

# LIQUOR CONTROL ACT 1988

Report of the Independent Review Committee

Presented to the Minister for Racing and Gaming

December 2013



## Contents

<b>Foreword</b> .....	<b>3</b>
Terms of Reference .....	6
<b>Introduction</b> .....	<b>7</b>
<b>1. Alcohol and the Community</b> .....	<b>11</b>
Changing the drinking culture .....	13
Community Education .....	14
Community Engagement .....	16
• Objections .....	20
• Advertising Applications .....	23
Advertising and Promotion .....	25
Responsible Service of Alcohol training .....	35
Undesirable liquor products .....	37
Energy drinks .....	38
<b>2. Objects of the Act</b> .....	<b>41</b>
<b>3. Juveniles and Young Adults</b> .....	<b>51</b>
Legal Drinking Age .....	54
Secondary Supply of liquor to juveniles .....	55
Controlled Purchase Operations .....	58
Police Powers – section 155 .....	63
Definition of Loco Parentis .....	64
Delivery of Liquor .....	65
Proof of Age .....	69
Alcohol Intervention Program .....	70
<b>4. Public Interest</b> .....	<b>71</b>
Outlet density .....	79
Licence categories .....	85
Prohibition on reapplication .....	87
<b>5. Licences</b> .....	<b>89</b>
Licence Classification .....	89
• Direct Sales/Internet licence .....	89
• Small Bar licence .....	94
• Special facility licence .....	97
Licence Fees .....	98
Code of Practice .....	103
Liquor Restrictions .....	105
Liquor Accords .....	109
Glassware .....	111
Premises Capacity .....	112
Club Licences .....	113
Liquor Stores .....	115
Restaurant Licences .....	116
Beer Producers .....	121
Wine Producers .....	122
Wholesaler’s licences .....	125
<b>6. Permitted trading hours</b> .....	<b>126</b>
Liquor Stores .....	128
Hotels, Taverns and Small Bars .....	132
Nightclubs .....	135
Extended Trading Permits .....	136

<b>7. Constitution and effectiveness of the licensing authority .....</b>	<b>141</b>
The Liquor Commission.....	142
Reviews and appeals .....	145
Hearings .....	147
<b>8. Compliance and enforcement .....</b>	<b>148</b>
Disciplinary Action .....	149
Definition of Drunk.....	153
Drunk and disorderly behaviour .....	157
Movement between licensed premises.....	162
Consumption off licensed premises.....	163
Barring Notices.....	164
Offences .....	167
Offences by Body Corporates.....	169
Prosecutions .....	171
Disqualifying Offences.....	172
Liquor Restrictions.....	174
Banned Drinkers Register .....	178
Regulated Premises.....	180
<b>9. Appropriateness of penalties contained in the Act.....</b>	<b>181</b>
<b>10. Exemptions.....</b>	<b>185</b>
<b>11. Transparency and Process.....</b>	<b>187</b>
Discretion of licensing authority .....	187
Improving the licensing process.....	188
• New Licence applications.....	190
• Occasional licences and Extended Trading Permits.....	198
• Removal of licence.....	202
Interventions .....	203
<b>12. Technical Amendments .....</b>	<b>208</b>
Definitions - Section 3.....	208
Section 39 and 40 – Local Health and Local Planning Authority.....	209
Section 36A and 65A – Petrol stations.....	213
Section 37A - Convictions .....	214
Section 103A – Training Register .....	215
Section 116A – Incident Register .....	216
Section 146 – Liquor Returns.....	218
Section 160 – Power to request information.....	221
<b>13. Liquor Industry Advisory Committee .....</b>	<b>222</b>
<b>14. Education and Health Standing Committee's 10<sup>th</sup> Report.....</b>	<b>224</b>
<b>15. Red Tape Reduction Group Report .....</b>	<b>225</b>
<b>16. Recommendations.....</b>	<b>229</b>
<b>Appendix 1 – Submissions .....</b>	<b>250</b>
<b>Appendix 2 – Consultation Meetings .....</b>	<b>253</b>
<b>Appendix 3 - Australian National Council on Drugs .....</b>	<b>255</b>
<b>Appendix 4 – New South Wales – Environment and Venue Assessment Tool .....</b>	<b>257</b>
<b>Appendix 5 – Education and Health Standing Committee's 10<sup>th</sup> Report .....</b>	<b>261</b>

---

## Foreword

The *Liquor Licensing Act 1988* ('the Act') came into operation on 1 February 1989 and effectively remained unchanged for ten years; significant changes came into effect in 1998 and 2007.

### *Principal features of the Act from 1989 to 1998*

The licensing authority was comprised of the Liquor Licensing Court (comprised a person eligible to be appointed as a District Court Judge) and the Director (appointed under the *Public Service Act 1978*).

The licensing authority had absolute discretion under section 33 of the Act to grant or refuse applications in the public interest where sections 5 and 38 were relevant when making a decision.

Section 5 of the Act set out the objects as:-

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

Under section 38 of the Act an applicant for the grant or removal of a Category A licence was required 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...'*

All contested Category A applications for the grant or removal of a licence were to be determined by the Court and decisions of the Director were subject to appeal to the Court. The Court also dealt exclusively with disciplinary matters.

In 1998 the *Liquor Licensing Amendment Act 1998* implemented a number of changes identified in the June 1995 report of the Minister for Racing and Gaming on the review of the *Liquor Licensing Act*, which in turn was premised on the April 1994 report of the review of the *Liquor Licensing Act 1988*.

### *Principal changes to the Act in 1988*

Introduced reference to the minimisation of harm or ill-health due to the use of liquor as a primary object of the Act together with another primary object of *'to regulate the sale, supply and consumption of liquor'*.

In carrying out its functions under the Act the licensing authority was required to have regard to the primary objects of the Act and also to the existing objects.

All applications (including contested Category A licence applications) to be determined by the Director unless the Director considered it was appropriate to refer the whole or part of the matter for hearing and determination by the Court.

---

In 2007 the *Liquor and Gaming Legislation Amendment Act 2006* implemented a number of recommendations of the May 2005 report of the review of the *Liquor Licensing Act 1988*.

*Principal changes to the Act in 2007*

Changed the short title of the Act to the *Liquor Control Act 1988*.

The needs test as set out in section 38 of the Act was repealed and replaced with a requirement that an applicant ‘*must satisfy the licensing authority that granting the application is in the public interest.*’

The distinction of Category A and Category B licences was repealed; however, the licence categories of hotel licence, liquor store licence, restaurant licence, club licence etc, remained with the addition of a new small bar licence sub-category.

The objects of the Act were amended to read:-

- (1) The primary objects of this Act are to:-
  - (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; and
  - (c) to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.
  
- (2) In carrying out its functions under this Act, the licensing authority shall have regard to the primary objects of this Act and also to the following secondary objects —
  - (a) facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State; and
  - (d) to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
  - (e) to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.

The Liquor Licensing Court was replaced by the Liquor Commission.

In the five years since the 2007 amendments came into operation, there has been much community interest in the operation and effectiveness of various provisions of the *Liquor Control Act 1988*.

There has been particular interest from members of the Parliament, media, stakeholders in the liquor and tourism industries and the health sector, in the application of the public interest test to liquor licensing matters. In addition, Report No. 10 of the Education and Health Standing Committee of the Legislative Assembly (*Alcohol: Reducing the Harm and Curbing the Culture of Excess*) was tabled in the Parliament in June 2011.

Consequently, the Honourable Terry Waldron MLA, Minister for Racing and Gaming, appointed an independent review Committee in December 2012, consisting of Mr John Atkins (Chairman), Mr Ian Stanley and Ms Nicole Roocke. Mrs Donna Kennedy was appointed as the Executive Officer to the Committee.

The Committee sought 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 Weekend West* and *The Weekend Australian* on 12 January 2013 and *The Sunday Times* on 13 January 2013.

In total 149 submissions were received (Refer Appendix 1) with 84 of those submissions being published on the Department of Racing, Gaming and Liquor [website](#) with the consent of the submitter. Where the submitter did not consent, the submission was not published.

In addition to the written submissions, follow-up meetings were conducted with a number of parties who had lodged a submission and other relevant stakeholders where the Committee identified a need. Refer Appendix 2.

The Committee also met with regulators, police and industry stakeholders in Victoria, New South Wales and New Zealand.

One of the Terms of Reference required the Committee to consider 'the appropriateness of the current restrictions allowing the consumption of liquor without a meal in restaurants'.

However, on 30 May 2013 the State Government announced changes to make it easier for restaurants to serve liquor without a meal by amending the *Liquor Control Regulations* to reduce the red tape, time and expense for restaurants applying for a liquor without a meal permit. The provisions came into effect on 4 June 2013 with the government making a commitment the provisions relating to restaurant licences would be amended as part of the review.

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 the Committee considered but did not support. 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 the Committee.

---

## Terms of Reference

In conducting the review, the Committee is to consider matters relevant to the operation and effectiveness of the *Liquor Control Act 1988*, having regard to the changing community needs and attitudes relating to the accessibility of liquor and related services.

In considering the interest and needs of the West Australian community, the Committee is to have particular regard to:-

- balancing the requirements of consumers for liquor and related services with minimizing harm or ill-health caused to people or any group of people, due to the use of liquor;
- the interests and needs of persons selling or supplying liquor; and
- the interests and needs of the tourism industry and other hospitality industries in this state.

Other matters the Committee should consider include:-

- the appropriateness of the objects of the Act;
- the constitution of the licensing authority;
- the public interests criteria for low risk venues versus high risk venues;
- the continuation of the section 38(5) restriction of three years on re-applying for a liquor licence that is refused in the public interests;
- the continuation of the current licence classification system, inclusive of issues relating to:-
  - the small bar licence as a category of hotel licence and the viability of the current restriction of 120 persons;
  - the impact of the electronic age and the rapid development of internet sales; and
  - producers meeting the requirements of consumers for liquor on-site.
- the appropriateness of the current restrictions allowing the consumption of liquor without a meal in restaurants;
- non-metropolitan liquor stores trading on Sundays;
- the trading hours of hotels and the role of extended trading permits in this regard, with particular reference to the distinction between the services offered by hotels and nightclubs;
- introducing into the Act a penalty for the secondary supply of liquor to juveniles;
- the definition of 'drunk';
- exemptions provided under section 6 of the Act;
- the appropriateness of penalties contained within the Act; and
- the advertising and marketing of liquor products.



---

## Introduction

*“We have to accept...that ‘alcohol is not an ordinary commodity’. If it is left to personal choice as an entirely libertarian issue, we will run into problems. It is a drug. It is a drug of dependence. It is a psychoactive drug. It happens to be legal. We do not want to make it illegal, but it does require different handling from soap powder and other things that may be dealt with otherwise by the free market.”*

Sir Ian Gilmore, UK Professor, July 2012

Liquor is a legal product which has played a central role in our culture for generations as both a social activity and a religious ceremonial ritual. Attempts at prohibition have never been successful.

Notwithstanding this, there is a reason why we need to rigorously regulate the sale, supply and consumption of liquor in Western Australia.

While moderate, unproblematic drinking is the norm in Western Australia, there is the potential for liquor to be misused with serious negative consequences. While only a minority of the community are drinking at excessive and immediately risky levels, the potential for harm resulting from lower level alcohol consumption is becoming more and more evident.

There is a growing body of research and growing community awareness that it is not just episodic, determined or binge drinking that is a problem, but also the risks associated with what is considered by many to be normal drinking over long periods of time.

While attention is often given to the immediate harm caused by alcohol consumption there is evidence which shows the long term impact across the community of drinking above the recommended drinking guidelines is just as serious.

The impact of all forms of harmful drinking extends beyond the drinker and has a significant impact on families and carers as well as health and law enforcement services, local government and government agencies such as child protection, education, corrective services, mental health and housing.

In this regard, the rates of alcohol-related Emergency Department presentations have increased significantly in the last five years and the number of alcohol-related hospitalisations has increased by over a third for residents in the Metropolitan area.<sup>1</sup>

The financial cost this imposes on the whole community through increases in taxes and charges and regulation is very significant.

The Committee notes while the majority of liquor is supplied through packaged liquor outlets such as liquor stores, hotels and taverns, the harm or inconvenience to society and individuals caused by anti-social behaviour tends to mostly become apparent in and around venues where liquor is consumed such as hotels, bars and nightclubs and on the resulting impact on the health, Police and community services systems. It is also important to consider the harm caused in domestic settings such as alcohol-related domestic violence.

---

<sup>1</sup> Provided by Epidemiology Branch, Department of Health, 6 March 2013

The Committee considers both short term and long term alcohol-related harm needs to be addressed and believes this will require a degree of cultural change around our society's habits and behaviours.

In this regard, while regulation is an important part of the solution, it cannot achieve cultural change alone.

Community education is equally if not more important. Piecemeal measures are unlikely to be effective.

Alcohol policy should be thought of as a long term integrated strategy with a comprehensive approach incorporating regulation and education.

There is also considerable community concern about alcohol use by young people. The Committee considers there is a particular need to take strong action to address the concerns and issues in relation to juveniles and their access to liquor.

There is apparent community support for strategies such as secondary supply provisions and controlled purchase operations as ways to reduce access to liquor by juveniles, which will ultimately lead to a reduction in alcohol-related harm amongst juveniles.

The Committee considers the right to sell and supply liquor comes with responsibilities. While industry participants have expressed concerns regarding delays in process and procedure, it is important to recognise from a community perspective the overall impact of liquor has far reaching consequences. Pursuing efficiency in processes should not come to the detriment of preventing negative health outcomes.

Notwithstanding this, the Committee acknowledges the liquor industry contributes significantly to the State economy and provides broad employment opportunities. The economic viability of these businesses is a legitimate factor to be taken into account when considering the nature and extent of regulation.

### ***Aims of the recommendations***

In making the recommendations contained in this report the Committee focussed on:-

- Minimising harm and protecting juveniles and other at risk members groups in the community;
- Providing certainty for applicants, stakeholders and industry participants and improving transparency and expediency;
- Improving stakeholder and community engagement;
- Regulatory reform and reducing regulatory burden;
- Strengthening compliance and enforcement provisions; and
- Community attitudes and culture.

It is important to note in formulating the recommendations, the Committee took care to ensure the amendments proposed in the recommendations will not impose an unreasonable compliance burden on industry or administrative costs on government that are not balanced by the benefits they will deliver.

The Committee through its recommendations has endeavoured to construct a flexible framework allowing regulation to evolve to meet changing community expectations.

### *Harm Minimisation*

The Committee considered measures to restrict the availability of alcohol such as outlet density, hours of operation and access to liquor by juveniles. Strategies to reduce both short and long term alcohol-related harm as well as the impact of harmful drinking on the social environment and the WA Police, health services and government agencies were also considered. In this regard, the Committee has made recommendations which will provide an avenue to partially fund the significant education exercise that needs to be undertaken to address the cultural change required if we are to achieve an improved drinking culture. The Committee has made recommendations which:-

- seek to address community concerns with respect to juveniles and young people;
- will enhance the public interest assessment process through including reference to outlet density; and
- change the objects of the Act, which while seeking to maintain the positive tension created by balancing legitimate community interest with a very strong focus on minimising harm, seek to rebalance that relationship towards a greater emphasis on minimising harm.

### *Certainty and transparency*

The Committee considered ways to improve the licensing process with the aim of improving efficiency, transparency and the administration of the Act while balancing the regulation of the sale and supply of liquor and the potential impact on the community and public health outcomes. In this regard, the Committee has made recommendations which should improve the transparency and efficiency of the system at all levels.

### *Improving stakeholder and community engagement*

The Committee considered the importance of opportunities for community members to express their concerns regarding the potential impact of a proposed licensed premises and looked at ways to allow for efficient opportunities for residents and community members to engage in the licensing process. In this regard, the Committee has made recommendations which will improve and enhance community engagement in the decision making process.

### *Regulatory reform and reducing regulatory burden*

The Committee considered ways to reduce regulatory burden on industry participants where possible and where appropriate. This includes measures to make processes more efficient and in some cases, removing the need to apply for certain approvals.

### *Compliance and enforcement*

The Committee considered the degree to which the provisions of the Act are enforced, the impact that has on the operation of licensed premises and the compliance rate of licensees and if there was an opportunity to strengthen or enhance the existing offence provisions in the Act.

### *Community attitudes and culture*

The Committee acknowledges changing attitudes through government policy and regulation is difficult but believes a positive change in Western Australian's drinking culture is crucial to addressing both short and long term alcohol-related harm. This change in culture will be evidenced by changing social norms around alcohol consumption, with individuals not drinking at risky levels and consuming alcohol at more moderate levels; people being held responsible for their drinking behaviour and a general intolerance of disruptive drinking. As mentioned previously, this will only be possible as part of a comprehensive approach. In this regard, the Committee has made recommendations which will create greater accountability and responsibility for both licensees and consumers as well as providing an avenue to partially fund the significant education exercise needed to address the cultural change required if we are to achieve an improved drinking culture.

As a result of the 2005 review of the Act and the adoption by the government of the majority of the recommendations made in the Freemantle Report, significant amendments were made to the Act in 2006 and 2007. These include:-

- The establishment of the Liquor Commission and the changed role of the Director of Liquor Licensing which resulted in a less adversarial approach;
- The introduction of the small bar licence which has had a positive impact on the drinking culture in Western Australia;
- The move to a public interest test rather than a public need test for a licence and the subsequent adoption of public interest assessments;
- Upgraded training requirements for licensees, approved managers and staff in the management of licensed premises and the responsible service of alcohol;
- Provisions to enable liquor restrictions to be imposed on a remote community;
- The introduction of Sunday trading for metropolitan liquor stores;
- The ability for restaurants to sell liquor without a meal in the whole licensed premises by way of an extended trading permit;
- The ability for the licensing authority to use confidential police information to determine applications; and
- Provisions requiring licensees to provide free drinking water at all times.

The Committee has sought to preserve and enhance these positive measures introduced as part of the last major review, while removing some anomalies.

While the administrative changes of the last review have been largely positive the Committee acknowledges there is room for improvement including removing or applying a light handed level of administrative oversight where it is demonstrated through performance that risk to the community is relatively low.

There is a clear desire for greater transparency in process in the operations of the Liquor Commission and the licensing authority.

The Committee also notes with approval a number of the recommendations in this report are along similar lines to those made in the Alcohol Action Plan published by the Australian National Council on Drugs (Refer Appendix 3). The Alcohol Action Plan makes the following recommendations:-

1. *Increase informed public engagement with the harms associated with alcohol;*
2. *Obtain data on alcohol consumption and harms essential to informing effective responses that have currency and are sensitive to change;*
3. *Support local-level interventions in alcohol-related harms;*
4. *Recognise the critical role of regulating the availability of alcohol in reducing alcohol-related harms;*
5. *Regulate alcohol advertising, promotions and sponsorship;*
6. *Enhance treatment responses for the whole population and for specific high-risk groups;*
7. *Address alcohol-related problems among older Australians; and*
8. *Address alcohol consumption and harms among young people.*

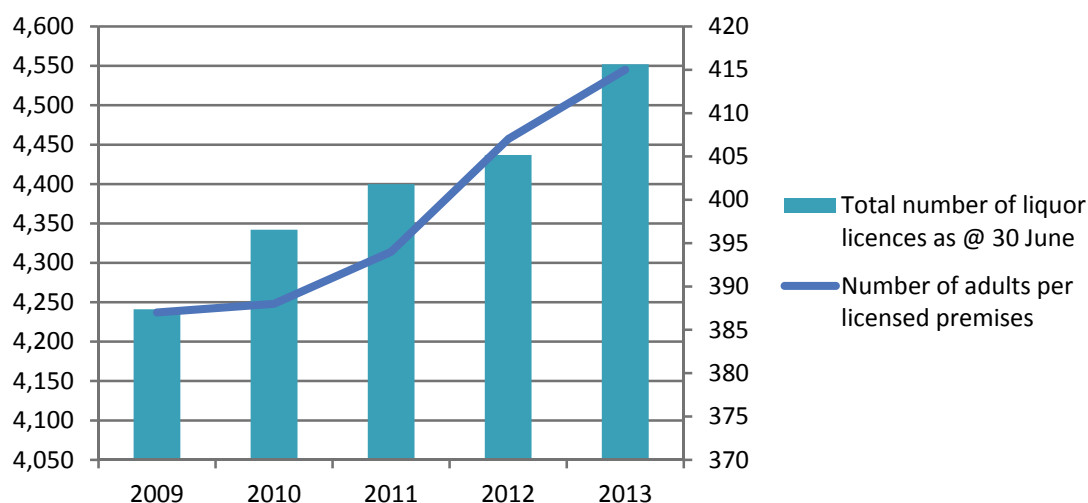
### **Structure of report**

Unless indicated by quotation marks, the submissions have been summarised and referenced in the relevant section. It should be noted the Committee has not expressed a view on the submissions where they have been summarised and the submitters views have been referenced in full. The Committee's views can be found under the conclusions of each section only.

## 1. Alcohol and the Community

There are currently over four and a half thousand licensed premises in Western Australia and as can be seen from the **Figure 1** below, there has been a steady increase in the number of licences over the last 5 years. The Committee notes however the proportion of licensed premises to adults over the period has declined. A breakdown of the licence types is provided at **Figure 2**.

**Figure 1: Total number of liquor licences and number of adults per licensed premises<sup>2</sup>**



**Figure 2: Licence types<sup>3</sup>**

Licence Types	2008/09	2009/10	2010/11	2011/12	2012/13
Hotel	288	286	282	273	275
Hotel Restricted	44	47	50	51	52
Tavern	347	358	374	373	389
Tavern Restricted	0	0	0	8	16
Small Bar	30	44	56	66	78
Liquor Store	506	523	530	536	547
Club	423	423	424	418	419
Club Restricted	534	544	545	550	560
Restaurant	734	759	779	782	824
Nightclub	47	45	45	43	44
Special Facility	529	549	557	577	588
Casino Liquor	1	1	1	1	1
Producer	579	575	574	567	557
Wholesaler	179	188	183	192	202
<b>Total</b>	<b>4,241</b>	<b>4,342</b>	<b>4,400</b>	<b>4,437</b>	<b>4,552</b>
<b>WA Population 18+<sup>4</sup></b>	<b>1,642,888</b>	<b>1,650,075</b>	<b>1,735,112</b>	<b>1,810,165</b>	<b>1,888,464*</b>
<b>Number of adults per licensed premises</b>	<b>387</b>	<b>380</b>	<b>394</b>	<b>408</b>	<b>415*</b>

\* estimated figure

2 Department of Racing, Gaming and Liquor 2012/13 Annual Report

3 Department of Racing, Gaming and Liquor 2012/13 Annual Report

4 Australian Bureau of Statistics

There is considerable community concern about the impacts of alcohol in our community, and particularly about alcohol use by young people. A survey commissioned by the *McCusker Centre for Action on Alcohol and Youth* in November 2012 found 98% of the adults surveyed were concerned about alcohol-related violence in Western Australia and 94% were concerned about alcohol use among young people in Western Australia.<sup>5</sup>

The rates of alcohol-related Emergency Department presentations have increased significantly in the last five years and the number of alcohol-related hospitalisations has increased by over a third for residents in the Metropolitan area.<sup>6</sup>

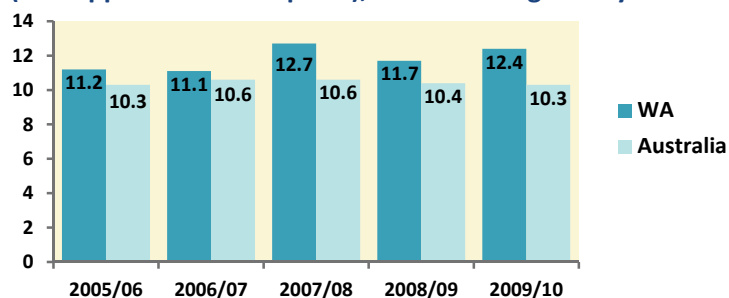
The impact of harmful alcohol use extends beyond the individual drinker themselves and beyond responding health and law enforcement services. It impacts on Local Government, child protection, education, corrective services, mental health, housing, families and carers.

While attention is often given to the acute and immediate harms of alcohol consumption, such as violence and injury which commonly result from drunkenness, there is robust scientific evidence which clearly shows the long term impact across the community of drinking above recommended drinking guidelines is just as damaging.

The *WA Drug and Alcohol Office* submit one in four Western Australians are regularly drinking more than the recommended limits to stay at low risk for harm and ill-health and that strategies for the whole of the community are necessary to reduce the social and economic cost of harmful alcohol use. Further, while only a small proportion of the population experience severe alcohol dependence and related levels of harm, a significant proportion of the population at least occasionally drink in a manner and context that put themselves and others at risk of harm.<sup>7</sup>

As indicated in **Figure 3** below, at 12.4 litres WA's per capita alcohol consumption exceeds the national average of 10.3 litres and is indicative of a strong drinking culture that features determined drunkenness or drinking to get drunk. This drinking culture and intoxication is associated with anti-social behaviour and violence and is a matter of concern within the community.

**Figure 3: Estimated per capita consumption for Western Australia<sup>8</sup> (ESP Method<sup>9</sup>) and Australia<sup>10</sup> (ABS apparent consumption), individuals aged 15 years and over.**



5 Provided by the Office of Road Safety, February 2013 Independent market research commissioned by the McCusker Centre for Action on Alcohol and Youth, November 2012. Available from: [www.mcaay.org.au](http://www.mcaay.org.au).

6 Provided by Epidemiology Branch, Department of Health, 6 March 2013

7 Babor, T., Caetano, R., Casswell, S., Edwards, G., Giesbrecht, N., Graham K., Grube, J., Gruenewald, P., Hill, L., Holder, H., Homel, R., Osterberg, E., Rehm, J., Room, R., Rossow, I 2003, *Alcohol, no ordinary commodity, research and public policy*. Oxford University Press, New York.

8 Drug and Alcohol Office (Unpublished data)

9 For WA, per capita consumption (PCC) is litres of absolute (pure) alcohol consumed, divided by the total population aged 15 years and over. Wholesale alcohol sales data is used to derive litres of absolute alcohol which is then divided by the Estimated Service Population (ESP). The ESP is based on an Australian Bureau of Statistic measure of Australian population called the Estimated Residential Population (ERP) and accounts for absent residents, Australian visitors and international tourists. The ERP is based on Census data and adjusted for population change since the most recent Census year, net overseas migration and estimated interstate movements.

10 Australian Bureau of Statistics (2012). *Apparent Consumption of Alcohol, Australia, 2010-11*

## Changing the drinking culture

Drinking culture refers to attitudes, beliefs and patterns of behaviour with regard to alcohol that are widespread in the population. It is not only indicated by the overall level of alcohol consumption but also changes in frequency and measures of harm.

The *WA Drug and Alcohol Office* submits managing and reducing the harms generated by alcohol occurs in the context of a complex society with a range of competing demands. While individuals need to be educated and encouraged to consume alcohol responsibly, evidence shows systemic change is necessary to minimise harms. This includes consideration of how we make alcohol available in our community as well as creating environments that make it easier for individuals to make the right choices.<sup>11</sup>

The *McCusker Centre for Action on Alcohol and Youth* submits the environment in which individuals function, the prevailing drinking culture and the way alcohol is made available all need to support low risk alcohol use. In this regard, saturating the environment with pro-drinking messages and providing easy access to large quantities of low cost alcohol contributes to a culture of drinking to get drunk and it is unreasonable to expect individuals to shoulder all responsibility for the resulting drinking patterns and harms.

The public health and law enforcement burdens caused by alcohol are far too great to leave it to individuals alone being responsible to moderate behaviour. Further, while there are important roles for health organisations, the community, parents and individuals, these do not detract from the role of government in regulating how alcohol is sold and marketed and educating the public about appropriate drinking guidelines and alcohol-related harms.

The *Brewers Association of Australia & New Zealand* submits targeted intervention, including a combination of education, strong enforcement of existing laws and laws to reinforce the social norm of responsible and moderate consumption is far more effective in resolving alcohol misuse without impacting on the majority that consume alcohol in moderation.

---

11 Drug and Alcohol Office (2010) Inquiry into the adequacy and appropriateness of prevention and treatment services for alcohol and illicit drug problems in Western Australia: Alcohol Paper. Page 26

## Community Education

One of the main objectives of the recommendations made throughout this report is to positively influence the drinking culture in Western Australia. While there is no single strategy to achieve culture change, the Committee considers an ongoing Community Education campaign is an important aspect of driving significant change in the drinking culture of Western Australia.

The success of the long running QUIT smoking campaign, particularly with young people, is a good indication public education campaigns are effective in changing people's behaviour. Another example is the effect campaigns on recycling have had on the community in general.

### **Submissions**

The *WA Drug and Alcohol Office* submits education and persuasion strategies are important to bring the community along in terms of understanding issues and creating support for other strategies that are effective in achieving behaviour change. Education and persuasion strategies fall into the traditional 'demand reduction' category.

A number of other submissions recommend education campaigns. In particular:-

The *Committee for Perth* submits curbing excessive drinking in Western Australia will require a fundamental cultural shift and will require a comprehensive funded education program and marketing campaign similar to the anti-smoking campaign.

The *City of Perth* submits community education and collaborations between government, industry and the community are essential to foster a responsible community attitude towards the consumption of alcohol.

The *University of Western Australia* submits the Western Australian Government should fund alcohol research, education and harm reduction programs targeted at young people under the age of 25 years.

The *Esperance Local Drug Action Group* submits warning signs should be displayed at every point of sale and on labels on every alcoholic bottle and on brown paper bags regarding the consequences of Foetal Alcohol Syndrome Disorder (FASD) and the government should educate towards a moderate drinking culture, targeting sporting clubs and drink drivers.

The *Distilled Spirits Industry Council of Australia* submits an overly-simplistic policy focus solely on alcohol availability will not give the results the community is looking for in terms of reduced violence. Areas requiring particular attention are a state-wide program focused on culture change aimed at reducing excessive and irresponsible drinking; a focus on server responsibility programs and the drinking environment; and enforcement of the existing rules in relation to public intoxication and alcohol consumption by minors, with an emphasis on providing appropriate resources for police and licensing authorities.

### **Conclusion**

The Committee considers education campaigns targeting cultural change are necessary if the harm minimisation objects of the Act are to be achieved.



As discussed in **Section 6. Licences – Licence Fees**, sufficient funds need to be made available to support such campaigns. In this regard, Recommendation 51 sets out a proposal to adequately fund Community Education campaigns.

As will be discussed throughout this report, there are several areas which the Committee considers should be addressed by Community Education campaigns. These include:-

- Harm Minimisation – delaying the uptake of alcohol by young people, increase awareness of the risks associated with teenage drinking, and unsupervised teenage drinking, safe drinking guidelines, identifying drunk patrons in licensed premises, preventing and reducing alcohol-related harm;
- Personal responsibility and accountability – increased penalty for refusing to leave a licensed premises [S115(5)(c)], offence provisions for obtaining liquor for a drunk person;<sup>12</sup>
- Secondary Supply – information for parents and young people regarding new offence provisions;
- Reinforcing the importance of parental responsibility as key drivers of young peoples’ attitudes and behaviour in relation to alcohol;
- A review of school curricular should be undertaken to ensure best practice with regard to alcohol education and an emphasis on culture, values and good citizenship; and
- Explaining the legislation and providing practical information and skills to assist compliance with the legislation.

The Committee considers it is vital the government assess the effectiveness of Community Education campaigns to ensure they are achieving the desired outcomes.

The campaigns should be sustained and targeted and must be about more than just providing information. They should seek to challenge behaviours and bring about a change in the way alcohol is consumed.

It will also be important for WA Police to be aware of and adequately trained in the new provisions which have been recommend in this report, particularly in relation to secondary supply and controlled purchase operations.

Finally, while juveniles are a high profile target demographic for change through education, any education campaigns which are undertaken should also include material focussed on the responsibility of adults as role models.

#### **Recommendation 1**

***The Minister implements ongoing extensive education campaigns targeting cultural change.***

---

<sup>12</sup> Refer Recommendations 87 and 88

## Community Engagement

The provisions of section 67 of the Act necessitates that an application must be advertised if required by the Director.

Unless exceptional circumstances apply, applications for a new licence are required to be advertised on the site of the premises for 14 days and the applicant is to undertake a letter drop to residents and businesses within a 200 metre radius of the proposed premises and serve notice of the application and intended manner of trade on all relevant organisations in the specified locality of the proposed premises. These include schools and educational institutions; hospitals; hospices; aged care facilities; drug and alcohol treatment centres; short term accommodation or refuges for young people; child care centres; churches; any local government authority; local Police stations.

In addition to the provisions above, applications for a hotel, tavern, small bar, restaurant, producer liquor store, nightclub and some special facility licences are required to be advertised on the site of the premises for 28 days as well as being advertised in *The West Australian* newspaper.

### **Submissions**

*WA Police* submit the public interest test should be amended to require the liquor licence applicant to provide information proving the need for a licensed premise within a locality and the benefits to the local community and further, the applicant provide evidence of local community consultation. In this regard, *WA Police* request section 38(4) of the Act be amended to insert 'the requirement for the licensed premises in the locality' as this would require an applicant to consult with the community in the specific locality of the proposed licensed premises and incorporate community feedback in their submission demonstrating the public interest of an application.

The *McCusker Centre for Action on Alcohol and Youth* submits the Act and the way it is administered does not provide for meaningful community access and participation and current liquor licensing processes are not easily accessible to community members wanting to communicate their concerns about a liquor licence application. In addition, regard for community engagement is largely absent from current liquor licensing processes in WA.

It further submits, liquor licensing processes are not well understood by community members and there appears to be little support provided to community objectors by the licensing authority. This makes it difficult for ordinary members of the public to effectively engage in the process. Instead there should be a clear and simplified process through which members of the public can participate and make their views known.

To ensure community interests are appropriately represented, the factors preventing community access and participation in liquor licensing processes must be comprehensively addressed, according to the *McCusker Centre for Action on Alcohol and Youth*. Strong community participation, having regard for vulnerable members of the community and those with limited resources, should be a feature of the operation of the Act.

The *WA Drug and Alcohol Office* submit the problems that can result from alcohol use have a direct and indirect impact on much of the community and it is important the liquor licensing system supports better community access to its processes than is currently the case.

It is common practice for licence applicants to be represented by lawyers and while section 5(2)(e) of the Act states the system should be flexible with as little formality or technicality as possible, it remains legalistic and on occasion, adversarial and this makes community participation in liquor licensing matters difficult. Further the *WA Drug and Alcohol Office* submit, having a legalistic system is costly and can act as a barrier to the involvement of community members, while being potentially hostile and inequitable for community members who typically have not had legal representation.

It considers the Act should allow community involvement through a process that is open, accessible and affordable. Community members report they are often unaware of liquor licensing matters occurring in their area or lack the knowledge, skills or resources to become involved. Increasing community access does not encourage vexatious activity, but rather supports inclusion of those with genuine concerns, or relevant information of use to the decision maker.

The *Cancer Council Western Australia* submits the Act needs to strike a better balance between encouraging community participation and discouraging frivolous and vexatious complaints. A much simpler, less onerous process for members of the public to object to applications should be outlined in section 73 of the Act and objectors should only be required to deal directly with the licensing authority. The requirements for substantiation of an objection should be reduced which would allow the licensing authority to consider all objections from the community and allow community members to remain anonymous when the applicant is notified of the objection.

There were a number of other submissions which also suggest the Act should be amended to address the factors affecting community accessibility in relation to licence applications to enable greater community participation in the liquor licensing objection process.

### **Conclusion**

From the submissions lodged, it is clear there is a definite call for greater community engagement in the licensing process.

The Committee considers it is important the community has an opportunity to express their concerns regarding the potential impact of a proposed licensed premises and acknowledges the Act should allow efficient opportunities for residents to engage in the licensing process.

In New South Wales the licensing authority is required to consider the impact the granting of certain applications will have on the local community. This is achieved by requiring potential applicants to undertake consultation with the local community before making an application and submit the outcomes of this process in a Community Impact Statement. There are two categories of Community Impact Statements - Category A and Category B with the difference being in the stakeholders who must be consulted.

Applicants are required to lodge a Community Impact Statement when an application is made and the licensing authority cannot approve an application unless it is satisfied the overall social impact will not be detrimental to the well-being of the local or broader community.

The Committee considers this process would be beneficial for both the applicant and the community as it provides potential applicants with the opportunity to engage with the community early in the process, possibly dispel any concerns they may have, and have the opportunity to either modify their application if they wish to do so or respond to the validity of the community concerns prior to lodging their application. Importantly it gives the community a voice.

The intentions behind the requirement for the Community Impact Statement is to front end load the consultation process so delays do not occur once the application has been submitted. While further work will be required at the earlier stages of the development of proposals, it is anticipated efficiencies will be gained once the application has been lodged.

Another benefit of the Community Impact Statement is the ability for stakeholders to support an application and provide comments on the positive impacts the grant of the application will have on the local community. This concept is discussed further below under **Objections** on pages 20 to 22.

Accordingly, the Committee recommends the Act be amended to require the preparation of a Community Impact Statement for high risk (Category A) licences.<sup>13</sup> It is anticipated the process would be as set out below in **Figure 4**.

*Recommendation 2*

*Amend section 67 of the Act to introduce a requirement for applicants for high risk (Category A) licences to lodge a Community Impact Statement with an application.*

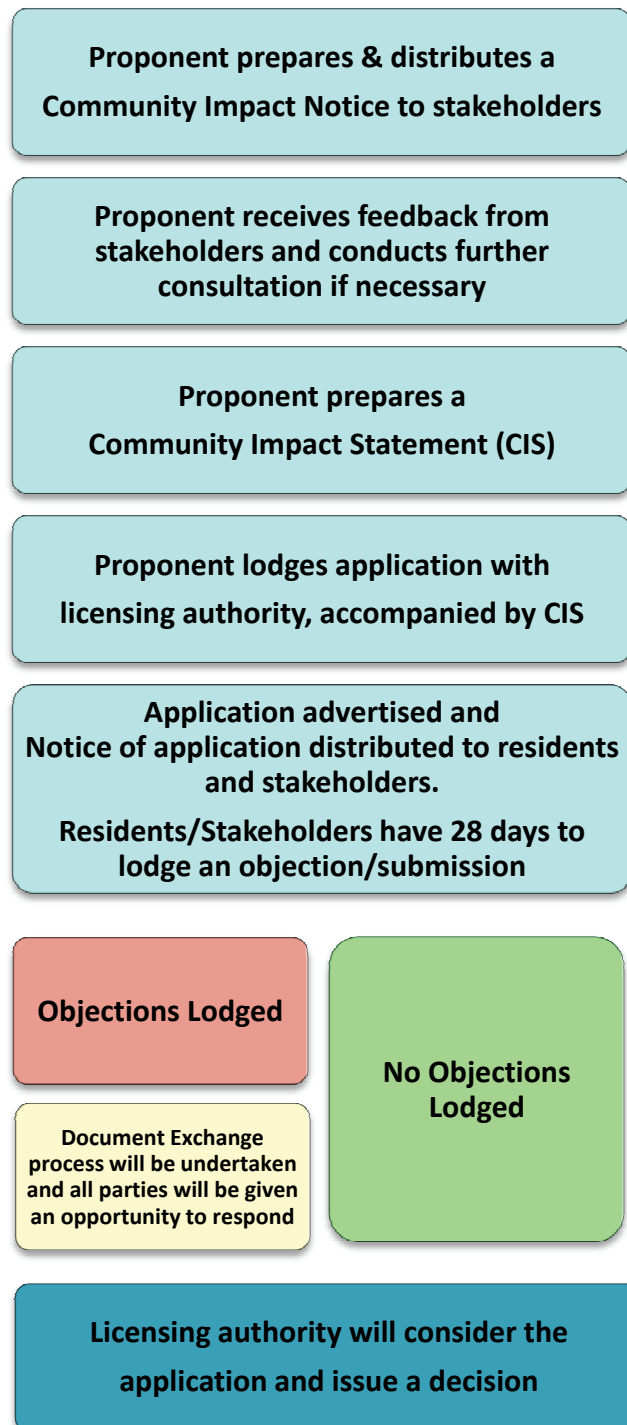
*Recommendation 3*

*Amend section 38(4) of the Act to include the consideration of the outcome of community consultation conducted by way of a Community Impact Statement.*

---

<sup>13</sup> Refer Recommendation 45

Figure 4: Community Impact Statement Process



## Objections

Section 73 of the Act provides the right to object to a liquor licence application where that application has been required to be advertised.

Section 74 of the Act provides that no objection can be made except on one or more of the following grounds:-

- the grant of the application would not be in the public interest; or
- the grant of the application would cause undue harm or ill-health to people, or any group of people, due to the use of liquor; or
- if the application were granted-
  - undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity, or to persons in or travelling to or from an existing or proposed place of public worship, hospital or school, would be likely to occur; or
  - the amenity, quiet or good order of the locality in which the premises or proposed premises are, or are to be, situated would in some other manner be lessened; or
- the grant of the application would otherwise be contrary to this Act.

Where an objection is lodged on the ground the grant of the application would not be in the public interest, the Notice of Objection must be accompanied by submissions setting out the reasons why the objector considers the objection can be made out.

Section 74(4) of the Act allows the Director to strike-out an objection if the Director determines:-

- an objection is frivolous or vexatious; repetitious of other objections; or relates to matters frequently before the licensing authority of which the licensing authority may be presumed to be aware; or
- any fact or ground is not relevant or cannot be verified; or
- for any reason the objection should not be heard.

## Submissions

The *WA Drug and Alcohol Office* submit the term 'undue' should be removed from the general grounds of objection in section 74(1)(b) of the Act as this would lower the evidentiary threshold by removing the onus of proof on objectors, so the licensing authority is able to weigh and balance submissions regarding whether the evidence or material presented is determinative or not.

It further submits the onus of proof evidentiary requirements on community objectors are stringent and very difficult to achieve, often resulting in objections being struck out. In this regard, the evidentiary threshold should be lowered for objections lodged by members of the community.

*Environmental Health Australia (WA) Incorporated* submits the period during which objections to applications may be lodged is too short for many Local Governments to seek effective input from the council or the community and the objection period should be a minimum of two months.

*Local Drug Action Groups Inc* submits all community objections should be recorded and the objection process should be streamlined and made easier for the community to access.

The *Liquor Stores Association of WA Inc* submits the burden of establishing the validity of the objection lies on the objector and is a time consuming activity with no direction given as to what evidence is to consist of. Additionally, while, there is a training regime in place at the licensing authority to assist applicants in the procedure and the process for obtaining licences, there is no training and or assistance in place to direct, support or assist any person to establish the validity of an objection.

*Liquorland (Australia) Pty Ltd* submits other licensees should be specifically excluded from being able to lodge objections when it is quite clear they have a competitive interest in the refusal of an application for a new liquor licence.

The *Business Improvement Group of Northbridge* submits the Act should be amended to require a decision maker to determine whether an objection is valid prior to the broader decision being made. If it is determined under review that the objection is later allowed, the applicant should then be permitted to introduce further rebuttal evidence. Further, the Act should compel objectors and interveners to attend hearings, failing which the validity of the objection or intervention fails.

*Herbert Smith Freehills* submits there is no consequence for an objector who does not serve their objection on the applicant.

### **Conclusion**

The Committee recognises there is a need for greater community engagement in the application and objection process, with the current system and processes being somewhat difficult to navigate. Recommendations 4 and 5 address this in part.

In addition, the Committee recommends there be two ways in which affected parties can advise the licensing authority of their views directly, that is by way of a submission or an objection.

- A **submission**, which can be either in favour of or opposed to an application, written in the parties own words and not required to be 'made out'. Where there is a Community Impact Statement process a submission must be made as part of that process unless the Director otherwise determines. Where there is no Community Impact Statement process a submission may be made at any time an objection may be made.
- An **objection** will be required to be 'made out' as it is under the current requirements and objectors will be constrained by the existing grounds of objection set out in section 74 of the Act.

The purpose of allowing submissions to be lodged is to enable the licensing authority to get an indication of the view of the affected community without requiring them to be bound by the statutory requirements which currently apply to objections.

It is also expected the introduction of a requirement for applicants for high risk licences to undertake community consultation and lodge a Community Impact Statement (Refer to Recommendation 2) will reduce the incidence of objections being lodged as the applicant will be afforded the opportunity to address many community concerns as part of that process. Submissions should be made as part of that process.

The Committee also recommends the *Notice of Objection* form used by the licensing authority be amended to make it more user friendly and easier for objectors to identify or nominate their ground of objection. In particular, the prescribed grounds of objection should be listed so objectors can nominate the ground of objection.

With regard to serving objections on an applicant, the Committee considers this should be done by the licensing authority and recommends section 73(4a) of the Act be amended to make the requirement to serve an objection/submission on an applicant a responsibility of the Director and to be done within 14 days of the last objection date.

The Committee also recommends section 74(4) of the Act be amended so it is a requirement for the Director to notify the applicant as well as the objector if an objection is struck-out.

Finally, while it does not require a legislative amendment, the Committee recommends the licensing authority should implement an ongoing series of education sessions to assist community members in the procedure and the process for lodging and verifying an objection.

*Recommendation 4*

*Amend section 73 and 74 of the Act to enable stakeholders to lodge either a submission or an objection. A submission can be in support of, or opposed, to an application and will not be required to be 'made out'.*

*Recommendation 5*

*The licensing authority amend the Notice of Objection form to make it more user friendly. In particular a list of the grounds of objection should be included to make it easier for objectors to identify or nominate their ground of objection.*

*Recommendation 6*

*Amend section 74(4) of the Act to require the Director to serve all objections/submissions within 14 days of the last objection date.*

*Recommendation 7*

*Amend section 74(4) of the Act to require the Director to notify an applicant if an objection is struck out.*

*Recommendation 8*

*The licensing authority should implement an ongoing series of education sessions to assist community members in the procedure and the process for lodging and verifying an objection.*



## Advertising Applications

Section 67 of the Act states an application must, if the Director requires, be advertised in the manner specified by the Director.

The advertising requirements for club restricted, wholesalers and some special facility licences are:-

- advertise on the site of the premises for a 14 day period;
- a letter drop to residents and businesses within a 200 metre radius of the proposed premises; and
- service of a notice of the application and intended manner of trade on all: schools and educational institutions; hospitals; hospices; aged care facilities; any drug and alcohol treatment centres; any short term accommodation or refuges for young people; child care centres; churches; any local government authority; any local Police stations, which may be situated in the specified locality of the proposed premises

The advertising requirements for hotels, taverns, small bars, nightclubs, liquor stores, restaurants, clubs, producers and some special facility licences are:-

- advertise the application in *The West Australian* newspaper;
- advertise on the site of the premises for a 28 day period;
- a letter drop to residents and businesses within a 200 metre radius of the proposed premises; and
- service of a notice of the application and intended manner of trade on all: schools and educational institutions; hospitals; hospices; aged care facilities; any drug and alcohol treatment centres; any short term accommodation or refuges for young people; child care centres; churches; any local government authority; any local Police stations, which may be situated in the specified locality of the proposed premises

## Submissions

Submissions from a number of *Local Drug Action Groups* suggest notices advertising applications should be published in local newspapers in addition to *The West Australian* and suggest the use of clearer signage at the proposed site. Further, they have requested the objection period be longer than 28 days.

The *City of Cockburn* submits where a public interest assessment submission is required to be lodged by an applicant, the objection period should be two months to allow improved assessment and consultation by Local Government. It is also suggested public interest assessment submissions be required to be lodged with the local government town planning application.

*Mike and Irene Bell* submit it is not acceptable to trust a licence applicant to notify his neighbour of the details of the application when they may have reason to withhold some information and the Director should be required to give notification of applications directly to the adjoining neighbours and others.

The *Marninwarntikura Women's Resource Centre* submits the minimum advertising requirements should be prescribed in the Act with discretion for the Director to impose additional advertising requirements.

The *Australian Hotels Association (WA)* submits the requirement to advertise applications for extended trading permits or one off extended trading permits places additional administrative burdens and red tape on licensed hospitality businesses. As established licensed premises have already undertaken a substantial public consultation process as a part of the approvals process for the license, the requirement for additional public consultation for one-off ETPs is considered redundant and therefore unnecessary. Once an extended trading permit is established there should be no further requirements for the advertising of minor conditions or changes that can be implemented through the renewal of an extended trading permit or one-off extended trading permit.

### **Conclusion**

The Committee considers it appropriate to require new licence applications to be advertised in the relevant Local/Community newspaper and recommends the Director make this a requirement as well as reviewing the onsite advertising requirements to ensure they are adequate and clearly visible to passers-by.

The Committee did not consider it necessary to recommend any other changes to the way applications are advertised.

### **Recommendation 9**

*The Act be amended to require that new licence applications must be advertised in the relevant local/community newspaper.*

### **Recommendation 10**

*The licensing authority review the onsite advertising requirements to ensure they are adequate and clearly visible to passers-by.*

## Advertising and Promotion

All advertising for alcohol beverages in Australia is required to comply with both the Australian Association of National Advertisers (AANA) Advertiser Code of Ethics, which applies to all forms of advertising, and the ABAC. The ABAC complements the AANA Advertiser Code of Ethics and provides more specific guidance in relation to the advertising of alcohol beverages.

The AANA Advertiser Code of Ethics is administered by the Advertising Standards Bureau. The Bureau also administers the Advertising Standards Board (ASB), an independent panel which considers complaints about advertising involving issues of discrimination, vilification, violence, sex, sexuality, nudity, alarm and distress to children, language and health and safety.

The ABAC is the self-regulating advertising scheme of the Australian alcohol beverages industry and was first introduced in 1998 and subsequently updated in 2004 to take into account changes including the growing use of internet advertising and promotional events for alcohol beverages.

The ABAC scheme was developed in agreement with all major Australian alcohol beverages manufacturing and marketing industry associations and key advertising, media and consumer bodies.

Underpinning the ABAC is the Alcohol Advertising Pre-vetting System (AAPS) which is also managed by the Australian Associated Brewers (AAB), the Distilled Spirits Industry Council of Australia (DSICA), and the Winemakers Federation of Australia (WFA) for their members.

The primary function of the AAPS is to reinforce the effectiveness of the ABAC Code, by utilising independent adjudicators to evaluate advertisements for alcohol beverages against the Code at the concept or story-board stage.

Under the ABAC scheme advertisements for alcohol beverages must present a mature, balanced and responsible approach to the consumption of alcohol beverages and:-

- must not encourage under-age drinking, excessive consumption of alcohol, misuse or abuse of alcohol or offensive behaviour;
- must not have a strong or evident appeal to children or adolescents;
- must not suggest that the consumption or presence of alcohol beverages may create or contribute to a significant change in mood or environment;
- must not depict any direct association between the consumption of alcohol beverages, other than low alcohol beverages, and the operation of a motor vehicle, boat or aircraft or the engagement in any sport (including swimming and water sports) or potentially hazardous activity;
- must not challenge or dare people to drink or sample a particular alcohol beverage, other than low alcohol beverages, and must not contain any inducement to prefer an alcohol beverage because of its higher alcohol content;
- must not encourage consumption that is in excess of, or inconsistent with the Australian Alcohol Guidelines issued by the NHMRC; and
- must comply with the Advertiser Code of Ethics adopted by the Australian Association of National Advertisers.

In relation to licensed premises, the licensing authority may impose conditions on a licence if it considers it to be in the public interest to do so in order to prohibit promotional activity where drinks are offered free or at reduced prices, or limit the circumstances in which this may be done. In addition, section 65B of the Act states regulations may prescribe conditions prohibiting promotional activity in which liquor is offered free or at reduced prices or limit the circumstances in which promotional activity may take place.

### Submissions

WA Police submit evidence demonstrating exposure of young people to alcohol marketing speeds up the onset of drinking and increases the amount consumed by those already drinking<sup>14</sup>.

Recent research into point-of-sale alcohol promotions<sup>15</sup> identified:-

- Point-of-sale (POS) promotions were ubiquitous with an average of 36 promotions per store;
- The majority of young people surveyed had participated in POS promotions;
- Price promotions were the most popular; and
- Those who participated in POS promotions spent more than those who didn't and most consumed all the alcohol they purchased.

The researchers concluded 'point-of-sale promotions fall outside the scope of the Alcoholic Beverages Advertising Code (ABAC) and therefore there was a clear need for enforceable guidelines on point-of-sale promotions'.

In closing, WA Police submit the Act should include provisions to protect children and young people from alcohol promotion.

The *Commissioner for Children and Young People WA* submits the Committee should consider amendments to prohibit alcohol advertising outside and inside liquor outlets, through printed material distributed in letterboxes, through outdoor advertisements, inside sporting venues and through newspapers and other publications printed and distributed in Western Australia.

The *Injury Control Council of Western Australia* submits exposure to alcohol advertising influences a young person's beliefs around what is normal or acceptable social behaviour and contributes to the normalisation of alcohol use. Reducing forms of alcohol advertising exposure is a necessary component to a comprehensive strategy to prevent harm from alcohol.

In addition, point-of-sale advertising, such as gift-with-purchase incentives, competitions, bulk purchase incentives and price promotions are popular marketing tools for alcohol brands that have been associated with increased alcohol consumption and contribute to the normalisation of alcohol<sup>16,17</sup>

The *Injury Control Council of Western Australia* strongly advocates the introduction of provisions in the Act to protect children and young people from exposure to all forms of alcohol advertising, marketing and promotion, including in sports sponsorship, as research demonstrates exposure to alcohol advertising influences young people's early initiation to alcohol use and or increased alcohol consumption.

The *McCusker Centre for Action on Alcohol and Youth* submits exposure to alcohol advertising influences young people's beliefs and attitudes about drinking and increases the likelihood adolescents will start to use alcohol and will drink more if they are already using alcohol.<sup>18</sup>

---

14 Babor, T.F., Caetano, R., Casswell, S., Edwards, G., et al. (2010). *Alcohol: No Ordinary Commodity - Research and Public Policy*. 2nd Edition. Oxford and London: Oxford University Press.

15 Jones S et al (2012). An investigation of the nature and effects of point-of-sale promotions for alcohol beverages.

16 Aldred, B. (2004). *Alcohol Advertising: How big a demon?*

17 *Drugs in Society*; Howard, K., Flora, J., Schleicher, N., & Gonzalez, E. (2004)

18 Anderson P, de Bruijn A, Angus K, Gordon R, Hastings G. Impact of Alcohol Advertising and Media Exposure on Adolescent Alcohol Use: A Systematic Review of Longitudinal Studies. *Alcohol & Alcoholism*. 2009; 44(3):229–243

Alcohol promotion contributes to the normalisation of alcohol use<sup>19</sup> and reinforces the harmful drinking culture that exists in Australia.

It further submits:-

- Alcohol is one of the most heavily marketed products in the world<sup>20</sup> and young people are exposed to alcohol promotion in a wide range of forms including television, radio, online, sponsorship, print, outdoor and product placement.<sup>21</sup> In addition to advertising by alcohol companies, recent years have seen an increase in advertising by retail outlets, often with promotions that may be especially attractive to young people;
- Alcohol advertising in Australia is subject to an ineffective system of self-regulation which has consistently failed to ensure alcohol promotion is socially responsible and that exposure to young people is minimised.<sup>22,23,24,25</sup> Legislated controls on all forms of alcohol advertising and promotion are urgently required with a focus on protecting children and young people from exposure to all forms of alcohol advertising, marketing, sponsorship and promotion;
- There is strong community support for independent regulation of alcohol advertising with an independent survey of 1,450 Western Australian adults conducted by the Painted Dog Research company in November 2012 (commissioned by the *McCusker Centre for Action on Alcohol and Youth*) showing 71% of Western Australians support legal controls to reduce young people's exposure to alcohol advertising (with only 6% opposed)<sup>26</sup>; and
- There are a range of options available to prevent young people's exposure to alcohol promotion and potential approaches to preventing exposure to alcohol advertising and promotions including:-
  - Curbing the extent and content of alcohol advertising and promotion in Western Australia
  - Restrictions on alcohol advertising and promotion as conditions of liquor licences. For example, provisions restricting advertising on the outside of licensed premises within 500m of schools and venues frequented by juveniles.
  - The ability to declare alcohol promotion-free zones. For example, around schools and venues frequented by juveniles.
  - Phasing out alcohol promotion on government property (eg. public transport such as buses and government land where alcohol is frequently advertised and young people are exposed).
  - Restrictions on online alcohol promotions, including the use of social media and digital technologies.

In summary, the *McCusker Centre for Action on Alcohol and Youth* submits alcohol advertising and promotion should be identified as an area of particular concern and supports the introduction of measures to prevent young people's exposure to all forms of alcohol promotion, reduce the volume of alcohol promotion in the community and ensure alcohol promotions are socially responsible.

---

19 Australian Medical Association. Alcohol Marketing and Young People: Time for a new policy agenda. Canberra: Australian Medical Association; 2012

20 Jernigan D. The extent of global alcohol marketing and its impact on youth. *Contemp Drug Probl.* 2010; 37:57–89.

21 Australian Medical Association. Alcohol Marketing and Young People: Time for a new policy agenda. Canberra: Australian Medical Association; 2012

22 Australian Medical Association. Alcohol Marketing and Young People: Time for a new policy agenda. Canberra: Australian Medical Association; 2012

23 Jones S. The decline of ethics or the failure of selfregulation? The case of alcohol advertising. 2000

24 Jones S, Donovan RJ. Self-regulation of alcohol advertising: Is it working for Australia? *Journal of Public Affairs.* 2002; 2(3):153-165

25 Jones S, Hall D, Munro G. How effective is the revised regulatory code for alcohol advertising in Australia? *Drug and Alcohol Review.* 2008; 27:29-38

26 Independent market research commissioned by the *McCusker Centre for Action on Alcohol and Youth*, November 2012. Available from: [www.mcaay.org.au](http://www.mcaay.org.au)

The *Youth Affairs Council of WA* submits children and young people have long been identified as being particularly at risk of harm as a result of the misuse of alcohol<sup>27</sup> and this risk is compounded by the fact young people are particularly susceptible to the influence of alcohol advertising. It further submits:-

- In addition to well-established television advertising markets there is growing concern regarding the ubiquitous nature of alcohol advertising in social media and new digital technologies<sup>28</sup>. The unfettered access of young people to largely unregulated internet-based alcohol advertisements has opened a new front for the alcohol industry to increase its saturation of an already over-exposed market. Social media marketing has become one of the favoured approaches of alcohol companies globally to, relatively cheaply, increase their exposure to a younger market<sup>29</sup>;
- The ABAC Scheme has rules seeking to discourage any form of advertising that has 'strong or evident appeal to children or adolescents' however studies have revealed a substantial amount of alcohol advertising is communicated directly to young people. A 2007 study held 13 to 17 year olds were exposed to as much or more free-to-air advertising of four leading alcoholic beverage brands than 18 to 29 year olds<sup>30</sup>;
- A 2010 study on the extent to which advertising regulations were effective at reducing the degree to which children were exposed to advertisements about alcohol revealed the current regulatory framework was largely ineffective<sup>31</sup>. The Western Australian study held over three quarters of the children and young people participating were able to correctly associate the Bundaberg Rum Polar Bear with an alcohol product. This indicated that not merely was there a statistically large number of children being exposed to Bundaberg Rum advertising but the children had been exposed to the advertisements on enough occasions to correctly connect the advertising character with the product it was selling. Studies such as this raise serious questions about the effectiveness of the currently self-regulated or co-regulated system of alcohol advertising that operates in Australia; and
- Australia has a system of co-regulation whereby both the Federal Government and the alcohol industry play a role in regulating the advertising of alcohol on television. Most countries have elements of voluntary or mandatory self-regulation that restricts the content and times of television alcohol advertisements. The ABAC has detailed a raft of limitations restricting the content of alcohol advertising which is strengthened by the Commercial Television Industry Code of Practice that stipulates alcohol advertising must be limited to broadcasting between 12.00 midday and 3.00 pm during school terms and 8.30 pm and 5.00 am during school terms and school holidays, however an exception to this regulation is that advertisements are permitted for alcoholic beverages during the broadcast of any sporting event on weekdays or public holidays, irrespective of the time it is screened.

The *Youth Affairs Council of WA* recommends the phasing out of alcohol promotions from times and placements that have high exposure to young people aged up to 18 years. This includes, but is not limited to advertisements during sports broadcasts, alcohol sponsorship of sport and cultural events and advertisements shown during times of increased child viewing.

27 Winter VM, Donovan RJ, Fielder LJ. Exposure of children and adolescents to alcohol advertising on television in Australia. *Journal of Studies on Alcohol and Drugs*. 2008; 69(5): 676-683

28 Australian Medical Association. *Alcohol Marketing and Young People: Time for a new policy agenda*. Canberra: Australian Medical Association; 2012

29 Diageo plc. Diageo takes multi-million dollar global partnership with Facebook® to the next level [press release]. London: Diageo plc; 2011 Sep 19; Casswell S. Current status of alcohol marketing policy—an urgent challenge for global governance. *Addiction*. 2012; 107:478–485; Schultz EJ. Should Agencies Be Worried About Heineken's New Deal With Google? [Internet]. 2011 [updated 2011 Jun 30; cited 2013 Jan 11]. Available from: <http://adage.com/article/digital/agencies-worried-heineken-s-google-deal/228522/>

30 Ministerial Council on Drug Strategy (MCDS), *Australian Alcohol Beverage Advertising in Mainstream Australian Media 2005 to 2007: Expenditure and Exposure*. 2009, Department of Health and Ageing: Canberra

31 Carter O, Phan T, Donovan R. Three-quarters of Australian children recognise Bundy R. Bear: alcohol advertising restrictions are not working. *Aust NZ J Public Health [Letter]*. 2010; 34(6):635-36

*Healthway* submits there is now compelling evidence around the impact of alcohol marketing on consumption, particularly among young people.<sup>32</sup>

Alcohol marketing has been found to influence the age at which drinking commences, the volume and frequency of drinking and alcohol-related beliefs and attitudes. Further, these effects have been found to be cumulative, becoming more pronounced as the volume of advertising and promotions increases. In the face of growing evidence, *Healthway* supports the views of key health groups the self-regulation framework of alcohol marketing that has prevailed in Australia is now insufficient. In 2009, the Australian National Preventative Health Taskforce recommended a phase-out of alcohol promotions with high exposure to young people aged up to 25 years.<sup>33</sup>

The Board of *Healthway* has formally adopted the recommendations of the Australian National Preventative Health Taskforce and supports legislative changes to protect young people from exposure to all forms of alcohol marketing and promotion. This is especially pertinent to alcohol marketing through social media and sponsorship.

The *Alcohol & Other Drugs Council of Australia* submits the National Drug Strategy 2010–2015 highlights the risk to young people’s physical and psychosocial development arising from drinking alcohol in adolescence.

To effectively prevent harm from alcohol a comprehensive approach is required and the *Alcohol & Other Drugs Council of Australia* recommends the protection of children and young people from exposure to all forms of alcohol advertising, marketing and promotion, including the way alcoholic beverages are advertised and marketed, especially to young people, the hours during which advertising of alcohol products is allowed and alcohol sponsorship of events.

The *Executive Director Public Health* submits children and young people are a recognised at-risk group, with greater vulnerability to the negative influences of their environments with research now showing alcohol advertising influences the attitudes of children and young people towards alcohol and paves the way for harmful drinking to occur. Alcohol use, especially when initiated at a young age, elevates the risk of many mental health and social problems and in the general population, alcohol advertising and promotions have a strong role in influencing accepted community expectations and social norms which contribute to shaping the drinking culture. Reducing the exposure of children and young people to alcohol advertising and marketing of liquor products is an important harm and ill-health minimisation strategy

The *Executive Director Public Health* supports restrictions on the advertising and marketing of liquor products, particularly to children and young people.

The *Foundation for Alcohol Research and Education* submits consumer studies reveal exposing young people to alcohol advertising increases the likelihood of them starting to consume alcohol as well as increasing consumption in those already consuming alcohol<sup>34,35,36</sup> and the regulation of alcohol advertising and promotion is a cost-effective policy measure to reduce alcohol related harms.<sup>37,38,39,40,41</sup>

32 Dobson C. Alcohol marketing and young people: Time for a new policy agenda. Australian Medical Association Canberra. 2012

33 National Preventative Health Taskforce 2009. Australia: The healthiest country by 2020. Technical Report No 3. Preventing Alcohol-related Harm in Australia: a window of opportunity. Commonwealth of Australia. 2009

34 Anderson, P., de Bruijn, A., Angus, K., Gordon, R., & Hastings, G. (2009). ‘Impact of alcohol advertising and media exposure on adolescent alcohol use: a systematic review of longitudinal studies’. *Alcohol and Alcoholism* 44(3), pp.229–243.

35 Gordon, R., MacKintosh, A.M., & Moodie, C. (2010). ‘The impact of alcohol marketing on youth drinking behaviour: a two-stage cohort study’. *Alcohol and Alcoholism* 45(5), pp.470–480.

36 Smith, L.A., & Foxcroft, D.R. (2009). ‘The effect of alcohol advertising, marketing and portrayal on drinking behaviour in young people: systematic review of prospective cohort studies’. *BMC Public Health* 9(51).

37 Anderson, P., & Baumberg, B. (2006). *Alcohol in Europe: a public health perspective. A report for the European Commission.* London, UK: Institute of Alcohol Studies.

It further advises:-

- Most forms of advertising and promotion are self-regulated by the alcohol industry at a national level by the ABAC however, state and territories also have a role in regulating certain promotions, such as those at the point of sale, through their respective liquor control legislation;
- The use of point of sale marketing at licensed premises is common and somewhat aggressive, with Perth liquor outlets alone hosting an average of 35.9 point of sale promotions per outlet.<sup>42</sup> The prolific nature of point of sale marketing is concerning because it results in minors being regularly exposed to advertisements and promotions that depict alcohol consumption as a fun, social and inexpensive activity.<sup>43</sup> There is also consistent evidence to suggest point of sale promotions are likely to affect overall consumption of underage alcohol consumers, binge drinkers, and regular drinkers<sup>44,45</sup>; and
- While the Director's *Responsible promotion of liquor - consumption on premises and the sale of packaged liquor Industry Guideline* specifies the kinds of activities or promotions the Director may restrict or prohibit under section 64(3)(ga) and 64(3)(gb) of the Act, it is inadequate to effectively regulate liquor and liquor promotion with a view to minimising alcohol-related harms because it does not contain provisions that aim to reduce the exposure to minors of alcohol promotions on the interior and exterior of licensed premises (including both on-licence and off-licence premises).

The *Foundation for Alcohol Research and Education* submits the government should clarify the thresholds of promotional discounting, activities and behaviours that are prohibited both on and off-licence premises under the *Responsible promotion of liquor - consumption on premises and the sale of packaged liquor Industry Guideline*. In addition, the Act should include provisions regarding point of sale promotions to minimise the exposure of minors to these promotions in and around licensed premises in public-access areas and should provide a clear schedule of penalties applicable to licensees conducting promotional activities in breach of the provisions relating to the promotions of liquor.

The *Western Australian Drug and Alcohol Office* submits alcohol advertising has an impact on community attitudes and perceptions towards alcohol and its use and the exposure to alcohol advertising in most settings such as on television and Facebook, in the car on the radio, on public transport, at sporting events and near schools normalises the concept of alcohol use. It further submits:-

- Children are vulnerable to the influence of the environments in which they live and socialise and experts report that even with responsible drinking by adults, the message sent to children and young people through exposure to alcohol use and promotions in these environments is that alcohol is an important, necessary part of everyday life. This 'cultural ease' or normalisation around alcohol encourages young people to drink, drink at an earlier age and to make particular choices aligned with the general drinking culture, which is one of early uptake and excessive consumption<sup>46</sup>;

38 Collins, D.J., & Lapsley, H.M. (2008). The avoidable costs of alcohol abuse in Australia and the potential benefits of effective policies to reduce the social costs of alcohol. Canberra: Commonwealth of Australia, pp.18-22

39 Meier, P. et al. (2008). Op. cit

40 Babor, T.F., Caetano, R., Casswell, S., Edwards, G., et al. (2010). Alcohol: No Ordinary Commodity - Research and Public Policy. 2nd Edition. Oxford and London: Oxford University Press, pp.185-198

41 Saffer, H. (1991). 'Alcohol advertising bans and alcohol abuse: an international perspective'. *Journal of Health Economics* 10(1), pp.65-79

42 Jones, S.C., Barrie, L., Robinson, L., Allsop, S., & Chikritzhs, T. (2012). 'Point-of-sale alcohol promotions in the Perth and Sydney metropolitan areas'. *Drug and Alcohol Review* 31

43 Pettigrew, S., Roberts, M., Pescud, M., Chapman, K., et al. (2012). 'The Extent And Nature Of Alcohol Advertising On Australian Television'. *Drug and Alcohol Review* 31, pp.797-802

44 Meier, P., Booth, A., Stockwell, A., Sutton, A., et al. (2008). Independent Review of the Effects of Alcohol Pricing and promotion. Part A: Systematic Reviews. Sheffield: the University of Sheffield.

45 Kuo, M., Wechsler, H., Greenberg, P., & Lee, H. (2003). 'The marketing of alcohol to college students: the role of low prices and special promotions'. *American Journal of Preventive Medicine* 25(3), pp.204-211

46 Toumbourou, J. (2010). Unpublished. Extract from expert witness statement.



- The importance of preventing or reducing the acceptance of alcohol as a needed component of everyday activities is highlighted by various studies which show alcohol use, especially early initiation, elevates the risk of many harms, mental health and social problems for young people<sup>47,48,49,50</sup>;
- It has also been found young people, regardless of drinking behaviour at baseline, were more likely to drink more over time in environments with more alcohol advertising, even when controlling for alcohol sales in those environments. This suggests exposure to alcohol advertising contributes to the drinking<sup>51</sup>;
- Outdoor advertising near schools results in repetitive, daily exposure of children and young adolescents to this form of advertising and exposure to all forms of outdoor alcohol advertising has been found to significantly predict alcohol behaviours, intentions and expectancies of children regarding alcohol use. Research shows adolescents attending schools in neighbourhoods where alcohol advertisements were common, tended to want to drink more and, compared with other children, had more positive views of alcohol. This finding held true for those students who were previously non-users of alcohol, suggesting even those who have not consumed alcohol are still influenced by alcohol advertising<sup>52</sup>; and
- A 2011 survey<sup>53</sup> of West Australians shows that there is considerable community support for alcohol advertising restrictions within Western Australia. The survey found that:-
  - 86% supported banning alcohol advertising at venues frequented by children;
  - 83% supported banning alcohol advertising in paper and magazines frequently read by children
  - 80% supported banning of alcohol advertising during live sporting events in children's viewing times;
  - 67% supported banning alcohol sponsorship of sporting events; and
  - 62% supported banning alcohol advertising completely.

In summary, the *Western Australian Drug and Alcohol Office* submits while some aspects of alcohol advertising are a matter for Commonwealth consideration, there are actions that can be taken at a state level including: alcohol advertising near schools; point of sale advertising; alcohol sponsorship of sporting events; prohibition of alcohol advertising on billboards; alcohol advertising in the print media and the government should consider opportunities to legislate limits on alcohol advertising.

Submissions from industry groups and liquor manufacturers submit there is no need to further restrict the advertising and promotion of alcohol and the ABAC scheme is functioning well.

In particular, *Lion* submits an evidence based approach to policy making will lead to the implementation of measures that reduce alcohol-related harm without negatively impacting on those who consume alcohol responsibly.

---

47 Hingson R, Heeren T, Zakocs R, Winter M, & Wechsler H. (2003) Age of first intoxication, heavy drinking, driving after drinking and risk of unintentional injury among U.S. college students. *Journal of Studies on Alcohol*, 64:23-31

48 Wells, J, Horwood, L, & Fergusson, D (2004). Drinking patterns in mid-adolescence and psychosocial outcomes in late adolescence and early adulthood. *Addiction*, 99: 1529–1541

49 Hingson R, Heeren, T, & Winter, M (2006). Age at Drinking Onset and Alcohol Dependence. *Archives of Pediatric Adolescent Medicine*, 160:739-746

50 Toumbourou, J, Williams, I, White, V, Snow, P, Munro, G, & Schofield, P (2004). Prediction of alcohol-related harm from controlled drinking strategies and alcohol consumption trajectories, *Addiction*, 99(4): 498-508

51 Snyder, L, Fleming, F, Slater, M, Sun, H, & Strizhakova, Y (2006). Effects of alcohol advertising exposure on drinking among youth. *Archives of Pediatric Adolescent Medicine*, 160: 18-24.

52 Pasch, K, Komro, K, Perry, C, Hearst, M and Farbaksh, K 2007. 'Outdoor Alcohol Advertising Near School: What Does It Advertise and How It Is Related to Intentions and Use of Alcohol Among Young Adolescents?' *Journal of Studies on Alcohol and Drugs*, p. 587-596

53 Steer A & Coase P 2011, Alcohol.Think Again Post-campaign Evaluation. TNS Social Research Perth

The *Alcohol Beverages Advertising Code Management Committee* submits the ABAC Scheme was developed in agreement with all major Australian alcohol beverages' manufacturing and marketing industry associations and key advertising, media and consumer bodies and the guidelines for advertising and packaging have been negotiated with government. The majority of alcohol advertising in Australia is regulated by the Scheme.

*Liquorland (Australia) Pty Ltd* submit they do not believe any further controls should be imposed on licensees given the vast majority of advertising that occurs in the packaged liquor segment of the market relates to only product and price images.

*Free TV Australia* submits there is an extensive range of restrictions and placement rules already in place for advertising of alcohol products on Free TV television and if further alcohol advertising restrictions were imposed on free-to-air television 'regulatory bypass' would occur and advertisements would move to those platforms which are not subject to any regulation. Therefore, any alcohol advertising restrictions should apply equally across all media platforms.

The *Publishing Advertising Advisory Bureau (PAAB)* submits alcohol advertising in Australia is subject to appropriate measures through a combination of regulation, co-regulation and self-regulation which provide a number of protections for the community in general. The PAAB believes the existing framework of industry codes and legislation along with the complaints handling system is sound, robust and cost effective and the current self-regulatory system affords all parties – including advertisers, media and community – transparency, clarity, and consistency of approach and expectation.

The *Distilled Spirits Industry Council of Australia* submits the evidence base underpinning the effectiveness of the current quasi-regulatory system is compelling and the government should support the system in place. To support the strong and principled approach taken by industry to managing the advertising of alcohol in Australia, the government should place more emphasis on social marketing campaigns that promote moderation and seek to encourage a culture of safe and responsible drinking. In addition, the government should undertake community education campaigns aimed at reinforcing the importance of parental responsibility as key drivers of young peoples' attitudes and behaviour in relation to alcohol and a review of school curricular should be undertaken to ensure best practice with regard to alcohol education and an emphasis on culture, values and good citizenship.

The *Liquor Stores Association of WA Inc* submits their industry operates under the ABAC Scheme and all members of the Australian Liquor Stores Association operate under a 'Product Ranging Guideline' which has been established for retailers to consider when ranging products as well as promoting them. This approach works well and the advertising and promotion of alcohol is an educational issue rather than a legislative issue.

The *Australian Association of National Advertisers* submits their members recognise they have a role to play in contributing to a healthier Australia and this responsibility is reflected in the content and scheduling restrictions in the self-regulatory system for advertising and marketing communications.

The *Australian Hotels Association (WA)* submits the advertising and promotion of alcohol is well regulated as determined in the Director's policies and enforced by the Department of Racing Gaming and Liquor and WA Police and the current regulation of alcohol advertising and promotion is sufficient to ensure the proper and responsible sale and supply of liquor.

There is little empirical evidence to support the claim an individual's drinking behaviour is the direct result of alcohol advertising and studies of drinking behaviour where there have been bans on alcohol advertising have led to mixed results and do not support the claim advertising restrictions directly reduce alcohol abuse. Studies of communities which have lifted bans on alcohol advertising have not found a resulting increase in alcohol consumption after the ban is lifted.

*Woolworths Limited* submits Western Australia's consideration of further regulation or legislation on alcohol advertising should be incorporated into the existing Australian government processes operating through the Australian National Preventative Health Agency. Woolworths also partners with DrinkWise, a fact-based not-for-profit organisation which dedicates resources to educating the public on the impacts of irresponsible consumption of alcohol by minors and adults through television and print media. DrinkWise is responsible for the very successful 'Kids absorb your drinking' and 'Alcohol and Pregnancy' campaigns whose communications materials are displayed and available throughout Woolworths-owned liquor stores and ALH pubs.

*Diageo Australia* submits the current systems and codes applying to advertising and marketing of liquor are effective and appropriate for regulating alcohol marketing including licensee-led activities.

There were a number of other submissions suggesting children and young people should be protected from exposure to alcohol advertising.

### **Conclusion**

The Committee recognises the liquor industry's efforts to self-regulate the advertising and promotion of alcohol, but must also acknowledge it seems community expectations are not being met by self-regulation. Some degree of further regulation appears to be necessary. While the ABAC Scheme has value, it would appear there is a definite need for further regulation in this area.

From the evidence provided in the submissions mentioned above, there is an increasing awareness of the impact of alcohol advertising on children and young people and there is also a clear demand from the community for the government to act to protect children and young people from exposure to all forms of alcohol advertising, marketing and promotion.

After considering the many submissions lodged in relation to the advertising and promotion of liquor, it is evident advertising can impact on an individual's attitudes to alcohol, particularly with young people. The Committee considers any alcohol advertising which is specifically aimed at children and young people is unacceptable.

The Committee therefore recommends the Act be amended to include provisions which allow the Director to specifically prohibit advertising or promotions to which children and young people will be exposed, as well as promotions or discounting that could encourage the irresponsible consumption of liquor. The Committee considered making recommendations directed at specific types or instances of advertising. Having regard to the rapidly evolving manner in which advertising can occur, the Committee considered it is desirable the Act be amended to allow full flexibility to address marketing activity as it evolves over time. That is why Recommendation 11 has been framed in the way it has been.

The Committee recognises regulating the advertising of alcohol should be only one component of an overarching coordinated strategy to reduce harm from the sale, supply and consumption of liquor, but consider it should be an essential part of that strategy.

The Committee also acknowledges a great deal of alcohol advertising regulation is outside the realm of the Western Australian Act and that a national approach is required. In this regard, the Committee recommends the members of the Australian Liquor Licensing Authority Conference (ALLAC) should work towards developing and implementing consistent legislation across all jurisdictions which can prohibit the inappropriate advertising of liquor. Currently the New South Wales, Victoria and Queensland legislation contain provisions in relation to restricting or prohibiting advertising and promotional activities.

Finally, to monitor the effectiveness of tighter regulations in the advertising of alcohol the Committee considers it necessary further research should be conducted on:-

- the impact of alcohol industry sponsorship of sporting and events; and
- the impact on individual attitudes particularly young people from exposure through advertising.

*Recommendation 11*

*Amend section 65B of the Act to enable regulations to be made to prohibit or restrict:-*

- a) promotional activity which is likely to impact on children; and*
- b) activities such as promotions or discounting that could encourage the irresponsible consumption of liquor or is otherwise not in the public interest.*

*Recommendation 12*

*Members of the Australian Liquor Licensing Authority Conference (ALLAC) should work towards developing and implementing consistent legislation across all jurisdictions which can prohibit the inappropriate advertising of liquor.*

## Responsible Service of Alcohol training

Well managed premises and the responsible service of alcohol are seen as important tools in changing Western Australia's drinking environment and providing consumers with safer, more responsible venues that are committed to practising harm-minimisation techniques. Training provides licensees, managers and bar staff with important skills and knowledge about the State's liquor laws; alcohol and the effects of excessive alcohol intake; standard drink measures; options to assist customers to drink within appropriate limits; how to refuse service to an intoxicated patron; and how to deal with difficult patrons and conflict situations.

There are two levels of training in Western Australia:-

- a course in the Management of Licensed Premises, including the legislative obligations and responsibilities of licensees and managers; and
- a course of training in responsible practices in the sale, supply and service of liquor which covers topics such as duty of care, harm minimisation, refusal of service, effects of alcohol, juveniles, identifying intoxication and conflict resolution.

Section 33(6b) of the Act requires licensees and unrestricted approved managers to successfully complete an approved course in the Management of Licensed Premises and other staff such as restricted approved managers and any person serving liquor are required to successfully complete a course in the responsible service of alcohol.

### Submissions

The *Walpole Country Club Inc* submits amendments to the Act which required managers and bar staff to be trained in the responsible service of alcohol have significantly added to the costs faced by the club due the requirement for an approved manager to be present at all times the club is trading.

There were a number of submissions relating to the course in responsible practices in the sale, supply and service of liquor. A number of submissions suggest licensed crowd controllers working a licensed premise should be required to successfully complete a course in the responsible service of alcohol as this would assist them in identifying and responding to drunk patrons.

In particular, the *Western Australian Drug and Alcohol Office* submits training in identifying and responding to drunken patrons and non-aggressive patron management should be a mandatory requirement of the licensing requirements for crowd controllers.

A number of submissions also suggested training in responsible service of alcohol practices could be improved and should adequately cover how to identify and respond to drunken patrons and related laws within the Act.

In particular, the *Injury Control Council of Western Australia* submits the current training requirements should be supported with additional strategies around patron management techniques to develop a more comprehensive system that assists staff in identifying intoxication and appropriate actions to implement.

It further submits the standardisation of Responsible Service of Alcohol training requirements across all jurisdictions and implementation of additional programs such as *Safer Bars* would assist and support staff in identifying intoxication and provide practical skills to respond better to problem situations. Higher training standards, in turn, would positively impact on venue operation by creating environments that better support bar staff's ability to identify intoxication and refuse service.

Finally, the *Australian Hotels Association (WA)* submits section 103A of the Act should be amended to specify the register which is required to record the training details of all employees should be retained for three years.

### **Conclusion**

The Committee considers it appropriate for crowd controllers who undertake duties associated with controlling entry and exit to and monitoring behaviour in licensed premises (including evicting patrons) to complete the nationally accredited unit of Responsible Service of Alcohol training. The Committee recognises there are circumstances where this requirement would not be necessary, for example, where crowd controllers are employed as ushers at football games and concerts.

Accordingly, the Committee recommends regulation 14AD be amended to require crowd controllers who undertake duties associated with controlling entry and exit to and monitoring behaviour in licensed premises to complete the nationally accredited unit of Responsible Service of Alcohol training.

The Committee consider the standard of responsible service of alcohol training should be reviewed and developed further and the Director should engage with the Hospitality & Tourism Industry Training Council to facilitate this. In addition, the members of the Australian Liquor Licensing Authority Conference (ALLAC), should work towards developing and implementing a nationally recognised unit of training in the responsible service of alcohol.

The Committee consider it is more appropriate for the register which is required to record the training details of all employees be retained for four years as this is the period during which a prosecution can be commenced under section 169 and recommends section 103A of the Act be amended accordingly.

#### **Recommendation 13**

*Amend regulation 14AD to introduce a requirement for licensed crowd controllers who undertake duties associated with controlling entry and exits to, and monitoring behaviour in, licensed premises to complete the nationally accredited unit of Responsible Service of Alcohol training.*

#### **Recommendation 14**

*The licensing authority engage with the Hospitality & Tourism Industry Training Council to review and develop further the standard of Responsible Service of Liquor training.*

#### **Recommendation 15**

*The members of the Australian Liquor Licensing Authority Conference (ALLAC) should work towards developing and implementing a nationally recognised unit of training in the responsible service of alcohol.*

#### **Recommendation 16**

*Amend section 103A of the Act to specify that a register which records the details of Responsible Service of Liquor training must be maintained by a licensee for a period of four years.*

## Undesirable liquor products

Section 126D of the Act states the Minister may recommend regulations be made under section 175 to declare a specified liquor product to be an undesirable liquor product and where a licensee sells or supplies a declared undesirable liquor product, the licensee and or employee commits an offence.

The Minister may recommend the making of such regulations only if the Minister considers the designs, motifs or characters on the packaging of the product concerned are likely to be attractive to juveniles, the product is likely to be confused with soft drinks or confectionery, the product has special appeal to juveniles or it is otherwise in the public interest to do so.

In addition, before recommending the making of such regulations the Minister is required to consult with relevant liquor industry representatives and the manufacturer of the product proposed to be declared to be an undesirable liquor product.

### **Submissions**

The *McCusker Centre for Action on Alcohol and Youth* submits while the Act contains provisions which allow for the removal of undesirable liquor products, they have concerns about the way these provisions are interpreted and implemented.

The provisions of section 126D of the Act requires that the Minister consult with the liquor industry, yet in the consideration of a particular request, as the party requesting removal of the product, the *McCusker Centre* was not given an opportunity to comment on the information provided by the industry representatives. The *McCusker Centre* considers there is no rationale for requiring consultation with the industry.

It recommends reasonable steps should be taken to prevent undesirable liquor products from entering the Western Australian market and decisions regarding the sale of undesirable liquor products should be made on the basis of reasonable evidence without the requirement to consult with industry. Timeliness in decision making should be a primary consideration.

### **Conclusion**

On the basis consultation of this nature is not required elsewhere in the Act, the Committee concluded the prescription of the consultation process in relation to an undesirable liquor product should be removed.

Accordingly, the Committee recommends section 126(4) of the Act be repealed.

### **Recommendation 17**

*Repeal section 126D(4) of the Act.*

## Energy drinks

Under the provisions of section 64 of the Act, the licensing authority may, at its discretion, impose conditions on licences. In relation to energy drinks, the following condition is applied:-

*No liquor is to be supplied mixed with energy drinks (For the purposes of this condition energy drinks has the same meaning as formulated caffeinated beverage within the Australia New Zealand Food Standards Code with a composition of 145mg/l of caffeine or greater)*

This condition is generally imposed on late night venues which trade under an extended trading permit and on other licences on a case-by-case basis, particularly if the condition has been requested by *WA Police* in their role as an intervener in an application.

### Submissions

*WA Police* support the Director's policy of imposing conditions prohibiting the sale of energy drinks mixed with liquor on some licences, however, recommend the service of alcohol with energy drinks is banned at all licensed premises and events.

*WA Police* is a member of the Inter-Governmental Committee on Drugs National Working Group on Alcohol (IGCD-NWGA) tasked with developing a response to the emerging issue of alcohol combined with energy drinks and research conducted by the National Drug and Alcohol Research Centre suggests the use of alcohol in combination with energy drinks is associated with increased consumption of alcohol, increased binge drinking and an impaired perception of level of alcohol intoxication. It also suggests those who use energy drinks in conjunction with alcohol are more likely to engage in harmful behaviours including increased aggression, violence and drink driving.<sup>54</sup>

The *McCusker Centre for Action on Alcohol and Youth* submits concerns about alcoholic energy drinks relate to the potential for increased alcohol consumption, increased potential for injury and risk-taking behaviours and the physiological effects of dehydration and of combining a stimulant (caffeine) and a depressant (alcohol), such as increased heart rate or palpitations.<sup>55,56</sup>

Research with an Australian sample supports international research findings young people see alcoholic energy drinks as facilitating rapid intoxication while maintaining or increasing energy levels. In response to concerns about alcoholic energy drinks, researchers have suggested Governments place limits on the alcohol content of packaged alcoholic energy drinks and/or impose a minimum price, and for those concerned with reducing alcohol-related harm among young people to advocate for restrictions, or a ban, on this product category. Research findings also suggest alcoholic energy drinks may meet the criteria listed in the Act regarding undesirable liquor products due to their special appeal to minors and young people.<sup>57</sup>

The *McCusker Centre for Action on Alcohol and Youth* recommends the Act be amended to prohibit the mixing of alcohol and energy drinks on licensed premises and to impose limits on the alcohol content of alcoholic energy drinks and restrictions on the availability of pre-mixed alcohol and energy drinks.

54 2013 Review of the Liquor Control Act 1988, WA Police Submission, Appendix 4, 2013

55 Pennay A, Lubman DJ, Miller P. Combining energy drinks and alcohol - a recipe for trouble? *Aust Fam Physician*. 2011 40(3):104-7

56 Brache K, Stockwell T. Drinking patterns and risk behaviors associated with combined alcohol and energy drink consumption. *Addictive Behaviors*. 2011; 36 (12):1133-1140

57 Jones SC. "You wouldn't know it had alcohol in it until you read the can": adolescents and alcohol-energy drinks. *Australasian Marketing Journal* 2011; 19:189-195



*Red Bull Australia Pty Ltd* submits it is important for the Committee to have an understanding of the context of energy drink sales which according to figures provided by BarScan<sup>58</sup> comprise less than one per cent of overall sales over the bar nationally.

Like other non-alcoholic mixers, some consumers chose to mix energy drinks with alcohol. When a 250ml can of energy drink is mixed with 30mL of alcohol, the concentration of alcohol is approximately 5 % which is equivalent to beer. In licensed venues in which Red Bull is available, the product is sold for approximately \$6 per can. Patrons purchasing a vodka and can of Red Bull will pay \$12-\$15. This fits within the premium pricing range and is the approximate equivalent price of two vodka and lemonades. The premium price position of an energy drink purchased with alcohol does provide a price disincentive for over consumption.

*Red Bull Australia Pty Ltd* and *Coca-Cola Amatil (Aust) Pty Ltd* consider there is a need for evidence-based research on this matter. They advise both the Scientific Committee on Food in 2003 and the European Food Safety Authority in 2009 addressed the issue of mixing alcohol and energy drinks in their corresponding opinions. The Scientific Committee on Food concluded 'there is no confirmation of a causal relationship between the reported effects of the consumption of alcohol and/or drugs and the consumption of energy drink' containing taurine and glucuronolactone. In 2009, the European Food Safety Authority agreed with the conclusions from the Scientific Committee on Food. Both the Scientific Committee on Food and the European Food Safety Authority in their respective opinions do not support the assumption of any combined effect or interaction between alcohol and energy drinks. They both further submit:-

- While there have also been concerns raised that mixing energy drinks with alcohol could result in the subjective perception by consumer he/she is less intoxicated than if alcohol was consumed on its own and that people would consume more alcohol when mixed with energy drinks compared with the consumption of alcohol beverages on their own. These concerns are not supported by a scientific review which concluded there is no consistent evidence energy drinks alter the perceived level of intoxication of people who mix energy drinks with alcohol and no evidence that co-consumption of energy drinks causes increased alcohol consumption<sup>59</sup>;
- In addition, a recent study of more than 6,000 Dutch students comparing those who consumed alcohol mixed with energy drinks compared with those that drank alcohol alone, provides scientific evidence mixing energy drinks with alcohol does not increase overall alcohol consumption and/or alcohol-related consequences<sup>60</sup>; and
- The findings of the 2012 Utrecht Student Survey, the initial draft findings of the National Health and Medical Research Council Dietary Guidelines relating to alcohol mixed with energy drinks were amended from mixing 'should be avoided' to mixing 'should be used with caution'.

*Red Bull Australia Pty Ltd* considers Western Australia has the strictest liquor licensing regime across Australia with regard to energy drink restrictions and it appears regulatory authorities are taking a precautionary approach as evidenced by a study of recent liquor applications.

---

58 BarScan Energy Category Report 2012

59 JC Verster, C Aufricht, C Alford, Energy drinks mixed with alcohol: misconceptions, myths and facts, *International Journal of Medicine*, 2012:5 187-198

60 Lydia de Haan, Hein A de Haan, Joris C Verster, Effects of Consuming Alcohol Mixed with Energy Drinks versus Consuming Alcohol Only, *International Journal of Medicine*, 2012:5 953-960

Despite there being no clear scientific basis to do so , and despite the limited amount of energy drinks being sold in licenced premises, *Red Bull Australia Pty Ltd* are of the view WA Police in conjunction with the Executive Director Public Health often object to energy drinks being supplied or sold in new liquor licence applications, as well as applications to renew extended trading permits which often results in applicants volunteering not to sell energy drinks to avoid objections from these two agencies and the subsequent extension of time required to obtain a liquor licence. They conclude, while WA Police and the Executive Director Public Health may argue there has been a reduction in antisocial behaviour as a consequence of the current restrictions there is no conclusive evidence to defend this position.

In closing *Coca-Cola Amatil (Aust) Pty Ltd* calls on the Committee to consider the implications of the licensing authority imposing conditions in circumstances where such restriction are not supported by independent scientific evidence with specific reference to the category of energy drinks and *Red Bull Australia Pty Ltd* submits that given the available scientific evidence, the current restrictions and bans on energy drinks in venues across Western Australia should be removed and restrictions on the sale of energy drinks for new liquor applications, for example low risk venues, such as small bars, should not be imposed.

### **Conclusion**

The Committee considers a complete prohibition on the sale of energy drinks at licensed premises is not necessary nor appropriate and considers the policy of imposing conditions on a case-by-case basis is sufficient to deal with issues.

Accordingly, the Committee recommends the existing provisions of section 64 of the Act which allows the licensing authority to impose a condition prohibiting the sale of liquor mixed with energy drinks on a case-by-case basis be retained.

### **Recommendation 18**

*Retain the existing provisions of section 64 of the Act which allows the licensing authority to impose a condition prohibiting the sale of liquor mixed with energy drinks on a case-by-case basis.*

## 2. Objects of the Act

The current objects of the Act as stated in section 5 of the Act are:-

- (1) *The primary objects of this 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; and*
  - (c) *to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.*
  
- (2) *In carrying out its functions under this Act, the licensing authority shall have regard to the primary objects of this Act and also to the following secondary objects —*
  - (a) *to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State; and*
  - [(b), (c) deleted]*
  - (d) *to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and*
  - (e) *to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.*
  
- (3) *If, in carrying out any of its functions under this Act, the licensing authority considers that there is any inconsistency between the primary objects referred to in subsection (1) and the secondary objects referred to in subsection (2), the primary objects take precedence.*

### **Submissions**

There is considerable support for the Act to be amended to make harm minimisation the sole primary object of the Act with all the other existing objects being demoted to secondary objects.

WA Police submit section 5(1)(a) of the Act requires an applicant to demonstrate the premises will operate so as to minimise harm and not cause further ill-health and that the liquor licence will not unduly disturb or offend the community. The Act does not provide a meaning of 'to minimise harm or ill-health' and assessment of it is not linked to health, justice or other indicators so the intention is hard to pin-point and is open to wide interpretation. It further considers:-

- Industry development and expansion enable greater access to and availability of liquor and the outcome is greater negative impact on the community in the form of harm, ill-health, violence and a raft of other consequences;
- Section 5(1)(c) of the Act should be amended to read 'to cater for the requirements of consumers for liquor related services, having regard to harm and demographics of the locality'. Section 5(1)(c) of the Act makes provision for the Director to grant a liquor licence for a premises which will 'cater for the requirements of consumers for liquor related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State'. The Act should 'cater for the requirements of consumers for liquor related services' but not 'with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State'. It is submitted the Act is to regulate and control liquor and industry related to it whereas the current legislation links the Act to the proper development of the industry it purports to manage the licensing of;

- While section 5(2)(a) of the Act provides the Director must also have regard to, in the reasons for the granting of liquor licences, 'the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State' the promotion of licensed facilities and the live music industry for the community should not be confused with the importance of ensuring the safe management of liquor consumption in the community. Primary objective (c) of the Act, 'to cater for the requirements of consumers for liquor related services' encompasses the needs of live original music performance and consumer diversity; and
- The requirement of the Director to ensure adequate controls for the sale, disposal and consumption of liquor as per section 5(2)(d) of the Act seem to be in opposition of each other. On one hand the Director is to control the use of liquor to enable the wider community to consume liquor in a safe way but at the same time the Director should have regard to facilitating the development of licensed facilities related to the performance of live original music. Given the harms which are overwhelmingly proved to have been associated with the use and abuse of alcohol, the sole and primary objective given consideration and priority when approving any new permit or variation is to minimise harm and not cause further ill-health upon the grant to supply liquor.

WA Police recommend harm-minimisation be the sole primary object of the Act with sections 5(1)(a) and (c) becoming secondary objects and incorporated into section 5(2).

The *McCusker Centre for Alcohol and Youth* submits alcohol is a product that causes substantial harm in the community, including among children and young people, and other at-risk groups and preventing harm to the Western Australian community should come before the interests of the liquor, hospitality and tourism industries. While the Act has the proper development of the liquor and related industries alongside minimising harm as primary objectives, the Western Australian community cannot be confident that their health and well-being will not be compromised in preference for supporting business interests.

In this regard, the prevention and minimisation of harm and ill-health should be the primary object of the Act. There is a conflict between the current primary object of the Act of minimising harm or ill-health due to the use of liquor (primary object (b) as it is inconsistent with the proper development of the liquor, tourism and other hospitality industries in the State (primary object (c)). The competing nature of the primary objects has been noted by the Director in a number of decisions. For example in regard to Dan Murphy's Cannington<sup>61</sup> the Director wrote:-

*'Pursuant to section 16 of the Act, each application must be considered on its merits. However, it is often the case when determining the merits of an application that tension may arise between advancing the objects of the Act, particularly the objects of minimizing alcohol-related harm and endeavouring to cater for the requirements of consumers for liquor and related services. When such circumstances arise, the licensing authority needs to weigh and balance those competing interests.'*

61 Liquor Commission of Western Australia. Section 24 - Licensing applications referred by the Director for determination by the Commission: Dan Murphy's Cannington [LC01/2012] [Internet]. 2012 [updated 2012 Jan 3; cited 2012 Jan 11]. Available from: <http://www.liquorcommission.wa.gov.au/Default.aspx>.

The term 'minimise' in regard to harm or ill-health suggests an acceptance of a level of alcohol-related harm and does not recognise the role of legislation in preventing harm from alcohol. Highlighting the prevention of harm from alcohol within the primary objects of the Act sends out a signal alcohol-related harm is preventable and preventing harm to the Western Australian community from alcohol is of the highest importance. The *McCusker Centre for Alcohol and Youth* recommends the addition of 'prevention' to the primary object of the Act so section 5(1)(b) of the Act would read 'to prevent and minimise harm or ill-health caused to people, or any group of people, due to the use of liquor'.

In summary, they recommended preventing and minimising harm and ill-health due to the use of liquor must be the highest priority of the Act and primary object (c) should be removed or demoted to a secondary object.

The *WA Drug and Alcohol Office* submits there is an overwhelming case for the legislation to reflect alcohol as a product which is not a normal commodity. Alcohol is a drug, which when used in certain ways, places individuals and communities at risk of a wide range of problems, harms and costs. Because of the way alcohol affects cognitive functioning, it is important the legislation that guides the sale and supply of alcohol supports the minimisation of harm and ill-health with this being especially important given the process of becoming and being intoxicated results in compromised decision making abilities. In its view:-

- An Act that clearly identifies its focus to be the minimisation of alcohol-related problems and harm would dramatically improve the ability of the current legislation to reduce the negative impact that alcohol has in Western Australia;
- The ability of the Act to address or minimise alcohol-related harm and ill-health is hindered by the conflicting nature of the primary objects of the Act and in order to be effective, and true to this intent, the Act must set out a clear and non-conflicting purpose to assist in its appropriate application;
- The Act should be amended so 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;
- Section 5(1)(c) should become a secondary object of the Act, with the following amended wording, 'to consider the requirements of consumers for liquor and related services and the development of the liquor and associated industries in Western Australia in a way that will not impact on the health, safety and amenity of the community'.

The *National Drug Research Institute* submits changes to the Act in 2006 resulted in the inclusion of an industry-specific clause as a primary object of the Act in section 5(1)(c). This object is given equal weighting to the other objects and competing considerations must be weighed and balanced in liquor licensing decision making. It presents:-

- The National Preventative Health Taskforce recommended liquor control laws have harm minimisation as its primary objective<sup>62</sup>. The Western Australian Parliament Education and Health Standing Committee recommended the Act be amended to make 'protecting and improving public health' the primary object of the Act<sup>63</sup>. Consistent with these recommendations, the National Drug Research Institute recommends where conflict occurs between minimising harm from alcohol and supporting the liquor and related industries, unambiguous precedence be given to minimising harm or ill-health. Thus, harm minimisation must remain a primary object of

62 National Preventative Health Taskforce. Australia: The Healthiest Country by 2020 – National Preventative Health Strategy – the roadmap for action. Canberra: Commonwealth of Australia; 2009

63 Education and Health Standing Committee. Alcohol: Reducing the Harm and Curbing the Culture of Excess, 2011. Perth: Legislative Assembly, Parliament of Western Australia.

the Act, and the precautionary principle in favour of the health and wellbeing of communities apply;

- Conflict between objects of the Act creates difficulty for decision makers, and can result in insufficient attention to community safety and health when there is conflict with industry. Everything within the Act and how it is implemented relates to these primary objects and, given the potential of alcohol to create significant harm and costs for consumers and for the broader community, it is essential that the highest priority is given to preventing and minimising that harm and ill-health; and
- The Institute recognises the place of alcohol, but consider legislation must ensure access and enjoyment are in the context of a balanced approach. Community and law makers must encourage the replacement of high risk high volume outlets with low risk well managed outlets but not in a manner that results in increased access, which will result in significant increases in harms for consumers. Alcohol should not be allowed to be an imposition for the rest of the community through increased emergency department and hospital admissions, increased Police costs and reduced public amenity.

*National Drug Research Institute* recommend where conflict occurs between minimising harm from alcohol and supporting the liquor and related industries, unambiguous precedence be given to minimising harm or ill-health. Harm minimisation must remain a primary object of the Act, and the precautionary principle in favour of the health and wellbeing of communities be applied.

The *WA Network of Alcohol & Other Drugs* submits the Act should give the highest priority to preventing and minimising alcohol-related harm and ill-health, as the single main object of the Act. Preventing and minimising harm to the Western Australian community should always come before the interests of the liquor, hospitality and tourism industries.

The *Commissioner for Children and Young People WA* submits there appears to be an inherent inconsistency within the primary objects of the Act in which the interest of the alcohol and tourism industries are placed on equal footing with the minimisation of harm or ill-health due the alcohol use.

It further advises it is important liquor control legislation prioritise harm minimisation over the interests of the liquor, tourism and hospitality industries. This position is consistent with recommendations of the National Preventative Health Taskforce<sup>64</sup> and the Education and Health Standing Committee<sup>65</sup>. Realigning the objects of the Act could be achieved by reverting to the previous legislative policy under which the objects relating to industry interests were, in effect, secondary to the primary objects. Alternatively, a requirement could be introduced to provide that in performing a function or exercising a power under the Act, the minimisation of harm or ill-health caused to people must be regarded as the paramount consideration. It is also noted the Victorian liquor legislation refers to the 'responsible' development of the liquor and licensed hospitality industries and it is suggested, if section 5(1)(c) is retained as an object, similar terminology could be used in preference to the 'proper' development of the industry with the term 'responsible' being defined as primarily having regard to the health, safety and public amenity development of a community.

64 National Preventative Health Taskforce. Australia: The Healthiest Country by 2020 – National Preventative Health Strategy – the roadmap for action. Canberra: Commonwealth of Australia; 2009

65 Education and Health Standing Committee. Alcohol: Reducing the Harm and Curbing the Culture of Excess, 2011. Perth: Legislative Assembly, Parliament of Western Australia.

The *Commissioner for Children and Young People WA* recommends section 5(1)(c) of the Act is removed as a primary object of the Act to ensure the minimisation of harm or ill-health through the use of liquor has unambiguous priority.

The *Cancer Council Western Australia* submits in light of the harms caused by alcohol consumption and the high prevalence of risky drinking in Western Australia, it is appropriate and essential the primary objects of the act remain as ‘to regulate the sale, supply and consumption of liquor’ and ‘to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor’.

In contrast, they consider it is at odds that commercial interests of the liquor, tourism and hospitality industries are given equal consideration to minimising the harms associated with alcohol. They are in essence conflicting objectives and not possible to balance in a practical or meaningful way. Consequently, the third object, ‘to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State’ should be a secondary rather than primary object of the act.

The *Injury Control Council of Western Australia* submits alcohol consumption is associated with short and long term harm for individuals, economic and social costs to the community and burdens on the healthcare, justice and education systems. The highest priority of the Act’s primary objects should be given to the minimising of alcohol-related harm and ill-health, above that of the interests of the liquor and tourism industries. In addition, improving the night-time economy of WA’s cities will actually increase night-time tourism into those areas and the associated economic benefits that accompany this. This could be achieved through the establishment of a ‘Night-Time Economy Planning Committee’ for all Perth entertainment districts, involving relevant stakeholders from government, non-government and industry.

The *Foundation for Alcohol Research and Education* submits harm minimisation should be prioritised as the single primary object of the Act and preventing and minimising harm to the Western Australian community should always come before the interests of the liquor, hospitality and tourism industries. It advises:-

- Harm minimisation is an integral component of alcohol and other drug policy and the Australian Government has defined harm minimisation as aiming to ‘address alcohol and other drug issues by reducing the harmful effects of alcohol and other drugs on individuals and society. Harm minimisation considers the health, social and economic consequences of alcohol and other drugs use on both the individual and the community as a whole’<sup>66</sup>;
- To ensure harm minimisation is an effective primary Object of the Act, it must not contradict the objects that clearly favour the alcohol industry. The current objects of the Act are not balanced and the conflict between harm minimisation and meeting industry requirements are clear challenges in reducing alcohol-related harms. In this regard, ensuring harm minimisation is the single primary object of the Act will help eliminate potential for contradiction of other objects, and is essential to ensure the sale and regulation of alcohol in Western Australia does not continue to contribute to alcohol-related harms experienced in the community. It recommends the objects of the Act do not contradict each other and do not favour the alcohol industry; and
- Finally, the sale and distribution of alcohol regulated under the Act should not be confusing for consumers, licensees, and regulators and in this regard, the name of the Act should be amended to the Alcohol Control Act 2013 to ensure the Act is relevant in the current environment.

66 Department of Health and Ageing (2004). Module 5: young people, society and AOD: learner’s workbook. Commonwealth of Australia: Canberra

---

*Mr Gavin D Crocket* submits the objects of the Act should be amended to add a secondary object to clarify that no primary object has precedence over another and the licensing authority should undertake a weighing and balancing exercise to avoid a conflict, where such conflict exists as between primary objects.

Submissions were also lodged by *Mr Peter Abetz MLA, Healthway, the Alcohol & Other Drugs Council of Australia, the University of Western Australia, the Office of Road Safety, the Mental Health Commission, the Department for Communities, the Aboriginal Affairs Coordinating Committee, the South Perth Local Drug Action Group, the Marninwarntikura Women's Resource Centre and the Local Drug Action Groups Inc* recommending the minimisation of harm and ill-health be made the sole primary object of the Act and the remaining primary objects are incorporated as secondary objects. It should also be noted other submissions did not support a change which would make harm minimisation the only primary object of the Act.

The *Executive Director Public Health* submits the international level of scientific evidence regarding alcohol as a potentially harmful drug strongly supports alcohol being regulated in a manner that supports the minimisation of alcohol-related harm and ill-health. The primary objects of the Act influence how alcohol is made available which impacts on the extent to which alcohol-related harm occurs. Risk can be reduced by controlling alcohol sales and supply through location, density and type of licensed outlets.

Maintaining the minimisation of alcohol-related harm and ill-health as a primary object of the Act will contribute to a reduction in the overall impact of alcohol in Western Australia. In this regard, the *Executive Director Public Health* submits the objects of the Act in their current form are appropriately balanced and workable.

The *Department of Education* submits the primary objects of the Act are appropriate and give adequate emphasis to both the regulation of the sale, supply and consumption of liquor and minimising harm or ill-health.

The *Committee for Perth* submits the role of the legislation should be to encourage the responsible promotion, sale, supply and consumption of alcohol and to balance this with appropriate public health objects. Amending the Act to make public health its primary objects as recommended by the Education and Health Standing Committee would conflict with the primary role of the legislation to both enable and control the development and operation of licensed premises according to public need, by placing too much emphasis on restricting all types of liquor licences in the interests of public health.

In its view, the objects of the Act should balance public health goals, the needs of consumers and the needs of the tourism and hospitality industries. There should also be a specific object to encourage responsible alcohol consumption, with an aim to curb the culture of excessive drinking.

*Herbert Smith Freehills* submits while the licensing authority is required to balance the equal priority, and often competing, primary objects of the Act, in practice, the proper development of the liquor industry and regulation of that industry, in particular, seem to be given insufficient regard. The licensing authority's role is to regulate, not to implement public health policy

The *WA Sports Federation* submits the objects of the Act are appropriate, however in the assessment of any licence application there is disproportionate input from a health perspective. There is no formal mechanism for industry input and it is prohibitive for small clubs and expensive for large venues to provide the evidence required under the current protocols in comparison to the intervention capacity of the Director of Health.



Other submissions supported a rebalancing of the objects so that they are more attuned to the needs of consumers and industry.

The *Business Improvement Group of Northbridge (Inc)* submits while recognising the importance of minimising harm and ill-health, it needs to be noted the Act does not seek to prevent harm and ill-health.

Balancing the requirements of consumers for liquor and related services with minimising harm and ill-health is a difficult task, but one that is required to decide most liquor related applications. There is a large body of common law in relation to this aspect of the decision making process, but there is no matrix that can be relied on to estimate the likely success of an application. From a practical perspective, the requirements of consumers and the development of the industry has taken a secondary consideration to harm and ill-health considerations and modification is required to re-balance these objectives and for the Act to be used as a tool in facilitating industry development as was originally intended.

The *Business Improvement Group of Northbridge (Inc)* recommend section 5(1)(c) of the Act be amended to read 'to cater for the requirements of consumers for liquor and related services and to facilitate the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.' The subtle change to the wording would assist in industry development and clarify the equal footing of this objective relative to other primary objectives.

The *Australian Hotels Association (WA)* submits the liquor, hospitality and tourism industry are of the view the primary objects of the Act since their Amendment in 2006 have not effectively brought about a balanced approach to satisfying the needs of consumers versus the objectives of minimising harm or ill health. In its view:-

- The primary objects of the Act need also to include a recognition of the interests and needs of people selling and supplying the industry within the tourism and hospitality industry of Western Australia in order to facilitate the orderly and professional development of the liquor hospitality and tourism industries;
- To facilitate the optimum development of the tourism, liquor and hospitality industries the Act must have regard to the interests of the community and the economic implications of change, in particular changes made to regulation; and
- The Act be amended to provide for new primary objects of the Act to be:-
  1. (a) to regulate the sale, supply and consumption of liquor; and
  - (b) to balance the requirements of consumers for liquor and related services with minimising harm or ill-health caused to people, or any group, due to the use of liquor; and
  - (c) to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.
  - (d) to have regard to the interests and needs of people selling or supplying liquor, and the interests and needs of the tourism industry and other hospitality industries in this State.
  - (e) to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor, and
  - (f) to facilitate and encourage the maintenance of a high standard of liquor and related services provided by the liquor industry, the tourism industry and other hospitality industries.

2. In carrying out its functions under this Act, the licensing authority shall have regard to the primary objects of this Act and also to the following secondary objects —
  - (a) facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State; and
  - [(b), (c) deleted]
  - (d) to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
  - (e) to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.
- (3) If, in carrying out any of its functions under this Act, the licensing authority considers that there is any inconsistency between the primary objects referred to in subsection (1) and the secondary objects referred to in subsection (2), the primary objects take precedence.

*Woolworths Limited* submits the Act establishes the market in which alcohol can be sold and of which licensees can reasonably be responsible for managing. The health of consumers is more appropriately dealt with as health, social, education, policing and community issues which are more suitably dealt with holistically rather than solely by licensees. It is still appropriate harm minimisation is an object of the Act, but it more sensibly rests as a secondary object. It further considers:-

- Its present inclusion has resulted in a clashing of purposes and as a result the object 5(1)(c) has not received the same recognition by the licensing authority in its interpretation and application of the Act. This has meant the requirements of consumers and investment in the industry have often not received the same level of attention and consideration in the interpretation of the Act to adequately reflect a regulatory environment that balances the needs of the majority who consume in moderation and sensibly against the small minority who seek to drink at hazardous or harmful levels; and
- The practical implication will be a stronger weighting of the Act to cater for the vast majority of consumers who do so in moderation and responsibly. The emphasis on developing industry is likely to lead to significant business investment, greater competition and increased consumer choice. It will also lead to a systemic shift in public health thinking that has tended to place responsibility on licences rather than concentrate on assisting individuals to understand the harm and community concern with alcohol abuse and to be more responsible for their own actions.

*Tourism WA* submits while one of the primary objects of the Act is to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State, there is concern from the tourism industry as to whether the intent of this is being achieved. In particular, there are concerns objects (a) and (b) are given a greater emphasis and priority in the decision making process.

In this regard, they do not considered it necessary to amend the objects of the Act, but rather there is a need to ensure that in applying the provisions of the Act, all of the primary objects are considered equally. It is suggested a strategic assessment of the potential impact on the amenity of key tourism development priorities such as Elizabeth Quay, Waterbank and the Perth City Link be undertaken to assist in the decision making process and ensure an appropriate mix of restaurants, pubs, hotels and small bars are part of these precincts.

*Mr Richard Roberts* submits the rights to obtain and consume liquor by the majority of Western Australian's should be the primary concern, including the needs of tourism.

---

The *Swan Valley & Regional Winemakers Association* submits the promotion of a sustainable wine and food culture should be an object of the Act. The consideration of proper development of the liquor and tourism industry is a primary consideration for the sustainability of the Swan Valley and it is considered critical to the economic future of the region that the Act operate in such a manner that reasonably supports the interests of the wine industry.

### **Conclusion**

Tensions will inevitably arise between the primary object of minimising harm and ill-health and those of catering for the requirements of consumers for liquor services and having regard to the proper development of the industry. When these tensions arise the licensing authority must undertake a weighting and balancing exercise of the competing arguments, first by reference to the primary objects and then the secondary objects, with the decision in each case depending on the particular circumstances.

The Committee carefully considered the submissions relating to the objects of the Act and concluded it is in the public interest for the tension between the primary objects of the Act to be retained, and accordingly, it would not be appropriate to make harm minimisation or prevention the sole primary object.

However the Committee acknowledges alcohol is not a normal commodity and there is widespread community concern about the impacts of alcohol on our society in both the short and long term. Accordingly the Committee considers there is a need to rebalance the objects in a way that, while not making the prevention of harm the sole primary object, does require a greater focus on responsible behaviour by both consumers and industry and supports a more proactive approach to protecting our young people.

To encourage cultural change in relation to community attitudes towards liquor and the consumption of liquor, the Committee recommends the inclusion of an additional primary object. This object effectively replaces the 'the requirements of consumers' with 'the interests of the community as a whole' as a primary object. Consumers are of course a part of the community.

The new object would read:-

*'to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor consistent with the interests and reasonable requirements of the community'.*

The Committee also recommends an amendment to combine certain elements of primary object (c), not covered in the new object described above, with secondary object (a) so as to reinforce community expectations and the strong public health arguments in support of ensuring that the activities of the liquor and related industries are seen to be responsible.

The new primary object would read;

*'to facilitate the responsible development of the liquor and related industries, such as the live music, entertainment, tourism and hospitality industries in the State and the responsible use and development of licensed facilities'.*

Finally, the Committee recommends an amendment to primary object (b) to replace ‘*due to the use of liquor*’ with ‘*due to the sale, supply or consumption of liquor*’ to enable the licensing authority to more broadly consider the potential harm or damage to the health of children and young people. This is particularly relevant to the advertising and promotion of liquor. This amendment will require consequential amendments to sections 38(4), 64(3)(cc), 69(8b) and 74(1)(b).

#### *Recommendation 19*

*Amend the objects of the Act to read:-*

##### *Objects of Act*

- (1) The primary objects of this 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 sale, supply or consumption of liquor’; and*
  - (c) to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor consistent with the interests and reasonable requirements of the community; and*
  - (d) to facilitate the responsible development of liquor and related industries, such as the live music, entertainment, tourism and hospitality industries in the State and the responsible use and development of licensed facilities.*
- (2) In carrying out its functions under this Act, the licensing authority shall have regard to the primary objects of this Act and also to the following secondary objects —*
  - (a) to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and*
  - (b) to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.*
- (3) If, in carrying out any of its functions under this Act, the licensing authority considers that there is any inconsistency between the primary objects referred to in subsection (1) and the secondary objects referred to in subsection (2), the primary objects take precedence.*

#### *Recommendation 20*

*Amend sections 38(4), 64(3)(cc), 69(8b) and 74(1)(b) to replace ‘due to the use of liquor’ with ‘due to the sale, supply or consumption of liquor’*

### 3. Juveniles and Young Adults

In March 2009, the National Health and Medical Research Council released the Australian Guidelines to Reduce Health Risks from Drinking Alcohol in relation to alcohol consumption and health risks. The guidelines recommend for children and young people under 18 the safest option is not drinking. Children under 15 years are at the greatest risk of harm from drinking, and for this age group, not drinking is especially important. For young people aged 15 to 17 years, the safest option is to delay the initiation of drinking for as long as possible.

Every three years, school students in Western Australia are surveyed to find out about their drug and alcohol use in the Australian School Students Alcohol and Drug survey. The Australian School Students Alcohol and Drug survey is the leading national survey on alcohol and other drug use amongst secondary school students. In 2011, 3,771 students in years 7 to 12 from 45 Government, Catholic and Independent schools completed the survey.

The *Australian Secondary Schools Alcohol and Drug Survey: Alcohol Report 2011*<sup>67</sup> (ASSADS Alcohol Report) revealed many of these young people demonstrate a concerning attitude towards alcohol with 35.7% of 12 to 17 year old students reporting one of the main reasons they drink is to get drunk.

The ASSADS Alcohol Report also revealed:-

- of the 12 to 17 year old students who drank in the week prior to the survey being conducted, more than one-third (36.2%) drank at risky levels for single occasion alcohol-related harm (compared to 20.9% in 1993). For the purposes of the survey, a student drank at risk of single occasion harm if they consumed at least 5 but no more than 20 standard drinks on any one day in the past week;
- 80% of 16 to 17 year old students drank in the year prior to the survey being conducted, 53.5% drank in the month prior to the survey being conducted and 33.5% drank in the week prior to the survey being conducted. Only 10.4% were non-drinkers;
- For students aged 12 to 17 years, the source of their last alcoholic drink was most commonly their parents (28.2%), followed by their friends (26.4%) then someone else who bought it for them (23.1%);
- Younger students are more likely to get their last drink from their parents with 80% of 12 year-olds and 43.5% of 13 year olds, with only 18.4% of 17 year olds, getting their last drink from their parents;
- As age increases students are more likely to get someone to buy alcohol for them or buy it themselves from a licensed premises - 9.7% of 13 year olds reported getting someone to buy alcohol for them, compared to 31.3% of 16 year olds and 29.2% of 17 year olds;
- 7.1% of students aged 12 to 17 years reported getting their last drink from a liquor store or drive through bottle shop, while for the 17 year old age group the percentage increases significantly to 21%. A further breakdown shows 29.4% of 17 year old male students who drank in the week prior to the survey being conducted got their liquor from a liquor store or drive through bottle shop compared to 11.1% of 17 year old female students;
- Half of all Western Australian school students aged 16 to 17 report being sick or vomiting after drinking alcohol in the previous year; and
- Between 2007 and 2011, 2,484 Western Australian 12 to 17 year olds were admitted to hospital for alcohol-related reasons, representing 6,485 bed days. For the same period there were 25 alcohol-related deaths.

<sup>67</sup> Bridle, R., Miller, J., King, T. & Christou, A. (2012). Australian School Student Alcohol and Drug Survey: Alcohol Report 2011 – Western Australian results. Drug and Alcohol Office Surveillance Report: Number 8. Perth: Drug and Alcohol Office

Other studies have found:-

- Young drinkers experience a range of short term harm resulting from their alcohol use. Younger, risky drinkers are most likely to report a loss of memory, with over a third (37.7%) of those aged 12 to 17 years reporting memory loss as a result of alcohol consumption at least once a month<sup>68</sup>;
- In addition to the concerning range of short term risks associated with excessive alcohol consumption, there is growing evidence that alcohol is implicated in a range of longer term consequences including harm to brain development. The brain continues to develop into the early 20s, and alcohol can irreparably damage young brains leading to problems with memory, planning and organisation, impulse control and mood regulation<sup>69</sup>;
- The potential for harm extends beyond the drinker. Young people are impacted by others' harmful alcohol use in a number of significant ways. Alcohol use during pregnancy is a leading cause of preventable birth defects.<sup>70</sup> Reducing alcohol use during pregnancy will reduce the prevalence and severity of Foetal Alcohol Spectrum Disorders (FASD). Preventing FASD will require a comprehensive approach, including both population-wide and targeted strategies to reduce alcohol use during pregnancy;
- Young people are more likely to report being verbally abused, physically abused or put in fear by someone under the influence of alcohol than any other age group. One in five Australians aged 18 to 19 years old have been a victim of physical abuse by someone under the influence of alcohol; for 20 to 29 year olds, more than one in seven have been a victim<sup>71</sup>;
- A survey of 7,200 undergraduate Australian university students identified almost half (48%) of university students drink at harmful levels and many students were affected by other students' drinking. Students reported that as a result of others' drinking in the previous month, 13% had been insulted or humiliated, nearly 9% of male students reported being pushed, hit or otherwise assaulted by others who had been drinking, 14% of female students had experienced an unwanted sexual advance, and 1% of students had been sexually assaulted<sup>72</sup>; and
- Alcohol use, especially when initiated at a young age, can elevate the risk of many mental health and social problems and young people with certain mental health disorders are more likely to initiate alcohol use and accelerate their use throughout adolescence. It was also found alcohol use may contribute to poor mental health<sup>73</sup>.

One of the primary objects of the Act is to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor. In this regard, juveniles are potentially the most at risk sector of the community. While research shows fewer young people in Western Australia are using alcohol, those who do drink are drinking more<sup>74</sup> and as evidenced by the statistics above, are drinking at earlier ages, with many drinking to get drunk.

There is also significant concern in the community about drinking patterns among young people and the resulting harm. Binge drinking continues to be a significant problem for the community along with associated harm resulting from out of control parties, anti-social behaviour, violence, property damage, ambulance callouts and traffic accidents.

68 Australian Institute of Health and Welfare. 2010 National Drug Strategy Household Survey report. Drug statistics series no. 25. Cat. no. PHE 145. Canberra: AIHW; 2011

69 Bava S, Tapert SF. Adolescent brain development and the risk for alcohol and other drug problems. *Neuropsychol Rev.* 2010; 20(4):398-413

70 Education and Health Standing Committee. Foetal Alcohol Spectrum Disorder: the invisible disability. Perth: Legislative Assembly, Government of Western Australia; 2012

71 Australian Institute of Health and Welfare. 2010 National Drug Strategy Household Survey report. Drug statistics series no. 25. Cat. no. PHE 145. Canberra: AIHW; 2011

72 Hallett J, Howat, P, Maycock, B, McManus, A, Kypri, K, Dhaliwal, S. Undergraduate student drinking and related harms at an Australian university: web-based survey of a large random sample. *BMC Public Health.* 2012; 12(37)

73 Brown S & Tapert S (2004) Adolescence and the trajectory of alcohol use: basic to clinical studies. *Annals NY Acad Sci* 1021: 234-44

74 Bridle R, J M, King T, Christou A. Australian School Student Alcohol and Drug Survey: Alcohol Report 2011 – Western Australian results. Drug and Alcohol Office Surveillance Report: Number 8. Perth: Drug and Alcohol Office; 2012

In a recent survey conducted by the Commissioner for Children and Young People in 2011, availability of alcohol was considered the third greatest influence on the alcohol consumption of young persons who did drink alcohol.<sup>75</sup>

The Committee considers the Act needs to be flexible enough to allow the government to implement policy and strategies to adequately address emerging issues and to appropriately deal not only with juveniles, but with all sectors of the community with a view to changing the drinking culture in Western Australia.

There are several avenues through which this can be achieved and include the recommendations below as well as those regarding changing the drinking culture, community education, advertising and promoting liquor and the way licensees deal with drunk patrons on licensed premises.

---

<sup>75</sup> Commissioner for Children and Young People (2011). Speaking out about reducing alcohol-related harm on children and young people, Perth, Western Australia, available on <http://www.cyp.wa.gov.au>

## Legal Drinking Age

The Committee understands correspondence is regularly received by the Minister suggesting the legal drinking age be raised from 18 to 21 years of age, in order to prevent alcohol-related harm amongst young people.

### **Submissions**

A number of submissions suggest the legal drinking age should be increased to 21.

The *City of Cockburn* recommends if the statistics indicating that consumption of alcohol by young people have not improved by 2018 then the drinking age should be increased from 18 to 21 years old.

The *National Drug Research Institute* submits while the Institute acknowledges raising the legal minimum drinking age may be vigorously opposed by the many sections of the alcohol industry and would be unpalatable to some sections of the community, the weight of decades of scientific research evidence indicates it is a debate worth pursuing. Furthermore, governments could consider associated measures, such as laws requiring newly licensed drivers to maintain a blood alcohol content of zero until the age of 22, as is the case in Victoria, preventing them from combining the practices of drinking and driving for the first 3-5 five years of driving, when their drinking poses the greatest risk to themselves and other road users.

*Mr Peter Abetz MLA* submits scientific evidence points to the fact the human brain is not fully developed until at least 21 years of age and during the formative stages of the brain, alcohol causes significant damage. An amendment to increase the drinking age to 21 would provide difficult to implement politically, but increasing the age at which a person can purchase packaged liquor is a measure that should be considered.

### **Conclusion**

While several submissions suggested the legal drinking age should be increased to 21, broad community support to raise the legal drinking age was not evidenced.

The Committee considered this matter and came to the conclusion there was insufficient evidence to justify increasing the legal drinking age. Rather strategies to restrict access, increase penalties to those who supply liquor and enhanced education strategies should be adopted to collectively address issues relating to drinking by juveniles and young people. These matters are dealt with elsewhere in this report.

### **Recommendation 21**

*The legal drinking age should remain as 18 years old.*



## Secondary Supply of liquor to juveniles

As the legislation currently stands, there is no offence for supplying liquor to a juvenile if the supply does not take place on licensed premises. Parents, despite doing all the right things, can find themselves faced with an intoxicated juvenile after someone else has supplied their child with liquor without their consent.

In 2004, Recommendation 96 of the Freemantle Report, recommended 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'. This recommendation was not adopted by the Western Australian government at the time.

Research from the *Australian Secondary Schools Alcohol and Drug Survey: Alcohol Report 2011*<sup>76</sup> revealed for students aged 12 to 17 years, the source of their last alcoholic drink was most commonly their parents (28.2%), followed by their friends (26.4%), then someone else who bought it for them (23.1%). Other sources include siblings, licensed premises and parties.

### Submissions

Broad community support was evidenced for the introduction of secondary supply legislation.

*WA Police* recommend the introduction of legislation to prohibit the secondary supply of alcohol to juveniles. This legislation should not be limited to private premises but should also apply to anyone giving alcohol to a juvenile in any setting such as a park or reserve.

*WA Police* submit the issue of secondary supply often occurs at teenage parties where alcohol is supplied by the party hosts, often without adult supervision. In these cases many parents are concerned that their child had access to alcohol without their own knowledge or consent.

The *Australian Drug Foundation* submits a comprehensive communication and education campaign should accompany the passing of secondary supply legislation to inform the public and especially parents, teachers and young people. The campaign would explain the legislation; increase awareness of the risks associated with teenage drinking, and unsupervised teenage drinking; and provide practical information and skills to assist compliance with the legislation. The legislation should be closely monitored and evaluated to identify its effectiveness, any unintended consequences and any subsequent amendments that might be required.

The *McCusker Centre for Action on Alcohol and Youth* recommends the Act be amended to prohibit the supply of alcohol to minors without the permission of parents or guardians in all settings. The legislation should be supported by appropriate penalties and a comprehensive public education campaign about the laws and the importance of delaying young people's use of alcohol.

The *Foundation for Alcohol Research and Education* submits the Western Australian Government should introduce secondary supply laws into the Act and develop a public education campaign to accompany the secondary supply laws to ensure those who are supplying alcohol to young people understand the risks associated with young people being introduced to alcohol at an early age.

<sup>76</sup> Bridle, R., Miller, J., King, T. & Christou, A. (2012). Australian School Student Alcohol and Drug Survey: Alcohol Report 2011 – Western Australian results. Drug and Alcohol Office Surveillance Report: Number 8. Perth: Drug and Alcohol Office

The *WA Drug and Alcohol Office* recommends the introduction of provisions which prohibit the provision of alcohol to underage young people in private settings except by a legal guardian, or with the permission of a legal guardian. In addition, provisions should be introduced which allow WA Police to prosecute an adult for the supply of alcohol to a juvenile in a public place and parents and other adults who are responsible for supplying underage persons with alcohol from which they have become intoxicated and or should have been supervising at the time that they had consumed the alcohol.

*Mrs Samantha Menezes* submits research shows alcohol will irreversibly damage young people's brains and early alcohol use can lead to more alcohol problems later in life and places children in high risk situations such as violence, abuse, fights, injury, unwanted sexual activity, depression and relationship difficulties.

In her view, introduction of secondary supply legislation is something the Western Australian community wants with independent market research recently showing 88% of Western Australians support secondary supply laws, with only 5% opposed. An online petition lobbying the Minister for Racing and Gaming and the Premier to introduce secondary supply laws had, at the time of this submission, received the support of 1528 members of the community including parents, school teachers, principals, sports organisations, health professionals, chaplains, emergency services and youth organisations.

*Mrs Menezes* recommends the introduction of secondary supply legislation with additional supporting legislation about supply and supervision for Western Australia. This would empower all parents to be able to say 'no' to those who want to supply minors with alcohol on a private premises without parental permission.

*Mr Peter Abetz MLA* submits Recommendation 19 of the *Education and Health Standing Committee's 10th Report, Alcohol: Reducing the Harm and Curbing the Culture of Excess* should be noted by the Committee. Recommendation 19 states the Act be amended to insert a clause that a person must not supply alcohol to a minor or a juvenile unless that person has obtained the consent of their parent or legal guardian.

As well as overwhelming support from concerned parents and the community in general, the introduction of secondary supply legislation was supported in submissions from *Liquorland (Australia) Pty Ltd*, *Woolworths Limited*, the *Distilled Spirits Industry Council of Australia*, the *Liquor Stores Association of WA Inc* and *Diageo Australia*.

### **Conclusion**

The Committee considered this matter and came to the conclusion there was sufficient evidence to justify the inclusion of secondary supply legislation.

As a consequence of the potential for teenage parties to get out of control and require a significant Police presence the Committee considers a secondary supply offence would serve as a very real deterrent and empower parents.

The Victoria Police report this has been the case in Victoria and has also assisted in providing support to those parents who prefer not to supply alcohol to juveniles but feel powerless in the face of youth pressure to do so.

Accordingly, the Committee consider the introduction of an offence of supplying liquor to a juvenile without the consent of the parent or guardian would aid in restricting access to alcohol for juveniles.

The Committee also considers if a parent does give consent for another adult to provide liquor to their child, they should be entitled to expect the liquor will be supplied in a responsible manner. In this regard, Recommendation 23 sets out some of the criteria which should apply where a person is authorised to supply liquor to a juvenile on unlicensed premises.

The Committee acknowledges the challenges of administering secondary supply legislation however considers the potential for prosecution should be an effective deterrent.

*Recommendation 22*

*Amend section 121 of the Act to introduce an offence for a person to supply liquor to a juvenile on unlicensed premises. It should be a defence if the relevant person is a parent or guardian of the juvenile or were authorised by a parent or guardian of the juvenile to supply the liquor to the juvenile.*

*Recommendation 23*

*Amend section 121 of the Act to introduce a new provision so that where a person is authorised to supply liquor to a juvenile by the parent or guardian, the person must not supply liquor to the juvenile unless the supply is consistent with the responsible supervision of the juvenile. Factors to be considered in relation to responsible supervision should include—*

- a) whether the person is unduly intoxicated;*
- b) whether the juvenile is unduly intoxicated;*
- c) the age of the juvenile;*
- d) whether the juvenile is consuming the liquor supplied with food;*
- e) whether the person is responsibly supervising the juvenile's consumption of the liquor supplied;*  
*and*
- f) the quantity of liquor supplied and the period over which liquor was supplied.*

*Recommendation 24*

*Amend section 121 of the Act to include a definition of the term unlicensed premises as any place other than licensed or regulated premises and including residential premises.*

## Controlled Purchase Operations

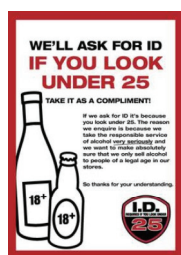
Section 121 of the Act prohibits a juvenile from entering and remaining on licensed premises and the sale or supply of liquor to a juvenile on licensed and regulated premises.

Licensees, managers, employees or any agent of the licensee are authorised under the Act to require any juvenile or suspected juvenile on licensed or regulated premises to state his or her age. If the age stated is false or appears to be false the authorised person may require the juvenile to produce evidence of their age. If the juvenile fails to comply with the requirement or the evidence produced does not prove the person is not a juvenile, the authorised person may require the juvenile to leave the premises. The Act and the Regulations detail the types of approved identification being:-

- A current Australian driver's licence or learner's permit with photograph; or
- A current passport; or
- A proof of age card issued as prescribed.

The packaged liquor industry has implemented a voluntary initiative known as *ID25* which is focused on the responsible supply and promotion of alcohol. Under this program, if a customer looks under the age of 25 staff will ask to see proof of age identification prior to selling alcohol to that customer. The *ID25* program is supported by point-of-sale material and is promoted by the Liquor Stores Association and by both Woolworths Limited and Coles Liquor which represents a significant percentage of the packaged liquor industry.

### ID25 Point-of-Sale Material



### Submissions

*WA Police* submit despite voluntary initiatives such as the *ID25* campaign, juveniles are still accessing liquor from licensed premises. To support their submission to the Committee, the Liquor Enforcement Unit of *WA Police* conducted pseudo juvenile operations in July and August 2013 aimed at establishing whether or not the liquor industry checked the age of young person's purchasing liquor. The operations allowed investigators to test the availability of liquor to juveniles through direct retail sales.

Testing largely followed procedures used in 2002 by the Alcohol & Public Research Unit at the University of Auckland New Zealand, in 2007 by the Injury Control Council of Western Australia (ICCWA) and in 2007 by the Office of Liquor, Gaming and Racing in New South Wales. This enabled some comparison of results and ensured integrity in the testing. The test purchasing operation was conducted using *WA Police* Cadets aged 18 and 19 years old. Female cadets were instructed to use only light make-up to maintain a youthful appearance and photographs were taken of all cadets on the day they were used for the operation.

During both operations liquor stores, tavern and hotel licences were visited. If a Cadet was asked to supply proof of age, the Cadet declined to provide it and left the premises. This was classified as an unsuccessful purchase. A successful purchase was therefore a purchase made without proof of age being requested.

The results of the first operation were:-

Premises Visited	Successful Purchase	Unsuccessful Purchase	Total Purchases	Successful
100	72	28	72%	

The results of the second operation conducted in August 2013 were:-

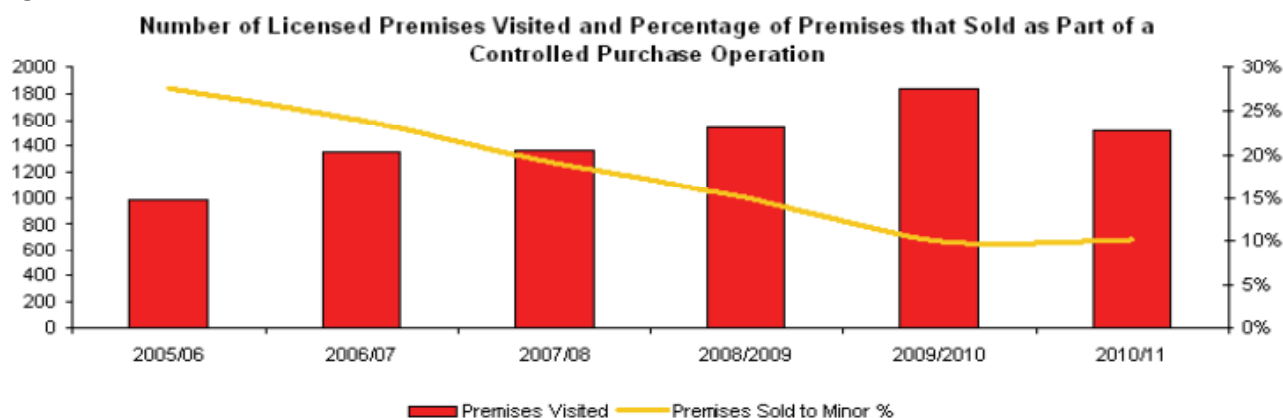
Premises Visited	Successful Purchase	Unsuccessful Purchase	Total Purchases	Successful
50	28	22	56%	

The data provided by *WA Police* following their pseudo juvenile operations clearly indicates the voluntary measures are not proving to be effective in restricting access to liquor by juveniles, which is of great concern. This is particularly evident considering the second operation was conducted following significant publicity surrounding the first operation.

*WA Police* also submit that following amendments in 2004 to the New Zealand *Sale of Liquor Act 1989* which enabled controlled purchase operations to be conducted by the New Zealand Police, there was a clear correlation between the number of licensed premises visited and the reduction in the number of licensed premises that sold liquor to a juvenile.

The New Zealand Police confirmed this view when the Committee met with them in May 2013 and advised controlled purchase operations have been shown to be an effective enforcement strategy in New Zealand.

Figure 5<sup>77</sup>



Further, *WA Police* submitted the method of conducting surveillance on licensed premises in the anticipation of identifying an offence relating to the sale of liquor to a juvenile is resource intensive and provides minimal return as an enforcement strategy.

*Mr Peter Abetz MLA* submits Recommendation 7 of the *Education and Health Standing Committee's 10th Report, Alcohol: Reducing the Harm and Curbing the Culture of Excess* should be noted by the Committee. Recommendation 7 states the Act be amended to allow *WA Police* conduct controlled purchasing operations to assist in the identification and prosecution of licensees suspected of breaching the Act by selling alcohol to minors.

77 *WA Police* submission to the Review of the Liquor Control Act, February 2013

The *WA Network of Alcohol & Other Drugs* recommends the Act be amended to allow controlled purchase operations so WA Police can monitor and enforce existing laws on the sale of alcohol to minors on licensed premises.

The *Commissioner for Children and Young People WA* submits evidence that some young people are able to obtain alcohol from licensed premises means enforcement of the existing laws is essential if they are to have the necessary impact. It is time to adopt controlled purchasing in Western Australia as an efficient and effective means of assisting WA Police in carrying out their enforcement operations.

The *WA Drug and Alcohol Office* submits it is well established that monitoring and enforcement is required to create behaviour change in retailers, particularly when profit is a powerful incentive for licensees.<sup>78</sup> It advises:-

- Western Australian research confirms juveniles can access alcohol relatively easily. For example, almost one in three (29.8%) 17 year olds who report drinking in the week prior to the survey had bought their alcohol from a licensed outlet<sup>79</sup> with another Western Australian study which tested the propensity of staff to ask 18-year-olds (who looked underage) for identification to confirm legality of sale showing overall a high proportion of premises (77%) sold liquor to the underage looking 18-year-olds without asking for ID, suggesting that in many premises, age verification practices are not being undertaken.<sup>80</sup> The 18-year-olds selected for the study looked underage, which was determined by a panel including a police officer, school nurse and former bar manager. A number of other studies indicate that the first attempt to purchase alcohol is successful on about 50% of occasions, suggesting that after four tries the chance of at least one success rises above 90%.<sup>81</sup> However, even small increases in enforcement can reduce sales to juveniles by as much as 35% to 40%, especially when combined with media and other community activities<sup>82</sup>; and
- Controlled purchase operations are a test of existing responsibilities under the Act and do not constitute entrapment when implemented based on intelligence and in a prescribed manner. In addition, to safeguarding the wellbeing of juveniles deployed in controlled purchase operations, robust and stringent policies and procedures would need to be developed covering operational planning, recruitment and selection, risk assessment and appropriate support. For example, the juvenile operatives could be possibly recruited from the WA Police Cadet Trainee Program.

In summary, *WA Drug and Alcohol Office* consider additional legislative support such as the ability to conduct controlled purchase operations is needed to effectively monitor and enforce the provisions relating to the sale of liquor to juveniles.

The *McCusker Centre for Action on Alcohol and Youth* submits controlled purchase operations (also called ‘test purchasing’ or ‘compliance monitoring’) would enable WA Police to monitor and enforce existing legislation regarding the sale of alcohol to minors. There is strong support from the community and WA Police for controlled purchase operations to give WA Police greater powers to monitor and enforce existing laws regarding alcohol sales to minors.

78 Loxley, W. Toumbourou, J. Stockwell, T. Haines, B. Scott, K. Godfrey, C. Waters, E. Patton, G. Fordham, R. Gray, D. Marshall, J. Ryder, D. Siggers, S. Sancu, L and Williams, J 2004, *The Prevention of Substance Use, Risk and Harm in Australia: a review of the evidence*. Canberra: The National Drug Research Centre and the Centre for Adolescent Health.

79 Australian School Student Alcohol and Drug (ASSAD) Survey: Unpublished results 2011, Drug and Alcohol Office of Western Australia

80 Lang, A. Zapelli, R (2007) Psuedo underage liquor sales – a research report. Injury Control Council Western Australia.

81 Stockwell, T. Gruenewald, P. (2001) Controls on the physical availability of alcohol. In: Heather, N. Peters, T.J. Stockwell, T. (eds) *International handbook of alcohol dependence and problems*. Chichester: John Wiley & Sons Ltd.

82 Grube, J.W. (1997) Preventing sales of alcohol to minors: Results from a community trial. *Addiction*, Vol 92 (Suppl. 2), S251–60.

In its view:-

- It is clear from a range of sources many underage young people are able to purchase alcohol directly from licensed premises in Western Australia<sup>83,84,85</sup> and as controlled purchase operations would simply enable WA Police to monitor compliance with the existing provisions of the Act regarding sales to minors, the use of controlled purchase operations should not be a problem for licensees who comply with the Act; and
- The Act be amended to enable WA Police and volunteers under 18 years to undertake controlled purchase operations for alcohol, and to provide it with the appropriate protection from prosecution.

The *Alcohol & Other Drugs Council of Australia* submits to effectively prevent harm from alcohol, a comprehensive approach is required and they recommended the government considers amending the Act to allow controlled purchase operations so WA Police can monitor and enforce existing laws on the sale of alcohol to minors on licensed premises.

The *Foundation for Alcohol Research and Education* submits another measure to complement the introduction of secondary supply laws is controlled purchase operations for alcohol. This type of procedure is employed in tobacco enforcement in Western Australian under the *Tobacco Products Control Act 2006* and should also be legal for use in alcohol enforcement. Changes should be made to the Act to allow controlled purchase operations as this will place greater onus on retailers to check for identification before selling alcohol to a minor.

There were a number of other submissions in support of controlled purchase operations, while to the contrary the *Australian Hotels Association WA* submits the current definitions concerning authorised officers and their functions as detailed in sections 14 and 153 of the Act should be maintained and minors should not be authorised to partake in enforcement (controlled purchase) operations under any circumstances.

### **Conclusion**

The *WA Police* submission together with the results of the pseudo juvenile operations and the *Australian Secondary Schools Alcohol and Drug Survey: Alcohol Report 2011*<sup>86</sup> convinced the Committee to resolve to make a recommendation to amend the Act to allow WA Police to undertake controlled purchase operations subject to an agreed set of operating standards.

To ensure integrity in process, an agreed set of operating standards should be developed by WA Police and approved by the Minister for Racing and Gaming. These should include details such as the requirement to use WA Police cadets only, the physical appearance of the cadets and the procedures to be followed.

To avoid the perception of entrapment WA Police should be required to notify the industry of their intention to run a controlled purchase operation/campaign, the dates during which it is to occur and the duration of the operation/campaign.

83 Bridle R, J M, King T, Christou A. Australian School Student Alcohol and Drug Survey: Alcohol Report 2011 – Western Australian results. Drug and Alcohol Office Surveillance Report: Number 8. Perth: Drug and Alcohol Office; 2012

84 Commissioner for Children and Young People WA. Speaking out about reducing alcohol-related harm on children and young people: The views of Western Australian children and young people. Perth: Commissioner for Children and Young People WA; 2011

85 Lang A, Zapelli R. Pseudo underage liquor sales: a research report. Injury Control Council Western Australia; 2006.

86 Bridle, R., Miller, J., King, T. & Christou, A. (2012). Australian School Student Alcohol and Drug Survey: Alcohol Report 2011 – Western Australian results. Drug and Alcohol Office Surveillance Report: Number 8. Perth: Drug and Alcohol Office

The Committee also recommends WA Police be required to publically report annually on the results of their operations.

Finally, the Committee considers in a further effort to restrict the access of liquor to juveniles, it should become a mandatory requirement licensees who are authorised to sell packaged liquor must request proof of age from any patron who appears to be under the age of 25.

*Recommendation 25*

*Amend the Act to allow WA Police to undertake controlled purchase operations on licensed premises where packaged liquor is sold subject to:-*

- a) an agreed set of operating standards being developed by WA Police and approved by the Minister for Racing and Gaming regarding the use of WA Police cadets only, physical appearance and procedures to be followed;*
- b) WA Police being required to publically report annually on the results of their operations; and*
- c) WA Police being required to notify the industry of their intention to run a controlled purchase operation/campaign and the duration of the operation/campaign.*

*Recommendation 26*

*Amend the Act to require licensees who are authorised to sell packaged liquor to request proof of age from patrons who appear to be under the age of 25.*



## Police Powers – section 155

Section 155(4) of the Act authorises WA Police to seize any liquor, including any container or packaging, suspected on reasonable grounds of having been illegally sold, supplied, consumed or stored, or to be in the possession of a person unlawfully or for an unlawful purpose, and which may be required as evidence for the purpose of proceedings in respect of an offence under this Act or be liable to forfeiture under this Act.

Section 155(9) of the Act sets out the circumstances in which liquor seized by WA Police may be disposed of as soon as possible after it is seized. This applies in cases where a person is contravening:-

- section 110(4A) (an offence on a licensed sports arena);
- section 119 (an offence on unlicensed premises, for example, park or reserve drinking and street drinking);
- section 126E (where an event has been declared alcohol free); and
- section 152O(1) (where a private residence has been declared as a liquor restricted premises).

Any other liquor which is seized by WA Police must be recorded in WA Police Incident Management System and is subject to the provisions of the *Criminal and Found Property Disposal Act 2006*.

### **Submissions**

WA Police submit liquor seizures from juveniles are common place for frontline WA Police officers and the existing requirements create significant, time consuming and unwarranted administrative duties. Further, there does not appear to be any rationale, given WA Police can already dispose of liquor seized in some circumstances, as to why WA Police should not be able to immediately dispose of liquor seized from juveniles in all circumstances.

### **Conclusion**

After considering the submission by WA Police, the Committee recommends section 155 of the Act be amended to enable WA Police to seize and dispose of any liquor in the possession of a juvenile.

#### **Recommendation 27**

*Amend section 155 of the Act to authorise WA Police to seize any liquor in the possession of a juvenile who is contravening any provision of the Act.*

## Definition of Loco Parentis

Section 121(1) of the Act states it is an offence for a juvenile to enter and remain on licensed premises unless the juvenile is accompanied by and under the supervision of a responsible adult.

Further section 125 of the Act provides a person shall be taken to be a responsible adult if that person was an adult who is a parent, step-parent, spouse, de facto partner or legal guardian of the juvenile, or other person in loco parentis to the juvenile.

### **Submissions**

*WA Police* submit it is generally held at common law that a person is only in 'loco parentis' if they are acting in place of the parent on a long term basis.

Despite this, there appears to be a commonly held belief that other person who has control of and responsibility for a juvenile could be considered a responsible adult and therefore in 'loco parentis'. This interpretation has recently been relied upon by a licensee at an event to enable multiple juveniles to enter a licensed premises because they were with someone over the age of 18 years.

*WA Police* further submit juveniles on licensed premises need to be under constant supervision by another person capable of exerting control over and responsibility for that juvenile in a parent-like relationship and the term 'loco parentis' needs to be either defined or removed and a fuller definition of responsible adult inserted to exclude merely another person who is over the age of 18 years.

### **Conclusion**

The Committee considers the current definition of responsible adult is adequate, however recommends the Act should include an appropriate definition of 'loco parentis'. In this regard, unlike *WA Police*, the Committee considers the term 'loco parentis' should include a short term arrangement or one off occasion such as an Aunt taking a child to a licensed premises or a teacher accompanying a class of juveniles on an outing to a licensed sports venue such as a tenpin bowling centre.

The usual translation of the term 'loco parentis' is 'in place of a parent'.

The Committee suggests the definition '*a person who is acting in the place of a parent and is capable of exerting control over and responsibility for the juvenile in a parent-like relationship*' be used.

### **Recommendation 28**

*The Act be amended to include a definition of the term 'loco parentis'.*

## Delivery of Liquor

Section 65 of the Act states a licensee who is authorised to sell packaged liquor must ensure the liquor sold is consigned to the purchaser and delivered from the licensed premises and the liquor is delivered in sealed containers. The licensee must also ensure the liquor is not consumed on in the immediate proximity of the licensed premises.

### **Submissions**

The *WA Drug and Alcohol Office* submit that given the anonymity the internet provides, it is possible online transactions will increasingly become an avenue for juveniles to access alcohol, as has been the case in other countries. Issues which need to be considered include:-

- alcohol should be signed for at the time of delivery by the person who has ordered the alcohol. This will allow proof-of-age identification to be shown and matched against the order details;
- the licence holder must comply with whatever mandated liquor restrictions are in place in the community the alcohol is being delivered to;
- there should be mandated appropriate training for delivery personnel to enable them to identify intoxicated persons, juveniles and false identification and also to be aware of their responsibilities under the Act;
- licensees should be held accountable for the actions of the delivery companies they hire where there is evidence the licensee did not take due care to have responsible service training and other requirements implemented; and
- there should be a minimum wait of 24-hours before a delivery of alcohol can be received to limit the chances of those under the influence of alcohol that have run out, ordering more to continue their intake and potential for harm.

*Mr Gavin D Crocket* submits section 65 of the Act should be amended to cater for the ever growing online sale of liquor.

The *Department for Communities* submits with the internet and mobile phone use now part of our everyday lives, online sales of alcohol to minors is an emerging area of concern with a recent study in the United States finding age verification procedures used by internet alcohol retailers do not sufficiently prevent online sales to minors. Of the 45% of minors who successfully purchased alcohol, half did not have their age verified at the time of order.<sup>87</sup> Similarly, a British report identified online retailers as a potential source of alcohol for underage drinkers, with several websites selling alcohol with limited age checks. The study found efforts to reduce teenage binge drinking were being hindered by legal loopholes and that online retailers need to improve their age-checking procedures.<sup>88</sup>

The *Department for Communities* supports mechanisms, including legislation, that prevent young people aged under 18 years from buying alcohol from online retailers and recommends the Act be amended to outline requirements for liquor retailers to have robust structures, processes and checks to prevent minors from ordering and taking delivery of online alcohol purchases.

<sup>87</sup> Williams, R.& Ribisi, K. (2012). Internet sales to minors. *JAMA Pediatrics* 166(9): 808-813.

<sup>88</sup> Barton, A. (2012). Checked out: the role of ID checks in controlling underage drinking. Retrieved from [www.servelegal.co.uk](http://www.servelegal.co.uk)

The *Aboriginal Affairs Coordinating Committee* submits in 2002, 35% of Aboriginal young people aged 15-24 years reported consuming risky or high risk amounts of alcohol<sup>89</sup> and they are concerned that under a direct sales licence, any person with access to the internet or phone would have an avenue to discreetly obtain liquor, contributing to the risky consumption of alcohol by Aboriginal young people, in particular those who are underage.

The *Aboriginal Affairs Coordinating Committee* recommend consideration be given to how compliance of the Act will be enforced such as:-

- who will monitor the prohibition on delivering the liquor to a juvenile?
- how will age be verified when delivery drivers do not have the authority to request identification?
- if liquor is delivered to a juvenile, who commits the offence – the licensee or the delivery driver?
- will delivery drivers be required to undertake Responsible Service of Alcohol training?

*WA Police* submit they are concerned under current and proposed direct sales licence arrangements a person under 18 years old could host a party when parents or responsible adults are away, conduct an internet transaction using a pre-paid credit card and thereby inconspicuously obtain liquor.

In its view, the following points need to be considered in relation to the delivery of liquor:-

- who will monitor the prohibition on delivering the liquor to a juvenile?
- how will age be verified when delivery drivers do not have the authority to request identification?
- if liquor is delivered to a juvenile, who commits the offence, the licensee or the delivery driver?
- will delivery drivers be required to undertake Responsible Service of Alcohol training?

*WA Police* recommend the following actions be included as prohibited actions:-

- delivering the liquor to an intoxicated person;
- delivering liquor to a liquor restricted premises;
- delivering liquor to communities where restrictions are in place either in terms of hours or types of liquor; and
- delivering liquor to communities the subject of section 175 restrictions.

### **Conclusion**

The majority of the submissions lodged regarding the term of reference on the impact of the electronic age and the rapid development of internet sales raised concerns regarding the delivery of liquor from online outlets. The Committee considers the issue of delivery of liquor is more far-reaching than online outlets as any packaged liquor outlet can take orders online, by telephone or email and by other methods such as shopping applications on mobile devices.

As has already been established earlier in this report, there is an obvious need to protect juveniles and restrict their access to liquor.

One of the emerging issues in relation to juveniles obtaining liquor is the trend of ordering liquor either online or by telephone.

While consulting with other Australian jurisdictions, the Committee noted that in South Australia, each licence has prescribed hours during which they are permitted to deliver liquor and in New South Wales, specific provisions apply to the sale of liquor through the internet or by other communication media.

---

89 2002 ABS National Aboriginal and Torres Strait Islander Social Survey, (on a single day during the fortnight prior to the interview)

For example, section 114 of the New South Wales *Liquor Act 2007* states:-

*A licensee who sells liquor by taking orders over the telephone or by facsimile or by mail order, or who sells liquor through an internet site must:-*

- *at the time at which an agreement for sale is made, require the prospective purchaser to supply the purchaser's date of birth so as to confirm that the prospective purchaser is of or above the age of 18 years; and*
- *give written instructions to the person responsible for delivery of the liquor, requiring that the liquor be delivered to the adult person who placed the order, or to another adult person at those premises who undertakes to accept it on behalf of the person who placed the order, or if the delivery is made on a day after the day the order is taken, or the sale made through an internet site, in accordance with the customer's instructions.*

*A juvenile must not take delivery of any liquor sold in a manner described in this section unless the juvenile was ordered or requested by his or her parent or guardian to take delivery of the liquor.*

*A person (other than a parent or guardian) must not order or request a juvenile to take delivery of liquor sold in a manner described in this section.*

The Committee acknowledges many online services do require purchasers to verify their age, but remains concerned at the potential risks associated with online sales and therefore recommends the Act be amended to require specific provisions be applied to the delivery of liquor, regardless of the manner of purchase (in person, online, telephone or electronic means).

The Committee also recommends these requirements be imposed on any person delivering liquor in Western Australia, including the delivery of liquor sold or supplied under one of the prescribed exemptions in section 6 and regulation 8.

The Committee notes the New South Wales provisions and the challenges of regulating home deliveries to unattended premises. The Committee recommends the relevant provisions should provide that written instructions must be given to the person responsible for delivery of the liquor; requiring the liquor be delivered to the adult person who placed the order, or to another adult person at those premises who undertakes to accept it on behalf of the person who placed the order; or, if the delivery is made on a day after the day the order is taken, in accordance with the customer's instructions.

Specific provisions regarding proof of age documents which are discussed in the context of Recommendation 32 will also act as an effective strategy to further restrict access to liquor by juveniles.

While the liquor licensing legislation in Western Australia does not specifically state the hours liquor may be delivered, the sale and supply of liquor (being delivery) may only take place during the permitted trading hours. In light of this, the Committee considers it is not necessary to specify the hours during which packaged liquor may be delivered by packaged liquor outlets.

The Committee also understands it is possible to introduce a criminal offence into the Act for any person, whether in Western Australia or elsewhere, to deliver liquor to a juvenile in Western Australia. In this regard, an offence would be committed by both the person delivering the liquor and the licensee who sold the liquor.

*Recommendation 29*

*Amend section 65 of the Act to require licensees to comply with conditions prescribed in the Regulations/Code of Practice in relation to the delivery of liquor with similar provisions to section 114 of NSW Liquor Act 2007.*

*Recommendation 30*

*Amend the relevant exemptions prescribed in the Act and Regulations to require that any person delivering liquor must comply with conditions prescribed in the Regulations/Code of Practice in relation to the delivery of liquor.*

*Recommendation 31*

*Amend the Act to make it a criminal offence for any person to deliver liquor to a juvenile in Western Australia. The offence provision should apply to both the person delivering the liquor and the licensee who sold the liquor.*

## Proof of Age

The Victorian *Liquor Control Reform Act 1998* contains provisions relating to the misuse of proof of age documents.<sup>90</sup> Following an examination of these provisions, the Committee considers similar offence provisions in Western Australia would be an effective strategy to further restrict access to liquor by juveniles.

The Committee recommends the Act be amended to introduce offence provisions for the misuse of proof of age documents.

### *Recommendation 32*

*Amend section 126 of the Act to introduce offences for a person to:-*

- a) Give an evidence of age document to another;*
- b) Deface/interfere with an evidence of age document;*
- c) Knowingly make a false evidence of age document;*
- d) Knowingly give a false evidence of age document to another;*
- e) Supply false documents to obtain an evidence of age document;*
- f) Pass on any documents or material that does not relate to him or her for the purposes of an evidence of age document; and*
- g) Give a document or material to another person to support an application for a proof of age card that contains information that is false/misleading.*

*Each offence should have a maximum penalty of \$2,000.*

<sup>90</sup> Victoria Liquor Control Reform Act 1998, Authorised Version No. 071, No. 94 of 1998 section 124 - Wrongful dealing in evidence of age document; section 125 - falsely procure proof of age card

## Alcohol Intervention Program

Under the current provisions of the Act, WA Police have the option of issuing a Liquor infringement notice for a number of offences that contravene the Act. In regard to juveniles, WA Police are bound by the provisions of the *Young Offenders Act 1994* and government policy which provides infringement notices should only be issued to 16 and 17 year olds.

### **Submissions**

WA Police submit the most common offences committed by juveniles are street/reserve drinking; juvenile in possession of liquor; and juvenile on licensed premises, but the issuing of infringement notices does little to address the root cause of their alcohol use and only acts as a deterrent to getting caught. Figures supplied to WA Police by the Department of Racing, Gaming and Liquor show that in the 2012 calendar year, only 55% of the 800 infringement notices issued to juveniles were paid. This is compared to 68% of the 9,000 issued infringement notices to adults being paid.

The use of infringement notices is providing little incentive to comply with the provisions of the Act and they are seeking an amendment to the Act to allow minor alcohol-related offences to be dealt with by way of an intervention session in lieu of issuing an infringement notice.

Recent amendments to the *Misuse of Drugs Act 1981* introduced a similar diversionary option for cannabis offences, allowing people to undertake an intervention session to discuss their cannabis use and associated harms. The aim is to reduce cannabis use and to date, 63% of people provided with this diversion opportunity have opted to attend a health-focussed intervention session.

The principles of therapeutic jurisprudence and early intervention are supported by a solid body of research that proves their efficacy in reducing alcohol use and it is considered their interaction with young people involved in alcohol-related offences provides an ideal gateway into providing a referral to education on alcohol risks.

In this regard, WA Police submit a diversionary option similar to the Cannabis Intervention Requirement would be a valuable strategy to assist with addressing issues such as risky alcohol use including binge drinking by juveniles.

The *Australian Hotels Association (WA)* submits for juvenile offenders who are drunk or engage in violent anti-social behaviour in a licensed premises the penalties should be mandatory attendance in an alcohol education program.

### **Conclusion**

After considering the information provided by WA Police, the Committee recommends section 167 of the Act be amended to introduce the option of WA Police referring juveniles to an alcohol intervention program for minor offences. It is understood this would also require an amendment to the *Young Offenders Act 1994*.

#### **Recommendation 33**

*Amend section 167 of the Act to enable WA Police to use an alcohol intervention program as an alternative to issuing an infringement notice for minor offences committed by juveniles.*

#### **Recommendation 34**

*The Young Offenders Act 1994 be amended as necessary to enable Recommendation 33 to be implemented.*



## 4. Public Interest

Section 33 of the Act states the licensing authority has an absolute discretion to grant or refuse an application on any ground or for any reason that it considers in the public interest.

In decision LC 16/2010 the Liquor Commission notes the following precedents in determining what constitutes the public interest:-

*“The expression ‘in the public interest’ when used as the criterion for the exercise of a statutory discretion, usually imports a discretionary value judgement confined only by the subject matter and the scope and purpose of the legislation.” (Re Minister for Resources; ex parte Cazaly Iron Pty Ltd [2007] WASCA 175)*

and

*“The reference to ‘the public interest’ appears in an extensive range of legislative provisions upon which tribunals and courts are required to make determinations as to what decision will be in the public interest. This expression is, on the authorities, one that does not have any fixed meaning. It is of the widest import and is generally not defined or described in the legislative framework, nor, generally speaking, can it be defined. It is not desirable that the courts or tribunals, in an attempt to prescribe some generally applicable rule, should give a description of the public interest that confines this expression.*

*The expression ‘in the public interest’ directs attention to that conclusion or determination which best serves the advancement of the interest or welfare of the public, society or the nation and its content will depend on each particular set of circumstances.” (McKinnon v Secretary, Department of Treasury [2005] FCAFC 142 per Tamberlin J).*

and

*“In a case such as the present, where relevant considerations are not specified, it is largely for the decision maker, in the light of matters placed before him by the parties, to determine which matters he regards as relevant and the comparative importance to be accorded to matters which he so regards.” (Sean Investments Pty Ltd v McKellar [1981] 38 ALR 363 per Dean J).*

In considering an application, the licensing authority will take into account the objects of the Act as provided in section 5 and the matters set out in section 38(4).

The matters the licensing authority may have regard to in determining whether the granting of an application is in the public interest as specified in section 38(4) of the Act are:-

- (a) the harm or ill-health that might be caused to people, or any group of people, due to the use of liquor; and
- (b) the impact on the amenity of the locality in which the licensed premises, or proposed licensed premises are, or are to be, situated; and
- (c) whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises or proposed licensed premises; and
- (d) any other prescribed matter. (there are no prescribed requirements at this time)

Where the provisions of section 38(2) of the Act apply and an applicant is required to satisfy the licensing authority that granting the application is in the public interest, this is addressed by an applicant lodging a public interest assessment submission with their application. In this regard, a public interest assessment submission is required to be lodged with:-

- an application for the grant or removal of a licence;
- an application for an extended trading permit, for ongoing extended hours or the sale or supply of liquor without a meal in restaurants that are not restricted to a maximum of 120 persons on the premises at any one time; and
- any other application the Director deems appropriate (such as an application to vary the conditions of a licence or permit or an application to alter or redefine a licensed premises).

### **Submissions**

A number of submissions claim the requirement to lodge a public interest assessment submission is too rigorous for low risk licences such as clubs and restaurants and the requirements should be modified or repealed and that the existing policy and guidelines are not adequate to assist applicants.

*Mr Jackson Cleary* submits the public interest assessment is a burdensome and unnecessary document that is of little benefit to the operator, public or the Director in determining applications. The document requires applicants to present cumbersome amounts of information that is already available to the Director and applicants should only need to provide details of themselves, the venue, proposed manner of trade and the proposed harm minimisation measures. In his view:-

- While the Director has asserted in the past there is no need for the application to be professionally prepared and there is no statutory requirement to have a lawyer prepare the public interest assessment, one who does not have legal qualifications cannot be expected to successfully prepare such a cumbersome and convoluted document; and
- The public interest assessment imposes a huge cost on applicants which leads to fewer venues, and venues with higher prices. The Director asserts that a very small number of licences have been rejected but this fails to take into account the number of potential venue operators who have given up before submitting an application because of the burdensome public interest assessment process. It is suggested a public interest assessment is still appropriate for high risk venues but applicants should only have to prove the venue is not in the public disinterest.

The *Department of Sport and Recreation* submits the introduction of the public interest assessment has led to some challenges for many sports and associated clubs. Taking a broad approach and looking across community activities it would appear that some significant inconsistencies in and on the interpretation of public interest have developed in licensing approvals. The public interest test currently focusses predominantly on one of the three objects of the Act being ill-harm and possible ill-health and only engages WA Police and the Executive Director Public Health to assess applications in the context of public interest. This practice may not take into account all the information available and may contribute to the formation of an unbalanced view. There appears to be a need for a mechanism in the Act that ensures the application of the concept of public interest to applications for licensees takes into account all of the objects of the Act. This could include input from the sport and recreation industry when considering the public interest of applications from sport and recreation clubs.

The *Swan Valley & Regional Winemakers Association* submits there is a lack of transparency in how the public interest assessment test is administered. In addition, there should be separate requirements for high versus low risk venues and the public interest assessment test should take into account the views of responsible representative bodies such as this Association otherwise it cannot claim to be representing the full views of the public.

*Tourism WA* submits further clarity is required around what constitutes a public interest assessment, the criteria for differentiating between low and high risk ventures, what is required to be submitted and the level of detail required. This has been an ongoing issue in relation to liquor licensing and it is suggested a more comprehensive guideline should be produced by the licensing authority to assist with the completion of a public interest assessment. This is particularly relevant for small bar licences which suits smaller operators who do not necessarily have the resources or detailed understanding of the legislation to complete an assessment in accordance with what the requirements of the licensing authority. It recommends the Director's public interest assessment policy is reviewed.

The *Tourism Council WA* submits:-

- licence applications should normally be granted to allow the competitive market to meet the requirements of consumers, unless it can be demonstrated that the licence would contradict the objective to minimise harm or ill-health;
- the onus should be on the licensing authority or objectors to a licence application to identify the specific impact on harm and ill-health the licence would have and where a negative impact is demonstrated, the specific terms of the licence should be altered to mitigate this harm and ill-health rather than denying a licence;
- licence applications should be graded for risk of harm and ill-health and the public interest test graded according to that risk. Licences should also be subject to harm and ill-health performance measures such as the register of incidents and their grading of risk reviewed accordingly. A single low risk licence would replace many current licence types, including restaurant, small bars and producer licences. A low risk licence should have a low level of restriction on customer service and a low level of licence application and compliance costs;
- the public interest test for a liquor licence in a new accommodation hotel should be eased where there are demonstrated hotel shortages;
- to give effect to the objects of the Act, the Act should specifically recognise tourism bodies such as Tourism WA and Tourism Council WA as representatives of the tourism industry and its customers. The representations of those tourism bodies should be given the same legal weight as the representations of WA Police and health bodies;
- the decision to grant a licence, and on what terms, should be solely based on the objectives of the Act. Any term of the Act which supports religious considerations or anticompetitive privileges should be removed from decision making; and
- the number of licence types should be reduced and licences types defined by their risk of harm and ill-health. Licences types should be graded from low to high risk based on risk from volume and speed of liquor served on premises, ranging from higher risk fast-service bars, to medium risk seated service and low risk tasting and risk from consumption of liquor off premises ranging from a higher risk liquor store to low risk cellar door sales.

The *Distilled Spirits Industry Council of Australia* submits section 38(4) of the Act is too restrictive in its use of wording 'might' in clauses (a) and (c). 'Might' compels decision makers to take a zero risk approach, rather than applying any sense of probability, proportion, or of what is a reasonable expectation. Further, the provisions of section 38(4)(c) which state 'whether offence, annoyance, disturbance or inconvenience might be caused to people who work or reside in the vicinity of the licensed premises or proposed licensed premises' sets far too low a barrier for refusing a license. It is a fact of human existence that very trivial and inconsequential matters can create annoyance or inconvenience in some. The use of the term 'vicinity' is another problematic word in that it depends so much on context and interpretation. 'Vicinity' implies a much larger area than location and has a different meaning for a person in a vehicle than for pedestrians. Combining those elements of the clause with the open-ended 'might' this clause, on a strict reading can be used to deny the granting of any license.

The *City of Fremantle* submits promoting low risk licensed venues such as restaurants and small bars and allowing them to trade in direct competition with high risk licensed venues such as hotels and nightclubs offers greater choice for the public and stimulates a move away from the traditional 'beer barn' drinking environments. Each application should be assessed on its merits as low risk venues such as restaurants and small bars typically possess less potential for a negative impact on the amenity, quiet or good order of the locality than high risk venues such as hotels and nightclubs. It recommends the public interest criteria for low risk venues be streamlined and made considerably less onerous than the public interest criteria for high risk venues.

The *WA Sports Federation* submits the public interest test is applied to a similar standard for clubs as for other licences. The positive evidence required by sports clubs is difficult to provide in comparison to the generic public health interest evidence. It would be appropriate to provide a simpler mechanism for sports clubs to meet the public interest test. In addition, many liquor licence applications take undue time to be finalised. The rationalisation of the public interest assessment and the move to outcomes based rather than prescribed licence conditions would speed up the process and provide more certainty to operators.

The *Small Business Development Corporation* has concerns regarding the burden imposed on applicants due to the requirement to submit a public interest assessment and the lack of guidelines or templates to assist applicants. The lack of guidance impacts on small business and represents a significant barrier to entry, particularly for small operators. The *Small Business Development Corporation* fully supports the Red Tape Reduction Group's recommendations to reform the public interest assessment process.

The *City of Perth* submits the issue of public interest should be made with consideration to the size and type of premises and by possibly removing the requirement from small bars and restaurants which could be considered low risk. The *City of Perth* would support more definitive guidelines regarding public interest criteria and recommends that it only applies to larger high risk venues.

*Liquorland (Australia) Pty Ltd* submits it is important for the licensing authority to balance the objectives of harm minimisation with the appropriate development and regulation of the liquor industry and it is the licensing authority's role to regulate the sale and supply of liquor, not implement public health policy. In this regard, there is a need to develop a practical public interest model to maintain the balance between meeting consumer demand and addressing community issues.

It also suggests the application process could be refined so that a public interest assessment is not required for an alteration/redefinition application or for the removal of a licence application within a short distance.

*Woolworths Limited* submits the public interest test should be tiered accordingly to recognise applications that are clearly low risk such as for the sale of packaged liquor largely tied to normal shop trading hours in communities with responsible alcohol consumption. The public interest assessment test should also recognise operators that have clear and transparent systems and a demonstrated commitment to minimising the opportunity for harm within their existing business.

A number of other submissions also suggest section 38(4) of the Act should make provision for applicants to provide supporting evidence in relation to the potential benefit of the licence being granted.

The *Metropolitan Redevelopment Authority* submits the Act and advertising process only considers public objections to an application which is contrary to current planning and other government consultation processes and they recommend applications should be advertised for public comment and any letters of support could provide an indication of Public Interest. Given that one of the objectives of the Act is to have regard for the development of tourism and hospitality industries, they recommend that consideration should be given to the particular licensing needs of tourism and hospitality precincts and the advice and opinions of professional industry associations, tourism and hospitality groups. For example, consideration of the hospitality and tourism needs of State Government redevelopment areas and tourism precincts, and referral of applications to Tourism WA for comment.

*Mr Dan Mossenson* submits there is no opportunity for members of the public or organisations to support an application for a new licence and says there is potential to skew the objectivity of the evaluation of the public interest test.

A number of submissions are supportive of the current public interest assessment requirement.

The *WA Drug and Alcohol Office* submits the public interest requirements of section 38 of the Act and related policy are important in that they support the consideration of how the venue will interact with the characteristics of the locality.

In assessing likely risks associated with an application, it is relevant to consider that it will be operating in a community where harm may be already occurring. Even moderate levels of ongoing alcohol-related harm or incidents in an area can indicate that one or more structural, environmental and or community factors exist that support the problems to occur.

While in a general sense a venue can be considered to be low risk or high risk by its characteristics, the volume of alcohol sold and how it is supplied, there are a multitude of factors that can interact to transform a low risk venue into one that is high risk such as a change to the trading conditions, the characteristics of the community and the existing levels of problems and potential for the venue to further contribute to the cumulative impact of alcohol use.

When considering a new application, as a minimum, public interest criteria should require consideration of harm and ill-health considerations associated with the location of the premises and in what way it will interact in the surrounding community and environment, both directly and indirectly.

*WA Police* submit new licences are often granted on the basis of the applicant filling a gap in the market or catering for a public need. If a licence is granted and the factors or features that satisfied the public interest criteria are not conditioned on the licence, the licensee is not bound to operate pursuant to its own submissions and can change the style and structure of its operation at will. It is recommended, matters relied on in public interest submissions should form an enforceable condition of the licence. It further submits:-

- In relation to the public interest test, an applicant should be required to provide information proving the need for a licensed premise within a locality and the benefits to the local community, and further that the applicant provide evidence of local community consultation;
- Sections 5 and 38 of the Act are too narrow when considering the impact of a licence on the community as there is no requirement for the applicant to provide a complete explanation regarding the need for a further liquor outlet and what benefit will be gained by the community. As such section 38(4) should be amended to insert a requirement to satisfy the licensing authority that there is a 'requirement for the licence in the locality'; and

- The Director's policy allows support for an application to be submitted by the applicant in the form of petition, letters of support or survey results. It is noted by *WA Police* the wider community is not consulted in any of these methods and a majority of applicants only seek the view of patrons and businesses in close proximity to a proposed venue. A more concerted effort should be made by an applicant to prove public interest for proposed premises and applicants should be required to consult with the community in the locality of the premises and incorporate community feedback in their submission of public interest. In this regard, section 38(4) be amended to include 'the results of consultation with the community' as a matter the licensing authority should consider.

The *Executive Director Public Health* submits the current public interest assessment requirements are an important tool for developing a responsible industry and have raised industry awareness and standards regarding factors that can increase or decrease the potential for alcohol-related harm. It is therefore important to maintain the requirement that all licence applications are accompanied by a public interest assessment so that a comprehensive risk assessment can be made.

'Venue-morphing' which is the term used to describe venues changing lower risk features to higher risk features is becoming a common practice among licensed premises. When venues have been operating in a low risk format there is often limited venue specific data evidencing alcohol-related harm which makes it difficult for a case to be made against the application for a higher risk licence. This creates a potential loophole for applicants in areas where there are already high levels of alcohol-related harm.

The *McCusker Centre for Action on Alcohol and Youth* submits regard for the public interest, including the public health interest, should be paramount in liquor licensing decision making and they strongly support the continuation of the requirement for applicants to complete a public interest assessment for applications for all liquor licence categories. In its view:-

- Where licensees seek to make changes to the way they operate and where those changes would have the potential to increase the risk associated with the premises, the licensee should be required to notify the community and establish that the changes will not contribute to alcohol-related harms and, where appropriate, apply for a new licence. It recommends the licensing authority requires appropriate community consultation procedures and public interest assessment requirements for changes to licensed premises that have the potential to increase the risks associated with the premise; and
- While genuine tourism-related liquor licences are supported, there are concerns regarding some licences granted on tourism grounds, where there appears to be little genuine tourism value. It recommends applicants be required to substantiate any claims of benefits to tourism with appropriate evidence.

The *Department for Communities* submits currently there is no clear process or scope for assessing the public interest in granting a liquor licence and applicants are not obliged to consult, show how localised harms will be minimised or demonstrate how the licence is integrated with whole of community planning. The onus is placed solely on the applicant to demonstrate the public interest will be met. The public interest assessment should be a carefully planned and considered outcome statement, based on a meticulous process which involves a range of stakeholders. The demonstration of the public interest would benefit from clear guidelines and procedures for applicants, which would include the importance of consultation with local service providers and residents including seniors, families and young people. It recommends the Act be amended to include a clear process and guidelines for assessing public interest in liquor licensing applications that includes consultation with all stakeholders in the community.

---

## Conclusion

While the term ‘in the public interest’ is one that does not have a fixed meaning and is generally not defined or described in the legislative framework, it is important the licensing authority provide quality guidance to applicants regarding the processes and matters they must give consideration to in preparing a public interest assessment submission.

In response to the many submissions in this area the Committee has developed a number of recommendations which it considers, when taken together, will improve process, transparency, community engagement and overall outcomes.

The Director has a policy titled *Public Interest Assessment* which assists applicants in the preparation of a public interest assessment submission. While detailed and comprehensive the policy is not designed to guide an applicant through the process. The potential for confusion and frustration is therefore high. A more user friendly and comprehensive guide would reduce frustration, enable more efficient use of resources and would be more likely to satisfy community and industry expectations.

In this regard the Committee considers the licensing authority should develop a comprehensive Code of Practice to assist applicants in preparing a public interest assessment to replace the existing public interest assessment policy and should undertake a review of all other policies, guidelines, fact sheets and other material, in conjunction with industry, to ensure they are accurate, relevant and are meeting the needs of users. Further recommendations in relation to the application process have been made under **Section 11, Transparency and Process**.

The Committee also considers any public interest assessment lodged in support of an application should be published on the licensing authority’s website to facilitate greater community awareness of applications.

The issue of low risk versus high risk licences has been addressed elsewhere in this report and the Committee has recommended a two tiered classification system for licences.

In regard to the submissions requesting the consideration of submissions in support of an application when determining if an application is in the public interest, Recommendation 4 provides for sections 73 and 74 of the Act to be amended to allow for the lodgement of a submission or an objection which will allow for positive submissions to be lodged in support of an application. A further recommendation will be made to amend section 38(4) of the Act to allow the licensing authority to have regard to a submission lodged in support of an application.

In response to the submissions relating to community consultation, as discussed earlier in this report at **Section 1, Alcohol and the Community, Community Engagement**, the Committee has recommended applicants for high risk licences be required to prepare a Community Impact Statement prior to lodging an application.<sup>91</sup> In this regard, the Committee also recommended section 38(4) of the Act be amended to include the outcome of the Community Impact Statement as a matter which the licensing authority should have regard to when assessing if an application is in the public interest.<sup>92</sup>

---

91 Refer Recommendation 2

92 Refer Recommendation 3

It has also been submitted the Director should have the discretion to consider an application for the removal of a licence within a short distance and an alteration or redefinition of a licensed premises without the need for a public interest assessment submission to be lodged. The Committee considers this to be a reasonable request in relation to removal applications only and recommends section 38(1) of the Act be amended to give the Director the discretion to waive the requirement for a public interest assessment submission to be lodged with an application for removal of a licence.

In relation to the content of an applicant's public interest assessment submission, WA Police submit that matters used in submissions and which are deemed persuasive in granting a licence should be imposed as conditions of the licence. While this does not require a legislative amendment, the Committee recommends this be applied by the licensing authority by way of policy.

In regard to the submission by WA Police to amend section 38(4) of the Act to insert a requirement to satisfy the licensing authority that there is a requirement for a licence in a locality, the Committee does not consider this is an appropriate amendment, as the notion of public need is no longer entrenched in the Act.

Another technical amendment is the amendment of section 38(4)(b) of the Act to include the words 'quiet or good order of the locality' to reflect similar wording in section 74(1)(g).

#### *Recommendation 35*

*The licensing authority should develop a comprehensive Code of Practice to assist applicants in preparing a public interest assessment to replace the existing public interest assessment policy and should undertake a review of all other policies, guidelines, fact sheets and other material, in conjunction with industry, to ensure they are accurate, relevant and are meeting the needs of users.*

#### *Recommendation 36*

*All public interest assessment's should be made publicly available on the licensing authority's website.*

#### *Recommendation 37*

*Amend section 38(4) of the Act to include consideration of submissions in support of, or opposed to, an application as matters the licensing authority may have regard to in determining if an application is in the public interest.*

#### *Recommendation 38*

*Amend section 38(1) of the Act to allow the Director the discretion to consider a removal application without having to consider the public interest provisions.*

#### *Recommendation 39*

*The licensing authority should ensure that matters relied on in public interest assessment submissions and which are deemed persuasive in granting a licence are imposed as conditions of the licence.*

#### *Recommendation 40*

*Amend section 38(4)(b) of the Act to read '...the amenity, quiet or good order of the locality...' to reflect the wording of section 74(1)(g)(ii).*



## Outlet density

From the submissions lodged, there is resounding support for some measure of outlet density to be included as a matter the licensing authority may have regard to in section 38(4) of the Act.

### Submissions

WA Police submit the Act should be amended to allow the licensing authority to take greater account of the increasing volume of alcohol sold, with higher levels of alcohol-related harm both on licensed premises and in private homes. This is particularly relevant in the context of an increasing number of applications from large off-premise retailers such as supermarket chains. Further a 12-month trial of a new Environment and Venue Assessment Tool (EVAT), which was developed to assess liquor licence applications and is based on the contents of the Allen Consulting Group report on the cumulative impact of alcohol outlet density, is being undertaken in New South Wales. This trial should be monitored by the Western Australian Government. Refer Appendix 4.

The *McCusker Centre for Action on Alcohol and Youth* also suggest the Act be amended to empower liquor licensing decision makers to consider outlet density, the cumulative impact of licensed premises and the clustering of premises. Similar suggestions were made in nearly 20 other submissions (*The City of Fremantle, the Department of Corrective Services, the Metropolitan Redevelopment Authority, the Mental Health Commission, the South Perth Local Drug Action Group, Mr Peter Abetz MLA, the Injury Control Council of Western Australia, School Drug Education & Road Aware, Carmelina McQueen, the Esperance Local Drug Action Group, Local Drug Action Groups Inc, the City of Cockburn, the WA Network of Alcohol & Other Drugs, Environmental Health Australia (WA) Incorporated, the National Drug Research Institute, the Commissioner for Children and Young People WA and the Cancer Council Western Australia*).

The *WA Drug and Alcohol Office* submit the Act should be amended to allow the licensing authority to recognise the cumulative impact of licensed premises as a matter for consideration in relation to alcohol-related harm and ill-health, community safety and amenity and suggest the inclusion of provisions in the Public Interest criteria which support consideration by decision makers of current and future outlet density and the cumulative impact of liquor licences on alcohol-related harm, ill-health, safety and amenity, both at the locality and state level. In this regard, the Drug and Alcohol office advised the Committee they are working on developing an outlet density tool.

The *Foundation for Alcohol Research and Education* submits a recent Western Australian study found for every 10,000 additional litres of pure alcohol sold at a packaged liquor outlet, the risk of violence experienced in a residential setting increased by 26 per cent.<sup>93</sup> An analysis was also undertaken in Victoria of the effects of licensed outlet density on several measures including assault, domestic violence, chronic harms and high risk drinking in young people. The analysis found there was a strong association between reported assaults and all three outlet types, general licenses, on-licence and off-licence.<sup>94</sup> A 10 % increase in general licence rates in an area increased rates by 0.6 per cent, while a 10 % increase in off licence rates increased assault rates by 0.8 per cent. International studies have shown that increased outlet density has also been linked to higher rates of road traffic accidents, drink driving or being a passenger of a drink driver, robbery, homicide, suicide (both attempted and completed), child maltreatment, deviant adolescent behaviours, sexual offences and sexually transmitted infections.<sup>95</sup>

93 Liang, W and Chikritzhs., T (2010). Revealing the link between licensed outlets and violence: Counting venues versus measuring alcohol availability. *Drug and Alcohol Review*. 30, 524-535

94 Livingston, M. (2008). A Longitudinal Analysis of Alcohol Outlet Density and Assault. *Alcoholism: Clinical and Experimental Research*, 32(6), 1074-1079.

95 MDCH, Bureau of Disease Control, Prevention & Epidemiology. (2011). The association of increased alcohol outlet density & related harms: Summary of key literature. Michigan: MDCH.

In its view:-

- The more licensed venues there are, the more people there are consuming alcohol and the more likely there will be harm. There has been an argument for the adoption of small bars with reasons for this being that small bars 'encourage innovation and a more dynamic hospitality industry' and 'offer a unique variation to traditional bars, where liquor is consumed in a responsible manner'.<sup>96</sup> However, additional small bars contribute to the number of outlets in an area and research has shown that the number of outlets in an area contributes to the alcohol-related harms. There is also concern that such bars are being allowed where other venues would be declined, allowing for a licensed venue in an area that has been identified to have a high density of outlets;
- There are a number of policies that can be implemented to control the number of licensed outlets. Two of these policies are 'saturation zones' and 'cluster controls'. Saturation zones impose limitations on the provision of new licences in areas where it has been identified there is high density of licenses. Cluster controls prohibit new liquor licences for premises within a specified distance of existing licensed premises or other amenities such as schools, hospitals, churches or places of religious worship.<sup>97</sup> It is important the overall reduction in risk is the fundamental consideration when introducing policies to regulate the density of outlets; and
- The Act be amended to establish saturation zones in areas identified as already having large numbers of liquor licences, including small bar licences and the licensing authority introduce cumulative impact and cluster control policies for the determination of new liquor licences.

The *Mental Health Commission* submits the impact of the availability and marketing of alcohol on harmful alcohol consumption needs consideration as part of the review and consideration should be given to including the capacity to consider outlet density and the cumulative impact of this on the community when assessing applications for liquor licences.

*Environmental Health Australia (WA) Incorporated* submits the clustering of venues is causing significant issues in the community and research shows alcohol outlet density and high volume outlets are linked to a range of alcohol-related harms. Outlet density and the cumulative impact of licensed premises should receive increased consideration in liquor licensing decision making than is currently provided. In addition, there is insufficient recognition of low socio economic suburbs in the application process for liquor venues including the requests for extended trading hours. The licensing authority should have a clear and legislated position limiting venues in recognised low socio economic areas to a suburb level.

The *National Drug Research Institute* submits under the Act, consideration of new liquor licences does not have to take into account the existing number of licensed outlets in an area or the cumulative impact of licensed venues, either in the local area or the broader community. In its view:-

- There is significant evidence increasing the availability of alcohol in a region increases alcohol-related harm such as violence, road crashes, general injuries and other health consequences in the community. Studies have consistently found the density of alcohol outlets in an area is positively associated with the rate of violence in that area, with similar patterns for other outcomes including road crashes and general injuries.<sup>98,99</sup> Research evidence also suggests higher liquor outlet density is associated with heavier drinking among young people<sup>100</sup>;

96 Department of Racing, Gaming & Liquor (2008). Small Bar Licences

97 Matthews, S. (2010). To compare regulatory and planning models which reduce crime in the night time economy, Churchill Fellowship Report. Winston Churchill Memorial Trust, Australia.

98 Livingston, M. (2011) A longitudinal analysis of alcohol outlet density and domestic violence, *Addiction*, 106, 919-925.

99 National Drug Research Institute (2007). Restrictions on the Sale and Supply of Alcohol: Evidence and Outcomes. Perth: National Drug Research Institute, Curtin University of Technology.

100 Chen, M. J., Grube, J. W. & Gruenewald, P. (2010) Community alcohol outlet density and underage drinking, *Addiction*, 105, 270-278.

- A study focussing on outlet density, and in particular liquor stores, in Perth showed that proximity to a liquor store was associated with increased levels of harmful alcohol consumption and mental health problems.<sup>101</sup> Published in 2013, the study found the number of liquor stores in the neighbourhood was weakly associated with total alcohol consumption, but more strongly associated with harmful alcohol consumption. Each additional liquor store in the neighbourhood was associated with an increase by 1% in the mean number of standard drinks of alcohol consumed per drinking day and by 6% in the mean number of days of harmful consumption of alcohol. The odds of hospital contact for anxiety, stress or depression were 56% greater among participants with a liquor store within the neighbourhood compared to those without; and
- The Act be changed to allow consideration of the health, safety and amenity effects of clustering of licences, outlet density and cumulative impact in the decision making process.

The *WA Network of Alcohol & Other Drugs* submits research shows alcohol outlet density is linked to a range of alcohol-related harms and outlet density and the cumulative impact of licensed premises should be considered in liquor licensing decision making.

The *Commissioner for Children and Young People WA* submits there is concern the current provisions of the Act do not require the licensing authority to consider outlet density and the cumulative impact of licensed premises on local areas or the broader community. A stronger focus on cumulative harm and outlet density would help to more effectively manage the distribution of liquor outlets in the interests of reducing alcohol-related harm in the community. It recommends the Act be amended to require the licensing authority to consider outlet density when determining applications in the public interest.

The *Cancer Council Western Australia* submits the link between outlet density and alcohol-related harm is a clear one with Australian data showing that on-premises liquor licence density is linked to an increase in violence, whereas off-premises liquor licence density is linked to an increase in chronic alcohol-related harm. In each case, higher outlet density leads to a geographically localised increase in alcohol consumption, but manifests in different types of harm.<sup>102</sup> Recent evidence from Western Australia also links higher outlet density with an increase in alcohol consumption and to greater mental health morbidity.<sup>103</sup>

In its view outlet density is of sufficient concern to other jurisdictions to warrant restrictions on new licence applications with both Victoria and New South Wales restricting the issue of new licences in specific local government areas in an attempt to ameliorate alcohol-related harm. In this regard they recommend the Act be amended to include provisions for consideration of outlet density.

The *Department of Corrective Services* submits they are supportive of provisions to consider outlet density and the cumulative impact of the number of outlets selling liquor in a locality when making decisions.

*Mr Peter Abetz MLA* submits Recommendation 23 of the *Education and Health Standing Committee's 10th Report, Alcohol: Reducing the Harm and Curbing the Culture of Excess* should be noted by the Committee. Recommendation 7 states the Act be amended to consider the public health impact of any further increase in liquor outlets, and include a codification system for future outlet density requirements for the planning policies of the State's local government authorities.

101 Pereira, G., Wood, L., Foster, S., & Haggard, F. (2013) Access to Alcohol Outlets, Alcohol Consumption and Mental Health. *PLoS ONE* 8(1): e53461. doi:10.1371/journal.pone.0053461

102 Livingston, M., Alcohol outlet density and harm: Comparing the impacts on violence and chronic harms. *Drug and Alcohol Review*, 2011.30(5):p.515-523.

103 Pereira, G., et al., Access to Alcohol Outlets, Alcohol Consumption and Mental Health. *PLoS ONE*, 2013. 8(1): p. e53461.

---

The *Injury Control Council of Western Australia* submits the relationship between the availability of alcohol, both in terms of proximity (outlet density) and hours within which it can be purchased, and alcohol-related problems such as community and domestic violence, public disturbances and motor vehicle crashes, has been well documented. Numerous studies in Australia and internationally indicate an overwhelming link between the number of premises in an area and late and/or extended trading hours, and excessive alcohol consumption with social disruption, noise and anti-social behaviour including crime and violence

It recommends the Act be amended to introduce specific provisions on outlet density and trading hours as a means of regulating liquor licence applications.

The *Local Drug Action Groups Inc*, the *Esperance Local Drug Action Group*, the *Rockingham/Kwinana Local Drug Action Group* and the *South Perth Local Drug Action Group* all submitted the Act should be amended to enable the licensing authority to consider outlet density and the cumulative impact of licensed premises in liquor licensing decision making.

The *City of Fremantle* submits anti-clustering and saturation provisions could be written into the Act to control high risk licensed venue density and prevent nightclubs or hotels operating side by side. This approach is successful in Paris, New York and Vancouver and has been introduced in the City of Westminster, London.

The *City of Cockburn* submits the number of liquor outlets in the City of Cockburn has grown significantly over the past 10 years and the number continues to grow at a rate that is of concern to many in the community. There is however, an expectation the number of liquor outlets will increase as new suburbs are developed and also as higher density accommodation is introduced into some of the established suburbs.

For these reasons the City recommends outlet density be more strictly controlled and has adopted a position statement including the following reference to outlet density:-

*In many suburbs within the City the number of liquor licensed premises especially bottle shops is considered to be adequate and additional liquor outlets are generally not supported unless it can be proven that the area is not adequately serviced with bottle shops.*

A number of other submissions recommend outlet density should be considered as a contributor to alcohol-related harm should be considered in the decision making process.

The *Metropolitan Redevelopment Authority* submits any measure of outlet density should be compared against resident, worker and tourist population of an area, as the level of patronage to a destination should proportionately increase the number of licences suitable for a precinct. It is also essential regulatory measures align with the rate of development to ensure our city can adequately accommodate for its growing population.

*Liquorland (Australia) Pty Ltd* submits while international studies suggest the density of liquor outlets is associated with a range of alcohol-related harms, these studies have also consistently emphasised that these relationships are complex as outlet densities may be associated with different types of problems and different categories of licensed premises. To date, these studies have generally not distinguished between packaged liquor outlets and other types of licensed premises and the relative purpose of different outlets. If applications are assessed only on the grounds of outlet density in the local area, that would potentially be reverting to the old system whereby applications were determined on the basis of 'public need'. Limiting outlets on the basis of density alone may operate as a de facto protection from competition for some of these outlets. The evidence about what constitutes an appropriate level of outlet density is unclear and inconclusive.

---

## **Conclusion**

The Committee considers outlet density should not be assessed purely on the number of licensed premises. The class of licences and the nature of the business being conducted should also be considered.

It is also important that any measure of outlet density recognises the positive benefits of clustering licensed premises in certain circumstances. For example, in a tourism precinct such as Elizabeth Quay it could be more appropriate to have a higher degree of density including a number of low risk licences as opposed to one or two large high risk outlets. Further, the potential harm from a number of small bar licences would be significantly different from a number of large packaged liquor outlets operating in a particular area.

The nature of a licensed premise has a significant effect on drinking culture, and the Committee considers it imperative the licensing authority has the ability to influence the types of licensed premises operating in a particular area.

Therefore the Committee considers there is sufficient evidence and support to include the number and nature of licensed premises in a relevant locality as a matter the licensing authority may have regard to in section 38(4) of the Act and recommends the Act be amended accordingly.

In addition, the Committee agrees with WA Police's suggestion regarding the New South Wales trial of an Environmental and Venue Assessment Tool (EVAT) and recommends the Minister should monitor and assess the outcomes of the trial.

The Committee supports the work being done by the Drug and Alcohol Office, considers it is important to understand the relationship between liquor outlets and harm and recommends the Minister monitor the progress of this project.

While not specifically related to outlet density, the WA Drug and Alcohol Office submit the Act should be amended to prohibit the location of licensed outlets within a specified distance of schools. The City of Cockburn lodged a submission suggesting that strict set-backs be established to prevent the operation of a liquor outlet within 200 metres of schools, youth centres and or other premises occupied or used by at risk persons.

In this regard, the Committee considers it is most important to prevent the establishment of new licensed premises near schools and consider 400 metres to be an appropriate distance. Accordingly the Committee recommends section 38 of the Act be amended to so that, unless exceptional circumstances apply, a liquor licence shall not be granted within 400 metres of a school.

### ***Recommendation 41***

*Amend section 38(4) of the Act to include the number, type and nature of any existing and proposed licensed premises in the relevant locality as a matter the licensing authority may have regard to in assessing the public interest.*

### ***Recommendation 42***

*The Minister should monitor and assess the outcomes of the New South Wales trial of an Environmental and Venue Assessment Tool (EVAT).*

*Recommendation 43*

*The Minister should monitor the progress of and assess the Outlet Density Tool currently being developed by the WA Drug and Alcohol Office.*

*Recommendation 44*

*Amend section 38 of the Act so that, unless exceptional circumstances apply, a liquor licence should not be granted within 400 metres of a school.*

---

## Licence categories

Prior to the Act being amended in 2007 there were two licence categories – Category A and Category B. The licence categories were linked to the risk factor of a particular class of licence and determined how applications were processed and licences dealt with.

### Submissions

*Restaurant & Catering Australia* submits research in 2012 of its Western Australia membership highlights members believe there should be a distinction between high-risk and low-risk venues in Western Australia and this would assist in identifying venues capable of responsibly serving alcohol in the absence of meals. It recommends the Act be amended to make a clear distinction between high-risk and low-risk venues.

The *Small Bar Association of WA Inc* submits small bars are a low risk licence category and would benefit from a more collaborative and less obstructive approach from the bureaucracy. It recommends a method for identifying high risk and low risk venues basis needs to be created and reviewed on a regular basis.

*The Law Society of Western Australia* submits the lack of distinction drawn between high risk and low risk licences, can potentially create unnecessary challenges for applicants for low risk licences. It recommends a distinction be drawn between high risk and low risk licences and applications for low risk licences should be required to address a less onerous public interest test.

*Mr Gavin D Crocket* submits the distinction between category A and category B licences should be brought back into the Act so that a far lesser public interest test can be applied to non-commercial licences.

The *Tourism Council WA* submits licence applications should be graded for risk of harm and ill-health and the public interest test graded according to that risk. Licences should also be subject to harm and ill-health performance measures, such as the register of incidents, and their grading of risk reviewed accordingly. A single low risk licence would replace many current licence types, including restaurant, small bars and producer licences. A low risk licence should have a low level of restriction on customer service and a low level of licence application and compliance costs.

### Conclusion

Over recent years there has been support for the reintroduction of the two licence categories. This view is supported by submissions lodged for consideration by the Committee with several submissions suggesting the removal or modification of the public interest assessment requirement for low risk premises.

At present, the licensing authority has adopted a policy which essentially puts the licences into two risk categories, however the Committee considers there is a need to formalise this arrangement.

The Committee considers application and compliance requirements should be proportionate to the potential risk of a class of licence and considers it is appropriate to apply a less detailed Public Interest test for low risk licences which would remove unnecessary regulation for both applicants and the licensing authority.

Accordingly, the Committee recommends the Act be amended to reintroduce two licence categories which distinguishes between low risk and high risk premises.

It should be noted, as specified in Recommendation 49, Small Bars should be seen as a low risk class of licence.

*Recommendation 45*

*Amend section 38 of the Act to provide a distinction between Category A and Category B licences.*

*A high risk Category A licence would include the classes:-*

- *Hotel (including Tavern)*
- *Nightclub*
- *Liquor Store*
- *Casino*
- *Special Facility (unless otherwise prescribed)*

*A low risk Category B licence would include the classes:-*

- *Club and Club Restricted*
- *Restaurant*
- *Small Bar (Refer Recommendation 49)*
- *Producer*
- *Wholesaler*



---

## Prohibition on reapplication

The provisions of section 38(5) of the Act state if an application for the grant or removal of a licence is not granted because the licensing authority is not satisfied that granting the application is in the public interest, an application in respect of the same premises or land cannot be made within three years after the decision unless the Director certifies that the proposed application is of a kind sufficiently different.

### **Submissions**

A number of submissions recommend the provisions of section 38(5) of the Act should be either repealed or the term reduced.

The *Law Society of Western Australia* submits a distinction should be drawn between applications which are refused upon the grounds the evidence demonstrates the grant of the application would have an adverse consequence as opposed to those applications which fail due to a lack of evidence. It is also suggested clarification of the term 'of a kind sufficiently different' is required.

*Liquorland (Australia) Pty Ltd* submits the continuation of the moratorium on reapplying within three years is not in the public interest as it prevents anyone who may produce the required evidence to satisfy the public interest test from lodging an application for three years.

The *Metropolitan Redevelopment Authority* recommends an application for previously refused premises is assessed on the new applicant and the new business proposal's merits, rather than on the premises for which it is located and the type of licence being applied for.

The *City of Perth* submits restricting the number of times an application could be submitted for a premises would be a better approach than a specified time period.

*Woolworths Limited* submits the three year moratorium on reapplying for a liquor licence should be repealed. Rather than commencing the entire process again, the reapplication should be limited to just the matters set out in the decision for which the application was initially unsuccessful.

The *Foundation for Alcohol Research and Education* submits the provisions of section 38(5) of the Act should remain unchanged.

The *WA Drug and Alcohol Office* submits the provisions contained within section 38(5) of the Act should be amended to increase the period to five years. Further, extended trading permit applications for extended trading hours should be included as a type of application which is subject to the provisions of section 38(5).

### **Conclusion**

Several submissions have called for the three year period to be repealed altogether or reduced significantly, while submissions from health groups have requested the three year restriction on re-applications is maintained. Clearly the opinion of industry and health stakeholders are contradictory in this regard.

The Committee understands in the 2012/13 financial year out of approximately two hundred applications lodged, only six applications for the grant of a licence were refused. These were:-

1. Application for a wholesaler's licence – refused on the basis the applicant did not satisfy the Director the granting of the application was in the public interest due to the applicant not clearly stating its intended manner of trade at the proposed premises, the harm minimisation documents not reflecting the conduct of a business under a wholesaler's licence and the fit out of the proposed premises reflecting the setup of a liquor store licence;
2. Application for a restaurant licence – refused on the basis the Director was not satisfied the granting of the application was in the public interest due to the location of the proposed premises, the number of licensed premises in the locality and the nature of the business conducted at the premises;
3. Application for a liquor store licence – refused on the basis the Liquor Commission was not satisfied the granting of the application was in the public interest due to the addition of another destination liquor store at the proposed location significantly increasing outlet density;
4. Application for a liquor store licence – refused on the basis the Director was not satisfied the granting of the application was in the public interest due to the lack of adequate or compelling evidence submitted by the applicant to demonstrate the grant of the licence would cater for the requirements of consumers for liquor and related services;
5. Application for a liquor store licence – refused on the basis the Director was not satisfied the granting of the application was in the public interest due to the potential negative impact outweighing the benefits which may be gained by some members of the community; and
6. Application for a liquor store licence – refused on the basis the Director was not satisfied the granting of the application was in the public interest due to the prevalence of at-risk groups in the locality and the existing level of alcohol-related harm.

The percentage of applications refused for the 2012/13 financial year is 2.9% and the Committee understands in previous years less than 10% of applications have been refused with 9.3% of applications being refused in the 2010/11 financial year and 6.7% of applications being refused in the 2011/12 financial year.

The Committee considers there is no overwhelming evidence to support a change to section 38(5) of the Act and accordingly, recommends section 38(5) remain unchanged.

*Recommendation 46*

*Section 38(5) of the Act should not be amended.*

---

## 5. Licences

### Licence Classification

The Act contains 10 classes of liquor licences:-

- Hotel (including the sub categories of tavern and small bar licences)
- Nightclub
- Liquor Store
- Club (including Club Restricted)
- Restaurant
- Producer
- Wholesaler
- Special Facility (14 sub categories prescribed in the Regulations)
- Casino
- Occasional

The two areas where there is some support for change relates to the introduction of a direct sales/internet licence and the current classification of the small bar licence as a sub-class of a hotel licence.

### Direct Sales/Internet licence

With the increasing adoption of electronic commerce or e-commerce, almost any product can be purchased online. In terms of liquor, licensed premises that are permitted to sell packaged liquor (liquor stores, hotels, taverns, producers etc), have led the market in Western Australia by expanding their terrestrial licensed premises and retail sales business to include internet sales. The current provisions of the Act require online sales must take place on or from a physical or terrestrial licensed premises.

The ability to authorise the establishment of a 'virtual liquor store' to conduct an online or internet sales business (including telephone and mail order sales) without the statutory requirement to maintain a physical or terrestrial licensed premises was the subject of submissions.

An examination of other Australian jurisdictions revealed only South Australia and Victoria make specific provision for the direct sales of liquor over the internet.

- South Australia's liquor licensing laws provide for a direct sales licence which authorises the sale of liquor at any time where the purchaser orders the liquor by mail, telephone, facsimile, internet or some other electronic means; and
- In Victoria, the legislation provides for renewable limited licences which authorise the supply of liquor in circumstances where the scale and scope is restricted or limited. For example, under this category, a licence can be limited to authorising the licensee to the sale and supply of packaged liquor only when such liquor is ordered by mail, telephone, facsimile transmission or internet.

In all other Australian jurisdictions, there are no specific licences available which only permit the sale of liquor over the internet.

In February 2012 the Department of Racing, Gaming and Liquor, at the request of the Minister for Racing and Gaming, issued a discussion paper regarding the possible introduction of a direct sales/internet licence.

---

In response to the discussion paper, there was support from business operators who would benefit from holding a direct sales/internet licence. In those submissions it was noted online sales would be an ideal way for small operators/producers to sell liquor, as many do not have the capital to set up a physical premises.

It was also suggested this licence category would allow businesses to concentrate on supplying small amounts of niche products, rather than having to supply mass quantities of cheap and widely available liquor, the profits of which are needed to sustain a physical premise.

In contrast, concerns were raised by *WA Police*, the *McCusker Centre for Action on Alcohol and Youth* and the *WA Drug and Alcohol Office* in relation to the increased availability of liquor that would result from this type of licence being available and the risk of liquor becoming more accessible to juveniles. *WA Police* also raised concern over the inherent difficulty in monitoring this type of supply and indicated considerable extra resources would be required to carry out additional monitoring and enforcement duties.

The *Liquor Stores Association* and the *Australian Hotels Association (WA)* submitted this type of licence was not necessary, as licensees already have the ability to make online sales and that this type of licence does not fit with the primary objective of the Act, with regard to the proper development of the liquor, tourism and hospitality industries, because the licensee will not be required to invest in physical infrastructure.

In March 2012 the Minister for Racing and Gaming announced the review of the Act and determined that it would be more appropriate for the introduction of a direct sales/internet to be considered as part of the review.

### **Submissions**

*WA Police* submit they are concerned that under the current provisions of the Act and under the proposed direct sales licence persons under 18 could purchase liquor through an internet transaction and thereby inconspicuously obtain liquor. This raises issues in regard to delivering liquor to juveniles and intoxicated persons as well as the delivery of liquor to a Liquor Restricted Premise, to communities where restrictions are in place and to communities the subject of section 175 restrictions.

*WA Police* also submit if they are required to enforce the provisions of internet sales licences then considerable extra resources will be required to carry out the additional duties.

The *McCusker Centre for Alcohol and Youth* submits it has concerns about the potential impact of the growth of online sales of alcohol on the already worrying levels of alcohol consumption and alcohol-related harms among young people and regard for preventing harm must come above business concerns.

In its view:-

- The growth of online sales of alcohol has the potential to significantly increase the access and availability of alcohol as it represents an extension to the existing means of accessing alcohol and will contribute to the normalisation of alcohol use, particularly among young people, through the resulting increase in the availability of alcohol and the increased access from having alcohol delivered to the door;

- There are concerns regarding existing licensees that operate online liquor stores and provide home delivery services as it is unclear how the existing services are monitored and little is known about how such services operate and the potential negative impacts and that there may be a proliferation of such business types if further growth in online liquor sales was supported by the Act; and
- Serious weaknesses in the monitoring and enforcement of existing liquor licences in Western Australia have been identified<sup>104</sup> and until those weaknesses are fully addressed and the monitoring and enforcement of existing licences are shown to be effective and sustainable, it would be premature and potentially harmful to increase the burden on WA Police and departmental compliance staff by expanding the online availability of alcohol, while also maintaining provision of the existing licence types. Any expansion of liquor licensing must be accompanied by an adequate increase in resourcing for monitoring and enforcement.

The *McCusker Centre for Alcohol and Youth* recommend the licensing authority conduct a comprehensive evaluation of direct sales licences in operation in South Australia and Victoria, which should include community consultation, an evaluation of the impact of direct sales licences on the availability and access to alcohol, and a review of the effectiveness of monitoring and enforcement procedures. If a direct sales licence category is considered appropriate on the basis of the comprehensive evaluation of equivalent licences in other states, initial approvals should be on the basis of a very limited number of licences in a trial with comprehensive independent evaluation. In determining an appropriate limit, the highest regard should be given to minimising harm and monitoring and enforcement capacity. The licence type should be defined to enable effective monitoring and enforcement and constraints on the promotion of alcohol should be a standing condition of licences.

The *WA Drug and Alcohol Office* submits care must be taken if consideration is given to opening up the licence classification system as this has the potential to increase the availability of alcohol. In this regard, a specific internet sales licence category will significantly increase the economic and physical availability of liquor in Western Australia by way of its convenience and cheaper prices because of reduced overheads associated with terrestrial premises. Further they advise:-

- Alcohol may become much more available to people who previously could not access it at terrestrial premises including, but not limited to, people who are too intoxicated to drive and many others. In addition, the ease of access to internet sales purchases may mean that customers increase the frequency and possibly volume of their purchases as it would be perceived as less effort than getting in the car and driving to the liquor store or other take away premises and carrying it all home;
- Given the anonymity the internet provides, it is possible online transactions will become an avenue for juveniles accessing alcohol. In this regard, a juvenile does not have to enter a licensed premises to complete the purchase and is able to browse extensively on the internet and order online or by phone or mail order. The juvenile does not appear to need to present proof of age identification when placing the order;
- The current licence classification system should be maintained and the Act maintain a focus on the minimisation of alcohol-related harm and problems; and
- If a new internet sales licence category is introduced:-
  - there be a cap on the total number of these liquor licences should be set, as well as a cap on volume per order;
  - regulations for internet sales should be implemented to avoid promotions that target young people;

104 Auditor General Western Australia. *Raising the Bar: Implementing key provisions of the Liquor Control Act in licensed premises*, 2011

- 
- alcohol must be signed for at the time of delivery by the person who has ordered the alcohol. This will allow proof-of-age identification to be shown and matched against the order details;
  - the licence holder must comply with whatever mandated liquor restrictions are in place in the community that the alcohol is being delivered to;
  - provision of sales data by delivery postcode should be a standard condition of this licence type;
  - the name and date of birth of the purchaser and receiver is required to be recorded, to assist with investigations of underage purchase and other breaches of the Act;
  - there should be mandated appropriate training for delivery personnel to enable them to identify intoxicated persons, juveniles and fake identification and also to realise their responsibilities under the Act;
  - the licensee of an internet sales licence should be able to be held accountable for the actions of the delivery companies they hire where there is evidence that the licensee did not take due care to have responsible service training and other requirements implemented; and
  - there should be a minimum wait of 24-hours before a delivery of alcohol can be received to limit the chances of those under the influence of alcohol that have run out, ordering more to continue their intake and potential for harm.

*Liquorland (Australia) Pty Ltd* submits the expectations of customers have broadened to demand increased access, variety and convenience to alcohol, however, it is important that alcohol sold online is sold in accordance with liquor licensing laws and Responsible Service of Alcohol practices.

*Woolworths Limited* submits it is increasingly investing in online and multi option retailing and this expansion has occurred within the existing controls established by the Act. It is important this is recognised without the need to create additional classes of licence, or impose new clauses or conditions on existing licences.

The *Liquor Stores Association of WA Inc* submits a current liquor store operator is responsible for ensuring staff are adequately trained in the responsible service of alcohol which includes identifying underage and intoxicated persons. None of this would apply to a stand-alone internet site. A standalone internet licence does not fit within the primary objects of the Act contained in section 5(1)(c) of the Act which is to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.

The *Australian Hotels Association WA* submits the introduction of a direct sales licence without a physical premises would contradict the primary objects of the Act which specifically supports hospitality and tourism businesses and if the direct sales licence were to proceed, it would greatly undermine the significant investment by existing hospitality businesses to ensure their venues are managed and supervised in accordance with the Act. It recommends an online direct sales licence category is not introduced.

A number of other submissions also submit the introduction of a direct sales licence without a physical premises would contradict the primary objects of the Act.

The *Liquor Wholesalers Association of WA* submits there is a need to have a licence category, as there is in other states, for an operator to conduct online/internet sales as this is an area where Western Australian operators are at a considerable disadvantage. Most of the large operators in internet liquor sales are based in New South Wales or Victoria and operate under a specific internet sales licence. These operators deliver a very large quantity of wine direct to customers in Western Australia which is to the detriment of business owners who would like to operate similarly from Western Australia.

---

## **Conclusion**

After reviewing the responses to the discussion paper and the submissions lodged, the Committee considers, while there is some support for a new class of licence to be introduced, it is not necessary nor appropriate to introduce a separate category of licence to facilitate online sales.

The Committee also concurred with the comments made by *WA Police*, the *McCusker Centre for Action on Alcohol and Youth* and the *WA Drug and Alcohol Office* in relation to the delivery of liquor to juveniles and this has been addressed at Recommendation 29.

One of the challenges acknowledged by the Committee is to ensure, where liquor is supplied in Western Australia from another jurisdiction, the same standards relating to delivery of liquor and proof of age apply. In this regard, the Committee has recommended the Act be amended to introduce a criminal offence for delivering liquor to a juvenile in Western Australia (Refer Recommendation 30) and makes a further recommendation that members of the Australian Liquor Licensing Authority Conference (ALLAC) should work towards introducing consistent delivery provisions in all jurisdictions.

### *Recommendation 47*

*No additional licence class of licence is required for a direct sales or online liquor business.*

### *Recommendation 48*

*Members of the Australian Liquor Licensing Authority Conference (ALLAC) work towards introducing consistent delivery provisions in all jurisdictions.*

---

## Small Bar licence

Under section 41(1aa) of the Act, a small bar licence is classified as a hotel licence with conditions prohibiting the sale of packaged liquor and limiting the number of persons permitted on the licensed premises to a maximum of 120.

### **Submissions**

The *Small Bar Association of WA Inc* submitted the licensing system would be improved and made more accountable and relevant by creating a small bar licence type as a standalone licence category. This view was also supported by *Tourism WA*, the *City of Fremantle* and the *Metropolitan Redevelopment Authority*.

The *Small Bar Association of WA Inc* submits small bars are not hotels or taverns in an operational sense and are not perceived as such by the public, yet under the Act they are included under the umbrella of the hotel licence. This causes confusion and complications from a zoning and land use perspective and the licensing system would be improved and made more accountable and relevant by creating a small bar licence type as a standalone licence category.

It further submits, significant costs are required to set up a small bar and by their nature, small bars are more likely to go in and out of fashion and have a shorter time frame to receive a return on capital investment. In addition, small bars do not get the benefit of scale that larger venues can negotiate with alcohol suppliers and from a financial perspective, small bars would benefit from the ability to serve an additional 30 patrons.

The *City of Fremantle* submits a small bar licence should not be categorised as a type of hotel licence, rather it should be a unique, low risk liquor licence. In addition, the economic viability and marketability of 120 patron maximum small bars would be significantly enhanced with increased flexibility in licence conditions, such as trading until 1am or the ability to provide or not provide food or entertainment without the need to vary licence conditions. It is also recommended a new micro bar licence category is introduced with an innovative approach to the provision of toilets. Floor space is often a limiting factor and public toilets occupy a significant footprint within the envelope of a building. As an incentive for prospective licensees, they recommend the Act mandates micro bars only require one unisex disabled access toilet facility and are limited to a maximum of 50 patrons.

The *Australian Hotels Association WA* submits the small bar licence was established as a sub category of the hotel licence to ensure that bars regardless of their technical name, ie hotel, tavern or small bar, all operated with the same conditions and benefits. The operation of a small bar licence and a tavern restricted licence is identical with the exception that a small bar is limited to a maximum of 120 persons.

It recommends the small bar licence continue to be a sub-class of the hotel licence and the Act be amended to provide that a small bar licence can be converted into a tavern restricted licence should the licensee wish to increase their venue's maximum occupancy beyond 120 persons, with protection from the licensee losing their small bar licence if the tavern restricted licence application is unsuccessful.

The *Metropolitan Redevelopment Authority* questions the viability of the small bar licence which only caters for up to 120 patrons because the class of licence lies within the hotel class means it is more difficult to demonstrate public interest. The introduction of an intermediate category of licence such as a bistro licence is recommended, which would be suited to modern establishments which offer food and drink but not necessarily in a seated environment.



---

The *WA Drug and Alcohol Office* submits the small bar licence was introduced in 2007 as a lower risk venue type designed to encourage a more mature drinking culture. In concept, small bars are considered lower risk due to the nature of the venue, limited patron numbers and the ability for bar staff to monitor the whole venue and interact with patrons easily. Increasing patron number maximums for small bars or other changes that significantly alter the nature of such venues would increase the potential for harm associated with this licence type and they recommend the small bar patron capacity maximum remain as 120 patrons.

The *City of Perth* submits the introduction of small bar licences has contributed to the growth of a safer, more sophisticated drinking culture in the CBD and inner suburbs and has diversified options for residents and tourists. Small bars have also contributed to achieving the goals of the City's Forgotten Spaces strategy in providing a viable economic option for the activation of small underutilised spaces within the city. The venue size makes it more appropriate for licensed premises to be situated in mixed use areas due to the fewer number of patrons and often more sophisticated nature of the venues. In this regard, the current size of 120 patrons is sustaining business viability and there is no need to revise the capacity figure.

*Mr Gavin D Crocket* submits the various types of hotels set out in section 41 of the Act remains confusing and recommends there should be a single hotel licence to which conditions are added depending on what type of business is required.

*Tourism WA* submits the diversity of mix of small bars has complemented the range of existing licensed venues, providing an alternative for tourists and residents and adding to the tourism product available. While the issue of the size and viability of small bars is being considered as part of the review, it is suggested issues such as the potential impact that additional approval conditions such as security, meals and parking may have on the licensee should also be considered. It recommends small bar licences are recognised as a separate category of licence.

The *Tourism Council WA* submits the current restrictions which define licence types in Division 2 of the Act should be reduced to promote competition, innovation and service availability. In particular, the restrictions on small bars having a maximum capacity of 120 customers should be removed.

The *McCusker Centre for Alcohol and Youth* submits the maximum capacity set for small bars of no more than 120 people at any one time should remain, to ensure small bars remain small. The existing size of small bars is part of why they may present less risk than some other licences.

*WA Police* submit the concept of small bars is increasing in popularity throughout the State and particularly within the City of Perth where it has been encouraged by Local Government. The extent of their attractiveness, impact on the liquor industry and whether or not they are contributing to or reducing alcohol-related harm are issues that require evaluation in the near future.

The maximum occupancy for a small bar is 120 persons which is not exactly a small gathering when persons are consuming alcohol. A number of small bars in Perth are achieving maximum numbers and when they are clustered in close proximity to each other they have the capacity to have the same or greater impact as a tavern licence. In this regard, *WA Police* recommend the existing maximum capacity of small bars does not increase.

---

### **Conclusion**

Given the nature of the business conducted in small bars, the relatively low risk to the community of those licensed premises and the view small bars are supporting a more mature drinking culture, a differentiation between small bars and hotels is considered appropriate in undertaking a public interest test.

The Committee considers a small bar licence should be classified as a unique, low risk, licence with a designated class of its own and not as a type of hotel licence.

Several submissions sought to increase the maximum number of persons from 120 to 150, however the Committee considers there is insufficient evidence or need to justify an increase to the maximum number of persons. The option remains for those licensees who wish to expand to apply for an alternative class of licence such as a hotel or tavern licence.

#### ***Recommendation 49***

*Amend the Act to introduce a new class of licence for Small Bars with the current provisions in relation to licence conditions and permitted trading hours, including the amendment proposed under Recommendation 71, being retained.*

## Special facility licence

Section 46 of the Act provides that the licensing authority shall not grant a special facility licence-

- except for a prescribed purpose as set out in Regulation 9A of the Regulations;
- because an approval, consent or exemption required under another written law in respect of a particular licence type, cannot be obtained, for example, town planning approval); or
- if granting or varying a licence of another class, or imposing, varying or cancelling a condition on a licence of another class, or issuing an extended trading permit in respect of another class of licence, would achieve the purposes for which the special facility licence is sought.

Therefore, an applicant for a special facility licence must demonstrate how the business for which the licence is sought meets the prescribed purposes for which a special facility licence may be granted and if a special facility licence is granted, it must be granted on such terms and conditions as are necessary to ensure that the licence is used only for the prescribed purpose for which it is granted.

### **Submissions**

*WA Police* submit, based on evidence of an Australian study which compared different approaches to reducing alcohol-related harm in the two Australian regional cities of Newcastle and Geelong, reducing trading hours results in a decrease in alcohol-related harm.<sup>105</sup> The study also suggested regulatory approaches lead to reducing alcohol consumption and intoxication whereas community approaches just aim to manage problematic behaviour arising from intoxication. Accordingly, they recommend in order to reduce alcohol-related harm, including but not limited to crime, violence and anti-social behaviour consideration should be given to reviewing all special facility licences to ensure the licence is appropriate for the type of licence currently granted.

*Mr Gavin D Crocket* submits the special facility style of licence was once a very useful licence and it provided for greater flexibility under the Act. He recommends the structure and description of special facility licences in the repealed Act be revisited and the intent of this class of licence be reactivated.

### **Conclusion**

The Committee considers all special facility licences should be reviewed to ensure the licence category is appropriate and whether the reasons the licence was originally granted are still valid.

#### **Recommendation 50**

*All special facility licences should be reviewed to ensure the prescribed class of licence is still valid and relevant with a view to converting inappropriate licences to a more appropriate class of licence.*

<sup>105</sup> Miller P et al (2012). Dealing with alcohol-related harm and the night-time economy. Monograph No 43, National Drug Law Enforcement Research Fund. Available at [www.ndlerf.gov.au](http://www.ndlerf.gov.au)

## Licence Fees

Section 128 of the Act provides for regulations to be made for the payment of licence fees. In 2013 the annual licence fee payable by licensees was \$539 (\$267 for club restricted licences). An additional fee of \$257 is payable if a licensee holds up to two extended trading permits and an additional \$514 is payable if a licensee holds three or more extended trading permits.

In 2011 section 128 of the Act was amended to enable licence fees to be prescribed by reference to:-

- the class of licence;
- any restrictions or conditions imposed in relation to the licence;
- the type of premises;
- the location of the premises
- the capacity of the premises;
- the trading hours;
- the convictions for offences under this Act, if any, of the applicant for the licence;
- the disciplinary action under Part 3 Division 13, if any, taken against the applicant for the licence;
- any other criteria prescribed in the Regulations;
- the extension of the operation of a licence by a permit; and
- the purposes for which a permit is to be issued, or the period during which a permit is to have effect.

To date, while none of the new criteria have been utilised and only the provisions relating to the class of licence and the operation of an extended trading permit are applied to the prescription of annual licence fees, the Committee considers these options should still be exercised when appropriate and remain available to the liquor licensing authority.

Figures provided to the Committee indicates around 50% of the liquor consumed in Western Australia is purchased from liquor stores. A further 36% is purchased from hotels and taverns which includes packaged liquor and liquor consumed on the licensed premises.

### **Submissions**

*Restaurant & Catering Australia* submits evidence indicates that consuming food with alcohol can limit the adverse effects of intoxication and there should be an incentive for these establishments such as reduced licence fees. In this regard, fees should be developed to reflect the relative levels of risk posed by different types of licences and given there is a substantial body of evidence demonstrating that certain characteristic and practices of licensed premises are associated with alcohol-related harm the licensing authority must reweight the system to more accurately reflect the proportion of alcohol sold and resultant alcohol-related harm by restaurants, cafes, pubs, clubs and packaged liquor outlets.

The *Australian Hotels Association WA* submits recent changes to the fee structure have imposed unreasonable fees around some licence applications. In this regard, fees and charges under the Act should be limited to a reasonable charge and only increase by CPI.

The *Porongurup Promotions Association* submits small producers are required to pay the same licence fees as the major Western Australian producers, many of whom produce thousands of tonnes of fruit each vintage and have substantial economies of scale.

---

Many of the producers in the Porongurups rely heavily on their cellar doors for marketing of their wines and the equal licence fees for both size producers ignores the disproportionate sizes and the ability of the smaller producers to pay.

Members of the *Porongurup Promotions Association* recommend a fairer licence fee structure would be a sliding scale to reflect size and capacity to pay.

A number of other submissions also recommend that increases to fees should be limited so any increase is no greater than CPI.

The *National Drug Research Institute* submits there could be an additional harm reduction levy applied to those premises permitted to have late trading to compensate the community for additional costs in deterring drink-driving as well as responding to increases in crime, particularly violent crime, and drink-driving road crashes, after midnight. Those who benefit most from such changes should contribute to the costs of minimising problems for the rest of the community.

The *Foundation for Alcohol Research and Education* submits risk based licensing fees are a structure based on a range of factors that may increase a venue's risk of facilitating harms such as increased trading hours and high occupancy levels. The rationale for the introduction of these measures is that those who cause the costs pay the costs. Risk based licensing fees can also be used to pay for late night transport options and crowd control strategies. Risk based licensing fees have been introduced in a number of jurisdictions in Australia including the Australian Capital Territory, Queensland and Victoria and are currently under consideration in the Northern Territory.

In this regard, an evaluation of risk-based licensing in the Australian Capital Territory (ACT) makes a strong case for the continuation and wider application of the licensing model with Australian Federal Police ACT Police data showing the introduction of risk based licensing in the ACT coincided with a 25% reduction in alcohol-related offences in the two years since its introduction.

Significantly, the additional licensing fee has had no detrimental impact on the liquor licensing market with licence regulators stating there had been no significant change to the number of liquor licences in the ACT since its introduction.

It recommends the Act be amended to introduce a risk based licensing fee system that offsets and attributes the cost to government and the community of administering and managing the impact of alcohol use and misuse on the community. The risk based licensing fee system should include, but not be limited to, the density of outlets, trading hours, patron intoxication, crowding, staff and management practices and venue type.

### **Conclusion**

Premises selling liquor for consumption on the licensed premises are subject to a high level of policing and enforcement with respect to the consumption of liquor. In turn, licensees of these premises have more control over their patrons and have a legal requirement to intervene where necessary to reduce harm.

The harm occurring as a result of packaged liquor sales is likely to occur away from the licensed premises, and while licensees of packaged liquor outlets are not required to intervene to reduce harm once the customer has left their premises, this harm cannot be ignored.

Results of a Western Australian study found the more alcohol sold per packaged liquor outlet the greater the risk of reported assault within the surrounding community and it was the volume of alcohol sold that had the greatest impact on assaults occurring in homes within the surrounding community. It was also found alcohol sold by packaged liquor outlets was associated with increased interpersonal violence occurring in residential settings, on-premise outlets (eg. bars and pubs) and other places including in the street.<sup>106</sup> As domestic settings are a likely place for consuming alcohol purchased from packaged liquor outlets, they are a likely location for violence associated with off-premise alcohol purchases to occur.

In Western Australia per capita pure alcohol consumption for individuals aged 15 years and over was 12.4 litres for 2009/10 which is an increase of 1.2 litres since 2005/06.<sup>107</sup> Per capita pure alcohol consumption in Western Australia is consistently higher than national estimates and in 2009/10 it was 2.1 litres higher.<sup>108,109</sup>

Each year, alcohol use is responsible for around 450 deaths in Western Australia and in 2010 Western Australian residents were hospitalised 15,776 times for conditions related to alcohol, costing approximately \$100 million.<sup>110</sup>

Harmful alcohol use is associated with a range of chronic diseases including cardiovascular disease, some cancers, liver diseases and cognitive impairment.<sup>111,112,113</sup> In Western Australia, the age-standardised rate of alcohol-related deaths for chronic conditions increased significantly over the period 1997 to 2005. In that period, five conditions (suicide, alcoholic liver cirrhosis, stroke, road crash injuries and oesophageal cancer) were responsible for 59% of all alcohol-related deaths in this state.<sup>114</sup>

The rates of alcohol-related Emergency Department presentation have increased significantly in the last 5 years for residents in the Western Australia metropolitan area and in 2011, the number of alcohol-related Emergency Department presentations for metropolitan area residents was 8,249, a rate of 445 per 100,000 of the population.<sup>115</sup>

Alcohol-related harms also place a major burden on WA Police resources with alcohol being involved in 75% of all WA Police responses in Western Australia, with a similar proportion of WA Police discretionary operational budget being directed toward addressing alcohol-related issues.<sup>116</sup>

106 Liang W, Chikritzhs T. Revealing the link between licensed outlets and violence: Counting venues versus measuring alcohol availability. *Drug and Alcohol Review*. 2011; 30(5):524-535

107 Drug and Alcohol Office (Unpublished data).

108 Drug and Alcohol Office (Unpublished data).

109 Australian Bureau of Statistics (2012). Apparent Consumption of Alcohol, Australia, 2010-11.

110 Epidemiology Branch & CRC-SI, Department of Health, 2013

111 National Health and Medical Research Council. Australian guidelines to reduce health risks from drinking alcohol. Canberra: Commonwealth of Australia; 2009

112 Winstanley MH, Pratt IS, Chapman K, Griffin HJ, Croager EJ, Olver IN, et al. Alcohol and cancer: a position statement from Cancer Council Australia. *MJA*. 2011; 194(9):479-482

113 Department of Health Western Australia. WA Health Promotion Strategic Framework 2012-2016. Perth: Chronic Disease Prevention Directorate, Department of Health, Western Australia; 2012

114 Xiao J, Rowe T, Somerford P, Draper G, Martin J. Impact of Alcohol on the Population of Western Australia - State wide report [homepage on the Internet]. Perth: Epidemiology Branch, Department of Health WA; c2008 [updated 2008 Jan; cited 2008 Oct 1]

115 Provided by Epidemiology Branch, Department of Health, 6 March 2013

116 Education and Health Standing Committee. Alcohol: Reducing the Harm and Curbing the Culture of Excess, 2011. Perth: Legislative Assembly, Parliament of Western Australia

Between 2009 and 2011 alcohol was involved in almost 20,000 assaults recorded by WA Police, which represented 44.1% of all assaults during that period.<sup>117</sup> Over 30% of alcohol-related assaults in Western Australia occur in or near licensed premises. In this regard, in 2009-10, there were almost 3,000 reported alcohol-related incidents requiring WA Police attention in and around licensed premises in Western Australia.<sup>118</sup>

Other complications associated with problem drinking include, difficulties with finances and relationships, as well as physical, emotional and legal issues such as violence and drink driving.<sup>119</sup>

Though visible harm may differ in various population groups, there is overwhelming evidence most alcohol-related harm is not caused by a minority of problem drinkers in the community, but by a majority who occasionally drink at harmful levels. This is evidenced by the results of the *2010 National Drug Strategy Household Survey* which showed more than one in five Western Australian drinkers (22.7%) aged 14 years or older consumed alcohol at a level that put them at risk of harm from alcohol-related disease or injury over their lifetime. Again the rate for Western Australia drinkers was higher than the Australian average (20.1%).<sup>120</sup>

While individual targeted interventions are necessary for people with problems associated with alcohol and their families, high priority must be given to comprehensive prevention and harm minimisation responses focused on systemic change in the broader community.

Strategies for the whole of the community are necessary to reduce the social and economic cost of harmful alcohol use and require population approaches based on the best available evidence and in the context of a comprehensive program designed to reduce alcohol problems.

Population approaches to preventing harm from alcohol, including through legislation, are cost-effective<sup>121</sup> and essential if Western Australia is to limit the burden of alcohol-related harm on the community, health services and law enforcement.

Effective strategies that address both the individual as well as the environment in which the individual is drinking include:-<sup>122</sup>

- Physical availability (eg. Number and location of outlets, density of outlets, hours and days of trade, range of products);
- Drinking context (eg. Responsible service of alcohol, reduce over-crowding);
- Education and persuasion (eg. increase knowledge and cultural change);
- Alcohol taxes and other price controls (increasing the economic cost of alcohol relative to other commodities);
- Drink-driving countermeasures (eg. Deterrence, punishment and social pressures); and
- Restrictions on alcohol promotions (reduce exposure and incentives to drink larger quantities).

117 Western Australian Police. Submission to minimum (floor) price: ANPHA issues paper [Internet]. 2012 [updated 2012 Aug; cited 2013 Jan 15]

118 Auditor General Western Australia. Raising the Bar: Implementing key provisions of the Liquor Control Act in licensed premises, 2011

119 Dietze P, Room R, Jolley D, Matthews S, Chikritzhs T. The adverse consequences of drinking in a sample of Australian adults. *Journal of Substance Use*. 2011; 16(2):116-126

120 Australian Institute of Health and Welfare. 2010 National Drug Strategy Household Survey report. Drug statistics series no. 25. Cat. no. PHE 145. Canberra: AIHW; 2011

121 Cobiac L, Vos T, Doran C, Wallace A. Cost-effectiveness of interventions to prevent alcohol-related disease and injury in Australia. *Addiction*. 2009; 104(10):1646-1655

122 Babor T et al (2010) *Alcohol: No ordinary commodity*. (2nd ed). New York: Oxford University Press

Taking all of these matters into consideration, the Committee considers education and awareness campaigns, together with other measures contained in Recommendation 11 in relation to advertising and promotion of liquor and Recommendations 22 to 33 in relation to juveniles can make an effective contribution to addressing both long term and short term harm.

As canvassed earlier in ***Changing the Drinking Culture***, sufficient funds need to be made available to support cultural change if the harm minimisation objects of the Act are to be achieved.

In this regard, the Committee considers an increase in annual licence fees in order to fund public education campaigns is appropriate. The Committee carefully considered how best to establish a fee regime which ensured those premises from which greater volumes of liquor is supplied were required to make an appropriate contribution to the proposed campaign.

Large premises, by their very nature are responsible for the supply of a significant volume of the liquor supplied in Western Australia and therefore it is appropriate that the licensees of those premises should make a significant contribution to addressing the harm caused to society through the consumption of alcohol.

Therefore, the Committee recommends the introduction of a risk-based annual licence fee as follows:-

- Category B licences will pay an appropriate base annual licence fee;
- Category A licences will pay an appropriate base annual licence fee;
- Category A licences which have a licensed area greater than 200 m<sup>2</sup> will pay a surcharge per square metre in addition to the base fee;
- the additional fee per square metre be set at \$10; and
- the base fees, surcharge per square metre and the size of the licensed premises be prescribed in the Regulations.

This recommendation has been made on the basis the larger a licensed premises is in licensed area, the greater volume of liquor sold from those premises and therefore, the greater the total level of harm caused.

Several criteria were considered and it was resolved to use the size of the licensed premises as opposed to volume of sales as it is easier to define and it is in fact, a de facto measure of volume.

#### ***Recommendation 51***

***Amend section 128 of the Act to:-***

- a) allow a base licence fee for Category A and B licences to be prescribed in the Regulations;***
- b) include the size of a licensed premises in section 128(2)(a) as a criteria on which licence fees can be prescribed;***
- c) include a provision that where a Category A licence has a licensed area which is greater than a prescribed size (200 m<sup>2</sup>), a surcharge per square metre will be payable (\$10 per m<sup>2</sup>);***
- d) require the money collected from the surcharge (fee per square metre) to be allocated to an appropriate current government body or bodies and be strictly quarantined for community education purposes only in accordance with guidelines and procedures determined by the Minister; and***
- e) allow a board of experts be established to advise the Minister on initiatives to fund.***



---

## Code of Practice

The liquor control regulatory framework in Western Australia consists of the *Liquor Control Act 1998* and the *Liquor Control Regulations 1989*. In addition, there are a number of policies produced by the Director which provide guidance to licensees in regard to the operation of licensed premises.

After examining the statutory conditions included on licence documents and the policies of the Director, the Committee considers a more suitable practice would be the use of a Code of Practice.

A Code of Practice is a document prepared for the purpose of providing practical advice on requirements and may contain explanatory information. It does not represent the only acceptable means of achieving a certain standard, however provides transparency to applicants regarding the expectations of the licensing authority.

Under a Code of Practice regime:-

- If a relevant requirement is prescribed in the Act or Regulations, licensees must follow the relevant requirements;
- If a relevant approved Code of Practice exists, compliance is mandatory unless the same or better outcomes are achieved;
- If no Act, Regulations or approved Code of Practice exist, licensees should refer to relevant guidance material produced by the licensing authority or any other reliable source, as well as conducting appropriate risk assessments; and
- The onus is on licensees to demonstrate they are acting in accordance with or above the requirements of the Code of Practice.

While a Code of Practice does not have the same legal force as a regulation and non-compliance would not be sufficient reason, in itself, for prosecution under the Act there is a requirement on the licensee to follow the Code of Practice, unless they utilise another solution which achieves the same or a better result. An inability to demonstrate this could be used to support a prosecution for non-compliance.

One of the benefits to industry of the implementation of Code of Practices for specific matters is greater certainty and transparency in the requirements of the licensing authority and the opportunity to contribute to the development of the Code. A further benefit will be a simplified licence document.

Requirements which currently exist within policy documents produced by the Director, would form part of a Code of Practice and become enforceable provisions.

The implementation of a Code of Practice would require an amendment to the Act to create a head of power to enable a Code of Practice to be developed and prescribed in the Regulations. The Act should also contain offence provisions similar to those that currently apply for a licensee not complying with a licence condition, including the ability for an infringement notice to be issued for non-compliance.

The regulatory framework is also able to be supplemented by guidelines. A guideline is an explanatory document issued by the licensing authority providing detailed information on the requirements of legislation, Regulations or codes of practices. Guidelines are not enforceable.

---

As will be discussed further in **Section 11, Transparency and Process**, there is a need to strengthen the current guidance material provided for applicants and those seeking to make representations regarding applications. The Committee considers the introduction of the regulatory structure above will provide the framework for this to occur.

As will also be discussed further in **Section 13, Liquor Industry Advisory Committee**, there is a need to establish an advisory body to provide advice to the Minister on an ongoing basis. One of the functions of this committee would be to make recommendations regarding codes and practice and other guidance material.

Accordingly, the Committee recommends the Act be amended to create a head of power to enable relevant Codes of Practice to be developed and prescribed in the Regulations, with offence provisions similar to those that currently apply for a licensee not complying with a licence condition.

*Recommendation 52*

*The Act be amended to enable Codes of Practice to be developed and prescribed in the Regulations.*

*Recommendation 53*

*The licensing authority ensure the regulatory framework consists of the Act, Regulations, Codes of Practices and Guidelines and information provided to industry ensure clarity on the legal status of each document.*

## Liquor Restrictions

Section 64 of the Act states, in relation to any licence or permit, the licensing authority may at its discretion impose conditions in addition to the conditions specifically imposed by this Act or in such a manner as to make more restrictive a condition specifically imposed by this Act.

An example of these provisions being exercised is where the Director has imposed conditions restricting the sale of liquor on certain days and limiting the type of liquor which may be sold in towns or regions where significant harm is being caused by the use of liquor. This is generally referred to as a section 64 enquiry.

The current provisions of section 64(1a) of the Act provide that the licensing authority may utilise these provisions to impose, vary or cancel a condition of its own motion, on the application of the licensee or at the written request of the parties to a liquor accord.

### Submissions

*WA Police* submit section 64(1a) of the Act should be amended so the Commissioner of Police and the Executive Director Public Health are recognised as parties who may request the Director to impose, vary or cancel conditions in this manner.

The *McCusker Centre for Alcohol and Youth* submits whole of community approaches, including liquor restrictions, can make important contributions to the required comprehensive approach needed to effectively and sustainably reduce alcohol-related harm. In this regard, liquor restrictions have made important contributions in a range of areas in Western Australia including Halls Creek and Fitzroy Crossing where benefits have been seen across a broad range of health and social indicators.<sup>123,124</sup>

It considers all interventions, including liquor restrictions, should be accompanied by comprehensive evaluation and where liquor restrictions are introduced, licensees should be required to regularly submit returns of sales data to the licensing authority to enable thorough evaluation of the restrictions and any other concurrent policy changes.

The *McCusker Centre for Alcohol and Youth* recommend the current provisions of the Act which allow for the implementation of liquor restrictions should continue and where required, the implementation of the existing provisions of the Act regarding liquor restrictions should be strengthened, for example, through the introduction of appropriate controls to restrict the transport of alcohol to and between areas with liquor restrictions.

The *Department of Corrective Services* submits it is supportive of continued flexibility in imposing licensing restriction in high risk areas such as the Pilbara and the Kimberley.

The *Executive Director Public Health* submits there are a number of recognised factors that can assist a venue to reduce its risk of alcohol-related harm, including internal and external factors that influence the drinking setting and the drinking behaviours of patrons. In this regard, the imposition of conditions on licences where appropriate, in the interests of minimising harm and ill-health related to alcohol consumption is supported. In addition, it is important the Act enables emerging issues such as self-service wine dispensers to be assessed and managed within a flexible legal framework.

<sup>123</sup> Drug & Alcohol Office. The Impact of Liquor Restrictions in Halls Creek, Quantitative Data - 24 month review. November 2011.

<sup>124</sup> Kinnane S, Farrington F, Henderson-Yates L, Parker H. Fitzroy Valley Alcohol Restriction Report: An evaluation of the effects of a restriction on take-away alcohol relating to measurable health and social outcomes, community perceptions and behaviours after a two year period. Perth: University of Notre Dame Australia, Drug and Alcohol Office, Government of Western Australia; 2010.

---

The *WA Drug and Alcohol Office* submit while targeted strategies for individuals are an important part of a comprehensive approach to reducing levels of alcohol-related problems in the community, research shows that a whole of community approach is also a necessary and effective method to achieve long-term change.

In this regard, they consider liquor restrictions can reduce social harms and support a community to take back care, control and responsibility by strengthening connection with family, culture, education, employment and community. In locations where alcohol consumption is high across the community, restrictions not only help to reduce problems associated with binge drinking, they also help to reduce longer term problems that can come from drinking regularly.

It recommends the Act be amended to introduce provisions for community, WA Police and the Executive Director Public Health to request the licensing authority take action using section 64 of the Act.

The *Marninwarntikura Women's Resource Centre* submits alcohol abuse in the Fitzroy Crossing region has caused many medium and long term problems that cannot be undone by the introduction of restrictions. Despite the restrictions resulting in a significant improvement in the community, once a pattern of alcohol abuse is established it takes a long time for a community to repair and recover. In this regard, if measures can be introduced into communities at risk now to assist in reducing the consumption of alcohol to a level consistent with the Western Australian average, then that opportunity should be taken. It recommends the licensing authority should adopt and implement measures to extend the current liquor restrictions into other regions of the State where the annual litres per capita consumption is greater than the Western Australian average.

*Mr John Jakobson* submits certain categories of people, such as tourists, pastoralists, remote contractor groups, who do not stay within a town long enough to effect its own issues should be able to expect exemption from liquor restrictions.

*Leedal Pty Ltd*, licensee of the Fitzroy River Lodge and the Crossing Inn, submits practical changes to the existing take-away liquor restrictions in Fitzroy Crossing are needed to curb 'sly grogging' and residents travelling to other towns to purchase liquor. It recommends the Act be amended to provide for mandatory monitoring and assessment of the effectiveness of liquor restrictions.

The *Honourable Ken Baston MLC* submits liquor restrictions in the North West have resulted in a reduction in choice for the wider community; a reduction in the spend of tourists; an unforeseen effect on the viability of small businesses; a disproportionate impact on the wider community while having little effect on the target group of at-risk drinkers; and group buying of alcohol and transportation into towns with restrictions.

There has been a contradiction between the objects of section 5(1)(b) and 5(1)(c) and while there is a place for liquor restrictions, a better approach would be to investigate the use of an identification card or similar system that allows for the purchase of alcohol by responsible persons who have not been convicted of any alcohol-related offence.

The *Shire of Leonora* submits at times when section 64 restrictions are imposed, often a large portion of local residents are unaware the restrictions are going to be in place which results in the inability to purchase liquor or attend licensed outlets. The restrictions can also affect pastoralists and tourists in the same manner. While liquor restrictions are being imposed in the best interest of a particular demographic of the community, some consideration on the impacts to tourism and the wider community also needs to be considered.

---

The *Honourable Wendy Duncan MLC* submits if the licensing authority is petitioned to impose liquor restrictions under section 64 the whole community should have the opportunity to respond, and not just the licensees as it is important the community that is going to be affected by the change in regime have some opportunity to influence the outcome. In addition, the imposition of restrictions must also take into account the impact of one of the main economic drivers in regional areas which is tourism.

Liquor restrictions are only ever a temporary measure while the root cause of the problem, irresponsible consumption of alcohol is dealt with at its cause. When restrictions or bans are put in place it is only a matter of time before ways and means of circumventing them are found. In order to solve this undeniable problem with alcohol in Australia, the Hon Wendy Duncan suggests irresponsible drinkers must be targeted first.

The *Australian Hotels Association WA* submits section 64 of the Act is intended as a targeted approach to specific licences where the licensing authority can exercise its discretion to impose additional liquor licence restrictions.

The explicit language of section 64 focuses on singular licences and or licensees and is intended to allow the licensing authority to target individual premises or individuals and is not intended as a general, all-encompassing application to a group or community of licences.

It recommends the Act is amended to limit the ability of the Director to vary the conditions of licensees in an entire community and to require the Director to consider imposing, varying and cancelling conditions on a case-by-case individual basis and not applying restrictions to an entire community of licence types.

*Mr John Bowler* submits the use of restricted trading hours and the prohibition of the sale of certain products is not an appropriate way to deal with a small minority of the public who are either unable or chose not to drink responsibly. The blanket restriction of the availability of alcohol to the majority of consumers who drink responsibly so as to control the availability of alcohol to a small section of the community is poor government , poor management and poor social manipulation.

A number of other submissions also submit the ability of the Director to vary the conditions of licences in an entire community should be limited and the Director should be required to consider imposing, varying and cancelling conditions on a case-by-case individual basis.

### **Conclusion**

The Committee considers liquor restrictions can make important contributions to the required comprehensive approach needed to effectively and sustainably reduce alcohol-related harm.

The Committee considers the request by WA Police is a reasonable request and accordingly, recommend section 64(1a) of the Act be amended to specify the Commissioner of Police, the Executive Director Public Health and parties to a liquor accord can request the licensing authority impose, vary or cancel conditions.

Another issue raised in relation to section 64 enquiries, relates to the consultation undertaken by the licensing authority as part of the enquiry process.

---

Section 64(2a) of the Act requires the licensing authority to invite affected licensees to show cause why the proposed restrictive conditions should not be imposed. It has been submitted the whole community should have an opportunity to provide feedback in relation to proposed restrictions, not just the affected licensees, so members of the community who are going to be affected by the restrictions have an opportunity to contribute to the discussion.

The Committee considers this to be an appropriate suggestion, and recommends section 64(2b) of the Act be amended to require the licensing authority to invite the affected community to show cause why the proposed restrictive conditions should not be imposed as part of an enquiry under section 64 of the Act.

In regard to support services, the Committee recommends the licensing authority should notify the relevant government agencies in relation to the potential need for relevant support services which may be required to assist the community once the restrictions have been imposed.

It was also submitted while the imposition of liquor restrictions can be effective, the root cause of the problem, the irresponsible consumption of alcohol, is often not addressed adequately. It is often only a matter of time before ways of circumventing the restrictions are found, which inevitably reduce the effectiveness of the restrictions. The focus should also be on problem drinking and ancillary support services for affected individuals.

*Recommendation 54*

*Amend section 64(1a) of the Act to allow the Commissioner of Police, the Executive Director Public Health and parties to a liquor accord to request the licensing authority to impose, vary or cancel conditions.*

*Recommendation 55*

*Amend 64(2b) of the Act to require the licensing authority to invite the affected community to show cause why the proposed restrictive conditions should not be imposed as part of an enquiry under section 64.*

*Recommendation 56*

*In relation to liquor restrictions imposed under section 64 of the Act, the licensing authority should notify the relevant government agencies in relation to the potential need for relevant support services before the introduction of liquor restrictions.*

---

## Liquor Accords

Under section 64(1b) of the Act a liquor accord means a written agreement or other arrangement entered into by two or more licensees in a local community, persons who represent the Licensing Authority, government departments or local government and other persons.

Liquor accords may include representatives from licensed premises, businesses, councils, police, government departments and other community organisations and are a co-operative arrangement aimed at developing safe and well managed environments in and around licensed premises in the local context. They are part of an overall strategy that seeks to achieve a standard of practice that assists in fostering a responsible drinking culture; ensures safety in the local community; and promotes effective communication and problem solving between licensees and key stakeholders.

Each liquor accord is focussed on resolving local issues within a local area. Although individual accords may have similar elements, no two are the same.

### **Submissions**

The *Department for Communities* submits the Act should be amended to require reporting provisions against the criteria listed in section 64(3) of the Act. This would improve data collection and evidence based decision making in relation to licensing applications and strategies for enhancing community safety and wellbeing. Accord members would be able to identify local strategies that are working well and as a result, the licensing authority would gain an overarching perspective on best practice strategies in this area.

The *Honourable Wendy Duncan MLC* submits considerable community and collaborative effort goes into the establishment of a workable and community supported liquor accord. In some regional towns liquor accords work very well but in other places the accord has been ineffective because one or two licensees decide not to take part or comply. She recommends that if a liquor accord is agreed upon in a specific area then it should become part of the licence conditions of all the licensees in that area.

The *Marninwarntikura Fitzroy Women's Resource Centre* submits its experience is that liquor accords don't always give a voice to the wishes of the community and an accord may be entered into with no community involvement at all. Given the emphasis on harm minimisation and the responsible supply of liquor in the local community it is imperative the local community is engaged in the process of establishing a liquor accord and in its ongoing implementation in the community. Without proper consultation with the local community there is a significant chance that key issues for the local community may be overlooked.

The *Marninwarntikura Fitzroy Women's Resource Centre* has had a positive experience with alcohol management committees and suggests there may be a role for formal recognition of them in the Act.

In relation to liquor accords, they recommend the Act be amended so that unless representatives of the local community with an appropriate understanding of the issues of alcohol-related harm within the community and of harm minimisation agree to a liquor accord, it will not be a valid accord.

---

**Conclusion**

The Committee considers it would be more appropriate to amend section 64(1b)(a) of the Act to include a requirement for representatives of the local community a liquor accord to be represented on an accord. While they acknowledge the important role representatives of the local community play in the negotiation of an accord, it does not consider it appropriate they should have a power to reject an accord.

Accordingly, the Committee recommends section 64(1b)(a) of the Act be amended to include a requirement for a liquor accord to be developed in consultation with representatives of the local community.

**Recommendation 57**

*Amend section 64(1b) of the Act to include a new subsection requiring that a liquor accord must be developed in consultation with representatives of the local community.*



---

## Glassware

Glassing assaults on licensed premises has emerged as a serious anti-social issue in recent years and as a result there has been considerable interest in the use of non-glass containers (tempered glassware) in licensed premises.

Where appropriate, the Director has the power under section 64 of the Act to impose a condition on a licence to only allow the sale of liquor in tempered glassware. To date the Director has not exercised this power.

The industry has voluntarily responded to this issue and is working towards solutions to this particular problem. For example, the Australian Leisure and Hospitality Group, which is the largest single operator of hotels in Western Australia has introduced tempered glass for beer drinking containers in the majority of their venues in this state.

### **Submissions**

The *Australian Hotels Association (WA)* and a number of others submit there should be no regulation restricting or banning glassware in licensed premises and the Western Australian Government should continue to support the ongoing industry self-led program of phasing in of tempered glassware.

### **Conclusion**

The Committee considers the voluntary use of tempered glassware is working effectively and sees no need to make any amendments to the Act in this regard.

---

## Premises Capacity

The current provisions of section 64 of the Act do not require the capacity of a licensed premises to be imposed as a condition of the licence.

### **Submissions**

*WA Police* submit all licences should have the maximum accommodation or patron numbers listed as a condition on the licence to enable *WA Police* to directly intervene and enforce accommodation or patron numbers on licensed premises at the time of an offence, leading to a reduced rate of incidence.

### **Conclusion**

The Committee considers this to be a reasonable suggestion and recommends section 64 of the Act be amended to require the maximum accommodation/patron numbers set by the relevant local government authority be imposed as a licence condition.

### **Recommendation 58**

*The maximum capacity of a licensed premises set by the relevant local government authority, should be imposed as a condition on the licence. Transitional provisions should apply to this recommendation.*

## Club Licences

Section 48 of the Act states a club licence authorises the sale of liquor to a club member, guests of a member and persons who are visiting a club as a member or an official of another club (temporary members).

In addition, the provisions of section 60(4)(cb) of the Act allow the licensee of a club licence to apply for an extended trading permit to authorise the sale and supply of liquor to persons other than members on a specified special occasion; referred to as a non-members function. The Director's Policy, *Extended Trading Permits - Sale and Supply of Liquor to Non-Members at Club and Club Restricted Licences*, specifies that generally, a club may apply for up to 12 of these permits in any 12 month period.

### **Submissions**

*Clubs WA* submits the Act, in its current form and as it is currently interpreted by the licensing authority, obstructs licensed clubs and threatens their future capacity to meet consumer demand and fulfil their important role within the community. The following amendments are recommended by it:-

- extend the authorisation to sell liquor to temporary members to include a person assisting another club;
- include the authorisation to sell liquor to a tourist; and
- introduce a definition of a club function which would allow clubs to hold club functions as well as non-private club member functions arranged by other community associations.

*Clubs WA* also submits some clubs have misinterpreted the legislation in relation to the requirements of section 100 of the Act in relation to the appointment of approved managers.

The *Tourism Council WA* made a similar recommendation in relation to removing the restriction that a club licensee can only serve club members and guests of members and allowing clubs to sell liquor to any interstate and international guest.

### **Conclusion**

The Committee considers the suggestion to amend the temporary member provisions to include a person assisting a guest or competing club is reasonable and recommends section 48 of the Act be amended as suggested.

In relation to the request to amend the Act to allow clubs to sell liquor to a tourist, the Committee considers this would not be appropriate as the existing guest provisions are adequate to enable clubs to offer hospitality to genuine tourists.

The suggested amendment regarding club functions and the sale of liquor at non-member functions was not considered appropriate, however, the Committee resolved to recommend the Act be amended to authorise clubs to conduct up to 12 non-member functions per year, without the need to apply for an extended trading permit. This will remove a level of unnecessary red tape and regulation. The club would however, be required to notify the Director of their intention to conduct a non-member function prior to the event occurring. The Director should however, have the discretion to prohibit a club from utilising these provisions if it is considered necessary, for example, for disciplinary reasons.

---

In relation to the *Clubs WA* claim that some clubs may have misinterpreted the requirements of section 100 of the Act in relation to the appointment of approved managers, the Committee resolved to recommend the Director develop a specific guideline or fact sheet for club and club restricted licences to clarify the approved manager requirements.

*Recommendation 59*

*Amend section 48(5) of the Act to allow clubs to sell and supply liquor to persons assisting a guest/competing club.*

*Recommendation 60*

*Amend section 48(2) of the Act and or section 60(4)(cb) to allow clubs to hold up to 12 non-member functions per year without the need to apply for an extended trading permit. (eg. notification system only). The Director should have the power to disallow a club from utilising these provisions.*

*Recommendation 61*

*The licensing authority develop and distribute a guideline/fact sheet specifically relating to the requirements in relation to approved managers for club and club restricted licences.*

---

## Liquor Stores

The provisions of section 47(2) of the Act state the licensee of a liquor store licence is authorised to supply liquor for consumption off the premises or by way of free sample on a part of the licensed premises approved by the Director.

### **Submissions**

The *Tourism Council WA* submits the Act should be amended to remove the prohibition on licensees charging for samples of premium liquor.

The *Liquor Stores Association of WA Inc* submit licensees should have the discretion to provide samples of liquor at no charge to customers and should be able to conduct tastings as part of the standard licence conditions rather than being required to lodge an application to vary the licence conditions which must be accompanied by a public interest assessment.

### **Conclusion**

It is the Committee's understanding that as a matter of practice a public interest assessment is not required to be lodged with an application to conduct tastings. Notwithstanding this, the Committee considers it is appropriate for a licensee to seek approval to conduct tastings, to ensure the area and the manner in which the tasting is to be conducted is appropriate.

In relation to the prohibition on charging a fee for tastings, the Committee considers there should be no such prohibition and recommend section 47(2) of the Act be amended accordingly.

### **Recommendation 62**

*Amend section 47(2) of the Act to remove the reference to 'free' sample to allow licensees of liquor stores to charge a fee for tastings.*

---

## Restaurant Licences

One of the Terms of Reference of the review of the Act is the appropriateness of the current restrictions on allowing the consumption of liquor without a meal in restaurants.

Section 50 of the Act states the licensee of a restaurant licence is authorised to sell liquor ancillary to a meal supplied by the licensee.

In 1998 the Act was amended to allow for an extended trading permit to be issued to allow a restaurant licensee to sell liquor without a meal in an area no larger than 20% of the licensed area. The Act was further amended in 2007 to remove the reference to 20% of the licensed area, meaning a licensee could apply for an extended trading permit to sell liquor without a meal in any part of the licensed premises.

In February 2013 the Western Australian Liberal Party issued their Liquor Licensing Policy which outlined their plan to drive Western Australia's development as a modern and culturally vibrant State which is attractive to tourists and the community.

One of the initiatives of the Liberal Party was a proposal to amend the Act to allow restaurants that hold less than 120 people to serve liquor without a meal subject to the following conditions:-

- Patrons must be seated at a table when consuming alcohol;
- Meals will still need to be available on the premises at all times when liquor is served to drinking only patrons; and
- The primary purpose of the business cannot be the supply of alcohol.

Due to the fact the review of the Act was already underway, the Government, as an interim measure, amended the Regulations to facilitate an abridged application process for an extended trading permit to authorise the sale of liquor without a meal being provided.

### **Submissions**

*Restaurant & Catering Australia* submits most consumers attend a restaurant or café to have a drink as a precursor or to accompany the purchase of a meal, however, there is a demand, particularly from tourists, who may seek to have a drink without a meal. Restaurateurs and café owners are focussed on their primary objective which is to deliver meals rather than alcohol to consumers and most consumers tend not to choose restaurants for the sole purpose of consuming alcohol and rarely, if ever use these venues as their local drinking establishment.

All other jurisdictions have less restrictive regulations for the serving of liquor without a meal than those currently in place in Western Australia with New South Wales being the only state to have regulations similar to those of Western Australia, although restaurants in New South Wales also have the ability to apply for a licence to serve liquor at a bar after meals which is not available in Western Australia.

In addition, the Association believes the licensing authority needs to be more flexible with regard to extended trading permits. For example, if a restaurant is booked to host cocktail parties and the venue is offering canapés and hors d'oeuvres to guests, the full menu should not have to be available to guests and these venues should not be required to apply for an extended trading permit to be able to offer this service. This would reduce unnecessary red tape for businesses who host functions such as these.

---

The *City of Fremantle* submits an opportunity exists to reform Western Australia's Liquor Act and create the framework for a first class hospitality industry that is progressive and visionary, meeting the demands and expectations of locals and tourists who wish to experience safe, diverse, flexible and vibrant day-time, evening and late-night drinking and dining experiences. Western Australia is ready to adopt a more responsible drinking culture and new strategies need to be considered to initiate behavioural change.

In this regard, and following the successful relaxation of liquor licensing laws in Fremantle during the Perth 2011 Sailing World Championships, they consider the Act should be amended to allow licensed restaurants to sell and supply liquor without a meal.

The *Business Improvement Group of Northbridge (Inc)* submits if restaurant licences were modified in a manner that deregulated the sale of alcohol, this would increase the risk profile of the licence category out of step with the public's perception. It is likely that due to the other characteristics of these licences, these could be used as a de facto tavern or small bar licences that permits trading through all hours, the attendance of juveniles and the perception of a lower risk profile than is currently apparent. Consideration would need to be given to the other fundamental characteristics of the licence category, such as imposing other trading restrictions on hours that would make this licence class more similar in character to taverns or small bars. The existing legislation provides a restaurant licence category that is functioning well and serves community expectations and they recommend no change is made to the Act.

*Mike and Irene Bell* submit allowing the service of alcohol without meals in restaurants is circumventing the purpose of a restaurant and is currently allowing licence holders to avoid local planning laws in some instances, calling themselves a restaurant when they are actually a tavern.

The *Australian Hotels Association (WA)* submits in changing liquor licensing regulations, there is a fine balance between modernisation, and protecting community and residential amenity. In this regard, the provisions relating to restaurant licences should be amended to allow the sale of liquor without a meal to persons seated at a table, giving customers the flexibility desired, eliminating the need for complicated extended trading permits while protecting the amenity of local neighbourhoods.

*Mr Gavin D Crocket* submits the differences between licensed restaurants, unlicensed restaurants, tavern restricted licences and small bar licences are blurred and the classification of these types of licences needs to be examined. In this regard, perhaps restaurant licences should disappear and this type of business become a sub class of a hotel licence.

*Tourism WA* submits from a tourism perspective removing this restriction would support the development of more vibrant precincts and allow greater access and flexibility for tourists. Interstate and international visitors have an expectation of being able to enjoy an alcoholic drink with or without a meal while frequenting licensed venues in Western Australia, in line with the majority of other Australian states and international standards. It recommends the provisions of the Act are amended to enable patrons to purchase a drink in a restaurant with or without a meal.

The *Tourism Council WA* submits the current restrictions which define licence types in Division 2 of the Act should be reduced to promote competition, innovation and service availability. In particular, the requirement for liquor to be served only with a meal should be removed from the restaurant licence provisions.

---

The *Metropolitan Redevelopment Authority* recommends the introduction of an intermediate category such as a bistro licence, which would be suited to modern establishments which offer food and drink but not necessarily in a seated environment. Alternatively, the *Metropolitan Redevelopment Authority* is supportive of the recent government initiative to allow restaurants with less than 120 people to supply alcohol without a meal without needing to obtain an extended trading permit.

A number of other submissions submit restaurants should be allowed to sell liquor without a meal to persons seated at a table.

The *City of Perth* submits the ability for restaurants to serve liquor without a meal needs careful consideration and restaurateurs should be in control of how they wish to manage such changes. They may experience difficulties managing the impacts of serving liquor without a meal may have on the operation of their business such as the effect of patrons standing in a restaurant drinking may have on the amenity and function of the restaurant.

The *Executive Director Public Health* submits restaurants have traditionally been venues that are lower risk for harm due to the service of food and removing that requirement reduces the focus on food and enables a restaurant to trade as a bar. In this regard, the *Executive Director Public Health* supports the current requirement for restaurants to apply for a liquor without a meal permit which enables the licensing authority to consider each application on a case-by-case basis and better monitor the increased availability of alcohol and the association increased risk of harm.

The *McCusker Centre for Action on Alcohol and Youth* expressed concern about changes to liquor licences that would have the potential to increase the risk associated with the licence such as restaurants serving liquor without a meal. The requirement that alcohol can only be supplied in a restaurant ancillary to a meal is a substantial factor in restaurants being associated with lower risk.

The *WA Drug and Alcohol Office* submits the requirement to consume liquor with a meal under a restaurant licence is a key feature of this licence category which makes it lower risk for harm when compared to other licence types. In its view:-

- The existing trading conditions on liquor without a meal permits are essential to distinguish restaurants from higher risk licences such as hotels and taverns and send a clear message to the community that the focus of a restaurant is food and dining rather than alcohol;
- Removing the current restrictions on restaurant licences and allowing liquor to be consumed without a meal will increase the availability of alcohol in the community and is likely to result in a net increase in the consumption of alcohol across the population. There is also the potential for the community perception of restaurants to change over time and for restaurants to attract higher risk patrons; and
- Caution is necessary when considering relaxing current restrictions on the consumption of alcohol without a meal in restaurants and they recommend the current application process for allowing the consumption of liquor without a meal in restaurants by way on an extended trading permit is maintained with the same conditions being imposed.

The *Mental Health Commission* submits the impact of the availability and marketing of alcohol on harmful alcohol consumption should be considered as part of the review. Related to the issue of availability of alcohol and the potential for increased levels of harm, is the matter of relaxation of existing rules that may increase access to alcohol, for example in restaurants and cafes. It recommends very careful consideration should be given to amending any provisions of the Act that may increase access to alcohol in the context of minimising harm to the community.



---

## **Conclusion**

It is evident from the submissions, there is significant support for the restrictions on restaurant licences to be lifted.

On the other hand, there is some concern in regard to relaxing the requirements that apply to restaurant licences and the potential for this to lead to an increase in the availability of liquor.

While it acknowledges these concerns, the Committee considers amending the Act to allow the consumption of liquor without a meal to seated patrons is the next natural step in the evolution of the restaurant licence and considers the continued practice of requiring patrons to be seated will uphold the traditional manner in which these venues operate. Further the Committee considers lifting this restriction will make a positive contribution to the development of an improved drinking culture in our community. The Committee recognises it is important restaurants do not become de facto bars. The proposed changes should be carefully monitored to ensure this does not occur.

The removal of the requirement to apply for a permit to operate in this manner will also result in reduced regulation, which is a good outcome for the restaurant industry.

Further, the Committee considers there is no need to restrict this opportunity to venues with a maximum capacity of 120 persons and they also consider it appropriate to remove the antiquated and somewhat impractical requirement for liquor to be served to patrons at their table. Patrons should be able to order and or pay for their drinks at a bar or servery and carry it back to their table, without having to wait for a staff member to serve it to them at their table.

The Committee also considers the ability to serve liquor without a meal should, subject to local government authority approval, extend to areas covered by an alfresco dining area permit.

The following requirements which currently apply to Liquor Without a Meal Permits should also apply:-

- the hours during which liquor may be sold and supplied be limited to those of a hotel licence, that is; 6.00 am to 12.00 midnight Monday to Saturday and 10.00 am to 10.00 pm on Sundays (with specific restrictions to apply on Christmas Day, Good Friday or before noon on ANZAC Day, that liquor may only be supplied ancillary to a meal);
- the business conducted under a restaurant licence must consist primarily and predominantly of the regular supply to customers of meals;
- the kitchen must remain open and the restaurant's regular full menu be available at all times liquor is sold and supplied; and
- the premises must always be set up and presented for dining and tables cannot be removed or shifted in order to create dance floors or function areas.

It is important to note, this will be an option available to restaurant licensees and is in no way, a mandatory condition which must be complied with. If a licensee does not wish to sell liquor without a meal, they are not required to do so. It is a business decision that restaurateurs may make to suit the operation of their business.

---

**Recommendation 63**

*Amend section 50 of the Act to:-*

- a) remove the requirement for liquor to be supplied ancillary to a meal supplied by the licensee during the following hours:-
  - Monday to Saturday between the hours of 6.00 am and 12.00 midnight; and
  - Sunday from 10.00 am to 10.00 pm.*
- b) On Christmas Day, Good Friday or before noon on ANZAC Day, liquor may only be supplied ancillary to a meal;*
- c) retain all other existing provisions relating to liquor being consumed while seated sitting at a table and the predominant purpose of the business being the supply of meals;*
- d) specify that patrons are able to purchase liquor from a bar or servery and carry it to a table; and*
- e) clarify the amended provisions apply to any area covered by an extended trading permit issued for the purpose of Alfresco Dining (subject to local government authority approval).*

---

## Beer Producers

The current provisions of section 55(1) of the Act authorise a producer who produces beer to sell beer as packaged liquor only, whereas wine producers are authorised to sell wine as packaged liquor as well as for consumption on a part of the licensed premises approved by the Director. If a beer producer wishes to supply their product for on-site consumption they are required to apply for a tavern or other appropriate licence.

### **Submissions**

*Mr Nick Galton-Fenzi*, licensee of the Beaten Track Brewery submits under the current provisions of the Act, the only mechanism available to beer producers to conduct onsite consumption and takeaway sales is via a tavern licence or a special facility licence. The provisions of section 55 of the Act allow the consumption of wine produced by a wine producer in an approved area of the licensed premises and an amendment is being sought to allow the consumption of beer produced by a beer producer in an approved area of the licensed premises.

*Mr Alan Proctor*, licensee of Billabong Brewing submits because the current provisions of the Act do not allow the consumption of beer produced by the licensee on the licensed premises, they are be required to apply for a tavern or hotel licence to facilitate this. An amendment is being sought to the provisions of the Act to allow consumption of beer produced by the licensee on the licensed premises.

The *Western Australian Brewers Association* seeks an amendment to the Act that would allow holders of a beer producers licence beer to conduct on-site sales for the consumption of beer brewed at the producers premises to be in line with wine producers.

The *Honourable Wendy Duncan MLC* submits boutique brewers, whose main market is the tourism industry, should be treated the same as wineries in being able to allow consumption of their product on site. In this regard, breweries that hold a producers licence should be able to conduct on-site consumption without the need of having to go to the extent of applying for a tavern licence.

### **Conclusion**

The Committee does not consider it is appropriate or justifiable to distinguish between beer and wine producers in this manner. The Committee therefore recommends the Act be amended to allow holders of beer producers licences to sell their product for consumption on a part of their licensed premises, subject to the approval of the Director.

#### **Recommendation 64**

*Amend section 55 of the Act to include the authorisation for beer producers to sell liquor for consumption on a part of the licensed premises approved for the purpose by the Director between the hours of 10.00 am and 10.00 pm.*

---

## Wine Producers

The current provisions of section 55(1) of the Act authorise a wine producer to conduct tastings of wine they have produced, to sell and supply wine they have produced for consumption on a part of the licensed premises approved by the Director and to sell wine they have produced as packaged liquor. In relation to the sale of packaged liquor, the sale can only take place on or from the licensed premises. This means that where orders are made by phone or online, the transaction must occur at the licensed premises – not from an offsite location. Further, all sales must be delivered from the licensed premises, unless approval has been issued for an offsite storage location.

In addition, the Regulations exempt sale or supply of liquor from a stall at a farmers market held in an agricultural region where the stall is provided by a producer's association for two or more producers to attend. The conditions of the exemption state tastings can be provided at no charge and the maximum volume of packaged liquor which can be sold is 2.5 litres per person.

Further to this, licensees of producers licences can apply for approval to attend an event such as a Food and Wine Show in the metropolitan area either by way of an extended trading permit or an occasional licence.

### **Submissions**

*Wines of Western Australia* submit the restrictions on producers licences should be relaxed to include provisions for the establishment of a Collective cellar door outlet and the ability for licensees to sell liquor from a retail or office outlet which is not located on the licensed premises. It also submits the Act should be amended to allow wine producers to sell liquor other than their own product for consumption at a specific event, such as a wedding or from an on-site restaurant as well as the ability to provide comparative tastings.

In relation to farmers markets, they are seeking approval to attend metropolitan farmers markets as well as regional markets and an amendment to allow holders of producer licences to attend these events without the need to seek approval for each event. Rather the details of these events would be endorsed on the licence for the upcoming year. In addition, they recommend an increase in the limit of packaged liquor sales from 2.5 litres to 9 litres, which is the volume of a 12 bottle case of wine.

The *Swan Valley & Regional Winemakers Association* submits the criteria for assessing a genuine producer should include a producer who can demonstrate they produce sufficient grapes on the licenced property to enable the applicant to produce at least 50% of the wine which they sell or, has appropriate liquor producing facilities at the licensed property to produce at least 50% of the wine they sell. If unable to meet the 50% rules, that they are able to demonstrate they at least grow a commercial quantity of grapes or process a commercial quantity of wine and direct or contract others to grow or make their remaining wine for them, or they produce sufficient grapes or have appropriate liquor producing facilities in another Western Australian Geographical Indication.

It is also seeking an amendment to remove the restriction on customers taking wine between a cellar door tasting facility and a dining area within the same licensed premises. It submits it should be possible for patrons to be able to taste wine, purchase a glass or bottle for consumption in the cellar door and then subsequently move with their open purchase into the dining area or vice versa.

---

## **Conclusion**

Subsequent to considering these submissions, the Committee examined the provisions relating to producers licences in other Australian jurisdictions.

In 2010 significant amendments were made to the South Australian *Liquor Licensing Act 1997*. The intention of the new licensing regime was to reduce red tape and make it easier for wine producers to do business and promote their products in the market place.

In summary, these amendments enabled wine producers to:-

- form a Collective Cellar Door with other wineries or operate from a second premises under their existing licence;
- participate in regional farmers' markets or other local festivals and events without the need to apply for a separate approval each time;
- sell liquor other than their own product if it is sold ancillary to a meal in a dining area;
- provide comparative tastings; and
- seek an exemption for blended wines if a producer needs to blend their own wine with a substantial portion of another producer's wine, due to circumstances beyond their control.

The South Australian Government reports the Collective Cellar Door initiative in particular, has been enthusiastically received by the wine industry, particularly by smaller operators who find it difficult to raise the funds to set up and run their own cellar door facility.

After considering the submissions and examining the South Australian model, the Committee considers similar provisions should apply in Western Australia. Accordingly, the Committee recommends the Act be amended to allow wine producers to establish a collective cellar door retail outlet within the same wine region as their production facilities, to allow all producers to conduct online and telephone sales from a place other than the licensed premises and to allow producers to sell liquor other than their own, if sold ancillary to a meal in a designated dining area or as comparative tastings.

These amendments should remove the need for licensees to hold two separate licences in order to operate their business and cater for the requirements and expectations of their customers. Importantly the changes recommended reflect community expectations and do not materially change the way alcohol is provided, but do remove unnecessary regulation and oversight from the system.

The Committee also recommends the Regulations be amended to expand the provisions of the existing exemption which allows wine producers to attend farmers markets to include metropolitan farmers markets, to replace 2.5 litres with 9 litres and to remove requirement for samples to be provide free of charge.

The Committee did not consider it necessary to amend the provisions relating to the criteria for assessing a genuine producer.

### **Recommendation 65**

*Amend section 55 of the Act to allow wine producers to establish a collective cellar door retail outlet within the same wine region as their production facilities.*

*Recommendation 66*

*Amend section 55 of the Act to allow producers to conduct online and telephone sales from a place other than the licensed premises, provided the delivery of liquor is from the licensed premises or from an approved offsite storage facility.*

*Recommendation 67*

*Amend section 55 of the Act to allow producers to sell liquor other than their own, if sold ancillary to a meal in a designated dining area which forms part of their licensed premises or an area the subject of an extended trading permit or for the purpose of comparative tastings.*

*Recommendation 68*

*Amend regulation 8D(2)(a) of the Regulations to:-*

- a) allow wine producers to attend any farmer's markets;*
- b) replace 2.5 litres with 9 litres;*
- c) remove requirement for samples to be provide free of charge; and*
- d) establish a process that requires licensees to seek approval from the licensing authority at the beginning of each year of their proposed attendance at events such as farmers markets and food and wine festivals.*

---

## Wholesaler's licences

Section 58 of the Act states a wholesaler's licence authorises the sale of packaged liquor for consumption off the licensed premises in a quantity of not less than 9 litres per person and by way of free sample for tastings purposes.

The business conducted must consist, primarily and predominantly of selling liquor to liquor merchants or other persons authorised by law to sell liquor. In this regard, at least 90% of the licensee's gross turnover from the sale of liquor in each financial year, should be to liquor merchants or other persons authorised by law to sell liquor and a maximum of 10% of sales may be retail sales.

### **Submissions**

*Phoenix Beers Pty Ltd* submits the ability to sell a portion of stock to unlicensed persons is an invaluable tool for the industry as it facilitates the sale of oddments and deleted or obsolete lines, which would otherwise need to be destroyed. The issue is the current provision which requires a minimum sale of nine litres which is based on out-dated products such as 12 King Brown bottles of Swan Lager. It recommends the minimum volume provision be repealed, or alternatively reduced to four litres.

The *Liquor Wholesalers Association of WA* submits the provisions of the Act that restrict the holder of a wholesalers licence to only sell 10% of total turnover to unlicensed persons severely limits the ability to extend the sales reach of a wholesaler. The 10% limit is often taken up by sales to businesses or organisations that are not required to hold a licence but are legitimate buyers of liquor such as councils, defence establishments, Parliament House, Government House and corporate customers.

Further, holders of other categories of licences, particularly liquor stores and hotels are openly courting resellers such as restaurants and small bars so they can extend their sales and revenue base. These operators are setting themselves up as quasi wholesalers and in this regard, the 10% limit is anticompetitive.

All holders of wholesale licences should be able to increase the revenue and customer base and to have the ability to extend their offer without running into legislated brick walls. Other licence categories do not have this impediment.

### **Conclusion**

The Committee considers an amendment to the minimum of 9 litres is appropriate and accordingly, recommend section 58(1) of the Act be amended by changing the minimum quantity of liquor which may be sold in a retail transaction to 4.5 litres which is equivalent of six bottles of wine or half a carton of beer.

The Committee resolved there is insufficient evidence to justify an amendment in relation to the ratio of liquor which may be sold as wholesale and retail transactions.

### **Recommendation 69**

*Amend section 58(1) of the Act to replace 9 litres with 4.5 litres.*

## 6. Permitted trading hours

The majority of the submissions regarding trading hours were in relation to the permitted trading hours of liquor stores and hotels and taverns with a number of submissions also recommending changes to the permitted trading hours for small bar and nightclub licences.

There were also a number of submissions from health groups suggesting there is a need to reduce trading hours in licensed premises in Western Australia.

### **Submissions**

The *Foundation for Alcohol Research and Education* submits research on the relationship between the trading hours of licensed premises and alcohol-related harm has consistently demonstrated that increased trading hours are associated with increased harms.<sup>125</sup> It advises:-

- Restrictions introduced in the New South Wales city of Newcastle demonstrate how even modest reductions in the trading hours of licensed venues can substantially reduce alcohol-related harms with an evaluation carried out in the 12 months following the introduction of the restrictions finding there was a 37 % reduction in alcohol-related harms when compared to a control site.<sup>126</sup> A further study three years after the restrictions were introduced found a 35 % reduction in night-time non-domestic assaults requiring Police attention and a 50 % reduction in night-time street offences<sup>127</sup>; and
- Given the impact a reduction in trading hours have on reducing alcohol-related harms, reducing trading hours should be considered for licences categorised under the nightclub licence and other licences that have been granted an extended trading permit under section 60(4)(g) of the Act. In this regard, they recommend the Act be amended to introduce a reduction in trading hours for those licences that are able to trade past 3.00am and that the introduction of reduced trading hours be independently evaluated to ascertain the social, health, crime and economic effects of these trading controls.

*Mr Peter Abetz MLA* submits Recommendation 26 of the *Education and Health Standing Committee's 10th Report, Alcohol: Reducing the Harm and Curbing the Culture of Excess* should be noted by the Committee. Recommendation 26 states the Act should be amended to facilitate the reduction of the permitted hours of trading where data shows that there is a problem with violence and breaches of the Act by licensees.

The *Aboriginal Affairs Coordinating Committee* submits research indicates an increase in the number of alcohol-related incidents is linked with extended hours. This research includes WA Police data which shows a peak in alcohol-related incidents occurring in Northbridge on weekends between 11:00pm and 3:00am and the results of a Norwegian study which found that each one hour extension in closing time produced a 16% increase in assaults per year. The results were symmetrical in that a restriction in hours produced a similar size drop in violent crime.<sup>128</sup>

125 National Drug Research Institute (2007). *Restrictions on the Sale and Supply of Alcohol: Evidence and Outcomes*. Perth: National Drug Research Institute, Curtin University of Technology.

126 Kypri, K, Jones, C, McElduff, P & Barker, D (2011) Effects of restricting pub closing times on night-time assaults *Addiction*, doi:10.1111/j.1360-0443.2010.03125.x

127 Hunter New England Local Health District. (2011). [http://lastdrinks.org.au/wp-content/uploads/2012/07/New-Institute-June-2012\\_Newcastle-Interventiongipa1.pdf](http://lastdrinks.org.au/wp-content/uploads/2012/07/New-Institute-June-2012_Newcastle-Interventiongipa1.pdf) Accessed 7 August 2012.

128 Miller P et al (2012). *Dealing with alcohol-related harm and the night-time economy*. Monograph No 43, National Drug Law Enforcement Research Fund. Available at [www.ndlerf.gov.au](http://www.ndlerf.gov.au)



The *Aboriginal Affairs Coordinating Committee* acknowledges while reducing the availability of liquor will not alone solve the issues caused by alcohol in Aboriginal communities, it will still have some impact on the level of consumption and limiting trading hours and together with other measures such as a limit on how much alcohol can be purchased in one day, will support the Committee's work in addressing alcohol abuse issues prevalent in Aboriginal communities. In this regard, they recommend the trading hours as currently specified in the Act are not extended and remain unchanged.

### **Conclusion**

Notwithstanding the submissions above and others, the Committee concluded it would not be appropriate to recommend a blanket reduction in trading hours across Western Australia. In regard to areas of the State where there are significant levels of alcohol-related harm occurring, the Director is empowered to vary the permitted trading hours using the provisions of section 64 of the Act. The Committee considers this is the most appropriate course of action, rather than reducing the trading hours across the State.

---

## Liquor Stores

Section 98D of the Act states the permitted hours for liquor store licences that are situated in the metropolitan area are between 8.00 am to 10.00 pm Monday to Saturday and between 10.00 am and 10.00 pm on Sundays. No trading is permitted on Good Friday, Christmas Day or before 12.00 midday on Anzac Day

For liquor stores that are not situated in metropolitan area, the trading hours are the same with the exception of Sundays, when no trading is permitted unless an extended trading permit has been issued by the licensing authority.

### **Submissions**

*Mr Don Perfrement*, licensee of McKails General Store submits Albany is a major regional centre and a major tourist destination. The general store is a seven day a week business servicing both locals and visitors and offers a large range of services and the inability to trade on Sunday when labor costs are at their highest affects the business bottom line and is inequitable when the local tavern can trade on Sundays.

*Mr Richard Roberts* submits trading on Sundays for non-metropolitan liquor stores allows freedom and gives the choice to the majority of Western Australian's who drink responsibly.

*Herbert Smith Freehills* submits as retail trading law have changed to allow stores generally to trade on Sundays, it would be appropriate for liquor stores, particularly those co-located with supermarkets to also trade to meet modern consumer's expectations for one-stop shopping convenience. The historic rationale of protecting country hotels is no longer applicable, particularly in regional cities servicing a wider area such as Bunbury, Karratha and Kalgoorlie.

*Liquorland (Australia) Pty Ltd* submits the expectations of consumers have broadened recently to demand increased access, variety and convenience and licensed trading hours should reflect these expectations. The current standard trading hours should be maintained along with the ability for licensees to apply for permanent extended trading permits. In addition, the current provisions which allow metropolitan liquor stores to trade from 10 am to 10 pm on Sundays should be extended to cover regional Western Australia, particularly the south west region, so regional consumers are not penalised and can enjoy broader choice and convenience.

In addition, the definition of metropolitan area is based on the *Metropolitan Region Town Planning Scheme* definition as at 1 June 1998 and does not take into account the significant growth in the Perth Metropolitan area and should be amended to include areas such as Mandurah and other key growth areas.

*Woolworths Limited* submits non-metropolitan consumers should be afforded the same convenience and choice that those in metropolitan areas enjoy by allowing them access to liquor store sales on Sundays. This would more clearly align to a primary object of the Act being to cater to the requirements of consumers of liquor with regard to the proper development of industry in Western Australia.

It recommends the ban on packaged liquor sales on Sundays in non-metropolitan Western Australia be removed from the Act and consumers in regional centres be afforded the freedom, opportunity, convenience and choice of being able to purchase from a packaged liquor store on Sundays. It is important provisions are maintained that allow special consideration for areas such as Fitzroy Crossing that are faced with particular alcohol problems.

---

The *Liquor Stores Association of WA Inc* submits Sunday trading for liquor stores has historically been a political issue and after the 2004 Review of the Act the decision of the then government to not allow non-metropolitan liquor stores to trade on a Sunday was described in a government media release by the then Premier and Minister for Racing and Gaming as ‘a win for Country Labor’. It further advises:-

- In regard to Sunday trading for metropolitan liquor stores, the claim from the hotel sector that Sunday trading would spell the end of their members business has never eventuated.
- Of the approximately 200 active liquor store licences in non-metropolitan Western Australia, 48 of those liquor stores have been issued with an extended trading permit to trade on Sundays, mainly due to tourism needs. There are 21 stores in regional areas that due to section 64 enquiries have restrictions on the sale of packaged liquor, including no sales on a Sunday and we understand these would remain in place. The potential number of additional liquor store outlets that would benefit from Sunday trading would be approximately 131 of which our research says that 19 would not take up the opportunity to trade due to the nature of their location, therefore the total number of regional liquor stores would actually use the opportunity is 112.
- Many independent liquor stores in regional areas are general stores and act as convenience outlets. It is estimated 57 of these outlets open on Sundays but are unable to sell liquor and in some outlets the alcoholic products are visible and this can cause some angst with potential customers when they are refused service. Tourism is a major industry and situations where tourists are unable to purchase a quality bottle of wine due to liquor stores not being able to trade on a Sunday is farcical. There are also situations in smaller towns such as where the hotels or taverns do not open until later in the day on Sundays and the product range of packaged liquor is minimal.
- The use of local government to conduct polls to determine if a liquor store can trade on Sunday should not be considered as there is the potential for pressure to be put on local members of government which could result in a biased outcome.
- To not allow liquor stores to trade on a Sunday is anticompetitive.

The *Tourism Council WA* submits restrictions on trade should be narrowed to those specific instances impacting public health. To ensure price competition and service availability, broad restrictions on trade should be removed such as removing restrictions on liquor stores trading on Sundays in regional areas.

The *Australian Hotels Association (WA)* submits there are currently sufficient outlets providing packaged liquor in regional areas on Sundays and there is no need or justification for allowing all regional liquor stores Sunday trading. It recommends the status quo is maintained in relation to liquor stores not trading in regional areas on Sundays.

The *Executive Director Public Health* submits regional and remote Western Australia experiences high rates of alcohol consumption and related harms and the impact that packaged liquor has on these communities is significant and the limited availability of packaged liquor on Sundays is a protective factor and supports harm minimisation. Based on the available evidence, increasing the availability of alcohol from liquor stores on Sundays in regional Western Australia will lead to an additional burden of alcohol-related harm in these areas.

In this regard, the *Executive Director Public Health* supports the current case-by-case application process for Sunday trading by non-metropolitan liquor stores which allows consideration of the particular circumstances of a community, including existing levels of harm and ill-health.

The *WA Drug and Alcohol Office* submits Sundays are traditionally days where less alcohol-related harm is experienced due to limits on alcohol availability and allowing liquor stores to trade on Sundays is likely to make cheaper alcohol available at a time when it otherwise would not. National research evidence for the relationship between consumption, harm and trading hours for licensed premises has consistently demonstrated that increased trading hours for licensed premises are associated with increased levels of consumption and or harm.<sup>129</sup> It further advises:-

- Many regional and remote areas in Western Australia are high risk for alcohol consumption and related harms and Australian research has found that high risk drinking<sup>130</sup> and rates of alcohol-related hospitalisations<sup>131</sup> are higher in many regional areas compared to urban areas;
- While there are a number of factors that influence how a person drinks, increased access to and convenience of obtaining alcohol make it difficult for those that drink at harmful levels to avoid or reduce their drinking. Increased risk of harm presented by increased Sunday trading is reflected in an Australian study by Livingston et al (2007)<sup>132</sup> which states ‘some studies have suggested that socially marginalised drinkers are more likely to be influenced by changes in alcohol availability than other drinkers. This implies that changes to outlet density could markedly affect the consumption and long-term health problems of some population subgroups, sometimes without noticeable changes in population-level consumption estimates’;
- Research conducted in Victoria also showed significant relationships between packaged liquor and domestic violence over time (Livingston 2009)<sup>133</sup> and links between packaged outlets to alcohol-use disorders (Livingston 2010)<sup>134</sup>;
- Increasing the availability of alcohol from liquor stores will lead to increased alcohol-related harm in regional and remote Western Australia, both for the general community and at-risk populations. For example, a study in New Mexico found there was 29% increase in alcohol-related crashes and a 42% increase in alcohol-related crash fatalities on Sundays after the ban on Sunday packaged alcohol sales was lifted<sup>135</sup>; and
- Given the available evidence, it is important to consider the individual characteristics of regional and remote communities in relation to Sunday trading on a case-by-case basis to minimise the risk of harm to people due to increased availability of alcohol. In this regard, they recommend the Act maintains the requirement for a case-by-case application for an extended trading permit by regional liquor stores to trade on Sundays.

## Conclusion

Sunday trading for liquor stores was mooted for many years before it was partially introduced in 2006 as a result a recommendation of the 2005 Fremantle Report<sup>136</sup> (it was initially recommended in 1994 in the Mattingly Report<sup>137</sup> but not supported by the Government).

129 National Drug Research Institute 2007, *Restrictions on the sale and supply of alcohol: Evidence and outcomes*, National Drug Research Institute, Curtin University of Technology, Perth.

130 ABS 2006. *Alcohol consumption in Australia: A snapshot, 2004–05*. ABS cat. no. 4832.0.55.001. ABS Canberra as cited in NDLERF *Dealing with alcohol-related harm and the night-time economy 2012 Monograph Series No. 43*.

131 Chikritzhs T, Jonas H, Heale P, Stockwell T, Dietze P et al. 2000. *Alcohol-caused deaths and hospitalisations in Australia, 1990–97*. National Alcohol Indicators technical report no. 1. Perth: National Drug Research Institute as cited in NDLERF *Dealing with alcohol-related harm and the night-time economy 2012 Monograph Series No. 43*.

132 Livingston, M., Chikritzhs, T. & Room, R. (2007) *Changing the density of alcohol outlets to reduce alcohol-related problems*. *Drug and Alcohol Review*. 26: 557-566.

133 Livingston, M. (2009). *How domestic violence rates change with changes in outlet density in Kettil Bruun Society Alcohol Epidemiology Symposium*. Copenhagen, Denmark.

134 Livingston, M. (2010), *Alcohol outlet density and harm: Comparing the impacts on violence and chronic harms in Kettil Bruun Society Thematic Meeting on Alcohol and Violence*. Melbourne, Victoria.

135 McMillan, G.P. & Lapham, S. (2006) *Legalized Sunday Packaged Alcohol Sales and Alcohol-Related Traffic Crashes and Crash Fatalities in New Mexico*, *American Journal of Public Health*, vol. 96, no. 11, pp 1944-1948.

136 *Liquor Licensing Act 1988, Report of the Independent Review Committee, May 2005*

137 *Liquor licensing in Western Australia, Report of the Independent Review Committee 1994*

Recommendation 28 of the Freemantle Report stated the Act should 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. Where a local community did not support Sunday trading, the licensing authority would prohibit the liquor store from trading on Sunday.

The government of the day supported the recommendation, however, during the parliamentary debate, it was successfully argued hotels in many regional towns play a major lifestyle and community role beyond their liquor licence requirements and the potential negative impact this would have on them was deemed to be unacceptable. As a result, the provisions relating to regional liquor stores were removed and the ability to trade on Sundays was passed for only metropolitan liquor stores.

The practice of the licensing authority issuing an extended trading permit to authorise a regional liquor store to trade on Sundays has continued since then, provided the licensee can satisfy the licensing authority it is in the public interest.

There are currently 203 regional liquor stores in Western Australia and 48 of these have been issued with an extended trading permit to enable them to trade on Sundays.

While the Committee recognises the fact hotels in small country towns are an integral part of the fabric of rural life, it considers there is no justification to continue with the distinction between metropolitan and regional areas. In this regard, business operators of licensed premises, like any other industry, must assess the existing and potential risks associated with their business and must be adaptive to change.

Accordingly, the Committee recommends section 98D of the Act be amended to authorise all liquor stores to trade on Sundays between 10.00 am and 10.00 pm.

While the Committee also considered the recommendation of the Freemantle Report in regard to conducting a poll in small rural towns, it resolved it was not necessary nor appropriate, as that in itself, would create an unnecessary distinction between large and small rural towns.

Notwithstanding this, recommendation 54, if adopted, will enable WA Police and the Executive Director Public Health to request the Director to impose more restrictive conditions in circumstances where undue harm is occurring or is likely to occur.

While the Committee acknowledges this recommendation will increase the availability of alcohol, on balance, they consider it is reasonable to do so as essentially, the amendment will only allow for one extra day of trade per week for existing premises and the recommendation represents an appropriate balancing of the objects of the Act.

Finally, the Committee is well aware of the issues affecting some regional areas and recommends the authorisation to trade on Sundays must not apply where liquor restrictions are in place or where it would impact on a liquor accord.

*Recommendation 70*

*Amend section 98D of the Act to authorise all liquor stores to trade on Sundays between 10.00 am and 10.00 pm.*

*The authorisation to trade on Sundays must not apply where liquor restrictions are in place or where it would impact on a liquor accord.*

## Hotels, Taverns and Small Bars

The permitted trading hours for hotels, taverns and small bars are between 6.00 am and 12.00 midnight Monday to Saturday and between 10.00 am and 10.00 pm on Sundays.

### **Submissions**

The *Australian Hotels Association (WA)* submits closing at 10:00 pm on Sundays does not reflect the community's expectations for a modern hospitality sector and amending section 98 of the Act to permit trading until 12.00 midnight on Sundays represents a common sense approach to regulation and will substantially reduce red tape burden and allow the vibrant hospitality environment that customers expect.

In recent years the State Government has reformed regulations allowing retail trading on Sundays in line with community expectations for goods and services on Sundays and the community no longer expects that Sunday is exclusively a day of rest.

It recommends section 98 of the Act is amended to enable hotels, taverns and small bars to trade until 12.00 midnight on Sundays.

*Mr Shaun Hack*, licensee of Chefz Table submits patrons and tourists expect that on a long weekend licensed premises should be open like a Saturday on a normal weekend. Closing at 12.00 midnight on Sundays of long weekends represents a common sense approach to regulation while substantially reducing the red tape burden. He recommends section 98 of the Act be amended to allow hotels, taverns and small bars to trade until 12.00 midnight on Sundays on long weekends.

*Dr John Sainken* submits the earlier a decision must be made by a reveller to change venues the better chance there is of that person deciding not to bother to go out later. Therefore, late trading of hotels keeps more people out later. He recommends hotels should close between 11.00 pm and 12.00 midnight.

The *Business Improvement Group of Northbridge (Inc)* submits each time an extended trading permit is renewed it is assessed as a fresh application and is based on a new public interest assessment taking into account all of the relevant public interest considerations. The assessment process diverts resources from interveners and the licensing authority.

It recommends section 98 of the Act be amended to permit trading for hotels and taverns up to 2.00 am Monday to Saturday and up to 12.00 midnight on Sundays, subject to an application being made to do so, and the application being considered against the objects of the Act and the public interest. In relation to small bars, the permitted hours should be up until 1.00 am on weeknights and 11.00 pm on Sundays as per the existing extended trading permit policy for small bars. It further submits:-

- Ongoing hours extended trading permits should be removed as a category of permit to prevent licensee's seeking to trade past 2.00 am;
- Under the proposed arrangement, if a tavern sought to trade to 2.00 am on Friday and Saturday nights, the test to do so would be the same as for an extended trading permit application under the current legislation;
- The legislation would need to be clear to ensure there is not an immediate right to trade to 2am for all existing or new licensees in the hotel category. The hours must be sought and judged against the relevant risk profile and public interest test – i.e. it should be simpler to prove the public interest in trading until midnight versus trading until 2.00 am and licensees should be encouraged to choose the hours that their business model requires;

- This would enable the feasibility of business models predicated on late trading to be proven, which in turn would encourage investment and provide an incentive for change. This is something that would well serve the requirements of consumers as the industry develops to take advantage of ever changing requirements; and
- There are numerous mechanisms the licensing authority has to ensure licensees that are failing to meet their regulatory obligations or are adversely affecting the amenity of the area, are held accountable resulting potentially in the cancellation of the licence, a reduction in trading hours or the imposition of other conditions restricting trading such as section 64, section 95, section 117 and section 175 of the Act which by virtue of the Regulations, the Minister has the power to impose a lockout or differential licence fees.

The *Small Business Development Corporation* submits most tourists and regular bar goers would expect licensed premises to be open later on the Sunday of a long weekend and extended trading hours to enable licensed premises to trade until 12.00 midnight on Sundays of long weekends represents a common sense approach to regulation and would substantially reduce the red tape burden associated with extended trading permits. It recommends the core hours of hotel, tavern and small bar licences be amended to enable them to trade until 12.00 midnight on Sundays of long weekends.

The *Tourism Council WA* submits restrictions on trade should be narrowed to those specific instances impacting public health. To ensure price competition and service availability, broad restrictions on trade should be removed such as removing any specific restrictions on hours of trading on Sundays or public holidays.

*Mr Jackson Cleary* submits the closing time for the small bar licence category should be extended from 12.00 midnight until to 2.00 am Monday to Saturday and from 10.00 pm to 12.00 midnight on Sundays without the need to apply for extended trading permits. This will mean more bars become viable for operators, will increase the diversity of venues, will encourage patrons to frequent small bars instead of larger venues and will contribute to a positive change in the drinking culture.

A number of other submissions submit section 98 of the Act should be amended to allow hotels, taverns and small bars to trade until 12.00 midnight on Sundays and if not every Sunday, at least on long weekends.

The *WA Nightclubs Association* submits the small bar licence category, while a very welcome addition to the Western Australian licensing system, have a business model that primarily focuses on liquor sales and are not suited to extended trading hours. It recommends small bars do not have their trading hours increased or that they should be granted ongoing extended trading permits.

### **Conclusion**

Recommendation 22 of the Freemantle Report recommended the Act should be amended to allow hotels to trade between 10.00 am to 12.00 midnight on Sundays; that is an extension from 10.00 pm to 12.00 midnight on Sunday nights.

The government of the day did not support the recommendation and indicated extended trading hours are more appropriately dealt with by way of extended trading permits on a case-by-case basis.

While the Committee does not consider it appropriate to amend the trading hours for all Sunday nights, it does considers it appropriate to extend the trading hours on Sunday nights for long weekends in order to cater for the evolving entertainment industry and the expectations of tourists and the community in general. This will also achieve a reduction in regulation, as it will eliminate the need for licensees to lodge permit applications for these weekends.

Accordingly, the Committee recommends section 98 of the Act be amended to authorise trading from 10.00 am to 12.00 midnight on Sunday evenings which precede a gazetted public holiday which falls on a Monday. Extended trading on all other Sunday nights should continue to be dealt with on a case-by-case basis by way of extended trading permits.

In regard to small bar licences specifically, the Committee considers if the small bar licence is to be viewed as a low risk licence, any extension of trading hours would be inappropriate.

Accordingly, the Committee considers the permitted trading hours for small bars should remain as they are, with the exception of an extension to 12.00 midnight on Sunday nights on long weekends.

Any other extension of trading hours for small bar licences should continue to be dealt with on a case-by-case basis by way of extended trading permits.

*Recommendation 71*

*Amend section 98 of the Act to authorise hotel, tavern and small bar licences to trade until 12.00 midnight on Sunday evenings preceding a gazetted public holiday which falls on a Monday.*



## Nightclubs

Section 98A of the Act states the permitted trading hours for a nightclub licence are between 6.00 pm and 5.00 am the next day Monday to Saturday and between 8.00 pm and 12.00 midnight on Sundays.

### Submissions

The *WA Nightclubs Association* submits addressing the present inequality of Sunday trade between hotels and nightclubs is a pertinent sub-issue under the Terms of Reference and it would be a policy move in line with balancing the requirements of liquor consumers and harm minimisation, the interests of the industry and the tourism and hospitality sectors.

It further submits nightclubs are currently permitted to trade from 8.00 pm to 12.00 midnight on Sunday nights which in many cases, is an uneconomic proposition with patrons finding these hours culturally unaligned to nightclubbing. This in effect leaves the vast bulk of the night's trade to the 'hotel crowd'.

Most nightclub licensees apply for extended trading permits for long weekends, which generally result in strong trade and minimal social harm. Therefore, the *WA Nightclubs Association* recommends a standardisation of trade for nightclubs on Sundays from 6.00 pm to 3.00 am. As trade prior to 8.00 pm is in general terms limited for most nightclubs, the request for 6.00 pm instead of 8.00 pm is for the purposes of standardisation, consistency and clarity. Further, 3.00 am is not an arbitrary choice. Hotels close two hours earlier on Sundays compared to other trading days and 3.00 am closing for nightclubs would extend this rationale and equalise the trading regime between the licence types.

It considers this would allow nightclubs to offer patrons three hours of post-midnight entertainment and give them a genuine non-hotel option for a night out. In this context it is important to note that by legislative intent the purpose of nightclubs is the provision of entertainment post-midnight.

The *City of Fremantle* recommends 4.00 am closing times for nightclubs, a one hour reduction in operating hours. A closing time of 4.00 am for nightclubs will provide entertainment precincts the ability to clean and refresh before the start of the next day. This is not atypical in major international cities with venues closing between 2.00 and 3.00 am in Vancouver, between 3.00 and 4.00 am in Edinburgh, at 4.00 am in New York, and between 4.00 and 5.00 am in London and Amsterdam.

*Dr John Sainken* submits the earlier a decision must be made by a reveller to change venues the better chance there is of that person deciding not to bother to go out later. Therefore, late trading of hotels keeps more people out later. He recommends nightclubs should close at 4.00 am.

### Conclusion

The Committee considers the balance is right in regard to nightclub trading hours, and therefore it would not be appropriate to recommend a reduction or increase in the permitted trading hours. In this regard, the Committee concluded the late night trade of nightclubs caters for a sector of the community and also contributes to the staggered dispersal of patrons, particularly in entertainment precincts such as Northbridge and Fremantle.

#### Recommendation 72

*The current permitted trading hours for nightclubs should be retained.*

## Extended Trading Permits

The current provisions of section 60(4)(g) of the Act, which relate to extended trading permits to extend trading hours, state a permit can be issued for up to 5 years. The Committee understands the current policy of the licensing authority is to issue these permits for a period of up to two years and upon the expiry of the permit, an application must be made for a new permit.

### Submissions

*WA Police* submit, based on evidence of an Australian study which compared different approaches to reducing alcohol-related harm in the two Australian regional cities of Newcastle and Geelong, reducing trading hours results in a decrease in alcohol-related harm.<sup>138</sup> The study also suggested regulatory approaches lead to reducing alcohol consumption and intoxication whereas community approaches just aim to manage problematic behaviour arising from intoxication. Accordingly, they recommend in order to reduce alcohol-related harm, including but not limited to crime, violence and anti-social behaviour, all current extended trading permits for additional trading hours for consumption on premise are revoked and sections 60 and 97 of the Act should be amended to remove the provision to grant extended trading permits for additional trading hours for consumption of alcohol on premises.

The *WA Drug and Alcohol Office* submits applications by hotels and taverns for late night trading past the permitted times are common and increasingly, hotels and taverns are applying for durations of two to three hours beyond the current permitted trading times. It further submits:-

- Studies show extended trading is linked with issues and harms such as drunkenness, drink driving, violence and antisocial behaviour<sup>139</sup> and a controlled evaluation of the impact of late night extended trading permits for Perth hotels found those hotels that were operating with extended trading were associated with a doubling of the level of assaults in and around their vicinity and a net increase of almost 40% in alcohol-related road crashes involving their customers. Subsequent analysis has shown that the blood alcohol levels of drivers in road crashes who had been drinking at extended trading permit premises were significantly higher than those who had been drinking at non-extended trading permit premises. It also found that the later in the evening the crash occurred, the higher this blood alcohol level tended to be<sup>140,141,142</sup>;
- Given the literature consistently establishes late night trading as a contributing factor to a number of alcohol-related problems, in addition to satisfying existing public interest criteria, late night extended trading permits are a privilege that should be afforded only to those who are able to show that the extended trading permit is not likely to impact on the community, by way of a demonstrated history of good conduct;
- Late night extended trading permits should only be granted to licensed premises with a demonstrable good record for the previous 12 months, including no infringements, offences or high levels of incidents; and

138 Miller P et al (2012). Dealing with alcohol-related harm and the night-time economy. Monograph No 43, National Drug Law Enforcement Research Fund. Available at [www.ndlerf.gov.au](http://www.ndlerf.gov.au)

139 Babor, T., Caetano, R., Casswell, S., Edwards, G., Giesbrecht, N., Graham K., Grube, J., Rossow, I. (2010). Alcohol, no ordinary commodity, research and public policy. New York.: Oxford University Press.

140 Chikritzhs, T., Stockwell, T., Masters, L. (1997) Evaluation of the Public Health and Safety Impact of Extended Trading Permits for Perth Hotels and Night-Clubs. Perth: National Centre for Research into the Prevention of Drug Abuse, Curtin University of Technology

141 127Chikritzhs, T. N., Jonas, H. A., Stockwell, T. R., Heale, P. F., & Dietze, P. M. (2001). Mortality and life-years lost due to alcohol: a comparison of acute and chronic causes. *The Medical Journal of Australia*, 174(6), 281-284.

142 Chikritzhs, T. and Stockwell, T. (2006) The impact of later trading hours for hotels on levels of impaired driver road crashes and driver breath alcohol levels. *Addiction* 101: 1254 – 1264.

- Late night extended trading permits should not be permitted to exceed more than one hour additional to standard trading hours, the time period within which to lodge interventions or objections to extended trading permit applications should be increased from 14 days to 28 days and small bar licences be prohibited from obtaining late night extended trading permits.

The *National Drug Research Institute* submits trading hours are a critical lever available to government for the regulation of alcohol's physical availability in different settings and policy decisions on this issue impact on the health and welfare of many people.

An *National Drug Research Institute* study specifically examined the effect of extended trading permits in Perth and analysed data from the licensing authority and WA Police Service regarding sales and problems associated with individual premises for 75 hotels, taverns and nightclubs in Perth that were granted longer hours between 1989 and 1996.<sup>143,144,145</sup> It further advises:-

- Significant changes in problem levels were found with a 70% increase in assaults in premises with later trading such as one or two additional hours of trading after midnight, and premises closing at midnight had a significant reduction in the number of times they were cited as the last place of drinking by a convicted drink driver with a blood alcohol level above 0.08ml/mg;
- Average alcohol purchases for extended trading permit premises were significantly higher than their non- extended trading permit counterparts, and a very strong link between the increase in violence and the increase in alcohol purchases was also found;
- The introduction of extended trading permits in metropolitan Perth also had a definite effect on the timing of alcohol-related incidents of harm for many premises. For the main harm indicators, road crashes and violent assaults, there was a consistent and obvious shift in the timing of incidents to increase after midnight. Of additional concern, was the indication that routine WA Police traffic patrols were failing to detect as many drink-drivers from particular premises after midnight once an extended trading permit was granted. The universal Australian experience with extended trading hours has been a corresponding shift in the timing of serious alcohol-related problems. In this instance trading post-midnight increases the proportions of road crashes and assaults occurring at a time when emergency and WA Police services are most expensive and are already over-stretched;
- Given strong evidence from experiences in Perth and Darwin that extended trading in late night venues results in an increase in levels of assault offences, the study recommended either that extended trading is discontinued and or that greater precautions are taken to protect public health and safety as well as to recoup the extra costs of providing emergency and Police services at a time when they are more costly; and
- If the use of extended trading permits is to continue: -
  - all forms of public transport be made more available after midnight to make it easier for drinkers to not drive during the early hours of the morning;
  - licensees with extended trading could be required to provide private transport services for their patrons; and
  - levels of violence and drink driving in and around licensed premises are closely monitored by licensing, WA Police and health authorities. Where levels of violence, road crashes and or drink-driving associated with a particular extended trading permit licensed premises increase, the extended trading permit be revoked.

143 Chikritzhs, T. & Stockwell, T. (2002). The Impact of Later Trading Hours for Hotels on Levels of Violence. *Journal of Studies on Alcohol* 63(5): 591-599.

144 Chikritzhs, T. and Stockwell, T. (2006). The Impact of Later Trading Hours for Hotels on Levels of Impaired Driver Road Crashes and Driver Breath Alcohol Levels. *Addiction*, 101:1254-1264.

145 Chikritzhs, T. and Stockwell, T. (2007). The Impact of Later Trading Hours for Hotels (public houses) on Breath Alcohol Levels of Apprehended Impaired Drivers. *Addiction* 102: 1609-1917.

The *Alcohol & Other Drugs Council of Australia* submits a link has been established between extended trading hours and alcohol-related problems and other evidence indicates a reduction in these hours can contribute to a reduction in these problems.

The *Executive Director Public Health* submits international and Australian literature, as well as Perth based research has found that extended late night trading hours are associated with increased consumption of alcohol and alcohol-related harms. Harm associated with extended trading permits does not necessarily always occur inside the licensed venue itself, but also once patrons have left a venue. Drink-driving and alcohol-related violence are examples of this.

The *City of Perth* submits greater consideration should be given to the type of venues being granted long term extended trading permits and the hours of trade should be a reflection of the primary use of a venue. In this regard, when venues are designed as hotels, yet operate with extended trading hours not dissimilar to a nightclub, difficulty often arises in the management of noise impacts on local businesses and residents. It considers it may be appropriate to review the hours of trade permitted with extended trading permits and consider only issuing extended trading permits for events throughout the year.

The *Small Bar Association of WA Inc* submits the confusion around extended trading permits occurs where venues with a tavern licence are issued with ongoing extended trading permits which can often enable them to trade as pseudo nightclubs. In relation to small bars, not every venue will be suited to extended trading hours but those who wish to apply should be able to demonstrate a good track record as a low risk venue and each case should be considered on its merits.

It recommends the grant of extended trading permits should be considered in light of high risk and low risk venues so that well run venues have better prospects for being issued with a permit.

The *WA Nightclub Association* submits the rolling use of extended trading permits and special facility licences is damaging and must be curtailed. It considers the clear intent of extended trading permits under the Act is for use in special circumstances yet extended trading permits allow hotels and taverns in Northbridge to trade until 2.00 am every Friday and Saturday night of the year. The resulting mass exodus of patrons onto the street at 2.00 am is problematic for WA Police, the transport system and nightclub operators.

The *WA Nightclub Association* advise in submissions to the licensing authority, the Commissioner of Police (O'Callaghan, 2010) and the WA Drug and Alcohol Office (2010) identified the majority of alcohol-related incidents occurred in 'Trouble Time' between 11.00 pm and 3.00 am, which the Liquor Commission had also previously identified. These submissions highlighted that the rolling use of extended trading permits by taverns and hotels and the operation of special facility licences during 'Trouble Time' as the leading causes of problems and called for the restriction of availability of alcohol at these premises during this time. The Police Commissioner cited the 2010 Coakes ARIF Report in his submission, which clearly identified that 64% of incidents occurred in 'Trouble Time'. The Commissioner of Police and the WA Alcohol and Drug Office have both called for the curtailing of extended trading permits and winding back special facility licence trading times to pull them into line with hotels and taverns.

In summary, the *WA Nightclub Association* submits nightclubs offer a fundamentally different product offering and industry role to consumers, being entertainment with alcohol as an ancillary, and this model should be encouraged and Western Australia's unique staggered closing times should always be protected.

The *Australian Hotels Association (WA)* submits considerable time, effort and resources are invested in applying for extended trading permits and the need to renew a permit on a regular basis becomes an administrative burden. The Act provides for extended trading permits to be granted for up to five years but this discretion is rarely exercised which leads to uncertainty, additional compliance and administrative burden.

There are many regulatory avenues available to the licensing authority and WA Police should the conduct of the licensed premises at any point in the five year term warrant investigation by either and it is therefore recommended the Act be amended to specify that extended trading permits should be issued for five years. In addition, they recommend extended trading permits should be automatically renewed, and where there is an intervention, that all interveners should be required to meet a reasonable onus of proof.

The *Small Business Development Corporation* supports the streamlining of the extended trading permit process and the recommendations of the *Red Tape Reduction Group's Report - Reducing the Burden* to allow extended trading permit applications to be accepted with new licence applications and to remove the requirement for a public interest assessment to be lodged with an extended trading permit application.

As detailed above under **Hotels, Nightclubs and Small Bars** the *Business Improvement Group of Northbridge (Inc)* recommends section 98 of the Act be amended to allow licensees of hotels, taverns and small bars to trade up until 2.00 am with the approval of the Director and section 60 of the Act be amended to remove ongoing hours extended trading permits as a category of permit to prevent licensee's seeking to trade past 2.00 am.

The *Tourism Council WA* submits restrictions on trade should be narrowed to those specific instances impacting public health. To ensure price competition and service availability, broad restrictions on trade should be removed or reduced including reducing restrictions on late night trading and provide greater certainty in extended trading permit renewals.

The *City of Fremantle* submits while hotels and nightclubs are high risk licensed venues, the City does not typically object to applications for 1.00 am extended trading permits submitted by hotel licensees that demonstrate a history of responsible service of alcohol and a commitment to harm minimisation principles.

*Mr Gavin D Crocket* submits the test for the grant of permits should be less onerous as the use of extended trading permits is becoming increasingly important in the operation of licensed premises. Section 60 of the Act provides no criteria upon which the licensing authority should determine an application. He recommends the grant or refusal of an extended trading permit on its merits needs to be carefully examined.

A number of other submissions submit extended trading permits for ongoing trading hours should be issued for the full 5 year period and should be automatically renewed upon expiry, if none of the relevant stakeholders lodge an intervention.

### **Conclusion**

A licensee's ability to operate licensed premises during extended trading hours should be viewed as a privilege, not a right. It is also important to note, as many factors affect the operation of licensed premises, it would be irresponsible for the licensing authority to automatically renew a permit without investigating how the previous permit was being managed and any other associated issues in relation to the operation of the licensed premises.

The Act currently allows for permits of this kind to be issued for up to 5 years. The licensing authority, after taking all matters into consideration, uses its discretion in this regard, and issues a permit for the period it determines is appropriate. The Committee considers this to be a suitable practice as it allows the licensing authority the discretion to issue a permit for a period it considers appropriate in the particular circumstances.

The previous performance of a licensee and the compliance history of the licensee and the licensed premises should be factors that are considered during the assessment of both new and renewal applications.

A need has been identified to provide more specific information relating to extended trading permits and the public interest assessment submission process. In this regard, the proposed Code of Practice on public interest assessments should include a section dedicated to extended trading permits which includes addressing the existing criteria in relation to harm, impact on amenity and offence and annoyance as well as the current trading hours and extended trading permits of other licensed premises in the locality, as a factor to be considered in the determination of an application.

There were several submissions which called for the abolition of ongoing hours extended trading permits. While some research has found extended late night trading hours are associated with increased consumption of alcohol and alcohol-related harms, they do cater for the reasonable requirements of the public, particularly in entertainment precincts such as Northbridge and Fremantle, and do assist with maintaining staggered closing times for late night venues.

Notwithstanding the continuation of extended trading permits, recommendation 83 below will give the Director the power to suspend a licence or permit for disciplinary reasons. This power should be exercised when appropriate. If it is, this will be an incentive for licensees to comply with the conditions of their licence and operate their licensed premises in a responsible manner.

*Recommendation 73*

*The provisions of section 60 of the Act relating to extended trading permits should be retained without amendment.*

*Recommendation 74*

*The licensing authority should consider the previous performance of a licensee and the compliance history of the premises when considering applications (new and renewal) under section 60(4)(g) of the Act.*

*Recommendation 75*

*The proposed Code of Practice on public interest assessments should include a section dedicated to extended trading permits which includes addressing the existing criteria in relation to harm, impact on amenity and offence and annoyance, the current trading hours and extended trading permits of other licensed premises in the locality, as a factor to be considered in the determination of an application for an ongoing hours permit under section 60(4)(g) of the Act.*

## **7. Constitution and effectiveness of the licensing authority**

The licensing authority is established under section 7 of the Act and is comprised of two entities – the Director of Liquor Licensing and the Liquor Commission.

The Director is responsible for all aspects of the administration of the Act and determines all liquor licensing matters and applications in the first instance, but may refer any matter for determination by the Liquor Commission under section 24 of the Act. Subject to the exceptions outlined in section 25(5) decisions of the Director are subject to review by the Commission.

The Liquor Commission is established under section 8 of the Act and its role is to:-

- determine liquor licensing matters referred to it by the Director;
- conduct reviews of certain decisions made by the Director or by a single Member of the Commission;
- conduct reviews based on a question of law;
- determine complaints and disciplinary matters in accordance with section 95 of the Act;
- make binding, high-level decisions in accordance with Act;
- award costs associated with matters before the Commission.

## The Liquor Commission

The Commission operates in accordance with rules that regulate the practice and procedure of the Commission and the costs and charges payable in relation to proceedings under the Act.

The Commission is comprised of a chairperson, a member as deputy chairperson and at least three, full-time, and part-time or sessional members. At least one member must be a lawyer.

The Minister may appoint a person as a member if, in his or her opinion, the person has knowledge or experience relevant to the functions of the Commission. Each member is appointed for a maximum period of five years.

The provisions of section 95(7a) of the Act require that when the Commission is hearing a complaint for disciplinary action against a licensee the Commission must be constituted by 3 members, including a member who is a lawyer.

### **Submissions**

The *City of Rockingham* submits the Liquor Commission should be abolished and a specialist section of the State Appeal Tribunal be established as the regulatory body for liquor licensing.

*Mr Gavin D Crocket* submits the Liquor Commission should be replaced by a specialist division in the State Appeal Tribunal. If however, the Commission is retained, a legal practitioner with at least 10 years' experience should be appointed as the full time Chairman, with additional members such as members from the liquor industry and or a retired Police officer and or a health provider all being full time members.

The *West Australian Sports Federation* submits a broader skills base should be reflected on the Liquor Commission and there should be a reduction in the number of members who are legal practitioners.

The *Business Improvement Group of Northbridge (Inc)* submits the composition of the Liquor Commission should include members from industry, including representatives from industry bodies and persons that have demonstrable experience in the industry. The members drawn upon for any decision should include at least one lawyer, one regulatory appointment and one industry appointment.

The *Australian Hotels Association (WA)* submits appointments to the Liquor Commission should include persons who have knowledge of or experience in hospitality businesses, tourism businesses or liquor licensing law. Currently the Commission is made up of nine members, however none of the members have operational experience in the tourism or hospitality industries. It should be a requirement at least one member of the Liquor Commission who has knowledge or experience in the hospitality or tourism industry should be present when the Commission meets.

The *Marninwarntikura Women's Resource Centre* submits the Act should be amended to require at least one member of the Liquor Commission has appropriate knowledge and experience in health and harm minimisation.

*Dr John Sainken* submits the Liquor Commission should be constituted by a panel of lawyers or a judge when hearing disciplinary matters.



## **Conclusion**

The changes instituted as a result of the Freemantle Report were extensive. The Committee does not consider, with the exception of the matters referred to in Recommendation 81, further material change is necessary. The Committee considers the current constitution of the Liquor Commission should be maintained and it would not be appropriate to include an industry, hospitality or tourism representative due to the potential for a conflict of interest to occur. Ultimately the Liquor Commission is a statutory body responsible for making high level decisions and setting precedents in relation to liquor licensing matters and it would not be appropriate to appoint members with commercial or other interests.

The recommended amendment to section 38(4) of the Act to allow for submissions to be lodged in support of an application will give industry, hospitality or tourism representatives an opportunity to be heard during the application process (Refer Recommendation 37). The recommendation to establish a Liquor Advisory Committee will allow the views and concerns of industry, hospitality or tourism representatives to be presented to the licensing authority through another channel (Refer Recommendation 141).

Given the complex nature of the matters the Commission deals with, it is often essential to have lawyers hearing matters. In this regard, because all the members are part-time or sessional members, the Committee understands it can be somewhat difficult to schedule hearings and it is therefore necessary to have a pool of legally qualified members to select for hearings.

Further, the Committee considers it is not necessary to prescribe the necessary skills or experience for members as the current provisions allow for flexibility, selection based on skill base and are intended to be flexible, not formal or prescriptive.

The Committee also considers the current provisions of section 95(7a) of the Act are adequate in relation to hearings for disciplinary matters and no amendments are recommended.

Finally, a number of stakeholders have expressed concerns regarding delays in the process and procedures of the Liquor Commission and delays in decisions being handed down and subsequently published. In this regard, the Committee considers the rules and processes for determining applications should be reviewed with input from industry and the legal fraternity.

The review should examine issues such as process mapping, timelines, performance standards and reporting requirements against these, establishment of stop the clock provisions. Reporting requirements should include details regarding timeline targets in business days; number of applications carried over from previous quarter; number of applications received in current quarter; total number finalised; number refused, struck-out or withdrawn; total number finalised within timeline target; per cent finalised within timeline target and the number carried over to next quarter.

The outcome of the review of rules and processes of the Liquor Commission is to identify inefficiencies in process and seek to implement strategies to address these.

In addition, in order to address delays with the issue of decisions, the Committee considers the Minister should establish a full-time position to assist the Commission with writing decisions ensuring these are provided in a timely manner. This position would need to be adequately funded by the government.

*Recommendation 76*

*The current structure of the Liquor Commission should be maintained.*

*Recommendation 77*

*The Liquor Commission should undertake a comprehensive review of the rules and processes for determining contested and uncontested applications. This should include input from industry and the legal fraternity and should examine issues such as process mapping, timelines and establishment of performance standards.*

*Recommendation 78*

*The Minister should establish a full-time position to assist with writing decisions for the Liquor Commission.*

## Reviews and appeals

Section 25 of the Act provides where a person is dissatisfied with a decision made by the Director in respect an application the person may apply to the Commission for a review of that decision within one month after the decision is issued.

When conducting a review of a decision made by the Director, the Commission may only have regard to the material that was before the Director when making the decision.

When carrying out a review of a decision made by the Director, the Commission must be constituted by three members if the decision relates to an application for the grant or removal of a licence or the decision is to make, vary or revoke a prohibition order. When conducting a review of a decision involving a question of law the Commission must be constituted by, or include, a member who is a lawyer.

Unless the review is sought by the person who lodged the application, a review of a decision under this section shall not reconsider any finding by the Director as to the fitness or propriety of a person in relation to an application, the adequacy or suitability of any premises under a licence or in relation to a club licence, the existence of the club.

On a review under this section, the Commission may affirm, vary or quash the decision; make a decision that should, in the opinion of the Commission, have been made in the first instance; give directions as to any question of law reviewed or to the Director; and make an incidental or ancillary order.

The provisions of section 25 of the Act do not allow the review of decisions relating to: -

- the granting of, imposition of conditions on or the suspension or cancellation of an extended trading permit (other than ongoing hours) or an occasional licence;
  - the requirement for an applicant to satisfy the public interest test under section 38(1)(c);
  - the declaration of a liquor restricted premises under section 152Q;
  - the Director's consideration of a subsequent application being of a kind sufficiently different under section 38(5);
  - the hearing of an objection;
  - the assessment of a subsidy;
  - the administrative duties of the Director not directly related to the outcome of any application;
- or
- a finding of fact required to be made in order for the matter or application to be disposed of.

### **Submissions**

*Liquorland (Australia) Pty Ltd* submits guidelines should be developed regarding the criteria for applications being referred to the Liquor Commission.

*Woolworths Limited* submits the Act should be amended to remove the discretionary requirement of the Director to refer licence applications to the Liquor Commission.

The *Business Improvement Group of Northbridge (Inc)* submits sections 25(5) and 25(5a) of the Act should be removed from the Act to enable the excepted applications and matters to be subject to review by the Commission.

*Mr Gavin Crocket* submits appeals are not merit reviewed which means the entire procedural and administrative process remains unchallenged by an applicant. All decisions made by the Director should be the subject of the review process and the Commission should be compelled to deal with the discrete issue referred to it by the Director.

The *Australian Hotels Association (WA)* submits decisions relating to extended trading permits should be reviewable and provisions stating the Commission may only have regard to material that was before the Director when conducting a review should be deleted to allow new evidence to be considered at a review.

The *Law Society of Western Australia* submits the Act should be amended so a successful applicant can simply review a condition imposed by the Director, as opposed to being required to review the entire decision. Further, section 25(2c) of the Act should be repealed to permit the Commission to consider fresh evidence when conducting a review of a decision made by the Director.

### **Conclusion**

The Committee considers, rather than developing guidelines for the referral of matters to the Commission, it would be more appropriate to set timeframes in which the referral must be made as this would provide greater certainty for applicants.

The Committee considers it would not be appropriate for all decisions to be subject to review by the Commission as this has the potential to lead to increasing the volume of work in the Commission resulting in delays. There are certain matters in which the Director should have the ultimate discretion to refuse, particularly on the grounds of public interest. In this regard, from a community perspective, the overall impact of alcohol is a matter of potentially significant harm. The Committee considers the circumstances listed under section 25 of the Act are appropriate for the Director to have the final say.

The Committee considers the introduction of new evidence for consideration by the Commission when hearing a review of a decision of the Director is not appropriate as this would be inconsistent with common practice under the Australian legal system and would lead to unnecessary further complexity in process.

In regard to the ability for a licensee to request the review of a condition imposed on their licence, the Committee understands that while section 25 of the Act does not specifically state a licensee can do this, the Commission does accept applications for the review of a condition or conditions imposed on a licence and accordingly no amendment is required.

### **Recommendation 79**

*Amend section 24 of the Act to provide appropriate timeframes within which the Director may refer applications to the Liquor Commission.*

## Hearings

The provisions of section 13 of the Act allow the Director to determine applications with or without conducting a hearing, but where the Director does decide to conduct a hearing, it shall be conducted in private unless the Director considers it should be public. Where the hearing is to be in private the Director may determine who shall be present.

### **Submissions**

The *Law Society of Western Australia* submits the Act should be amended to enable parties to elect to have a hearing before the Director, rather than such election being at the sole discretion of the Licensing Authority.

*Mr Gavin Crocket* submits hearings should be conducted openly and the general public should have access to all hearings.

### **Conclusion**

The Committee considers the licensing authority is an administrative body, not a judicial body and the conduct of hearings wouldn't necessarily improve the process. In fact, it could lead to delays.

Notwithstanding this, the Committee considers the holding of hearings would increase the transparency of the process and any hearings that are held should be open to the public unless the Director or Liquor Commission determine otherwise and recommends sections 13(6) and 16(8) of the Act be amended accordingly.

### **Recommendation 80**

*Amend section 13(6) and 16(8) of the Act so all hearings are public unless the Director or the Liquor Commission determine otherwise.*

## 8. Compliance and enforcement

Part 6 of the Act deals with the enforcement provisions and sets out the duties and functions of the licensing authority, WA Police and local government authority's in ensuring the Act is complied with as well as provisions relating to evasion of fees, false or misleading information, power to obtain information, offences by body corporates, liability of licensees, infringement notices, initiation and hearing of prosecutions, evidentiary provisions, averments and forfeiture of liquor.

Members of the community who attend licensed premises have a right to expect that those premises are safe environments that are free from drunken violence and anti-social behaviour.

It is essential that the licensing authority and WA Police work closely together and have a clear understanding of their respective roles and responsibilities in the enforcement of the provisions of the Act. It is also important that the licensing authority and WA Police are appropriately resourced in order to be able to effectively undertake the functions required of them by the Act.

The adequate enforcement of the Act and the Director's policies is essential as licensed premises are commercial operations. If it is perceived there will be no consequences for occasions of irresponsible service or breach of the legislation, ongoing service may take precedence over the responsible service of alcohol and other provisions of the Act.

### **Submissions**

A number of stakeholders submit there is a need for improved monitoring and enforcement of the Act through stronger provisions and increased resourcing of WA Police and the licensing authority.

The *Metropolitan Redevelopment Authority* submits greater weight should be placed on monitoring of, and compliance by, existing licensed venues. Harsher penalties for non-compliance and/or stringent conditions on potential higher risk venues should be implemented, rather than the current position where a licence may be refused because of the perceived risk and in consideration of existing licences – compliant or otherwise – within the proposed area. The *Metropolitan Redevelopment Authority* suggests a new compliance process could be established in the Act and compliance policies where the licensing authority, planning authorities (including redevelopment authorities), local government and WA Police work together to tackle problem venues.

The *McCusker Centre for Action on Alcohol and Youth* submits the licensing authority and WA Police should be adequately resourced and have appropriate powers to effectively monitor and enforce all provisions of the Act and monitoring and enforcement resources should be increased in line with the establishment of new liquor licences.

*Dr John Sainken* submits the Act should be amended to increase support, protection and assistance to licensees and the Liquor Enforcement Unit of WA Police should become the Liquor Education Unit.

### **Conclusion**

The Committee recognises that while many licensed premises are well run and operate within the law, there is a significant level of alcohol-related harm occurring in Western Australia.

While there appears to be sufficient powers within the current legislation to address the objects of the legislation set out in section 5 of the Act and effectively enforce the provisions of the Act, there is a perception in some sectors of the community this is not being done.

The Committee concluded there is no need for sweeping changes to the enforcement provisions of the Act, rather the existing powers should be used more effectively and more often when breaches occur, particularly where an offender continues to breach the provisions of the Act.

Sufficient resources should be provided to meet the reasonable expectations of the community that the Act be enforced.

### Disciplinary Action

The Liquor Commission may, on a complaint lodged by the Director, by the Commissioner of Police, or by a local government authority under section 95 of the Act, take disciplinary action against a licensee.

A complaint may be lodged on the grounds that:-

- the business conducted under the licence is not properly conducted;
- the licensed premises are not properly managed;
- the licensed premises have fallen into disrepair, are otherwise in an unsatisfactory condition, have been altered without approval or contravene the requirements of a written law relating to planning, building, health or safety;
- the owner or occupier of the licensed premises has failed to comply with a direction;
- the licensee has contravened a requirement of this Act or a term or condition of the licence or has failed to comply with a summons, direction or order;
- the licensee has been convicted of an offence under this Act, the *Health Act 1911* or the *Food Act 2008*, an offence in any jurisdiction, that may imply that the person is unfit to be the holder of a licence;
- the licensee has been given an infringement notice under section 167 of the Act and the modified penalty has been paid;
- the licensee otherwise is, or becomes, an unsuitable person to hold a licence;
- a person holding a position of authority in a body corporate that holds the licence, or who has an interest in the business, is or becomes not a fit and proper person to hold that position;
- the continuation of the licence is not in the public interest or the licence has not been exercised in the public interest;
- the safety, health or welfare of persons who resort to the licensed premises is endangered;
- a person is convicted of unlawful gaming in respect of events that took place on the licensed premises;
- a licence fee is not paid on or before the required date; or
- a previous determination for disciplinary action has been contravened.

In addition, an infringement notice given to an employee or agent of a licensee may be used as evidence in respect of a complaint lodged with respect to a licensee.

It is not a defence to a complaint against a licensee to show the licensee did not know, or could not reasonably have been aware of or have prevented the act or omission which gave rise to the complaint or had taken reasonable steps to prevent that act or omission from taking place.

If the Commission is satisfied, on the balance of probabilities, that the grounds upon of the complaint have been substantiated, the Commission may:-

- issue a reprimand;
- impose a condition to on the licence or otherwise limit the authority conferred by the licence;
- vary or cancel a condition;

- suspend the operation of the licence until further order or for a specified period;
- cancel the licence;
- disqualify the licensee from holding a licence;
- disqualify a person from being the holder of a position of authority in a body corporate that holds a licence;
- require a licensee or a person to enter into a bond or give security for future conduct;
- give directions as to the conduct of the business of the licensee;
- require specified action to be taken by the licensee within a specified period;
- order the licensee or a person to pay to the Crown a monetary penalty not exceeding \$60,000;
- make such other order in relation to the licensee or a person;
- take no action in the matter.

### **Submissions**

A number of stakeholders submit section 95(11) of the Act should be repealed to reduce or remove vicarious liability if it can be demonstrated a licensee or manager took all reasonable steps to prevent an offence being committed.

*Dr John Sainken* and *Mr Barry Jones* submit section 167(7)(b)(ii) of the Act should be amended to eliminate past paid infringement notices as a 'proper cause for disciplinary action' under section 95 of the Act.

The *Australian Hotels Association (WA)* submits sections 95(11) and 165 of the Act specifically prevent a defence when a licensee could not have been reasonably aware or have taken reasonable steps to prevent an offence from occurring. It is recognised under Australian Law that in certain conditions, employers are responsible for the wrong doings of employees. Vicarious liability should be reduced or excluded altogether if it can be demonstrated the licensee or manager took all reasonable steps to prevent an offence or misdemeanour occurring.

The *Business Improvement Group of Northbridge (Inc)* submits legislation should be introduced to ensure section 95 of the Act does not subvert a licensee or defendant's right to natural justice and procedural fairness. There should be an express double jeopardy defence implemented and any allegation in relation to a breach of the Act that is brought before the Liquor Commission in a section 95 proceeding should be required to be proven in a court proceeding at that higher standard before being able to be relied upon. It further submits:-

- Section 95 proceedings should be disallowed from relying on matters that criminal courts have dispensed with at a higher standard of proof and findings in court should be capable of being relied upon in such a proceeding;
- There should also be a clear cost recovery mechanism, akin to that used in court, for licensees to recover costs where proceedings are dispensed with; and
- These amendments would bring further integrity to the disciplinary process and ensure due procedure is followed which in turn would provide confidence to licensees and assist in encouraging new market participants.

The *Law Society of Western Australia* submits the Act should be amended to afford respondents to disciplinary proceedings an unimpeded right to challenge the evidence in support of the grounds for complaint, including the right to cross examine. In addition, section 95(11) of the Act should be removed from the Act.



The *City of Rockingham* submits a statutory complaint lodged by a local government authority should be heard and determined within 3 months of lodgement and the licensing authority should determine, within 21 days, whether the complaint is to proceed or be struck out. It further submits: -

- Section 95 complaints should be conducted at an open hearing with the local government authority, members of the public and other interested parties having a right to be heard;
- The provisions of section 95 and 117 of the Act should be amended so the principal issue which is required to be established is the improper/unlawful activities of the licensee's business and how these activities impact on the amenity of a neighbourhood, its community;
- local government authority's should have the same powers as the Commissioner of Police in relation to lodging a complaint under section 95 of the Act; and
- Previous adverse findings against a licensee should be relevant in any statutory complaint procedures and the mandatory conciliation process in statutory complaints should be abolished.

### **Conclusion**

In April 1994 the Mattingley Report recommended the Liquor Licensing Court be replaced with a Liquor Commission so liquor licensing would become more administrative and less legalistic however, this recommendation was not adopted by Government.

In 2005 a similar recommendation, made by the Freemantle Report, was subsequently adopted by the government and the Act was amended to replace the Liquor Licensing Court with a Liquor Commission in 2007. The Liquor Commission was assigned the responsibility for disciplinary action under section 95 of the Act.

The Committee considers now is an appropriate time to further progress the statutory responsibilities of the Director and considers the assignment of responsibility for disciplinary action under section 95 of the Act to the Director to be the next natural step in the evolution of the administration of the Act. In addition to reducing processing times this recommendation will further advance the Act becoming more administrative and less legalistic. In addition, the transfer of these responsibilities from the Commission should free up time and resources, which will enable the Commission to focus on other functions. The Committee acknowledges the Director will not be able to take over this function without additional staff resources and recommends the government provide adequate funding as required.

Many of the submissions made in this area are implicitly suggesting a move away from this being an administrative function. The Committee does not support this and in fact by recommending functions be transferred to the Director supports a stronger administrative approach to this area of regulation.

The Committee considers any disciplinary action taken by the Director should be subject to review by the Commission, with the exception of a decision by the Director to suspend a licence for disciplinary reasons which should not.

Under the current provisions of section 91 of the Act, the Director can only suspend a licence if it is in the public interest to do so or the licensee no longer has exclusive possession of the licensed premises as required by section 37(5). The Committee considers it is important the Director have the power to suspend a licence for disciplinary reasons also. In this regard, the Committee recommends section 91 of the Act be amended to allow the Director to suspend a licence for up to 7 days for disciplinary reasons. As mentioned above, this decision should not be subject to review by the Commission.

In relation to the hearing of a complaint under section 95 of the Act, in the interests of timeliness and proper procedure, the Committee considers a complaint should be heard within a prescribed period of three months of lodgement. In addition, the licensing authority should make a determination on whether a complaint will be heard or struck out within 21 days of lodgement.

The Committee considers the provisions of section 95(3) of the Act should be maintained and attendance at a preliminary conference should be at the discretion of the Director. In addition, if a hearing is held to determine the complaint, such a hearing should be open to the public, unless otherwise determined by the Director.

The Committee does not consider it would be appropriate to amend section 95(11) of the Act which states it is not a defence to a complaint lodged under section 95 for a licensee to claim they did not know or could not have prevented the actions which resulted in the complaint being lodged or had taken reasonable steps to prevent the actions which resulted in the complaint being lodged. While it is acknowledged this section places an onerous obligation on licensees, the Committee considers it is necessary to give effect to one of the primary objects of the Act, the minimisation of harm.

The Committee does not consider it would be appropriate to eliminate paid infringement notices as a ground for disciplinary action under section 95 of the Act as it considers the issue of an infringement notice is entirely relevant to the overall compliance history of a licensed premises and therefore, should be taken into account.

*Recommendation 81*

*Amend sections 95 and 96 of the Act to transfer the responsibility for disciplinary action from the Liquor Commission to the Director (with adequate resourcing).*

*Recommendation 82*

*Any decision or determination made by the Director in relation to sections 95 and 96 of the Act (other than a decision to suspend a licence or permit for up to 7 days for disciplinary reasons) should be subject to review by the Liquor Commission.*

*Recommendation 83*

*Amend section 91 of the Act to allow the Director to suspend a licence or permit for up to 7 days for disciplinary reasons. This decision should not be subject to review by the Liquor Commission.*

*Recommendation 84*

*Amend section 95 of the Act to:-*

- a) prescribe that a complaint must be commenced to be heard within three months of it being made, unless the parties agree otherwise; and*
- b) require the Director to make a determination on whether a complaint will be heard or struck out within 21 days of lodgement.*

*Recommendation 85*

*Amend section 95 of the Act to specify that hearings held by the Commission in relation to a complaint under section 95 should be open to the public, unless the Director determines otherwise.*

---

## Definition of Drunk

Section 3A of the Act states if a person is on licensed or regulated premises and their speech, balance, co-ordination or behaviour appears to be noticeably impaired, it is reasonable in the circumstances to believe the impairment has resulted from the consumption of liquor.

The current definition was inserted into the Act when it was amended in 2007 to address the *WA Police* submission to the Fremantle Committee that the definition was problematic because it required evidence a person was drunk due to liquor. This allowed a person to create reasonable doubt their impairment was caused by factors other than liquor. The Fremantle Committee made a recommendation the definition be amended in such a way that essentially removed the reference to 'affected by liquor'.

The definition is designed to allow for practical application by a server who has to quickly make a decision about a person's state of intoxication in often busy, crowded and poorly lit venues. Essentially, if a person is on licensed premises and their behaviour is impaired in some way, and it is reasonable to believe it is because of liquor consumption – then for the purposes of the Act, that patron is drunk.

A fundamental principle and primary object of the Act is the minimisation of harm caused by or due to the use of liquor. Liquor is no ordinary commodity or substance and has the potential to cause, amongst other social problems, significant physical harm.

The Act contains various provisions surrounding drunk persons, such as prohibitions on serving liquor to drunk persons and permitting drunk persons to remain on a licensed premises.

In 2010, a member of the public was refused entry to a licensed premises on the basis staff considered him to be drunk in accordance with the above definition; however the person actually had a disability. This incident was subsequently highlighted in the media along with the general issue of the difficulties in determining drunkenness. As a result of this incident, the licensing authority released a guideline titled *Identifying the Signs of Intoxication* that is designed to assist licensees and their staff in identifying the signs of intoxication.

### **Submissions**

The main themes of the submissions regarding the definition of drunk centre around the terms 'impaired' and 'affected' and the use of a prescribed blood alcohol level to determine drunkenness. There is also support for retaining the current definition.

*WA Police* submit when the Amendment Bill to amend the definition of drunk was before the Parliament in 2006 the explanatory memorandum stated the amendment 'removed the defence that allows 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'. In effect the amendment increased the level of drunkenness that is required to be proved from what was noticeably affected to a new higher level of noticeably impaired; a step up the ladder on the level of alcohol intoxication. The level of intoxication permitted is now higher than prior to 2006, which directly impacts on the level of harm. It recommends to make the observed intoxication standard in section 3A(1)(b) of the Act simpler by reverting to the pre-2006 term noticeably affected rather than noticeably impaired.

The *McCusker Centre for Action on Alcohol and Youth* submits WA Police should be properly equipped to identify a patron that is drunk and encourage consultation with WA Police to identify and address any existing challenges regarding the identifying or proving a patron is drunk.

The *Foundation for Alcohol Research and Education* submits in order to assist the authorities to enforce the responsible service of alcohol more detail is needed under section 3A (1)(b) of the Act when describing the characteristics of a drunk person. Guidelines under section 3A (1)(b) should be developed to assist with the enforcement of Responsible Service of Alcohol provisions under the Act and should outline in further detail than what is currently stated in the Act. The term noticeably impaired should be continued to be included in the definition of drunk.

The *WA Drug and Alcohol Office* submits the definition of drunk in section 3A(1)(b) of the Act should be amended to read 'the person's speech, balance, coordination or behaviour appears to be noticeably affected'.

The *Australian Hotels Association (WA)* submits the current definition of the term drunk in the Act is consistent with other Australian states and standards of Liquor laws as it allows for the individual and subjective nature of drunkenness. It further submits:-

- The requirement for law enforcement officers to undertake careful observation to prove that the patron's impairment had resulted from their drinking alcohol is a critical factor in today's poly drug use environment and a person should only be deemed drunk when through observation of alcohol consumption, a person's speech, balance, co-ordination or behaviour appears to be noticeably impaired;
- The Act does not currently authorise WA Police to take alcohol breath tests from patrons. This is both scientifically correct and fair as breath test evidence is irrelevant to being drunk. A person's ability to consume and absorb alcohol is effected by their, age, weight and size, metabolism, general health, and even genetic factors and using blood alcohol content (BAC) as a definitive indicator of drunkenness is not practical as BAC relates only to measuring the impairment of an individual's motor skills (e.g. driving skills). BAC is not a measure of an individual's behaviour or their level of drunkenness, and does not take into account observation of an individual's impaired balance, co-ordination or behaviour and a definition of drunk which included a BAC would not allow for the individual nature of drunkenness; and
- The current definition of drunk in the Act be maintained.

The *Business Improvement Group of Northbridge (Inc)* submits section 3A(2) of the Act states that if a WA Police officer decides someone is drunk, then they are deemed to be drunk for the purposes of the Act, which is effectively a reverse onus of proof. Additionally, there is no defence available to licensees for drug affected people that meet the definition stated in the Act that may be consuming alcohol. Given the exceptionally high levels of amphetamine consumption in WA, there is a very high risk that someone consuming illicit drugs meets the definition of drunk through drug taking and forces the liability onto the licensee for activities undertaken by patrons that are beyond its control. This has the practical effect of passing on the regulatory burden for drug enforcement within the licensed premises, without increasing the powers of the licensees to do so.

It recommends section 3A(3) of the Act be amended to read:-

- a) the person's speech, balance, co-ordination or behaviour appears to be noticeably impaired; and
- b) this impairment has reasonably been caused by the consumption of drugs other than alcohol.

The *Honourable Wendy Duncan MLC* submits there is no doubt that many patrons who enter a licenced premises are now consuming a significant amount of alcohol prior to entering the premises and it is often difficult for bar staff to identify this, especially if the drinker does not come to the bar to purchase alcohol but is having it purchased for them. There is some merit in recent suggestions by licensees that there should be a limit on Breath Alcohol Content for someone entering a premises, or perhaps a limit by which they must no longer be served or must leave the establishment.

The *Law Society of Western Australia* submits the definition of drunk for the purposes of the Act is problematic because it is essentially a subjective judgement, albeit one which must be objectively reasonable and consideration could be given to require a person to give a sample of breath, blood or oral fluid for analysis, in order to determine a person's level of intoxication.

*Mr Peter Abetz MLA* submits Recommendation 7 of the *Education and Health Standing Committee's 10th Report, Alcohol: Reducing the Harm and Curbing the Culture of Excess* should be noted by the Committee. Recommendation 7 states the Act be amended to allow the Police to more successfully prosecute a drunken person by defining a blood alcohol level for intoxication or amending section 3A(1)(b) of the Act to provide examples of impairment resulting from alcohol and the clarification of any other problems related to the failure to effectively prosecute drinkers for being drunk on a licensed premises.

The *Swan Valley & Regional Winemakers Association* submits it has always been impractical for staff to apply the definition of drunk in practice.

The *Small Bar Association of WA Inc* submits there is no consistent definition of drunk and it is a subjective term that cannot be applied with any consistency or certainty. A more appropriate solution is to keep educating managers and staff to recognise people who are drunk and continue to provide support and assist with ways to manage and move on a drunk person without creating a situation.

### **Conclusion**

While the term 'impaired' is used in Western Australia, several other states use the term 'affected'. The Committee believes amending the definition to use the term 'affected' could lower the threshold for determining drunkenness that may result in unintended consequences.

While the Committee acknowledges the interpretation of the current definition and the use of the term 'impaired' can be challenging for *WA Police* to successfully prosecute licensees for a breach of section 115(1) of the Act, they concluded there were no convincing arguments contained in the submissions to justify an amendment to the term 'impaired'.

The Committee also considers the use of breath alcohol testing equipment to determine whether or not a patron is drunk is not appropriate as a person's blood alcohol content is not necessarily a measure of their behaviour. While the *Road Traffic Act 1974* prescribes a blood alcohol content level for the purposes of operating a vehicle, it is questionable the same level of intoxication is relevant to a person's ability to conduct themselves in a responsible manner while on licensed premises. Notwithstanding this view, licensees can chose to use this equipment if they wish as they have the discretion to use any method to screen patrons before they enter their licensed premises and may refuse entry for any reason.

---

Finally, the Committee would like to acknowledge the submission made by the *Small Bar Association of WA Inc* that *‘there will never be a consensus on the definition of drunk and resources would be better spent on continued education of managers to deal with drunken patrons’*. In this regard, the Committee has made a recommendation regarding Community Education in **Section 1, Alcohol and the Community**.<sup>146</sup>

The Committee also observes the broad intention of the provisions relating to the service of alcohol to someone who is drunk, or the permitting of someone who is drunk to remain on licensed premises, is to protect persons whose capacity is in some way impaired. So while acknowledging there are practical difficulties for licensees and those who are responsible for enforcing the Act arising out of these provisions, the need to protect members of the community who are in some way in a state of diminished capacity, however caused, should be the overriding concern of the legislature.

*Recommendation 86*

*The current definition of ‘drunk’ in section 3A of the Act should be retained.*

---

146 Refer Recommendation 1

## Drunk and disorderly behaviour

Under the provisions of section 115(1) of the Act a licensee or his or her employee who permits drunkenness or violent, quarrelsome, disorderly or indecent behaviour to take place on their licensed premises commits an offence. An offence also occurs if a licensee or employee permits a reputed thief, prostitute or supplier of unlawful drugs to remain on licensed premises or permits unlawful gaming to occur on licensed premises.

It is also an offence to sell or supply liquor to a drunk person, to allow or permit a drunk person to consume liquor, to obtain liquor for a drunk person or to aid a drunk person in obtaining or consuming liquor on licensed or regulated premises.

A licensee or employee may refuse a person entry to, request that a person leave, remove a person or refuse to sell liquor to a person on licensed premises if:-

- a person is or appears to be drunk, is behaving in an offensive manner or is not dressed in conformity with the licensee's dress standards; or
- the licensee has reasonable cause to believe the person cannot or will not pay, is or is known to be quarrelsome or disorderly, is seeking to obtain liquor by begging, is or is known to be, or is an associate of, a reputed thief, prostitute, supplier of unlawful drugs, or person convicted of an offence involving unlawful drugs or violence, or is or appears to be a person whose presence, or to whom the provision of service, on the licensed premises will cause the licensee to commit an offence; or
- the person seeks to enter or enters or remains on the licensed premises at a time when they are closed or requests service on a part of the premises where the licensee is not authorised to provide the service requested or is set aside for a private function.

Offences also apply to:-

- a person who has been required to leave a licensed premises for the reasons above but does not do so; or
- a person who has been refused entry to, required to leave and has left, or has been removed from a licensed premises and subsequently remains on any footpath or in any area under the control of the licensee and is adjacent to the licensed premises; or
- a person who re-enters licensed premises within 24 hours of being refused entry to, required to leave, or being removed from, those premises commits an offence.

### **Submissions**

*WA Police* submits the offence of permitting drunkenness may appear straight-forward but is difficult to prosecute given the need to prove an accused (a) had actual or constructive knowledge that a patron was drunk, (b) had been in a position to observe that impairment of the patron and (c) permitted him to remain on the licensed premises. To place greater responsibility on premises management and to prevent drunkenness, section 115 of the Act should be amended to define the element 'permit' to remove the mental elements and simply make it an offence to have a drunken person on the premises. Further, there is no disincentive for patrons to modify their consumption to ensure they don't become drunk as they do not commit an offence for being drunk on the licensed or regulated premises. Section 115 of the Act should be amended so that a person commits an offence if they are drunk on licensed or regulated premises.

The *Australian Hotels Association (WA)* submits in many cases penalties directed at licensees and employees are for offences caused by the behaviour of individual patrons yet the patron is not subject to an infringement under the Act. While it is an offence for a licensee and or an approved manager to permit drunken, violent, quarrelsome, disorderly or indecent behaviour to take place on a licensed premises there is no penalty under the Act for the individual(s) who is drunk or engaging in violent anti-social behaviour in a licensed premises.

It further submits, there needs to be a deterrent to unacceptable behaviour from patrons and the public and section 115 of the Act should be amended to specify it is an offence for patrons who are drunk or engage in violent, quarrelsome, disorderly or indecent behaviour in a licensed premises with similar penalties as licensees or approved managers. For juvenile offenders the penalties should be mandatory attendance in an alcohol education program.

The *WA Drug and Alcohol Office* submits successful prosecutions regarding drunkenness on licensed premises are rare in Western Australia, because of evidence requirements that relate in part to problematic wording of the definition of drunkenness, but also the wording of offence provisions. It further submits:-

- Prosecutions of breaches of the Act are determined within the court system and WA Police must prove beyond reasonable doubt that drunkenness was permitted to take place. Proceedings for offences under the Act are summary proceedings and are dealt with in the Magistrate's Court and are determined in the same way as any other summary offence, meaning that the prosecuting authority has to establish its case 'beyond a reasonable doubt' (criminal standard of proof), and the rules of evidence apply to the proceedings. Prosecution under the court system is costly and can take a long time before matters are concluded which lessens the impact, timeliness and meaningfulness of the penalty for an offence, which in some cases could have occurred some time ago; and
- The wording of the offence provisions regarding drunkenness on licensed premises and service of liquor to a drunk person and related evidentiary requirements should be reviewed to support enforcement and successful prosecution. In addition, prosecutions of offence provisions under the Act should be heard by the Licensing Authority, not the District court system.

*Mr Peter Abetz MLA* submits Recommendation 7 of the *Education and Health Standing Committee's 10th Report, Alcohol: Reducing the Harm and Curbing the Culture of Excess* should be noted by the Committee. Recommendation 7 states the Act be amended to allow WA Police to more successfully prosecute a drunken person by defining a blood alcohol level for intoxication or amending section 3A(1)(b) of the Act to provide examples of impairment resulting from alcohol and the clarification of any other problems related to the failure to effectively prosecute drinkers for being drunk on a licensed premises.

The *McCusker Centre for Action on Alcohol and Youth* submits the number of prosecutions for serving alcohol to drunk patrons or allowing a drunk person on the premises is inconsistent with the number of drunk patrons present in some licensed premises.<sup>147,148</sup> The reasons for the low level of enforcement should be identified and addressed and approved managers and licensed premises must be held accountable for drunk patrons on their premises. It should be sufficient for a patron to be drunk on licensed premises for the approved manager and licensed premise to draw a penalty and the authorities should not be required to prove that a licensee 'permits' drunkenness to take place on the licensed premise in order for the licensee to commit an offence. It recommends to amend the Act to remove the requirement to prove that a licensee 'permits' drunkenness to take place on the licensed premise in order for the licensee to commit an offence.

147 Auditor General Western Australia. *Raising the Bar: Implementing key provisions of the Liquor Control Act in licensed premises*, 2011

148 Drug and Alcohol Office Western Australia. *Night Venues and Entertainment Events Project (NVEEP) 2012 Results for Western Australia*



The *Business Improvement Group of Northbridge (Inc)* submits the provisions of sections 3A and 115 of the Act create a number of issues for licensees and staff, who face criminal prosecution for serving someone that is drunk, or permitting them to remain on the premises. Additionally, there is no recognition that illicit drugs play a role in intoxication. In this regard, if a person is on licensed premises, then it is reasonable to believe that the impairment results from the consumption of liquor, notwithstanding that a person may have had only one drink but a quantity of illicit drugs. It should also be noted there is no corresponding charge for patrons if they are drunk on licensed premises. It further submits:-

- Given the complexities associated with determining whether someone is drunk for the purposes of the Act, it is even more difficult to prove they were not, particularly sometime after the alleged occurrence. The physical elements of this definition are exceptionally subjective and provide WA Police with a very wide discretion to prosecute licensees;
- This can lead to difficulties finding and retaining quality staff who are prepared to be criminally exposed for something highly subjective to determine. Removal of the reverse onus would provide a perception by staff and licensees of integrity in the policing of the Act and assist in attracting and retaining management and staff; and
- Further, while it should be an offence to serve alcohol to someone who is drunk, it should not be an offence for a person that meets the definition of drunk to remain on the premises for a reasonable time as long as they are not causing a disturbance or are disorderly. This would alleviate confrontation upon ejection and the risks of subsequent problems that can arise on the street and by allowing the licensee a reasonable time to remove such people the patron is better served and is the public interest.

A number of other submissions also suggest section 115 of the Act should be amended so a person commits an offence if they are drunk on licensed or regulated premises.

### **Conclusion**

During a number of consultation meetings held by the Committee there was considerable discussion regarding the practice of pre-loading and the emerging trend of side-loading. Pre-loading is the planned heavy consumption of alcohol by individuals before going to licensed premises. Anecdotal evidence suggests it is mostly motivated by the fact alcohol is significantly cheaper in packaged liquor outlets and with later trading hours people are going out later and consequently have more time to consume alcohol before they arrive at a licensed premises. Side-loading is where alcohol purchased from a bottle shop or packaged liquor outlet is consumed while travelling to, queuing to enter, or within bars, nightclubs and restaurants. It has also been reported patrons leave licensed premises to consume liquor in car parks and return to the venue.

While pre-loading is not a new practice, it would appear it is becoming increasingly common which presents unique challenges for licensees and WA Police as measures to address consumption on licensed premises, such as responsible service of alcohol strategies do not address pre-loading.

While the Committee acknowledges this is a developing issue affecting licensees and the community in Western Australia, it believes a powerful message would be sent to the community if staff and crowd controllers were more vigilant in utilising the provisions of section 115 of the Act and refused entry to any person who is drunk.

The Committee also acknowledges while individuals may consume the same amount of alcohol, some respond with violent and anti-social behaviour while others are largely peaceful and pleasant. It would appear these variations are not related to consumption itself but rather attitudes and expectations regarding the effects of alcohol and the social norms regarding drinking behaviour.

In this regard, the Committee is mindful any recommended amendments to the Act should not unreasonably impose on the majority of the community who conduct themselves in a responsible manner when visiting licensed premises, but still achieve some form of restriction and protection for those most at risk.

Accordingly, the Committee considers an offence for a person being drunk on licensed premises is not appropriate. The Committee concluded a person who may meet the legal definition of drunk should not be exposed to possible offences under the law unless that persons actions are otherwise unacceptable. The focus should be on harm minimisation, not punishing people for being drunk.

Notwithstanding this, those people who do chose to drink excessively and behave in a violent and disruptive manner must accept responsibility for their actions. The Act contains provisions to address this such as barring notices and prohibition orders. The Committee supports the continuation and strengthening of these as targeted specific measures.

With regard to the offence for permitting a drunk person to remain on licensed premises, the Committee considers it would not be appropriate to remove the term 'permit' from section 115(1)(a) of the Act as this could lead to lowering the level of protection to people who are drunk afforded by the Act.

The Committee considers enhancing the concept of personal responsibility is an important part of changing the drinking culture in Western Australia and in this regard the offence provisions for refusing to leave a licensed premises could be used more effectively. The Committee considers the issue of an infringement notice for this offence should serve as a significant deterrent for patrons at licensed premises engaging in anti-social behaviour. In this regard, the Committee recommends the penalty for failing to leave a licensed premises be increased to \$5,000. In addition, Committee the recommends the penalty for an offence under section 115(6) of the Act for remaining on a footpath or area adjacent to the licensed premises after being ask to leave or refused entry should also be increased to \$5,000.

Further, the Committee considers for this to be an effective strategy, the public should be made aware of this offence and the penalty as part of a community education campaign. It is also crucial WA Police support licensees in this regard and attend licensed premises to deal with patrons who are refusing to leave a licensed premises.

The Committee also considers the suggestion by the *Business Improvement Group of Northbridge (Inc)* to amend section 115 of the Act to introduce a defence for a licensee to permit a drunk patron to remain on the licensed premises in certain circumstances has merit. The Committee concluded allowing this to occur, especially if it is in the best interest of the patron to be managed and monitored, rather than evicted into the street where they may be at risk of being harmed, would be a positive harm minimisation strategy.

The Committee considers the criteria should be: -

- the patron is not unruly – they must be behaving in an orderly manner and not causing any disturbance;
- the licensee must not serve or supply them with any liquor or allow them to be supplied with any liquor. In this regard, an education campaign would be required to educate the public that offence provisions exist for obtaining liquor for a drunk person;
- the patron should be identified so that all staff know they are drunk and should not be served any more liquor; and
- the incident register should be updated with the details of the 'incident', however, incidents of this nature should not be seen as a negative incident.

Finally, the Committee acknowledges the *Australian Hotels Association (WA)* comment regarding the mandatory attendance of juveniles at an Alcohol Education Program for drunk or disorderly behaviour and note that Recommendation 33 addresses this.

*Recommendation 87*

*Amend section 115(5)(c) of the Act to increase the maximum penalty for failure to leave a licensed premises to \$5,000.*

*Recommendation 88*

*Amend section 115(6) of the Act to increase the maximum penalty for remaining in the vicinity of a licensed premises to \$5,000.*

*Recommendation 89*

*Amend section 115 of the Act to introduce a defence for a licensee to permit a drunk patron to remain on the licensed premises in circumstances where:-*

- the patron is not unruly – they must be behaving in an orderly manner and not causing any disturbance;*
- the licensee, manager or employee must not serve or supply them with any liquor or allow them to be supplied with any liquor. In this regard, an education campaign would be required to ensure the public are aware that offence provisions exist for obtaining liquor for a drunk person;*
- the approved manager should be notified of the person's presence;*
- the patron should be identified so that all staff and other patrons know they are drunk and should not be served or supplied with any more liquor;*
- the presence of the patron is recorded in the incident register; and*
- offence provisions should apply if these conditions are not met.*

## Movement between licensed premises

Section 103(3) of the Act states where a person takes, or is permitted by the licensee or employee to take, liquor from licensed premises and the licensee is not authorised to sell liquor to that person for consumption off those premises, the person and the licensee or employee commits an offence.

### Submissions

The *Australian Hotels Association (WA)* submits it is not likely that the scope of the offence created under section 110(3) of the Act is intended to cover persons moving between licensed areas which are subject to the same or similar licence conditions, particularly where the licensee of those licensed premises is the same. It recommends section 110(3) be amended to include a defence so as to permit patrons to walk freely between adjoining licensed premises which have the same licensee.

The *Tourism Council WA* submits the Act should be amended to allow customers to carry liquor freely within a venue as this will prevent conflict with customers. The conflict arises when licensees enforce restrictions which customers are unaware of and which customers consider to be an imposition on their reasonable behaviour. Reducing unnecessary enforcement will also reduce compliance costs and improve price competitiveness and customer value. In particular, the Act should be amended to enable customers to move freely:-

- from an area serving liquor, across a footpath or public area, to an alfresco area;
- across complexes such as stadia, arenas, casinos and convention, exhibition & entertainment centres, which may have multiple licences within the one venue; and
- between separate producers and restaurant licences in a single venue such as moving between a cellar door and a restaurant, with separate licensees, in the one winery.

### Conclusion

It would appear an anomaly exists within section 110 of the Act that results in an offence being committed if a patron carries liquor outside of the licensed area on their way to another part of the licensed area. This is often the case when a licensed alfresco area is separated from the licensed premises by a public footpath. The offence is an unintended outcome of the offence provision designed to penalise people and/or licensees when a patron purchases liquor on the licensed premise and then leaves the premises with the drink. Prominent examples of venues where the rule has caused problems are the Flying Scotsman in Mt Lawley and the George Hotel and the Belgian Beer Café in Perth.

The Committee considers an amendment is necessary to section 110(3) of the Act to remove the anomaly and accordingly recommends section 110(3) be amended to provide an offence is not committed by the patron or the licensee if a patron is moving between separate areas of a licensed premises.

Further, in relation to wine producers, the Committee considers patrons should be able to move between two adjacent licensed premises where the licences are held by the same licensee. For example, where a licensee holds a wine producers licence and a restaurant licence, patrons should be able to move between the two licensed premises while carrying liquor.

#### Recommendation 90

*Amend section 110(3) of the Act to provide a defence for both the licensee and the patron if patrons are moving between separate areas of a licensed premises.*

#### Recommendation 91

*In relation to wine producers licences only, amend the provisions of section 110(3) of the Act to allow patrons to move between two licensed premises, provided the licensee holds both licences.*

## Consumption off licensed premises

Section 65 of the Act states a licence or permit that authorises the sale of packaged liquor is subject to the condition that the liquor sold is not, unless authorised by an extended trading permit, consumed on or in the immediate proximity of the licensed premises.

For the purposes of any disciplinary action taken or proceedings, subsection (3) provides liquor may be taken to have been consumed in the immediate proximity of licensed premises if the liquor is consumed in a place nearby where there is frequent drunkenness, or disorderly conduct by persons resorting to the licensed premises or where persons habitually gather for the purpose of consuming liquor sold on or from the licensed premises, and the court is satisfied that the licensee has not, but could have, taken reasonable steps to prevent such occurrences or that the licensed premises are in any way ill-conducted.

### **Submissions**

*WA Police* submit this section works well in many situations, particularly in regional Western Australia where liquor is regularly unlawfully consumed in car parks, reserves or other open space within short walking distances of the licensed premises. However in the metropolitan area, with the population far more mobile, the definition of immediate vicinity can be very restrictive and the requirement for there to be elements of frequent drunkenness or disorderly conduct also restricts its effectiveness.

*WA Police* consider there are circumstances where liquor outlets sell to patrons knowing the liquor will be consumed unlawfully such as patrons heading to the Australia Day firework celebrations, to AFL or cricket matches or to outdoor concerts. These patrons are usually pre-loading due to restrictive serving practices at the venues they are attending and regularly come to the attention of *WA Police*, other licensees and medical staff due to the determined drunkenness behaviours they exhibit.

*WA Police* recommend by removing 'immediate vicinity' and the requirement for there to be drunkenness and disorderly behaviour and replacing with 'in circumstances in which it reasonably suspected the liquor will be consumed unlawfully' licensees will be required to consider more carefully their obligations to harm minimisation and this will reduce the risk of pre-loading or determined drunkenness at the many organised events across the state.

### **Conclusion**

While the Committee considers there is merit to the suggestion by *WA Police*, they concluded it would be more appropriate to add to rather than replace the provisions relating to immediate proximity. Accordingly, the Committee recommends section 65(1) of the Act be amended to include provisions which prohibit licensees from selling liquor in circumstances in which the licensee reasonably suspects the liquor will be consumed unlawfully. This will capture street drinking as well as reserve drinking and should serve to reduce pre-loading at large outdoor events such as the Australia Day fireworks.

### **Recommendation 92**

*Amend section 65(1) of the Act to include an offence for selling liquor in circumstances in which it is reasonably suspected that the liquor will be consumed unlawfully.*

## Barring Notices

The provisions of section 115AA of the Act allow the Commissioner of Police to issue a barring notice prohibiting a person from entering a specified licensed premises or a specified class of licensed premises for up to 12 months.

A barring notice may only be issued if the Commissioner believes, on reasonable grounds, that the person has, on licensed premises, been violent or disorderly, engaged in indecent behaviour or contravened a provision of any written law.

A person who has been issued with a barring notice commits an offence if they enter a licensed premises contrary to a barring notice, unless the person enters the premises solely for the purpose of performing duties relating to their work.

The Commissioner of Police is required to publish the details of barring notices issued on a secure webpage. Section 115AC of the Act specifies the information which must be published which is the name of the person, a photograph of the person (if available), the town or suburb where the person lives and the details of the licensed premises the notice applies to.

### Submissions

*WA Police* submits since their introduction in January 2011, barring notices have been used extensively to reduce violence and improve safety within and around licensed premises with a total of 539 barring notices being issued up to the end of January 2013. It further submits:-

- The provisions of section 115AA of the Act which require that the incident or behaviour must have occurred on licensed premises does not cover the situation where crowd controllers or venue staff are assaulted or subject to abuse outside the premises as they are refusing entry to the venue. This is occurring on a regular basis and had this occurred on the premise the person involved would have received a barring notice;
- Many licensed venues across the state have ID scanning machines and details of these names are loaded into their databases and used to restrict entry to barred persons. Without a date of birth it is not possible to positively identify a barred person and instances have occurred where a person has been refused entry to a venue as they have the same name as a barred person;
- When a person breaches a barring notice, *WA Police* can only arrest or summons the person as there is no ability to issue a liquor infringement notice. This is not the situation with breaches of prohibition orders, where a liquor infringement notice can be issued; and
- Subsection (7A) states a person does not commit an offence of breaching a barring notice if the person enters the premises solely for the purpose of performing duties relating to the person's work. This exemption is too broad and is now being interpreted to include persons conducting business meetings at licensed premises. The original intent was to provide an exemption to staff or contractors working in licensed premises which also covered trade persons who needed to attend a licensed premise to repair appliances etc.

The *Australian Hotels Association (WA)* submits section 115AA of the Act should be amended to expand the scope of barring notices to include offences that occur in the vicinity of licensed premises and individuals who are serious and/or serial offenders with alcohol-related crimes.

A number of other submissions also recommend the Act be amended to expand the scope for *WA Police* to issuing a barring notice to include offences that occur in the vicinity of licensed premises and individuals who are serious and/or serial offenders with alcohol-related crime(s) i.e.. Domestic violence, assault.

## **Conclusion**

As submitted by *WA Police* barring notices have been used extensively to restrict access to licensed premises with over 500 notices being issued since the beginning of 2011. Some of the reasons for their effectiveness are the speed in which they can be issued and the immediate impact on the barred person.

The Committee considers the use of barring notices would be more effective if the criteria for the issue of a barring notices included disorderly or offensive behaviour in the vicinity of a licensed premises. In this regard, an appropriate definition of 'vicinity of licensed premises' needs to be introduced which is specific to this section as the term is also used elsewhere in the Act.

The Committee also considers the request by *WA Police* to amend section 115AC of the Act to include the barred persons date of birth as information that may be published as a necessary tool to further enhance the identification of barred patrons.

In this regard, the use of ID scanning equipment is becoming increasingly popular with licensees and the Committee encourages licensees to continue using this technology. This is seen as an important aspect of the ongoing effectiveness of barring notices. The Committee considers the use of appropriate ID scanning equipment should become a mandatory requirement for some high risk venues. In particular, the licensing authority should be able to impose a condition requiring the operation of ID scanning equipment on licences of a particular class, or with late trading hours or in a particular geographical area or precinct.

The suggestion by *WA Police* to amend section 115AA(7A) of the Act to clarify activities that relate to a person's work is also considered appropriate. The Committee considers the defence provisions should only apply if the persons work directly relates to the licensed premises, that is they are at the licensed premises in their capacity as a plumber for example, not to attend a business lunch.

Finally, on a more technical note, the Committee recommends regulation 27 be amended to enable an offence under section 115AA of the Act for entering a licensed premises contrary to a barring notice to be dealt with by way of an infringement notice.

The Committee also noted there appears to be an anomaly in section 115AE of the Act that a licensee would be committing an offence if they knew a person had been issued with a barring notice but permitted them to enter the licensed premises to carry out their work duties, for example, as a plumber. Accordingly, the Committee recommends section 115AE be amended so no offence is committed if a licensee allows a barred person onto licensed premises for the purposes of their work

### **Recommendation 93**

- a) Amend section 115AA(2) of the Act so that a person exhibiting the prescribed behaviour in the vicinity of a licensed premises can be issued with a barring notice.
- b) Amend section 115AA of the Act to provide a definition of 'vicinity of licensed premises for the purposes of section 115AA(2).

### **Recommendation 94**

Amend regulation 27 of the Regulations so that an offence under section 115AE of the Act can be dealt with by way of an infringement notice.

*Recommendation 95*

*Amend section 115AA (7A) of the Act to specify the circumstances when it is acceptable for the recipient of a barring notice to enter and remain on licensed premises.*

*Recommendation 96*

*Amend section 115AC(1) of the Act to include a requirement that a barred persons date of birth is published on the secure webpage.*

*Recommendation 97*

*Amend section 115AE of the Act to provide a defence if section 115AA(7A) applies.*

*Recommendation 98*

*Amend the Act to require that all new licences of a prescribed type or types or in a prescribed location or precinct (high risk venues, entertainment precincts) must utilise suitable ID scanning technology for all patrons entering the licensed premises.*

*The Regulations should also allow the Minister to apply this requirement to existing licences of a prescribed type or types in a prescribed location or precinct (high risk venues, entertainment precincts).*



## Offences

Section 166 of the Act states a person who contravenes any provision of the Act commits an offence. Under section 165 of the Act, where an employee or agent of the licensee commits an offence for which the licensee would have been liable had it been committed by the licensee, the licensee shall be deemed also to have committed an offence and is liable to the same penalty as prescribed for the principal offence.

It is not a defence to a charge against a licensee to show the licensee did not know, or could not reasonably have been aware of or have prevented the offence committed by the employee or agent, or had taken reasonable steps to prevent the offence being committed.

For the purposes of section 165 of the Act an employee of the licensee includes a person engaged under a contract for services by the licensee and a person holding a crowd controller's licence who is employed by a crowd control agent engaged under a contract for services by the licensee or a manager.

### **Submissions**

A number of submissions suggest the offences in the Act should be categorised as 'simple criminal' offences rather than 'indictable offences'.

The *Australian Hotels Association (WA)* submits there needs to be clarity that offences in the Act are defined as simple civil offences and not indictable offences, which could potentially limit future employment, immigration, and financial prospects of staff within the industry.

Further, they submit there should be a defence to any charge under the Act that 'a licensee took reasonable steps possible to prevent the contravention taking place'. While they accept alcohol is a 'risk' product and licensees should face a tough standard in ensuring that alcohol is sold and supplied in compliance with the Act, it goes beyond the bounds of fairness for licensees to be guilty of a breach by an employee or agent when all reasonable steps have been taken to prevent such a breach.

The *Business Improvement Group of Northbridge (Inc)* submits to prevent a 'triple dip' for the same offence, defences to prosecution under the Act should be established:-

- Licensees should not be guilty if they can prove the manager or crowd controller acted on their own accord and outside the authority vested on them by the licensee;
- Managers or employees should not be guilty if they can prove they were instructed by the licensee or if the situation arose as a failure of security and they can prove that security acted on their own accord outside the scope of their authority; and
- crowd controllers should not be guilty if they can prove they were instructed by the licensee or manager or if the situation arose as a failure of the licensee or management and they can prove that the licensee or manager acted on their own accord outside the scope of their authority.

Further, to prevent prosecutions arbitraging the pleas and defences of the co-accused, they recommend legislation should be amended so:-

- no criminal conviction is recorded where the licensee or crowd controller is also found guilty – i.e. if the manager or crowd controller did not act outside the scope of his/her authority; and
- a guilty plea by a manager or licensee should expressly be forbidden from being used against the other party in a prosecution (i.e. a manager pleads guilty and the licensee doesn't, and the manager's plea is submitted as evidence against the licensee)

*Mr Barry Jones* submits the Act should be amended such that it is 'a defence to a charge of an offence under section 165(1) to show that the licensee did not know, or could not reasonably have been aware of or have prevented the offence committed by the employee or agent, or had taken reasonable steps to prevent the commission of that offence'. Further, it is highly inequitable that a licensee is able to be charged and convicted under section 165(2) for the actions of an employee where that employee is either not charged with an offence or is charged with an offence but not convicted.

The introduction of the *Security and Related Activities (Control) Act 1996* requires licensees to engage an outside agency to provide crowd controllers, rather than allowing them to employ crowd controllers directly. *Mr Jones* considers this has resulted in the degree of control over crowd controllers being greatly diminished. To achieve more effective security, licensees should be permitted to employ crowd controllers directly rather than having to hire them through a security agent.

### **Conclusion**

The suggestion to make offences under the Act simple offences rather than indictable offences was referred to the State Solicitor's Office who advised there are no offences in the Act which are described as either a crime or a misdemeanour and therefore, none of the offences listed in the Act are indictable offences – they are all simple criminal offences.

Further, the State Solicitor's Office advised civil sanctions such as those that can be imposed by the Liquor Commission after disciplinary proceedings, are aimed at protecting the public by maintaining the standards of behaviour for licensees while criminal sanctions are intended to punish offenders.

Accordingly, as advised by the State Solicitor's Office, to replace or amend criminal provisions with civil provisions, would essentially result in the Act no longer imposing any punishment on persons who breach the provisions of the Act which the Committee considers would not be appropriate or in the interest of the community in general.

In regard to section 165 of the Act and the liability of a licensee for an offence committed by an employee, the Committee considers the current provisions achieve an appropriate balance as, ultimately, licensees must be held responsible for the conduct of the business at licensed premises and must be motivated to ensure their staff are complying with the requirements of the Act.

## Offences by Body Corporates

Section 164 of the Act states where an offence is committed by a body corporate, the offence is also committed by any officer or other person concerned in the management of the body corporate. In addition, a manager who is supervising and managing the licensed premises at the time the offence was committed by the body corporate, they shall also be deemed to have committed an offence unless it is proved such direction had been given or such supervision had been exercised by that manager to ensure an offence against this Act would not be committed.

Further, if the Commission imposes a penalty on a licensee who is a body corporate as a result of disciplinary proceedings under section 95 of the Act, and the grounds of the complaint were found to have occurred with the consent or connivance of, or were attributable to, any failure to take all reasonable steps to secure compliance by the body corporate on the part of any officer or other person concerned in the management of the body corporate, the Commission may impose a penalty under section 96 of the Act on that person as well as a penalty on the body corporate.

Further, the Commission may also impose a penalty on any manager who was supervising and managing the premises at the time the grounds upon which the complaint was made occurred, unless it is proved that such direction had been given or such supervision had been exercised by that manager to ensure the grounds upon which the complaint was made would not occur.

### **Submissions**

*Dr John Sainken* submits the Council of Australian Governments (COAG) report on the subject of Personal Liability for Corporate fault is relevant to the Review and may in fact have obligatory recommendations. The Report refers primarily to Criminal Offences but also recommends that Civil Penalties should be include for consistency.

The *Law Society of Western Australia* submits because the Act does not contain any statutory penalty which is expressly provided for a body corporate, the effect of section 40 of the *Sentencing Act 1995* is to make a body corporate that is convicted of an offence liable to a fine of 5 times the minimum or maximum (as the case may be) fine that could be imposed for that offence. It further considers:-

- A targeted penalty regime for bodies corporate could be achieved by expressly providing for the specific penalty to be applied to a body corporate, thus avoiding the arbitrariness of section 40(5) of the *Sentencing Act 1995* and recognising that offences under the Act can vary significantly in their circumstances, ranging from minor unapproved works to significant and wilful contraventions of the Act; and
- The potential for additional penalty under the disciplinary provisions means there is adequate scope for appropriate penalties in the current penalty provisions and there is no demonstrated need to increase the penalties.

The *Australian Hotels Association (WA)* submits because the Act does not expressly provide for separate penalties for corporate licensees and licensees who are natural persons, the provisions of section 40 of the *Sentencing Act 1995* apply which means the maximum fines applicable to corporate licensees could be five times higher than stated in the Act. It recommends all offence provisions specifically provide that maximum and minimum fines for licensees provided for in the Act expressly apply to both natural and corporate licensees. This would prevent the *Sentencing Act 1995* applying to increase those penalties.

---

WA Police submit criminal penalties for corporate body licensees are not increased over that of a natural person who is a licensee and there is no effective disincentive for a corporate body to comply with the Act due to the penalty and modified penalty being comparatively inconsequential. It recommends to include the provisions of section 40(5) of the *Sentencing Act 1995* into the Act in a way that compels a magistrate to consider a penalty five times above that which is imposed upon a person who is a licensee. This should also to be reflected in the modified penalties.

### **Conclusion**

At the July 2012 meeting of the Council of Australian Governments (COAG) meeting it was agreed the *Personal Liability for Corporate Fault – Guidelines for applying the COAG Principles*<sup>149</sup> would be applied by all jurisdictions when drafting future legislation.

The Guidelines were developed to assist in achieving the commitment of COAG to deliver a nationally-consistent and principles-based approach to the imposition of personal criminal liability for directors and other corporate officers as a consequence of a corporate offence. In particular, the purpose of the Guidelines is to ensure all Australian jurisdictions, and all agencies within those jurisdictions, interpret and apply the COAG-agreed principles for assessment of directors' liability provisions consistently and in accordance with the intentions of COAG.

The Committee therefore recommends the provisions of section 164 of the Act, which imposes blanket liability on directors for offences for a contravention of the Act be reviewed and amended where necessary to ensure compliance with the *Guidelines for applying the COAG Principles*.

In relation to the provisions of the *Sentencing Act 1995*, the Committee considers it is appropriate for the provisions of section 40 to apply to body corporate licensees and a Magistrate should have the option of imposing a penalty of up to five times the prescribed penalty if an offender is a body corporate and therefore, no amendments are recommended.

### **Recommendation 99**

*The Act be reviewed and amended where necessary to ensure compliance with the Guidelines for applying the COAG Principles in relation to Personal Liability for Corporate Fault.*

---

149 <http://www.coag.gov.au/node/434>

## Prosecutions

Section 168 of the Act states a prosecution for an offence against this Act may be instituted in the name of the Director, by the Director or a delegate or by a member of the WA Police Force and section 169 states a prosecution for an offence against the Act must be commenced within four years after the date on which the offence is alleged to have been committed.

Section 169 of the Act also states a court of summary jurisdiction hearing and determining a charge of an offence under this Act is to be constituted by a magistrate if the penalty for the offence is a fine of more than \$2,000 or the person charged with the offence is a licensee, a manager or an employee or agent of a licensee.

### **Submissions**

The *WA Drug and Alcohol Office* submits prosecutions of offence provisions under the Act should be heard by the Licensing Authority, not the District court system.

The *Australian Hotels Association (WA)* submits the provisions of section 169 of the Act can create uncertainty for licensees. The length of time investigators can take to gather evidence when establishing a prosecution under the Act can make it difficult for a licensee to mount an adequate defence, given that witnesses and evidence, beyond incident registers, may not be available to a licensee when defending a case concerning an incident which happened four years ago. It recommends a two year time limit for prosecutions under the Act be introduced.

A number of other submissions also submit section 169 of the Act should be amended to specify a prosecution must be commenced within two years of an offence being committed.

The *Business Improvement Group of Northbridge (Inc)* submits there is no practical rationale for maintaining a period longer than for other serious crimes. It provides for uncertainty for the licensee and staff that may have been charged. It recommends section 169(3) of the Act be amended to reflect a period of one year in which a prosecution can be commenced.

### **Conclusion**

The Committee understands offences such as unapproved profit sharing and the appointment of directors and shareholders are often not discovered by the licensing authority until sometime after the offence has occurred and the four year period is therefore relevant and necessary.

Notwithstanding this, the Committee considers if the licensing authority's new IT system, which is due to be deployed sometime in 2014, has the functionality to require licensees to update their details on an annual basis, there could be some scope to reduce the prosecution period.

#### **Recommendation 100**

*If the licensing authority's new IT system has the capability to enable a yearly licensee detail verification process, the period for commencing a prosecution should be reduced to two years.*

## Disqualifying Offences

Section 34(2) of the Act sets out the criteria under which a person may not be approved by the licensing authority, that is, a person who is bankrupt; a person who has a mental disorder; a person who is imprisoned; a person who is disqualified from holding a licence; a juvenile; a state or commonwealth public servant or a sheriff or bailiff (unless the licensing authority is satisfied there is no conflict of interest) and in the case of a body corporate, is an externally-administered body corporate.

### **Submissions**

*WA Police* submit the Act should be amended to enable a more streamlined process to revoke the approval of a licensee or approved manager if they have committed a certain category of offence.

The current process, if a licensee or approved manager has been convicted of a certain category of offence, is for a licensee via a complaint for disciplinary action under section 95 of the Act and for an approved manager, under section 102F of the Act. Both of these processes require *WA Police* to submit evidence that the person is no longer fit and proper to hold a position of authority due to the nature of the conviction and are resource intensive, time consuming and subjective on the part of the person implementing the process and the decision maker.

*WA Police* believe that should a licensee or approved manager be charged or convicted of a certain category of criminal offence they should no longer be deemed to be fit and proper to hold a position of authority and should be removed from the industry by way of a specific section of the Act. Similar provisions already exist in the security industry under the *Security and Related Activities (Control) Act 1996* which states:-

*'A licensing officer is not to issue a licence, other than a temporary licence, unless the officer is satisfied –*

*(ca) that the applicant is not a prohibited person; and*

*(cb) where there is a charge pending in relation to the applicant for a disqualifying offence, that extenuating circumstances exist'.*

*WA Police* further advise the offences are at the more serious end of the scale and include:-

- an offence involving assault or violence against the person;
- an offence involving dishonesty or theft;
- a firearms or weapons offence;
- an offence of robbery;
- an offence in relation to a prohibited drug or plant;
- an offence in relation to a restricted pharmaceutical substance; and
- an offence against Part 5.3 of the Criminal Code as set out in the Schedule to the *Commonwealth Criminal Code Act 1995* or a terrorist offence against the law of any State or Territory or overseas jurisdictions.

It is the view of *WA Police* this legislation has proved beneficial in enhancing the integrity of the security industry and the introduction of similar legislation within the liquor industry will have the same effect.

**Conclusion**

The Committee considers the request by *WA Police* for the introduction of disqualifying offences for licensees and approved managers similar to the provisions of the *Security and Related Activities (Control) Act 1996* is appropriate and recommends the Act be amended accordingly. The Committee considers the relevant disqualifying offences should be prescribed in the Regulations.

**Recommendation 101**

*Amend the Act to allow the Director to revoke the approval of a licensee or approved manager if they are found guilty of a prescribed disqualifying offence.*

## Liquor Restrictions

Section 64 of the Act states, in relation to any licence or permit, the licensing authority may at its discretion impose conditions in addition to the conditions specifically imposed by this Act or in such a manner as to make more restrictive a condition specifically imposed by this Act. In some cases, these provisions are exercised by the Director to impose conditions restricting the sale of liquor on certain days and limiting the type of liquor which may be sold in towns or regions where significant harm is being caused by the use of liquor. This is generally referred to as a section 64 enquiry.

Under section 152P of the Act, the Director may, on the application of an owner or occupier of a premises, declare a residential premises, a non-residential private premises or Crown land to be a liquor restricted premises. Section 152O of the Act states a person who brings liquor onto, causes liquor to be brought onto, has in his or her possession or control any liquor on or consumes liquor on, a liquor restricted premises commits an offence. The penalty for these offences is a fine of \$2,000.

The issue of a liquor restricted premises declaration is designed to address, in an expedient manner, isolated and localised issues. If friends or relatives regularly cause trouble when drinking liquor in a person's home, or the owner or occupier is concerned about other anti-social alcohol-related behaviour in the home, they are able to apply to have that place declared a liquor restricted premises.

Section 175(1a) of the Act allows regulations to be made to declare an area of the State to be a restricted area, which means liquor is prohibited from being brought onto, possessed or consumed in that area. These provisions are generally used in relation to remote Aboriginal communities. The Minister may only recommend the use of these provisions if the Minister is satisfied the regulations are in the public interest and the Minister has consulted with the Commissioner of Police, the relevant local government authority and any other person considered necessary to consult.

### **Submissions**

*WA Police* submit the declaration of a number of restricted areas predominately within the Kimberley, Pilbara and Goldfield districts is proving to be beneficial in reducing the overall harms associated with excessive alcohol consumption. Community members have been the driving force behind the imposition of the restrictions and continue to support this position. Despite this support, some community members are breaching the restrictions by pooling monies, then conveying significant quantities of liquor purchased outside the restricted area into the area. This behaviour continues to be a significant issue for the majority of community members and *WA Police* who regularly conduct targeted and random patrols to enforce the restrictions. It further advises:-

- One issue that has arisen from *WA Police* operations is that unless the offenders are apprehended inside the defined restricted area with liquor, therefore creating the primary offence of bringing and or possessing liquor, being found in possession of liquor destined for, though outside, the restricted area does not constitute an offence. In this regard, *WA Police* have no legislative ability to charge a person who intends to convey or cause liquor to be conveyed into a restricted area. This nullifies the intent and effectiveness of the legislation; and
- The outcome is *WA Police* are unable to act and seize liquor that ultimately may end up in the restricted area which frustrates the intention and benefits of the restrictions. *WA Police* have to physically wait, often in remote areas, for these offenders to cross into the restricted area before a prosecution can be initiated. Many of these offenders, if aware of *WA Police* presence, simply consume the alcohol in the near vicinity of the restricted area.



---

*WA Police* recommend the Act be amended to introduce offences for attempting to convey liquor onto a restricted premise and attempting to cause liquor to be conveyed onto a restricted premise under section 152O(1) of the Act. In addition, they consider offences for attempting to bring and possess liquor in a restricted area and consuming liquor in the vicinity of a restricted area under section 175(1a)(b) should also be introduced.

The *WA Drug and Alcohol Office* submits liquor restrictions can reduce social harms and there are examples of Western Australian towns where liquor restrictions have worked effectively, however the impact of restrictions has subsequently been reduced due to people travelling to nearby towns to access liquor. For example, there are anecdotal reports of people travelling from Fitzroy Crossing to purchase alcohol in Derby, and bring it back to the Fitzroy Crossing community.

The *WA Drug and Alcohol Office* consider there is a need to be able to limit the amount of alcohol transported by vehicle to the towns and communities that have restrictions in place as this will strengthen the effect of liquor restrictions, and hinder the ability of persons to subvert the restrictions. It recommends the Act be amended to introduce provisions which allow the Director to impose carriage restrictions in areas where there are liquor restrictions so as to limit sly grogging and subversion of the restrictions.

The *Aboriginal Affairs Coordinating Committee* submits the declaration of a liquor restricted premises in small regional centres with identified problems (for example, Fitzroy Crossing and Halls Creek) is more likely to succeed where there are whole-of-community level liquor restrictions in place. In addition, there are situations in which agencies see the need to apply for a liquor restricted premises declaration for premises which may include common areas. For example, the Housing Authority may deem it necessary to apply for a declaration on individual houses and housing complexes, but experiences difficulties in restricting alcohol in the common areas within public housing complexes. It recommends the Act be amended to incorporate an option to apply for a liquor restriction in common areas to strengthen the liquor restricted premises restriction in place.

It also recommend section 152S of the Act is modified to allow for either the applicant, the occupant or the owner to be liable for maintaining signage (regardless of which party is the applicant) depending on the terms of the application for a liquor restricted premises declaration. For example, flexibility in the Act to allow for the Housing Authority to apply for a declaration with the occupant's consent with liability for signage and other matters resting with the occupant.

The *Department for Child Protection* submits Part 5B of the Act has become a valuable tool for the Department to support families and children at severe and continuing risk of harm from excessive alcohol use. The Department has supported significant numbers of families to voluntarily seek these declarations and has made 11 successful applications for declarations of liquor restricted premises under section 152P(4)(b) of the Act when occupiers have opposed making the application. The Department submits that minor amendments to the Act would support the continued effectiveness of the Department's and other agencies work under Part 5B of the Act to keep home, communities and children safe.

In this regard, the Department's local Level 8 District Directors are best placed to assess and respond to local family and community needs through the use of liquor restrictions, however they are not able to apply for a declaration under the current legislation. It recommends the Act be amended to enable the Department's Chief Executive Officer to delegate the power to apply for declarations under section 152P(4)(b) of the Act to District Directors.

Currently the Chief Executive Officer of the Department is responsible for the initial placement and maintenance of the notice required under section 152D of the Act. The Department submits imposing this responsibility and a \$2,000 penalty on the CEO in circumstances where the occupant opposes a declaration is not appropriate and supports the introduction of measures to discourage the occupant of a liquor restricted premises from removing or otherwise reducing the efficacy of the notice. It recommends amending the requirements of section 152S of the Act in relation to the notice size, formality and language.

### **Conclusion**

The Committee considers it is vital to ensure the various restrictions which are in place throughout Western Australia are supported by legislation that discourages and punishes those who attempt to subvert them. In this regard, the Committee recommends the Act be amended to introduce an offence of attempting to convey liquor onto a liquor restricted premises or into a restricted area. An additional offence should also be introduced for consuming liquor in the vicinity of a restricted area. Each of the new offences should be able to be dealt with by way of an infringement notice. In addition, a definition of vicinity should be prescribed for the purposes of section 175(1a) of the Act.

In regard to liquor restricted premises, the Committee considers it is appropriate to amend the requirements of section 152S of the Act in relation to the notices to be displayed, particularly in relation to declarations sought by government agencies. In this regard, the Committee recommends a defence provision be introduced in section 152S if the applicant for the declaration is a government agency or Department. The Committee also recommends the licensing authority review and revise the content and format of the required notice with a particular focus on the size, formality and language.

The Committee does not consider the suggestion by the *Department for Child Protection* to delegate the power to apply for a restricted premises declaration to District Directors is appropriate. The Committee considers it is not particularly onerous for the Chief Executive Officer to sign a declaration application and considers it is more appropriate for the power to remain with the Chief Executive Officer.

Finally, the Committee understands the current provisions of section 152P of the Act do allow common areas to be included in a restricted premises declaration and believes the licensing authority has exercised this power in at least one declaration.

#### **Recommendation 102**

*Amend section 152O(1) of the Act to introduce offences for a person:-*

- a) attempting to convey liquor onto a liquor restricted premises; and*
- b) attempting to cause liquor to be conveyed onto a liquor restricted premises.*

#### **Recommendation 103**

*Amend section 175(1a)(b) of the Act to include offences for a person:-*

- a) attempting to bring liquor into a restricted area; and*
- b) attempting to possess liquor in a restricted area; and*
- c) consuming liquor in the vicinity of a restricted area.*

#### **Recommendation 104**

*Include a definition of vicinity of a restricted area for the purposes of section 175(1a)(b) of the Act.*

*Recommendation 105*

*Amend the Act to exempt government agencies or departments from the requirements of section 152S of the Act.*

*Recommendation 106*

*Amend regulation 27 of the Regulations to include offences under sections 152S(1) and section 175(1a) of the Act.*

---

## Banned Drinkers Register

Between 2006 and 2008, the previous Northern Territory Government introduced a comprehensive package of alcohol management strategies which included the introduction of an alcohol management system and banned drinkers register.

Under the alcohol management system, a court or bail order could impose a ban on any offender from purchasing alcohol, thus placing them on the banned drinkers register. An ID scanning system was installed in all packaged liquor outlets and every person buying alcohol was required to have their ID scanned so the system could alert the supplier if the person was on the banned drinkers register. The system also facilitated the control of restricted sales such as a limit of one two-litre wine cask per person per day.

In August 2012 the newly elected Northern Territory Government claimed the banned drinkers register and the alcohol management system had failed to prevent problem drinkers from obtaining alcohol and ceased the operation of the banned drinkers register.

### **Submissions**

The *Aboriginal Affairs Coordinating Committee* submits consideration be given towards restricting the ability of people to shop at all outlets in a town to obtain more than their daily alcohol purchase limit. The consideration of a sales monitoring response in some areas with identified problems, such as Kununurra, is recommended.

The *Honourable Wendy Duncan MLC* submits the Act and any controls under it should target those who do not consume alcohol responsibly. The use of a banned drinker register, or the introduction of a card system for those qualified to drink due to their responsible manner in doing so is far preferable to restrictions applied over a whole community.

The *Australian Hotels Association (WA)* submits the Review Committee should give in principle support for the trial of an alcohol sale on presentation of ID system in the Kimberley region. It further submits:-

- An alcohol sale on presentation of ID system which uses photo identification as a means of monitoring and controlling the supply of alcohol can be used to support current liquor restrictions and other liquor strategies in dealing with alcohol-related issues in the Kimberley region;
- The system operates as an intelligent online register of banned drinkers so that when an individual's photo identification is scanned, information relating to their purchases for the day and any existing restrictions recorded against them will be relayed to the licensee or person conducting the sale in real time by accessing information from the online database;
- The system would assist licensees in managing the Liquor Act barring notice restrictions to prevent alcohol-related harm to those most at risk. The initiative would support local community objectives to restrict the sale of alcohol to persons issued with a barring notice and allow licensees to take a proactive and region- consistent approach; and
- Despite barring notices having been in effect since January 2011, ready access to the Internet remains limited and the names and faces of those restricted is made more complicated.

The *Honourable Ken Baston MLC* submits liquor restrictions in the North West of Western Australia have resulted in a reduction in choice for the wider community, a reduction in the spend of tourists, an unforeseen effect on the viability of small businesses, a disproportionate impact on the wider community while having little effect on the target group of at-risk drinkers and group buying of alcohol and transportation into towns with restrictions. The restrictions have had much wider effects on local communities than on the target group and evidence strongly suggests that restrictions per se will not have the desired effect without being paired with other measures which limit access to alcohol by target groups. In this regard, a better approach would be the use of an identification card or similar that allows for the purchase of alcohol by responsible persons who have not been convicted of any alcohol-related offence.

A number of other submissions also suggest the Committee should give in principle support for the trial of an alcohol sale on presentation of ID system in the Kimberley region.

### **Conclusion**

In 2011, the Minister for Racing and Gaming advised the Parliament an assessment of the Northern Territory alcohol management system had been considered by the Western Australian State Cabinet and a decision was made the card-based system was not an appropriate measure to introduce into Western Australia.

The Committee understands while the Northern Territory system was intended to target problem drinkers the system required a drinker to be charged and convicted of an alcohol-related crime before a Judge could place them on the banned drinkers register. Other issues affecting the effectiveness of the system were secondary supply and difficulties associated with people in the Northern Territory having suitable identification.

There are also significant financial implications to be considered, given such a system would require major changes to the justice system and substantial funding and resourcing would be required to develop, install and maintain the necessary equipment.

The Committee considers the introduction of a banned drinkers register is not a practical option to address problem drinking in Western Australia and considers the current strategies being used are having a positive impact on reducing harm. The Committee also considers the use of barring notices could address some of the issues raised in the submissions.

## Regulated Premises

Section 122 of the Act provides a definition of regulated premises and states a person who sells or supplies liquor to a juvenile, permits the sale or supply of liquor to a juvenile or permits the consumption or possession of liquor by a juvenile on regulated premises commits an offence.

Premises which are not licensed premises but are any of following are deemed to be regulated premises:-

- any area which is adjacent to, and is habitually used in conjunction with, a licensed premises and is managed, or is reasonably capable of being supervised by, the licensee;
- any place to which a permit applies, or other premises on which liquor may lawfully be supplied;
- any premises in a building or covered enclosure which is hired to the public or to which the public is admitted, whether or not on payment, where amusements are provided, entertainment or refreshment is available at a charge or the premises are otherwise used for the purpose of financial gain;
- any premises where foods, light refreshments or non-intoxicating drinks are ordinarily sold or served to the public, for consumption on the premises;
- any premises occupied by a club where no licence is in force;
- any premises prescribed for the purposes of this section; and
- for the purpose only of the prohibition of the sale or supply to, or the prohibition of the purchase or obtaining by, a juvenile of liquor but not otherwise — any road open to or used by the public, including any footpath or reservation adjoining the road, and vehicle on or adjacent to the road.

### Submissions

*WA Police* submit the existing definition of a regulated premises does not include venues which cater for outdoor events throughout Western Australia and at which BYO liquor is encouraged by the organiser. This means the organisers are not required to abide by requirements of the Act which presents policing difficulties in maintaining law and order and placing the onus of patron behaviour on *WA Police* rather than the organisers of such events.

*WA Police* recommend the definition of Regulated Premises be amended to include outdoor events, outdoor concerts, prescribed sports arenas as per 17A Liquor Control Regs 1989, parks ovals and parks to which public have access to.

### Conclusion

The Committee considers the provisions relating to juveniles in particular should be enforceable at large outdoor events and accordingly recommends section 122 of the Act be amended to expand the definition of a regulated premises to include public events where entertainment is provided and to remove the reference to a building or covered enclosure to enable outdoor events to be captured.

#### *Recommendation 107*

*Amend section 122 of the Act to:-*

- a) *expand the definition of a regulated premises to include public events where entertainment is at, or from which, can be viewed or heard; and*
- b) *remove the reference to a building or covered enclosure to enable outdoor events to be captured.*

## 9. Appropriateness of penalties contained in the Act

The Act contains numerous offence provisions which attract a monetary penalty. The current penalties range from \$1,000 up to \$20,000. In addition, the Liquor Commission may impose a penalty of up to \$60,000 if a disciplinary action complaint is made out.

Section 167 of the Act states an authorised officer who has reason to believe a person has committed a prescribed offence against this Act or is guilty of an offence, may issue an infringement notice informing the person a prosecution for the alleged offence may be commenced in a court, unless the alleged offender pays the modified penalty within 28 days. If an infringement notice is issued in relation to an offence, the modified penalty is 10 % of the maximum fine.

### **Submissions**

*Dr John Sainken* submits the current penalties are too severe and should be reduced. The quantum of most is inappropriate and unaffordable to small businesses, corporate structure notwithstanding and the penalties appear to be related to the authorities and health lobby's concerns regarding drink and violent behaviour, do not reflect the seriousness of the actual act but rather the perceived social problem around alcohol and more importantly illicit drugs. The research around drink-fuelled violence cannot validly separate the issue of simultaneous use of illicit substances. Most experienced industry experts feel the cultural change is related to the easy availability of these substances alone or in a mix with alcohol. While Australians have always liked an abundance of alcohol, the violence in our streets is newer.

*Liquorland (Australia) Pty Ltd* submits they are supportive of appropriate penalties for breaches of liquor licensing laws, however where a licensee receives a penalty for the conduct of an employee, the licensee should have an opportunity to demonstrate they had in place appropriate processes to prevent any breach occurring, prior to any action being taken against them. In addition, penalties should apply to any person committing an offence, including customers.

The *Small Bar Association of WA Inc* submits low risk venues with a good track record should be recognised and rewarded whereas, high risk problem venues should receive appropriate penalties and be made to improve their performance.

The *Metropolitan Redevelopment Authority* submits greater weight should be placed on monitoring of, and compliance by, existing licensed venues. Harsher penalties for non-compliance and or stringent conditions on potential higher risk venues should be implemented, rather than the current position where a licence may be refused because of the perceived risk and in consideration of existing licences, compliant or otherwise, within the proposed area. A new compliance process could be established in the Act with compliance policies where the licensing authority, planning authorities (including redevelopment authorities), local government and WA Police work together to tackle problem venues.

The *McCusker Centre for Action on Alcohol and Youth* supports appropriate and timely monetary or other penalties for breaching the Act. The credible threat of a substantial penalty is an important part of best practice in the regulation of the liquor industry.<sup>150</sup> The perception of insufficient penalties for liquor law breaches has been identified as a barrier to policing licensed premises. It recommends appropriate and timely monetary, or other, penalties apply for breaching the Act.<sup>151,152</sup> The *Mental Health Commission* submits the responsible service of alcohol is a critical issue and the Review of the Act should include an assessment as to whether the penalties for breaching the Act are meaningful and sufficiently timely.

The *WA Drug and Alcohol Office* submits the deterrence theory is important in effecting enforcement and compliance practice. That is, it is well established monitoring and enforcement is required to create behaviour change in retailers, particularly when profit is a powerful incentive for licensees.<sup>153</sup> It further submits:-

- There is strong community support for enforcement regarding service to customers who are drunk, underage drinking and increased penalties for licensees serving underage people with a 2011 survey of the Western Australian community finding:-
  - 84% supported stricter enforcement of the law against bar staff serving customers who are drunk;
  - 95% supported stricter enforcement of underage drinking;
  - 94% supported increased penalties for licensees serving underage drinkers;
  - 93% supported venues having their liquor licence suspended when they repeatedly serve intoxicated or underage people; and
  - 93% of people supported increased penalties for those who supply alcohol to underage people<sup>154</sup>;
- A recent review of legislation in Australia found ‘In order for police and other enforcement agencies to minimise harms that arise from alcohol consumption, appropriate legislative tools must be in place’ and ‘If it is perceived that there will be no consequences for occasions of irresponsible service, profit from sales may take precedence over adherence to RSA standards’<sup>155</sup>;
- Successful prosecutions for breaches of the legislation are often very difficult in the current system and take long periods of time, resulting in delays in applying penalties. In addition, the penalties imposed often involve small monetary fines and in some cases additional licence conditions which are generally not sufficient to be a deterrent to non-compliance. The closure of licensed premises as disciplinary action is rare;
- Other jurisdictions have explored various ways of encouraging compliance with the law through demerit systems linked to infringements, ‘three strikes and you’re out’ policies and other such strategies;

---

150 Auditor General Western Australia. Raising the Bar: Implementing key provisions of the Liquor Control Act in licensed premises, 2011

151 Doherty S, Roche AM. Alcohol and Licensed Premises: Best Practice in Policing A Monograph for Police and Policy Makers. Payneham: Commonwealth of Australia; 2003

152 Smith K, Wiggers J, Considine R, Daly J, Collins T. Police knowledge and attitudes regarding crime, the responsible service of alcohol and a proactive alcohol policing strategy. *Drug and Alcohol Review*. 2001; 20(2):181-191

153 Loxley, W., Toumbourou, J., Stockwell, T., Haines, B., Scott, K., Godfrey, C., Waters, E., Patton, G., Fordham, R., Gray, D., Marshall, J., Ryder, D., Siggers, S., Sanci, L and Williams, J 2004, *The Prevention of Substance Use, Risk and Harm in Australia: a review of the evidence*. Canberra: The National Drug Research Centre and the Centre for Adolescent Health.

154 Steer A & Coase P 2011, *Alcohol, Think Again* Post-Campaign evaluation. TNS Social Research, Perth

155 Trifonoff, A., Andrew, R., Steenson, T., Nicholas, R. and Roche, A.M. (2011). *Liquor Licensing Legislation in Australia: An Overview*. National Centre for Education and Training on Addiction (NCETA). Flinders University, Adelaide, SA.



- In 2012, the Victorian Commission for Gambling and Liquor Regulation introduced a demerit point system to contribute to improved compliance with liquor laws and a more responsible liquor industry. Licensees incur demerit points for a non-compliance incident and a licence is automatically suspended when it reaches the following demerit point thresholds:-
  - 5 demerit points leads to a 24 hours suspension;
  - 10 demerit points leads to a 7 day suspension; and
  - 15 demerit points leads to a 28 day suspension<sup>156</sup>; and
- In order to encourage compliance with the law, it is imperative the legislation support Police and the licensing authority to be able to take quick, decisive and meaningful action against breaches of the Act that have the potential to impact on harm, ill-health, disorder and amenity.

In summary, the *WA Drug and Alcohol Office* recommends the Act be amended to increase penalties for offences that have great capacity to impact on harm, ill-health and disorder, such as service to drunken persons and to improve the ability of the licensing authority to impose meaningful penalties in a timely manner.

The *Youth Affairs Council of WA* submits the Act provides a range of enforcement options designed to alter the behaviour of licensees and staff by providing penalties if they do not operate safely and responsibly. It has been difficult to prove in recent years the level of enforcement is having a demonstrable impact on the level of compliance with the provisions of the Act. In fact, increased antisocial behaviour and alcohol-related arrests in and around licensed premises that has required police attention increased by 22 % in the five years from 2005-2010. It further advises:-

- The Western Australian Auditor-General's 2011 report into the implementation of the *Liquor Control Act 1988* found the 'levels of fines and prosecution against licensees and their staff does not fully support improved compliance'<sup>157</sup>. This is demonstrated by the fact the majority of enforcement mechanisms are directed towards individual drinkers as opposed to licensees and their staff;
- The Act makes it incumbent upon licensees to be responsible for safe management of their premises and yet 93% of the fines that were issued in 2011 were to individual drinkers consuming alcohol in and around licensed premises<sup>158</sup>. In the four years from 2007 – 2011 licensees constituted around 4% of all fines issued under the Act. This is compounded by the fact the rate of police success in prosecuting licensees for offences under the act is very low. The success rate hovers between 50 and 60 % which significantly weakens the deterrent effect of enforcement<sup>159</sup>; and
- It seems incompatible with the objectives of harm minimisation to direct enforcement at individual drinkers rather than making licensees and staff accountable. Licensees and bar staff are uniquely placed to change the behaviour of drinkers in their premises and rigorously regulating bar staff and licensees through enforcement will positively affect the patrons they serve.

In summary, the *Youth Affairs Council of WA* submits the penalties under the act are inappropriate to achieve the object of harm minimisation and recommends enforcement should focus on institutional irresponsibility rather than ineffectively and counter-intuitively targeting individual drinkers.

---

156 Victorian Commission for Gambling and Liquor Regulation (2013), Demerits Point System. Available from:

<<http://www.vcglr.vic.gov.au/home/laws+and+regulations/enforcement/demerit+point+system/index.html>>

157 Auditor General Western Australia, Raising the Bar: Implementing key provisions of the Liquor Control Act in licensed premises, 2011

158 Auditor General Western Australia, Raising the Bar: Implementing key provisions of the Liquor Control Act in licensed premises, 2011. Pg 26

159 Auditor General Western Australia, Raising the Bar: Implementing key provisions of the Liquor Control Act in licensed premises, 2011. Pg 28

The *Esperance Local Drug Action Group* submits fines should be reviewed to ensure appropriate fines are issued for breaches of the Act and introduce a demerit point system.

*Mike and Irene Bell* submit penalties are not sufficient or are not being applied, therefore there is no incentive to comply and repeated breaches of regulations are occurring as a result. This is not treated with the high priority that is applicable and great harm is occurring to neighbours and others in the community. They consider noise and other impacts on the surrounding neighbours are not being addressed and few penalties are being applied for breaches and there are no effective deterrents as incentives to comply.

### **Conclusion**

The Committee recognises the significance of appropriate penalties for non-compliance and considers the monitoring and enforcement of these provisions is essential to influence behavioural change in the liquor industry.

The Committee considers on balance the current penalties are appropriate, however, given the common practice of infringement notices being issued for many offences, consider the modified penalty of 10 % may not be a meaningful disincentive for non-compliance.

In this regard, the Committee recommends the Act be amended to increase the modified penalty from 10 % to 20 % for offences which may be dealt with by the issue of an infringement notice.

The Committee considers where a prosecution is dealt with through the court system, it is still appropriate for the presiding Judge or Magistrate to make a determination on the amount of the penalty.

Finally, the Committee considers the Demerit Point System which has recently been introduced in Victoria is a creditable initiative and a similar system should be considered for Western Australia.

The Committee understands a 5 Star Rating system is also in place in Victoria which provides greater incentives for licensees to comply with liquor licensing laws, with four and five star licences being eligible for a discount on their annual liquor licence renewal fees.<sup>160</sup>

The Committee recommends both of these recent initiatives be monitored by the Minister with a view to introducing similar systems in Western Australia if, over time, they are found to be effective in reducing non-compliance and encouraging self-regulation in the liquor industry.

#### ***Recommendation 108***

*Amend section 167 of the Act on increase the modified penalty to 20% of the maximum fine.*

#### ***Recommendation 109***

*The Minister monitor the outcomes and effectiveness of the Demerit Point System and 5 Star Rating systems which have been introduced in Victoria with a view to introducing similar systems in Western Australia.*

---

<sup>160</sup> [https://assets.justice.vic.gov.au/vcglr/resources/7aa6f99b-562e-4265-8bd0-a0d6daf395bc/vcglr\\_starratingsystemcolour2pplowres.pdf](https://assets.justice.vic.gov.au/vcglr/resources/7aa6f99b-562e-4265-8bd0-a0d6daf395bc/vcglr_starratingsystemcolour2pplowres.pdf)

## 10. Exemptions

Section 6 of the Act sets out the circumstances when the Act does not apply. These are where liquor:-

- is supplied or consumed as part of a religious service or sold to a religious organisation for sacramental or similar religious purposes;
- is sold or administered for medicinal purposes;
- is supplied in the course of an approved educational course;
- is sold or consumed in Parliament House;
- is sold by, or under the authority of, the Public Transport Authority of Western Australia;
- is sold or supplied in a Police Force canteen;
- which has been seized or forfeited is sold by auction by any person authorised by the sheriff, bailiff or a member of the WA Police Force;
- is sold by an official receiver or trustee a bankrupt estate for the purposes of winding up that estate;
- is sold by an executor or administrator of an estate of a deceased person for the purposes of winding up that estate;
- which was acquired by virtue of the settlement of a claim made under a policy of insurance is sold by the insurer;
- being distilled spirits is sold in bond, by the occupier of a vineyard to the occupier of another vineyard;
- is an allowance supplied to a member of the crew of a ship; and
- in other circumstances prescribed in the Regulations.

The exemptions prescribed in regulation 8 of the Regulations are:-

- the sale of liquor in bond by the proprietor of premises which are the subject of a warehouse under the *Customs Act 1901* to a person who proposes to take the liquor outside Australia;
- the sale of liquor on a train in the course of an interstate rail passenger service to or from Perth;
- the sale or supply of liquor delivered as a gift together with flowers, a food parcel or a gift hamper;
- the sale or supply of liquor as a prize in a lawful lottery;
- the sale of liquor as ships' stores for consumption on a ship outside Western Australian territorial seas;
- the sale of an alcohol based food essence by an authorised person;
- the sale or supply of liquor by a person who operates an approved nursing home, to a patient or resident; by a person who operates a hospital to a patient, by a person who operates an approved private psychiatric hostel to a resident; by a person who operates a hostel to an aged person or disabled person who is a resident of the hostel;
- the sale of liquor on an aircraft in the course of a flight of the aircraft;
- the sale or supply of liquor on a commercial vessel in the course of an inter-State voyage or overseas voyage of the vessel; and
- the supply of liquor by a person who conducts, supervises or manages a bed and breakfast facility.

In 2011 a number of additional exemptions were prescribed in an effort to reduce the regulatory burden on the community and the licensing authority. These exemptions are:-

- the complimentary supply of liquor to customers by a business;
- the sale and supply of liquor at small occasional functions;
- the sale and supply of liquor by wine producers at regional farmers' markets;
- the consumption of liquor at venues where live entertainment is provided;
- the consumption of liquor in small charter vehicles; and
- an arrangement between the organiser of a function and a licensee.

---

### **Submissions**

Mr Peter Abetz MLA submits Recommendation 8 of the *Education and Health Standing Committee's 10th Report, Alcohol: Reducing the Harm and Curbing the Culture of Excess* should be noted by the Committee. Recommendation 8 states the Minister for Racing and Gaming table in Parliament by December 2011 a review of the current exemptions in section 6 of the Act and remove those which are historical.

The *Tourism Council WA* submits a licence exemption, or standard permission, should be introduced for low risk tourism experiences. An accredited tourism business may include a prescribed amount of liquor per guest as part of the overall price for a tour or accommodation service. This would enable operators to provide customer services such as a glass of champagne on arrival or to sell a prescribed amount of liquor to guests while on a safari or cruise where the tour operator would be the only source of liquor and where the tour includes all meals. The exemption would need to be registered, but would not be subject to approval or cost. To receive the exemption a business would need to be accredited against minimum standards such as the responsible service of alcohol, insurance requirements, risk management and customer service. Tourism accreditation standards have already been recognised by Western Australian state government agencies, including the Department of Environment & Conservation licensing system and Tourism WA marketing policy.

### **Conclusion**

The Committee reviewed the current exemptions prescribed in the Act and the Regulations and concluded there appears to be no necessity to repeal any of the existing exemptions. The Committee is also mindful that repealing certain exemptions would lead to additional regulatory burden on both the affected parties and the licensing authority which would be a backward step.

The Committee does however, consider the sale and supply of liquor should always be underpinned by responsible service of alcohol practices. In this regard, the Committee recommends parties who operate a business which involves the delivery of liquor purchased or obtained via a retail sale and which falls within one of the prescribed exemptions should also be bound by the proposed requirements in relation to the delivery of liquor, particularly where juveniles are concerned.<sup>161</sup>

Finally, the Committee considers the suggestion by the *Tourism Council WA* for the introduction of an exemption for accredited tour operators is reasonable and feasible. Accordingly, the Committee recommends the Regulations be amended to include an exemption for the sale and supply of liquor by an accredited tour operator. In this regard, parameters should be set such as the tour operator being accredited by the Tourism Council WA and restrictions in relation to the quantity of liquor which could be supplied.

### **Recommendation 110**

*Amend the Regulations to provide for an exemption for the sale and supply of liquor by accredited tour operators in prescribed circumstances.*

---

<sup>161</sup> Refer Recommendations 29 and 51

---

## 11. Transparency and Process

### Discretion of licensing authority

Under section 33 of the Act, the licensing authority has an absolute discretion to grant or refuse an application under this Act on any ground, or for any reason, the licensing authority considers in the public interest.

### *Submissions*

*Mr Gavin D Crocket* submits the Act should be amended to abolish the absolute discretion component of the power vested in the licensing authority.

### *Conclusion*

The Committee considers absolute discretion is required if the licensing authority is to be able to effectively regulate the sale and supply of liquor. As mentioned earlier, there are certain matters in which the Director should have the ultimate discretion to refuse, particularly on the grounds of public interest. It is however important that in exercising this discretion the licensing authority acts in accordance with the obligations laid out in the Act and the law. In that regard the Committee notes the decision in the matter of *Woolworths Ltd -v- Director of Liquor Licensing* [2013] WASCA 227.

### *Recommendation 111*

*Section 33 of the Act should remain unchanged.*

## Improving the licensing process

The licensing authority performs numerous functions in relation to liquor licensing, including:-

- hearing and determining applications in accordance with the Act;
- monitoring the standards of licensed premises;
- ensuring compliance with the requirements of the Act;
- considering complaints about noise or behaviour related to licensed premises and responding to such complaints;
- facilitating various liquor accords and community alcohol agreements;
- developing and implementing policy consistent with government objectives;
- providing policy advice;
- negotiating and liaising with industry groups; and
- dealing expeditiously with any other matters arising from the administration of the Act.

The table below shows the number and nature of applications lodged over the last four financial years.

<b>Applications Received<sup>162</sup></b>	<b>2009/10</b>	<b>2010/11</b>	<b>2011/12</b>	<b>2012/13</b>
Transfer of Licence	262	253	246	247
Grant or Removal of Licence	260	226	284	209
Alteration/Redefinition	167	151	161	114
Variation to Licence Conditions	166	203	219	249
Extended Trading Permits - ongoing extended hours	30	21	24	49
Extended Trading Permits - other ongoing	80	58	70	185
Extended Trading Permits - one-off	1,559	1,234	1,244	1,300
Approval of Manager	4,252	5,774	4,753	4,541
Protection Orders	39	61	92	74
Change of Premises Name	74	74	65	122
Position of Authority/Shareholding	100	128	144	148
Arrangement/Agreement	42	62	73	142
One-off variation of licensed area	96	110	101	67
One-off variation of licence hours	135	105	140	144
One-off variation of area and hours	30	22	16	15
Conversion - Club Restricted to full Club licence	2	1	1	1
Conversion - Hotel to Tavern or Hotel Restricted licence	1	0	4	1
Occasional Licence	2,174	3,215	3,357	5,001
<b>Total</b>	<b>9,469</b>	<b>11,698</b>	<b>10,994</b>	<b>12,609</b>

Under section 16 of the Act the licensing authority is required to act without undue formality and is not bound by the legal rules of evidence.

The licensing authority, when constituted by the Commission may sit at such times and such places as it thinks fit and may exercise in Chambers any jurisdiction of the Commission and when constituted by the Director, may conduct or arrange hearings, meetings, consultations and negotiations as the Director thinks fit. The Commission and the Director may obtain information regarding any question that arises for decision in such manner as they think fit and may make findings on the balance of probabilities.

<sup>162</sup> Department of Racing, Gaming and Liquor 2012/13 Annual Report

The Director will make a preliminary determination on the suitability and propriety of the applicant, the suitability of the proposed premises and the validity and relevance of any objections lodged prior to making a determination if the grant of the application is in the public interest.

Where the Director decides to conduct a hearing, the Director shall give notice to the applicant and to any other person interested in the application and only those persons shall be entitled to attend the hearing and be heard. Where the Director chooses to determine a matter without conducting a hearing the Director may determine the matter on the basis of written submissions, by way of a conciliatory conference or by way of teleconference.

If the Director decides an application is to be determined on the basis of written submissions, the Director may ask the parties to provide additional information to support the submissions made and the applicant and objectors must exchange copies of the submissions and any evidence to be relied upon. The Director is not precluded from convening an oral hearing, if it transpires from the written submissions that there are issues which are better examined in that manner.

The Commission may either arrange a hearing of the matter where parties to the proceedings will make oral submissions to the Commission or choose to exercise in Chambers any jurisdiction of the Commission (except when hearing an application for review of a new licence or the removal of a licence, where an objection is lodged and not withdrawn).

The procedure of the Commission shall be determined when any application or matter is before it and advice will be sent in writing.

The Commission's proceedings will be held in private unless the Commission considers that, in the circumstances of the case, the hearing should be held in public.

The Commission may on application by a party, or of its own initiative order that separate proceedings may be heard together.

If a hearing is held, at the end of the hearing the Commission will deliberate on the submissions made and its decision may be handed down immediately following the hearing or the Commission may reserve its decision, to be delivered at a later stage, but usually within three months. The Commission gives reasons for all its final decision.

## New Licence applications

When determining an application, the Director and the Commission are bound by the statutory requirements of the Act and precedent decisions. In addition, the Director is guided by policy and the Commission must act in accordance with the *Liquor Commission Rules 2007*.

### Submissions

*Woolworths Limited* submits the Red Tape Reduction Group Report<sup>163</sup> made a number of recommendations for reforms which aim to reduce the regulatory burden by improving the culture, performance and accountability of government agencies. A number of specific recommendations are yet to be implemented from that Review, despite the opportunity they provide for considerable reduction in cost and regulatory burden associated with liquor licence applications and government agencies in general. It further submits:-

- When the previous Labor Government reviewed the Act in 2004 a number of sensible reforms were not adopted or were actively opposed by the government at the time. This review and its Terms of Reference provide a unique opportunity for the Western Australian Government to build on those previous reviews to improve liquor licensing regulation and take the lead as world's best practice;
- Significant reform will provide Western Australians with greater choice, convenience and competition and lead to a major investment by the liquor and hospitality industry to provide for the needs of a modern, vibrant Western Australian lifestyle;
- The licensing application process in Western Australia is confusing, inconsistent and lacks clarity as to the role of both complainants and the various consent authorities;
- The ultimate impact of this situation is a system that is inordinately time consuming, results in significant financial disadvantage to applicants, discourages investment and inconveniences consumers;
- The costs and delays involved in the licensing processes in Western Australia are an inhibitor to retail investment. The issue of cost and delay are closely linked where the length of the applications process exacerbates the costs incurred by developers in the forms of increased holding, legal and expert costs. The resulting uncertainty also has material impacts on the ability of developers to finance new development;
- Liquor applications in Western Australia have, on average, taken the longest to resolve across the country. Currently, the average time it takes Woolworths to secure a licence application in Western Australia is over 18 months;
- holding on to property for such extended periods of course incurs holding costs. This is in addition to the costs of the liquor licence application process itself which are extremely high compared to other States, with legal fees costing nine times the New South Wales average and 49 times the Victorian average;
- the costs of these lengthy delays are not only the concern of the applicant but are also borne by prospective landlords who are reluctant to take on the additional financial risk that is inherent in the process. This results in applicants being forced to pay holding rent for lengthy periods with no guarantee of a favourable outcome;

163 Reducing the Burden – Report of the Red Tape Reduction Group, Government of Western Australia 2009  
[http://www.treasury.wa.gov.au/cms/uploadedFiles/Home/Publications/Independent\\_Reports/reducing\\_the\\_burden.pdf](http://www.treasury.wa.gov.au/cms/uploadedFiles/Home/Publications/Independent_Reports/reducing_the_burden.pdf)



- the costs and delays are compounded by a lack of transparency and certainty in the decision making process. Currently the Director has the power to either determine the application themselves or refer the decision to the Commission. To date, all new licence applications for Dan Murphy stores have resulted in the Director absolving his decision-making powers and referring the application to the Commission. This has occurred despite the applications involved being for significantly different locations, varying socio-demographics and levels of community involvement/objection;
- the application for a Dan Murphy store at Cannington did not draw a single objection from a member of the public, yet the matter was still referred to the Commission for a hearing and determination. None of referrals had reasons attached, nor were there any published criteria which would allow an applicant to determine whether a matter is likely to be referred to the Commission for a hearing;
- this approach contrasts with that in other jurisdictions, where there is either a single body (New South Wales) or individual (Victoria) responsible for the decision. In Victoria the matter is only referred to a hearing if there are objections. In NSW all applications are determined by the Casino Liquor and Gaming Control Authority;
- the lack of strict timeframes for referrals coupled with the lack of transparency around any concerns that may have led to a referral make it challenging for the applicant to properly plan business opening horizons or address matters that gave cause to the referral;
- the process in Western Australia is made considerably more complicated by local councils acting as an overlapping consent authority and forcing licence applicants to address the same sets of issues involved in the licence application process;
- there have been two instances recently where local councils have refused development consent for Dan Murphy's liquor stores in Western Australia (Currambine and Bicton), both of which were overturned following an appeal to the State Administrative Tribunal. In both cases these interventions resulted in additional costs amounting to hundreds of thousands of dollars and added many months to the application process;
- the Western Australian Government should undertake to:-
  - remove the discretionary power of the Director to refer licence applications to the Commission;
  - introduce a 'deemed approval' mechanism if no decision has been made within best practice timeframes noting that Victoria and NSW complete applications on average within 4.7 months;
  - narrow the objective assessment matters upon which local councils can refuse development applications through broader local government reforms;
  - publish internal policies and guidelines used in the decision-making processes and the reasons behind the decision not to grant an application.
- these changes will reposition Western Australia as the best practice State for its licensing processes and more closely align them with the systems in place for New South Wales and Victoria. Practically, this would result in the abolition of the Commission and for the Director and licensing authority to be authorised to make determinations, ideally within reasonable time limits. To ensure due process and consistency with other administrative review processes, objections to determinations would be heard by the Administrative Appeals Tribunal;
- the role of local councils requiring the same 'tests' to be passed should also be reviewed and limits placed on their roles and responsibilities to reduce delays, overlap and bureaucratic burden;
- this also brings the administration of the Act more closely to one of its secondary objects, mainly 'to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act'; and
- not only would this deliver budget savings for Western Australian taxpayers, but would be a significant step towards achieving a core aim of COAG to create regulatory regimes that would produce a 'seamless national economy'.

*Herbert Smith Freehills* submits there are a number of operational issues which mean the Act does not provide applicants with sufficient certainty to enable them to properly assess the prospects of a proposed application before investing substantial time and costs in the application process. These issues include the application of the Director's policies, the service of objections on the applicant and the lack of engagement by the licensing authority.

As a result of these issues *Herbert Smith Freehills* consider the application process is uncertain, unnecessarily difficult, protracted and costly which is contrary to section 16(7) of the Act which requires the licensing authority to act as speedily and with as little formality and technicality as possible. It recommends:-

- there should be improved consultation and transparency between the licensing authority and applicants regarding policies and procedures;
- any changes to the Directors policies or approach should be communicated to industry participants in a timely manner to allow input; and
- there should be an online tracking system to enable applicants to monitor the progress of their application.

*Mr Gavin D Crocket* submits the licensing authority should be collegiate, as the regulatory body, not adversarial and confrontational and should be compelled to put in place a proper structured system of administration of the Act so the public knows what its rights are in perusing an application. The excessive period in processing applications can result in applicants losing the their right to the proposed premises.

Defects in liquor licensing applications include the requirement to lodge all evidence at the time of lodging an application, the inability of the applicant to participate in the processing of the application, the decision making and processing is behind closed doors, statutory requirements to serve notices on residents and businesses is an extremely costly procedure and it is unclear what constitutes the public interest. Mr Crocket further submits:-

- all applications should be determined within a 6 month period. If this is not achieved, there should be a deemed approval;
- the licensing authority should be compelled to engage with all parties to proceedings and the general public;
- decision-makers should be required to seek an extension of the period of time to make their decision (similar to the SAT process);
- regulations, rules and provisions of the Act should be prescribed concerning the processing of applications; and
- the Commission and the Director should be compelled to respond to all formal applications, inquiries and the like within 14 days.

*Tourism WA* submits the need to obtain separate approvals for planning, liquor licences and building conditions is a significant source of frustration to the tourism industry adding to timeframes and costs of development. The complexity of the approval process restricts innovation in tourism product and is potentially a barrier to investment, which has impacted on the development of hotels, eco-accommodation and small bars. It further submits:-

- The timeframes to obtain an outcome from a liquor licence application can affect the commercial viability of a proposed development and the opportunity for the liquor licensing application process to start concurrently with the local planning authority process should be provided for;
- The licensing authority should also provide a greater level of assistance to applicants to ensure they have an understanding of the expectations of the licensing authority and the licence approval requirements. Provision should be made for applicants to have an opportunity to request a pre-application meeting with the licensing authority, the Department of Health, Police and the relevant local government authority to outline their proposal and seek an understanding of the requirements of each. This is a common approach taken by other approval authorities in

Western Australia and other jurisdictions and would provide greater coordination of the processes and certainty to the tourism industry;

- The need to ensure adequate provision of hotel rooms in Perth and the development of eco-accommodation in regional areas are key tourism development priorities for the Western Australian government. Attracting foreign investment is vital to addressing these priorities and the provision of a pre-application service would help inform investment decisions. This service is considered particularly important by *Tourism WA* in meeting the objectives of the Act and the development of tourism in Western Australia; and
- It also considered it to be important recognition of the capacity and prior experience of the applicant should be given due weighting in the application and approval process. Where an applicant has demonstrated experience and a record of successfully operating a licensed premises this should inform the assessment and subsequently reduce timeframes and the level of conditions applied.

*Tourism WA* recommends:-

- government reform of red tape and regulatory burden is needed to address the current requirement to obtain multiple approvals and associated timeframes;
- a pre-application process should be introduced by the licensing authority to enable applicants to discuss their proposal with the licensing authority and other key approval bodies; and
- recognition of the capacity and prior experience of an applicant should be given due weighting in the application and approval process.

The *City of Rockingham* submits sections 13, 16, 18 and 33 of the Act should be curtailed so the licensing authority is compelled to be accountable, provide a proper structured system in its administration of the Act and be compelled to permit parties the right to present their applications. A structured system of administration, with proper rules and regulations should be established through amendments to the Act.

The *Business Improvement Group of Northbridge* submits the Act does not promote public transparency in the decision making process. Since the abolition of the Liquor Licensing Court there is a lack of guidance in the decision making process. In the interests of transparency there should be some legislation encapsulating the requirement to publish decisions in sufficient details to enable informed decisions to be made as to the likely outcome of future applications, facilitate the development of policy and foster consistency. As a result of limited transparency there is a lack of public understanding and trust in the process. With transparency comes further public accountability as well as the improved perception of public accountability.

It recommends decisions should be published on the day they are finalised and should be required to be prepared to a standard that enable informed decisions to be made as to the likely outcome of future applications, facilitate the development of policy and foster consistency.

The *WA Sports Federation* submits in order to attract overseas and interstate events and spectators to sporting events, the host body needs to ensure the experiences involved in attending the events reflect spectator expectations, including the responsible use of alcohol. In this regard, the sporting event landscape has changed and sporting events are now competing in an entertainment context yet licence restrictions can seriously impact how sporting organisations can develop their product around the game. It considers:-

- The development of a new major sports stadium includes activating the whole area around the stadium for a considerable period prior to and after the event however, it would appear current licensing practices that stipulate numerous restrictive conditions for venues would stop this occurring;

- These concerns are of critical importance for the effective operation of the new major sports stadium in Perth and consideration should be given to having a licensing system with a focus on the venue operator developing the management practices to ensure compliance, rather than defining management practice in the conditions. This is the case at the new Perth Arena which is a positive step for all;
- Many of the major sports venues are now managed by large management groups with international and national experience, highly skilled staff and the capacity to manage responsibly without the need for stringent controls through licence conditions. In recognition of the professional approach of these venues, the management of major sports venues should be on the basis of performance of their management plan rather than the imposition of major restrictions on the licence;
- There are restrictions put on venues that hold sports events, however for these events private commercial venues such as hotels around the sporting venues are given expanded scope to operate. For example venues around Patersons Stadium are given extended licences, which sometimes includes the use of car parks, to increase their capacity to sell all types of alcohol while there are increased restrictions on the venue itself. It would appear that restrictions at major venues may in fact perpetuate a culture of binge drinking where patrons preload at nearby licensed premises; and
- The timeframes associated with the application process also need to be streamlined and the Act and or Regulations should provide some basic timeframes. It appears the uncertainty around the public interest test and application of licensing conditions has created a very long drawn out process.

*Liquorland (Australia) Pty Ltd* submits under the current licensing regime in Western Australia significant time and cost is invested by applicants in making applications yet this is often without any certainty as to the prospects of the application. There is an opportunity to improve processes including application of the Director's policies in a consistent manner and with reference to the Act. Examples include the requirement to lodge a certificate evidencing local planning authority when the Director has the discretion to accept an application without this being provided and the failure of objectors to serve the objection on the applicant which causes significant delays.

The application process in Western Australia is extremely uncertain, difficult, costly and time consuming and there is an opportunity to improve the operation and effectiveness of the Act to improve the application process to provide greater certainty for applicants as to the prospects of obtaining a licence.

*Liquorland (Australia) Pty Ltd* recommends:-

- improved consultation with licensees and other key stakeholders in respect of any proposed changes to the Director's policies or procedures;
- refining the application process so that a public interest assessment is not warranted or necessary for either a redefinition or relocation within a short distance;
- development of guidelines regarding the criteria for an application being referred to the Commission for determination;
- applicants being provided with clear timeframes for the determination of their application; and
- the introduction of an online tracking system to enable an applicant to monitor the progress of their application.

The *McCusker Centre for Action on Alcohol and Youth* submits while there may be calls to reduce the red tape associated with liquor licensing, some processes should not be dismissed as mere red tape as they have been put in place to ensure good process and to protect the community.

## **Conclusion**

The Committee acknowledges the concern of industry participants in relation to the length of time taken to process applications and the associated policies and procedures. However the regulation of the sale and supply of liquor has a significant impact on the community and public health outcomes. It is therefore important that each application is carefully and thoroughly assessed. It is also relevant to note that a system which embraces flexibility will, as a result, also inevitably create a level of uncertainty as to outcomes. That is a tension which must continue to be actively managed by the licensing authority.

Notwithstanding this, the Committee considers there is an evident need for improvement in process, certainty and transparency. There are several ways this can be achieved.

It is imperative clear guidance is provided to all stakeholders and in this regard, the Committee recommends the Directors policies and other guidance material be comprehensively reviewed and revised to ensure they are accurate and provide practical, clear and concise information for stakeholders.

In regard to changes to the Director's policies, the Committee understands in circumstances where a significant change is proposed, the relevant stakeholders and industry representatives are consulted and asked for feedback. The Committee recommends this process be continued, formalised and expanded, to facilitate further engagement between the licensing authority, stakeholders and industry representatives and to ensure greater transparency and certainty.

In relation to certainty, the Committee considers, because the regulation of the sale and supply of liquor is a public health matter, it would be inappropriate to recommend deemed approval provisions. The Committee considers a more appropriate approach would be a review of the licensing authority's application processes and procedures and the development and introduction of Key Performance Indicators (KPI's). In developing the KPI's the licensing authority should formally consult with relevant stakeholders and industry participants to ensure the processes and procedures are realistic and reasonable.

The Committee also considers the licensing authority should publish statistics regarding applications on a more regular basis. In this regard, the licensing authority should be required to publish statistics on a quarterly basis which include target timelines; pending applications carried over from previous quarter; number of applications received, granted and refused; number finalised within timeline target; average time taken to process applications; and the number of interventions and by whom. This should apply to all licence classes, extending trading permits and occasional licence.

All of the responses to the recommendations described above should be developed in consultation with the Liquor Industry Advisory Committee recommended to be established under Recommendation 141.

The Committee considers the ability for applicants to track the progress of their application should be introduced and recommends an online tracking system should be a mandatory feature of the new IT program currently being developed by the licensing authority. The Committee considers the IT program should have the functionality of being able to identify work flows, delegation of authority, responsible personnel and target timeframes. When these timeframes are not being met, escalation protocols should be established. Additionally, applicants should be able to log onto the system online and be able to track the progress of their applications.

While the Terms of Reference of this review are limited to the *Liquor Control Act 1988*, the Committee considers work needs to be undertaken with the Western Australian Local Government Association to ascertain mechanisms to be able improve the processing of applications through both jurisdictions. The Committee considers it should be possible for the parallel processing of applications to occur between the relevant local government and the licensing authority.

To enable this to occur, both jurisdictions could implement their various process in parallel, while still ensuring the final approval for a licensed premise is conditional on both parties providing the necessary authorisation.

All liquor applications require approval under both local government planning laws and the Act, with different regulatory agencies involved in these processes.

Parallel processing has the advantage of compressing the approval timeframe for applicants and is relevant where:-

- separate approvals can be assessed concurrently; and/or
- different agencies can undertake assessment on the same proposal concurrently.

Parallel processing should be adopted where:-

- there is no disadvantage to third parties;
- it does not compromise health outcomes;
- there is no statutory constraints;
- it does not significantly increase workload for the agencies; and
- applicants can provide the required information.

Where there are multiple authorisations required for licensed premises regulatory agencies are able to undertake parallel assessment of applications and withhold final decision conditional on all other necessary approvals are obtained.

The proposed online tracking system should be established to enable monitoring of applications across both jurisdictions. In establishing this system, extensive process mapping should occur across the entire life cycle of the application of the process. This will enable inefficiencies and duplication to be identified and proactively addressed on an ongoing basis.

The Committee considers the Liquor Industry Advisory Committee, Western Australian Local Government Association and the licensing authority should progress this as a matter of priority.

*Recommendation 112*

*The Directors policies and other guidance material be comprehensively reviewed and revised to ensure they are accurate and provide practical, clear and concise information for stakeholders.*

*Recommendation 113*

*The licensing authority continue with and expand the process of consulting stakeholders and industry representatives in relation to proposed changes to the Director's policies.*

*Recommendation 114*

*The licensing authority review and revise the current application processes and procedures in collaboration with all stakeholders*

*Recommendation 115*

*The licensing authority work in consultation with stakeholders and industry participants to establish agreeable Key Performance Indicators for the licensing authority.*

*Recommendation 116*

*The licensing authority should publish a quarterly report of application statistics including but not limited to pending applications, applications granted and refused, time taken to process applications and whether these are within agreed timeframes (KPI's) and the number of interventions and by whom.*

*Recommendation 117*

*An online tracking system should be a mandatory feature of the information technology program being developed by the licensing authority.*

*Recommendation 118*

*The Liquor Industry Advisory Committee, WALGA and the licensing authority progress the implementation of parallel processing of applications as a matter of priority.*

## Occasional licences and Extended Trading Permits

Section 59 of the Act provides that an occasional liquor licence authorises the licensee to sell or supply, or allow the consumption of, liquor at an occasion or event for a period of up to 3 weeks. Occasional licences are most commonly used for one-off functions such as fundraising events and school events such as fetes. They are also used by unlicensed clubs who may only conduct ten to twelve functions per year, and do not wish to apply for a permanent licence. In some situations, they are used by organisations which do hold a permanent licence, but the conditions of their licence do not allow them to conduct the function as required such as music festivals.

As a general rule the Director will approve up to twelve occasional liquor licences to an individual or an organisation within a twelve month period.

While sections 98 to 98H of the Act set out the permitted trading conditions for each class of licence, section 60 then provides the licensing authority with the power to grant extended trading permits to sell and supply liquor at times or in a place or circumstance that would not otherwise be authorised.

One-off extended trading permits are generally used by licensees to extend trading hours for a special occasion or function such as a wedding or party, or to extend the licensed area to allow them to trade in an area adjacent to the licensed premises such as a car park or footpath or a venue away from the licensed premises.

### Submissions

The *Country Racing Association of WA* proposes the establishment of a consultative process including the licensing authority, WA Police and the association to develop a more flexible policy for the setting of security arrangements for licensing race clubs. It advises:-

- In October 2010 the *Joint Standing Committee on the Review of the Racing and Wagering Western Australia Acts* tabled its report<sup>164</sup> in the Legislative Assembly. The Committee addressed the issue of crowd controllers in Chapter 3.3 (pages 64-67) with Recommendation 36 recommending the Minister for Racing and Gaming urgently review liquor licensing and enforcement requirements for major race meetings;
- Despite some reassuring comments from the Director and the Commissioner of Police to the Parliamentary Standing Committee, race clubs continue to receive licences which require security arrangements which reflect the one crowd controller for each 100 patrons policy. This level of security personnel is an over-kill for the type of event race clubs operate as the patronage consists largely of mature local citizens and responsible tourists who come to enjoy the special atmosphere of our community social events. Race clubs are also concerned that the younger generation will be deterred from participating in events where they may be subject to overzealous law enforcement;
- The objective of not for profit race clubs is to generate funds to maintain their race courses and provide stake money sufficient to attract nomination of horses to their meetings. There seems to be ever increasing costs imposed on clubs, for example, to comply with health and safety laws including the presence of a doctor on course during race meetings; and

<sup>164</sup> Joint Standing Committee on the Review of the Racing and Wagering Western Australia Acts, Inquiry Into the Racing and Wagering Western Australia Acts, Report No. 2 in the 38th Parliament, 2010  
[http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3812766aa2e4cb000599f26f482577bd0006b3ef/\\$file/2766+-+jscrwwa+rpt+2.pdf](http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3812766aa2e4cb000599f26f482577bd0006b3ef/$file/2766+-+jscrwwa+rpt+2.pdf)



- In this regard, to bring licensed crowd controllers to town incurs significant costs through high hourly rates which include travelling time and often, also accommodation. The expenditure of large amounts on excessive security requirements being imposed on low risk community events can only jeopardise the financial capacity of our member clubs to support many local community and service organisations and there is a real danger clubs will become unviable and be forced to close resulting in local communities being denied access to their long established social, entertainment and recreational events.

In summary, while the Association accepts race clubs must obtain a liquor licence for the race meetings they conduct, the security requirements imposed on occasional licences impose an unacceptable financial burden to the extent their continued operation is being threatened which in turn has serious implications for local communities. It recommends that race meetings up to a certain estimated level of patronage be exempted from any specified number of licensed crowd controllers and security requirements in such cases be left for agreement between the race club and local police.

The *Tourism Council WA* submits the Act should provide greater flexibility for the provision of liquor at events and venues as events are critical drivers of tourism but regulations are geared to ongoing operations and do not provide sufficient flexibility for events. Reform is needed to allow:-

- licence requirements for an event to be no more onerous than an equivalent ongoing operation;
- exhibitors and event managers to serve alcohol, without requiring the venue licensee to undertake this task;
- approve licences for interstate exhibitors at food & wine events held in Western Australia;
- profit sharing to occur between event managers and the venue operator; and
- multiple licences for the venue, event and exhibitor to apply over the one area.

*Perth Social Club Pty Ltd* submits they have concerns regarding the timeframes for processing applications with some applications lodged up to 6 weeks before the event but the approval not being issued until a few days before the event. It has also had difficulty amending conditions on the approval and have experienced a lack of response from local government authorities and WA Police. It recommends the licensing authority should maintain a database or history of events conducted by licensees and refer to them when processing subsequent applications. It would also be useful for the licensing authority and WA Police to attend stakeholder meetings and the events to get a better understanding of the logistics of running such events.

*Perth Racing* submits the application process can be lengthy and needs to be refined to allow event organisers sufficient time to brief staff well before the event commences. It further submits:-

- the past performance or record of the event organiser should be considered when conditions are being imposed;
- a glossary of terms used in the Act would assist licensees and stakeholders to interpret the Act and alleviate the uncertainty that can arise;
- there should be an element of flexibility with the sale, supply and consumption of liquor, without the need to vary approval conditions;
- a public education campaign needs to be launched to educate the public of their responsibilities and that of licensees;
- while heavy restrictions are placed on most events and these are controlled environments, alcohol is readily available at retail packaged liquor outlets and this encourages people to pre-load before attending events;
- all valid Responsible Service of Alcohol training providers should be clearly listed on the licensing authority's website;

- the ratio of required licensed crowd controllers should be reviewed to enable licensees to redirect this expense to other areas to help manager crowds;
- electronic training and incident registers make it easier to store and maintain the required information; and
- onerous restrictions on the alcohol that can be sold at events can cause angst with patrons due to longer queues and poor service levels and these restrictions should be reviewed for recurring events.

The *Honourable Wendy Duncan MLC* submits the security requirements in relation to the sale of alcohol are onerous to the point of causing the failure of some long-standing community events. There needs to be more flexibility in judging the risk of an event and its requirement for security. Due to the lack of trained staff in some country areas, security staff have to be flown in at great expense to oversee an event which, due to predicted numbers, requires a certain number of staff even though the type of event may be one of very low risk.

### **Conclusion**

The Committee considers while there is no apparent need to recommend any legislative amendments in relation to occasional licences and extended trading permits it is clear from the submissions there are a number of issues regarding the processing of applications for major events and the requirements in relation to the number of licensed crowd controllers required to be employed for the events.

In this regard, as mentioned previously, while the Committee acknowledges there is concern from industry participants in relation to the length of time taken to process some applications it is vital that each application is assessed thoroughly to ensure the objects of the Act are taken into consideration and there will be no negative impact on patrons attending the event or the community in general.

Notwithstanding this, the Committee recommends the process and procedures for processing applications for large events should be reviewed and assessed to identify possible savings in time. This review should also include a reassessment of some of the restrictions imposed, particularly if a licensee has a sound compliance history and there have been no major issues with previous events. The Committee also considers, particularly with experienced industry participants, the lodgement of a Management Plan by an applicant could reduce some of the current processing requirements and the licence could simply be conditioned to require compliance with the approved Management Plan.

In addition, the Committee recommends the implementation of a system which allows the outcomes of previous events to be taken into account when subsequent applications are lodged. This may require a system to be implemented where an event de-brief is conducted, with all relevant stakeholders providing a report or some other form of feedback which would then be maintained by the licensing authority so that it can be referred to for subsequent events. In short a system should be established whereby an organisation, with a proven track record of successfully running events in accordance with an agreed management plan, can expect to have its application for a subsequent event, which they undertake to conduct in a similar manner, approved.

Finally, in relation to the requirement for licensed crowd controllers at race clubs the Committee recommends the licensing authority review the current requirements in consultation with the *Country Racing Association of WA* and WA Police and develop a specific policy for this purpose. It is also essential that WA Police communicate the contents of the policy to all regional districts and Police stations to ensure all relevant industry participants are aware of the policy and its application is consistent across Western Australia.

*Recommendation 119*

*The licensing authority review and revise the current application processes and procedures for applications relating to large events.*

*Recommendation 120*

*The licensing authority introduce a system which allows the outcomes of previous events to be taken into account when subsequent applications are lodged.*

*Recommendation 121*

*The licensing authority, in consultation with the Country Racing Association of WA and WA Police, develop a policy in relation to the requirement for licensed crowd controllers at major race club events.*

---

## Removal of licence

When a licence is granted, it is granted to a licensee in relation to a specified licensed premises, however approval may be given by the licensing authority for the licensee to operate the licence at a place different from that originally approved.

In this regard, section 81 of the Act states the licensing authority has the same jurisdiction in relation to an application for the removal of a licence as it has in relation to an application for the grant of a new licence which in effect, requires the applicant to comply with all relevant statutory requirements.

### **Submissions**

*Mr Gavin D Crocket* submits the same test for a new licence and a removal of licence should not apply, particularly where the licence is to be moved within 500 metres to one kilometre of the existing premises. He recommends all licences be permitted to be removed administratively unless the Director determines the removal is tantamount to the grant of a new licence, in which case, he prescribes how the application will be dealt with.

*International Beer Shop Pty Ltd* submits if a licensed premises is already in an area it should be allowed to move to an alternative premises and not be forced to remain in unsuitable or overpriced premises. It recommends a process be put in place to make it easier to relocate a licence a short distance.

### **Conclusion**

The Committee considers this to be a further opportunity to reduce unnecessary regulatory burden and recommends the Act be amended to enable the removal of a licence within 500 meters of the existing premises to be dealt with administratively, unless the Director otherwise determines. It is recommended provisions similar to those contained in the Act prior to it being amended in 2007 are reintroduced.

In addition, Recommendation 38 recommends the Director have the discretion to waive the requirement for a public interest assessment to be conducted for a removal of a licence.

### **Recommendation 122**

*Amend section 81 of the Act to enable, unless the Director otherwise determines, the removal of a licence within 500 metres of the existing premises to be dealt with administratively.*

---

## Interventions

Section 69(6) of the Act enables the Commissioner of Police to intervene in proceedings before the licensing authority for the purpose of introducing evidence or making representations as to whether or not any person is a fit and proper person, as to whether public disorder or disturbance would be likely to result if a particular application were granted, as to the interest that any person may have in a licence or any other matter relevant to the public interest.

If an application is lodged for the grant or removal of a hotel, nightclub, casino, special facility or liquor store licence section 69(7) of the Act enables a local government to intervene in proceedings before the licensing authority for the purpose of introducing evidence or making representations as to whether premises are suitable to be, or to continue to be, licensed or the subject of a permit, as to whether a proposed alteration or redefinition of a licensed premises should be approved or on the question of whether persons who reside, work or worship in the vicinity would be likely to suffer undue offence, annoyance, disturbance or inconvenience if a particular application were granted.

Section 69(8a) of the Act enables the Executive Director Public Health to intervene in proceedings before the licensing authority for the purpose of introducing evidence or making representations in relation to harm or ill-health caused to people, or any group of people, due to the use of liquor, and the minimisation of that harm or ill-health.

Section 69(11) of the Act states the Director may intervene in any proceedings before the Commission, including proceedings relating to a decision or determination made by the Director, and may introduce evidence, make representations and examine or cross-examine any witness, on any question or matter.

Section 69(12) of the Act states a person, other than the Commissioner of Police or the Director, who proposes to intervene in proceedings under this section shall lodge a notice giving particulars of the nature of and reasons for the proposed intervention, not later than the last day on which objections should be lodged or, with leave of the licensing authority, before the day appointed for the hearing of the application.

## Submissions

A number of submissions suggest interveners under section 69 of the Act should be required to only submit direct evidence, statistics or arguments that are specific to the application that is before the licensing authority and should also be required to make available to all parties, all raw data that was produced.

The *WA Sports Federation* submits the objects of the Act are appropriate, however in the assessment of any licence application there is disproportionate input from a health perspective. There is no formal mechanism for industry input and it is prohibitive for small clubs and expensive for large venues to provide the evidence required under the current protocols in comparison to the intervention capacity of the Executive Director Public Health. There is concern about the approach of some sectors of the health lobby who advocate restrictions to enforce compliance and barriers to access rather than a balanced approach to the development of appropriate culture and management of alcohol.

The *City of Rockingham* submits the local authority's powers should be expanded so as to embrace all the powers the Commissioner of Police and the Executive Director Public Health have. It is the local authority who is the gatekeeper and needs these broader powers to properly perform its duties in providing for the safety, welfare and health of a community. It also needs to police the city as there aren't sufficient Police officers to carry out Police duties at peak times such as Friday and Saturday nights.

The *Tourism Council WA* submits to give effect to the objectives of the Act, the legislation should specifically recognise tourism bodies (such as Tourism WA and the Tourism Council WA) as representatives of the tourism industry and its customers and the representations of those tourism bodies should be given the same legal weight as the representations of police and health bodies. In this regard, section 69 of the Act should be amended to enable tourism bodies to support or object to a licence application with equivalent status as WA Police or Local Government.

The *Business Improvement Group of Northbridge (Inc)* submits the Act provides the Director with the power to cause an application to be advertised and the Director generally requires applications to be advertised for a period between 21 and 28 days during which time interventions and objections are invited to be submitted to the licensing authority and served on the applicant. The Act does not however, impose a time limit on the Commissioner of Police or the Director to submit an intervention. It advises:-

- It is not uncommon for the Executive Director Public Health or the Commissioner of Police to notify the Director of their intention to intervene, but not actually make a submission by the deadline which results in the process stalling while awaiting these documents;
- The application process is time consuming and expensive, which is an impediment to the development of the industry in Western Australia and is also a barrier to entry for new market participants including interstate and international organisations that are not experienced in operating under Western Australia's liquor laws; and
- The current legislation permits the Commissioner of Police and the Executive Director Public Health to drive the timetable of licensing applications, as the licensing authority will generally wait for interventions to be received. From a practical perspective, these interventions are generally repetitive 'boiler plate' style documents that are of limited value in the decision making process. By imposing a strict deadline:-
  - interveners will be required to triage those applications that are higher risk, or worthy of intervention, instead of a 'scattergun' approach to intervening to all applications;
  - the time to make a decision would be reduced as there would not need to be any accommodation of late submissions;
  - applicants, the licensing authority and interveners could better allocate internal time and resources knowing that they would not need to accommodate a third party at an unknown time.

It recommends section 69 of the Act should be amended with the insertion of new subsection (14) to read 'Any intervention made in accordance with subsection (6)(c), (7), (8) or (8a) must be disregarded by the licensing authority if it is not served on the applicant on or before the final day specified in the advertisements or notices relating to the application as the last day on which objections should be lodged'.

The *Australian Hotels Association (WA)* submits the Commissioner of Police and the Executive Director Public Health often use generic statistics in order to intervene in liquor licence applications. Given that interveners are not required to submit or produce objective, quantifiable evidence, they are in a position that enables them to make sweeping statements that they are not required to prove.

It further submits:-

- The action of intervening in a majority of applications also slows down the application process and ‘bogs-down’ applications with unnecessary red tape. Small business operators are left in the unreasonable position of having to continue to pay rent for their premise and remain unsure of their position when it comes to progressing other procedures such as hiring staff and purchasing supplies;
- Interveners to a legitimate liquor licence application should be required to meet a reasonable onus of proof; and
- Interveners should be required to only submit direct evidence, statistics or arguments that are specific to the application that is before the intervention. A reasonable minimum onus of proof within sections 64, 69 and 95 of the Act should be established for government agencies to meet when intervening in liquor licence applications and agencies should be required to make available to all parties, all raw data produced.

WA Police submit section 69(6) and (8a) of the Act provide the authority for the Commissioner of Police and the Executive Director Public Health to intervene on liquor licence applications. The Commissioner of Police is very active in interventions and used his authority to intervene on 136 occasions in 2011 and 399 occasions in 2012. It should be noted that interventions were lodged in relation to not only new licence applications, but also applications for ongoing hours extended trading permits, one-off extended trading permits and one-off variations for major events such as music festivals. It further advises:-

- The Commissioner provides data in relation to alcohol-related crime, violence and the impact that alcohol has on policing resources and the community while the Executive Director Public Health provides an insight into the health related impacts caused by alcohol;
- The harms caused by alcohol impact across a number of government agencies and a greater opportunity for government, not for profit groups and the community to intervene in applications would provide an improved, more holistic intervention process. In this regard, community groups and individuals have consistently expressed concerns that the licensing process favours the applicant and does not provide them the opportunity to raise concerns and be heard on licensing matters; and
- Section 69 of the Act be amended to give other government agencies and the community in general the authority to intervene in liquor licensing matters.

The *McCusker Centre for Action on Alcohol and Youth* submits the role of the Executive Director Public Health in intervening where liquor licence applications may impact on the community’s health is important and should continue. Given the burden of alcohol-related harms on health and law enforcement resources, it is essential and appropriate that the role of the Executive Director Public Health and the Commissioner of Police to intervene in proceedings before the licensing authority continues to be supported within the Act.

The *Executive Director Public Health* provided the following statistics in his submission which shows on average, an intervention was lodged in 16.8% of applications. This includes new licence applications, ongoing hours extended trading permits applications and variations for major changes to licence conditions.

	2008	2009	2010	2011	2012	Total
Applications lodged	308	299	274	235	269	1,385
Interventions	41	52	70	35	35	233
% Interventions	13.3%	17.3%	25.5%	14.9%	13.0%	16.8%

## **Conclusion**

The Committee considers the ability for the Executive Director Public Health and the Commissioner of Police to intervene in applications is a fundamental aspect to addressing the harm minimisation objects of the Act. The Executive Director and Commissioner have roles in the process which are unique and do not require replication with respect to any other body or office. The Committee does not recommend any amendments to these provisions of the Act, other than recommending the Commissioner of Police should be bound by the same period as other interveners to lodge his intervention.

In this regard, while in the interests of timeliness the Committee considers it is important the Commissioner of Police's intervention is lodged by the last date for objections, it is also important the Director has the discretion to accept new information that may come to hand during the application process. The Committee also understands the provisions of section 69 of the Act enable the licensing authority to request a report from the Commissioner of Police at any stage of the application, so there is no guarantee of certainty in any case.

Acknowledging that there is a degree of repetition in the health statistics and information that is provided to the licensing authority, the Committee recommends the Executive Director Public Health and the Commissioner of Police should each publish either annually or biannually a standalone report outlining the body of knowledge on the impact of alcohol on public health and the agreed commonly accepted level of harm in the community.

This report should be taken into account for all applications where an intervention is lodged. Any submissions lodged in support of interventions by the Commissioner of Police and the Executive Director Public Health should therefore be specific to the application demonstrating the impact only on the local community affected by the application.

It is therefore considered appropriate that the further data gathered by WA Police as evidence to demonstrate a history of incidents in and around a licensed premises should be specific and relevant to the premises subject to the particular application.

Similarly, the Committee considers the further data provided by the Executive Director Public Health should be limited to demonstrating that a local community is experiencing a greater level of alcohol-related harm than that which appears to be commonly accepted in the community.

There has also been some discussion regarding the frequency in which the Commissioner of Police and the Executive Director Public Health intervene in applications and the impact an intervention has on the timeliness of the application process.

In an effort to monitor the frequency of intervention by the Commissioner of Police and the Executive Director Public, the licensing authority should report on the number of interventions lodged in the annual report.

### **Recommendation 123**

*Amend section 69(12) of the Act so the Commissioner of Police is required to lodge a notice of intervention not later than the last day on which objections should be lodged, or with leave of the Director, before the day appointed for the hearing of the application.*



*Recommendation 124*

*The Commissioner of Police and the Executive Director Public should publish a report outlining the body of knowledge on the impact of alcohol on public health and the agreed commonly accepted level of harm in the community. This report should then be considered as part of each application where an intervention is lodged, together with specific submissions demonstrating the impact to the local community in which the premises is located.*

*Recommendation 125*

*The licensing authority publish details of the interventions lodged in each financial year in the Department of Racing, Gaming and Liquor Annual Report.*

---

## 12. Technical Amendments

### Definitions - Section 3

Section 3 of the Act contains definitions of particular terms used throughout the Act. Those terms not defined in section 3 are assumed to have their ordinary and natural meaning, however the ordinary and natural meaning of a word must be read in light of the aim and objective of the legislation.

#### **Submissions**

*Leedal Pty Ltd*, licensee of the Fitzroy River Lodge and the Crossing Inn, submits the current definition of lodger does not apply to visitors staying at the Caravan Park which is co-located with the motel rooms in the Fitzroy River Lodge accommodation precinct and requests the definition of lodger be amended to include visitors staying at the adjacent caravan park and allow lodgers to take an opened bottle of wine back to their motel room.

*Mr Gavin D Crocket* submits a number of additional definitions should be included such as application, order, contiguous, locality, vicinity, plans, redefinition.

*Herbert Smith Freehills* submits the definition of metropolitan area in the Act is based on the *Metropolitan Region Town Planning Scheme* definition as at 1 June 1988 and does not reflect the significant level of growth in the metropolitan area since that time. It has been accepted by the Liquor Commission that Mandurah should be considered part of the metropolitan region, given the development between and its links with the Perth CBD via the Perth to Mandurah train line. As such, the definition of the metropolitan area should be updated.

#### **Conclusion**

The suggestion to amend the definition of lodger was considered by the Committee but it resolved to retain the current definition as any change could lead to unintended consequences, particularly in areas such as Fitzroy Crossing where packaged liquor restrictions have been imposed as part of a government strategy to reduce harm in that region.

The suggestion to include definitions for terms such as application, order, contiguous was referred to the State Solicitor's Office who advised that unless there is a need to deviate from the ordinary meaning of a term it is not necessary to insert a definition for the term. The Committee accepts this advice and considers the words which have been suggested as meriting definition are all ordinary words in common usage and therefore, do not require a specific definition. The one exception to this is the term vicinity which is used in different contexts throughout the Act. In this regard, a recommendation has been made to provide a definition of 'vicinity of licensed premises' for the purposes of section 115AA of the Act in relation to barring notices.

In addition to the submissions received on this subject, Recommendation 56 of the Fremantle Report recommended the definition of 'licensed premises' be amended so that a licence can only be issued in respect of a single premises. Recommendation 59 of that report recommended 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. Neither of these recommendations was adopted by the government. The Committee does not consider it is necessary to amend these definitions.

In relation to the definition of metropolitan area, the Committee considers it is still appropriate for the Act to rely on the definition contained in *Metropolitan Region Town Planning Scheme* as it would be inappropriate to have an inconsistent definition.

---

## Section 39 and 40 – Local Health and Local Planning Authority

Section 39 of the Act states an application for the grant or removal of a licence shall, unless the licensing authority otherwise determines, be accompanied by a certificate from the local government for the district in which the premises are situated. A section 39 certificate is required to state whether or not the premises complies with all relevant requirements of the *Health Act 1911*, the *Food Act 2008*, the *Local Government Act 1995*, the *Building Act 2011* and any written law applying to the sewerage or drainage of those premises.

Section 40 of the Act states an application for the grant or removal of a licence, shall unless the licensing authority otherwise determines, be accompanied by a certificate from the local government for the district in which the premises are situated. A section 40 certificate is required to state that the proposed use of the premises will comply with the requirements of the written laws relating to planning, would comply with the requirements specified if consent were to be given by a specified authority or will not comply with the requirements.

### **Submissions**

*Environmental Health Australia (WA) Incorporated* submits the section 39 process is a useful confirmation that the proposed liquor venue is meeting the requirements of core legislation however, is of the view that the current process of issuance of a section 39 certificate by local government provides a too short a snap shot in time to assess a wide range of legislation which cover both structural and operational requirements. It further advises:-

- Some of the legislation specified in the section 39 certificate may not be the direct responsibility of local government to administer. For example, third party building compliance certification under the National Construction Code or where the local government does not have an appropriate officer on staff; and
- It may be more appropriate to have the agencies such as local government confirm the nature of any written notifications of non-compliance improvement notices, directions, infringement notices and provide a letter of structural compliance that may be provided by the local government on their own behalf or by a certifier. This process would allow an improved understanding of the operation of existing venues seeking extension or alteration of liquor licences.

The *Metropolitan Redevelopment Authority* submits the expertise and opinion of planning authorities should be given greater consideration in the determination of liquor licence applications. The *Metropolitan Redevelopment Authority* already considers an applicant's development application for a licensed venue when issuing a section 40 certificate and considers matters such as land use, licensed area, operating hours, patron number, outstanding conditions, conflict with planning framework and application of appropriate conditions. The *Metropolitan Redevelopment Authority* suggests the Act be amended to allow redevelopment authorities to intervene in the liquor licence process.

The *City of Rockingham* submits sections 39 and 40 of the Act should be amended to allow the local authority greater input into the decision making process as this would result in many liquor licensing problems being elevated well before they occur. Further, the section 40 certificate needs improvement because it is not lawful to give planning approval to a business name which is not a legal entity. Finally, section 40(1) of the Act should be amended to require the lodgement of a new section 40 certificate and a new public interest assessment as part of a transfer of licence application.

---

The *City of Cockburn* submits many of the issues addressed in the Act such as impacts on amenity and public interest are largely mirrored in the *Planning and Development Act 2005*. Current community participation in liquor licensing processes is ad hoc and many of the community impacts are not being introduced as part of the application process, which can result in poor health and amenity outcomes.

It further indicates, the extent of local authorities involvement in the application process is extremely varied and very few local authorities appear to recognise or use their role under the Act. Most local authorities appear to limit their role to the town planning stage which is inherently limited and often dependent upon the opinion of the council's senior planning officer.

The *City of Cockburn* recommend the Western Australian Local Government Association and the licensing authority carry out a program of awareness raising to ensure that all local authorities are aware of their role and responsibilities and capacity for participation under the Act.

As mentioned earlier in this report, *Tourism WA* submits the need to obtain separate approvals for planning, liquor licences and building conditions is a significant source of frustration to the tourism industry adding to timeframes and costs of development. Further complications occur in areas such as Hillarys Boat Harbour which are not managed by a local government authority and may require additional and separate approvals.

In its view, consultation should occur between the licensing authority and the Department of Planning to assist local government authorities in determining the definition of small bar within local planning schemes. The outcome of this consultation would ideally have a direct impact in determining the conditions to be met in obtaining section 40 planning approval such as parking.

It recommends government reform of red tape and regulatory burden including liquor licensing is needed to address the current requirement to obtain multiple approvals such as section 40 certificates and associated timeframes to assist in facilitating tourism investment.

*Mr Gavin D Crocket* submits the standard section 39 and 40 forms are confusing because they do not disclose the name of the licensee on the form. The form should be amended to allow the local authority a larger input into the decision making process as it is the local authority which becomes the gatekeeper in ensuring the proper operation of licensed premises with a defined district. In addition, the Director should accept the lodgement of applications without a section 39 and 40 certificate where there is prima facie evidence that the applicant will be able to comply with the planning, building and health issues required under section 39 and 40 of the Act.

The *Swan Valley & Regional Winemakers Association* submits the section 40 requirement that approval meets local planning provisions has created a situation where some local authorities are requiring planning approval prior to signing off on a section 40 certificate, even though the local authority is only being asked if the liquor licence will or would comply with local planning rules. For example a winery is a permitted use in the Swan Valley so therefore the local authority should complete the section 40 immediately without seeking to turn it into a de-facto planning application. This process needs to be improved so that the entire approval process is simpler.

*Liquorland (Australia) Pty Ltd* submits under the current licensing regime significant time and cost is invested by applicants in making applications yet this is often without any certainty as to the prospects of the application. It is suggested the discretion under sections 40(1) and 40(4) of the Act for an application to be accepted without a section 40 certificate being provided should be exercised by the Director. The applicant would be required to provide the section 40 certificate prior the final grant of the licence.

---

*Woolworths Limited* submits the licensing process is made considerably more complicated by local councils acting as an overlapping consent authority and forcing licence applicants to address the same sets of issues involved in the licence application process. The role of local councils requiring the same 'tests' to be passed should also be reviewed and limits placed on their roles and responsibilities to reduce delays, overlap and bureaucratic burden.

There have been two instances recently where local councils have refused development consent for liquor stores in Western Australia, both of which were overturned following an appeal to the State Administrative Tribunal. In both cases these interventions resulted in additional costs amounting to hundreds of thousands of dollars and added many months to the application process.

It recommends the Act be amended to narrow the objective assessment matters upon which local councils can refuse development applications through broader local government reforms.

### **Conclusion**

The Committee considers local authorities, as the representatives of the community most impacted by the grant of a licence have a legitimate role to play in this process.

Further the Committee considers the provisions of section 39 and 40 of the Act are appropriate and there is no need to recommend an amendment. While the discretion to dispense with the requirement to provide a section 40 certificate at the time of lodging an application should be retained, the Committee considers the exercise of this discretion should be actively pursued by the Director. Further to this, the Committee has made a recommendation in relation to parallel processing.<sup>165</sup>

The issue regarding the issue of a section 40 certificate to a business name was referred to the State Solicitor's Office for advice. Their advice indicates it is not unlawful to issue a section 39 or section 40 certificate in the business name as there is no statutory requirement for the certificate to be issued in the name of the applicant or the licensee. Notwithstanding this, the Committee recommends both forms be reviewed by the licensing authority in consultation with industry to identify and implement any improvements which should be made.

The Committee considers the suggestion from the *City of Cockburn* is a sound proposal and recommends the licensing authority and the Western Australian Local Government Association work together to develop and deliver a program to ensure all local authorities are aware of their role, responsibilities and capacity for participation under the Act.

Further, the Committee considers the use of integrated information technology systems would improve the communication and involvement of local authority's in liquor licensing matters and recommends this functionality should be considered for future system upgrades. The Committee also recommends this functionality should also extend to WA Police and the Executive Director Public Health.

Finally, the Committee considered the suggestion from the *Metropolitan Redevelopment Authority* and concluded while there is an opportunity to streamline some of the processes for applications, the involvement of a redevelopment authority in the liquor licensing process would be more appropriately dealt with by amending the *Metropolitan Redevelopment Authority Act 2011*.

---

<sup>165</sup> Refer Recommendation 118

*Recommendation 126*

*The licensing authority review the content and layout of the section 39 and section 40 certificate forms.*

*Recommendation 127*

*The licensing authority and the Western Australian Local Government Association undertake a program to educate local government authorities in their roles, responsibilities and capacity for participation under the Act.*

*Recommendation 128*

*The licensing authority's information technology system should contain the functionality to integrate with local government authorities, WA Police and the Executive Director Public Health.*

## Section 36A and 65A – Petrol stations

Section 36A of the Act states the licensing authority shall not approve the grant or removal of a licence that would authorise the sale of packaged liquor from any premises if there is a petrol station on the premises and the premises are in the metropolitan area or a country town site where there is a packaged liquor outlet.

This does not apply in the case of an application for the removal of a licence that is in respect of a premises on which there is a petrol station to other premises situated not more than 500 m from the premises from which the licence is sought to be removed.

Section 65A of the Act also states a licence that authorises the sale of packaged liquor and that is in respect of premises in the metropolitan area or in a country town site is subject to the condition that after the applicable day a petrol station must not be established on the premises. The applicable day is 1 July 2000.

In this regard, the Director, on application by the licensee, can waive the application of this provision if the premises are in a country town site.

### **Submissions**

The *Australian Hotels Association (WA)* submits there is strong community concern regarding drink driving and availability of alcohol to motorists and section 36A of the Act reflects public attitudes regarding this important issue. Retaining section 36A will protect the investment by hotel, tavern and other licensees in their venues and the prohibition of the sale of alcohol through petrol stations, as prescribed in section 36A(2) should be maintained.

*Mr Gavin D Crocket* submits section 36A of the Act needs to be amended to reflect the intent of the Parliament. The intent of the Parliament was to suggest that the point of sale of liquor in relation to a petrol station should be prohibited and the loose wording of this section has led to confusion.

Further, the intent of section 65A was to prohibit petrol stations selling packaged liquor. The wording of section 65A(2) has become a controversial issue in the liquor licensing regime. He recommends section 65A(2) be amended to reflect that a licensee, within close proximity, is permitted to sell packaged liquor, whereas liquor may not be sold directly from a petrol station.

### **Conclusion**

The Committee has considered the above submissions and has reviewed the Hansard from when the *Liquor Licensing Amendment (Petrol Stations and Lodgers' Registers) Act 2000* was before the Legislative Assembly and concluded the intent of the Parliament was to prevent the purchase of liquor from petrol stations. In this regard, the Committee considers the provisions of section 36A and 65A of the Act reflect this intention and do not recommend any amendments. Notwithstanding this, the Committee recommends, in the interests of clarity and ease of reading, the two sections could be combined into one in the Act.

### **Recommendation 129**

*Combine the provisions of section 36A and 65A into one section of the Act.*

## Section 37A - Convictions

Section 37A of the Act states a licensee, a person who occupies a position of authority in a body corporate which is a licensee or an approved manager who is convicted of an offence in any jurisdiction is required to inform the Director of the conviction within 14 days of being convicted.

### **Submissions**

*WA Police* submit this is considered a necessary provision but it is difficult to enforce. The method of notification must be able to be verified otherwise it is difficult to prove the person required to inform the Director failed to do so. Conversely, an actual notification in the prescribed circumstances may not be received by the Licensing Authority, placing an accused in a position of jeopardy. It recommends the onus of proof of notification be shifted upon the person who is convicted with the person being required to obtain a receipt of notification.

### **Conclusion**

The Committee considers the onus should be on the individual to notify the Director of any convictions and should be required to be able to prove they have done so.

In this regard, the Committee recommends the licensing authority's new information technology system should include the capability for an individual to notify the Director of a conviction by updating their details in the system.

In addition, given it may be some time before the licensing authority's new information technology system is deployed, the Committee recommends section 37A of the Act be amended to require an individual to notify the Director of a conviction in writing.

#### **Recommendation 130**

*The licensing authority's new information technology should contain the functionality to enable individuals to update their details in the system with the additional functionality for the system to notify the relevant officer in the licensing authority for appropriate action.*

#### **Recommendation 131**

*Amend section 37A of the Act to require an individual to notify the Director of a conviction in writing.*



## Section 103A – Training Register

Section 103A of the Act require persons who are employed or engaged in the sale, supply or service of liquor on or from licensed premises or are employed or engaged in the performance of other prescribed functions at licensed premises, to successfully complete a course of training or an assessment, approved by the Director, in responsible practices in the sale, supply and service of liquor.

Licensees are required to maintain a register on the licensed premises that records the prescribed details in respect of that course of training or assessment and the persons employed or engaged who have successfully completed it.

### **Submissions**

The *Australian Hotels Association (WA)* submits section 103A of the Act should be amended to specify that a training register required under section 103A must be maintained for three years.

*Perth Racing* submits to make it easier to store and maintain the required information, electronic paperwork for Responsible Service of Alcohol training and incident reports should be permitted instead of hard copies.

### **Conclusion**

At present, the Act is silent on the period that a register required under section 103A of the Act is required to be retained. In this regard, the Committee recommends section 103A(1)(b) be amended to specify the period the register should be retained and to reflect the timeframe during which the licensing authority or WA Police can commence a prosecution for a breach of the Act. The period recommended is four years.

It also recommended the Act be amended to allow the register required under section 103A of the Act to be maintained in an electronic format.

### **Recommendation 132**

*Amend section 103A of the Act to specify the register:-*

- a) must be retained for a period of four years; and*
- b) may be maintained in an electronic format.*

## Section 116A – Incident Register

Section 116A of the Act states a licensee must maintain a register of the incidents that take place at the licensed premises and the register is to be maintained in a form acceptable to the Director and is to contain the prescribed information.

A licensee must maintain the register on the licensed premises which must be made available for inspection at the request of an authorised officer.

### Submissions

*Perth Racing* submits to make it easier to store and maintain the required information, electronic paperwork for Responsible Service of Alcohol training and incident reports should be permitted instead of hard copies.

The *Business Improvement Group of Northbridge (Inc)* submits section 116A of the Act requires licensees to maintain a register of incidents occurring on or in the vicinity of the licensed premises and the *Security and Related Activities (Control) Act 1996* and regulations imposes a similar requirement on crowd controllers. It is suggested there should be provision in the Act for these registers to be kept electronically in a form that is readily accessible at the licensed venue in the same manner as the printed copies. By permitting these registers to be kept electronically it would encourage the electronic input by staff and crowd controllers, which may assist in making the information easily retrievable at a later date. It would also reduce the amount of physical paperwork to be kept at the licensed premises.

The *Australian Hotels Association (WA)* submits for busy venues that have no capacity to obtain an individual's name and details when they have been refused entry to a licensed premise, this requirement is unreasonable, onerous and impractical. It recommends the requirement to record a refusal of entry to licensed premises be removed from the list of prescribed incidents and specifications for which additional incidences are to be recorded in the register be detailed in regulation. It should be noted the Red Tape Reduction Group report<sup>166</sup> recommended that refusal of entry be removed from the list of prescribed incidents which must be recorded on the incident register.

Incident registers are required to be maintained under the Act and State crowd controllers legislation, thus duplicating the requirement to record incidents in multiple registers contributing to confusion, unnecessary administrative burden and red tape. It recommends section 116A of the Act be amended to recognise a register required under this section of the Act and a register required under the crowd controllers legislation can be one and the same, with incidents required to be recorded in the register within 24 hours of their occurrence. Again, it should be noted the Red Tape Reduction Group report<sup>167</sup> recommended the incident register and crowd control register should be amalgamated into a single register recording all relevant incidents. This would reduce the duplication arising from maintaining two registers with overlapping requirements.

Section 116A of the Act is silent with respect to the period of time that a register is required to be maintained at the licensed premises. Most business records are required to be kept for a defined period of time, however incident register records must be kept indefinitely, which in time places an excessive records keeping burden on licensees, the majority of which are small to medium businesses. It recommends section 116A be amended to specify that a register must be maintained for up to three years.

<sup>166</sup> Reducing the Burden – Report of the Red Tape Reduction Group, Government of Western Australia 2009  
[http://www.treasury.wa.gov.au/cms/uploadedFiles/Home/Publications/Independent\\_Reports/reducing\\_the\\_burden.pdf](http://www.treasury.wa.gov.au/cms/uploadedFiles/Home/Publications/Independent_Reports/reducing_the_burden.pdf)

<sup>167</sup> Reducing the Burden – Report of the Red Tape Reduction Group, Government of Western Australia 2009  
[http://www.treasury.wa.gov.au/cms/uploadedFiles/Home/Publications/Independent\\_Reports/reducing\\_the\\_burden.pdf](http://www.treasury.wa.gov.au/cms/uploadedFiles/Home/Publications/Independent_Reports/reducing_the_burden.pdf)

A number of other submissions also suggested the removal of the requirement to record a refusal of entry as a prescribed incident which must be recorded, the ability to maintain a single register for the purposes of the Liquor Act and the crowd controllers legislation and specific provisions that require a register to be maintained for up to three years.

### **Conclusion**

While the Committee acknowledges the recommendation of the Red Tape Reduction Group's report, it does not consider it appropriate to remove refusal of entry as a prescribed incident which must be recorded. Notwithstanding this, the Committee does consider WA Police should not take into account the number of 'refused entry' incidents when examining and reporting on the number of incidents at a licensed premises, as this should be seen as a positive measure by the licensee and should not be seen as an incident of concern. Similarly if recommendation 89 with respect to allowing a drunk person to remain on licensed premises under supervision is adopted, this should not be seen or reported as an incident of concern.

The Committee considers the requirement for a licensee and a crowd controller agent to maintain separate incident registers is not a practical or acceptable arrangement and in this regard, concurs with the recommendation of the Red Tape Reduction Group in relation to the maintenance of a single register to satisfy the requirements of the Act and the crowd controllers legislation. Further, the register should be able to be maintained in an electronic format, provided the provisions of section 116A(3) of the Act are complied with and the register is always available for inspection by an authorised officer.

Finally, similarly to the provisions of section 103A of the Act, the Act is silent on the period a register required under section 116A is to be retained. In this regard, the Committee recommends section 116A of the Act be amended to specify the period the register should be retained to reflect the timeframe during which the licensing authority or WA Police can commence a prosecution for a breach of the Act. The period recommended is four years.

#### **Recommendation 133**

*WA Police should not take into account the number of 'refused entry' or 'managed drunk' incidents when examining and reporting on the number of incidents at a licensed premises, as this should be seen as a positive measure by the licensee and should not be seen as an incident of concern.*

#### **Recommendation 134**

*Section 116A of the Act be amended to allow for the licensee's incident register and the crowd controller agent incident register to be maintained as one register.*

#### **Recommendation 135**

*Section 116A of the Act/Regulation 18EB of the Regulations be amended to specify that the incident register may be maintained in an electronic form, provided it is accessible at all times as required by subsection (3).*

#### **Recommendation 136**

*Section 116A of the Act be amended to specify that licensees must retain the incident register for four years.*

## Section 146 – Liquor Returns

The provisions of section 145 of the Act require prescribed licensees to make and maintain a record of all transactions involving the sale or purchase or other disposal or acquisition of liquor and section 146 of the Act requires a person who is required to maintain these records to lodge a return with the Director. Currently regulation 21C prescribes the holder of a wholesalers and a producers licence must comply with this requirement.

### **Submissions**

There is overwhelming support from groups such as *WA Police*, the *National Drug Research Institute*, the *WA Network of Alcohol & Other Drugs*, the *Cancer Council Western Australia*, the *McCusker Centre for Action on Alcohol and Youth*, the *Alcohol & Other Drugs Council of Australia*, the *University of Western Australia*, the *Executive Director Public Health*, the *Office of Road Safety*, the *Foundation for Alcohol Research and Education*, the *WA Drug and Alcohol Office* and the *South Perth Local Drug Action Group* for the provisions of section 145 and 145 of the Act to be maintained to support effective evidence-based policy responses to alcohol-related harm.

In addition, a number of these organisations have submitted there is a need to enhance the data which is collected and a need to address issues related to the availability of the data. In particular:-

The *National Drug Research Institute* submits the current collection strategy should be improved by requiring separate reporting for pre-mixed and straight spirits, collecting data specific to cider and cask wine and collecting alcohol sales data quarterly rather than once a year.

The *McCusker Centre for Action on Alcohol and Youth* submits the licensing authority should continue the collection of alcohol sales data in Western Australia and make it available to genuine independent researchers for the purpose of policy development and evaluating interventions. In addition, they recommend the collection of alcohol sales data in Western Australian could be improved by collating separate records for pre-mixed and straight spirits, collecting data specific to cider and cask wine, and collecting alcohol sales data quarterly.

The *Foundation for Alcohol Research and Education* submits the licensing authority should continue the collection and publication of alcohol sales data in Western Australia with an additional requirement to provide data for cider sales. The alcohol sales data should be made publically available in a format which can be easily accessed, used and analysed by policy makers and researchers.

The *WA Drug and Alcohol Office* submits the monitoring of alcohol consumption is of immense value for the evaluation of alcohol policies and interventions. Wholesale sales data can be used to calculate estimated per capita consumption figures, which are important for planning, research, evaluation and many government and community based interventions which aim to prevent alcohol-related harm and problems. In addition, when triangulated with Emergency Department and WA Police data wholesale sales figures are hugely valuable, timely data for informing harm minimisation and liquor licensing decisions. Further, sales data has been identified as critical to developing a working outlet density model and tool. Other surrogate measures for developing a model have inherent weaknesses.

---

While some industry groups argue that wholesale sales data significantly underestimates the actual volume of sales as it may not capture retail sales or liquor purchased by retail licensees from wholesalers in other jurisdictions, interstate stock movement by the national liquor chains and internet or mail order sales, experts advise that these factors have not had any noticeable effect in jurisdictions that have continuously collected data. Access Economics reported that Internet sales are estimated to account for 1.9 % of total sales of alcoholic beverages in Australia<sup>168</sup> which represents a very small proportion of overall sales. Researchers note that online sales are unlikely to significantly impact on the reliability of per capita estimates.

Industry cites the burden of the cost of collecting the data as a reason not to support the collection of sales data. According to Hall et al. 2008<sup>169</sup>, the collection and reporting of alcohol sales data entails minimal cost to the alcohol industry, which already provides this data to commercial market research companies. This is consistent with reports from jurisdictions where data collection currently occurs.

The collection of wholesale sales data is supported by the Australian Government which provides funding to Western Australia for the development and implementation of a National Alcohol Sales Data Project (NASDP). The NASDP commenced in 2008 and is ongoing in collaboration with numerous other jurisdictions.

In addition to wholesale data, retail sales data can give a precise estimate of the quantity of alcohol sold into the community, providing a more accurate premises specific measure of alcohol-harm.

The monitoring and evaluation of retail alcohol sales supports efficacy in research and informs reporting and planning of health promotion and harm prevention strategies targeting alcohol-related harm or ill-health occurring in the community. The quarterly provision of retail sales data would provide a precise estimate of total alcohol sales and the associated impact on harm or ill-health, in a given community.

Reporting of retail sales data would not have to be a significant imposition on business resources as it would only require extraction of figures from an existing record of stock kept by the licensee and to address industry concerns regarding commercial sensitivity, the data sought could be provided in general categories in the form of product type, time of sale and price (identified within a range).

The *WA Drug and Alcohol Office* recommends the licensing authority continue the collection of wholesale sales data and include provisions in the Act to share the information for research, reporting and planning purposes. It is also recommend the licensing authority commence the quarterly collection of retail sales data licensed premises for the purpose of informing research, reporting and planning.

*WA Police* submit the collection of wholesale sales data can provide an excellent measure of 'apparent per-capita consumption' of alcohol which helps identify regions of high per-capita consumption and high levels of alcohol-related harm around the state and allows WA Police to target interventions to areas identified with greatest need. Alcohol sales data also helps provide the rationale for interventions such as liquor restrictions in these areas and can also help to evaluate the effectiveness of liquor restrictions. In summary, the continued collection of wholesale alcohol sales data is an important tool in measuring alcohol-related harm and evaluating intervention strategies.

---

168 Access Economics 2010. Household E-Commerce Activity and trends in Australia. Available from:

[http://www.dbcde.gov.au/\\_\\_data/assets/pdf\\_file/0020/131951/Household\\_e-commerce\\_activity\\_and\\_trends\\_in\\_Australia-25Nov2010-final.pdf](http://www.dbcde.gov.au/__data/assets/pdf_file/0020/131951/Household_e-commerce_activity_and_trends_in_Australia-25Nov2010-final.pdf)

169 Hall, W., Chikritzhs, T., PHN, d. A., & Room, R. (2008). Alcohol sales data are essential for good public policies towards alcohol. *Medical Journal of Australia*, 189(4), 188-189.

---

The *Liquor Wholesalers Association of Western Australia* submits the provision of literage data presents an inaccurate summary of the actual literage movement in Western Australia. The figures supplied by Western Australian wholesalers represent only a portion of the total literage supplied within the State. This occurs because of interstate direct to consumer sales and interstate stock movements and sales by national liquor chain stores. The costs incurred by members of the Association is an unwarranted imposition, particularly if it results in a flawed outcome.

*Phoenix Beers Pty Ltd* submits the information required for the return is not readily extracted from most accounting and invoicing systems and it can take weeks for staff to extract and format the data. Enquiries with the licensing authority indicate the data is simply collected and sent to the Health Department. It is suggested the content of the return is reviewed to identify if all of the requested information is necessary. Alternatively, the requirement to lodge a return could be repealed or a less onerous return could be designed.

### **Conclusion**

After considering the submissions, the Committee concluded there is a clear need to continue with the collection of wholesale sales data from a health and police perspective.

In this regard, the Committee recommends the Minister monitor the outcomes of the National Alcohol Sales Data Project with a view to improving the data collected and capturing transactions which occur in other jurisdictions.

The Committee also considers if there is a discrepancy in the Regulations which does not require the collection of data in relation to cider sales, this should be rectified.

Finally, in the interests of reducing regulatory burden for those licensees who are required to lodge a return, it is recommended the licensing authority's new information technology system should include the capability for licensees to lodge their returns either online or electronically.

#### **Recommendation 137**

*The Minister should monitor the outcomes of the National Alcohol Sales Data Project, with a view to improving the accuracy of the data collected.*

#### **Recommendation 138**

*Amend the Act and or Regulations to ensure that sales data in relation to cider is collected.*

#### **Recommendation 139**

*The licensing authority's new information technology system should contain the functionality to allow licensee's to lodge liquor returns online or electronically.*

---

## Section 160 – Power to request information

Section 160 of the Act states where any person is found on, or is seen leaving, any licensed premises at a time other than during permitted hours, or an authorised officer has reasonable cause to suspect that any person is committing or is attempting to commit any offence against this Act, the authorised officer may demand particulars of the name and address of that person or of any witness to an offence and the age of that person, where that person's age is or may be material to the suspected offence. If the authorised officer has reasonable ground to suppose that any particulars supplied are false, the authorised officer may require the person to supply satisfactory evidence of those particulars.

If any person, without reasonable excuse, refuses or fails to supply any particulars or evidence when required to do so by any authorised officer under this section, and persists in the refusal or failure after being cautioned by the authorised officer, that person may be arrested, without warrant, by any member of the WA Police Force.

A person who, having been required by any authorised officer to supply any particulars or evidence under this section, without reasonable excuse supplies any particulars or evidence knowing that the particulars or evidence are false or misleading in any material respect, commits an offence.

### **Submissions**

WA Police submit the word demand in section 160(1) of the Act is inconsistent with the word required in section 160(3). Furthermore, it should not be necessary to caution a person that they may be arrested, without warrant, for the offence to be complete. This section needs to be more consistent with other Police powers in the newer *Criminal Investigation (Identifying People) Act 2002* where the power to obtain personal details is upon a request.

### **Conclusion**

The Committee concluded the provisions of the Act should be aligned with the *Criminal Investigation (Identifying People) Act 2002* and recommends section 160 of the Act is amended accordingly.

### **Recommendation 140**

*Amend section 160 of the Act to reflect the provisions of section 16 of the Criminal Investigation (Identifying People) Act 2002.*

## 13. Liquor Industry Advisory Committee

A number of submissions were made supporting the establishment of a Liquor Industry Advisory Committee.

### **Submissions**

*Mr Peter Abetz MLA* submits Recommendation 7 of the *Education and Health Standing Committee's 10th Report, Alcohol: Reducing the Harm and Curbing the Culture of Excess* should be noted by the Committee.

Recommendation 7 recommended the Act be amended to establish a Liquor Control Advisory Council. The Council shall provide an annual report to Parliament on legislative changes to improve the monitoring, effectiveness and compliance with the Act and any other Acts to help decrease alcohol-related harm in Western Australia. This recommendation was not adopted by the Government.

The *Marninwarntikura Women's Resource Centre* also recommends a Liquor Control Advisory Council be established to act as a Policy Advisory Board to give advice to the Minister. It advises a Liquor Control Advisory Council has been established in Victoria which comprises representatives from the Victorian liquor licensing authority, community groups, industry, local government and young people and provides advice to the Minister.

The *Marninwarntikura Women's Resource Centre* further submits the government did not support the recommendation of the *Education and Health Standing Committee's 10th Report, Alcohol: Reducing the Harm and Curbing the Culture of Excess* to establish a Liquor Control Advisory Council on the basis that a whole-of-government approach was being facilitated by the Drug and Alcohol Strategic Senior Officers Group. The *Marninwarntikura Women's Resource Centre* believes that specific and targeted policies must be developed and implemented to address the significant harm caused by the inadequate regulation of alcohol in the Western Australian community and that a specially constituted council would be best placed to provide such a role. The benefit in having a permanent council to provide policy advice to the government is continuity of progress and review.

### **Conclusion**

The Committee considers the establishment of an advisory body to provide advice to the Minister on an ongoing basis is a practical and cohesive approach to addressing the future of liquor regulation in Western Australia.

In this regard, the Committee recommends a Liquor Industry Advisory Committee be established. The Committee should consist of a person nominated by the Minister as independent chairperson, the Director, the Commissioner of Police, the Executive Director Public Health, a representative each from the Australian Hotels Association (WA) and the Liquor Stores Association of WA and three experts in matters relating to liquor licensing who shall be nominated for appointment by the Minister after consultation with the bodies referred to above.



The functions of the Committee will be:-

1. to inquire into and report to the Minister upon any matters referred to it by the Minister; and
2. to make recommendations to the Minister with respect to the Act, any law or provision of a law, relating to liquor control administered by the Minister and any law or provision of a law relating to liquor control that is prescribed for the purposes of this paragraph and subsidiary legislation, guidelines and codes of practice proposed to be made under or for the purposes of any prescribed law;
3. to examine, review and make recommendations to the Minister in relation to existing and proposed registration or licensing schemes relating to liquor control;
4. to provide advice to and cooperate with government departments, public authorities, employer organisations and other interested persons in relation to liquor control;
5. to formulate or recommend standards, specifications or other forms of guidance for the purpose of assisting employers, self-employed persons and employees to maintain appropriate standards of liquor control;
6. to promote education and training in liquor consumption as widely as possible
7. in cooperation with educational authorities or bodies to devise and approve courses in relation to liquor control;
8. to recommend to the Minister the establishment of public inquiries into any matter relating to liquor control;
9. to collect, publish and disseminate information on liquor licensing matters;
10. to formulate reporting procedures and monitoring arrangements of liquor consumption;
11. to commission and sponsor research into matters covered by the Act; and
12. issue for public review and comment any regulations, codes of practice or guidelines with respect to which it proposes to make any recommendations to the Minister.

#### *Recommendation 141*

*Amend the Act to establish a Liquor Industry Advisory Committee comprising a person nominated by the Minister as independent chairperson, the Director, the Commissioner of Police, the Executive Director Public Health, a representative each from the Australian Hotels Association (WA) and the Liquor Stores Association of WA and three experts in matters relating to liquor licensing who shall be nominated for appointment by the Minister after consultation with the bodies referred to above.*

## **14. Education and Health Standing Committee's 10th Report *Alcohol: Reducing the Harm and Curbing the Culture of Excess***

In June 2011 the *Education and Health Standing Committee's 10th Report, Alcohol: Reducing the Harm and Curbing the Culture of Excess* was tabled in the Legislative Assembly. The Government's response to the Committee's recommendations was tabled in September 2011. Refer Appendix 5.

The Committee agrees with the Government's response to Recommendations 4, 5, 7, 9, 11, 16, 18, 20, 21, 24, 25, 26, 35, 36, 37, 38, 39, 40, 41, 42 and 43.

The Committee considers Recommendations 1, 2, 3, 22, 31, 32, 33, 34 and 44 to 60 are not within the scope of the Liquor Act Review.

The remaining recommendations have been reviewed by the Committee and the following comments are made:-

Recommendations 6 and 27 – the Committee has recommended an amendment to the objects of the Act which will go some way towards achieving this outcome. Refer Recommendation 19.

Recommendation 8 – the Committee reviewed the current exemptions prescribed in the Act and the Regulations and concluded there appears to be no necessity to repeal any of the existing exemptions. Refer **Section 10, Exemptions**.

Recommendation 10 – the fines and penalties contained in the Act have been reviewed and the Committee has recommended the modified penalty for an infringement notice is increased to 20% of the maximum penalty. Refer Recommendation 108.

Recommendation 12 – the Committee does not endorse this recommendation but considers the recommended amendments to section 91 and 95 of the Act will improve the disciplinary powers of the Director. Refer Recommendations 81 and 83.

Recommendation 13 – the Committee has recommended the Act be amended to enable WA Police to conduct controlled purchase operations and to require the mandatory presentation of suitable identification for purchasers who appear to be under 25 years old. Refer Recommendations 25 and 26.

Recommendations 14 & 15 – the Committee agrees with this recommendation and has recommended the establishment of a Liquor Industry Advisory Committee. Refer Recommendation 141.

Recommendation 17 – the Committee agrees with this recommendation and has recommended the Act be amended to enable a risk based licence fee regime to be established. Refer Recommendation 51.

Recommendation 19 – the Committee agrees with this recommendation and has recommended the Act be amended to establish an offence for the secondary supply of liquor to juveniles. Refer Recommendation 22.

Recommendation 23 – the Committee agrees with this recommendation and has recommended the Act be amended to include the number, type and nature of any existing and proposed licensed premises in the relevant locality as a matter the licensing authority may have regard to in assessing the public interest. Refer Recommendation 41.

Recommendations 28, 29 & 30 – the Committee agrees with these recommendations and has recommended the Act be amended to introduce a head of power to restrict advertising and promotion which it is anticipated will go some way towards achieving the recommended outcome. Refer Recommendations 11 and 12.

## 15. Red Tape Reduction Group Report *Reducing the Burden*

In January 2009, the Red Tape Reduction Group was established and tasked with identifying, reporting and recommending measures that would reduce the compliance burden on the community of excessive and sometimes redundant regulation.

The Red Tape Reduction Group delivered *Reducing the Burden – Report of the Red Tape Reduction Group* to the Treasurer in December 2009 and the report was released to the public in February 2010.

Key recommendations include:-

- reforms which aim to reduce the regulatory burden by improving the culture, performance and accountability of government agencies;
- reforms which aim to maintain an impetus and mechanisms for on-going red tape reduction by government; and
- reforms designed to address specific areas of concern raised during the consultation process. The report contains 16 specific reform chapters across a broad spectrum of government activity.

The report contains 107 recommendations to significantly reduce the burden of excessive regulation and red tape on Western Australian businesses and consumers. 15 of the recommendations relate specifically to liquor licensing. Those recommendations are listed below, together with the Committee's view on the recommendation.

### **Recommendation 6.1**

*The Department of Racing, Gaming and Liquor should publish comprehensive guidelines or a template to assist applicants in preparing the public interest assessment submission.*

A recommendation has been made that the licensing authority should develop a comprehensive Code of Practice to assist applicants in preparing a public interest assessment to replace the existing public interest assessment policy and should undertake a review of all other policies, guidelines, fact sheets and other material, in conjunction with industry, to ensure they are accurate, relevant and are meeting the needs of users. Refer Recommendation 35.

### **Recommendation 6.2**

*The Department of Racing, Gaming and Liquor should implement a tiered system for public interest assessment requirements which differ depending on the level of risk associated with the application. For example, requiring a standard public interest assessment submission for the granting of a licence, but less stringent requirements for removal of licence.*

The recommendations to re-introduce two licence categories and to allow the Director to consider a removal application without having to consider the public interest provisions will go some way towards achieving this outcome. Refer Recommendations 38 and 45.

### **Recommendation 6.3**

*The Department of Racing, Gaming and Liquor should accept and process small bar/low risk licence applications without the requirement to have completed section 40 certificates.*

While considerable time and uncertainties are involved in planning and rezoning applications before local government parallel processing should be able to occur in appropriate circumstances. Refer Recommendation 118.

**Recommendation 6.4**

*The requirement that licensees must detail where they will be purchasing the liquor and what prices are being charged should be removed.*

This amendment to the Act was made as part of the 2007 liquor reforms.

**Recommendation 6.5**

*Refusal of entry should be removed from the list of incidents prescribed by regulation 18EB of the Liquor Control Regulations 1989, which must be recorded on the incident register.*

This issue has been addressed in **Section 12, Technical Amendments, Incident Registers**. The Committee does not consider it appropriate to remove refusal of entry as a prescribed incident which must be recorded but has recommended that these incidents should not be raised as a matter of concern.

**Recommendation 6.6**

*The incident register and crowd control register should be amalgamated into a single register recording all relevant incidents. This would reduce the duplication arising from maintaining two registers with overlapping requirements.*

This issue has been addressed in **Section 12, Technical Amendments, Incident Registers**. A recommendation has been made to amend the Act to allow for the licensee's incident register and the crowd controller agent incident register to be maintained as one register. Refer Recommendation 134.

**Recommendation 6.7**

*Applications for extended trading permit applications should be accepted along with the initial liquor licence application (i.e. remove the requirement that applications for extended trading permit can only be made subsequent to the initial licence application being granted).*

The Committee understands the licensing authority does accept applications being lodged for an extended trading permit at the time of lodging an application for the grant of a licence, but the application will not be processed until the licence has been granted. The public interest issues that exist in relation to late night trading are materially different and can require more significant harm minimisation issues to be considered. The current arrangements provide open and transparent application processes that are fairer for both applicants and potential objectors.

**Recommendation 6.8**

*The requirement that all extended trading permit applications must be accompanied by a public interest assessment submission should be removed. Instead there should be a risk-based assessment of the need for public interest assessment submissions for extended trading permit renewals.*

A licensee's ability to operate a licensed premises during extended trading hours should be viewed as a privilege, not a right and a public interest assessment submission should accompany applications. Notwithstanding this, a need has been identified to provide further information in relation to extended trading permits and the public interest assessment. Refer Recommendation 75.

**Recommendation 6.9**

*Individuals should be licensed as approved managers in their own right and allowed to move between premises without having to apply to the Department of Racing, Gaming and Liquor.*

This amendment was made to the Act in 2010.

**Recommendation 6.10**

*Section 5(1)(c) of the Liquor Control Act should be amended to read ‘to cater for the requirements of consumers for liquor and related services and to facilitate the proper development of the liquor industry, the tourism industry and other hospitality industries in the State’.*

This issue has been addressed in **Section 2, Objects of the Act**. A recommendation has been made to amend the objects of the Act which will go some way towards achieving this outcome. Refer Recommendation 19.

**Recommendation 6.11**

*The Department of Racing, Gaming and Liquor should provide staff with guidelines regarding how the primary objectives of the Liquor Control Act 1988 should be balanced during the assessment process. These guidelines should be made publicly available.*

It is not feasible to develop a formula for decision makers due to the unique manner of trade of each licensed premises and the individual characteristics of affected communities. It is however, important that appropriate well documented guidance material and policies are in place and are applied consistently. Refer Recommendation 112.

**Recommendation 6.12**

*The Department of Racing, Gaming and Liquor should be required to measure and publicly report:-*

- 1. Calendar days taken to make a decision and calendar days taken during ‘stop the clock’ periods;*
- 2. Calendar days taken by other departments to deal with referrals under the assessment process;*
- 3. Calendar days taken by proponents to respond to information requests; and*
- 4. The reasons as to why ‘stop the clock’ provision were utilized (e.g. information being requested from the proponent).*

The current capabilities of information technology systems at the licensing authority prohibit the extraction of this information. The Committee has however, made a recommendation that an online tracking system is a mandatory function of the information technology program being developed by the licensing authority. Refer Recommendation 117.

**Recommendation 6.13**

*The Department of Racing, Gaming and Liquor should measure and benchmark the effectiveness of liquor regulation in Western Australia against international best practice.*

Liquor control and licensing laws are different not only around Australia, but also in jurisdictions’ throughout the world. It is therefore not feasible to benchmark Western Australian laws directly against other jurisdictions. Notwithstanding this, the Committee considers the licensing authority should regularly examine initiatives introduced in other jurisdictions and evaluate whether they would be transferrable to Western Australia.

**Recommendation 6.14**

*Where no decision has been made with regards to an application to grant or remove a licence within six months of being received by the Department of Racing, Gaming and Liquor, the application will be deemed approved.*

Approval of licences under the Act is a serious community issue and requires an appropriate balancing of interests to be undertaken as detailed in the objects of the Act. The introduction of a deeming provision could result in the unfettered establishment of licensed premises in a manner which is inconsistent with the objects of the Act. The Committee recognises it is appropriate for industry to expect the licensing authority to progress applications in a timely and transparent way, and has therefore recommended the licensing authority work in consultation with stakeholders and industry participants to establish agreed Key Performance Indicators. Refer Recommendation 115.

**Recommendation 6.15**

*That a comprehensive independent review of the State's regulatory regime in liquor industry be commenced. The Economic Regulation Authority is well placed to undertake this review. The Terms of Reference of this report could include:-*

- *Evaluating the effectiveness and costs of compliance of the current regulatory regime;*
- *Recommending potential legislative reform; and*
- *Recommending mechanisms to measure the effectiveness of the liquor regulation.*

The appointment of this Committee has addressed this recommendation.

---

## 16. Recommendations

### Alcohol and the Community

#### *Recommendation 1*

*The Minister implements ongoing extensive education campaigns targeting cultural change.*

#### *Recommendation 2*

*Amend section 67 of the Act to introduce a requirement for applicants for high risk (Category A) licences to lodge a Community Impact Statement with an application.*

#### *Recommendation 3*

*Amend section 38(4) of the Act to include the consideration of the outcome of community consultation conducted by way of a Community Impact Statement.*

#### *Recommendation 4*

*Amend section 73 and 74 of the Act to enable stakeholders to lodge either a submission or an objection. A submission can be in support of, or opposed, to an application and will not be required to be 'made out'.*

#### *Recommendation 5*

*The licensing authority amend the Notice of Objection form to make it more user friendly. In particular a list of the grounds of objection should be included to make it easier for objectors to identify or nominate their ground of objection.*

#### *Recommendation 6*

*Amend section 74(4) of the Act to require the Director to serve all objections/submissions within 14 days of the last objection date.*

#### *Recommendation 7*

*Amend section 74(4) of the Act to require the Director to notify an applicant if an objection is struck out.*

#### *Recommendation 8*

*The licensing authority should implement an ongoing series of education sessions to assist community members in the procedure and the process for lodging and verifying an objection.*

#### *Recommendation 9*

*The Act be amended to require that new licence applications must be advertised in the relevant local/community newspaper.*

#### *Recommendation 10*

*The licensing authority review the onsite advertising requirements to ensure they are adequate and clearly visible to passers-by.*

*Recommendation 11*

*Amend section 65B of the Act to enable regulations to be made to prohibit or restrict:-*

- a) promotional activity which is likely to impact on children; and*
- b) activities such as promotions or discounting that could encourage the irresponsible consumption of liquor or is otherwise not in the public interest.*

*Recommendation 12*

*Members of the Australian Liquor Licensing Authority Conference (ALLAC) should work towards developing and implementing consistent legislation across all jurisdictions which can prohibit the inappropriate advertising of liquor.*

*Recommendation 13*

*Amend regulation 14AD to introduce a requirement for licensed crowd controllers who undertake duties associated with controlling entry and exits to, and monitoring behaviour in, licensed premises to complete the nationally accredited unit of Responsible Service of Alcohol training.*

*Recommendation 14*

*The licensing authority engage with the Hospitality & Tourism Industry Training Council to review and develop further the standard of Responsible Service of Liquor training.*

*Recommendation 15*

*The members of the Australian Liquor Licensing Authority Conference (ALLAC) should work towards developing and implementing a nationally recognised unit of training in the responsible service of alcohol.*

*Recommendation 16*

*Amend section 103A of the Act to specify that a register which records the details of Responsible Service of Liquor training must be maintained by a licensee for a period of four years.*

*Recommendation 17*

*Repeal section 126D(4) of the Act.*

*Recommendation 18*

*Retain the existing provisions of section 64 of the Act which allows the licensing authority to impose a condition prohibiting the sale of liquor mixed with energy drinks on a case-by-case basis.*



## Objects of the Act

### Recommendation 19

Amend the objects of the Act to read:-

#### Objects of Act

- (1) *The primary objects of this 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 sale, supply or consumption of liquor; and*
  - (c) *to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor consistent with the interests and reasonable requirements of the community; and*
  - (d) *to facilitate the responsible development of liquor and related industries, such as the live music, entertainment, tourism and hospitality industries in the State and the responsible use and development of licensed facilities.*
- (2) *In carrying out its functions under this Act, the licensing authority shall have regard to the primary objects of this Act and also to the following secondary objects —*
  - (a) *to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and*
  - (b) *to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.*
- (3) *If, in carrying out any of its functions under this Act, the licensing authority considers that there is any inconsistency between the primary objects referred to in subsection (1) and the secondary objects referred to in subsection (2), the primary objects take precedence.*

### Recommendation 20

Amend sections 38(4), 64(3)(cc), 69(8b) and 74(1)(b) to replace 'due to the use of liquor' with 'due to the sale, supply or consumption of liquor'

## Juveniles and Young Adults

### Recommendation 21

*The legal drinking age should remain as 18 years old.*

### Recommendation 22

*Amend section 121 of the Act to introduce an offence for a person to supply liquor to a juvenile on unlicensed premises. It should be a defence if the relevant person is a parent or guardian of the juvenile or were authorised by a parent or guardian of the juvenile to supply the liquor to the juvenile.*

### Recommendation 23

*Amend section 121 of the Act to introduce a new provision so that where a person is authorised to supply liquor to a juvenile by the parent or guardian, the person must not supply liquor to the juvenile unless the supply is consistent with the responsible supervision of the juvenile. Factors to be considered in relation to responsible supervision should include—*

- a) whether the person is unduly intoxicated;*
- b) whether the juvenile is unduly intoxicated;*
- c) the age of the juvenile;*
- d) whether the juvenile is consuming the liquor supplied with food;*
- e) whether the person is responsibly supervising the juvenile's consumption of the liquor supplied;*  
*and*
- f) the quantity of liquor supplied and the period over which liquor was supplied.*

### Recommendation 24

*Amend section 121 of the Act to include a definition of the term unlicensed premises as any place other than licensed or regulated premises and including residential premises.*

### Recommendation 25

*Amend the Act to allow WA Police to undertake controlled purchase operations on licensed premises where packaged liquor is sold subject to:-*

- a) an agreed set of operating standards being developed by WA Police and approved by the Minister for Racing and Gaming regarding the use of WA Police cadets only, physical appearance and procedures to be followed;*
- b) WA Police being required to publically report annually on the results of their operations; and*
- c) WA Police being required to notify the industry of their intention to run a controlled purchase operation/campaign and the duration of the operation/campaign.*

### Recommendation 26

*Amend the Act to require licensees who are authorised to sell packaged liquor to request proof of age from patrons who appear to be under the age of 25.*

### Recommendation 27

*Amend section 155 of the Act to authorise WA Police to seize any liquor in the possession of a juvenile who is contravening any provision of the Act.*

### Recommendation 28

*The Act be amended to include a definition of the term 'loco parentis'.*

*Recommendation 29*

*Amend section 65 of the Act to require licensees to comply with conditions prescribed in the Regulations/Code of Practice in relation to the delivery of liquor with similar provisions to section 114 of NSW Liquor Act 2007.*

*Recommendation 30*

*Amend the relevant exemptions prescribed in the Act and Regulations to require that any person delivering liquor must comply with conditions prescribed in the Regulations/Code of Practice in relation to the delivery of liquor.*

*Recommendation 31*

*Amend the Act to make it a criminal offence for any person to deliver liquor to a juvenile in Western Australia. The offence provision should apply to both the person delivering the liquor and the licensee who sold the liquor.*

*Recommendation 32*

*Amend section 126 of the Act to introduce offences for a person to:-*

- a) Give an evidence of age document to another;*
- b) Deface/interfere with an evidence of age document;*
- c) Knowingly make a false evidence of age document;*
- d) Knowingly give a false evidence of age document to another;*
- e) Supply false documents to obtain an evidence of age document;*
- f) Pass on any documents or material that does not relate to him or her for the purposes of an evidence of age document; and*
- g) Give a document or material to another person to support an application for a proof of age card that contains information that is false/misleading.*

*Each offence should have a maximum penalty of \$2,000.*

*Recommendation 33*

*Amend section 167 of the Act to enable WA Police to use an alcohol intervention program as an alternative to issuing an infringement notice for minor offences committed by juveniles.*

*Recommendation 34*

*The Young Offenders Act 1994 be amended as necessary to enable Recommendation 33 to be implemented.*

---

## Public Interest

### Recommendation 35

*The licensing authority should develop a comprehensive Code of Practice to assist applicants in preparing a public interest assessment to replace the existing public interest assessment policy and should undertake a review of all other policies, guidelines, fact sheets and other material, in conjunction with industry, to ensure they are accurate, relevant and are meeting the needs of users.*

### Recommendation 36

*All public interest assessment's should be made publicly available on the licensing authority's website.*

### Recommendation 37

*Amend section 38(4) of the Act to include consideration of submissions in support of, or opposed to, an application as matters the licensing authority may have regard to in determining if an application is in the public interest.*

### Recommendation 38

*Amend section 38(1) of the Act to allow the Director the discretion to consider a removal application without having to consider the public interest provisions.*

### Recommendation 39

*The licensing authority should ensure that matters relied on in public interest assessment submissions and which are deemed persuasive in granting a licence are imposed as conditions of the licence.*

### Recommendation 40

*Amend section 38(4)(b) of the Act to read '...the amenity, quiet or good order of the locality...' to reflect the wording of section 74(1)(g)(ii).*

### Recommendation 41

*Amend section 38(4) of the Act to include the number, type and nature of any existing and proposed licensed premises in the relevant locality as a matter the licensing authority may have regard to in assessing the public interest.*

### Recommendation 42

*The Minister should monitor and assess the outcomes of the New South Wales trial of an Environmental and Venue Assessment Tool (EVAT).*

### Recommendation 43

*The Minister should monitor the progress of and assess the Outlet Density Tool currently being developed by the WA Drug and Alcohol Office.*

### Recommendation 44

*Amend section 38 of the Act so that, unless exceptional circumstances apply, a liquor licence should not be granted within 400 metres of a school.*

## Licences

### Recommendation 45

Amend section 38 of the Act to provide a distinction between Category A and Category B licences.

A high risk Category A licence would include the classes:-

- Hotel (including Tavern)
- Nightclub
- Liquor Store
- Casino
- Special Facility (unless otherwise prescribed)

A low risk Category B licence would include the classes:-

- Club and Club Restricted
- Restaurant
- Small Bar (Refer Recommendation 49)
- Producer
- Wholesaler

### Recommendation 46

Section 38(5) of the Act should not be amended.

### Recommendation 47

No additional licence class of licence is required for a direct sales or online liquor business.

### Recommendation 48

Members of the Australian Liquor Licensing Authority Conference (ALLAC) work towards introducing consistent delivery provisions in all jurisdictions.

### Recommendation 49

Amend the Act to introduce a new class of licence for Small Bars with the current provisions in relation to licence conditions and permitted trading hours, including the amendment proposed under Recommendation 71, being retained.

### Recommendation 50

All special facility licences should be reviewed to ensure the prescribed class of licence is still valid and relevant with a view to converting inappropriate licences to a more appropriate class of licence.

### Recommendation 51

Amend section 128 of the Act to:-

allow a base licence fee for Category A and B licences to be prescribed in the Regulations;  
include the size of a licensed premises in section 128(2)(a) as a criteria on which licence fees can be prescribed;

- a) include a provision that where a Category A licence has a licensed area which is greater than a prescribed size (200 m<sup>2</sup>), a surcharge per square metre will be payable (\$10 per m<sup>2</sup>);
- b) require the money collected from the surcharge (fee per square metre) to be allocated to an appropriate current government body or bodies and be strictly quarantined for community education purposes only in accordance with guidelines and procedures determined by the Minister; and
- c) allow a board of experts be established to advise the Minister on initiatives to fund.

---

**Recommendation 52**

*The Act be amended to enable Codes of Practice to be developed and prescribed in the Regulations.*

**Recommendation 53**

*The licensing authority ensure the regulatory framework consists of the Act, Regulations, Codes of Practices and Guidelines and information provided to industry ensure clarity on the legal status of each document.*

**Recommendation 54**

*Amend section 64(1a) of the Act to allow the Commissioner of Police, the Executive Director Public Health and parties to a liquor accord to request the licensing authority to impose, vary or cancel conditions.*

**Recommendation 55**

*Amend 64(2b) of the Act to require the licensing authority to invite the affected community to show cause why the proposed restrictive conditions should not be imposed as part of an enquiry under section 64.*

**Recommendation 56**

*In relation to liquor restrictions imposed under section 64 of the Act, the licensing authority should notify the relevant government agencies in relation to the potential need for relevant support services before the introduction of liquor restrictions.*

**Recommendation 57**

*Amend section 64(1b) of the Act to include a new subsection requiring that a liquor accord must be developed in consultation with representatives of the local community.*

**Recommendation 58**

*The maximum capacity of a licensed premises set by the relevant local government authority, should be imposed as a condition on the licence. Transitional provisions should apply to this recommendation.*

**Recommendation 59**

*Amend section 48(5) of the Act to allow clubs to sell and supply liquor to persons assisting a guest/competing club.*

**Recommendation 60**

*Amend section 48(2) of the Act and or section 60(4)(cb) to allow clubs to hold up to 12 non-member functions per year without the need to apply for an extended trading permit. (eg. notification system only). The Director should have the power to disallow a club from utilising these provisions.*

**Recommendation 61**

*The licensing authority develop and distribute a guideline/fact sheet specifically relating to the requirements in relation to approved managers for club and club restricted licences.*

**Recommendation 62**

*Amend section 47(2) of the Act to remove the reference to 'free' sample to allow licensees of liquor stores to charge a fee for tastings.*

*Recommendation 63*

*Amend section 50 of the Act to:-*

- a) remove the requirement for liquor to be supplied ancillary to a meal supplied by the licensee during the following hours:-
  - Monday to Saturday between the hours of 6.00 am and 12.00 midnight; and
  - Sunday from 10.00 am to 10.00 pm.*
- b) On Christmas Day, Good Friday or before noon on ANZAC Day, liquor may only be supplied ancillary to a meal;*
- c) retain all other existing provisions relating to liquor being consumed while seated sitting at a table and the predominant purpose of the business being the supply of meals;*
- d) specify that patrons are able to purchase liquor from a bar or servery and carry it to a table; and*
- e) clarify the amended provisions apply to any area covered by an extended trading permit issued for the purpose of Alfresco Dining (subject to local government authority approval).*

*Recommendation 64*

*Amend section 55 of the Act to include the authorisation for beer producers to sell liquor for consumption on a part of the licensed premises approved for the purpose by the Director between the hours of 10.00 am and 10.00 pm.*

*Recommendation 65*

*Amend section 55 of the Act to allow wine producers to establish a collective cellar door retail outlet within the same wine region as their production facilities.*

*Recommendation 66*

*Amend section 55 of the Act to allow producers to conduct online and telephone sales from a place other than the licensed premises, provided the delivery of liquor is from the licensed premises or from an approved offsite storage facility.*

*Recommendation 67*

*Amend section 55 of the Act to allow producers to sell liquor other than their own, if sold ancillary to a meal in a designated dining area which forms part of their licensed premises or an area the subject of an extended trading permit or for the purpose of comparative tastings.*

*Recommendation 68*

*Amend regulation 8D(2)(a) of the Regulations to:-*

- a) allow wine producers to attend any farmer's markets;*
- b) replace 2.5 litres with 9 litres;*
- c) remove requirement for samples to be provide free of charge; and*
- d) establish a process that requires licensees to seek approval from the licensing authority at the beginning of each year of their proposed attendance at events such as farmers markets and food and wine festivals.*

*Recommendation 69*

*Amend section 58(1) of the Act to replace 9 litres with 4.5 litres.*

---

## Permitted Trading Hours

### *Recommendation 70*

*Amend section 98D of the Act to authorise all liquor stores to trade on Sundays between 10.00 am and 10.00 pm.*

*The authorisation to trade on Sundays must not apply where liquor restrictions are in place or where it would impact on a liquor accord.*

### *Recommendation 71*

*Amend section 98 of the Act to authorise hotel, tavern and small bar licences to trade until 12.00 midnight on Sunday evenings preceding a gazetted public holiday which falls on a Monday.*

### *Recommendation 72*

*The current permitted trading hours for nightclubs should be retained.*

### *Recommendation 73*

*The provisions of section 60 of the Act relating to extended trading permits should be retained without amendment.*

### *Recommendation 74*

*The licensing authority should consider the previous performance of a licensee and the compliance history of the premises when considering applications (new and renewal) under section 60(4)(g) of the Act.*

### *Recommendation 75*

*The proposed Code of Practice on public interest assessments should include a section dedicated to extended trading permits which includes addressing the existing criteria in relation to harm, impact on amenity and offence and annoyance, the current trading hours and extended trading permits of other licensed premises in the locality, as a factor to be considered in the determination of an application for an ongoing hours permit under section 60(4)(g) of the Act.*



### **Constitution of the licensing authority**

#### *Recommendation 76*

*The current structure of the Liquor Commission should be maintained.*

#### *Recommendation 77*

*The Liquor Commission should undertake a comprehensive review of the rules and processes for determining contested and uncontested applications. This should include input from industry and the legal fraternity and should examine issues such as process mapping, timelines and establishment of performance standards.*

#### *Recommendation 78*

*The Minister should establish a full-time position to assist with writing decisions for the Liquor Commission.*

#### *Recommendation 79*

*Amend section 24 of the Act to provide appropriate timeframes within which the Director may refer applications to the Liquor Commission.*

#### *Recommendation 80*

*Amend section 13(6) and 16(8) of the Act so all hearings are public unless the Director or the Liquor Commission determine otherwise.*

---

## Compliance and Enforcement

### Recommendation 81

*Amend sections 95 and 96 of the Act to transfer the responsibility for disciplinary action from the Liquor Commission to the Director (with adequate resourcing).*

### Recommendation 82

*Any decision or determination made by the Director in relation to sections 95 and 96 of the Act (other than a decision to suspend a licence or permit for up to 7 days for disciplinary reasons) should be subject to review by the Liquor Commission.*

### Recommendation 83

*Amend section 91 of the Act to allow the Director to suspend a licence or permit for up to 7 days for disciplinary reasons. This decision should not be subject to review by the Liquor Commission.*

### Recommendation 84

*Amend section 95 of the Act to:-*

- a) prescribe that a complaint must be commenced to be heard within three months of it being made, unless the parties agree otherwise; and*
- b) require the Director to make a determination on whether a complaint will be heard or struck out within 21 days of lodgement.*

### Recommendation 85

*Amend section 95 of the Act to specify that hearings held by the Commission in relation to a complaint under section 95 should be open to the public, unless the Director determines otherwise.*

### Recommendation 86

*The current definition of 'drunk' in section 3A of the Act should be retained.*

### Recommendation 87

*Amend section 115(5)(c) of the Act to increase the maximum penalty for failure to leave a licensed premises to \$5,000.*

### Recommendation 88

*Amend section 115(6) of the Act to increase the maximum penalty for remaining in the vicinity of a licensed premises to \$5,000.*

*Recommendation 89*

*Amend section 115 of the Act to introduce a defence for a licensee to permit a drunk patron to remain on the licensed premises in circumstances where:-*

- the patron is not unruly – they must be behaving in an orderly manner and not causing any disturbance;*
- the licensee, manager or employee must not serve or supply them with any liquor or allow them to be supplied with any liquor. In this regard, an education campaign would be required to ensure the public are aware that offence provisions exist for obtaining liquor for a drunk person;*
- the approved manager should be notified of the person’s presence;*
- the patron should be identified so that all staff and other patrons know they are drunk and should not be served or supplied with any more liquor;*
- the presence of the patron is recorded in the incident register; and*
- offence provisions should apply if these conditions are not met.*

*Recommendation 90*

*Amend section 110(3) of the Act to provide a defence for both the licensee and the patron if patrons are moving between separate areas of a licensed premises.*

*Recommendation 91*

*In relation to wine producers licences only, amend the provisions of section 110(3) of the Act to allow patrons to move between two licensed premises, provided the licensee holds both licences.*

*Recommendation 92*

*Amend section 65(1) of the Act to include an offence for selling liquor in circumstances in which it is reasonably suspected that the liquor will be consumed unlawfully.*

*Recommendation 93*

- a) Amend section 115AA(2) of the Act so that a person exhibiting the prescribed behaviour in the vicinity of a licensed premises can be issued with a barring notice.*
- b) Amend section 115AA of the Act to provide a definition of ‘vicinity of licensed premises for the purposes of section 115AA(2).*

*Recommendation 94*

*Amend regulation 27 of the Regulations so that an offence under section 115AE of the Act can be dealt with by way of an infringement notice.*

*Recommendation 95*

*Amend section 115AA (7A) of the Act to specify the circumstances when it is acceptable for the recipient of a barring notice to enter and remain on licensed premises.*

*Recommendation 96*

*Amend section 115AC(1) of the Act to include a requirement that a barred persons date of birth is published on the secure webpage.*

*Recommendation 97*

*Amend section 115AE of the Act to provide a defence if section 115AA(7A) applies.*

*Recommendation 98*

*Amend the Act to require that all new licences of a prescribed type or types or in a prescribed location or precinct (high risk venues, entertainment precincts) must utilise suitable ID scanning technology for all patrons entering the licensed premises.*

*The Regulations should also allow the Minister to apply this requirement to existing licences of a prescribed type or types in a prescribed location or precinct (high risk venues, entertainment precincts).*

*Recommendation 99*

*The Act be reviewed and amended where necessary to ensure compliance with the Guidelines for applying the COAG Principles in relation to Personal Liability for Corporate Fault.*

*Recommendation 100*

*If the licensing authority's new IT system has the capability to enable a yearly licensee detail verification process, the period for commencing a prosecution should be reduced to two years.*

*Recommendation 101*

*Amend the Act to allow the Director to revoke the approval of a licensee or approved manager if they are found guilty of a prescribed disqualifying offence.*

*Recommendation 102*

*Amend section 1520(1) of the Act to introduce offences for a person:-*

- a) attempting to convey liquor onto a liquor restricted premises; and*
- b) attempting to cause liquor to be conveyed onto a liquor restricted premises.*

*Recommendation 103*

*Amend section 175(1a)(b) of the Act to include offences for a person:-*

- a) attempting to bring liquor into a restricted area; and*
- b) attempting to possess liquor in a restricted area; and*
- c) consuming liquor in the vicinity of a restricted area.*

*Recommendation 104*

*Include a definition of vicinity of a restricted area for the purposes of section 175(1a)(b) of the Act.*

*Recommendation 105*

*Amend the Act to exempt government agencies or departments from the requirements of section 152S of the Act.*

*Recommendation 106*

*Amend regulation 27 of the Regulations to include offences under sections 152S(1) and section 175(1a) of the Act.*

*Recommendation 107*

*Amend section 122 of the Act to:-*

- a) expand the definition of a regulated premises to include public events where entertainment is at, or from which, can be viewed or heard; and*
- b) remove the reference to a building or covered enclosure to enable outdoor events to be captured.*

**Appropriateness of Penalties contained in the Act**

*Recommendation 108*

*Amend section 167 of the Act on increase the modified penalty to 20% of the maximum fine.*

*Recommendation 109*

*The Minister monitor the outcomes and effectiveness of the Demerit Point System and 5 Star Rating systems which have been introduced in Victoria with a view to introducing similar systems in Western Australia.*

## Exemptions

### *Recommendation 110*

*Amend the Regulations to provide for an exemption for the sale and supply of liquor by accredited tour operators in prescribed circumstances.*

---

## Transparency and Process

### *Recommendation 111*

*Section 33 of the Act should remain unchanged.*

### *Recommendation 112*

*The Directors policies and other guidance material be comprehensively reviewed and revised to ensure they are accurate and provide practical, clear and concise information for stakeholders.*

### *Recommendation 113*

*The licensing authority continue with and expand the process of consulting stakeholders and industry representatives in relation to proposed changes to the Director's policies.*

### *Recommendation 114*

*The licensing authority review and revise the current application processes and procedures in collaboration with all stakeholders*

### *Recommendation 115*

*The licensing authority work in consultation with stakeholders and industry participants to establish agreeable Key Performance Indicators for the licensing authority.*

### *Recommendation 116*

*The licensing authority should publish a quarterly report of application statistics including but not limited to pending applications, applications granted and refused, time taken to process applications and whether these are within agreed timeframes (KPI's) and the number of interventions and by whom.*

### *Recommendation 117*

*An online tracking system should be a mandatory feature of the information technology program being developed by the licensing authority.*

### *Recommendation 118*

*The Liquor Industry Advisory Committee, WALGA and the licensing authority progress the implementation of parallel processing of applications as a matter of priority.*

### *Recommendation 119*

*The licensing authority review and revise the current application processes and procedures for applications relating to large events.*

### *Recommendation 120*

*The licensing authority introduce a system which allows the outcomes of previous events to be taken into account when subsequent applications are lodged.*

### *Recommendation 121*

*The licensing authority, in consultation with the Country Racing Association of WA and WA Police, develop a policy in relation to the requirement for licensed crowd controllers at major race club events.*

*Recommendation 122*

*Amend section 81 of the Act to enable, unless the Director otherwise determines, the removal of a licence within 500 metres of the existing premises to be dealt with administratively.*

*Recommendation 123*

*Amend section 69(12) of the Act so the Commissioner of Police is required to lodge a notice of intervention not later than the last day on which objections should be lodged, or with leave of the Director, before the day appointed for the hearing of the application.*

*Recommendation 124*

*The Commissioner of Police and the Executive Director Public should publish a report outlining the body of knowledge on the impact of alcohol on public health and the agreed commonly accepted level of harm in the community. This report should then be considered as part of each application where an intervention is lodged, together with specific submissions demonstrating the impact to the local community in which the premises is located.*

*Recommendation 125*

*The licensing authority publish details of the interventions lodged in each financial year in the Department of Racing, Gaming and Liquor Annual Report.*



---

## Technical Amendments

### Recommendation 126

*The licensing authority review the content and layout of the section 39 and section 40 certificate forms.*

### Recommendation 127

*The licensing authority and the Western Australian Local Government Association undertake a program to educate local government authorities in their roles, responsibilities and capacity for participation under the Act.*

### Recommendation 128

*The licensing authority's information technology system should contain the functionality to integrate with local government authorities, WA Police and the Executive Director Public Health.*

### Recommendation 129

*Combine the provisions of section 36A and 65A into one section of the Act.*

### Recommendation 130

*The licensing authority's new information technology should contain the functionality to enable individuals to update their details in the system with the additional functionality for the system to notify the relevant officer in the licensing authority for appropriate action.*

### Recommendation 131

*Amend section 37A of the Act to require an individual to notify the Director of a conviction in writing.*

### Recommendation 132

*Amend section 103A of the Act to specify the register:-*

- a) must be retained for a period of four years; and*
- b) may be maintained in an electronic format.*

### Recommendation 133

*WA Police should not take into account the number of 'refused entry' or 'managed drunk' incidents when examining and reporting on the number of incidents at a licensed premises, as this should be seen as a positive measure by the licensee and should not be seen as an incident of concern.*

### Recommendation 134

*Section 116A of the Act be amended to allow for the licensee's incident register and the crowd controller agent incident register to be maintained as one register.*

### Recommendation 135

*Section 116A of the Act/Regulation 18EB of the Regulations be amended to specify that the incident register may be maintained in an electronic form, provided it is accessible at all times as required by subsection (3).*

### Recommendation 136

*Section 116A of the Act be amended to specify that licensees must retain the incident register for four years.*

*Recommendation 137*

*The Minister should monitor the outcomes of the National Alcohol Sales Data Project, with a view to improving the accuracy of the data collected.*

*Recommendation 138*

*Amend the Act and or Regulations to ensure that sales data in relation to cider is collected.*

*Recommendation 139*

*The licensing authority's new information technology system should contain the functionality to allow licensee's to lodge liquor returns online or electronically.*

*Recommendation 140*

*Amend section 160 of the Act to reflect the provisions of section 16 of the Criminal Investigation (Identifying People) Act 2002.*

### **Liquor Industry Advisory Council**

#### *Recommendation 141*

*Amend the Act to establish a Liquor Industry Advisory Committee comprising a person nominated by the Minister as independent chairperson, the Director, the Commissioner of Police, the Executive Director Public Health, a representative each from the Australian Hotels Association (WA) and the Liquor Stores Association of WA and three experts in matters relating to liquor licensing who shall be nominated for appointment by the Minister after consultation with the bodies referred to above.*

## Appendix 1 – Submissions

- 1 City of Belmont
- 2 Beaten Track Brewery
- 3 Irma Reberger
- 4 William S Booth
- 5 Jackson Cleary
- 6 Maxwell Szulc
- 7 School Drug Education & Road Aware (SDERA)
- 8 Helen Randall
- 9 Restaurant & Catering Association
- 10 McKails General Store
- 11 Phoenix Beers
- 12 150 East Riverside Bar Restaurant
- 13 Broadwater Resort Apartments South Perth
- 14 Chefz Table
- 15 Sea Gardens Café & Restaurant
- 16 Walpole Country Club Inc
- 17 AJS Management (WA) Pty Ltd
- 18 Australasian Association of Convenience Stores Ltd
- 19 The Generous Squire
- 20 Darby Park Serviced Residences
- 21 Local Drug Action Groups Inc
- 22 Esperance Motor Hotel
- 23 Billabong Brewing
- 24 Curtin Student Guild Tavern
- 25 Richard Roberts
- 26 Albies Bar & Bistro
- 27 Eaton Tavern
- 28 Paul McGurgan
- 29 Carmelina McQueen
- 30 Kevin Moran
- 31 Chapters on the Terrace
- 32 Country Racing Association
- 33 Holiday Inn Perth City Centre
- 34 The Newport Hotel
- 35 Torch Bar
- 36 Moora Hotel
- 37 Broken Hill Hotel
- 38 Western Australian Brewers Association
- 39 Perth Racing
- 40 ALH Group
- 41 FJM Property
- 42 Anthony McGrath
- 43 Kings Perth Hotel
- 44 Dr John Sainken
- 45 Bremer Bay Resort
- 46 WA Police (LED)
- 47 International Beer Shop Pty Ltd
- 48 P Gillies
- 49 The Recreation Hotel & Sheffield's
- 50 Country Comfort Inter City Hotel

- 51 Local Drug Action Groups Inc - Mullewa
- 52 Brewers Association of Australia & New Zealand
- 53 The Court Hotel
- 54 WA Nightclubs Association
- 55 Rockingham/Kwinana Local Drug Action Group
- 56 Kalgoorlie Local Drug Action Group
- 57 City of Fremantle
- 58 Augusta Hotel Motel
- 59 Environmental Health Australia (WA) Incorporated
- 60 Robert Palandri
- 61 Kalbarri Edge Resort
- 62 John Jakobson
- 63 Brian Humphreys
- 64 Fitzroy River Lodge
- 65 Crossing Inn
- 66 Committee for Perth
- 67 Campari Australia Pty Ltd
- 68 Honourable Ken Baston MLC
- 69 Herbert Smith Freehills
- 70 Esperance Local Drug Action Group
- 71 Local Drug Action Groups Inc
- 72 City of Cockburn
- 73 Australian Drug Foundation
- 74 JW & DL Sadler
- 75 Shire of Leonora
- 76 Mullaloo Beach Hotel
- 77 Odin Tavern
- 78 Red Bull Australia Pty Ltd
- 79 Ngaanyatjarra Aboriginal Corporation
- 80 National Drug Research Institute
- 81 Coca-Cola Amatil (Aust) Pty Ltd
- 82 WA Sports Federation (WASF)
- 83 WA Network of Alcohol & Other Drugs
- 84 Clubs WA
- 85 Commissioner for Children and Young People WA
- 86 Cancer Council Western Australia
- 87 Injury Control Council of Western Australia's
- 88 Business Improvement Group of Northbridge
- 89 Mike and Irene Bell
- 90 McCusker Centre for Action on Alcohol and Youth
- 91 Youth Affairs Council of WA
- 92 Swan Valley & Regional Winemakers Association
- 93 Small Bar Association of WA Inc
- 94 Dan Mossenson
- 95 Wines of Western Australia
- 96 Colonial Leisure Group
- 97 Honourable Wendy Duncan MLC
- 98 Healthway
- 99 TIPS
- 100 Alcohol & Other Drugs Council of Australia

101	Lion
102	Department of Corrective Services
103	University of Western Australia
104	The Law Society of Western Australia
105	ABAC Management Committee
106	Liquorland (Australia) Pty Ltd
107	Free TV Australia
108	Publishing Advertising Advisory Bureau
109	Distilled Spirits Industry Council of Australia
110	Liquor Stores Association of WA Inc
111	Department of Sport and Recreation
112	Executive Director Public Health
113	Department of Education
114	Dr Janet Woollard
115	Australian Association of National Advertisers
116	Australian Hotels Association (WA)
117	Office of Road Safety
118	Small Business Development Corporation
119	Metropolitan Redevelopment Authority
120	Foundation for Alcohol Research and Education
121	Drug and Alcohol Office (Western Australia Alcohol and Drug Authority)
122	Mental Health Commission
123	Department for Child Protection
124	City of Rockingham
125	City of Perth
126	Margaret Fitzpatrick
127	Woolworths Limited
128	G D Crocket
129	Diageo Australia
130	Marninwarntikura Women's Resource Centre
131	Perth Social Club
132	Gabriel Pana
133	Department for Communities
134	John Bowler
135	Aboriginal Affairs Coordinating Committee
136	Tourism Western Australia
137	South Perth Local Drug Action Group
138	Timothy R Lane
139	Samantha Menezes
140	Tourism Council WA
141	Porongurup Promotions Association
142	Amelia Ioannides
143	Joan Elizabeth Booth
144	Peter Abetz MLA
145	Parents and Friends Federation of WA
146	Malcolm Burton
147	Stuart Holloway
148	Liquor Wholesalers Association of WA
149	Australian Dental Association (WA Branch) Inc

## Appendix 2 – Consultation Meetings

### **Australian Hotels Association (NSW)**

Paul Nicalou, Chief Executive  
John Green, Director Policing, Regulations & Membership

### **Australian Hotels Association (VIC)**

Brian Kearney, Chief Executive Officer

### **Australian Hotels Association (WA)**

Bradley Woods, Chief Executive Officer/Executive Director  
Paul Brockschlager, Deputy Chief Executive Officer  
Victoria Jackson, Government Relations Manager

### **Business Improvement Group of Northbridge**

Michael Keiller, Director, Mustang Bar & Northbridge Brewing Company  
Ben Rasheed, Group General Manager, Marlin Group

### **Clubs WA**

Peter Seaman, Executive Director  
Jessica Patterson, Lavan Legal  
Dan Mossenson, Lavan Legal

### **Country Racing Association**

John Biggs, Secretary  
Doug Milner, Manager Broome Turf Club Inc  
Kevin Looby

### **Department of Health, Public Health and Clinical Services**

Dr Tarun Weeramanthri, Executive Director Public Health  
Dr Revle Bangor-Jones, A/Director, Disaster Management Regulation and Planning

### **Department of Racing, Gaming and Liquor**

Barry Sargeant, Director of Liquor Licensing  
Peter Minchin, Director Administrative Law

### **Drug and Alcohol Office (Western Australia Alcohol and Drug Authority)**

Neil Guard, Executive Director, Drug and Alcohol Office  
Professor Gary Geelhoed, Chairperson, WA Alcohol and Drug Authority Board  
Professor Steve Allsop, Deputy Chairperson, WA Alcohol and Drug Authority Board

### **G D Crocket**

Gavin Crocket, Solicitor and Director, Cullen Babington Macleod  
Catroina Macleod, Solicitor and Director, Cullen Babington Macleod

### **Hospitality New Zealand**

Bruce Robertson, Chief Executive

### **Liquor Commission of Western Australia**

Jim Freemantle, Chairperson  
Eddie Watling, Deputy Chairperson  
Seema Saxema, Executive Officer

### **Liquor Stores Association of WA Inc**

Lindsay James, Executive Director  
Lou Spagnolo, President

### **Liquorland (Australia) Pty Ltd**

Alison Tehan, Licensing and Regulatory Manager, Coles Liquor

### **Marninwarntikura Women's Resource Centre**

Emily Carter, Deputy Chief Executive Officer  
Dr James Fitzpatrick, Paediatrician, Princess Margaret Hospital  
Jadnah Davies, Health Worker, Fitzroy Crossing

### **New South Wales Independent Liquor & Gaming Authority**

David Greenhouse, Chief Executive  
Bryce Wilson, General Counsel  
Sharyn Brownlee, Authority Member  
Alison Waring, Manager Liquor Licensing

**New South Wales Police**

Patrick Paroz, Superintendent/Commander, Drug & Alcohol Coordination

**New South Wales Small Bar Association**

Martin O'Sullivan, President

**New Zealand Alcohol Regulatory and Licensing Authority**

Bruce Holmes, Secretary

Bryan Smith, Policy

Matt Langworthy, Operations Manager

**New Zealand Institute of Licensing Inspectors**

Murray Clearwater, President

**New Zealand Police**

Ben Offner, Inspector, National Alcohol Harm Prevention

**Professor Sir Ian Gilmore**

Healthway Visiting Fellow, Chair of UK Alcohol Health Alliance, Member British Medical Journal Group Board, President of British Society of Gastroenterology

**Restaurant & Catering Australia**

John Hart, Chief Executive Officer

Justin Pleass, Legal Counsel/Policy Manager

**Small Bar Association of WA Inc**

David Durack, President

Tim Brown, Vice President

Dan Mossenson, Founder and Secretary

**The McCusker Centre for Action on Alcohol and Youth**

Professor Mike Daube, Director

Julia Stafford, Executive Officer

**Tourism Council WA**

Evan Hall, Chief Executive Officer

**Victorian Commission for Gambling and Liquor Regulation**

Jane Brockington, Chief Executive Officer

Adam Toma, Director Licensing & Approvals

Samantha Adrichem, Manager Liquor Licensing

Mark Windich, Director Compliance and Audit

**Victorian Police**

Brett Guerin, Superintendent - Transit & Public Safety Command

Jenny Pavlou, Legal

Peter Harmen, Liquor Licensing Police

Brett Ward, Razon Taskforce

**WA Nightclubs Association**

Tim Brown, President

Simon Barwood, Vice President

**Western Australian Police**

Karl O'Callaghan, Commissioner of Police

Jim Migro, Detective Superintendent, Licensing Enforcement Division

Mark Twamley, Detective Senior Sergeant, Officer in Charge, Liquor Enforcement Unit

**Wines of Western Australia**

Redmond Sweeney, President

Nigel Gallop, Fraser Gallop Estate

**Woolworths Limited**

Shane Tremble, Licensing and Acquisitions Manager

Andrew Wilsmore, Manager Public Affairs



## Appendix 3 - Australian National Council on Drugs Alcohol Action Plan

Recommendations of the Australian National Council on Drugs [Alcohol Action Plan](#):-

- 1. Increase informed public engagement with the harms associated with alcohol, by:-**
  - 1.1 *Promoting public understanding of the range of evidence-based options to prevent and respond to alcohol-related harm.*
  - 1.2 *Promoting better public understanding of the harms to others caused by alcohol consumption to ensure informed community debate about effective responses, especially harms to children and the costs of individual alcohol use borne by communities.*
  
- 2. Obtain data on alcohol consumption and harms essential to informing effective responses that have currency and are sensitive to change, by:-**
  - 2.1 *Encouraging each State and Territory to collect and report alcohol sales data that allow local-level analysis.*
  - 2.2 *Implementing policies in each jurisdiction to increase the collection of information about alcohol's involvement with police incidents, and to standardise such reporting nationally.*
  - 2.3 *Initiating procedures to collate and analyse data on alcohol-related emergency department admissions across Australia.*
  - 2.4 *Including questions on the concurrent use of alcohol with other drugs in future National Drug Strategy Household Surveys.*
  
- 3. Support local-level interventions in alcohol-related harms, by:-**
  - 3.1 *Encouraging States and Territories to ensure that liquor licensing legislation across all jurisdictions gives prominence to public health and safety considerations.*
  - 3.2 *Ensuring that there is opportunity for local government and other local community stakeholders to be involved in decision-making processes without undue difficulty, and that communities are aware of their rights in these regards.*
  - 3.3 *Ensuring access to local relevant data on alcohol consumption and related harm.*
  - 3.4 *Building the capacity of local community stakeholders (e.g. local government) to respond effectively to prevent alcohol-related harm.*
  
- 4. Recognise the critical role of regulating the availability of alcohol in reducing alcohol-related harms, by:-**
  - 4.1 *Give further consideration to implementing the recommendations regarding alcohol taxation made in the Australia's Future Tax System review.*
  - 4.2 *Developing liquor licensing procedures that consider outlet density, closing hours, and related risks and harms, drawing on local evidence and with the input of the local community.*
  - 4.3 *Monitor and enforce compliance with responsible service of alcohol laws with meaningful penalties.*
  
- 5. Regulate alcohol advertising, promotions and sponsorship, by:-**
  - 5.1 *Initiating a parliamentary review of the impact of alcohol advertising, promotions and sponsorship on young people.*
  - 5.2 *Give further consideration to establishing an independent or government body to review, adjudicate and regulate alcohol advertising and promotions.*

**6. Enhance treatment responses for the whole population and for specific high-risk groups, by:-**

- 6.1 *Basing funding decisions on a system that identifies local needs and resources, and identifies and responds to service gaps for high-risk populations, with a view to developing access to a range of evidence-based treatment options.*
- 6.2 *Considering approaches for drinkers not currently engaged with the treatment system, such as opportunistic and brief interventions within the primary healthcare system or in other health and welfare services where higher rates of alcohol-related problems have been noted (such as homelessness, child protection and mental health).*
- 6.3 *Developing and implementing online or other e-health promotions incorporating self-monitoring, provision of information on personal strategies for reducing consumption, and referral to treatment where appropriate; with particular attention to reaching those who would not normally access treatment.*
- 6.4 *Promoting awareness of, and where indicated adoption of, pharmacotherapy treatments for alcohol dependence.*
- 6.5 *Expanding the availability of police and court diversions into treatment for minor offences committed when intoxicated or in association with harmful alcohol use.*
- 6.6 *Enhancing availability of and access to child- and youth-friendly services as well as services to support and assist parents seeking help in relation to their children's alcohol use.*

**7. Address alcohol-related problems among older Australians, by:-**

- 7.1 *Undertaking further research into alcohol use among Australians aged over 65, including identifying patterns of use, age-specific risks and harms, and implications for prevention and treatment.*
- 7.2 *Developing an evidence base that enables the development of alcohol consumption guidelines for older Australians.*
- 7.3 *Introducing strategies to alert health professionals and older Australians themselves to the risks associated with alcohol among older people as well as appropriate interventions.*

**8. Address alcohol consumption and harms among young people, by:-**

- 8.1 *Evaluating the impact of secondary supply legislation.*
- 8.2 *Encouraging informed community debate on the minimum legal purchase age for alcohol.*
- 8.3 *Encouraging broad prevention strategies such as increasing school engagement and awareness of the role families and parents can have in reducing alcohol-related harm, and investing in strategies consistent with this role.*
- 8.4 *Developing and evaluating the impact of specific treatments for young people experiencing alcohol-related problems.*

## **Appendix 4 – New South Wales Environment and Venue Assessment Tool**

## Environment and Venue Assessment Tool (EVAT)



Trade & Investment  
Office of Liquor, Gaming & Racing

This fact sheet describes the Environment and Venue Assessment Tool, which will be trialled for new liquor licence applications in the City of Sydney local government area for twelve months from early 2013.

### Background and context

The Office of Liquor Gaming and Racing engaged the Allen Consulting Group to undertake research into the cumulative impact of licensed premises in NSW. The research comprised two phases. Phase 1 investigated the factors that contribute to the cumulative impact of licensed premises and provided the evidentiary base for Phase 2 of the research: the development of a tool to guide liquor licensing decisions.

In Phase 1, the Allen Consulting Group undertook an exhaustive review of the national and international literature, extensive statistical analysis, and a comprehensive consultation process. This consultation process involved NSW Police, local councils, other government agencies, industry groups, liquor accords, business organisations and community groups. The Phase 1 report identifies the economic and social impacts of licence density and outlines the contributing external and market risk and mitigation factors.

The Environment and Venue Assessment Tool (EVAT) is based on the large body of evidence collected under Phase 1. It recognises the broad range of net impacts of liquor licence density, accounts for a wide range of risk factors, and supports risk mitigation.

The EVAT provides two overall risk assessments: location risk (which includes both external and market factors) and venue risk. The tool provides a consistent and transparent basis on which to make licensing decisions.

The EVAT will be trialled for new liquor licence applications in the City of Sydney local government area from early 2013. A further decision regarding the EVAT's use will be made following an evaluation of the twelve month trial and release of the research findings.

### How the EVAT works

#### Risk Assessment

The EVAT provides weighted risk assessments for individual liquor licence applications based on several risk factors identified by research into the cumulative impact of licensed premises in NSW.

The EVAT provides two weighted risk assessments – one for location risk, and one for venue risk. Risk assessments are either low, moderate, high or extreme.

All individual risk factors in the EVAT are weighted as High or Low, based on the strength of evidence identified by the Allen Consulting Group. Those factors weighted as 'High' have three times the contribution to the final weighted risk assessments as those factors weighted as Low.

### Location Risk Assessment

Location risk consists of both external and market risk factors.

External risk factors are those that are beyond the control of either venue operators or the market (e.g. infrastructure and socio-demographic features).

The external risk factors included in the EVAT are:

- Rate of alcohol-related assaults
- Rate of offensive behaviour
- Presence or absence of late night transport
- Police risk assessment
- Council risk assessment.

Market risk factors are those that are related to the liquor sector but are not necessarily the consequence of an individual operator (e.g. a large concentration of premises with extended trading hours).

The market risk factors included in the EVAT are:

- Radial estimate of liquor licence density (i.e. average number of liquor licences within a 1km radius)
- Proportion of high risk venues (i.e. hotel licences)
- Proportion of diversifying venues (e.g. on-premises licences without primary service authorisations)
- Proportion of venues with late night trading.

# Environment and Venue Assessment Tool (EVAT)



## Venue Risk Assessment

Venue risk factors are those that are specifically related to an individual liquor licence application (e.g. licence type).

The venue risk factors included in the EVAT are:

- Licence type
- Patron capacity
- Extended trading
- Liquor Accord membership
- Other mitigation strategies.

Different licence types are given different risk assessments in the EVAT.

- Hotel = High
- Club = Moderate
- On premises with primary service authorisation = Moderate
- On premises without primary service authorisation = Low
- Packaged = Low.

## Example of EVAT risk assessment

The following table provides an example of how risk assessments and weightings for individual factors in the EVAT contribute to weighted location and venue risk assessments for a particular liquor licence application. This example reflects an application for a hotel licence with a patron capacity above 160 and extended trading hours in a moderate risk location within the Sydney metropolitan area.

Category	Factor	Weight	Risk assessment	Weighted risk assessment
Location risk - external	Assaults	High	Moderate	
	Offensive behaviour	High	Moderate	
	Late night transport	Low	Mitigating	
	Police assessment	Low	Moderate	
	Council assessment	Low	Moderate	
Location risk - market	Radial estimate of density	High	High	Moderate
	Proportion of high risk venues	Low	Low	
	Proportion of diversifying venues	Low	Mitigating	
	Proportion of late night trading venues	High	Low	
Venue risk	Licence type	High	High	High
	Patron capacity	High	High	
	Extended trading	High	High	
	Liquor Accord membership	Low	Mitigating	
	Other mitigation strategies	Low	Low	

In the above example, the application would receive an overall location risk assessment of 'Moderate' and an overall venue risk assessment of 'High'.

Importantly, these risk assessments only form part of the decision-making process for liquor licence applications. These risk assessments are only relevant to liquor licence density (i.e. the clustering of licensed premises within a geographic area) and do not provide a definitive response to an application. Community Impact Statements and submissions are still a critical part of the decision-making process.



# FLOW CHART

## Liquor licence application process

showing role of the Environment and Venue Assessment Tool (EVAT)



Trade & Investment

Office of Liquor, Gaming & Racing

### Under the liquor laws, the Authority must not grant a licence unless the Authority is satisfied that:

(a) the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, and

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

(c) if development consent is required under the Environmental Planning and Assessment Act 1979 that development consent or approval is in force.

### To facilitate the Authority's consideration of the impact that the granting of licences, authorisations or approvals will have on the local community, the liquor laws provide a process in which the Authority is made aware of:

(a) the views of the local community, and

(b) the results of any discussions between the applicant and the local community about the issues and concerns that the community may have in relation to the application.

For applications that require a community impact statement, the CIS must be prepared in accordance with the regulations and any requirements of the Authority.

### The Authority must not grant a licence, authorisation or approval unless the Authority is satisfied, after consideration of:

(a) the community impact statement, and

(b) any other matter the Authority is made aware of during the application process (such as by way of reports or submissions), that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.

### Community impact statement\*

Applicant prepares CIS outlining issues/concerns and applicant's response

Applicant receives feedback from stakeholders – discusses any issues/concerns, conducts further consultation

Applicant provides CIS notice to stakeholders (police, local council, nearby residents etc.)

Application lodged with ILGA, with community impact statement (CIS) if required

Application advertised and notice provided to police, local council, and residents

Police, local council, residents, Health, and any other person/organisation can make submissions to the Authority

### Director General Submission#

NSW Trade & Investment assessment team prepare report with recommendations to ILGA

Recommendations may include:

- Objections/ no objections
- Licence conditions
- General recommendations eg. request for further info

Report sent to assessment team for further investigation based on EVAT rating (during the trial low risk applications will be included for evaluation purposes)

Application details entered into EVAT – risk profile calculated for venue and location

NSW Trade & Investment staff prepare report on applications requiring a CIS and high risk applications for the Authority to consider

Authority considers applications and makes a decision to grant or refuse application

Considerations include:

- Community impact statement
- Submissions received from Council, Police, Health, residents & other individuals/organisations
- Submission received from Director General, NSW Trade & Investment in respect of compliance risk
- Data e.g. data contained in the 2009 Social Profile Report (published by OLGR)

\*Community impact statement is prepared prior to application being lodged only if required.

#Director General Submission is prepared under section 42 of the *Liquor Act 2007*

## Appendix 5 – Education and Health Standing Committee Report No 10 - Alcohol: Reducing the Harm and Curbing the Culture of Excess Western Australian Government Response

Recommendations	Response
<p><b>Recommendation 4</b> The Director of Liquor Licensing in his annual report should include information on the profitability of the State's liquor industry to assist the State Government assess the industry's capacity in paying for alcohol-related harm in Western Australia.</p>	Not Supported
<p><b>Comment:</b> The collection of information on the economy and economic indicators is not an appropriate responsibility or mandate of the licensing authority.</p>	
<p><b>Recommendation 5</b> The Minister for Mental Health and the Minister for Racing and Gaming provide to Parliament an annual report on the results of the collection and analysis of the previous year's Western Australian alcohol consumption data.</p>	Not Supported
<p><b>Comment:</b> Contrary to information in the Report, data is not collected by the licensing authority in relation to alcohol consumption. Wholesale sales data, (i.e. data relating to the sale of liquor by wholesalers to retailers for on-selling) is collected on an annual basis in relation to WA wholesales only. Because this information is collected from WA wholesalers only, it is only an indicative figure of alcohol wholesale-to-retail sales.</p>	
<p><b>Recommendation 6</b> The Minister for Racing and Gaming table in Parliament by December 2011 draft amendments to the Liquor Control Act 1988 to make 'protecting and improving public health' the primary object of the Act.</p>	Not Supported
<p><b>Comment:</b> The primary object of the Act -- set out in section 5(1)(b) - to <i>minimise harm or ill-health caused to people, or any group of people, due to the use of liquor</i> is considered to be appropriate in the context of the scope and purpose of the Act. Section 69 of the Act then recognises the authority of the Executive Director Public Health and provides that authority with powers to introduce evidence in proceedings, relating to harm or ill-health caused due to the use of liquor.</p>	
<p><b>Recommendation 7</b> The Minister for Racing and Gaming table in Parliament by December 2011 draft amendments to the Liquor Control Act 1988 to allow the Police to more successfully prosecute a drunken person. This could be by:-</p> <ul style="list-style-type: none"> <li>• defining a blood alcohol level for intoxication or amend section 3A(1)(b) to provide examples of impairment resulting from alcohol; and</li> <li>• the clarification of any other problems related to the failure to effectively prosecute drinkers for being drunk on a licensed premise.</li> </ul>	Noted
<p><b>Comment:</b> Arriving at an enforceable definition of drunkenness is an ongoing issue. However, using blood alcohol content (BAC), as a definitive indicator is not considered practical as BAC relates more to measuring the impairment to motor skills (eg driving skills) than to behaviour or the level of drunkenness. The definition will be re-assessed when next the Liquor Control Act undergoes major consultative review.</p>	
<p><b>Recommendation 8</b> The Minister for Racing and Gaming table in Parliament by December 2011 a review of the current exemptions in section 6 of the Liquor Control Act 1988 and remove those which are historical.</p>	Noted
<p><b>Comment:</b> This matter will be considered when next the Liquor Control Act undergoes major consultative review</p>	
<p><b>Recommendation 9</b> The Minister for Racing and Gaming table in Parliament by December 2011 draft amendments to the Liquor Control Act 1988 to clarify the lines of authority and accountability to prevent alcohol-caused harm in licensed premises and in the broader community.</p>	Not Supported
<p><b>Comment:</b> It is considered that the current provisions of the Act (principally part 6 and section 155) provide adequate accountability and lines of authority. This is an operational matter that is currently being addressed by the Director of Liquor Licensing and the Police.</p>	

<p><b>Recommendation 10</b> The Minister for Racing and Gaming table in Parliament by December 2011 draft amendments to the Liquor Control Act 1988 that would raise the level of fines issued by the Police or the Department of Racing, Gaming and Liquor. These fines to licensees or their managers to be increased from the current level of \$1,000 to a minimum penalty of \$10,000. The fines should be based on the number of patrons and wholesale sales data.</p>	Noted
<p><b>Comment:</b> The appropriateness of penalties is reviewed on each occasion the Act undergoes major review and it is expected that penalties will again be considered when next the Liquor Control Act undergoes major consultative review</p>	
<p><b>Recommendation 11</b> The Minister for Racing and Gaming table in Parliament by December 2011 draft amendments to the Liquor Control Act 1988 that would ensure that any fines issued by the Police or the Department of Racing, Gaming and Liquor to licensees or their managers that remain unpaid after three months result in the suspension of the licensee's liquor licence.</p>	Not Supported
<p><b>Comment:</b> Offenders are entitled to challenge infringements through the courts which can take several months.</p>	
<p><b>Recommendation 12</b> The Minister for Racing and Gaming table in Parliament by December 2011 draft amendments to the Liquor Control Act 1988 that ensures if more than three fines or suspensions have been issued for failing to serve alcohol in a responsible manner over the past 12 months, licences can be revoked by the Director of Liquor Licensing.</p>	Not Supported
<p><b>Comment:</b> Section 95 currently provides that proper cause for disciplinary action exists if a licensee has been issued with an infringement notice. It is currently a matter for the Liquor Commission to determine whether there is sufficient reason to make out that complaint and discipline the licensee. Amongst the powers of discipline are powers to suspend or cancel the operation of the licence.</p>	
<p><b>Recommendation 13</b> The Minister for Racing and Gaming table in Parliament by December 2011 draft amendments to the Liquor Control Act 1988 to allow the Police to conduct 'controlled purchasing operations' to assist in the identification and prosecution of licensees suspected of breaching the Act by selling alcohol to minors.</p>	Not Supported
<p><b>Comment:</b> Government does not support the use of minors in police enforcement operations.</p>	
<p><b>Recommendation 14</b> The Minister for Racing and Gaming and the Minister for Health table in Parliament by December 2011 draft amendments to the Liquor Control Act 1988 that would establish a Liquor Control Advisory Council. The Council shall provide an annual report to Parliament on legislative changes to improve the monitoring, effectiveness and compliance with the Liquor Control Act 1988 and any other Acts to help decrease alcohol-related harm in Western Australia.</p>	Not Supported
<p><b>Comment:</b> The Drug and Alcohol Strategic Senior Officers Group, supported by the Drug and Alcohol Office, is a cross agency group formed to provide a whole-of-Government approach to addressing drug and alcohol issues. This Group is able to consult widely with industry and community groups.</p>	
<p><b>Recommendation 15</b> The new Liquor Control Advisory Council should be chaired by a Ministerial nominee. It should include representatives from the Departments of Health, Mental Health, and Racing, Gaming and Liquor; and representatives from the Police, National Drug Research Institute, the McCusker Centre for Action on Alcohol and Youth, Healthway, the Health Consumers' Council, the Australian Medical Association, the College of Nursing (WA) and a Professor of Public Health.</p>	Not Supported
<p><b>Comment:</b> See Recommendation 14</p>	
<p><b>Recommendation 16</b> By June 2012, the Minister for Racing and Gaming and the Minister for Police increase the number of staff available to effectively enforce key provisions of the Liquor Control Act 1988, including whether alcohol is being served responsibly on licensed premises.</p>	Noted
<p><b>Comment:</b> Resourcing (where required to meet legislative or policy objectives) is a matter for the budgetary process. Deployment of police officers is an operational issue.</p>	



<p><b>Recommendation 17</b> <i>The revenue for licensing administration and inspection tasks should be obtained by increasing fees for licensed premises based on different risk factors, similar to those used in Queensland and Victoria.</i></p>	Noted
<p><b>Comment:</b> The legislative head of power to set, by regulation, licence fees based on risk parameters has recently been established. Implementing such a strategy is a matter to be considered in future annual fees reviews.</p>	
<p><b>Recommendation 18</b> <i>The Minister for Mental Health prepare a discussion paper by December 2012 on the social and economic costs of alcohol on the State's youth. The Minister to seek community input on the question of whether Western Australia should raise over a three-year period the legal drinking age for purchasing and consuming alcohol to 20 or 21 years.</i></p>	Noted
<p><b>Comment:</b> The development of a research and discussion paper could be commissioned to improve the understanding of the social and economic impacts of alcohol in WA, including a focus on youth.</p>	
<p><b>Recommendation 19</b> <i>The Minister for Racing and Gaming table in Parliament by December 2011 amendments to the Liquor Control Act 1988 to insert a clause that a person must not supply alcohol to a minor or a juvenile unless that person has obtained the consent of their parent or legal guardian.</i></p>	Not Supported
<p><b>Comment:</b> Legislative reform of this nature should only be considered as part of a major consultative review of the Liquor Control Act.</p>	
<p><b>Recommendation 20</b> <i>The Minister for Racing and Gaming, as part of the preparation of a discussion paper on the social and economic costs of alcohol on the State's youth, assess the benefits of having a split age limit that would bar alcohol being purchased from an off-licence venue until drinkers are 20 years of age, and report to Parliament by December 2012 on its usefulness in lowering rates of under-age drinking in Western Australia.</i></p>	Not Supported
<p><b>Comment:</b> Current government policy is not to vary the existing age restriction on purchasing or consuming alcohol.</p>	
<p><b>Recommendation 21</b> <i>The Minister for Road Safety table in Parliament by June 2012 a discussion paper on the benefits and costs of lowering the maximum blood alcohol level for drivers to 0.04 grams per 100 millilitres.</i></p>	Not Supported
<p><b>Comment:</b> The Minister for Road Safety does not support the tabling of a discussion paper solely on lowering the BAC to 0.04 grams per 100 millilitres by June 2012 as a review of a range of options is underway. There is evidence that lower blood alcohol concentrations will reduce crash rates. In light of this evidence, the Office of Road Safety (ORS) has commenced a review of a range of options for lower BAC, including but not limited to 0.04 grams per 100 millilitres. As part of this investigation, a research project to gauge the prevalence of alcohol among WA drivers and riders at all BAC levels is planned. This research and the wider review are not likely to be completed by the June 2012 timeframe recommended by the Report. Once complete, the ORS review will be considered by the Road Safety Council and recommendations presented to the Minister for Road Safety and ultimately Parliament for consideration.</p>	
<p><b>Recommendation 23</b> <i>The Minister for Racing and Gaming and the Minister for Planning table in Parliament by December 2011 amendments to the Liquor Control Act 1988 which consider the public health impact of any further increase in liquor outlets, and include a codification system for future outlet density requirements for the planning policies of the State's local government authorities.</i></p>	Noted
<p><b>Comment:</b> Legislative reform of this nature should only be considered as part of a major consultative review of the Liquor Control Act.</p>	
<p><b>Recommendation 24</b> <i>The Minister for Racing and Gaming investigate and report to Parliament by December 2011 on the effectiveness of programs used in other jurisdictions, such as 'Safer Bars', as a way of lowering violent incidents in and around Western Australian licensed outlets.</i></p>	Noted
<p><b>Comment:</b> Programs in other jurisdictions are monitored constantly and State Government liquor licensing authorities meet regularly to share information. Successful initiatives are considered for implementation and this is evidenced in the many legislative reforms to the State's liquor laws in recent years</p>	

<p><b>Recommendation 25</b> The Minister for Health bring to Parliament by December 2011 amendments to the Health (Public Building) Regulations 1992 to repeal regulations 7(4) and 7A(2) so that the existing exemptions are removed for the four very large hotels (Cottesloe Beach Hotel, Ocean Beach Hotel, Aberdeen Hotel and Metro City). The commencement date for the amendment should be 12 months after its adoption by Parliament.</p>	<p>Not Supported</p>
<p><b>Comment:</b> The Liquor Licensing Authority is authorised to place limits on the number of persons that may be accommodated in a licensed premises on a case by case basis. These limits may be more restrictive than the limits included in the Health (Public Buildings) Regulations 1992.</p>	
<p><b>Recommendation 26</b> The Minister for Racing and Gaming table in Parliament by December 2011 amendments to section 97 of the Liquor Control Act 1988 to facilitate the reduction of the permitted hours of trading where data shows that there is a problem with violence and breaches of the Act by licensees.</p>	<p>Not Supported</p>
<p><b>Comment:</b> There is currently sufficient authority in the Liquor Control Act for this to occur</p>	
<p><b>Recommendation 27</b> The Minister for Racing and Gaming table in Parliament by December 2011 amendments to the Liquor Control Act 1988 that delete section 5(1)(c) 'to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State' from its objects.</p>	<p>Not Supported</p>
<p style="text-align: center;">~</p>	
<p><b>Recommendation 28</b> The Minister for Health and the Minister for Mental Health write to their counterparts in other States recommending that the Federal Government implement the 2009 Ministerial Council on Drug Strategy recommendations relating to the phasing out of alcohol promotions from times and placements with high exposure to young people up to 25 years of age.</p>	<p>Noted</p>
<p style="text-align: center;">~</p>	
<p><b>Recommendation 29</b> The Minister for Racing and Gaming table in Parliament by December 2011 amendments to the Liquor Control Act 1988 to further limit alcohol advertising in Western Australia:-</p> <ul style="list-style-type: none"> <li>• outside and inside liquor outlets;</li> <li>• through printed material distributed in letter boxes;</li> <li>• through outdoor advertisements;</li> <li>• inside sporting venues; and</li> <li>• through newspapers and other publications printed and distributed in Western Australia.</li> </ul>	<p>Not Supported</p>
<p><b>Comment:</b> It is considered that, in the absence of Federal controls, such an ad hoc approach to controlling alcohol advertising would be impractical and ineffective.</p>	
<p><b>Recommendation 30</b> The Director General, Department of Racing, Gaming and Liquor use section 65B of the Liquor Control Act 1988 to prohibit discounting of alcohol products such as when they are bought in a package of six, a dozen or a carton.</p>	<p>Not Supported</p>
<p><b>Comment:</b> Section 65B is a regulation making power that relates to promotion activity on licensed premises – not advertising per sé. It is considered that in the absence of Federal controls such an ad hoc approach to controlling alcohol pricing would be impractical and ineffective.</p>	
<p><b>Recommendation 35</b> The Premier report to Parliament by December 2011 on the efforts of the State Government's lobbying of the Federal Government to implement the recommendations of the Australia and New Zealand Food Regulation Ministerial Council's review relating to the national introduction of a health message warning on the labels of all alcohol products.</p>	<p>Noted</p>
<p><b>Comment:</b> The Minister for Health is on the Australia New Zealand Food Regulation Ministerial Council (ANZFRMC) and is currently developing a response to this review (the Blewett Report). ANZFRMC meets in December 2011 to formulate a policy response to the Blewett report.</p>	

<p><b>Recommendation 36</b>  <i>In the absence of Federal Government regulation, the Minister for Health and the Minister for Racing and Gaming table in Parliament by June 2012 amendments to the Liquor Control Act 1988 to introduce a system of health message labelling on alcohol products produced in Western Australia.</i></p>	<p>Not Supported</p>
<p><b>Comment:</b>                  Food labelling is not the domain of the Liquor Control Act. The Australia and New Zealand Standards Code, which includes labelling requirements, is administered by the federal regulatory body Food Standards Australia and New Zealand.</p>	
<p><b>Recommendation 37</b>  <i>The Minister for Racing and Gaming table in Parliament by December 2011 amendments to the Liquor Control Act 1988 making it a condition of liquor licences for drinking glasses to include an indication of the number of standard drinks.</i></p>	<p>Not Supported</p>
<p><b>Comment:</b>                  Given the wide range of alcoholic beverages and alcohol content this is not considered a practical option.</p>	
<p><b>Recommendation 38</b>  <i>As a matter of urgency, the Drug and Alcohol Office or the National Research Drug Institute at Curtin University be provided with funding by the Minister for Mental Health or the Minister for Health to collaborate with Sheffield University to ascertain the appropriate minimum price for alcohol in Western Australia. This outcome of this research be presented as a report to Parliament by April 2012.</i></p>	<p>Not Supported</p>
<p><b>Comment:</b>                  See recommendation 39. Taxation/pricing policy is primarily a Federal Government responsibility.</p>	
<p><b>Recommendation 39</b>  <i>The Minister for Health direct the Department of Health to work with Parliamentary Counsel by December 2011 to enable an amendment to the Public Health Act 1911 to introduce a minimum floor price to prevent the sale in Western Australia of the cheapest forms of alcohol.</i></p>	<p>Not Supported</p>
<p><b>Comment:</b>                  The government believes that the only practical way to effectively control the availability of cheap 'bulk' alcohol is to change the taxation method – see response to recommendation 40.</p>	
<p><b>Recommendation 40</b>  <i>The Premier urgently negotiate with the Federal Government to increase taxes on alcohol products by introducing a tiered volumetric tax in addition to a minimum retail price per standard drink.</i></p>	<p>Noted</p>
<p><b>Comment:</b>                  The issue of replacing the current ad valorem method of taxing alcohol with a volumetric method has been supported by the Western Australian Government at a Federal level on a number of occasions and the State will continue to pursue this issue when the opportunity presents.</p>	
<p><b>Recommendation 41</b>  <i>By December 2011 the Director of Liquor Licensing extend the current section 64 restrictions in the Kimberley and Pilbara limiting the sale of particular alcohol products to all other regions of the State where the annual litres per capita consumption of alcohol is greater than the Western Australian average.</i></p>	<p>Noted</p>
<p><b>Comment:</b>                  The Director of Liquor Licensing is required by law to exercise jurisdiction impartially and is not subject to influence or direction. It is for the Director to determine the appropriateness or otherwise of section 64 liquor restrictions. The imposition of restrictions must be based on evidence that is consistent with the scope and subject of the <i>Liquor Licensing Act 1988</i>.</p>	
<p><b>Recommendation 42</b>  <i>The Minister for Education ensure that drug and alcohol education becomes a mandatory part of the curriculum in all schools, and that schools are encouraged to engage with the School Drug Education and Road Aware program.</i></p>	<p>Supported                  In Principle</p>
<p><b>Comment:</b>                  The Department of Education in collaboration with the Catholic Education Office, the Association of Independent Schools, the Drug and Alcohol Office and the Office of Road Safety is committed to ensuring that young people receive the best possible education related to the dangers of alcohol use through the auspices of School Drug Education and Road Aware (SDERA). The SDERA provides best practice curriculum support materials, professional development, and a statewide consultancy service for all Western Australian schools (in all systems and sectors).                  The Department of Education is also working closely with the Drug and Alcohol Office, and other government and non-government agencies in the Drug and Alcohol Interagency Strategic Framework for Western Australia 2010 – 2015. That the SDERA project has continued to evolve into arguably the nation's leading school drug education provider. The SDERA is</p>	

and will remain the Western Australian Government’s primary strategy for support and delivery of school-based drug education in Western Australia.

Drug and alcohol education is generally provided in all schools through the Health and Physical Education learning area. In addition to providing students with facts and knowledge, studies in the health and physical education learning area also aim to empower students to critically evaluate the opportunities and challenges associated with living in modern society, and teach them how to take action to reduce threats to their health and wellbeing. Students who are able to identify and develop their own attitudes and values are better equipped to make personal and socially responsible decisions related to issues such as alcohol use.

Through its support services for educators, SDERA encourages schools to take a holistic approach to prevention and early intervention by considering a whole school community response to alcohol and drug education; providing a balanced approach to alcohol and drug issues by addressing risk factors and protective factors; and providing an early intervention program for those students whose lives may be touched by drug use. School drug education aims to address potential causes of student alcohol use, as well as seeking to address the consequences in order to promote physical, social and emotional health and wellbeing. Abstinence from illegally using drugs and alcohol underpins all programs.

<b>Recommendation 43</b> <i>The Minister for Education encourage the State’s universities to develop a more comprehensive undergraduate and postgraduate teacher training curriculum in alcohol and drug issues.</i>	<i>Supported</i>
---	------------------

<p><b>Comment:</b>                  Teacher preparation is imperative to support the delivery of effective drug and alcohol education in our schools. The Department of Education representative on the SDERA Steering Committee will strongly advocate for the SDERA project team to increase its (already established) engagement with undergraduate and postgraduate teacher training institutions. At present, SDERA provides services to students at the Joondalup campus of Edith Cowan University. SDERA also offers the Challenges and Choices program online and through open professional development opportunities, which are readily accessible to all students across all universities.</p>	
--	--



