of alcohol. Nevertheless, it does have a significant role in establishing the overall framework for minimising harm arising from its use.

(iii) Economic Impact of Alcohol Abuse

Various estimates have been put on the cost of drug and alcohol abuse in Australia.

The work of David Collins of Macquarie University and Helen Lapsley of University of New South Wales⁷ is generally accepted as an authoritative source of information in this regard.

They estimate that the cost of alcohol abuse in Australia amounted to \$7.6 billion in 1998-9. Their research further breaks this figure down as follows:

	\$
Crime	1.24 billion
Health	0.23 billion
Lost Production	1.9 billion
Road Trauma	1.8 billion
Community	<u>2.4 billion</u>
	\$7.57 billion

⁶ National Drug Strategy op. cit

⁷ Collins & Lapsley op. cit

(iv) Health

Alcohol is reputed to be responsible for as much death and disability worldwide as tobacco and high blood pressure. A review published in "The Lancet", in March 2005, indicated that 4 per cent of the disease burden globally was attributable to alcohol, compared to 4.1 per cent from tobacco and 4.4 per cent to high blood pressure. The review's authors warned that alcohol helps to cause more than 60 different medical conditions, including breast cancer and coronary heart disease.

Disaggregating the national data reported by Collins & Lapsley, estimates for Western Australia show:

- approximately 400 deaths per annum are alcohol related; and
- approximately 40,000 occupied hospital bed days result from alcohol related causes.

These statistics do not take into account any deterioration in health status which does not result in hospital admission.

It is acknowledged by Collins & Lapsley⁸ that a small intake of alcohol can have a positive health effect in certain circumstances (e.g. the protective effect against strokes in women).

(v) Road Trauma

Work done by Chikritzhs and others⁹ published in May 2000 indicated:

- 30% of all driver and pedestrian deaths on Australian roads were alcohol related (for W.A. the figure is 33% - 10% higher than the national average);

⁸ Collins & Lapsley op cit

⁹ Chikritzhs et al Trends in Alcohol Related Road Injury in Australia 1990 - 1997

- Over 50% of alcohol related crash victims were aged between 15 and 24 years; and
- High risk drinking caused 418 road deaths and 7789 hospitalisations in Australia in 1997 (latest figures available to the committee) and the average cost of a single fatality has been estimated at \$750,000 and a single hospitalisation \$132,000.¹⁰

The overall economic cost of alcohol related road accidents is reported to be approximately \$200 million per annum in Western Australia and this takes no account of the human misery and trauma caused to families and friends.

(vi) Crime

Australian Institute of Criminology research into the prison population in 2001 shows the influence of alcohol by the various categories of crime.

	Violent	Property	Traffic	Disorder
	%	%	%	%
Alcohol	11	4	12.8	12.6
Alcohol & Drugs	12.6	9	6.7	6.3
Total	23.6	13	19.5	18.9

Discussions with Police in various jurisdictions throughout Australia and in metropolitan Western Australia, supported the view that alcohol was a significant factor in up to 70% of the crimes committed in their respective areas of influence.

¹⁰ Cost Estimates provided by Roadwatch: University of Western Australia quoted by Chikritzhs et al, op cit.

(vii) Production Losses

The estimated cost of lost production as a result of alcohol is a combination of past alcohol caused death and present alcohol related illness. The Alcohol and Other Drugs Program of the Health Department of Western Australia, drawing on the work of Collins and Lapsley,¹¹ estimates that alcohol accounts for lost production totalling \$1.5 billion per annum in Western Australia. Added to this is the estimate of a further \$500 million per annum lost as a result of absenteeism (made by Hocking and others published in the Medical Journal of Australia 1994).

(viii) Population Groups particularly at risk of chronic and acute harm:

(a) Aboriginal People¹²

The Gordon Enquiry¹³ highlighted the impact of alcohol on Aboriginal communities.

It became increasingly clear from discussions with Aboriginal people and various agencies dealing with Aboriginal people that although the proportion of urban Aboriginal people who drink alcohol is now similar to the general population, of those who do drink, 20% consume alcohol at high-risk levels, compared to 10% of drinkers in the general population. Problems associated with alcohol in some rural and remote communities in Australia are a cause for national concern. Alcohol is a significant factor in the very poor health status of many Aboriginal people and is a major contributor to the reduced life expectancy of this group of Australians.¹⁴

An important factor brought to the attention of the committee was particular patterns of harmful drinking practised amongst Aboriginal people:

¹¹ Collins & Lapsley op. cit

¹² Includes Torres Strait Islander people

¹³ Gordon, S., Hallahan, K., Henry, D. (2002) *Putting the picture together, Inquiry into response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*. Department of Premier and Cabinet, Western Australia.

¹⁴ National Alcohol Strategy 2005-2009 op. cit

1. chronic alcoholism;
2. problem drinkers – who may binge for up to two weeks then stay sober for relatively short periods;
3. binge drinkers ('parties' that go 3 days and nights); and
4. occasional drinkers who necessarily become involved in the heavy drinking of their peers to socialise.

Within the non-urban Aboriginal population a further problem manifests itself when a community member(s) visit the city or larger regional centre for (say) medical treatment.

The family, often an extended family, will follow them with no organised accommodation or support; a number of these people end up binge drinking or involved in heavy drinking with their peers to socialise.

(b) Under age and younger (legal) drinkers

Concern about youth drinking is widespread among parents, schools, youth leaders, politicians and the general community. Young people are significant consumers of alcohol. Research shows that while per capita alcohol consumption has declined in Australia over the past two decades, more young people are drinking alcohol, drinking at an earlier age and increasingly adopting high risk drinking patterns.¹⁵

The National Drug Strategy Household Surveys of 1998 and 2001 reveal that in excess of 20% of the 14 year to 17 year old population (male and female) drank regularly in a way that exceeded National Health and Medical Research Council guidelines for acute harm.

This figure rises to 45% in the 18-24 year age group.

¹⁵ National Alcohol Strategy 2005 – 2009 op. cit

Just below 20% of the 18-24 year group responded that they drank consistently in a manner that exceeded the National Health and Medical Research Council low risk level for avoiding long term (chronic) harm.

5. Effectiveness of the Operation of the Licensing Authority

The effectiveness of the operation of the licensing authority was one of the key matters for consideration by the committee. Prior to the formation of this committee, the Minister for Racing and Gaming sought submissions on the effectiveness of the operation of the licensing authority, however it was subsequently determined that this matter should form part of a wider review of the Act. Those submissions received by the Minister were consequently forwarded to this committee for consideration.

Current Structure

Pursuant to section 7 of the Act, the licensing authority consists of:

- The Liquor Licensing Court; and
- The Director of Liquor Licensing

The Liquor Licensing Court is a court of record and consists of a single judge appointed by the Governor on the recommendation of the Minister. The Director of Liquor Licensing is appointed in accordance with the Public Sector Management Act 1994 and is responsible to the Director General of the Department of Racing, Gaming and Liquor for the administration of the Act.

Division of Responsibility

The court is responsible for hearing and determining disciplinary matters (section 95), matters referred by the Director (section 24) and applications for the review of a decision of the Director (section 25).

The Director is responsible for determining all other applications and matters under the Act.

Pursuant to section 15 of the Act, the Director may delegate any of the functions of the Director under the Act, except for the power of delegation.

Reviews and Appeals

A person who is a party to proceedings and is dissatisfied with a decision of the Director may appeal that decision to the Liquor Licensing Court. Pursuant to section 25 of the Act, the Court may -

- Affirm, vary or quash the decision subject to the review;
- Make a decision in relation to any application or matter that should, in the opinion of the Court, have been made in the first instance;
- Give directions as to any question of law reviewed, or to the Director; or
- Make any incidental or ancillary order.

A decision of the Court may be appealed to the full bench of the Supreme Court on a question of law.

When conducting a review of a decision of the Director, it is the practice of the Court to hear the matter *de novo*.

Background to the current structure

The Liquor Act of 1970, which came into operation on 1 July 1970, established the Licensing Court, consisting of a chairman and two other members appointed by the Governor. There was no pre-requisite for appointment, with members normally drawn from the liquor industry and appointed for a period of three years. Decisions of the Court could be appealed to the Supreme Court, but only on a question of law.

The 1970 Act was amended in 1976 so that a person who was a legal practitioner as defined under the *Legal Practitioners Act 1893* of not less than eight years standing may

be appointed as a member and chairman of the Licensing Court for a term not exceeding seven years.

In 1987, the Act was further amended to provide for the separation of the judicial and administrative functions of the Act. Consequently, the Licensing Court was abolished and replaced with a Liquor Licensing Authority, comprising of the Liquor Licensing Court, consisting of a judge appointed by the governor on the recommendation of the Minister, and the Director of Liquor Licensing, appointed under the *Public Service Act 1978* and reporting to the Permanent Head of the relevant department. The Court was responsible for the judicial functions (matters pertaining to category A licences where an objection had been lodged) while the Director of Liquor Licensing was responsible for administrative matters (applications where an objection had not been lodged or which jurisdiction had been specifically vested under the Act). Decisions of the Director could be appealed to the Court, which determined the appeal by way of a rehearing.

The *Liquor Licensing Act 1988* came into operation on 1 February 1989 following a review of the 1970 Act. The review was conducted by the Office of Racing, Gaming and Liquor and sought to introduce a simplified licensing system.

The 1988 Act retained the licensing authority, consisting of the Liquor Licensing Court and the Director of Liquor Licensing. All contested applications for the grant or removal of a category A licence were determined by the Court, together with other specific matters, while the Director of Liquor Licensing determined all other matters and was responsible for the administration of the Act. The Director of Liquor Licensing headed the Liquor Licensing Division and reported to the Executive Director of the Department of Racing, Gaming and Liquor.

Not long after the introduction of the 1988 Act, concerns were expressed by the industry that the new Act had a number of shortfalls, particularly the delays, costs and complexities of having matters heard before the Court. Consequently, the Minister for Racing and Gaming, the Hon. Pam Beggs JP MLA agreed to a review of the Act, which

was conducted by the Office of Racing, Gaming and Liquor. The review was limited to the technical operations of the Act. This review recommended that in respect of contested applications the Director of Liquor Licensing determine the suitability of the applicants and proposed premises and the Court determine matters pertaining to the reasonable requirements of the public and public interest. The review also recommended the establishment of a Commission, which would act as an administrative tribunal, not a judicial body. The recommendation for the establishment of a Commission was not adopted.

In April 1994 an independent committee, chaired by Mr Keith Mattingley OA was appointed to review liquor licensing in Western Australia. This committee also recommended that the Court be replaced with a commission so that liquor licensing would become more administrative and less legalistic. This recommendation was not adopted by government, however other amendments which sought to simplify decisions under the Act were implemented. In this regard, the Director of Liquor Licensing was to be responsible for determining all applications under the Act in the first instance and the Court was to:

- Determine applications for a review of a decision of the Director;
- Determine disciplinary matters under section 95; and
- Consider and determine matters referred by the Director under section 24

These amendments came into effect on 1 May 1998.

Jurisdictions in other states

New South Wales

The *Liquor Act 1982* (the NSW Act) provides for the establishment of the Licensing Court of New South Wales and the Liquor Administration Board. The NSW Act also

provides for the Governor to appoint a Director of Liquor and Gaming in accordance with the *Public Sector Management Act 1988*.

Licensing Court

The Licensing Court is a Court of record and is comprised of at least three persons each of whom is, or is eligible to be, a magistrate, appointed by the Governor. One magistrate is appointed as the Chairperson of the Licensing Court of New South Wales and another as Deputy Chairperson. A licensing magistrate is appointed for a seven-year term, and is eligible for re-appointment.

The Licensing Court may be constituted by –

- a licensing magistrate sitting alone;
- a Magistrate, other than a licensing magistrate, acting under delegation; or
- two or more licensing magistrates.

A person who is aggrieved by a decision made by the Licensing Court, when it is constituted by a single magistrate, may appeal that decision for hearing and determination by the Court constituted by –

- three or more licensing magistrates; or
- two licensing magistrates sitting with a non-licensing magistrate.

The Licensing Court deals with applications for the grant of new licences, transfer of licences, breaches, complaints and disciplinary proceedings against licensees.

A person aggrieved by a decision of the full bench of Licensing Court may appeal that decision to the Supreme Court of New South Wales on a question of law. Decisions of

the Licensing Court made in relation to offence proceedings may be appealed to the District Court.

Liquor Administration Board

The Liquor Administration Board comprises –

- the licensing magistrates that form the Licensing Court; and
- such other members as the Minister deems appropriate.

Members of the Board are appointed for a three-year term.

The Board is responsible for –

- keeping under constant review the operation of the Act and making such recommendations to the Minister in relation thereto as it thinks fit,
- upon being directed by the Minister, inquiring into, and making a report and recommendations to the Minister upon, any matter connected with the administration of the Act,
- keeping under constant review the standard of licensed premises,
- receiving submissions or reports from any person with respect to the operation of the Act, and
- imposing conditions with respect to any matter within its jurisdiction and revoke or vary any such condition.

The Board also determines a number of minor applications (such as change of premises name or alterations to the area of licensed premises) and disturbance complaints. Minor applications are determined by a single board member, or under delegation, by an officer of the Department and the decision is not appealable.

Disturbance complaints are heard and determined by a single board member who may convene a conference. A decision relating to a disturbance complaint may be appealed to the full bench of the Licensing Court.

Director of Liquor Licensing

The Director of Liquor Licensing is located within the Department of Gaming and Racing.

The role of the Director includes –

- investigating all liquor licence applicants to establish their fitness to hold a licence;
- initiating prosecution and disciplinary action in the Liquor Licensing Court;
- taking objections against licence application on probity and other public interest and statutory grounds;
- investigating licence holders in relation to illegal activities or misconduct on licensed premises;
- investigating complaints about the operation of licensed premises; and
- monitoring industry compliance for the responsible service of alcohol.

A discussion paper released by the New South Wales Government in relation to a National Competition Policy review of the New South Wales Liquor Act 1982 and the Registered Clubs Act 1976 has proposed that non-contested applications be dealt with administratively and the Licensing Court only be responsible for hearing contested applications, appeals and disciplinary matters.

Queensland

In Queensland, the Director General of the Department of Tourism, Racing and Fair Trading is the “chief executive” for the purposes of the Liquor Act 1992 (the QLD Act). The chief executive is responsible for determining all matters under the QLD Act and pursuant to section 42 is able to delegate the powers of the chief executive to an appropriately qualified public service employee, police officer or person employed by local government. The Director General is also responsible for taking disciplinary action under the Act and in this regard may, pursuant to section 137A, suspend or cancel a licence or take another form of disciplinary action.

In practice, the Director General determines the more contentious issues while the Director of Liquor Licensing and the Manager of Licensing Administration are responsible for determining all other types of applications.

The Director General does not conduct hearings to determine applications; instead staff of the Liquor Licensing Division prepare a report and recommend whether or not the application should be approved. The report considers the nature of the application, the claims of any objections and all other relevant issues, including the public interest. The Director General may choose to accept or reject the recommendations of the report.

The QLD Act requires that a conference be held in respect of certain applications, where an objection has been lodged. The Act provides that the Director General may take part in the conference, however this does not often occur in practice. If during a conference the parties reach agreement regarding the outcome of the application, the agreed terms are put in writing and signed by the conferring parties, and the Director General is satisfied that a decision in the agreed terms is lawful; the Director General may make a decision that is consistent with those terms.

In deciding whether to –

- make a decision consistent with the agreed terms;
- grant the application, albeit that agreement was not reached; or
- grant the application, albeit that a conference was not held,

the Director General is required to have regard to –

- whether or not the applicant has demonstrated that the grant of the application is in the public interest;
- any objections;
- comments from the relevant local government;
- the impact on the amenity of the community concerned;
- in the case of an extended hours permit beyond 2.00 am –
 - the previous conduct of the applicant in discharging any duties under this Act previously placed on the applicant, especially for the purposes for which the extension is sought; and
 - the applicants ability to control the noise and behaviour of the number of persons that could reasonably be expected to be on and in the vicinity of the premises if the extension were granted; and
 - the suitability of the premises and its facilities for the purpose for which the extension is sought.
- in the case of an extended hours permit or an adult entertainment permit, comments from the assistant commissioner.

The Appeals Tribunal

Decisions of the Director General may be appealed to the Commercial and Consumer Tribunal.

The Tribunal is properly constituted by 3 of its members. However, a single member may hear minor appeals. The Governor in Council appoints members for a three-year term and at least one member must be a person who –

- has held office as a judge of the Supreme Court or as a judge of District Courts and who no longer holds such office; or
- has engaged in legal practice for at least five years.

The Tribunal hears and determines appeals against decisions made by the Director General, including –

- the grant or refusal of a licence or permit or the renewal of an extended hours permit;
- the specification of conditions on a licence or permit; or
- the taking of disciplinary action relating to, or the urgent suspension, of a licence, the cancellation or suspension of a permit or the imposition or variation of the conditions of a permit.

Pursuant to section 25 of the QLD Act, the Tribunal –

- must observe natural justice;
- must proceed expeditiously with as little formality and technicality as is consistent with a fair and proper consideration of the matter before it; and
- is not bound by the rules or practices as to evidence and may inform itself on any matter as it considers appropriate.

An appeal to the Tribunal is to be heard by way of a rehearing of the evidence that was before the Director General.

The Tribunal is required to produce a written decision that includes the reasons for the decision. A decision of the Tribunal may subsequently be appealed to the Supreme Court on a ground of error of law.

South Australia

In South Australia, the licensing authority consists of the Liquor and Gambling Commissioner and the Licensing Court. The Liquor and Gambling Commissioner is responsible to the Minister for the administration of the *Liquor Licensing Act 1997* (the SA Act) and is appointed, and holds office, in accordance with the *Public Sector Management Act*.

The Office of the Liquor and Gambling Commissioner sits with the Attorney General's Department and the position of the Commissioner reports to the Chief Executive of the Department. However the Chief Executive does not have responsibility for the decisions made or the development of policy pursuant to the SA Act.

Pursuant to section 10 of the SA Act, the Commissioner may delegate powers and functions to any other person.

The Licensing Court of South Australia may be constituted of the Liquor Licensing Court Judge, or some other District Court Judge, or former District Court Judge, with authority to exercise the jurisdiction of the Court. However, currently only the Liquor Licensing Court Judge presides over liquor licensing matters.

The Liquor and Gambling Commissioner is responsible for determining –

- all non-contested matters except those that are, under some other provision of the Act, to be determined by the Court; and
- all contested applications for a limited licence.

If an application is contested (and the application does not relate to a matter that is, under some other provision of the SA Act, within the exclusive jurisdiction of the Court), the Commissioner must make reasonable attempts to achieve agreement between the parties by conciliation. If the differences between the parties are resolved the Commissioner must determine the matter. If the differences are not resolved then the matter must be referred to the Court for determination, unless the parties request that the Commissioner determine the matter.

The Office of the Liquor and Gambling Commissioner determines the majority of applications, including contested applications for the grant or transfer of a licence and extended trading authorisations. Very few are referred to the Court for determination. During 2003/04, 175 contested applications were determined, of which only 19 were referred to the Court.

In addition to the functions identified above, the Liquor and Gambling Commissioner is responsible –

- to the Minister for Consumer Affairs for the administration of the SA Act;
- for other judicial functions assigned to the Commissioner under the SA Act including:-
 - conciliation of complaints; and
 - review of barring orders,
- for the inspection of licensed premises to ensure compliance with the SA Act, regulations and conditions of licences;
- for taking disciplinary action directly against licensees or approved persons with their consent, or before the Court by way of complaint;
- for making recommendations to the Minister on submissions for dry areas; and
- for promoting responsible service and consumption and harm minimisation principles.

The Court is responsible for determining all matters referred to it by the Commissioner and all other matters as provided for by the SA Act. The Commissioner may refer, for hearing and determination by the Court, any matter that involves a question of substantial public importance or a question of law, or a matter that should, in the public interest or the interests of a party to the proceedings, be determined by the Court.

The Court also hears and determines complaints lodged for disciplinary action against a licensee and may make determinations in relation to whether or not a person is a fit and proper person for the purposes of the Act.

The SA Act provides for certain decisions of the Commissioner to be reviewed by the Court, where a party to the proceedings is dissatisfied. The review is conducted by way of a rehearing and the Court may affirm, vary or quash the decision, make a decision that in the opinion of the Court should have been made in the first instance or refer the matter back to the Commissioner for rehearing or reconsideration

A decision of the Court may, by leave, be appealed to the Supreme Court.

Tasmania

The licensing authority in Tasmania is established under the *Liquor Licensing Act 1990* (the Tasmanian Act) and consists of two separate entities - the Commissioner for Licensing and the Licensing Board of Tasmania. The Revenue, Gaming and Licensing Division of the Department of Treasury and Finance provides administrative support to the Commissioner for Licensing and the Licensing Board of Tasmania. The Executive Director of the Revenue, Gaming and Licensing Division is currently appointed as the Commissioner of Licensing.

Section 207(1) of the Tasmanian Act establishes the office of the Commissioner of Licensing. The Governor appoints the Commissioner of Licensing for a period of five

years. The position is a statutory authority in its own right and in this regard is only responsible to the Secretary of the Department of Treasury and Finance for administrative purposes.

The Office of the Licensing Commissioner is responsible for approving permits (ie: function permits) and determining fit and proper persons. The Commissioner also issues licences upon direction from the Board.

The Licensing Board currently consists of a presiding member and two other members, of which one is required to be a legal practitioner. The Board may sit as two members, however in practice it generally sits as three.

The Licensing Board is responsible for hearing and determining applications for new licences and determines certain disciplinary matters.

The Act also provides for the Board to hear appeals made against decisions of the Commissioner, in respect of the following matters --

- a refusal to grant a permit;
- the conditions subject to which a licence or permit was granted;
- a refusal to give any approval;
- the cancellation of a permit;
- the suspension or cancellation of a licence;
- any requirement specified in a notice given in accordance with section 41(1); and
- a decision that a person is not qualified to hold a licence.

Having heard a matter, the Board may --

- in the case of an application for the grant of a licence, direct the Commissioner to grant the licence or refuse the application;

- in the case of an application by the Commissioner for approval to cancel or suspend a licence, direct the Commissioner to cancel or suspend the licence; and
- in the case of an appeal against any other decision of the Commissioner, confirm or revoke the Commissioner's decision or direct the Commissioner to take such action as the Board deems appropriate.

Very few decisions of the Commissioner are appealed and therefore the Board is not often required to hear appeals.

The Act does not provide for a decision of the Licensing Board to be appealed. However, the Board may be required to state a case for the opinion of the Supreme Court on any question of law arising on an application or appeal under the Act.

A National Competition Policy review of the Liquor Licensing Act 1990 recommended that the Act be amended to remove reference to the Licensing Board and to place administrative responsibility with the Commissioner for Licensing.

Victoria

Consumer Affairs Victoria - Liquor Licensing Branch is a Business Unit of the Department of Justice. The *Victorian Liquor Control Reform Act 1998* (Victorian Act) provides for the Director of Liquor Licensing to be appointed by the Governor, for a period not exceeding five years. The position of the Director is a statutory appointment and in this regard operates independently from the Minister and the Department of Justice. The Director of Liquor Licensing is responsible for the administration of the Victorian Act.

The Victorian Act provides for the establishment of a Liquor Licensing Panel that consists of a Chairperson and a pool of approximately 11 members, all of which are appointed by the Minister for a period not exceeding five years.

Panel members are responsible for considering contested applications that have been referred to them by the Director. In the majority of cases, a panel member will sit alone in hearing an application. However, the Victorian Act does provide for a panel to be constituted by more than one person. When considering a matter, the panel is required to give both the applicant and the objector a reasonable opportunity to be heard.

Hearings are, unless otherwise determined by the panel member, conducted in public. During a hearing the panel member is required to act according to equity and good conscience and without regard to technicalities or legal forms. There is no requirement for the hearing to be conducted in a formal manner and panel members are not bound by rules or practice as to evidence and may prohibit or regulate cross-examination.

The panel members report their findings to the Director and make a recommendation regarding whether or not the application should be granted, outlining the reasons for the recommendation.

The Director or his/her delegate may then proceed to grant or refuse the application. In this regard the Director determines those applications that are controversial, or likely to establish a new precedent or policy (approximately 50 matters a year). All other matters contested and uncontested are determined by the Liquor Licensing Branch. Liquor Licensing Victoria determines approximately 15,000 applications/matters a year.

Appeals and Inquiries

A decision of the Director may be appealed to the Victorian Civil and Administrative Tribunal (VCAT). The VCAT consists of a number of legal practitioners and hears and determines a wide variety of matters, including those relating to liquor licensing.

Section 38(3) of the Victorian Act provides that the following are not valid reasons for an objection –

- that the business carried on under the licence would or would not be successful;

- that the business of another licensee or permittee (including the objector) may be adversely affected by the grant, variation or relocation; or
- there is insufficient need or demand to justify the grant, variation or relocation.

Furthermore, pursuant to section 42, the Director may refuse to accept an objection if he or she considers that –

- in the case of an objection under section 38, the person making the objection is not affected by the application; or
- the objection is frivolous or vexatious; or
- the objection is not otherwise in accordance with the Victorian Act.

Essentially these provisions restrict the ability of existing licensees to object on commercial grounds.

The Director of Liquor Licensing may also make application for the VCAT to conduct an inquiry into a licensee or permit holder, to determine whether or not disciplinary action should be initiated. The Director lodges very few inquiry applications, as in most instances the Police initiate such action.

Summary and Comparison

Each of the liquor licensing authorities reviewed, vary in terms of structure, division of responsibility, types of matters determined, process for determination and judicial nature.

In this regard, South Australia and New South Wales are the only states where a Court determines an application for the grant of a licence in the first instance. In New South Wales the Court (constituted by one or three) determines all applications whether contested or not, whereas in South Australia the Court only determines those contested

applications that are referred by the Commissioner. In practice, the South Australian Liquor and Gambling Commissioner determines the majority of applications.

In Queensland all applications are determined by the Director General of the Department of Tourism, Racing and Fair Trading, which is similar to Victoria where the Director of Liquor Licensing determines all applications. In Queensland, staff of the Liquor Licensing Division prepare a report that considers the nature of the application, any objections and the public interest and makes a recommendation to the Director General regarding whether the licence should be granted. In Victoria, a member of the Liquor Licensing Panel hears contested applications (which generally relate to amenity issues) and their findings are reported to the Director of Liquor Licensing with a recommendation regarding whether the licence should be granted. The Director is not bound to accept the recommendations of the panel.

In Tasmania, applications for new licences are determined by the Licensing Board, which is constituted by three members – one of which is a legal practitioner.

The Board also determines certain disciplinary matters and appeals made against decisions of the Director.

In South Australia and New South Wales, the Court determines disciplinary complaints upon lodgement by the respective Commissioner or Director. In Queensland, the Director General is responsible for taking disciplinary action against licensees. Disciplinary action in Victoria may be initiated by applications to the Victorian Civil and Administrative Tribunal, most of which are made by the Police.

Decisions of the NSW Licensing Court, when constituted by one, may be appealed and heard by the Licensing Court reconstituted as three. Decisions of the Licensing Court constituted by three may be appealed to the Supreme Court but only on a question of law.

In South Australia the Court reviews decisions of the Commissioner where a party is dissatisfied. A decision of the Court may, by leave, be appealed to the Supreme Court.

In Victoria, decisions of the Director may be appealed to VCAT and in Queensland decisions of the Director General may be appealed to the Liquor Appeals Tribunal. Decisions of the QLD Tribunal may subsequently be appealed to the Supreme Court on the ground of error of law.

In Tasmania, decisions of the Licensing Board are final, however the Board may be required to state a case on a question of law for the opinion of the Supreme Court.

Submissions

Submissions to the committee that addressed the issue of the structure of the licensing authority were varied, with some supporting the existing structure and others supporting the establishment of a commission, in one form or another. The following is a summary of the major submissions:

- The Australian Hotels Association (WA Branch) supported the establishment of a commission consisting of a Commissioner (appointed by the Governor) and two Assistant Commissioners, all legally qualified. The role of the Director should be administrative, report to the Commissioner, and the Director should not be involved in the development of policy. Policy guidelines should be issued by the Minister. Decisions of the Commission should be appealed to the State Administrative Tribunal or the Supreme Court.
- The Liquor Stores Association supported the establishment of a Commission consisting of a chairperson, the Director of Liquor Licensing and a legal practitioner. Decisions of the Commission should be appealed to the Supreme Court, by leave and only on a question of law. There should be a level of separation between the Director as the policy maker and the body determining

applications. The current system provides two opportunities for a hearing, a “trial run” before the director and a re-hearing before the court.

- Clubs WA is of the view that the role of the Director should not include the administration of the Act and the evaluation of club constitutions. It suggests that a Constitution and Permit Council be established as a three member panel, one of whom is the Director, a second member of the council would be a person nominated by the club industry and appointed by the Minister (this member would be substituted by a representative from another industry body when determining a matter not affecting the club industry) and the third member would be a magistrate from the Liquor Licensing Court.
- The Department of Health recommends that the licensing authority should not be retained in its existing form. It proposes that a new structure be formed that would include a Liquor Licensing Panel (which hears and determines applications and matters under section 64, 95 and 117 of the Act), the Director of Liquor Licensing (which has a more administrative role) and an Appeals Tribunal. The Liquor Licensing Panel would sit with a minimum of two members who are experienced and qualified in public health and law.
- The WA Police Service believes that matters before the Court are still shrouded in unnecessary formality and preamble. A more informal and flexible system is necessary and it therefore supports the establishment of a commission that oversees the operations of the Director, hears and determines appropriate applications and reviews decisions of the Director.
- The Western Australian Local Government Association is generally supportive of the structure and operation of the licensing authority, however appeals to the Court should not be heard *de novo*.

- The Law Society of Western Australia proposes that the structure and operation of the licensing authority revert back to that which existed before the 1998 amendments, when the court determined contested category A applications. The Society does not support the existing process whereby applications can be subjected to two hearings that consider the same issues and notes the cost of proceedings before the Director has increased due to the lack of procedural fairness and satisfactory protocols.

Conclusion

In considering what is the most appropriate structure for the licensing authority and one which best serves the interests of the public of Western Australia, the committee considered the written submissions, views expressed in various stakeholder interviews and broad observations of other liquor licensing jurisdictions throughout Australia.

Widespread criticism of the cost and legalistic nature of having matters determined under the Act has been made for over 15 years. Attempts to address this problem have met with limited success.

The 1990 review observed:

“The present system is unsuitable. It is too rigid, time consuming and costly. People who benefit from these deficiencies are those in the industry who want to prevent competition, and the legal profession. Significantly, several members of the legal profession itself have pointed to these problems even though they are resulting in a great deal of work for solicitors.”

Similar criticism was again presented to this committee. Of particular concern was the appeal process where the Court hears matters *de novo*. The existing system is considered by many to be too legalistic and not conducive to providing a “flexible system with as little formality or technicality as may be practicable”. The community generally feels

disenfranchised by the existing practices and procedures. Effectively, applicants and objectors, especially those who can afford legal representation, are using hearings before the Director as a “practice run” and if dissatisfied with the outcome then appeal to the Court for a review, often introducing new evidence. The 1998 amendments to the Act sought to make the appeal process simpler. However, because of the adopted practice of *de novo* hearings, this has proven not to be the case. The current system supports those who have considerable financial backing to the disadvantage of the community and small operators.

The 1990 review flagged the idea of a Liquor Licensing Commission and the 1994 Mattingley review stated:

“From its inquiries interstate and elsewhere the committee has no doubt that liquor licensing is becoming more administrative and less legalistic, which is reducing costs for both licence applicants and objectors, hence it considers that industry and the community would be better served by a commission than a court...”

The committee considered a range of alternatives for the structure of the licensing authority, and the following three options, in order of preference are proposed.

Option 1

The Director General of the Department of Racing, Gaming and Liquor becomes the statutory position under the Act for decision-making and is responsible for the administration of the Act. The Director General may delegate to staff responsibility for determining various applications. All matters are to be determined administratively in the first instance. Where possible, there should be greater emphasis on conciliation and mediation. Hearings should be replaced with informal conciliatory conferences and if during a conference the parties reach agreement on the outcome of an application and the Director General is satisfied that a decision in

the agreed terms is lawful, the Director General should have regard to the decision reached and may make a decision that is consistent with those terms.

Appeals on the administrative decisions should be heard by a Liquor Licensing Commission. The Commission would consist of a chairperson, and four full or part-time members (or such number considered necessary by the Minister). Appeals on decisions relating to the grant of a new licence would be heard by a panel of three, who would review the reasonableness of the decision based on the evidence presented. A decision of the Commission on the grant of a licence may only be appealed to a single judge of the Supreme Court on a question of law. Other applications appealed to the Commission would be determined by a single commissioner or a panel of three, depending on whether the matter was contentious and no further right of appeal would exist. The Commission –

- must observe natural justice;
- must proceed expeditiously with as little formality and technicality as possible; and
- is not bound by the rules or practices as to evidence and may inform itself on any matter as it considers appropriate.

Policy guidelines would be developed by the Director General and reviewed by the Commission, who would report annually to the Minister. The Commission would also hear and determine disciplinary matters under section 95 of the Act.

One member of the Commission should be legally qualified with other members being suitably experienced in making decisions within an administrative framework.

Option 2

All decisions made under the Act would be made administratively in the first instance by the Director General of the Department of Racing, Gaming and Liquor

as the statutory position and appeals would be heard by the Liquor Licensing Court. The Court would only review the reasonableness of the decision based on the original evidence presented with decisions of the Court appealed to a single judge of the Supreme Court only on a question of Law.

Option 3

All decisions made under the Act would be made administratively in the first instance by the Director General of the Department of Racing, Gaming and Liquor as the statutory position and appeals heard by the State Appeals Tribunal.

The committee is firmly of the view that the most appropriate, effective and efficient option is the first, providing the best opportunity to implement an administrative based system that is accessible to all members of the community, not just those who can afford lawyers. This option must also be considered in the context of other recommendations made in respect of the Act. As an alternative, the committee believes option 2 is workable, but inferior.

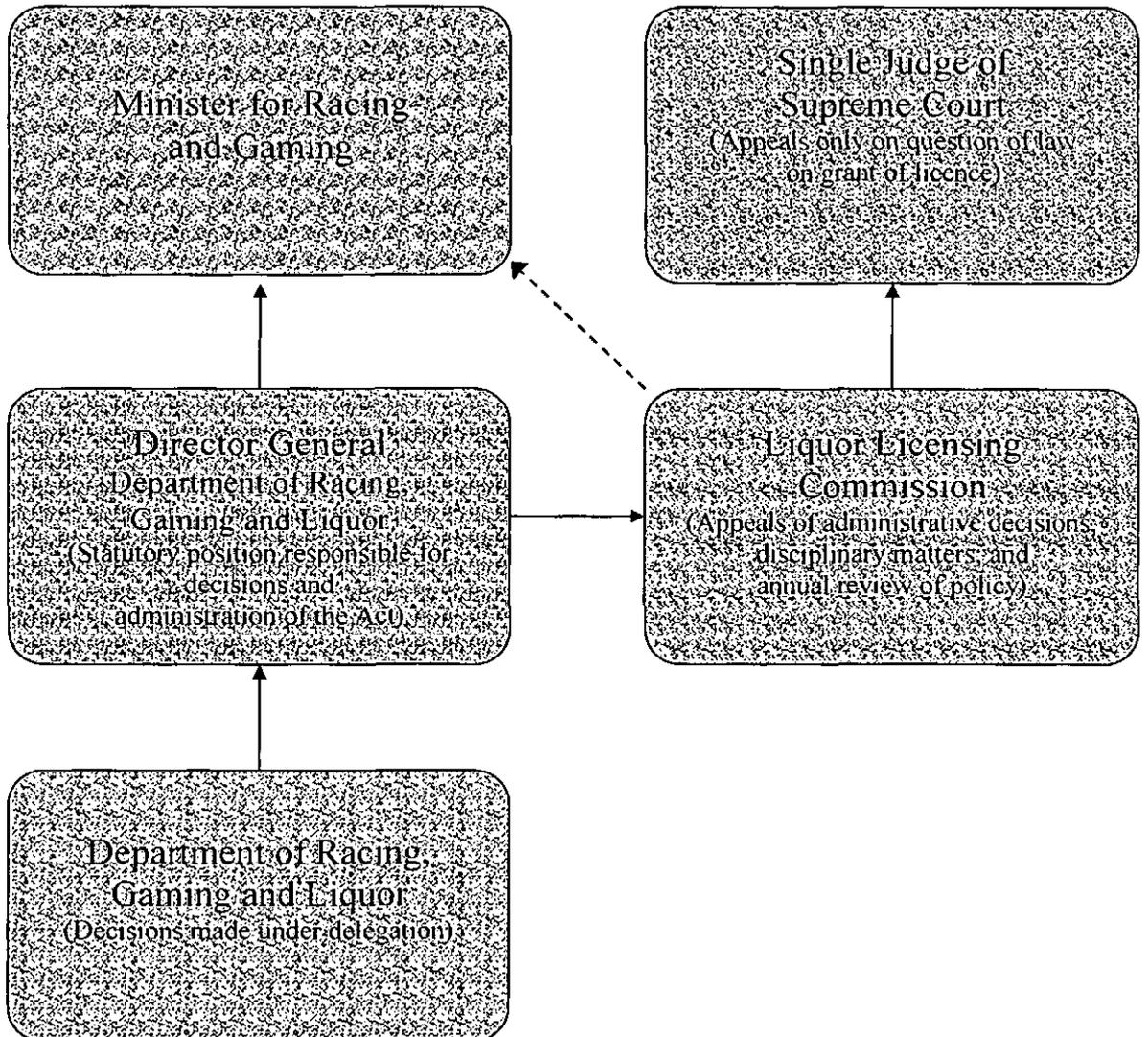
The committee does not support the use of the State Administrative Tribunal (SAT) to determine liquor licensing appeals. The SAT hears matters *de novo* and decisions of the SAT can be appealed to the Supreme Court. To use the SAT would not achieve the outcome of reducing the costly and legalistic framework from which the current system suffers. The committee also noted the May 2002 Western Australian Civil and Administrative Review Tribunal Report on the Establishment of the State Administrative Tribunal where it said:

"As indicated elsewhere in this Report, the Taskforce adopts the view of the 1999 WALRC Report and of the 1996 Review that it is inappropriate, on the grounds of the subject matter and policy areas involved, for the existing areas of regulation affected by the functions of the Licensing Court.....to be subject to the jurisdiction of the SAT."

Recommendations

- 2. A Liquor Licensing Commission replace the Liquor Licensing Court.**
- 3. The Director General of the Department of Racing, Gaming and Liquor become the statutory position responsible for decisions and the administration of the Act, other than those aspects of administration that relate to the Commission.**
- 4. Appeals to the Commission to be determined on the evidence presented to the Director General.**
- 5. A decision of the Commission on the grant of a licence may only be appealed to a single judge of the Supreme Court on a question of law.**

Structure of the Liquor Licensing Authority



6. Public Needs Test

Current Provisions of the Act

Section 38 of the Liquor Licensing Act 1988 currently requires an applicant for the grant or removal of a category A licence to satisfy the licensing authority that the licence is necessary in order to provide for the reasonable requirements of the public for liquor and related services or accommodation in that area. This is commonly referred to as the “needs test”.

Furthermore, the applicant for a liquor store licence must not only satisfy the needs test but must also satisfy the licensing authority that the reasonable requirements of the public for liquor in the affected area cannot be provided for by licensed premises already existing in that area (section 38 (2b)). Section 38 sets out the matters to be taken into consideration when determining the needs test and over the years the Supreme Court of Western Australia has provided the legal foundation for applying this section of the Act.

In *Charlie Carter Pty Ltd V Streeter & Male Pty Ltd* it was stated:

“The court is required under this provision to determine whether the licence is necessary in order to provide for the reasonable requirements of the public for liquor and related services in that area, having regard to the considerations set out in subs (1).

... “necessary” is a word which has the same connotations as words such as “needs” and “need”. Thus in Buttery V Muirhead (1970) SASR 334 at 337 Bray CJ said:

'Needs of the public must mean 'need' in the sense of 'demand' meaning by that a reasonable demand by contemporary standards. It cannot mean 'need' in the sense of necessity judged by some ethical or sociological test.'

"In the context of s38(1) the test of what is "necessary" is in terms of "reasonable requirements". Thus the factual inquiry is directed at the issue of "reasonable requirements" of the public. The question then is whether the proposed licence is necessary in order to provide for those requirements. In this context "necessary" probably means no more than that the licence is "reasonably required" in order to provide for the "reasonable requirements" of the public. The word "reasonable" imports a degree of objectivity in that the word reasonably means "...sensible; ...not irrational, absurd or ridiculous' not going beyond the limit assigned by reason' not extravagant or excessive; moderate" '. See Shorter Oxford Dictionary at page 1667.

Summary of Submissions

- The Australian Hotels Association (WA Branch) supports the retention of the public needs test in order to maintain the current value of hotel licences and the economic viability of the sector. Moreover, the Association does not wish to see a proliferation of liquor outlets and argues that there are potential negative social outcomes that may result from the implementation of a public interest test.
- The Department of Treasury and Finance believes that the current public needs test protects incumbent sellers of liquor because potential new entrants must show that existing outlets do not already adequately serve the area. According to the Department, a public interest test would remove the anti-competitive restrictions associated with the needs test and be more likely to result in benefits accruing to the consuming public.

- The Liquor Stores Association supports the retention of the needs test and argues that the removal of section 38 of the Act will mean effective deregulation and potentially allow any style of business to retail liquor products. Further it argues that the section 38 “needs test” has worked well in WA and does not preclude entry into the market, it simply poses a “consumer” facing question – “are there enough outlets or not”?
- The Restaurant and Catering Industry Association of Western Australia believes that the current differential position, whereby hotels and taverns receive the market protection associated with the needs test for licence applications and restaurants do not, is a restriction that cannot be justified. Restaurants, hotels and taverns should be subject to equivalent licensing rules. This can be achieved by abolishing the current public needs test and replacing it with a public interest test.
- The WA Police Service considers that the application of a public interest test to all applications is a fairer, equitable and justified method for determining whether or not a licence or permit should be granted rather than a public needs test.
- The Office of Crime Prevention – Department of Premier & Cabinet proposes that a public interest test should be promoted in importance and the ‘onus of proof’ in meeting the public interest divested from health and safety advocacy agents to applicants themselves. Specifically, licence applicants would need to mount a case demonstrating the measures being undertaken to prevent and minimise harm.
- Tourism Western Australia strongly supports the replacement of the needs test with a public interest assessment believing that it is important to the tourism industry from the perspective of facilitating competition between existing and proposed licensed venues through the reduction of a significant barrier to entry.

National Competition Policy

The current “needs test” under section 38 of the Act is seen as being contrary to the principles of the National Competition Policy, as it constitutes an unjustifiable barrier to entering the liquor industry. Not surprisingly, some sectional industry groups support retaining the existing provisions because it effectively protects their industry sector from potential new entrants into the market place. The determination of section 38 matters adds to the complexity and cost (via the appeal process) of an application for the grant of a new category A licence, while at the same time limiting community participation in the decision making process.

According to the Department of Treasury and Finance, “*The National Competition Council (NCC2004) considers the public needs test to be the most significant breach of CPA obligations in the liquor area because of the significantly anti-competitive impacts arising from erecting barriers to entry without improving harm minimisation*”. Section 38 does not explicitly require harm minimisation to be addressed, although it would seem that this could be considered under the overriding discretion vested in the licensing authority under section 33, whereby an application may be refused if it is not in the public interest.

Conclusion

The committee is of the firm view that the decision to grant or refuse an application for a new licence should not be based on an artificial barrier to protect some sections of the industry from competition, irrespective of National Competition Policy considerations. Applications should be determined solely on their social, community and health implications.

Whilst it was consistently argued that the application of a public interest test would result in a proliferation, or at least a significant increase, in licence numbers, the committee was not persuaded that this would necessarily follow, provided the criteria for determining

public interest were broadly defined. In fact, the use of public interest criteria may make it easier for particular communities to control outlet density and the sale of liquor generally to meet their particular needs. This might be particularly important in non-metropolitan areas.

This approach is consistent with national trends, with most states having moved away from a “needs test” to a public interest assessment as a means of determining applications. Queensland, New South Wales and Victoria all determine applications based on a public interest or social impact assessment.

It is therefore proposed that the Act be amended to remove the needs test under section 38 and replace it with a public interest test that requires the licensing authority to determine whether or not an application for the grant of any licence is in the public interest. Applicants should be required to demonstrate that their application is in the interest of the public, having regard to the likely health and social impacts on the community and sub-groups within the community. The matters to be addressed when considering the public interest should be prescribed in the Regulations with a comprehensive test to apply to applications for licences which have a greater risk of contributing to alcohol related harm such as hotels, cabarets, liquor stores and some special facilities. A modified test should apply for applications for licences which generally have a lesser impact on the community such as producers, wholesalers, restaurants and clubs.

For the purposes of assisting in the determination of whether an application is in the public interest, the committee believes that an application for the grant or removal of a hotel, cabaret, liquor store and (some) special facility licence should be determined in the context of the following -

- the harm or ill-health that may be caused to people or any group of people due to the use of liquor;

- an assessment of the magnitude, duration and probability of the occurrence of the health and social impacts;
- the likely health and social impacts that granting the application would have on the population of the locality;
- the number and condition of licensed premises already existing in the locality;
- distribution of licensed premises already existing throughout the locality (ie outlet density);
- extent and quality of services that are provided by licensed premises already existing in the locality;
- the existing and projected population and demographic trends in the locality;
- the number of persons residing in, resorting to or passing through the locality, and their respective expectations;
- the proximity of the proposed licensed premises to sub-communities within the locality including schools and places of worship and the likely impact on those sub-communities;
- the impact on the amenity of the locality and whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises;
- the local laws of a local authority made under the *Local Government Act 1995* or the by-laws of an Aboriginal community made under the *Aboriginal Communities Act 1979*;
- the health, safety and welfare of persons who may resort to the licensed premises;
- the kinds of liquor that may be sold; the containers in which and the amount of liquor that may be sold; and the days and times at which liquor may be sold;
- the potential for irresponsible drinking;
- evidence of responsible service initiatives, including – completion of responsible service of alcohol courses; display of and adherence to responsible service of alcohol policies; availability of food; security arrangements; and controls that prevent noise and disturbance to neighbours.

Other applications should be considered in the context of:

- the likely health and social impacts that granting the application would have on the population of the locality;
- the proximity of the proposed licensed premises to sub-communities within the locality including schools and places of worship and the likely impact on those sub-communities;
- the harm or ill-health that may be caused to people or any group of people due to the use of liquor;
- the impact on the amenity of the locality and whether offence, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises;
- the local laws of a local authority made under the *Local Government Act 1995* or the by-laws of an Aboriginal community made under the *Aboriginal Communities Act 1979*;
- the health, safety or welfare of persons who may resort to the licensed premise;'
- the potential for irresponsible drinking; and
- evidence that responsible service initiatives, including – completion of responsible service of alcohol courses; display of and adherence to appropriate responsible service of alcohol policies; availability of food; and controls to prevent noise and disturbance to neighbours.

To support a move away from large drinking establishments and encourage creativity and innovation through smaller intimate venues, the committee believes that the licensing authority should be afforded discretion to apply the lesser test to small taverns or wine bar type establishments which cater for less than 80 people in non-residential areas.

The shift from a needs test to a public interest test will also require subsequent amendments to section 73 of the Act to remove the unique right of objection that is conferred on any person holding a category A licence and section 74 to remove the

grounds of objection that relate to whether or not a licence is necessary to provide for the reasonable requirements of the public.

Recommendation

- 6. Section 38 of the Act be amended to replace the current “needs test” with a public interest test.**

7. Objects of the Act and Current Licence Classification System

In accordance with the terms of reference, the committee is required to consider the appropriateness of the objects of the Act and current licence classification system and associated trading hours, having regard to changing community needs and attitudes relating to the accessibility of liquor and related services.

7.1 Objects of the Act

Section 5(1) of the Act states that the primary objects of the Act are –

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

Subsection (2) provides that in carrying out its functions under the Act the licensing authority shall have regard to the primary objects of the Act and also the following objects –

- (a) to regulate, and to contribute to the proper development of, the liquor, hospitality and related industries in the State;
- (b) to cater for the requirements of the tourism industry;
- (c) to facilitate the use and development of licensed facilities reflecting the diversity of consumer demand;
- (d) to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor;

- (e) to provide a flexible system, with as little formality and technicality as may be practicable, for the administration of the Act.

Summary of Submissions

The Australian Hotels Association (WA Branch), Liquor Stores Association, Restaurant and Catering Industry Association, Clubs WA and the Cabaret Owners Association did not comment specifically on the appropriateness of the objects of the Act.

The Liquor Industry Council of WA believe that the minimisation of harm due to the use of liquor was adequately addressed in the 1998 amendments to the Act, and the Act does not require further provisions to address the problem which is more properly approached by public education campaigns.

The Drug and Alcohol Office and the Department of Health believe that the existing objects are conflicting and that the objects of the Act do not appropriately acknowledge alcohol as a potentially harmful product, nor appropriately support the prevention and minimisation of such harm. Consequently, they recommend that section 5 (2) of the Act be deleted and all references to 'the minimisation of harm or ill-health' be replaced with 'the prevention and minimisation of harm or ill-health'.

The Western Australian Police Service believes that balancing the primary and secondary objects of the Act has become far too complicated to allow for an informed process that can be understood by, and directly involve, the average citizen within the community. The promotion of the hospitality industry should be left to other agencies or legislation. The police propose that the secondary objects of the Act be removed and the objective of the Act should be "to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor, the prevention of crime and disorder; maintenance of public safety and the prevention of public nuisance at licensed premises and the immediate proximity of premises where liquor may be lawfully sold, supplied or consumed."

The Women's Christian Temperance Union of WA Inc is of the view that the legislation should support the prevention of harm as a top priority.

The Australian Faculty of Public Health Medicine (WA Regional Committee) states that with many competing interests surrounding the sale and consumption of liquor it is vital that the public interest, that is to minimise alcohol related harm and ill-health, is expressed, considered and weighed at least as strongly as commercial, business and tourism needs.

The WA Centre of Health Promotion Research (School of Public Health – Curtin University) believes that there is tension between various objects of the Act and that there should be a strengthening in the ranking of the objects to give priority to the primary objects, particularly minimising alcohol related harm.

The Office of Road Safety suggests community safety issues should be a primary focus of the Act.

The Men's Advisory Network states that harm minimisation should be the over-riding criteria when making decisions, whilst the Palmerston Association Inc is of the view that public health related issues should be at the forefront of all decisions under the Act.

The Office of Aboriginal Health (Health Department) is of the strong view that the objects should be recast to emphasise the well being of the community.

The Community Advisory Council indicated that the primary objectives of the Act should be emphasised, whilst the secondary objectives should be removed. In this regard, the primary objectives of the Act should be to prevent and minimise harm and promote community safety.

The Injury Control Council of WA contends that the promotion of community safety and public health should be the principal object, if not the only object of the Act.

The Office of Crime Prevention – Department of Premier and Cabinet proposes that harm minimisation should be unambiguously promoted as the most important objective of the Act. Currently the status of two primary and five secondary objectives are confusable and rendered meaningless.

Conclusion

In general, the liquor industry did not comment on the objectives of the legislation, except for the Liquor Industry Council who felt that the current objects adequately address the issues of harm minimisation. However, there was a strong and consistent call by the health groups and some government agencies, to amend the objectives of the Act to make minimising alcohol related harm the primary focus. Some groups suggested ‘minimising’ harm was insufficient and that the Act should seek to ‘prevent’ alcohol related harm. From the information available to the committee there is no doubt that there appears to be some conflict between the two stated primary objects (of regulation and harm minimisation) with some of the remaining objects stated in section 5(2) of the Act.

Ipp J in *Lily Creek Intentional Pty Ltd V Sayers and ORS* stated:

“It is obvious, however that tension may arise between the object of minimising harm or ill-health caused to people, or any group of people, due to the use of liquor and certain of the objects contained in s 5(2). There will be occasions when s 5(2) objects could only be achieved by the grant of licences for the sale and supply of liquor in circumstances under which such grants may tend to cause harm of ill-health to people.”

The trend in the review of liquor legislation in Australia, New Zealand, USA, Canada and the United Kingdom is towards minimising alcohol related harm.

The United Kingdom Licensing Act 2003 states that the licensing objectives are –

- (a) the prevention of crime and disorder;
- (b) public safety;
- (c) the prevention of public nuisance;
- (d) the protection of children from harm.

Similarly the Nicholson Committee Review of Liquor Licensing Law in Scotland recently recommended the following objectives:

- (a) the prevention of crime and disorder;
- (b) the promotion of public safety;
- (c) the prevention of public nuisance;
- (d) the promotion of public health; and
- (e) the protection of children from harm.

In this context, the committee believes that there is the potential for tension between the existing objects of the Act. Due to the significant body of evidence referred to earlier in this report on the negative impact that alcohol has on the community and consistent with national and international trends, the object of the Act should unequivocally focus on minimising alcohol related harm.

The committee does not support removing industry and tourism considerations completely from the objects of the Act, however where there is a conflict between the primary and other objects, the committee believes that the primary object of harm minimisation should prevail.

Recommendation

- 7. The objects of the Act be amended to make it clear that where there is any conflict between the primary objective of harm minimisation and the other objects, promoting the principles of harm minimisation shall prevail.**

In furthering the principles encapsulated under the primary object of the Act of minimising harm caused to people, or any group of people due to the use of liquor, the committee believes that other complimentary initiatives should also be adopted to support this outcome.

Following the Mattingley review in 1994, the requirement for licensees and managers to complete an accredited training course was introduced. The committee supports this initiative but notes that it has been the policy of the Director of Liquor Licensing to only require licensees and managers of category A licences, and managers of category B licences to complete the required training. The committee is of the view that all licensees should now be required to complete the accredited training course.

The responsible service of alcohol and effective patron management can have a direct impact on minimising alcohol-related problems. Well managed licensed premises, together with well trained staff capable of early intervention to identify and reduce the number of intoxicated patrons, has been found to have a positive impact on alcohol related problems such as violence, anti-social behaviour and drink driving (Graham et al 1980; Homel et al 1992; Stockwell and Department of Health 1998). The requirement for staff to be trained in responsible server practices has been introduced in New South Wales, including those serving liquor under an occasional licence.

In the USA, at least 11 states have mandatory server training programs for all licensed establishments. Three studies have found an association between server training and a decrease in intoxication of patrons, with another study reporting a 23% decrease in

singular vehicle night-time injury crashes as a result of a state wide mandatory server training program.¹⁶

Recommendations

- 8. All licensees and managers must complete an accredited training course approved by the licensing authority.**
- 9. All servers of alcohol on licensed premises must be trained in the responsible service of alcohol (to be phased in over 12 months).**
- 10. Licensees must maintain and make available for inspection a register with each staff member's name and a copy of their certificate showing they have completed responsible service of alcohol training.**
- 11. During trading, an approved manager must always be present on the licensed premises.**

With respect to the operation of occasional licences, many functions are small, low risk events run by community groups or organisations. However, alcohol related harm can still occur in this environment, therefore the committee is of the view that the larger the function (and consequently the greater the risk) the more need there is for training in responsible server practices.

Recommendation

- 12. For functions conducted under an occasional licence, if the function is for less than 100 people, training is not required, where the function is for 101-300 people, the licence holder must be trained in responsible server**

¹⁶ Holder H and Wagner A (1994) Mandated server training and reduced alcohol traffic crashes: A Time Series Analysis of the Oregon Experiment.

practices, and if the function is for more than 300 people the licence holder and all servers of liquor must be trained in the responsible service of alcohol.

Section 64 of the Act provides that the licensing authority, may at its discretion, impose conditions which it considers to be in the public interest. The Liquor Licensing Court has determined that such matters should be dealt by way of an “inquiry”. Such a process can be extremely onerous and time consuming. It is not always appropriate or necessary to conduct an inquiry. The committee is of the view that it would be more appropriate that the licensing authority can issue a “Notice of Intention“, requiring a licensee to show cause why restrictive conditions should not be imposed. The “Notice of Intention” should state the nature of the proposed action and the grounds for the proposed action and invite the licensee to show cause why the proposed action should not be taken.

A number of submissions raised concerns about the effectiveness of Alcohol Accords, which in Western Australia began with the Fremantle Accord in 1996 and has led to the establishment of 23 accords state wide. Accords aim to develop a collaborative approach to address alcohol related problems in a particular locality and usually consist of representation from the alcohol industry (hotels, taverns, nightclubs, liquor stores, sporting clubs etc), local government, health professionals, police and representatives of the local community. Agreed initiatives are voluntary and therefore lack enforcement and can be undermined by one or more licensees who do not embrace the proposed initiatives.

It was put to the committee that accord membership should be compulsory. However, the committee is of the view that the underlying nature of an accord is more consistent with voluntary membership. A licensee’s willingness to be a member of a local accord and support local initiatives to address alcohol related problems could form part of a public interest consideration by the licensing authority when considering any application.

Nonetheless, the committee believes that some support can be provided to accord initiatives by amending section 64 of the Act so that the licensing authority may impose conditions on licences in a particular locality in response to an approach from a local accord. The committee is not suggesting that the licensing authority would automatically impose such restrictions without determining whether there is general consensus for the conditions and whether the imposition of the conditions would be in the public interest.

Recommendations

13. Section 64 of the Act be amended to remove the requirement for the licensing authority to conduct an inquiry before imposing conditions on a licence and this provision be replaced with a “Notice of Intention” requiring a licensee to show cause why conditions should not be imposed.

14. Section 64 of the Act be amended to allow the licensing authority to impose licence conditions at the request of local accord members.

The committee noticed during its deliberations that considerable media attention was given to the issue of the provision of water at licensed premises. There are no specific provisions under the existing Act requiring licensees to provide water to their patrons.

The provision of water (and other non-alcoholic drinks) is considered by the committee to be an essential component of any strategy to minimise the effects of alcohol by providing patrons with an alternative to the consumption of liquor. In New South Wales licensees are required to provide water free of charge to patrons at all times liquor is sold and supplied on the licensed premises. The committee does not believe that it is unreasonable for a licensee to provide potable water to patrons free of charge.

Recommendation

15. The Act be amended to require licensees to provide potable water free of charge at all times liquor is sold and supplied on the licensed premises.

The responsible promotion of liquor is fundamental to ensuring that premises are well managed and that the risk of alcohol related harm is minimised. Happy hours and other promotions using discounted alcohol to attract people to licensed premises will generally cause a rise in consumption that is likely to cause an increased risk of intoxication.¹⁷

These promotions (such as cheap drinks, periods of free drinks or two for one offers) are particularly attractive to younger, “at risk” drinkers, who often binge drink.

The Director of Liquor Licensing has issued policy guidelines on the “Responsible Promotions of Liquor” however these guidelines cannot be enforced and a breach of the policy requires the Director to conduct an inquiry under section 64 of the Act to determine what specific conditions should be imposed on a licence. Section 64(3) empowers the licensing authority to impose conditions which it considers desirable in order to –

- prohibit promotional activity in which drinks are offered at reduced prices, or limit the circumstances in which it may be done; or
- prohibit any practices which encourage irresponsible drinking.

As Doherty and Roche (2003) noted:¹⁸

Prevention of intoxication represents the cornerstone of best practice in relation to licensed premises... Intoxication is known to increase the likelihood of

¹⁷ Osterberg E. Effects of Price and Taxation. In Heather N, Peters TJ, Stockwell T (eds): International Handbook of Alcohol Dependence and Problems.

¹⁸ Doherty S, Roche A (2003). Alcohol and Licensed Premises: Best Practice in Policing. Adelaide. Australasian Centre for Policy Research.

aggression, violence and accidental injuries among intoxicated people and other members of the community... While intoxication does not always lead to offending, there is a strong and important association between violence and intoxication. (p. 36)

Accordingly, the committee believes that the Act should be amended so that the licensing authority may incorporate guidelines in the Regulations in relation to the responsible promotion of liquor with provision for a condition to be subsequently imposed on all licences requiring compliance with the guidelines.

Recommendation

- 16 The Act be amended so that the licensing authority may incorporate guidelines in the Regulations on the responsible promotion of liquor and a condition be imposed on all licences requiring compliance.**

As a good management practice, many licensees already maintain an ‘incidents register’ for their premises detailing events such as unruly behaviour, patrons being refused service and/or being evicted from the premises and action taken to resolve complaints from neighbours. The committee believes that the maintenance of such a register is in the best interests of a licensee and would also assist the police and the licensing authority. An “incidents register” should therefore be made mandatory.

Recommendation

- 17. All licensees are to have and maintain an incidents register. The form and content of the register should be prescribed in the Regulations.**

Alcohol consumption can have a significant negative impact on Aboriginal communities. Whilst proportionally, indigenous people who drink alcohol is lower than that of non-indigenous people, those who do are more likely to consume alcohol at high risk levels.¹⁹

The Director of Liquor Licensing has invoked the powers under section 64 of the Act and imposed restrictions on the availability of liquor in a number of regional communities,²⁰ with quite positive results. However the committee believes that the Act can be further strengthened to support the primary object of minimising harm or ill-health caused to people, or a group of people, due to the use of liquor, particularly in respect of indigenous communities. Complementary recommendations in this report should assist in improving the current processes used by the licensing authority which will enhance community engagement and consultation. However, the Act should also be amended to support the provisions under the *Aboriginal Communities Act 1979* which enables communities to restrict or ban the possession, sale, supply and consumption of liquor and impose strong deterrent penalties for 'sly grogging', including the forfeiture of any vehicle used in transporting liquor to 'dry' communities.

The Act should therefore make provision for the Director General of the Department of Indigenous Affairs to apply to the licensing authority for Regulations to be made supporting the restrictions proposed by a community under the Aboriginal Communities Act. The Regulations would contain penalty provisions so that restrictions are enforceable under the Liquor Act. Consideration could also be given, via the Regulations, to empower Aboriginal wardens to enforce these provisions.

Recommendations

18. Additional offence provisions be created under the Act for the illegal sale of liquor to Aboriginal communities, with strong deterrent penalties,

¹⁹ Australian Bureau of Statistics and Australia Institute of Health and Welfare 2001.

²⁰ Halls Creek, Mount Magnet, Onslow, Nullagine, Derby, Newman, Port and South Hedland and Meekatharra.

including the forfeiture of any vehicle used in the commission of the offence.

19. Where an Aboriginal community want to impose liquor restrictions within their community, the Director General of the Department of Indigenous Affairs may apply to the licensing authority and have those restrictions and related enforcement provisions placed in the Liquor Licensing Regulations which would include penalties for breaches of the restrictions.

7.2 Licence Classification System

Classes of Licences

The relevant liquor licensing legislation in each state is predicated on different types of licences, with the Act stipulating basic trading privileges for each licence type. The name for each licence type varies from state to state, but there is an underlying similarity. In Western Australia, the Act provides for Category A licences consisting of hotels (including taverns and hotel restricted), cabarets, liquor stores, special facilities and casino and Category B licences which includes clubs, restaurants, producers, wholesalers and occasional.

The primary difference between Category A and Category B licences is the obligation to be met under section 38 of the Act (the “needs test”).

The Act then provides for an extension of the trading conditions by the issuing of an extended trading permit under section 60. This concept is consistent with other states. In comparing the licence classification system in WA with other jurisdictions, the committee sees no benefit in changing the existing nomenclature or associated basic privileges under each licence type. The current system allows a variety of licence types to trade under different conditions in order to meet the diversity of consumer demand and provides a clear distinction for both the industry and the public. However, the removal of

the “needs test” will result in the current distinction between category A and B licences becoming redundant.

Recommendation

20. The Act be amended to remove the current distinction between category A and B licences.

Nonetheless, in reviewing the submissions, the committee is of the view that there is scope for some refinement to the various licence types.

Hotels

The Act currently places an obligation on the holder of a hotel licence (including tavern and hotel restricted) to receive persons onto the premise while the premises is trading during permitted trading hours. The committee feels that this is an unnecessary restriction on hotel licensees, who should be able to exercise greater discretion to keep undesirable patrons from their premises.

However, the complaint provisions in section 115(9) should be strengthened so that in appropriate circumstances the licensing authority can require a licensee to receive a person. Complementary amendments to sections 63 or 64 may also be necessary.

Recommendation:

21. The obligation that requires the licensee of a hotel (tavern, hotel restricted) to receive people onto the premises during permitted trading hours be removed and the complaint provisions under section 115(9) be consequently amended.

Section 97 of the Act details the permitted trading hours for each licence type. On Sundays, the permitted trading hours for hotels are 10.00 am to 10.00 pm.

The Australian Hotels Association (AHA) believes that the Act should be amended to enable hotels to trade to 12 midnight on Sundays. According to the AHA, such an extension would accommodate many demands, including:

- extra time to socialise, particularly at a time where working days and hours are more varied;
- providing a rendezvous after local sporting and social activities;
- enabling the viewing of international sporting fixtures that patrons wish to view live; and
- ensuring tourists are able to appreciate Western Australian hospitality venues during the preferred trading hours.

The distinction of Sundays from other days of the week has become increasingly blurred over the years with changes in work and social patterns. Accordingly, the committee supports an amendment to the Act to allow hotels to trade to 12 midnight on Sundays.

Recommendation

- 22. The permitted trading hours for hotels on Sundays be amended to 10.00am to 12 midnight.**

Cabarets

Most cabarets are presented and marketed as nightclubs, with dance floors and the like and are seldom set up with chairs and tables for eating and drinking or providing a cabaret style of entertainment. The description of the licence as “cabaret” licence is a misnomer that, for the purpose of informing the public would be corrected if the licence was designated as “nightclub” licence.

Recommendation

23. The designation of ‘cabaret’ licence be changed to ‘nightclub’ licence.

The City of Perth suggested that there needs to be a clean up time for public spaces in entertainment precincts, for example Northbridge, to promote a smoother transition from the evening to daytime economy and to reduce opportunities for anti-social behaviour. Cabarets can currently trade to 6.00am in the morning however, according to the Cabarets Owners Association, the consumption of liquor reduces towards the end of trading and the economic benefit of trading between 5.00am and 6.00am is minimal. The committee believes that by amending the permitted trading hours of cabarets to 5.00am, the risk of conflict between cabaret patrons and other members of the community starting their day will be reduced with minimum negative impact on the cabaret industry.

Recommendation

24. The permitted trading hours for cabarets be reduced by requiring them to close at 5.00am.

The permitted trading hours for cabarets on Sunday is 8.00 pm to 12 midnight. Similar to the AHA, the Cabaret Owners Association argues that the demand for late-night live entertainment on Sunday nights is increasing, due to changing work and social patterns of young people and therefore the restriction imposed on Sunday night trading is anachronistic and discriminates against many people who do not work a normal working week.

The committee supports the standardisation of Sunday trading for cabarets.

Recommendation

25. The permitted trading hours for cabarets on Sundays be amended to 6.00 pm to 5.00 am the following morning.

Clubs

Clubs WA put to the committee that some of the existing restrictions on clubs should be removed to make clubs more accessible to members of the public.

Any proposal to make club licences less restricted so that alcohol can be sold to the general public is not supported by either the Department of Health or the Australian Hotels Association.

The committee acknowledges the important role that clubs play within the community. However, there is a body of evidence that suggests that levels of alcohol consumption and drinking behaviours that lead to problems do occur at some licensed clubs.

There is growing concern over the association between alcohol and sport and the message it sends to young people. Heavy drinking, as part of post-game celebrations, is a tradition in many sports²¹ with alcohol companies using sport as a powerful means of promoting their products.²²

The committee is of the view that some restrictions imposed on clubs under the Act can be relaxed or removed. However the committee does not support a broad move to make clubs more accessible to the general public. Within the scheme of the licence classification system, the provision of liquor under a club licence is, and should continue to be, an ancillary service to members of the club. Similarly, clubs should not be solely reliant on the sale of liquor for their future viability. The committee was of the view that

²¹ Munro G (2000). Challenging the Culture of Sport and Alcohol. *International Journal of Drug Policy*.

²² Hills and Casswell, cited in Heather N, Peters TJ and Stockwell T (eds). *Alcohol Dependence and Problems*.

the viability of a club should be based on their principal activities and if this cannot be achieved there are serious doubts as to whether the club should continue to exist.

Clubs who want to compete in the commercial market place should obtain a licence appropriate to the proposed activities. The obligation to receive people onto tavern premises is seen by clubs as a barrier to applying for a tavern licence in situations where clubs are seeking greater flexibility in meeting the needs of local communities. It is recommended that this requirement be removed for a number of reasons which are outlined in other sections of this report.

Some of the proposals put by Clubs WA do not require an amendment to the Act, for instance, the availability of reciprocal membership and the use of non-member extended trading permits for functions. These issues are currently controlled by the Director of Liquor Licensing as a matter of policy. The committee supports clubs making provision in their constitutions for reciprocal membership, but only for like clubs (i.e. bowling clubs with other bowling clubs) and not to any person who is a member of any club in Australia or New Zealand as proposed by Clubs WA. In respect of non-member extended trading permits, the committee believes that the existing policy of 4 per annum (as contained in the Director's policy) is unreasonably restrictive and does not provide sufficient flexibility particularly for clubs in rural areas, and supports up to 12 non-member permits per year.

Clubs WA also submitted that the current laws do not reflect the needs of a modern club by facilitating the payment of membership subscriptions on a monthly basis and unfairly constrain club restricted licence holders to purchasing their liquor from retail outlets. The committee supports changes to the Act to facilitate the payment of monthly subscription fees and believes that the Act should not restrict clubs that have a restricted licence from being able to obtain liquor at the most competitive price.

Recommendations

26. The Act be amended to provide for the payment of monthly subscriptions fees by club members.

27. Club restricted licences be permitted to purchase their liquor from wholesalers.

Liquor Stores

Sunday trading for liquor stores was one of the more contentious issues to be considered by the committee.

Section 97 of the Act (permitted trading hours) precludes liquor stores from trading on Sundays and practically, section 60 of the Act (extended trading permits) is limited in its application by the Director of Liquor Licensing.

The Liquor Stores Association (LSA) in its submission, claim that the liquor store sector accounts for more than 70%, or approximately \$700 million, of packaged liquor sales in Western Australia.

In its view, the sales volume – in six days – of the liquor store sector is a good indication of consumer acceptance and recognition of the specialist nature of these outlets as well as the non-recognition of the hotel sector as packaged liquor providers. According to the LSA, liquor stores are the specialist packaged liquor retailers because they provide:

- an extensive range of alcoholic beverages (wine, beer and spirits);
- competitive pricing;
- trained staff with product knowledge; and
- facilities conducive to female shoppers who prefer to shop at liquor stores rather than hotel bottle shops.

Furthermore, advice from the LSA is that their members donate, on average, \$5,750 per store to community groups and small to medium size vineyards rely on stores, particularly the independents, to sell their product which not only provides market exposure for small vineyards but also contributes to tourism.

The LSA claim that other than a handful of outlets, the hotel sector does most of its packaged liquor business on a Sunday when there is no competition from liquor stores, which means that consumers are faced with higher prices and a lesser product range. To emphasise this point, the committee was provided with a copy of an advertisement by a large hotel in the southern suburbs comparing (favourably) their prices for certain brands of wines and beers to various liquor stores. However, the advertisement clearly states "specials available Tuesday to Saturday".

In a two week period prior to Christmas 2003, the LSA gathered a petition containing 32,000 signatures in support of Sunday trading for liquor stores. That petition was presented to Parliament.

The Australian Hotel Association (AHA) is opposed to Sunday trading for liquor stores. According to the AHA, hotels provide a range of services to the community – food, entertainment, meeting places, sporting club rooms, accommodation, employment (including apprentices and trainees) and places for people to meet and socialise – in addition to packaged liquor, which liquor stores do not provide.

The AHA estimates that on average most hotels with a bottle shop or take-away drive through sell 30% of their weekly packaged liquor on a Sunday, and for some hotels, it's as much as 50%. This turnover, it is argued, is a substantial factor in hotels being able to provide the range of services they deliver to the community. According to the AHA, allowing liquor stores to trade on Sunday would erode the competitiveness and viability of hotels and could force many to close.

The Department of Treasury and Finance states that the inconsistency and inequity in trading hours between liquor stores and hotels is a major restriction on competition. Furthermore, according to the Department, the argument that increased availability of liquor leads to increased consumption of alcohol is weak,²³ and in reality, opening up liquor stores to Sunday trading is more likely to see a reduction in demand for liquor from hotel bottle shops rather than an overall increase in the demand for liquor.

The Department of Health does not support Sunday trading for liquor stores because of the potential for increase alcohol related harm, particularly for “at risk” populations such as indigenous people and young people, due to the significant increase in the availability of liquor.

The two biggest liquor store chains in Western Australia, Woolworths Ltd and Liquorland (Australia) Pty Ltd (Coles/Myer), supported Sunday trading for liquor stores arguing that this would provide greater flexibility, convenience and choice for the public.

A small group of independent liquor store operators were opposed to Sunday trading because of the perceived dominance of Woolworths and Liquorland, a view not shared by liquor store operators in general. Concern about market dominance was put to the LSA by the committee, however, the LSA did not believe that market domination by Woolworths and Liquorland was an issue.

In considering this matter, the committee was cognisant of the referendum held on 26 February 2005 (with the state election) relating to the extension of retail trading hours, resulting in a rejection of the proposal by the majority of Western Australians. However, the committee noted that Sunday trading for liquor stores was specifically excluded from the referendum.

It is the view of the committee that there is a clear distinction between the convenience of obtaining packaged liquor on Sunday and a general extension of retail trading hours as

²³ Roche Dr A.M. ' Appendix B: Social issues pertaining to the Liquor Act Review – Queensland 1998.

proposed by the referendum. Sunday is a day when many people socialise with their family and friends (i.e. BBQ's, picnics and family gatherings) and participate in and attend sporting events and therefore there is a stronger argument for the convenience of the public to access liquor from liquor stores.

The committee does not support the argument presented by the AHA that simply because the viability of some hotels may be jeopardised, the public of Western Australia should be denied the convenience and advantages of obtaining packaged liquor from liquor stores on Sundays, a right enjoyed by the public in other states. To continue to prop-up uneconomical businesses by denying the public the convenience of Sunday trading is both unreasonable and not in the long term best interests of the community or the hotel industry. The AHA also proposed that compensation should be paid to hotels if Sunday trading for liquor stores was introduced. The committee does not support the payment of compensation. Sunday trading for liquor stores has been mooted for over ten years (it was recommended in the 1994 Mattingley review) and any business operator must assess the existing and potential risks associated with their business. The Act is also required to be reviewed every five years, which is a clear indication that the industry must be adaptive to change.

Despite previous recommendations that liquor stores should trade on Sundays (Mattengley Review), the status quo has prevailed to the benefit of hotels.

It is worth noting that under section 41 of the Act, the licensee of a hotel (tavern) is required to sell liquor for consumption on the premises and may sell packaged liquor. In other words, the predominant purpose of a hotel (tavern) licence is the sale of liquor for consumption on the premises, not packaged liquor.

However, the committee does recognise the fact that hotels in small country towns are an integral part of the fabric of rural life. In this context, the committee proposes that, similar to the provisions of the Shop Trading Reform Act 1996 (Victoria), a local government may conduct a poll of the local community and if that community decides

that it does not want the liquor store to trade on a Sunday then the licensing authority shall impose a restriction prohibiting that liquor store from trading. Such a mechanism should only apply to small country towns and only after the community has had at least six months to experience the option of Sunday trading. The procedures for the conduct of the poll should be prescribed in the Regulations or the Local Government Act.

Recommendation

28. The Act be amended to authorise liquor stores to trade on Sundays between 10.00 am and 10.00 pm with provision for a local government in small rural towns to conduct a poll, the procedures of which should be prescribed in the Regulations or the Local Government Act. Where a community does not support Sunday trading, the licensing authority shall prohibit the liquor store from trading on Sunday.

Restaurants

It is currently possible for a restaurant to apply for an extended trading permit, pursuant to section 60(4) of the Act, to allow the sale of liquor without a meal in an area not exceeding 20% of the seating capacity. The current practice is to “define” the 20% permit to a specific area within the restaurant.

The Restaurant and Catering Industry Association (R & CIA) argue that the 20% restriction is too arbitrary and creates unnecessary difficulties for restaurant operators and the general public. According to the Association, “the requirement to separate dining clients from those enjoying a drink without food is unnecessary and restrictive. It can separate husbands and wives, split up groups celebrating birthday parties and the like and imposes an untenable burden on proprietors.... and has a negative impact on Western Australian tourism”.

The R & CIA proposes that rather than a designated area limited to 20% of the seating capacity, the Act should allow a restaurant to provide such a service in an area approved by the Director of Liquor Licensing. The R & CIA stresses that it does not advocate restaurants becoming taverns and it should be a requirement of the permit that the predominant purpose of the business must at all times be the provision of meals prepared by the licensee for service and consumption on the premises. It states that “the idea that restaurants, unchecked, would trade out of control as bars is a myth that some industry sectors may well wish to promote in their own interests, but there is no substantive data that would support this view”.

Tourism Western Australia indicated that it has received considerable anecdotal evidence of overseas tourists bemused that they have to have a substantial meal if they want to have a drink in a café. Although the previous amendments to the Act which allowed liquor to be consumed without a meal in 20% of the seating capacity partially addressed this problem, according to Tourism Western Australia this is inadequate because of the inflexibility of the provisions and therefore any beneficial impact for tourism has been significantly diluted.

The Australian Hotels Association (AHA) is opposed to any changes that would allow restaurants extra capacity to sell liquor that is not ancillary to a meal and is of the view that to extend the capacity for restaurants to serve liquor without a meal would blur the distinction between a tavern licence and a restaurant licence. The AHA is also of the view that if restaurants want to serve liquor without a meal they can apply for an appropriate licence (i.e. tavern).

The Department of Health does not support the granting of extended trading permits to restaurants to allow the sale of liquor without a meal because eating whilst drinking assists to minimise the potential for intoxication and alcohol related harm and effectively removing the requirement to serve a meal with alcohol would allow restaurants to trade as bars.

The ability for restaurants to provide liquor without a meal varies from state to state, with Queensland and Victoria basically applying a “predominant purpose” test, NSW allows up to 30% of patrons to consume liquor without a meal and South Australia requires that a restaurant business ensures that its prime business is provided by the service of food and drink with an unofficial allowance for not more than 25% of its trade being generated by the service of alcohol without a meal.

The committee accepts the argument from the Restaurant and Catering Industry Association that the current provisions restricting restaurants to a defined area not exceeding 20% of their seating capacity for the provision of liquor without a meal is inflexible and not conducive to supporting tourism or the reasonable requirements of the public generally.

The committee strongly supports strategies that will modify the drinking culture of Western Australians, and for that matter tourists, by providing flexibility and choice for patrons in low-risk drinking environments such as restaurants. However the committee does not wish to transform restaurants into de facto taverns.

In this regard, the committee proposes that an extended trading permit granted to restaurants under section 60(4) authorising the sale of liquor without a meal, not be limited to an area of 20% of the seating capacity. However the permit should be subject to appropriate conditions to maintain the integrity of the restaurant licence such as:

- all liquor must be served to persons seated at a dining table by staff with no bar sales;
- the premises must always be set up and presented for dining and tables cannot be removed or shifted to create dance floors;
- the predominant purpose of the premises must always be the supply of meals and the kitchen must be open and operating with a normal menu available until 11.00pm;
- the premises should not be promoted as anything other than a restaurant; and

- the permitted hours for the operation of a permit is 10.00am to 12midnight.

Furthermore, the committee suggests that where there is reasonable evidence to suggest that a licensee is not trading in accordance with the tenor of the permit, the licensing authority can easily cancel the permit.

Recommendation

- 29. That the authority for a restaurant licence to sell liquor without a meal not be restricted to 20% of the seating capacity, however appropriate conditions be imposed to maintain the integrity of the predominant use as a restaurant. Such a permit should be easy to cancel if the licensee trades contrary to the permit conditions.**

The R & CIA believes that from a competition policy perspective and from the perspective of achieving the social objectives laid down in the legislation, BYO restaurants should be licensed the same as restaurants that sell and supply liquor. According to the R & CIA, BYO restaurants account for around two thirds of all alcohol consumed in restaurants and should therefore have the same responsibilities in relation to alcohol consumption as licensed restaurants.

At present, it is not an offence to serve liquor to a drunken person or allow a drunken person to consume liquor while they are on regulated premises, such as BYO restaurants.

The committee does not see any advantage in simply licensing BYO restaurants. The committee does however support the principle that liquor consumed in a BYO restaurant should be consumed in a responsible manner.

Recommendation

- 30. A new provision be inserted into the Act relating to regulated premises (including BYO restaurants), creating an offence for serving liquor to a drunken person or allowing a drunken person to consume liquor.**

Wholesalers

The Liquor Wholesalers' Association submitted that the annual collection of data relating to alcohol sales by the Department of Racing, Gaming and Liquor is an unwarranted and costly imposition on the wholesale industry on the basis that the interstate sale of liquor across state borders is no longer of relevance and the state no longer collects licence fees from retailers as a percentage of their purchases.

The Department of Health argues that wholesale sales data is a significant source of information about the amount and type of alcohol being sold and that this information is important to researchers and policy makers for the monitoring of patterns of alcohol sales and consumption and subsequent alcohol-related harm. According to the Department of Health, alcohol consumption estimates derived from the data are currently the best measure of per capita alcohol consumption in Western Australia and collection of this data has significant public health benefits and uses, particularly if available at state, regional and small area levels.

Following the High Court decision in 1997 that state governments could not levy alcohol taxes, a number of state jurisdictions ceased the collection of data from wholesalers, however Western Australia, Queensland and the Northern Territory continued to collect the data. The 2002 meeting of State and Territory Liquor Licensing Ministers supported the national collection of wholesale liquor data and the Ministerial Council on Drug Strategy at their November 2003 meeting resolved the adoption of a project to re-establish the collection of alcohol sales data nationally.

The committee supports the continued collection of wholesale liquor data as an important tool for monitoring alcohol consumption patterns and for public health research and evaluation. The content of the returns should be reviewed to ensure that the appropriate data is being collected, particularly to distinguish between cask and bottled wine.

Recommendation

31. Western Australia continue to collect wholesale sales data, the content of which should be reviewed and continue to support the re-introduction of the national collection of the data.

Producers

The Act currently provides that producers of beer can only sell packaged liquor in an aggregate quantity per person of not less than 9 litres for consumption off the premises (section 55(1) (a)(iii)).

It was put to the committee by the Western Australian Brewers Association that with the growth of small boutique beer producers the obligation to sell in quantities of not less than 9 litres is too onerous and does not cater for the public or tourists who might wish to purchase liquor in smaller quantities. Producers of wine do not have a similar restriction and it is the view of the committee that purchasing smaller quantities of packaged liquor would assist with harm minimisation.

It was also put to the committee that producers of beer should be able to sell liquor for consumption on the premises. However the committee does not support this idea and suggests that this can be more appropriately achieved by an application for a tavern licence, which would be subject to a full public interest assessment. Unlike wine producers, whose premises are in rural or semi-rural locations, small beer producers can easily establish premises in inner city and residential areas and to allow beer producers to

sell liquor for consumption on the premises would potentially create de facto bars, operating under a producers licence.

A number of submissions suggested that producers of wine should have greater freedom under the Act to sell and supply their product away from their licensed premises. The committee is satisfied that sections 59 (occasional licences) and 60 (extended trading permits) of the Act already provide sufficient flexibility to accommodate producers of wine and that it should be a matter for determination, on a case by case basis and in the public interest, by the licensing authority.

Recommendation

32. Section 55(1)(a)(iii) of the Act be amended to remove the requirement that producers of beer can only sell packaged liquor in quantities of not less than 9 litres.

Special Facilities

The Tourism Council of Western Australia put to the committee that the 2001 amendments to the Act relating to special facility licences has made applying for and obtaining a special facility licence a much more difficult and expensive task.

According to the Tourism Council, the flexibility offered by a special facility licence is ideally suited to multifaceted tourism needs, with terms and conditions being tailored to meet the specific needs of an applicant. The 2001 amendments to the Act restricted the special facility provisions so that a special facility licence can only be granted for a prescribed purpose and cannot be granted if a licence of another class would be suitable.

Accordingly, the Tourism Council requested that the provisions of the Act relating to special facility licences revert to the position which prevailed prior to the 2001 amendments.

The committee supports a more flexible and efficient licensing regime to support the tourism industry, subject to any applicant satisfying the public interest test.

Recommendation

33. The provisions of the Act relating to special facility licences revert to the provisions which prevailed prior to the 2001 amendments.

7.3 The Use of Extended Trading Permits

Section 60 of the Act provides for the issuing of extended trading permits (ETP's), which is a useful and flexible means of extending the privileges under a licence. In this regard, the Western Australia legislation is not dissimilar to legislative provisions in other states.

The three main areas of contention in the use of ETP's were:

1. restaurants selling liquor without a meal;
2. clubs selling liquor to non-members, and
3. extending permitted trading hours.

Points 1 and 2 above have been discussed earlier in this report.

One of the prescribed purposes for which a permit may be issued is for extended hours, authorising the licensee to sell liquor under the licence at specified hours that would not otherwise be permitted hours.

The Australian Hotels Association, whilst opposing any extension of hours for cabarets because it would "diminish the distinction between a cabaret licence and a tavern licence", believes that hotels need more flexible trading hours, with extended trading hours for hotels on a long term or permanent basis providing the most flexibility, together

with a more objective means of determining where it would be most appropriate and suitable to approve such permits. According to the AHA, flexible hours would enable many hotels to access more customers who would like to patronise hotels at the time of their choosing and convenience, with an increasing trend from patrons seeking alternative venues to nightclubs.

Hotels can currently trade from 6.00am to 12 midnight Monday to Saturday and 10.00am to 10.00pm on Sundays. Advice from the Department of Racing, Gaming and Liquor is that in excess of 100 hotels currently have on-going permits extending their permitted trading hours.

Most health advocates are opposed to any extension of hours because of the negative impact that it has on the community. Chiknitzhs et al²⁴ conducted an evaluation of the impact of late night extended trading permits for Perth hotels. In comparison with premises that did not have an ETP, hotels that had extended trading were associated with a doubling of the level of assaults in and around the vicinity of their premises and a net increase of almost 40% in alcohol-related road crashes involving their customers. Subsequent analysis showed that the blood alcohol levels of drivers in road crashes who had been drinking at ETP premises were significantly higher than those who had been drinking at non-ETP premises.

The Department of Health does not support extended hours permits because of the negative impact on the community and the strain it places on the resources of the police and emergency services who must respond to the increased number of problems. However, the Department of Health acknowledges the demand for late night entertainment, and suggests that in order to minimise the negative impact that these permits can have, they:

- should not exceed more than one hour past normal permitted trading;

²⁴ Chiknitzhs T, Stockwell T, and Masters L (1997). Evaluation of the public health and safety impact of extended trading permits for Perth hotels and night clubs. The National Centre for Research into the Prevention of Drug Abuse, Curtin University of Technology.

- should only be granted to premises with a demonstrable good record for the previous 12 months (i.e. no infringements or offences for breaches of the Act); and
- should only be issued with the following standard conditions:
 1. all staff are trained in the responsible service of alcohol.
 2. no alcohol to be sold in the last 20 minutes of the permit.
 3. no packaged liquor to be sold during the permit.

The W.A. Police Service states that the proliferation of late night permits has placed a severe strain on police resources to meet their statutory obligations of ensuring the proper and orderly conduct of all licensed premises. The police believe that any applicant for a permit to extend their permitted trading hours should have to prove that the granting of the permit is in the public interest and would not lead to anti-social behaviour at the premises or in the immediate vicinity of the premises.

The physical availability of alcohol has increased in Australia over the last 20 years, as it has in most developed countries,²⁵ with trading hours in all jurisdictions having been extended. Changes in consumer patterns and demand, providing for the needs of tourists and a shift towards deregulation are no doubt contributing factors. However, this trend needs to be balanced against the substantial body of evidence that establishes a link between late night trading and alcohol-related problems.

The committee accepts that there are legitimate reasons why hotels, and for that matter other licence categories, should be granted on-going permits to extend their permitted trading hours in order to respond to the diversity of consumer demand. However, it should be accepted that the grant of these permits is a privilege that should only be given to premises which are well managed and the onus should clearly be on the applicant to demonstrate that their application, and the subsequent conduct of the permit, is in the public interest.

²⁵ Stockwell T, Grucnewald P. Controls on the physical availability of alcohol. In Heather N, Peters TJ, Stockwell T (eds). International Handbook of Alcohol Dependence and Problems.

The committee is also of the view that the Act needs to provide clearer parameters for the granting of on-going hours permits and should therefore stipulate that extended hours permits for hotels cannot be granted past 2.00am except where a declaration has been made by the Minister in respect of a special event or in relation to a particular precinct. Notwithstanding such a declaration, each application should still be considered on their individual merits and in the public interest.

The committee is aware of the existing policy applied by the Director of Liquor Licensing to any premises trading past 1.00am whereby conditions are imposed on the licence or permit requiring minimum standards for CCTV and security. In the committee's view, this requirement should be extended to all high-risk premises trading past 12 midnight.

The mandatory training for all servers of liquor has been previously recommended in this report.

Recommendations

34. The Act be amended to stipulate that extended trading permits for on-going hours cannot be granted past 2.00am unless a declaration has been made by the Minister in respect of a special event or in relation to a particular precinct.

35. All applications for an extended trading permit for on-going hours be subject to a public interest test, the details of which should be prescribed in the Regulations.

36. Any on-going hours permit past 12 midnight have standard conditions imposed in respect of minimum requirements for security and CCTV. These minimum requirements should be prescribed in the Regulations.

7.4 Banning Products from Sale

At present, the Act has no dedicated mechanism for products such as alcoholic milk or alcoholic aerosols to be banned. The sale of these types of products, because of their attraction to juveniles or their novelty appeal, is considered by the committee not to be in the public interest. While the banning of a product can be currently achieved through the imposition of a licence condition, this is a cumbersome process, where licensees must be afforded an opportunity to be heard before a condition is imposed.

In New South Wales, provisions contained in the Liquor Regulations 1996 (NSW) enable prescribed undesirable liquor products to be banned from sale. The provisions target alcoholic drinks that appeal to children in the way they are marketed and packaged, or where the product is likely to be confused with soft drink or confectionary.

The types of products that may be considered undesirable would include:

- alcoholic vapour that is sold or supplied for consumption in a vaporised form;
- alcoholic aerosol products, sold in an aerosol container for consumption by humans;
- alcoholic iceblocks; or
- alcoholic milk.

Whilst there was general support, particularly from the health advocates, for the ability of the licensing authority to ban undesirable products from sale, the Australian Hotels Association supported a more co-operative approach between the licensing authority and the liquor industry to develop restrictions where it is considered to be of benefit to the community. The committee nevertheless considered it more appropriate for the licensing authority to be able to ban undesirable products from sale.

Recommendation

- 37. The Act be amended to authorise the licensing authority to prescribe in the Regulations that specified liquor products or classes of liquor products are banned from sale or distribution in Western Australia where such action is considered to be in the public interest.**

7.5 The Hours that Packaged Liquor is Available

Under a hotel licence and a club licence (excluding club restricted) packaged liquor may be sold from 6.00am to 12 midnight Monday to Saturday and 10.00am to 10.00pm on Sundays. Liquor Stores are permitted to trade from 8.00am to 10.00pm Monday to Saturday and, if the earlier recommendation in this report is adopted, from 10.00am to 10.00 pm on Sundays.

In considering the availability of packaged liquor from a National Competition Policy perspective, all packaged liquor outlets should have consistent operating hours. However, National Competition Policy does not stipulate an increase in availability is required, only that there is equity amongst the different sellers of packaged liquor.

The majority of packaged liquor is sold from liquor stores, however advice from the Liquor Stores Association is that very little packaged liquor is sold in the last hour to hour and a half of trading (8.30pm to 10.00pm) with most liquor stores closing by 9.00pm.

The committee formed the view that many late night purchases of packaged liquor are by those who are already intoxicated or who wish to continue drinking after leaving licensed premises and have run out of alcohol supplies.

Controlling the availability of alcohol can influence the consumption patterns of those at greater risk of alcohol related harm.

The committee recommends that packaged liquor from hotels, clubs and liquor stores should only be available from 8.00am to 10.00pm Monday to Saturday and 10.00am to 10.00pm on Sundays which is consistent with National Competition Policy requirements. Where an individual licensee can demonstrate that it is in the public interest that packaged liquor should be available outside these hours, that licensee can seek an extended trading permit from the licensing authority. The committee believes that an extended trading permit should only be granted in exceptional circumstances.

Recommendation

38. The Act be amended so that the authority to sell packaged liquor under a hotel, club or liquor store licence be restricted to 8.00am to 10.00pm Monday to Saturday and 10.00am to 10.00pm Sundays.

7.6 Vocational Training and Juveniles

Under section 6 of the Act and Regulations 7 and 8, the provision of liquor in an approved educational course of instruction or training is exempt from the Act.

In 2003, there were 5,212 students enrolled in hospitality courses across the vocational education and training sector in Western Australia. Of these, 1,868 (36%) were at seven regional and metropolitan TAFE Colleges and 3,344 (64%) at non-TAFE training providers.

The Department of Education and Training believes that in order to give some certainty to all training providers and at the same time provide a mechanism that will assist in the administration of the Act, a special licence should be created for the Vocational Education and Training sector.

The provisions should enable a licence to be granted to Vocational Education and Training providers that sets out conditions for the tasting, sale and supply of liquor by students as well as other appropriate provisions for the management and operation of restaurants and bars on the training provider's premises. The tasting of liquor should only be authorised if the student has turned 17 years of age and the student is supervised at all times and the activity they are undertaking will be assessed for the purposes of an accredited hospitality qualification in which they are enrolled.

The Department of Education and Training also supports the full participation of students serving and supplying liquor on any licensed premises (which is currently prohibited under the Act) provided:

- the student has turned 17 by the time an accredited training course begins;
- they are supervised at all times; and
- the activity they are undertaking will be assessed for the purposes of an accredited hospitality qualification in which they are enrolled.

The Department of Employment and Training has recommended that the term 'Vocational Educational and Training' provider as defined under the *Vocation Education and Training Act 1996* replace terms such 'post secondary or tertiary educational institution' contained in Regulation 7(a).

The Restaurant and Catering Industry Association also supported juveniles engaged in an accredited training course being able to serve liquor. They believe that this will provide greater incentives for restaurants to take on staff for training. The current restriction makes the restaurant industry less attractive as a place to be employed and trained and disadvantages young people seeking a career in the hospitality industry.

The committee does not support juveniles who are undertaking an accredited training course being able to serve liquor in general bar areas because of the responsibility placed on servers of liquor under the Act, particularly in respect of the refusal of service.

Recommendations

39. A new licence be created for Vocational Education and Training providers.

40. With the approval of the licensing authority, students engaged at licensed premises be permitted to serve liquor provided –

- a. the provision of liquor is ancillary to a meal.**
- b. the student has turned 17 years of age.**
- c. the student is supervised at all times.**
- d. the activity the student is undertaking will be assessed for the purposes of an accredited hospitality qualification in which they are enrolled.**

41. “Vocational Educational and Training” provider as defined under the Vocation Education Training Act 1996 replace terms such as ‘post secondary or tertiary educational institution’ throughout the Act and Regulations.

7.7 Miscellaneous

There were a range of miscellaneous matters raised that the committee felt were appropriate to comment on or support.

Live Music Industry

In March 2003 a Noise Abatement Working Party was established to provide the Minister for Culture and the Arts with options and strategies to address the problems associated

with the competing interests of residential and commercial land uses relating to noise restrictions with a specific focus on the impact on the live music industry in WA. The Working Party was required to identify solutions that would ensure the local, original music scene in particular, would retain its place within the urban environment and contribute to the creation of a vibrant and creative city.

The Working Party was made up of representatives from the Department of Environmental Protection, Water and Rivers Commission; the Department of Racing, Gaming and Liquor; the Department of Planning and Infrastructure; the Department of Local Government and Regional Development; and the Department of Culture and the Arts.

The Working Party has recommended that the committee considers an amendment to section 5(2)(a) of the Act in order to recognise the importance of the live music industry in this state and its interaction with the liquor and hospitality industries.

Recommendation

- 42. Section 5(2)(a) of the Act be amended to include a reference to the live music industry.**

Section 117 of the Act

A submission was received from an existing licensee concerning the provisions of section 117 of the Act, which deals with complaints about noise or behaviour related to licensed premises. This section allows one person to lodge a complaint with the Director of Liquor Licensing alleging that noise emanating from licensed premises or disorderly conduct by patrons of a particular premise is unduly disturbing or inconvenient to residents. Prior to be amended in 1998, the Act required a minimum of 10 adult persons to make a complaint.

It was put to the committee that allowing only one person to lodge a complaint can place an unacceptable burden on a licensee and the Act should require at least 3 unrelated people to be adversely effected before a complaint can be made.

Although this section previously provided that a complaint must be made by not less than 10 adult persons, it also provided that where the Director was satisfied that the nature or gravity of the complaint was such, a complaint could be lodged by less than 10 people.

The committee is satisfied that the existing provisions of section 117 are suitable. The current procedures under the Act requires a process of conciliation and negotiation and only when that process fails is the licensing authority then required to be satisfied that “undue” noise and disturbance is occurring such that a complaint should be upheld. This process requires a weighing and balancing exercise which can undoubtedly take into consideration the number of complainants.

Infringement Notices

The WA Police Service believes that there is an anomaly in section 167 of the Act relating to the withdrawal of an infringement notice.

The Director of Liquor Licensing may withdraw an infringement at any time up to two years after it was issued (section 167(5)). Where an infringement notice is withdrawn after 28 days of it being issued, no further action lies against the alleged offender (section 167(5a)). According to the police, this raises a serious anomaly because if an infringement notice is withdrawn due to a technical deficiency after 28 days of issue, the police cannot prosecute the alleged offender.

Recommendation

43. Section 167(5a) of the Act be repealed.

8. The Impact of Market Domination on the Liquor Industry

One of the terms of reference for consideration by the committee was the impact of market domination on the liquor industry. This is directly related to the perceived expansion of Woolworths (Woolworths Liquor and BWS) and Coles Myer (Liquorland, Vintage Cellars and Quaffers).

Collectively, Woolworths and Coles Myer account for approximately 54% of liquor purchased by liquor stores and about 30% of liquor purchased by all licensed retail premises in Western Australia.²⁶ Approximately 1 in 3 liquor store licences are held by either Woolworths or Coles Myer.

The Liquor Stores Association of Western Australia (LSA) did not see market domination by Coles Myer or Woolworths as an issue and suggested there was an “anti chain store” attitude prevailing in some sections of the community. Whilst views varied, most independent Liquor stores owners who attended consultative meetings with members of the committee were of the view that they were catering for a different market.

The large chains tend to offer a relatively narrow range of high volume product while the independents tended to offer a wider variety of low volume product. This was particularly evident in the wine growing regions where the independents stocked product from local wineries that would not be suited to chain store operations. This approach provided a boost to the regional economy and added significant value to the tourism experience in these regions. Again in the metropolitan area, independents are able to compete in close proximity to the chain outlets by offering a different product range.

²⁶ Information provided by the Department of Racing, Gaming and Liquor. Data only relates to purchases from Western Australian wholesalers

On the other hand the Australian Hotels Association (AHA) was of the view that “dominance of the major retail chains threatens the viability of hotels and independent liquor stores, and in turn choice and competitively priced product for the consumer.”

The AHA also pointed out the ability of the large chain stores to cross- subsidise liquor with other items and believed that if the public needs test is removed and liquor stores are granted Sunday trading, hotels and independent liquor stores will not be able to compete. This in turn would remove choice and lead to higher prices.

The Department of Treasury and Finance did not support the arguments put forward by the AHA and stated that “Concerns for the effects of regulatory reform on commercial sectoral interests are often portrayed as “genuine” concern for the broader public interest. Such representations are misleading and are merely an on-going strategy by vested interests to delay and hinder proposals for liquor licensing reform.”

The Department further stated, “WA consumers continue to suffer the consequences of this delayed reform with higher prices, reduced choice, lower quality services and inconvenience.”

When Victoria relaxed its legislation in respect to liquor licensing in 1987, with a high level of deregulation from February 1999, a cap was placed on the number of liquor outlets Coles Myer and Woolworths could operate. While the level of deregulation led to a proliferation of liquor stores, the cap, which is due to be lifted in January 2006, has not been reached. This suggests that a relaxation of legislation in respect to liquor stores does not result in the chain stores destroying competition or reducing product choice.

There was no compelling evidence put to the committee to suggest that Coles Myer and Woolworths currently enjoy market domination in the liquor industry in Western Australia. In the context of the recommendations in this report, Sunday trading for liquor stores is the only area where Coles Myer or Woolworths could have any additional impact.

There is therefore no justification to apply a different set of rules to the chain store outlets in respect to Sunday trading hours.

Coles Myer in its submission to the committee pointed out that the Trade Practices Act (1974) (TPA) is the vehicle by which all competitive activity is regulated in Australia. The TPA provides for significant penalties for misuse of market power and the prevention of mergers or acquisitions that create a substantial lessening of competition.

Coles Myer also submitted that the removal of Sunday trading restrictions on liquor stores would not result in them substantially increasing the number of liquor stores under their control.

The submission from Tourism Western Australia stated that the inability to purchase packaged liquor on Sundays from liquor stores was both “anti-competitive and confusing to tourists.” In its view, liquor stores should have the same trading hours as hotels to ensure competition between outlets, “as this provides for a higher standard of service, price competition and variety of product.”

Importantly, the review recognised that the chain stores cater for a significant percentage of packaged liquor sales and should be free to service the needs of tourists and the community in general on a level playing field with other packaged liquor providers.

Woolworths stated that they are frequently and incorrectly cited as a “dominant” player in the Western Australian liquor market when, according to them, their market share is relatively low. Woolworths state that they hold less than 15% of the licensed packaged liquor outlets while Coles Myer indicated they have 8.5%.

While the number of outlets may be relatively low, the combined turnover of Woolworths and Coles Myer is significant. However this is not in itself a justification for restraining the retail strategies of these two high volume sellers.

As the population increases and community demand changes, companies such as Coles Myer and Woolworths will expand their operations over time to ensure a healthy and vigorous competitive market place.

Coles Myer pointed out that the independent sector has for many years organised itself into various buying groups for the purposes of competitive buying, advertising and promotion under common names such as Sip 'n Save, Cellarbrations, Liquor Barons, Route 66, Western Cellars and others. Sip 'n Save is part of a buying group of 200 hotels in WA and SA whose web site describes it as "Australia's largest liquor group".

Coles Myer is firmly of the view that the consequence of competition is that some businesses succeed and others fail. Those that fail through inadequacies of capital or management often regard that failure as unfair. The reality, according to Coles Myer, is that the liquor industry in WA is generally viable and profitable and liquor stores in WA sell for a higher price than in any other state and business failures are very low.

As previously stated there are safeguards to competition in the Trade Practices Act. Section 46 of the TPA prohibits a corporation that has a substantial degree of power in a market from taking advantage of that power for the purpose of deterring or preventing a person from engaging in competitive conduct in that or any other market. In addition the TPA, in section 50, directly regulates the acquisition of assets such as liquor licenses which would have an injurious effect upon competition in the market. The Department of Treasury and Finance supported the role of the TPA and said in its submission that "The role of the ACCC (and the TPA) is fundamentally to enhance the interests of the Australian consumers by promoting fair, vigorous and lawful competition, whether it is between big, medium and/or small businesses. This should not be a significant concern for small businesses that have the ability to respond quickly to market dynamics and consumer demand".

In a presentation to the Annual Conference of the Australian Liquor Stores Association in August 2004, The Australian Competition and Consumer Commission (ACCC) said:

“As consumer demands change and businesses become more innovative, those willing to take advantage of the competitive environment through innovation, improved efficiencies, and other forms of vigorous competition will thrive. Smaller businesses are often more flexible and able to adapt to change and find new ways to get customers through their doors than bigger competitors.”

The ACCC has actively pursued Coles Myer and Woolworths for breaches of the TPA in the past, an indication that it is vigilant in seeking to maintain a competitive environment. In June 2003 the ACCC instigated proceedings in the Federal Court against both companies for anti-competitive conduct in respect of liquor related matters. *The West Australian* newspaper on 27 April 2005 reported that Liquorland had reached agreement with the ACCC and would plead guilty to five charges and pay a fine of \$4.75 million plus costs, whilst Woolworths were still facing 16 charges.

It is therefore the view of the committee that where instances of market domination arise, they are more appropriately dealt with under the regulatory regime of the Trade Practices Act and not the Liquor Licensing Act.

9. Enforcement, Security and Control of Special Events

Enforcement and Security

The community has a right to expect that licensed premises are well managed, safe environments with active enforcement of a licensee's obligations under the Act.

The excessive consumption of liquor contributes to a range of harms in the community, many of which have been highlighted earlier in this report. Alcohol related violence in and around licensed premises is of major concern, with hotels, taverns and nightclubs being more closely associated with violence than other types of licensed premises. This is not to suggest that all hotels, taverns and nightclubs are poorly managed, however where large amounts of alcohol are consumed on the premises and management does not actively enforce their obligations not to-

- sell or supply liquor to an intoxicated person;
- permit drunkenness on their premises;
- allow juveniles to obtain liquor; and
- overcrowd their premises,

there is an increased risk of alcohol related violence.

A key point made by Homel et al²⁷ (2004) was that the extent to which managers of licensed premises have a permissive attitude towards patron behaviour was an important indicator of the likelihood of violence occurring on those premises. As Homel et al noted, "the link between permissiveness and violence makes a lot of intuitive sense, since if management has an 'anything goes' attitude it is not surprising that violence and aggression occur.

²⁷ Homel, R, Carvolth, R, Hauritz, M, McIlwain, G and Teague, R (2004). Making licensed venues safer for patrons; what environmental factors should be the focus of interventions? Drug & Alcohol Review.

The extent to which licensed premises continue to serve alcohol to intoxicated patrons is a significant predictor of alcohol related violence and harm.

Doherty and Roche (2003)²⁸ identified a range of factors that could contribute to on-going serving of intoxicated patrons:

- profit motivation of licensees and the competing priorities of needing to sell more alcohol and the requirement not to sell alcohol to intoxicated persons;
- a lack of training of bar staff and crowd controllers in the areas of responsible service of alcohol and incident management;
- the high turnover of staff in the hospitality industry; and
- environmental factors (ie poor lighting and overcrowding) that make it difficult for bar staff to assess levels of intoxication.

The WA Police Service is responsible for the general enforcement and detection of breaches of the Act.

The importance of targeted and proactive enforcement by police is consistent with the strengthening evidence in the research literature that the greatest gains in alcohol harm reduction are likely to occur if prevention strategies are combined with active enforcement by police (Homel et al).²⁹

Various estimates exist concerning the proportion of incidents attended by police that are alcohol related. In recent discussions the committee conducted with police in WA and other states, estimates for police attendance at incidents related to alcohol varied from 60-80%.

It is evident that a large proportion of police resources are taken up in addressing alcohol related problems. The committee is of the view that greater enforcement of the Liquor

²⁸ Doherty, S, & Roche, A (2003) Alcohol and Licensed Premises. Best Practice in Policing. Adelaide

²⁹ Homel, R H et al (2002) "Creating safer drinking environments", in Heather, N, Peter, TJ and Stockwell, T (eds). International Handbook of Alcohol Dependence and Related Problems.

Act at licensed premises will significantly contribute to reducing the general level of alcohol related harm experienced in the community and the amount of police time taken up by alcohol related incidents requiring police attendance.

Front line police officers must be well trained in the provisions of the Act, be confident in their knowledge and be encouraged to pursue prosecutions in the courts or before the licensing authority. Policing must be targeted and intelligence driven.

It is against this backdrop that the committee believes a number of recommendations can be made to make licensed premises safer places.

The police put to the committee that the current definition of drunkenness in the Act (section 115(3)) does not assist them in obtaining prosecutions for selling or supplying liquor to an intoxicated person. It is too easy for offenders to create a reasonable doubt by suggesting that the impairment of a person's speech, balance, co-ordination or behaviour may have been caused by other factors such as drugs, fatigue, or mental aberration rather than alcohol.

Recommendation

- 44. Section 115(3) of the Act be amended so that a person is deemed to be drunk due to the use of liquor, if the person is on licensed or regulated premises and their speech, balance, co-ordination or behaviour is noticeably affected.**

Licensed premises, by their very nature, are often venues to which undesirable people, particularly those who have been or are currently involved in criminal activity, are attracted. Licensees complain that it is often difficult to exclude these people from their premises. Additionally, when licensees do refuse entry or remove quarrelsome patrons, they often linger outside the premises causing problems.

Recommendations

45. Where a person is refused entry or removed from licensed premises that person be required to vacate the immediate proximity of the premises, including the car park and failure to do so be an offence.

46. The police be empowered to move-on individuals who may disturb the peace in the immediate proximity of licensed premises.

It has come to the attention of the committee that some licensees are employing people with extensive criminal records, particularly for offences relating to violence and drugs as well as people associated with organised crime. It is paramount that this criminal element is not permitted to be employed or associated with the operation of licensed premises and every effort must be made to prevent organised crime from infiltrating the hospitality industry in WA.

Currently, only licensees and approved managers are subject to probity investigations, and police intelligence data cannot be used in the screening and decision making process.

A draft bill prepared in South Australia, the Statutes Amendment (Liquor, Gaming and Security Industries) Bill 2004 proposes, amongst other matters:

- an “associates” test so that the licensing authority must take into account the character of associates of licensees in assessing whether they are fit and proper to hold a licence;
- facilitating the use of police intelligence by protecting the confidentiality of the intelligence;
- where the licensing authority makes a determination based on police information classified as criminal intelligence, it is not required to provide reasons for that determination other than the application is contrary to the public interest and any appeal for refusing a licence or disciplinary action is conducted in closed session

to all individuals, including the applicant/licensee/approved person and their representative;

- criminal intelligence information can be used to take disciplinary action against existing licensees or approved persons; and
- where appropriate, the taking of finger prints of licensees or applicants by the police.

The committee is of the strong view that similar legislation is required in WA in order to improve the safety of licensed premises and maintain the integrity of the hospitality industry.

Recommendations

- 47. The Act be amended so that the character of a person's associates can be taken into consideration in determining whether they are fit and proper under the Act.**
- 48. The Act be amended to facilitate the use of police intelligence (protecting the confidentiality of that information) and any appeals be heard in closed session.**
- 49. The licensing authority be empowered to prohibit a person from being employed on licensed premises if the Commissioner of Police provides a certificate stating that the person's criminal record is such, or they are associated with organised crime and their employment at the premises is not in the public interest.**
- 50. The licensing authority be empowered to prohibit a person from being on specified licensed premises if the Commissioner of Police provides a certificate stating that their criminal record is such, or they are associated**

with organised crime and their presence on licensed premises is not in the public interest.

51. The police, for identity and probity purposes, be empowered to request the licensing authority to require an applicant to provide fingerprints.

Juveniles entering licensed premises and seeking to obtain liquor remain an on-going problem for licensees. An authorised person may require any suspect juvenile to provide evidence of age (documents are stipulated in the Act and Regulations), however there is no authority in the Act for an authorised person to confiscate forged or suspect documents. The committee is conscious that this authority has the potential for abuse and therefore the Regulations should provide strict processes for recording the documents seized and time frames for providing the documents to the police.

Recommendation

52. The Act be amended so that forged or suspect evidence of age may be seized or confiscated by a licensee, however the Regulations should detail the processes and time frames for providing the seized documents to police.

When looking at issues and trends in other jurisdictions throughout Australia, the committee was particularly impressed with the positive results achieved in Queensland and Victoria by the use of “lock out” conditions for late night trading venues.

The purpose of a lock out is to prevent the movement of patrons between premises in the early hours of the morning. Entry to premises is prohibited after 3.00am (or such other appropriate time), although patrons already in a venue may continue to drink until closing time. A lock out is most beneficial where there is a concentration of premises in a particular locality, such as Northbridge.

Lock out provisions have been used in Queensland since 1995 and more recently, a trial 3.00am lock out on the Gold Coast has proven very successful in reducing anti-social behaviour;

- calls for ambulance services decreased 66%;
- offences for assault (bodily harm) decreased 54%;
- good order offences decreased 16.3%;
- offences relating to the unlawful use of a motor vehicle decreased 33.3%; and
- unlawful entry offences decreased 29.6%.

Following the success of the Gold Coast trial, the Queensland Government has announced that a 3.00am lock out will now be trialled in all nightclubs in the Brisbane City Local Government area.

Similar results have also been achieved in Ballarat and Warrnambool in Victoria following the implementation of lock out provisions.

Accordingly, the committee is of the view that the demonstrated success of lock out provisions in reducing crime and anti-social behaviour in other states warrants the introduction of similar restrictions in WA.

Recommendation

- 53. A lock out condition be imposed on all nightclub licences prohibiting entry after 3.00am.**

Special Events

The consumption of liquor in a public place is an offence under the Act (section 119) without the consent of the occupier or person or authority having control of that place.

Many licensed and un-licensed public events are held each year. The predominant event in the metropolitan area is the Australia Day Celebrations culminating in the "Skyshow" on 26 January each year. This event attracts in excess of 350,000 people who gather in public parks and the foreshore to view the celebrations. This event is promoted as a family event each year but attracts an undesirable element, that through the excessive consumption of liquor, causes problems for the police, organisers and the community. Incidents of serious assaults and offensive behaviour during and after this event have been extensively reported in the press.

The police have limited powers to seize alcohol in these situations and the committee is mindful that any additional powers given to the police in this regard should be exercised judiciously.

Accordingly, the committee proposes that the Minister be empowered to make a declaration in respect of a special event or in relation to a particular area or precinct which would invoke additional powers for the police to seize both opened and unopened liquor in accordance with provisions stipulated in the Regulations. The Regulations could also make provision for additional powers for the police where considered appropriate by the Minister depending upon the individual circumstances.

Recommendations

- 54. Where a person is consuming liquor in a public place contrary to the Act, the police be empowered to simply seize and dispose of any open container.**
- 55. The Minister be empowered to make a declaration in respect of a special event or in relation to a particular area or precinct which would invoke Regulations, to stipulate specific areas or zones and specific times, and empower the police to seize any liquor in the possession of a person or exercise such other powers considered appropriate by the Minister.**

10. Technical Amendments

The following technical amendments to the Act, submitted by the Department of Racing, Gaming and Liquor, are supported by the committee.

1. SCOPE AND LONG TITLE OF THE ACT

The long title of the Act provides that it is:

AN ACT to regulate the sale, supply and consumption of liquor, the use of premises on which liquor is sold, and the services and facilities provided in conjunction with or ancillary to the sale of liquor, to minimize harm or ill-health caused to people, or any group of people due to the use of liquor, to repeal the Liquor Act 1970, and for related matters.

The regulation of the liquor industry, which includes the regulation and control of occasional fad products, results in situations where the scope and effectiveness of the legislation has been questioned. For example, recent correspondence from Parliamentary Counsel's Office, in relation to the prescription of the AWOL³⁰ (Alcohol Without Liquor) product as liquor has led the Parliamentary Draftsperson to comment that the power of the licensing authority under the Act is limited to selling and supplying alcohol and not to the misuse of liquor by a person who is not a licensee.

These comments, serve to illustrate the short fall in the legislation as an important tool in the minimisation of harm or ill-health to people or any group of people due to the use of liquor. Accordingly, the current designation of the Act should be amended to reflect a

³⁰ AWOL relates to liquor supplied via a diffuser capsule connected to an oxygen pipe into which liquor (such as vodka and absinthe) is poured for the purpose of being infused with oxygen bubbles and then inhaled through a tube. Devices are typically adapted from oxygen machines traditionally used for aromatherapy and exercise purposes.

wider focus away from liquor licensing *per se* to, for example, liquor administration or liquor control.

Recommendation

1. The title of the Act be changed to the Liquor Control Act.

2. SECTION 3

Definition of "licensed premises"

The definition of "licensed premises" in section 3(1) of the Act should be amended in accordance with the findings of the decisions in *Tapp & Tapp* and *Executive Director vs Woolworths Ltd* of Supreme Court, where the Court found that a licence can only be issued in respect of a single premises and that an application for alteration/redefinition can only be approved if in respect of the originating premises.

Recommendation

56. The definition of "licensed premises" be amended so that a licence can only be issued in respect of a single premises.

Definition of "liquor"

Paragraph (a) of the definition of "liquor" prescribed in section 3(1) of the Act provides that liquor means "a beverage which at 20° Celsius contains more than 1.15% ethanol by volume, or such other proportion as may be prescribed."

Paragraph (b) of the definition provides that liquor also means "any other substance prescribed as being liquor for the purposes of this Act."

These definitions have presented difficulties in the drafting of amendments to the Regulations to deal with the AWOL product, where Parliamentary Counsel has indicated that there is a danger that the term “beverage” as used in paragraph (a) being narrowly construed to apply only to liquids taken via the mouth. This uncertainty was also expressed by Senior Assistant State Council at the State Solicitor’s Office.

Similarly, Parliamentary Counsel has expressed concerns that on a strict reading of the term “substance” as used in paragraph (b), it could be argued that the changing nature of vapour (in relation to the AWOL product) could preclude it from being considered as a “substance”.

Recommendation

57. The definition of “liquor” be amended to encompass the AWOL product and other novelty liquor products that might arise from time to time.

Definition of “meal”

Section 3(1) of the *Liquor Licensing Act 1988* defines the word “meal” as meaning —

“a genuine meal, not supplied in sandwich form, eaten or to be eaten by a person while seated at a dining table or counter”

This definition is inconsistent with standards and trends that apply in many of Perth’s contemporary restaurants, particularly in relation to the exclusion of meals prepared in sandwich form. Furthermore, prosecutions initiated against a restaurant that has failed to comply with the condition of its licence that required liquor to be supplied ancillary to a meal, have been unsuccessful largely due to the current definition.

The definition of a meal varies between jurisdictions and a number of examples are outlined below—

1. definition used in Queensland’s legislation:

“meal” means food that—

- (a) is eaten by a person sitting at a table, or fixed structure used as a table, with cutlery provided for the purpose of eating the food; and*
- (b) is of sufficient substance as to be ordinarily accepted as a meal.*

2. definition used in New South Wales’ legislation:

“meal” means a genuine meal partaken of by a person seated at a dining table.

3. definition used in South Australian legislation:

“meal” means a genuine meal eaten while seated at a table

Recommendation

58. The definition of “meal” be amended to:

“meal means food that-

- (a) is eaten by a person sitting at a table, or fixed structure used as a table, with cutlery provided for the purpose of eating the food; and**
- (b) is of sufficient substance as to be ordinarily accepted as a meal.**

Definition of “sell” in relation to liquor

Questions relating to “selling” of liquor and call centres

Paragraph (a) of the definition of “sell” in relation to liquor includes the words “agree or attempt to sell”. The broadness of this definition has led to questions of interpretation in respect to modern day advertising and marketing practices employed by licensees, specifically in relation to arrangements where orders for liquor in Western Australia are placed at Call Centres that may be located in other States or Territories. This practice has raised questions about where and when the sale actually takes place and, specifically in relation to liquor store licences, whether an arrangement made between a customer and a Call Centre operator on a Sunday constitutes the sale and supply of liquor at a time that is not permitted under a liquor store licence (see section 97) and whether such a sale constitutes an offence under either section 110 or 111 of the Act.

Recommendation

59. The definition of “sell” be amended to ensure that the sale of liquor through a call centre must be authorised by a licence or permit.

Exemption for small social transactions

Paragraph (f) of the definition of “sell” in relation to liquor includes “supply, or offer, agree or attempt to supply —

- in circumstances in which the supplier derives, or would be likely to derive, a direct or indirect pecuniary benefit; or
- gratuitously, but with a view to gaining or maintaining customer or other commercial advantage and includes, in relation to a club, supply to or to the order of members otherwise than by way of sale”.

Additionally, section 163 of the Act provides for the presumption to be made, in the absence of proof to the contrary, that liquor has been sold where liquor is supplied to a person who —

- has paid for admission to the premises where the liquor is supplied or for seating at the premises;
- has made, or been asked to make, a donation of money, by a collection or otherwise; or
- is present in an unlicensed restaurant.

These provisions apply to every instance of the sale and supply of liquor and constitute many common practices, such as —

- a collection of money to buy drinks to be consumed by staff after work;
- the provision of a gratuitous glass of wine at the opening of an art exhibition; and
- the gratuitous supply of liquor to investors at a function held by a bank or other financial institution,

as an offence pursuant to the provisions of section 109 of the Act.

While the inclusion of the word “gratuitous” is appropriate to ensure that the supply of liquor is not used as an inducement by business operators to gain or maintain custom or other commercial advantage, the continued appropriateness of provisions that deem common practices by many persons to be unlawful requires addressing.

Recommendation

60. The Act be amended to provide an exemption from the definition of “sell” for small social transactions of liquor. These exemptions should be prescribed in the Regulations.

Definition of “sample” or “tasting”

A definition of “sample” or “tasting” in relation to liquor is sought in order to clarify an appropriate amount of liquor to be supplied by a licensee for tasting purposes, so as to remove any doubt that the tasting is a *bona fide* sample and not a sale or supply of liquor for consumption on the licensed premises.

In this respect, rather than prescribing a measure in the Act itself, it is proposed that any measurement should be prescribed in regulation to provide for administrative ease should the measurement require subsequent amendment.

Recommendation

61. The Act be amended to include a definition of “sample” with a measurement prescribed in Regulation.

Definition of “consumption” in relation to liquor

The Act should be amended to introduce a definition of “consumption” in relation to liquor, to ensure that any reference to consumption throughout the Act captures any imbibition of liquor, so that “consumption” cannot be narrowly interpreted to apply only to liquids drunk via the mouth, but also to the inhalation of alcoholic vapours, absorption of alcoholic iceblocks or any other imbibition of liquor.

Recommendation

62. The Act be amended to include a definition of “consumption”.

3. SECTION 3(2)(B)

This section of the Act sets out that liquor will not be regarded as having been provided by way of free sample if a charge is made “for the hire of glasses or containers or the use of any facility on the premises”. Following difficulties with the regulation of AWOL products, section 3(2)(b) of the Act should be amended to include the words “or device” so as to ensure that the use of machines that produce alcoholic vapour are also covered by this provision.

Recommendation

63. Section 3(2)(b) of the Act be amended to include the words “or device”.

4. SECTION 4(8)

Section 4(8) should be repealed as the section is largely unworkable and has been significantly diluted by the exemption provided in regulation 6.

Recommendation

64. Section 4(8) of the Act and Regulation 6 of the Regulations be repealed.

5. SECTION 16(14)

Section 16(14) of the Act requires the Clerk of Courts to advise the Director of Liquor Licensing when a licensee or manager is convicted of an offence under the Act. The Department of Justice has indicated that this provision is difficult for them to administer because they do not know, at the time of a conviction, whether a person is a licensee or manager. The reference to “licence or manager” should be replaced with “person”.

Recommendation

65. Section 16(14) of the Act be amended to replace “licensee or manager” with “person”.

6. SECTION 37

The provisions of section 37(5) of the Act, which require that a licensee (other than the licensee of a club restricted licence) occupies and retains a right to occupy the licensed premises, to the exclusion of others, should apply irrespective of whether or not a licence is under suspension.

Recommendation

66. The Act be amended so that the provisions of section 37(5) apply irrespective of whether or not a licence is under suspension.

7. SECTION 41(5)

To complement suggested changes to sections 108 and 115, it is recommend that the word “receive” in section 41(5)(a) is deleted and replaced instead with “admit”.

Recommendation

67. The word “receive” in section 41(5)(a) be replaced with the word “admit”.

8. SECTION 46

Section 46 (or section 33) of the Act should be amended to provide that the licensing authority may substitute an alternative licence type (i.e. a hotel licence or a restaurant

licence) where an applicant seeks the grant of a special facility licence and it is determined by the licensing authority that the grant of a licence is in the public interest, but in the view of the licensing authority another class of licence would be adequate to achieve the purpose for which the special facility licence was sought.

Recommendation

68. The Act be amended so that the licensing authority may substitute an alternative type of licence where an applicant seeks the grant of a special facility licence but in the view of the licensing authority a licence of another class would be adequate for the purpose.

9. SECTION 62

The Act should be amended to clarify whether or not a conditionally granted licence can be removed.

Recommendation

69. The Act be amended to clarify that a conditionally granted licence cannot be removed.

10. SECTION 63 OR 64

Variation of licence conditions

The Act be amended to provide that a licensee can lodge an application to vary any conditions of the licence (other than those specifically imposed by the Act).

Recommendation

70. The Act be amended to clarify that a licensee can lodge an application to vary any condition of the licence (other than those specifically imposed by the Act).

Variation of licence conditions by the holder of a special facility licence

The Act should be amended to provide for the lodgment of an application by the licensee of a special facility licence to vary the conditions of that special facility licence, on the proviso that the conditions of a the licence cannot be varied in such a way that the licence would operate in the same way as another licence type or permit trade in the same manner that would be possible under another licence type.

Recommendation

71. The Act be amended to clarify that a special facility licence cannot be varied to such an extent that a licence of another class, with or without permits, would achieve the same purpose.

11. SECTION 67

Subsection (1)(d) specifies that an application to which section 77(6) applies must be advertised, which has raised questions about the power of the Director to require an application for alteration or redefinition of licensed premises to be advertised where that application is not likely to lead to a substantial increase in actual or potential liquor sales and to reduce significantly the actual or potential liquor sales under a Category A licence held by any other person.

Recommendation

72. Section 76(1)(d) of the Act be deleted.

12. SECTION 69

In a recent hearing before the Liquor Licensing Court, legal argument was presented which questioned the ability of the Director of Liquor Licensing to intervene in matters before the Court. Whilst in this particular instance the Court permitted the Director to be heard, the Act should be amended to put beyond doubt the authority of the Director to intervene and be heard on any matter before the Court.

Recommendation

73. Section 69(11) of the Act be amended to put beyond doubt the authority of the Director General (Racing, Gaming and Liquor) to intervene in matters before the Commission.

13. SECTION 72

This section of the Act requires that certain applications before the licensing authority be accompanied by the consent of the owner, lessor, lessee or mortgagee. This provision results in licensees being unable to make business decisions relating to the operation of the business under the licence without the written consent of the owner, who has no legal interest in the licence. It is recommended that this requirement be repealed other than in respect of applications for alteration or redefinition of licensed premises.

Recommendation

74. Section 72 of the Act be amended so that owner/lessor consent is only required in respect of applications for alteration or redefinition of licensed premises.

14. SECTION 77

Section 77(1)

Alterations to the internal layout of the premises should be exempted from the requirements of section 77 (i.e.: only alterations that result in an increase or decrease in the licensed area or a change in the use of an area of the licensed premises should be required to seek the authority's prior approval). In this respect, there would still be a need for the licensee to lodge up to date plans within a specified period of any internal changes being proposed.

Recommendation

75. Section 77(1) of the Act be amended so that only applications that result in an increase or decrease in the licensed area or a change in use of an area of the licensed premises requires the prior approval of the licensing authority.

Section 77(6)

This matter relates to the recommendation to repeal section 67(1)(d).

Section 77(6) of the Act requires the Director to direct that an application for alteration or redefinition of licensed premises is required to be advertised where the application is likely —

- to lead to a substantial increase in the actual or potential liquor sales; and
- to reduce significantly the actual or potential liquor sales under a Category A licence held by another person.

As the assessment of applications under section 77(6) is a highly subjective matter, in that it is difficult to categorically establish whether any application will result in substantial increases in actual or potential liquor sales or to reduce significantly the actual or potential liquor sales of another licence holder, therefore section 77(6) should be repealed, thereby providing for the Director to assess each application for advertising under the provisions of section 67(2) of the Act.

Recommendation

76. Section 77(6) of the Act be repealed so that the advertising of all applications is covered under the provisions of section 67(2).

15. SECTION 84(3)

Section 84(3)(a) of the Act should be amended to remove the requirement for the notice of an application to be given to the licensee at least three days before the last day on which objections may be lodged, as there is no longer a requirement for transfer applications to be advertised. This provision is to be replaced with a requirement that a copy of notice of the application must be given to the licensee at least three days before the application is approved.

Recommendation

77. Section 84(3) of the Act be amended so that the requirement for a copy of the notice of application must be provided to the licensee at least three days before the application is approved.

16. SECTION 87

Section 87(1) should be amended to remove the exclusion that applies to liquor store licences from the grant of a protection order.

Recommendation

78. Section 87(1) of the Act be amended to remove the exclusion that applies to liquor stores.

17. SECTION 90

Section 90 provides for the Director, on informal application being made in writing by the licensee, may suspend the operation of the licence. Given that—

- section 91 of the Act provides that the Director may suspend a licence on a ground or public order of safety;
- section 92 of the Act provides for the Director to suspend a licence where the licensee has ceased to carry on business under the licence or a person has assumed a position of authority in a body corporate that holds a licence without the approval of the licensing authority;
- there is no longer any obligatory trading hours to be observed by a licensee; and
- there is no longer any requirement to pay an *ad valorem* licence fee, for which relief could be sought during the period of suspension,

there are no longer any grounds for a licensee to apply for a voluntary suspension of licence. .

Recommendation

79. Section 90 of the Act be repealed.

18. SECTION 93

The provisions of section 93 of the Act should be simplified so that a licence is deemed to be cancelled if it is suspended for more than 28 days, unless a longer period of suspension is approved by the licensing authority.

Recommendation

80. Section 93 of the Act be amended so that a licence is deemed to be cancelled if it is suspended for more than 28 days, unless otherwise approved by the licensing authority.

19. SECTION 102

Section 102 of the Act provides that it is an offence for —

- a person to assume a position of authority in a body corporate that holds a licence; and
- a shareholder to increase or decrease their shareholding in a body corporate that holds a licence,

without prior approval of the licensing authority.

While the current provisions create an offence for the individual concerned, there is no corresponding offence committed by the body corporate. Therefore, it is appropriate to amend the provisions of section 102 to provide that a body corporate that holds a licence

is also liable for offences relating to changes to the corporate structure of a body corporate that holds a liquor licence, without the prior approval of a licensing authority.

For ease of increasing or decreasing shareholding in a body corporate that holds a licence by a person already approved by the licensing authority, complimentary amendments to section 102(b) should be made to provide for a person who has already been approved as a person in a position of authority, in respect to the particular body corporate that holds a licence, to increase or decrease their shareholding in that company without prior approval, provided that notice of the change in shareholding is provided to the Director within 14 days. Penalty provisions may need to apply for persons who fail to adequately inform the Director within the 14 day period.

Recommendations

81. Section 102 of the Act be amended to provide that a body corporate that holds a licence is also liable for offences relating to changes of the structure of the body corporate without the prior approval of the licensing authority.

82. Section 102(b) of the Act be amended so that a person who has already been approved as a person in a position of authority in respect of a body corporate may increase or decrease their shareholding without prior approval, provided notice of the change in shareholding is provided within 14 days.

20. SECTION 104

The Act should be amended so that licensees can enter into any reasonable arrangement in respect of the *management* of the premises, provided that the obligations and responsibilities of the licensee are not abrogated and that the “management party” can also be held liable for any offence under the Act as though they to were the licensee.

Recommendation

83. Section 104 of the Act be amended so that a licensee can enter into any reasonable arrangement in respect of the management of licensed premises provided the obligations of the licensee are not abrogated and the “management party” can also be held liable for any offence under the Act.

21. SECTION 105

This section of the Act requires the holder of hotel licence, other than a tavern licence, to maintain a register of lodgers, in a form acceptable to the Director.

This requirement is no longer appropriate and proof that a person is a lodger can be more simply stated by deleting the obligation in section 105(1) and replacing it with a provision that places the burden of establishing that a person was a lodger, where the fact that a person is a lodger is a defence to a complaint, with the licensee and any other person being charged with an offence.

Recommendation

84. Section 105(1) of the Act be amended to remove the obligation to maintain a lodgers register and replace it with a provision that the burden of establishing that a person is or was a lodger lies with the licensee and any other person charged with an offence under this section.

22. SECTION 106

Section 106 of the Act currently limits the number of guests a lodger may have on licensed premises to no more than six adults at any time liquor is consumed. The numbers limitation should be deleted and instead a power provided for the Director to impose a condition limiting the number of guests per lodger on a case-by-case basis.

Recommendation

85. Section 106 of the Act be amended to delete the numbers limitation (6) so that the number of guests per lodger is determined on a case-by-case basis.

23. SECTION 108

Because of difficulties associated with licensees having to rely upon the provisions in section 108 to deal with unsuitable persons under section 115, it is recommended that section 108(3) (with the traits of those persons who can be refused service being inserted instead into section 115(4)) be deleted and insert, in its place of the following —

(3) A licensee has reasonable cause to refuse to admit a person to licensed premises, or to sell liquor there to a person, if the person is a person who under section 115(4) may be refused admission to or asked to leave the licensed premises.

Recommendations

86. Section 108(3) of the Act be deleted and replaced with:

(3) A licensee has reasonable cause to refuse to admit a person to licensed premises, or to sell liquor there to a person, if the person is a person who under section 115(4) may be refused admission to, or asked to leave, the licensed premises.

24. SECTION 110

The title of section 110 refers to “premises to which a certificate of exemption relates”, however the Act no longer makes provision for the issue of a certificate of exemption. Therefore, the reference to a certificate of exemption in the title of section 110 and any

other reference to certificates of exemption that may occur throughout the Act and Regulations should be deleted.

The Act should also be amended to include offence provisions for a licensee, approved manager, or a person employed or engaged by the licensee who allows, permits or suffers the premises to be used in conjunction with an illegal activity (e.g. consumption of drugs or prostitution).

The anomaly in subsection (6) between removal of BYO and 'on premises' purchased liquor also needs to be addressed.

Recommendations

87. The reference to a certificate of exemption in the title of section 110 of the Act (or elsewhere) should be deleted.

88. Section 110 of the Act be amended to create an offence provision for a licensee, manager or a person employed or engaged by the licensee who allows the premises to be used in conjunction with an illegal activity (e.g. consumption of drugs or prostitution).

89. Section 110(6) of the Act be amended so that a person who has purchased liquor for consumption ancillary to a meal may remove any unconsumed portion of the liquor from the licensed premises.

25. SECTION 114

Section 114 of the Act authorises the police to close licensed premises or a part of the premises or to cease the sale, supply and consumption of liquor if satisfied that:

1. civil disorder, a breach of the peace or a threat to public safety is occurring or is likely to occur; and
2. in the interests of maintaining the peace or ensuring public safety it is or may be desirable that the premises be closed.

However, it is unclear whether this section allows the police to prohibit only the sale of packaged liquor during the above circumstances. This is particularly relevant in some country towns during large funerals and events.

Recommendation

90. Section 114 of the Act be amended to make it clear that the police can prohibit the sale of packaged liquor in order to prevent civil disorder, a breach of the peace or otherwise in the interests of maintaining the peace or ensuring public safety.

26 SECTION 115

Despite the general prohibition contained within sections 115(1) and 115(4) against permitting undesirable persons onto licensed premises, subsection 115(1)(b) creates a right for a reputed thief, prostitute or supplier of unlawful drugs to enter and remain on the licensed premises for so long as is necessary to obtain reasonable refreshment, without providing the licensee with any guidance on how long that period may be. Given the abundance of unlicensed premises that now provide food and beverage services, it would seem unreasonable for the Act's provisions to continue to provide a licensee with an obligation to receive such undesirable persons (notwithstanding the fact that the provisions of section 115(4) provide overriding provisions for licensees to refuse admittance to such persons or cause their removal), given the established nexus between licensed premises and illicit drug use and other illegal or unsavoury activities.

The requirement in section 115(1)(b) for a licensee to allow an undesirable person, especially a supplier of unlawful drugs, to enter and remain on the licensed premises for the purpose of obtaining reasonable refreshment should be deleted.

Recommendation

91. Section 115(1)(b) of the Act be amended to delete the requirement of a licensee to allow an undesirable person, especially a supplier of unlawful drugs, to enter and remain on the licensed premises for the purpose of obtaining reasonable refreshment.

27. SECTION 117

Powers of Director to defer a complaint, issue an interim order and leave a complaint open

Section 117 of the Act provides for complaints to be made to the Director about noise or disorderly behaviour related to licensed premises. While subsection (5) indicates that the Director may take appropriate action, whether pursuant to conciliation or negotiation or by way of an order, the administration of complaints under section 117 would be simplified if provisions were inserted that enabled the Director to —

- defer the determination of a complaint;
- issue an interim order; and
- provide for a complaint to remain open for a specified period to ensure that the issues are resolved to the satisfaction of the Director.

While section 16 of the Act provides general directions on the procedure to be followed by the licensing authority in proceedings under the legislation and already provides for the licensing authority to "...upon its own motion or upon the application of any party, adjourn the hearing or further hearing of any application or matter from time to time..."

(subsection 16(1)(d)), provision should be made for the placement of similar provisions in section 117 to strengthen the ability of the Director to deal with such complaints in an expeditious or comprehensive manner, depending upon the circumstances of the complaint.

Section 117(4) should be amended to provide that the Director may defer determination of complaint proceedings pending an attempt to resolve the complaint by conciliation or negotiation and to allow the director to issue an interim order in relation to a complaint. At present, an aggrieved person is required to make another complaint, if, following the determination of an initial complaint, the noise or behaviour that was the subject of the initial complaint does not cease or recommences.

Recommendations

92. Section 117 of the Act be amended so that the licensing authority may defer the determination of a complaint, issue an interim order or provide for a complaint to remain open for a specified period.

93. Section 117 of the Act be amended so that the licensing authority may on its own motion or upon the application of any party, adjourn the hearing or further hearing of any application or matter from time to time.

94. Section 117(4) of the Act be amended so that the licensing authority may defer determination of a complaint pending an attempt to resolve the complaint by conciliation or negotiation or to allow for the issuing of an interim order.

28. SECTION 121

Section 121(5)(b) provides that the general prohibition against juveniles being present on licensed premises does not apply to the presence on a part of the licensed premises of a juvenile at a time at which —

- entertainment is, with the approval of the Director, provided on that part of the premises mainly for juveniles; and
- liquor is not sold, supplied or consumed there.

These provisions are considered deficient for two reasons.

Firstly, they require the Director to approve a function for juveniles on licensed premises, without including an approval process, similar to the processes included in the Act associated with the grant of an occasional licence or an extended trading permit for a function. Given that the approval relates to the presence of juveniles on licensed premises, the Director cannot take a *laissez-faire* approach to such approvals and has introduced a process for the approval of requests from licensees for unaccompanied juveniles to be present on licensed premises.

This approval process requires significant liaison between the Department of Racing, Gaming and Liquor and external agencies, such as the Police Department and local government authorities.

Secondly, the words “mainly for juveniles” imply that the entertainment does not need to be restricted solely to juveniles.

Accordingly, an application process should be included in the Act, including the power to levy an appropriate application fee (similar to that for an extended trading permit for a function), and to stipulate that functions should be solely for juveniles.

Recommendation

95. Section 121(5)(b) of the Act be amended to create an application process (and subsequent fee) for allowing unaccompanied juveniles on licensed premises and where entertainment is provided, to ensure such entertainment should be solely for juveniles.

29. SECTION 123

This section of the Act provides that a juvenile commits an offence when they —

- purchase or obtain, or attempts to purchase or obtain, liquor from any other person on licensed or regulated premises;
- bring liquor on to licensed or regulated premises; or
- consume liquor on licensed or regulated premises.

In addition to the existing provisions of section 123, an offence should be created for a person to supply liquor to a juvenile without the consent of the juvenile's parent/guardian, even at a private residence.

At a meeting of State and Territory Health Ministers in August 2003, concerns were raised regarding the apparent inconsistencies regarding the supply of liquor to juveniles in the various jurisdictions, particularly the supply of liquor to young people in private dwellings. At present, only New South Wales precludes adults, other than parents, from supplying liquor to juveniles. In this regard, section 114 of the NSW Liquor Act makes it an offence to supply liquor to a person under the age of 18, unless the person supplying the liquor is a parent or guardian or the supply of liquor to the juvenile is authorised by a parent or guardian. This exclusion does not apply to licensed premises.

Recommendation

96. The Act be amended to create an offence for any person to supply liquor to a juvenile at a private residence without the consent of the juvenile's parent or guardian, with the burden of proof regarding whether the supply of liquor was authorised by the parent or guardian to lie with the person supplying the liquor.

30. SECTION 127

The annual licence fee should be payable regardless of whether a licence is in suspension or not.

Recommendation

97. Section 127 of the Act be amended to clarify that the annual prescribed licence fee is payable whether or not the licence is under suspension.

31. SCHEDULE 2 – DIVISION 1

Division 2 of Schedule 2 of the Act should be amended to remove the address details of the Air Force Association Club that are stipulated in section 2; and instead refer to any premises at which the club conducts its business.

Recommendation

98. Division 2 of Schedule 2 of the Act be amended to remove reference to the specific address details of the Air Force Association.

32. REGULATION 10

Needs to specify that the applicant must be the sole occupier of the vineyard to which the licence will apply if granted.

Recommendation

- 99. Regulation 10 of the Regulations be amended to provide that the applicant must be the sole occupier of a vineyard to which the licence will apply if granted.**

33. REGULATION 11

Regulation 11(2)(a) of the *Liquor Licensing Regulations 1989* requires that the plans accompanying applications for the purposes of section 66 of the Act must be drawn by a duly qualified architect, surveyor, town planner, engineer, builder or draftsman. It is proposed that the regulation be amended to enable any person capable of preparing plans to the required standard to draw the plans that are required to accompany applications for the purposes of section 66 of the Act.

Recommendation

- 100. Regulation 11 of the Regulations be amended to enable any person capable of preparing plans to the required standard to draw plans to accompany an application.**

11. MATTERS WARRANTING FURTHER CONSIDERATION

A number of important issues came to the attention of the committee that fell outside its terms of reference. Whilst the committee has not made any recommendations in relation to these matters it does believe they warrant mention and further consideration.

Late Night Transport

In discussions with licensees operating premises that open after midnight and the police, it became clear that delays in dispersing patrons leaving licensed premises was of real concern.

In entertainment precincts, where a number of late night hotels and nightclubs operate in close proximity, the net effect of limited access to public transport and very long waits for taxis is that large numbers of mostly young people leaving licensed premises are left with no way of getting home.

Some taxi drivers are reluctant to drive into these areas to pick up customers because of the risk of their taxis being damaged or fouled, or fares not being paid by people who are drunk or disorderly. With numbers of available taxis limited the potential for squabbles to develop and escalate into assaults or damage to property is very real.

This issue was highlighted in a recent discussion document issued by the Drugs and Crimes Prevention Committee of the Parliament of Victoria. The document cites concerns about "...few integrated or affordable transport options for young people going to and from entertainment venues." It goes on to suggest that responsibility for improving this situation should lie not only with public transport authorities but also with club owners who might contribute to subsidising transport for their young patrons.

In discussions with representatives from the various transport authorities, the committee sought views about how this problem can be addressed in the WA context. There is no

obvious solution although the committee was advised of some encouraging results from a recent trial of a redesigned and managed taxi rank in Fremantle which resulted in more taxis being available and more efficient use of those that were available. Unfortunately the trial has been discontinued because of its cost.

The committee is of the view that a concerted effort from Government in tackling the challenge of coordinating public transport and taxi systems to disperse people quickly and safely away from entertainment precincts has the potential to significantly reduce anti-social behaviour and crime. Consultation with and support from licensees of late night venues will be important in developing effective and affordable transport solutions.

Advertising of Liquor

A number of submissions to the committee from health related organisations raised concern that the advertising and marketing of alcoholic beverages promotes its misuse. Young people and other impressionable groups may be particularly vulnerable to the messages of alcohol advertisements. More effective regulation of advertising was suggested to control the way liquor is advertised.

In Australia the regulation of alcohol advertising is largely industry controlled and voluntary and is conducted on a national basis. It is therefore outside the scope of this review. However there is no doubt that the matter should receive the attention of policy makers.

Chapter 5 of the Victorian Drugs and Crime Prevention Committee includes an excellent discussion of the details and shortcomings of the self regulatory system applying to alcohol advertising in Australia and compares it with statutory regulatory systems operating in other countries. It goes on to invite discussion on a range of issues including importantly:

“Has an appropriate balance been struck between protecting society against the harmful effects of the consumption of alcohol and encouraging its promotion as a legitimate industry?” (P102)

The committee would expect this is a question that concerns many West Australians and deserves the attention of Government, policy makers, the community and industry groups.

Local Town Planning Schemes

The pressures and conflicts created by integrating residential uses with entertainment and tourist uses was highlighted in submissions by industry and resident groups, as well as local government.

While noise and building codes are able to address some problems, there is a need for greater attention to the long term implications of mixing incompatible land uses at the town planning approval stage. This can be achieved through local town planning scheme provisions which can be designed to take account of a wide range of issues including hours of operation, local amenity and outlet density for entertainment uses. The City of Subiaco has incorporated development control provisions in its local town planning scheme.

The committee was also advised of conflicts between existing residential and entertainment developments where one use - usually a hotel, preceded the other - usually medium density residential and was then being subjected to pressure to meet stringent controls on its activities.

The committee is of the view that greater thought should be given to addressing land use conflicts at the planning stage and that existing development should be given preference in terms of determining whether any new development that would generate land use conflict should be approved.

The adoption of this approach would also assist in dealing with complaints, mainly from residents in relation to the operation of entertainment venues, where it is currently possible for one or more residents to make a valid complaint and have to go to some length and cost to have the complaint addressed.

As most local governments have differing views on what should and should not be permitted, it is difficult for all stakeholders to establish what is fair and reasonable in many situations. It is therefore important that the “ground rules” be established in a formal way so that the rights of all parties are clearly understood and able to be enforced.

12. Evolution of Liquor Control in Western Australia³¹

Since the first liquor laws which only related to public revenue and drunkenness were passed following the foundation of the State in 1829, licensing laws in Western Australia have been reviewed 11 times through two Royal Commissions (1921, 1984), a Parliamentary Committee of Inquiry (1957), independent Committee of Inquiry (1969, 1994), three departmental reviews (1911, 1987, 1990) and three consolidations (1856, 1872, 1880).

As the Chairman of the 1969 Committee of Inquiry, Mr Phillip Adams, QC, found, there were only two forms of licence in the period between the State's foundation in 1829 and 1856 when the first Acts were consolidated. These were a public house licence, which permitted the sale of liquor for consumption on or off the premises, and a retail licence which entitled the holder to sell liquor for consumption off the premises in quantities of not less than one gallon.

No licence was required to sell spirits in quantities of not less than 40 gallons or wine or beer in quantities of not less than 15 gallons. No public house could be licensed unless it contained one sitting room and one sleeping room for public accommodation and it was an offence for the keeper, if without reasonable cause, he refused lodging and refreshment to any traveller and his horses during the day or night.

Public houses felt the pressure of regulation, however. In the 1856 consolidation they were required to provide at least two sitting rooms and two sleeping rooms and stabling for six horses and 12 bullocks, presumably to meet the needs of settlers on the move. The 1872 consolidation increased the number of licence types to 10 and banned liquor sales on Good Friday and Christmas Day except to bona fide travellers. Sales on Sundays had been banned since 1855.

³¹ Extracted and updated from the 1994 Mattingley report.

Trading hours were restricted for the first time under the Consolidated Wines, Beer and Spirit Act of 1880. Trading was restricted from 4am to 10pm in summer and 6am to 10pm in winter, but licensing magistrates were permitted to waive the whole or any part of these restrictions – a forerunner no doubt of extended trading permits. Despite the restrictions, liquor became readily available on the goldfields with three breweries and 23 hotels serving 15,000 people in Coolgardie and a further 10,000 in surrounding districts.

The statutory closing time was extended to 11pm in 1886 (which was before the temperance movement became influential).

The Licensing Act of 1911, which replaced the 1880 Act and its amendments, contained 204 sections and introduced 15 different licences as well as local option polls based on electoral districts to determine whether areas should be “wet” or “dry”. Then in 1921 the Government appointed a Select Committee, which became a Royal Commission, to review the Act “in the interests of the public”.

Explaining the object of the review, the Chairman of the Commission said, “Until prohibition comes about, the Government desires to tighten up the liquor laws and exercise better control of the trade”

After the Commission’s report, the Government approved 130 amendments to tighten up the Act “pending prohibition”, appointed a licences’ reduction board under pressure from those opposed to the liquor trade and provided for State-wide polls every five years to gauge public opinion on prohibition. These polls remained in the Act until 1950 when the last poll disclosed a turnaround in public thinking: few people wanted prohibition.

In the period after World War II, a maturing community influenced by overseas travel and the influx of European cultures accepted the benefits of more relaxed drinking. In line with these trends, the report of the 1969 inquiry recommended that the law should be changed to “meet the varying needs and conveniences” of all sections of the public provided it was consistent with the safety and wellbeing of all. The Committee decided,

first, that liquor is a service to the public; secondly, that those who sell liquor for consumption on the premises should also provide adequate food at all reasonable times for those who may require it; and thirdly, that the interests of those engaged in the industry should be regarded as important, but not as important as the first two points.

The Committee in its report stated: "It was put to us many times during the inquiry that any increase in the number of drinking outlets available for the consumption of liquor or any extension of hours during which liquor is available must inevitably increase consumption, with its attendant ill effects. After examining the evidence available on the subject, we came to the conclusion that there was no substance in this contention. Instead, we believe that drinking should be leisurely and that it should be done in comfortable and attractive surroundings. We also believe that less harm can come from liquor where drinking conditions are of a high standard".

As a result of this inquiry, the 1970 Act permitted hotel trading hours to be varied to meet a public demand in special circumstances, lowered the drinking age from 21 to 18, introduced tavern licences to create smaller outlets without accommodation, established cabaret licences for restaurant-type nightclubs and hotels, changed grocery store "gallon" licences (minimum of six large bottles) to single-bottle store licences as a service to shoppers, particularly women, and dropped the tendering system for new licences.

At this stage the pressure from self-interest groups fighting for commercial protection increased, particularly between cabarets, hotels and liquor stores. As the pressure increased, the system for resolving disputes and deciding the needs of industry and the community received a lot more attention.

Soon after the Burke Government was elected in February 1983, it appointed a Committee of Inquiry with terms of reference which included, "To give particular attention to the submissions of the representative groups in the liquor industry". Another term of reference was almost identical with one of the current terms of reference; that was, "To examine the operation of the present day adversary system of applying for and

objecting to licences and in particular the possibility of reducing the costs and expenses of appearing before the Licensing Court, whether as an applicant or as an objector”.

The Committee of Inquiry was changed to an Honorary Royal Commission when concerns were expressed that the Parliamentary members might be criticised for holding a second office of profit under the Crown if they accepted reimbursement for expenses. The inquiry comprised the then Chairman of the Licensing Court, Judge John Syme. A former magistrate, Judge Syme had been appointed Chairman of the Licensing Court by the Court Government for a seven-year term from 1980. With him on the Bench were two members of the Legislative Assembly (one Liberal, the other Labor).

The terms of reference required the Honorary Royal Commission to examine the operations of the Licensing Court and to address concerns that the licensing Court had a dual role of judging licence applications while its lay members and principal clerk administered the Act.

To overcome the problem, the Royal Commission recommended that the Licensing Court be reconstituted with a single judge of District Court status who would decide new licence applications after a proposed Liquor Commission had indicated that all requirements under the Act had been met. At the same time the Liquor Commission, which would comprise a registrar who would be chairman and three other full-time members, would relieve the Licensing Court of its administrative responsibilities. Appeals from the Commission to the Court would be limited largely to whether the decision in question contravened a regulation or provision of the Act.

The Australian Hotels' Association supported the recommendation – perhaps suggested it – but wanted a judge to be appointed commission chairman and a legally qualified magistrate to be deputy chairman. This was in addition to the appointment of a judge to head the Licensing Court. The arguments went backwards and forwards – the Royal Commissioners opposing the AHA's claim that the commission should include an industry representative and the AHA opposing a Royal Commission claim that the

commission should include a nominee of the Alcohol and Drug Authority. The Royal Commission also proposed that the new commission should have a largely regulatory role, but the AHA wanting a wider role which included the formation of policy on liquor matters.

The one thing both sides agreed on was that the new Commission would have an important part to play in administering an industry rationalisation scheme with compensation provided from Treasury funds. However the Government never approved the proposed scheme.

Two years after the Honorary Royal Commission's report, the Liquor Amendment Act (No2) 1986 established a liquor licensing authority comprising a Liquor Licensing Court and a Director of Liquor Licensing. It was noted then that the Director, who had been given substantial discretionary powers, would be responsible to the Executive Director of the Office of Racing and Gaming for the efficiency and effectiveness of the newly created administrative Division, but not to the Minister or the Executive Director on matters in which the Director had specific statutory authority.

In February 1987, the Burke Government appointed a barrister and former stipendiary magistrate, Mr Peter Sharkey, to succeed Judge Syme as Judge of the Licensing Court with the status of a District Court judge and in December 1988 Mr Rodney Greaves, another barrister and former magistrate, was appointed to succeed Judge Sharkey, also with the status of a District Court judge.

Proposals that Licensing Court judges be appointed members of the District Court, not just hold the same status, was rejected.

A year after the current Act was introduced, the then Director of Liquor Licensing, a lawyer, pointed out that Western Australia and South Australia were the only jurisdictions in Australia in which a Liquor Licensing Court heard matters in the first instance – that is, original applications. He suggested that there was no need for a Court

at all because in all other parts of the country original applications were determined, largely informally by Boards or Commissions.

The Director recommended in fact that the Liquor Licensing Court be replaced by an administrative tribunal in the form of a Commission constituted by a chairman with legal qualifications and members who were not public servants. He also recommended that, whereas a judge is appointed to 70 years of age, the chairman of the Commission be appointed for a set term of up to five years.

The Government did not act on this recommendation.

In April 1994, the Mattingley Committee (an independent review committee appointed by the government) made a series of recommendations, the most significant being to amend the objects of the Act to include a reference to harm minimisation and to establish a Liquor Licensing Commission.

Although the government did not adopt the recommendation to establish a Commission, the subsequent 1998 amendments to the Act established, for the first time, the primary objective of minimising harm caused to people, or any group of people, due to the use of liquor. The 1998 amendments also supported, but did not achieve, the move away from a legalistic framework to a less formal, administrative based system, with the Director of Liquor Licensing being the initial decision maker and the Liquor Licensing Court determining appeals on decisions of the Director and dealing with disciplinary matters.

**REVIEW OF THE
LIQUOR LICENSING ACT 1988**

TERMS OF REFERENCE

LEGISLATIVE REVIEW REQUIREMENT

Section 178 of the *Liquor Licensing Act 1988* (the Act) provides for the Minister for Racing and Gaming to carry out or cause to be carried out a review of the operation of the Liquor Licensing Act, having regard to and to consider –

1. the effectiveness of the operations of the licensing authority; and
2. such other matters as appear to the Minister to be relevant to the operations and effectiveness of the Act.

REVIEW COMMITTEE

As part of the review process, an independent committee is to be appointed by the Minister for Racing and Gaming for the purposes of the review. The committee is to consider and have regard to:

- the submissions received on the “Review of the Structure and Operations of the Licensing Authority”, in reviewing the effectiveness of the operation of the licensing authority; and
- those matters set out below and other matters considered by the review committee to be relevant to the operation and effectiveness of the Act.

The Effectiveness of the Operations of the Licensing Authority

In July 2002, the Minister for Racing and Gaming initiated a review of the operation of the licensing authority, which included an assessment of the manner in which applications are determined under the Liquor Licensing Act and the relationship between the Liquor Licensing Court and the Director of Liquor Licensing.

A discussion paper was prepared by the Department of Racing, Gaming and Liquor to facilitate the review and to provide an opportunity for stakeholders to make submissions in relation to the review.

In assessing the effectiveness of the operations of the licensing authority, the Review Committee will examine and take into account the submissions received in response to the discussion paper.

In considering the effectiveness of the operations of the licensing authority, consideration should also be given to the appropriateness of the Government, through the Minister issuing policy guidelines providing guidance in relation to matters of public interest and Government policy on liquor licensing issues.

Matters Relevant to the Operation and Effectiveness of the Act

The Review Committee is to examine and consider those matters that appear relevant to the operation and effectiveness of the Act, having regard to –

- the interests and needs of the Western Australian community;
- the interests and needs of persons selling or supplying liquor;
- the interests and needs of liquor consumers;
- the interests and needs of the tourism industry in Western Australia; and
- the trends and experiences of other Australian and overseas jurisdictions.

These matters include the following:

- (i) The appropriateness of the objects of the Act and the current licence classification system and associated trading hours, having regard to changing community needs and attitudes relating to the accessibility of liquor and related services, including -
 - the minimisation of harm or ill health caused to people, or any group of people, due to the use of liquor;
 - the use of extended trading permits;
 - the times during which liquor is available at hotels and liquor stores and the distinction between the services offered by hotels and cabarets;
 - the role of the club licence and the requirement that liquor only be sold to club members and their guests;
 - the extent to which a restaurant licence should allow liquor to be consumed without a meal;
 - the availability of packaged liquor;
 - the ability to ban a specified liquor product or class of liquor products from sale or distribution; and
 - any specific needs of non-metropolitan licensed premises and communities.
- (ii) The merits of a public interest test in comparison to the public needs test and the relative implications for the licence classification system.
- (iii) The impact of market domination on the liquor industry.

Security issues associated with the operation of licensed premises and the control of special events.

Submissions Received or Referred

1. R Ashlin, J Kelly, P Sequeira and G Brindle
2. T Topham
3. L W Harris
4. HTS Consultants Pty Ltd
5. F R V Management Ltd (Franklin Vineyards)
6. B Masters MLA
7. Town of Vincent
8. Department of Racing, Gaming and Liquor
9. Western Australia Police Service
10. Moora Promotions
11. City of Gosnells
12. The Liquor Industry Council of W.A. Inc
13. Women's Christian Temperance Union of WA Inc
14. Lions Club of Wagin (Inc)
15. Mungullah Community Aboriginal Corporation
16. Liquor Stores Association of Victoria Inc
17. Restaurant and Catering Industry Association of WA (Inc)
18. Fremantle Inner City Residents Association
19. The Law Society of Western Australia
20. J Pages (Heaven Dance Club)
21. M H Dale
22. Australasian Faculty of Public Health Medicine
23. Vin Ethos Pty Ltd and Professional Wine Alliance Pty Ltd
24. City of Subiaco
25. Department of Education and Training
26. WA Centre for Health Promotion Research, Curtin University
27. W Hinds
28. Office of Road Safety
29. The Cancer Council of Western Australia

30. Men's Advisory Network
31. Telethon Institute for Child Health Research
32. Australian Institute of Environmental Health
33. Palmerston Association Inc
34. WA Council on Addictions Inc (Cyrenian House)
35. National Drug Research Institute, Curtin University of Technology
36. D Lalor
37. D Brown
38. Edith Cowan University (Joondalup Campus)
39. J Jakobson
40. Clubs WA
41. D Cake
42. R Knox (Byramgou Park)
43. R Knox (Donnybrook Masonic Lodge)
44. V George
45. Office of Aboriginal Health (Department of Health)
46. Phillips Fox
47. M Keiller
48. Community Advisory Council
49. City of Fremantle
50. D Richards (City of Nedlands)
51. H Hanbury
52. TAFEWA (Great Southern)
53. Shire of West Arthur
54. The Western Australian Network of Alcohol and other Drug Agencies
55. G Manning
56. S Jaggard (Injury Control Council WA (Inc))
57. Injury Control Council of Western Australia Inc
58. A J Price
59. Department of Treasury and Finance
60. Liquor Wholesalers' Association

61. Country Labor WA (SPLP)
62. City of Perth
63. Tourism Western Australia
64. Liquor Stores Association of Western Australia (Inc)
65. Australian Hotels Association Western Australia
66. Department of Racing, Gaming & Liquor
67. Hancock Developments Pty Ltd
68. Cabaret Owners' Association of WA (Inc)
69. Liquorland (Australia) Pty Ltd
70. Woolworths Limited
71. Drug and Alcohol Office – Department of Health
72. Western Australian Brewers Association
73. Office of Crime Prevention – Department of the Premier and Cabinet
74. G Aves
75. Tourism Council Western Australia
76. D Cochrane
77. J O'Dea
78. T Blechynden
79. J Sainken
80. A Shaw, A Pimm and C Martin
81. Ilberys – Lawyers
82. B Christian
83. ALH Group
84. WA Local Government Association
85. J Hutchison
86. R Mitchell
87. The Great Southern Wine Producers Association
88. Happs Pty Ltd

Individuals or Groups Consulted

1. Snr Sgt P Eager
Liquor Licensing Unit, Victorian Police
Prosecutions Branch
2. S McLellan
Acting Director, Liquor Licensing Victoria
3. D Pitchford
CEO, Melbourne City Council
4. D Wood
Corporate Functions Manager, Spotless Catering
(MCG)
5. R Harvey
General Manager, Catering & Events
Coordination, Victoria Racing Club
6. S Howard
Secretary, Liquor Administration Board, NSW
7. P Scanlon
Principal Registrar, Liquor Licensing Court, NSW
8. D Freeman
Manager, Legal & Licensing, Dept of Gaming &
Racing, NSW
9. A Banerjee
Legal & Licensing, Dept of Gaming and Racing,
NSW
10. G Lim
City Care Specialist, Building and Regulatory,
City of Sydney
11. S Matthews
Project Coordinator, Safe City, City of Sydney
12. J Butera
Planner, City of Sydney
13. N Donnelly
Research Manager, NSW Bureau of Crime
Statistics and Research
14. S Briscoe
NSW Bureau of Crime Statistics and Research
15. Sgt N Pitchuev
Licensing & Gaming Unit, Surrey Hills Local
Area Command, NSW Police
16. K Lenihan
Drug Programs Bureau, NSW Health Dept.
17. E Greenaway
Drug Programs Bureau, NSW Health Dept.
18. P Cox
Senior Policy Officer, Dept of Gaming and Racing

19. C Watters Executive Director, Liquor Licensing Division,
Dept of Tourism, Fair Trading & Wine Industry
Development, Queensland
20. D Tennison Manager Liquor Administration, Liquor Licensing
Division, Dept of Tourism, Fair Trading & Wine
Industry Development, Queensland
21. G Murphy Executive Manager, Liquor Operations Branch,
Liquor Licensing Division, Dept of Tourism, Fair
Trading & Wine Industry Development,
Queensland
22. P Mansfield Inspector, Drug & Alcohol Coordination,
Operations Support Command, Queensland Police
Service
22. S Pyke Inspector, Queensland Police Service
23. D Hansen Snr Sgt, Drug & Alcohol Coordination, Operations
Support Command, Queensland Police Service
24. J Bell Representative, Gold Coast Licensees
25. B Pointing Superintendent, Gold Coast District Police
26. B Denholder Gold Coast City Council
27. K Lambkin Manager, Alcohol, tobacco and Other Drug
Services, Public Health Services, Queensland
Health
28. S Anstis Senior Advisor Prevention, Alcohol. Tobacco and
Other Drug Services, Queensland Health
29. G Oliver Sgt, Liquor Licensing Coordinator, Gold Coast
District Police
30. S Stark Manager Strategy Unit, City of Perth
31. P Monks Manager Approval Services, City of Perth
32. R Wells Manager Health Services, City of Gosnells
33. B Caporn Manager Urban Environment & Control, City of
Fremantle

54. D Bell A/Supt, Community Safety Branch, WA Police Service
55. M Riley OIC, Alcohol & Drug Coordination Unit, WA Police Service
56. G Prior Principal Legislation Officer, WA Police Service
57. D Munckton Senior Constable, Research & Legislation Officer, WA Police Service
58. M Stevens Executive Director, Public Health, Department of Health
59. G Kirby Drug & Alcohol Office, Department of Health
60. N Henrickson Drug & Alcohol Office, Department of Health
61. T Murphy Director, Office of Aboriginal Health
62. D Gray National Drug Research Institute, Curtin University
63. T Chikritzhs National Drug Research Institute, Curtin University
64. R Greaves Judge, Liquor Licensing Court
65. H Highman Director of Liquor Licensing
66. R Muirhead Chief Executive Officer, Tourism Western Australia
67. B Johnston Tourism Western Australia
68. J Hewitt Tourism Western Australia
69. B Sargeant Director General, Department of Racing, Gaming & Liquor
70. D Smith Executive Director, Economic, Department of Treasury & Finance
71. D Morrison Director, Structural Policy, Department of Treasury & Finance
72. D Pender Research Officer, Department of Treasury & Finance
73. P Matrakis Public Transport Authority

- 74.. G Merritt Transperth
75. P Reid Department of Planning & Infrastructure
76. J Scheffer Chairman, Drugs & Crime Prevention Committee,
Victoria
77. S Cook Executive Officer, Drugs & Crime Prevention
Committee, Victoria
78. S Willshire Acting General Manager, Liquor Licensing
Victoria
79. A Gronow Supt, Geraldton Police Station
80. G Hills Senior Constable, Geraldton Police Station
81. R Jefferies CEO, City of Geraldton
82. M Nicholls City of Geraldton
83. R Simpson Department of Indigenous Affairs
84. S Davies Geraldton Regional Aboriginal Medical Services
85. R Collins Supt, Goldfields Esperance District Police Office
86. Sgt Smith Goldfields Esperance Police Office
87. W Withers Constable, Goldfields Esperance Police Office
88. E Piper Deputy CEO, City of Kalgoorlie
89. A Brahim Regional Manager ICC
90. W Martin Acting CEO, Bega Aboriginal Medical Centre
91. S Mitchell OIC, Berrimah Police Headquarters, Darwin
92. J Townsend Dept of Health and Community Services, Darwin
93. P Adamson Lord Mayor, Darwin City Council
94. K Gaye Council for Aboriginal Alcohol Program Services
Inc, Darwin
95. J Withnall Chairman, Northern Territory Liquor Commission
96. G Moriarty Director of Liquor Licensing, Northern Territory
97. R Randall Supt, Bunbury Police Station
98. G Bond Senior Constable, Bunbury Police Station
99. S Reid City of Bunbury

- | | | |
|------|-------------------|-----------------------------------------------------|
| 100. | G Barbour | Manager Environmental Health, Shire of
Busselton |
| 101. | Various Licensees | Kalgoorlie, Geraldton, South West |
| 102. | N Moriarty | Mgr Health, City of Bunbury |
| 103. | G Fitzgerald | Mgr Development Services, City of Bunbury |
| 104. | D Mossenson | Solicitor, Phillips Fox |
| 105. | R Buckey | President, Tourism Council Western Australia |
| 106. | M Cutbush | Inglewood Hotel |
| 107. | D Strom | Leisure Inn |