

Australian Hotels Association
WESTERN AUSTRALIA

Submission Liquor Control Act 1988 Review

5 March 2013

This document represents the Australian Hotels Association (WA) submission to the Liquor Control Act 1988 Review.

EXECUTIVE SUMMARY

As the peak industry association, representing the owners and operators of hospitality businesses in Western Australia, the Australian Hotels Association (AHA) provides the attached submission on behalf of our industry.

The AHA recognises the importance of regulatory controls to maintain the adherence to the liquor licensing laws of Western Australia, but we also strongly endorse the principles that encourage individual responsibility and self-control for the consumers of liquor.

This submission encompasses a range of recommendations for amendments to the Liquor Control Act 1988 and attempts to balance the pressures of consumers drinking liquor with the importance of minimising the harm that can occur when individual responsibility is forfeited.

This submission contains recommendations which seek to simplify Western Australia's complex liquor licensing regime to encourage higher levels of investment and confidence in the business of hospitality whilst at the same time, balancing the needs of the community and social interests in the responsible sale, service and consumption of liquor.

In representing the interests of nearly 1,000 hospitality businesses throughout Western Australia, we have provided a substantive range of recommendations and matters for the Liquor Control Act 1988 Review panel to consider.

We encourage this Review to strike a fairer and balanced outcome to address the interests of those selling and supplying liquor, the tourism industry, the requirements of consumers and the overarching premise of ensuring that harm or ill health is minimised due to the use of liquor.

Contents

AUSTRALIAN HOTELS ASSOCIATION (WA)	5
2013 REVIEW OF THE LIQUOR CONTROL ACT 1988	6
EXPLANATION OF THE SUBMISSION FORMAT	7
Issue: The Definition of “Drunk” – Section 3A	8
Issue: The Primary Objects of Liquor Control Act 1988 – Section 5	11
Issue: The constitution of the licensing authority – Section 7 and Section 9	14
Issue: Controlled purchase operations – Section 14 and Section 153	16
Issue: Reference to the Commission Review and Appeals - Section 25(2)(c)	17
Issue: Extended Trading Permits or one-off Extended Trading Permits to be allowed review – Section 25(5)(a)(i)(ii)(iia)	18
Issue: Alcohol availability in petrol stations - Section 36A(2)	19
Issue: Liquor Stores – Adequate Public Needs Test – Section 38	20
Issue: Small bar license – Section 41	21
Issue: Restaurant Licenses – sale of alcohol without a meal – Section 60(4)(ca)	23
Issue: Extended Trading Permits (ETPs) for small bars, hotels and taverns – Section 60(4)(g)	25
Issue: Regional Liquor Store Trading - Section 60(4)(g) and Section 98D	26
Issue: Imposing, varying and cancelling conditions - Section 64	27
Issue: Alcohol advertising and promotion – Section 64(3) and Section 65B	29
Issue: Application Interventions - Sections 64, 69 and 95	30
Issue: Advertising of Applications for Extended Trading Permits or one-off Extended Trading Permits - Section 67	31
Issue: Disciplinary Matters - Section 95(11) and Section 165	32
Issue: Sunday Trading for Licensed Premises – on-premise consumption – Section 98	33
Issue: Managers and Licensees Liabilities and Duties - Section 100, and Section 101	34
Issue: Responsible Practices training register - Section 103A	36
Issue: Movement of Liquor – Section 110(3)	37
Issue: The sale and consumption of liquor - Section 112(1)	38
Issue: Barring Notices - Section 115AA	40
Issue: Register of incidents at licensed premises - Section 116A	41
Issue: Maintain a penalty for the secondary supply of liquor to juveniles – Section 121	43
Issue: Where a juvenile enters or remains on any part of the licensed premises – Section 121(4)	44

Issue: Evidence of Age – Section 126(1)(b)(i) and Regulation 18A	46
Issue: Liquor Licensing Fees – Section 128	47
Issue: A two year time limit for prosecutions under the Act – Section 169	48
Issue: Lockouts - Section 175(1)(ce)	49
Issue: Alcohol ID System	50
Issue: Banning Glassware.....	51
Issue: Defence is provided when all reasonable steps are taken to prevent an offence	52
Issue: Flexibility in liquor laws	53
Issue: Offence provisions in the Liquor Control Act	54
Issue: Offences under the Liquor Control Act to be defined as simple criminal offences	56
Issue: Online Direct Sales License	57
Issue: Patrons to be liable for penalties under the Liquor Control Act in line with the penalties set for licensees.	58
Issue: Remove the offence for patrons taking liquor from a licensed area to another within a licensed premise passing through an unlicensed zone	59

AUSTRALIAN HOTELS ASSOCIATION (WA)

The Australian Hotels Association (WA) (AHA) is one of the most well respected industry associations in Western Australia.

Founded in 1892, we represent more than 80% of the hotel, hospitality and accommodation industry in WA. The AHA's membership includes accommodation hotels and resorts, suburban and country pubs and taverns, convention and function centres, boutique breweries, small bars and large restaurants.

Over 40,000 West Australians are directly employed in the State's hotel and hospitality industry. Annually \$7.5 billion is spent in hospitality and tourism industries in WA.

Our role is to represent the business and commercial interests of our members, promote the responsible service, sale and consumption of alcohol, provide quality training services and to provide industry networking and marketing opportunities.

The Australian Hotels Association (WA) recognises the importance of working with government departments and stakeholders and we have a demonstrated history of achievement in working with national, state and local government agencies, law enforcement agencies, educators, universities, retailers, transport and road safety organisations.



2013 REVIEW OF THE LIQUOR CONTROL ACT 1988

The AHA welcomes the opportunity to make this submission to the 2013 Review of the Liquor Control Act 1988 (the Act).

The liquor licensing regime in Western Australia is a complex regulated system that can better balance the needs of the community, business and social interests which provide a vibrant and diverse hospitality industry for WA.

As a general principle the AHA believes regulatory controls need to be premised on individual responsibility. This principle is at the core of Australian law and was best expressed by the High Court of Australia in its definitive decision on licensee liability in *C.A.L. No 14 Pty Ltd v Scott* [2009] HCA 47:

“Balancing the pleasures of drinking with the importance of minimising the harm that may flow to a drinker is also a matter of personal decision and individual responsibility. It is a matter more fairly to be placed on the drinker than the seller of drink. To encourage interference by publicans, nervous about liability, with the individual freedom of drinkers to choose how much to drink and at what pace is to take a very large step.”

The regulations, the licensing guidelines and the Liquor Control Act 1988 have all been strengthened in the past 10 years, with a number of amendments from 1999 through to more recently in 2006–07, that have seen the level of penalties and the onus of responsibility on licensees grow enormously. There is now, a much higher obligation placed on licensees and managers for the sale and responsible serving of alcohol.

Fundamentally as a society and a community we must engage in a level of responsibility about the fact that alcohol is a drug that can be addictive if abused and misused and it is critical for our industry to ensure that it is sold responsibly.

However, the AHA also believes greater emphasis should be placed on ensuring flexibility in liquor laws to ensure WA remains competitive with other States. In order to maintain, and improve the competitive position of WA’s hospitality and tourism industries, it is imperative that there be an emphasis on the flexibility of the terms of the Liquor Control Act 1988 and the powers of the Commission in respect to applications by and the operations of genuine tourism facilities.

This document contains the recommendations of the AHA which seek to simplify WA’s complex liquor licensing and regulatory framework in an effort to increase greater choice to both the consumer and hospitality business operator, while respecting the community’s needs and concerns.

The issues raised in this submission were determined in consultation with the AHA’s members in WA, comprising the majority of hospitality and accommodation hotel businesses in the state.

EXPLANATION OF THE SUBMISSION FORMAT

For each of the issues detailed here, the AHA identifies the relevant term(s) of reference, provides a clear statement of the outcome the industry is seeking, the rationale that supports the recommendation, and proposed recommendation which could be adopted by the Review panel.

Each of the issues identified in this submission are detailed in the following format:

Issue – a clear statement of the issue and the relevant section of the Liquor control Act 1988, where appropriate

Term(s) of Reference – the Review's term or terms of reference which apply to the issue discussed

AHA Seeking – the outcome the AHA is seeking on behalf of the hospitality industry

Reasons – the reasons supporting the outcome the industry is seeking

AHA Recommendation – a suggested recommendation the Review Committee may wish to adopt in its final report.



Issue: The Definition of “Drunk” – Section 3A

Term(s) of Reference: The definition of “drunk”

AHA Seeking:

The current definition of “drunk” in the Liquor Control Act be maintained.

Reasons:

- The current definition of the term ‘drunk’ in the Liquor Control Act is consistent with other Australian states and standards of Liquor laws as it allows for the individual and subjective nature of drunkenness.
- The definition of ‘drunk’ in Section 3A of the Liquor Control Act states;
 - (1) A person is drunk for the purposes of this Act if –
 - a. the person is on licensed premises or regulated premises; and
 - b. the person’s speech, balance, co-ordination or behaviour appears to be noticeably impaired; and
 - c. it is reasonable in the circumstances to believe that that impairment results from the consumption of liquor.
 - (2) If an authorised officer or a person on whom a duty is imposed under section 115 decides, in accordance with subsection (1), that a person is drunk at a particular time, then, in the absence of proof to the contrary, that person is to be taken to be drunk at that time.
- The High Court of Australia has stated “expressions like ‘intoxication’, ‘inebriation’ and ‘drunkenness’ are difficult both to define and to apply.” (C.A.L. No 14 Pty Ltd v Scott [2009] HCA 47)
- 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.
- 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 phrase “in the absence of proof to the contrary” in Section 3A(2) is vital to ensuring licensees are able to mount a defence against a charge of permitting drunkenness (Section 115).

- The current Liquor Control Act does not authorise 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.
- The High Court of Australia in its ruling on C.A.L No 14 Pty Ltd v Motor Accidents Insurance Board, and C.A.L. No 14 Pty Ltd v Scott (10 November 2009) said in regard to breathalysers (which measure Blood Alcohol Content), "the compulsory administration of that type of testing by police officers on the roads was bitterly opposed when legislation introduced it, and it is unthinkable that the common law of negligence could compel or sanction the use of methods so alien to community mores in hotels and restaurants."
- Blood Alcohol Content (BAC) – the amount of alcohol in one's system and is influenced by weight, number of drinks, the period of time during which alcohol is consumed and many other factors.
- Using 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.
- A definition of "drunk" which included a BAC would not allow for the individual nature of drunkenness.
- Under the Liquor Control Act bar staff do not have the authority to compel patrons to submit to a breathalyser test.
- Given the limits of BAC as a measure of drunkenness an individual with a low tolerance for the effects of alcohol could be considered drunk under the current definition in the Act, while having a BAC lower than 0.05 (a BAC of 0.05 is the threshold for an individual to be found guilty of a drunk driving offence). Conversely an individual with a high tolerance for the effects of alcohol could have a BAC higher than 0.05 and not engage in anti-social behaviour.
- In the Supreme court of Western Australia decision Starkie v Van Tobruk [2007] WASC 51 (9 March 2007) states:
 - "...that the process of determining a drunken person under the Liquor [Control] Act is entirely different in its nature than the same determination under the Road Traffic Act.

- The decision goes on to state:
 - “...it is inappropriate to use the method of detection under the Road Traffic Act and apply it to the Liquor [Control] Act simply because the later Act has its own distinctive method of detection based on visual observations as distinct from blood alcohol reading and calculations.
 - “The percentage of alcohol in the blood is of no significance under the Liquor [Control] Act...this means a person may well have a high blood alcohol content but may not be detected as being a drunken person under the Liquor [Control] Act, if that person just sits quietly at a table.
 - “Bar staff have no right or obligation to require a customer to provide a sample of breath for analysis.”

AHA Recommendation:

The current definition of “drunk” in the Liquor Control Act be maintained.

Issue: The Primary Objects of Liquor Control Act 1988 – Section 5

Terms of Reference(s): The appropriateness of the objects of the Act

AHA Seeking:

The AHA seeks that the Liquor Control 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.
- (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;
 - (e) to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act, 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.

- (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.

Reasons:

- The current primary objects of the Act are:
 - (a) to regulate the sale, supply and consumption of liquor; and
 - (b) to minimize 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.
- It is the view of the liquor, hospitality and tourism industry that 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 order for the Act to facilitate the orderly and professional development of the liquor hospitality and tourism industries, 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.
- 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.

AHA Recommendation:

That the Liquor Control 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.



Issue: The constitution of the licensing authority – Section 7 and Section 9

Term(s) of Reference: Balancing the requirements of consumers for liquor and related services with minimising harm or ill-health caused to people or any group of people, due to the use of liquor;

The interests and needs of the tourism industry and other hospitality industries in this state; and

The constitution of the licensing authority

AHA Seeking:

The AHA seeks that appointments to the Liquor Commission be persons who have knowledge of, or experience in, hospitality businesses, tourism businesses, or liquor licensing law.

Reasons:

- Section 9B(3) states “a person may be appointed as a member [of the Liquor Commission] if, in the opinion of the Minister, the person has knowledge or experience relevant to the functions of the Commission.”
- Section 9B(4) specifies that one member of the Commission must be a lawyer.
- Currently the Commission is made up of 9 members, including 5 legal practitioners, a medical doctor, a former public servant, the chairman and only one member with experience in the tourism industry at a strategic planning level.
- There are no members of the Commission with operational experience in the tourism or hospitality industries.
- Given the Commission’s review function it would be beneficial for the membership to include persons with an understanding of the hospitality and tourism industries based on operational experience.
- The Takeovers Panel serves a similar function with reference to resolving takeover disputes and corporate control transactions in widely held Australian entities, as the Commission does with reference to decisions of the Director of Liquor Licensing.

- Under the Australian Securities and Investments Commission Act 2001 it is mandated that the Takeovers Panel members have experience in business, administration of companies, financial markets and other areas directly relevant to the work of the Panel.
- ASIC Act 2001 Section 172(4) states:
“The Minister must nominate a person as a member only if the Minister is satisfied that the person is qualified for appointment by virtue of his or her knowledge of, or experience in, one or more of the following fields, namely:
business;
administration of companies;
financial markets;
financial products and financial services;
law;
economics;
accounting.”
- The full membership of the Liquor Commission is not required to be present when the Commission meets. Only 3 members are needed for the Commission to hold hearings. In order to achieve the full benefits of having members with knowledge and experience in the hospitality and tourism industry it is vital at least one member with this experience take part in all Commission hearings.

AHA Recommendation:

There shall be representation from the hospitality and tourism industry within the membership of the Liquor Commission.

Amend and insert a new section 9B (3):
Liquor Control Act 1988 – SECT 9B(3)

A person may be appointed as a member if, in the opinion of the minister the person is qualified for appointment by of his or her knowledge of, or experience in, one or more of the following fields, namely:

- (a) hospitality business;
- (b) tourism business;
- (c) liquor licensing law.

That it be made requirement that at least one member of the Liquor Commission with knowledge or experience in the hospitality or tourism industry be present when the Commission meets.

Issue: Controlled purchase operations – Section 14 and Section 153

Term(s) of Reference: 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;

Introducing into the Act a penalty for the secondary supply of liquor to juveniles;

AHA Seeking:

The AHA seeks that the current definitions concerning authorised officers and their functions as detailed in Sections 14 and 153 of the Act be maintained, and that minors not be authorised to partake in enforcement operations under any circumstances.

Reasons:

- In the State Government's response to the Education and Health Standing Committee – 10th Report – *Alcohol: Reducing the Harm and Curbing the Culture of Excess* the Minister for Racing and Gaming, the Hon. Terry Waldron MLA, stated "Government does not support the use of minors in police enforcement operations."
- The industry shares the Government's concerns regarding the use of minors in enforcement and does not support their use in police operations.
- The vast majority of licensees support and comply with the legislation regarding the sale of liquor only to adults 18+ years old.
- The WA Government's Drug and Alcohol Office 2011 Australian School Students Alcohol and Drug (ASSAD) survey found that a little over half of the 12 – 17 year olds surveyed had had at least one drink in the past year and were mostly likely to have obtained the liquor from parents (28.2%) and friends (26.4%).
- According to ASSAD survey only 1.6% of 12-17 year olds who had had a drink in the last year obtained the drink from a hotel, pub, bar, tavern, or club.

AHA Recommendation:

The current definitions concerning authorised officers their functions as detailed in Sections 14 and 153 of the Act be maintained, and that minors not be authorised to partake in enforcement operations under any circumstances.

Issue: Reference to the Commission Review and Appeals - Section 25(2)(c)

Term(s) of Reference: Balancing the requirements of consumers for liquor and related services with minimising harm or ill-health caused to people or any group of people, due to the use of liquor;

The interests and needs of people selling or supplying liquor;

The interests and needs of the tourism industry and other hospitality industries in this State; and

The appropriateness of penalties contained within the Act

AHA Seeking:

The requirement that a review of a decision made by the Director may only have regard to material that was previously before the Director should be deleted from the Liquor Control Act allowing new evidence to be considered at a review.

Reasons:

- The Liquor Commission was not intended to exclusively be an Appeal Body such as a higher Court. Its original intention was to create an external independent authority to consider and/or review licensing matters separate and independent to the Officers of the Department of Racing, Gaming and Liquor.
- Therefore, it must be allowed to consider all matters that are brought before it without the exclusion of material which may not previously have been before the Director when a Decision was made.

AHA Recommendation:

The requirements that a review of a Decision made by the Director may only have regard to material that was before the Director, Part 2 Division 6 Section 25(2)(c), should be deleted from the Liquor Control Act allowing new evidence to be considered at a review.

Issue: Extended Trading Permits or one-off Extended Trading Permits to be allowed review – Section 25(5)(a)(i)(ii)(ia)

Term(s) of Reference: The interests and needs of people selling or supplying liquor; and

The interest and needs of the tourism industry and other hospitality industries in this State

AHA Seeking:

The exclusion of extended trading permits or one-off extended trading permits or the cancellation, imposition or variation of a term or condition of licence, Section 25(5)(a)(i)(ii)(ia) and (iii), should be deleted from the Liquor Control Act.

Examples of Extended Trading Permits and one-off Extended Trading Permits include, but are not limited to, applications or extended hours of trade on long weekends and public holidays, or traditional cultural celebrations such as St Patrick's Day, or applications for additional space for events such as the Leeuwin Estate Concert or ISAF Sailing Championships.

Reasons:

- The Liquor Commission needs to be able to consider all reasonable matters that are required to be reviewed including extended trading permits, one-off extended trading permits or the cancellation, imposition or variation of the term or condition of a licence.
- By excluding this important conditional instrument on a liquor licence, businesses are excluded the opportunity to have natural justice and the right of review of core trading instruments. The merit of the establishment of the Liquor Commission was that it provided an external independent authority to consider and/or review licensing matters separate to the day-to-day functioning officers of the Department of Racing, Gaming and Liquor.
- Procedural fairness and merit of natural justice dictate that all matters that can substantially affect both positively and detrimentally the trading conditions of a licence, be allowed to be considered by the Liquor Commission.

AHA Recommendation:

The exclusion of extended trading permits or one-off extended trading permits or the cancellation, imposition or variation of a term or condition of licence, Section 25(5)(a)(i)(ii)(ia) and (iii), should be deleted from the Liquor Control Act.

Issue: Alcohol availability in petrol stations - Section 36A(2)

Term(s) of Reference: Balancing the requirements of consumers for liquor and related services with minimising harm or ill-health caused to people or any group of people, due to the use of liquor;

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

AHA Seeking:

AHA seeks to retain Section 36A of the Act which restricts the sale of alcohol in petrol stations.

Reasons:

- Alcohol is a product that needs to be treated with respect. No one knows this better than those who work in the hospitality industry. It is a product that is heavily regulated and the sector works hard to promote responsible service and consumption of it.
- There is strong community concern regarding drink driving and availability of alcohol to motorists, retaining Section 36A reflects public attitudes regarding this important issue.
- Retaining Section 36A will protect the investment by hotel, tavern and other licensees in their venues.

AHA Recommendation:

The prohibition of the sale of alcohol through petrol stations, as prescribed in Section 36A(2) be maintained.

Issue: Liquor Stores – Adequate Public Needs Test – Section 38

Term(s) of Reference: The public interests criteria for low risk venues versus high risk venues

AHA Seeking:

AHA seeking that liquor store licenses not be granted unless the licensing authority is satisfied that the reasonable requirements for liquor in the local area cannot be provided for by existing licensed premises.

Reasons:

- There is very strong research evidence that the frequency of assaults increases with increases in the density of licensed premises. Researchers have reported that where the numbers of licensed premises increase it can lead to subsequent increases in the numbers of assaults. (Predicting Alcohol-Related Harms From Licensed Outlet Density: A Feasibility Study. Ndlerf Monograph No. 28. Chikritzhs, Catalano, Pascal & Henrickson (2007).
- Local communities should be able to expect a reasonable control on outlet density and to ensure that the potential impact on local amenity is not affected by oversupply of licensed outlets.
- Since the abolition of the 'public needs test' there has been a substantial increase in the number of liquor stores in WA. Adequate public interest controls need to be in place.

AHA Recommendation:

Liquor store licenses not be granted unless the licensing authority is satisfied that the reasonable requirements of the public for liquor and related services in the affected area cannot be provided for by licensed premises already existing in that area.

Prior to making an application for a liquor store license, an applicant must obtain from the Director of Liquor Licensing a Certificate to Proceed, which will ensure the applicant meets the pre-requisites for grants of licences as detailed in Section 37(1)(a)(b)(i)(ii)(c)(i)(ii)(d).



Issue: Small bar license – Section 41

Terms of Reference(s): The interests and needs of the tourism industry and other hospitality industries in this State:

The public interests criteria for low risk venues versus high risk venues; and

The small bar licence as a category of hotel licence and the viability of the current restriction of 120 persons

AHA Seeking:

The small bar license continue to be a category of the hotel license, and Section 41 (1aa) be maintained.

Legislation to provide that a small bar license which is already limited to a maximum 120 persons can be converted into a tavern restricted license should the licensee wish to increase their venue's maximum occupancy beyond 120 persons, and the licensee be protected from losing their small bar license if the tavern restricted license application is unsuccessful.

Reasons:

- The small bar license was established as a sub category of the Liquor Control Act "hotel licence" to ensure that bars regardless of their technical name, i.e. hotel, tavern or small bar, all operated with the same conditions and benefits.
- The operation of a small bar license and a tavern restricted license is identical with the exception that a small bar is limited to a maximum of 120 persons.
- However there are also examples of hotels that have bars contained within them that would hold less than 120 People, as there are examples of taverns throughout the state that have occupancy of less than 120 persons.
- Whilst Queensland, New South Wales, and Victoria limits small bars to a maximum of 60 people, it would be unfair to the small bar sector in WA to alter the current maximum of 120 persons.

	Maximum number of patrons for Small Bars
New South Wales	Government Bill in the Parliament to create a new definition of “small bars” with a maximum of 60 patrons
Queensland	Small bar license conditions stipulate a maximum of 60 patrons
Victoria	Local Councils limit the numbers in the occupancy permit to generally less than 60
South Australia	New Small bar legislation with a maximum of 120 persons. Effective February 2013.

- Currently the Act provides a pathway for small bar licensees wishing to expand beyond 120 persons with the application process for a tavern restricted licenses, which is identical to the small bar license with the exception of the 120 or less persons requirement.

AHA Recommendation:

The small bar license continue to be a category of the hotel license, and Section 41 (1aa) be maintained.

That there be legislation to provide that a small bar license which is already limited to a maximum 120 persons can be converted into a tavern restricted license should the licensee wish to increase their venue’s maximum occupancy beyond 120 persons, and the licensee be protected from losing their small bar license if the tavern restricted license application is unsuccessful.



Issue: Restaurant Licenses – sale of alcohol without a meal – Section 60(4)(ca)

Term(s) of Reference: The appropriateness of the current restrictions allowing the consumption of liquor without a meal in restaurants

AHA Seeking:

Restaurants be permitted to sell liquor without a meal to persons seated at a table.

Reasons:

- Restaurant licences by their very nature are food and dining venues, however they are permitted to serve liquor without a meal with an Extended Trading Permit.
- The core conditions of the license could be amended to allow restaurants to sell liquor without a meal, without the need to apply for an ETP, on the condition that patrons are seated at a table.
- In changing liquor licensing regulations, there is a fine balance between modernisation, and protecting community and residential amenity.
- The restaurant license 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 whilst protecting the amenity of local neighbourhoods.
- Restaurants wishing to only sell alcohol with meals should be given the opportunity to request that this remain a condition of their license.

Government Position

On the 8th of February 2013 the Premier Colin Barnett announced the Government's policy if re-elected:

“Legislate to allow restaurant's that hold less than 120 people to serve liquor without a meal. The Conditions on serving liquor without a meal will be:

- *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*
- *The primary purpose of the business cannot be the supply of alcohol.*

AHA Recommendation:

Restaurants be permitted to sell liquor without a meal to persons seated at a table.

Example of restaurant permitted to sell liquor without a meal to persons seated at a table



Bar license - liquor service allowed without requirement for seating



Issue: Extended Trading Permits (ETPs) for small bars, hotels and taverns – Section 60(4)(g)

Term(s) of Reference: The interests and needs of the tourism industry and other hospitality industries in this state;

The public interests criteria for low risk venues versus high risk venues; and

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

AHA Seeking:

AHA seeks greater flexibility for Extended Trading Permits through mandatory 5 year permits and automatic ETP renewals.

Reasons:

- Considerable time, effort and resources are invested in gaining Extended Trading Permits. For businesses with ETPs the need to renew a permit on a regular basis becomes an administrative burden. The Liquor Control Act provides for up to 5 year ETP's however these are rarely granted leading to uncertainty, additional compliance and administrative burden.
- The Red Tape Reduction Group's Report - *Reducing the Burden* recommendations 6.7 and 6.8 addressed the issue of ETPs:
 - applications for Extended Trading Permits should be accepted along with the initial liquor license application (i.e. remove the requirement that applications for Extended Trading Permits can only be made subsequent to the initial license application being granted);
 - the requirement that all Extended Trading Permit applications must be accompanied by a Public Interest Assessment should be removed, and replaced by a Public Interest Submission.
- There are many regulatory vehicles available to Police and the Director of Liquor Licensing should the conduct of the licensed premises at any point in the 5 year term warrant investigation by either.

AHA Recommendation:

ETP's renewals should be automatically renewed, and where there is an intervention, that all interveners should be required to meet a reasonable onus of proof. Section 60(4)(g) allow for ETP's to be 5 years in length.

Issue: Regional Liquor Store Trading - Section 60(4)(g) and Section 98D

Term(s) of Reference: Non-metropolitan liquor stores trading on Sundays

AHA Seeking:

AHA seeking that regional liquor stores may only continue to open on Sundays when Extended Trading Permits issued by the licensing authority are granted.

Reasons:

- There are currently sufficient outlets providing packaged liquor in regional areas on Sundays. There is no need or justification for allowing all regional liquor stores Sunday trading.

AHA Recommendation:

Maintain the status quo in relation to liquor stores not trading in regional areas on Sundays.

Issue: Imposing, varying and cancelling conditions - Section 64

Term(s) of Reference: The interests and need of persons selling or supplying liquor;
and

The appropriateness of penalties contained within the Act

AHA Seeking:

AHA is seeking that the powers of the Director of Liquor Licensing under Section 64 should be amended to require the Director to only consider imposing, varying and cancelling conditions on a case-by-case, individual basis and not applying restrictions to an entire community of licence types.

Reasons:

- Section 64 is intended as a ‘targeted approach’ to specific licenses where the licensing authority can exercise its discretion to impose additional liquor license restrictions. Throughout this section of the Act, licenses and licensees are referred to in a singular context.
- Upon reading Section 64 of the Act and the Director’s Policy on *Show Cause Proceedings – Section 64 of the Act*, it can be seen that the section operates to impose, vary, or cancel a condition on a license ‘after some negative characteristic of the licensed premise is brought to the attention of the licensing authority’.
- The explicit language of section 64 focuses on singular licenses 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 licenses.

AHA Recommendation:

Limit the ability of the Director to vary the conditions of licensees in an entire community. 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.



Issue: Alcohol advertising and promotion – Section 64(3) and Section 65B

Term(s) of Reference: The advertising and marketing of liquor products

AHA Seeking:

AHA is seeking that restrictions relating to the advertising and promotion of alcohol not be further restricted.

Reasons:

- The advertising and promotion of alcohol is well regulated as determined in the Director of Liquor Licensing's policies and enforced by the Department of Racing Gaming and Liquor and WA Police.
- There is little empirical evidence to support the claim that individual's drinking behaviour is the direct result of alcohol advertising.
- Studies of drinking behaviour where there have been bans on alcohol advertising have lead to mixed results and do not support the claim that advertising restrictions directly reduce alcohol abuse.
- Studies of communities which have lifted bans on alcohol advertising have not found a resulting increased in alcohol consumption after the ban is lifted.
- The current regulation of alcohol advertising and promotion is well sufficient to ensure proper and responsible sale and supply in any liquor related businesses.

AHA Recommendation:

That the existing restrictions on the advertising of liquor not be further restricted.

Issue: Application Interventions - Sections 64, 69 and 95

Term(s) of Reference: 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

AHA Seeking:

The AHA seeks that where the Liquor Control Act allows for the Commissioner of Police and the Executive Director Public Health to intervene in proceedings before the licensing authority it should be amended to require that the evidence produced by any government agency in an intervention must be relevant and specific to the application and available to all stakeholders.

Reasons:

- The WA Police and Executive Director of Public Health (EDPH) often use generic statistics in order to intervene in liquor license 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.
- 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 license application should be required to meet a reasonable onus of proof.

AHA Recommendation:

That interveners 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 Liquor Control Act should be established for Government agencies to meet, when intervening in liquor licence applications. Agencies be required to make available to all parties, all raw data that was produced.

Issue: Advertising of Applications for Extended Trading Permits or one-off Extended Trading Permits - Section 67

Term(s) of Reference: 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

AHA Seeking:

There be no automatic requirement to advertise an extended trading permit, a one-off extended trading permit or a renewal of an extended trading permit.

Reason:

- 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. These businesses have previously undertaken a process of public consultation as part of their original licence application process.
- 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.

AHA Recommendation:

Insert the following new clause Division 7, Section 67:

(6) This section does not apply to any application for an extended trading permit, a one-off extended trading permit or a renewal of an extended trading permit. In exceptional circumstances the Director of Liquor Licensing may require advertising.

Issue: Disciplinary Matters - Section 95(11) and Section 165

Term(s) of Reference: The interests and need of persons selling or supplying liquor;
and

The appropriateness of penalties contained within the Act

AHA Seeking:

Section 95(11) and Section 165 of the Liquor Control Act be removed, as they prevent a licensee from providing a defence to a complaint where a 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.

Reasons:

- Sections 95(11) and 165 specifically prevent a defence when a licensee could not have been reasonably aware or have taken reasonable steps to prevent an offence from occurring.
- Vicarious liability is recognised under Australian Law that in certain conditions, employers are responsible for the wrong doings of other employees.
- Vicarious liability should be reduced or excluded altogether if it can be demonstrated that the licensee or manager took all reasonable steps to prevent an offence or misdemeanour occurring.
- It is recognised that:
 - Reasonable steps must be active preventative measures.
 - Procedures, guidelines and training was in place.
 - A licensee could not have reasonably been aware of or prevent the omission which gives rise to the complaint.
 - Licensees put measures into place to ensure employees are educated and clearly understand their obligations
 - Employees are required to sign a Code of Conduct affirming compliance of all legal requirements and venue policies.

AHA Recommendation:

Remove Section 95(11) and Section 165 of the Liquor Control Act.

Issue: Sunday Trading for Licensed Premises – on-premise consumption – Section 98

Term(s) of Reference: 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

AHA Seeking:

Amend Section 98 of the Liquor Control Act to enable hotels, taverns and small bars to trade until 12 midnight on Sundays.

Reasons:

- Allowing closing of 12 midnight on Sundays represents a common sense approach to regulation, substantially reducing red tape burden and allow the vibrant hospitality environment customers expect.
- Currently the Act permits trade on Sundays from 10:00am till 10:00pm unless an ETP has been granted.
- Closing at 10:00pm on Sundays does not reflect the community's expectations for a modern hospitality sector.
- 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.
- The community no longer expects that Sunday is exclusively a day of rest.

AHA Recommendation:

Change section 98 to enable bar trade until 12 midnight on Sundays by amending core hours of a hotel licence.



Issue: Managers and Licensees Liabilities and Duties - Section 100, and Section 101

Term(s) of Reference: The interests and needs of persons selling or supplying liquor; and

The appropriateness of penalties contained within the Act

AHA Seeking:

AHA seeks that a defence be provided within Section 100 and 101 for licensees and managers to the actions of staff where they can demonstrate reasonable steps have been taken, requiring those staff to comply with the requirements under the Liquor Control Act or conditions of the license.

Reasons:

- Licensees and managers deserve the same presumptions of innocence and rights to a defence before the law as all citizens and residents of Western Australia enjoy.
- For example, in the recently introduced *Out of Control Gatherings Bill 2012* where a person took steps considered reasonable in the circumstances, this is a defence to the charge:
 - “75B.(3) It is a defence to a charge under subsection (2) to prove the accused person took such steps (if any) as were reasonable in the circumstances to ensure that the gathering did not become an out-of-control gathering.” Criminal law amendment (*Out-of-Control Gatherings*) Bill 2012 Part 2, page 65
- Under the Act, if an employee is proved guilty of an offence the licensee is automatically guilty, no matter how comprehensive the staff training and supervision and how responsible the licensee.
- It is thus important that the Act provides fair defences for those employees and agents, as a matter of fairness for them and for the licensee.
- Vicarious liability is recognised under Australian Law that in certain conditions, employers are responsible for the wrong doings of other employees.
- Vicarious liability should be reduced or excluded altogether if it can be demonstrated that the licensee or manager took all reasonable steps to prevent an offence or misdemeanour occurring.

- It is recognised that:
 - Reasonable steps must be active preventative measures. The defence or reasonable steps rests with the licensee or manager.
 - Procedures, guidelines and training was in place.
 - Could not have reasonably been aware of or prevent the omission which gives rise to the complaint.
 - Employees are required to sign a Code of Conduct affirming compliance of the requirements set out under the Liquor Control Act, subordinate legislation, guidelines or venue's policies.
- Employers, managers and licensees that put measures into place to ensure employees are educated and clearly understand their obligations should be seen to be taking reasonable steps to avoid vicarious liability.
- There needs to be consistency across various legislative instruments. By reversing the anomaly in the Act that removes the ability to provide any defence, licensees are protected from unreasonable complaints.

AHA Recommendation:

Provide a defence within Section (100) and (101) for licensees and managers that can demonstrate reasonable steps have been taken requiring staff to comply with the requirements under the Liquor Control Act or conditions of the license.

Issue: Responsible Practices training register - Section 103A

Term(s) of Reference: 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

AHA Seeking:

The AHA seeks that Section 103A specify that training register records be maintained for three years.

Reasons:

- Persons employed to undertake bar duties must complete the required course in Responsible Service of Alcohol within 28 days.
- The Licensee of licensed premises is required to maintain a register that records details of a person employed or engaged in the capacity of bar staff. Details include person's name, date of employment, name of training provider, State training was undertaken and date training certificate was issued.
- Once a bar person has undertaken the necessary RSA training, the training register must be updated with the relevant details.
- Section 103A and regulation 14AG is silent with respect to the period of time that a register is required to be maintained at the licensed premises. Three years is a reasonable period to maintain the training register.
- The penalty for not recording or maintaining a register is a fine of \$5 000.
- Regulation 14AG (2) also stipulates that the licensee is required to keep a copy of the training certificate.
- Most business records, e.g. tax records, are required to be kept a defined period of time, however training 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.

AHA Recommendation:

That Section 103A specify that training register records be maintained for three years.

Issue: Movement of Liquor – Section 110(3)

Term(s) of Reference: The interests and needs of people selling or supplying liquor;
The interests and needs of the tourism industry and other hospitality industries in this State.

AHA Seeking:

That patrons be permitted to walk freely between adjoining licensed premises which have the same licensee.

Reasons:

- It is not likely that the scope of the offence created under section 110(3) is intended to cover persons moving between licensed areas which are subject to the same or similar license conditions, particularly where the licensee of those licensed premises is the same.

AHA Recommendation:

Section 110(3) be amended to included a defence to section 110(3) so as to permit such patrons to walk freely between adjoining licensed premises which have the same licensee.

Issue: The sale and consumption of liquor - Section 112(1)

Term(s) of Reference: The interests and needs of people selling or supplying liquor;
The interests and needs of the tourism industry and other hospitality industries in this State.

AHA Seeking:

That licensed premises be allowed 30 minutes after closing time for patrons to consume liquor on premise.

Reasons:

- Section 112(1)(a)(i) specifies that patrons must finish consuming any liquor purchased on premise and leave the venue within 15 minutes of closing time.
- Section 112(1)(a)(ii) specifies that patrons who have purchased liquor ancillary to a meal have 30 minutes after closing time to finish consuming any liquor purchased on premise and leave the venue within 30 minutes of closing time.
- Fifteen minutes is a very brief period of time to empty a venue of patrons. In effect this causes patrons to consume liquor quickly in an effort to finish their drink before leaving the venue.
- The current regulation allowing only 15 minutes for patrons to leave a venue can lead to confrontation between patrons and venue security staff as customers are forced to leave the venue so soon after the service of liquor has finished for the evening.
- The distinction of allowing 15 minutes after closing for liquor purchased without a meal to be consumed but 30 minutes for liquor purchased ancillary to a meal creates confusion for patrons unfamiliar with WA's complex liquor regulations.
- Allowing patrons 30 minutes after closing to finish consuming liquor purchased on premise would:
 - Promote a more positive hospitality environment at licensed premises;
 - Reduce confrontation between patrons and security staff;
 - Allow patrons time to consider transport options prior to leaving the venue;
 - Reduce confusion among tourists unfamiliar with WA's current strict liquor regulations.

- 30 minutes is consistent with other Australian states.

Time allowed for patrons to finish drinks after closing	
Queensland	30 minutes
New South Wales	30 minutes
South Australia	30 minutes
Northern Territory	30 minutes
Victoria	30 minutes

AHA Recommendation:

That Section 112(1)(a)(i) be amended as follows:

112. Exceptions to s. 109,110 and 111

(1) Sections 109,110 and 111 do not prohibit or restrict –

(a) where any liquor was sold on licensed premises during the permitted hours –

(i) during the first 30 minutes after the end of those hours or of any period forming part of those hours, the possession or consumption of that liquor on the premises, or, the taking away of that liquor if it is packaged liquor;

And that section 112(1)(a)(ii) be deleted.



Issue: Barring Notices - Section 115AA

Term(s) of Reference: The interests and needs of people selling or supplying liquor;

The interests and needs of the tourism industry and other hospitality industries in this State; and

The appropriateness of penalties contained within the Act

AHA Seeking:

AHA is seeking that the scope of barring notices should also include:

- Offences that occur in the vicinity of licensed premises; and
- The barring of individuals who are serious and/or serial offenders with alcohol related crime(s) i.e. an individual convicted of domestic violence/assault as a result of being intoxicated.

Reasons:

- Expanding the scope of those who should or could be the subject of a barring notice will make premises safer for patrons and staff.
- It is in the interest of public safety that the scope of barring notices be expanded to include individuals from licensed premises who are serious and/or serial offenders of alcohol related crime and the barring of individuals who offend in the vicinity of licensed premises.

AHA Recommendation:

Section 115AA be amended expanding 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 crime(s).



Issue: Register of incidents at licensed premises - Section 116A

Term(s) of Reference: 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

AHA Seeking:

The requirements to record a refusal of entry to licensed premises be removed from any list of prescribed incidents to be recorded in a register.

The AHA seeks that Section 116A to be amended to recognise that a register required under this section of the Liquor Control Act and a register required under the Crowd Controllers legislation can be one and the same.

Section 116A to specify that a register be maintained for up to three years.

Reasons:

- Currently, refusal of entry to licensed premises has been deemed by Officers to be a prescribed incident that must be recorded in the incident register.
- 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, and should be specifically exempt from incidents that are required to be recorded.
- Incident registers are required to be maintained under the Liquor Control 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.
- Section 116A is silent with respect to the period of time that a register is required to be maintained at the licensed premises. Three years is a reasonable period to maintain a register.
- The number of prescribed incidents is extensive and includes, among other things refusal of entry, meaning each time an individual is refused entry, a specific incident report must be made by both the licensees or approved manager and crowd controller. This places an unnecessary burden on licensees given there are many reasons and incidents where individuals are refused entry to a venue.

- The penalty for not recording an incident is a fine of \$5 000.
- In order to avoid fine licensees must record reports for incidents, such as refusal of entry, which do not involve an individual on the premises, with these records also duplicating the records required to be kept by the Crowd Controllers.
- The Red Tape Reduction Group's report, *Reducing the Burden*, recommended that:
 "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."
- In addition to the above the Red Tape Reduction Group report also recommended that refusal of entry be removed from the list of prescribed incidents which must be recorded on the incident register.
- Most business records , e.g. tax records, are required to be kept 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.

AHA Recommendation:

The requirement to record a refusal of entry to licensed premises be removed from any list of prescribed incidents to be recorded in a register, and specifications for which additional incidences are to be recorded in the register be detailed in regulation.

Section 116A to be amended to recognise that a register required under this section of the Liquor Control 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.

Section 116A specify that a register be maintained for up to three years, and that electronic or paper records be acceptable.



Issue: Maintain a penalty for the secondary supply of liquor to juveniles – Section 121

Term(s) of Reference: Introduction into the Act a penalty for the secondary supply of liquor to juveniles

AHA Seeking:

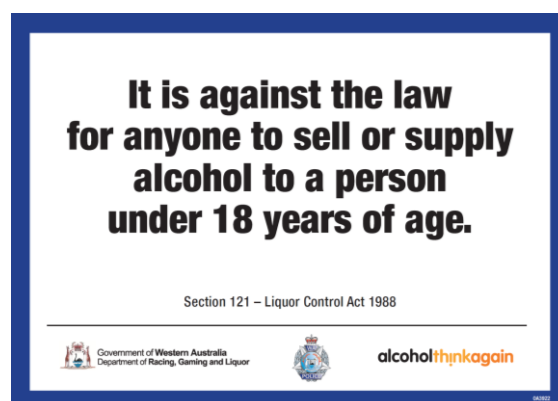
AHA is seeking that the current legal drinking age of 18+ should be maintained and the penalties in section 121 for the secondary supply of liquor to juveniles in licensed premises be maintained.

Reasons:

- Section 121 of the Liquor Control Act stipulates that it is an offence for liquor to be sold or supplied to a juvenile on licensed premises by any person, with a fine of up to \$10 000 for the licensee or manager, and up to \$4 000 for sale or supply by any other person.
- Alcohol is a regulated product and its sale and supply is subject to strict regulations.
- The AHA does not support minors drinking alcohol or being supplied alcohol by any person.

AHA Recommendation:

The current legal drinking age of 18+ and the penalties for the secondary supply of liquor to juveniles in licensed premises detailed in Section 121 of the Liquor Control Act should be maintained.



Issue: Where a juvenile enters or remains on any part of the licensed premises – Section 121(4)

Term(s) of Reference: Introduction into the Act a penalty for the secondary supply of liquor to juveniles; and

The appropriateness of penalties contained within the Act

AHA Seeking:

AHA is seeking that section 121(4) be amended to include ‘permitting’ as applicable to licensee’s and their employees and agents.

Reasons:

- The general philosophy of offence provisions has historically been that there is no guilt without some knowledge of the prohibited conduct on the part of the licensee (via its employees and agents). This has been achieved by use of the term “permit” in the offence provisions.
- Under the current Act, several offence provisions include this element e.g.
 - section 121(2) permitting a juvenile to consume alcohol on the licensed premises;
 - section 115(1): permitting drunkenness on licensed premises.
- Legal meaning of “permitting”:
 - The concept of ‘permit’ involves an element of knowledge, namely, one of two kinds of knowledge:
 - Actual Knowledge i.e. staff actually knew that the conduct was taking place; or
 - Constructive Knowledge i.e. Staff ought to have known that the conduct was taking place. This can mean either acting without caring whether the contravention occurs or deliberately turning a blind eye to it.
- Mere negligence is not enough to constitute ‘permitting’.
- Section 121(4) currently does not include the element of ‘permitting’ vis a vis the licensee, stating that if a juvenile enters or remains on licensed premises then the licensee commits an offence. It is essentially a strict liability offence. (The defence of mistake of fact i.e. that the juvenile looked 18 is still available but that is not always available on the facts).
- Examples where a licensee will be guilty under s.121(4):

- A juvenile who looks under 18 comes to a pub for lunch with a group of work mates. It is a quiet Tuesday and there are no security and few staff on duty. If he passes through the bar without any staff seeing him and goes straight through to the beer garden and sits quietly in the corner (not drinking) surrounded by his adult work mates. Police arrive and spot him 20 minutes later.
- A juvenile who looks under 18 jumps over the back fence of a pub on a Saturday night and mingles into a crowd. Police arrive and spot him 20 minutes later.

AHA Recommendation:

Section 121(4) be amended to include 'permitting' as applicable to licensee's and their employees and agents.

Issue: Evidence of Age – Section 126(1)(b)(i) and Regulation 18A

Term(s) of Reference: 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.

AHA Seeking:

AHA is seeking that the acceptable forms of evidence of age be extended to other reasonable forms of identification.

Reasons:

- Licensees and patrons should be given the flexibility to rely on other forms of identification which are reasonably acceptable.
- For example, Proof of Age cards issued by other States and Territories should be acceptable forms of identification on the same basis that WA Proof of Age cards are acceptable.
- This provides greater flexibility for a licensee to permit entry to a person who resides in another State and does not have an Australian Drivers' Licence or Passport, and for the same patron to use their Proof of Age card and not have to carry their Passport.

AHA Recommendation:

Regulation 18A be amended to include other forms of reasonable identification.



Issue: Liquor Licensing Fees – Section 128

Term(s) of Reference: The interests and needs of persons selling or supplying liquor

AHA Seeking:

AHA seeking that increases to fees referred to in the Liquor Control Act or Regulation be limited to not increasing greater than CPI.

Reasons:

- CPI price increases are a fair and reasonable way of justifiably increasing fees.
- Recent changes to the fee structure have imposed unreasonable fees around some license applications. The fees administered under the Liquor Control Act have been determined by the High Court (*Walter Hammond & Associates v. NSW*) to only be permissible on the basis that it is not indirectly a form of tax or charge for the sale of goods. The Australian Government and States 1999 inter-governmental agreement on the reform of Commonwealth and State Financial Relations provides for States to receive all the revenue from the Goods and Services Tax, therefore fees and charges under the Liquor Control Act should be limited to a reasonable permit charge and only increase by CPI.

AHA Recommendation:

Fees and charges under the Liquor Control Act should be limited to a reasonable permit charge and only increase by CPI.



Issue: A two year time limit for prosecutions under the Act – Section 169

Term(s) of Reference: 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

AHA Seeking:

The AHA seeks the introduction of a two year time limit for prosecutions under the Act.

Reasons:

- Prosecutions can be brought about anytime up to four years after an offence is alleged to have been committed, this can create uncertainty for licensees.
- That there is such a long time that investigators can take to gather evidence when establishing a prosecution under the Act can make it difficult to 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.
- Two years is considered to be sufficient time to allow for a prosecution to be brought under the Act.
- The New South Wales Liquor Act 2007 allows mandates that proceedings for an offence must be commenced no later than 12 months after the date on which the offence is alleged to have been committed, except for 7 specific sections which specify no more than 3 years. 12 months

AHA Recommendation:

A two year time limit for prosecutions under the Act be introduced.



Issue: Lockouts - Section 175(1)(ce)

Term(s) of Reference: The interests and need of persons selling or supplying liquor; and

The appropriateness of penalties contained within the Act.

AHA Seeking:

AHA seeking that Section 175(1)(ce) be amended so that each licensee will continue to have the right to have applications judged on its merits on a case-by-case basis, and that considerations be given to permitting persons who have recently left the premises to re-enter in certain circumstances during a lock-out period.

Reasons:

- DRGL will have the flexibility to judge each license on a case-by-case basis in relation to lockout times.
- Considering lockout times on a case-by-case basis would allow DRGL to target individual problematic venues without punishing the majority of venues and patrons who manage the sale and consumption of alcohol responsibly.
- Patrons should not be locked-out when seeking to re-enter premises for legitimate reasons, for example to purchase food, go to the toilet, etc.
- Patrons can sometimes get locked out on their own or away from their group of friends if they leave the premises only for a short period. This has the potential to leave patrons in unsafe situations.
- An example may be to permit re-entry during lock-out periods in circumstances where a patron seeks to re-enter within a set timeframe from when the patron exited/ the start of the lock-out period, or where the patron exited for permitted purposes such as to obtain food or to retrieve items from a cloak room.

AHA Recommendation:

Amend Section 175(1)(ce) so that each licensee will continue to have the right to have applications judged on its merits on a case-by-case basis. Patrons who have recently left the premises be permitted to re-enter in certain circumstances during a lock-out period.

Issue: Alcohol ID System

Term(s) of Reference: Balancing the requirements of consumers for liquor and related services with minimising harm or ill-health caused to people or any group of people, due to the use of liquor

AHA Seeking:

AHA seeks support for the trial of an alcohol sale on presentation of ID system in the Kimberley region.

Reasons:

- An alcohol sale on presentation of ID system uses photo identification as a means of monitoring and controlling the supply of alcohol and 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 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 WA Liquor Control 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 Liquor Control Act barring notice and allow licensees to take a proactive and region- consistent approach.
- 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.

AHA Recommendation:

That the Review Committee give in principle support for the trial of an alcohol sale on presentation of ID system in the Kimberley region.

Issue: Banning Glassware

Term(s) of Reference: Balancing the requirements of consumers for liquor and related services with minimising harm or ill-health caused to people or any group of people, due to the use of liquor; and

The interests and needs of people selling or supplying liquor

AHA Seeking:

AHA seeks that there should be no regulation restricting or banning glassware in licensed premises. Government should continue to support the ongoing industry self-led program of phasing in of tempered glassware.

Reasons:

- Since 2010, the hospitality industry has proactively replaced traditional glassware for beer and soft drinks with tempered glassware.
- With 85% of supply in the industry currently being tempered glassware, the voluntary phasing in of tempered glassware has worked well.

AHA Recommendation:

There should continue to be no legislative, regulatory or internal department guidelines restricting or banning glassware in licensed premises.



Issue: Defence is provided when all reasonable steps are taken to prevent an offence

Term(s) of Reference: The interests and needs of people selling or supplying liquor;

The interests and needs of the tourism industry and other hospitality industries in this State; and

The appropriateness of penalties contained within the Act

AHA Seeking:

The AHA is seeking the creation of a defence to any charge under the Act that ‘a licensee took reasonable steps responsible to prevent the contravention taking place’.

Reasons:

- It is accepted that alcohol is a ‘risk’ product and that 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/agent when all reasonable steps have been taken to prevent such a breach.
- Take the example of a responsible and competent licensee who puts enormous resources into training staff and setting up and maintaining compliance systems. Those systems are successful in preventing 99% of potential contraventions. It is unreasonable for that licensee be liable for one contravention which is the result of a momentary lapse of one of its employee or agents

AHA Recommendation:

That there be the creation of a defence to any charge under the Act that ‘a licensee took reasonable steps possible to prevent the contravention taking place’.

Issue: Flexibility in liquor laws

Term(s) of Reference: The interests and needs of the tourism industry and other hospitality industries in this State

AHA Seeking:

The AHA is seeking that emphasis be placed on the importance of flexibility in liquor laws to ensure WA remains competitive with other markets.

Reasons:

- In order to maintain, and more importantly increase, the competitive position of hospitality and liquor providers in Western Australia, it is imperative that there be an emphasis on the increase in the flexibility of the terms of the Liquor Control Act and the powers of the Commission in respect of applications by, and the operation of genuine tourism facilities.
- This is particularly important in relation to the promotion and sustainability of interstate and international tourism in WA, where local hospitality providers are competing with the facilities offered by operators in other markets, both interstate and internationally.

AHA Recommendation:

In order to maintain and increase the competitive position of hospitality and liquor providers in WA, and thus interstate and international tourism in WA, it is essential that emphasis be placed on the importance of flexibility in liquor laws to ensure WA remains competitive with other markets.

Issue: Offence provisions in the Liquor Control Act

Term(s) of Reference: The interests and needs of people selling or supplying liquor;

The interests and needs of the tourism industry and other hospitality industries in this State; and

The appropriateness of penalties contained within the Act

AHA Seeking:

That 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.

Reasons:

- The offence provisions under the Act impose significant financial penalties on licensees. Commonly a maximum fine of \$10, 000 for licensees applies.
- A significant proportion of licensees in Western Australia are corporate bodies.
- Section 40(5) of the Sentencing Act (Western Australia) provides;
 - “Except where a statutory penalty is expressly provided for a body corporate, a body corporate which is convicted of an offence the statutory penalty for which is or includes a fine is liable to a fine of 5 times the maximum fine that could be imposed on a natural person convicted of the same offence.”
- Section 40(5a) of the Sentencing Act (Western Australia) provides;
 - “Except where a statutory penalty is expressly provided for a body corporate, or a body corporate which is convicted of an offence the statutory penalty for which is or includes a minimum fine is liable to a fine of 5 times that minimum fine.”
- The Act does not expressly provide for separate penalties for corporate licensees and licensees who are natural persons.
- The result is that a minimum and maximum fines applicable to corporate licensees are actually 5 times higher than stated in the Act.

- The result is perverse. For example if there were two similar hotel premises, one with a corporate licensee and one with a licensee who is a natural person and an identical offence under the Act was committed on each of the licensed premises (e.g. an offence relating to juvenile or drunkenness):
 - a. The corporate licensee currently faces a minimum fine of \$5,000 and a maximum fine of \$50,000
 - b. The licensee who is a natural person currently faces a minimum of \$1,000 and a maximum of \$10, 000.
- The industry has been spared the full effect of this provision as it is not well known amongst police prosecutors or Magistrates, at least not so far.
- As a matter of policy, we can see no sensible basis for a higher penalty to be imposed on a corporate licensee than a natural licensee. The Liquor Commission was not intended to exclusively be an Appeal Body such as a higher Court. Its original intention was to create an external independent authority to consider and/or review licensing matters separate and independent to the Officers of the Department of Racing, Gaming and Liquor.

AHA Recommendation:

That 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 applying to increase those penalties.

For example s.121(1) currently provides:

“Penalty:

- (a) For the licensee or a manager, a fine of \$10,000”

This should be amended to state:

“Penalty:

- (a) For the licensee who is a corporation, a licensee who is a natural person or a manager, a fine of \$10,000.”

Issue: Offences under the Liquor Control Act to be defined as simple criminal offences

Term(s) of Reference: The interests and needs of people selling or supplying liquor;

The interests and needs of the tourism industry and other hospitality industries in this State; and

The appropriateness of penalties contained within the Act

AHA Seeking:

The Liquor Control Act be amended to define that offences be categorised as civil offences.

Reasons:

- There needs to be clarity that offences in the Liquor Control Act be defined as simple criminal offences and not indictable offences, which could potentially limit future employment, immigration, and financial prospects of staff within the industry.
- We are also aware that in many circumstances hospitality staff have decided not to contest charges and offenses issued under the Liquor Control Act for fear defending an innocent action may result in a finding of guilt and therefore receiving an indictable criminal offense record.

AHA Recommendation:

The Liquor Control Act be amended to define that offences be categorised as civil offences.



Issue: Online Direct Sales License

Term(s) of Reference: Balancing the requirements of consumers for liquor and related services with minimising harm or ill-health caused to people or any group of people, due to the use of liquor;

The interests and needs of people selling or supplying liquor;

The interests and needs of the tourism industry and other hospitality industries in this State; and

The impact of the electronic age and the rapid development of internet sales

AHA Seeking:

An online direct sales license category not requiring a physical premises not be established.

An assessment of all existing license categories needs to be undertaken to ensure that all appropriate license types have the capacity to conduct online or internet sales business, as well as telephone, facsimile and mail order sales.

Reasons:

- The introduction of a 'direct sales licence' without a physical premises would contradict the Primary Objects of the *Liquor Control Act* – which specifically supports the hospitality and tourism businesses.
- The introduction of this license category as the proposed manner, hours and operation of trade are already catered for by existing license categories.
- If the direct sales license 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.
- In 2007, the Department of Racing, Gaming and Liquor introduced major reforms to ensure that all venues were managed by trained personnel and supervised by well trained staff. The time and money spent by the industry to ensure compliance with the Act was too significant to see this investment eroded by a direct sales license.

AHA Recommendation:

An online direct sales license category not be introduced.

Issue: Patrons to be liable for penalties under the Liquor Control Act in line with the penalties set for licensees.

Term(s) of Reference: Balancing the requirements of consumers for liquor and related services with minimising harm or ill-health caused to people or any group of people, due to the use of liquor;

The appropriateness of penalties contained within the Act

AHA Seeking:

The AHA seeks that Patrons should be subject to substantial similar penalties under the Liquor Control Act in line with the penalties set for licensees for serious offences.

Reasons:

- Penalties within the Act are directed at licensees and/or approved managers. In many cases these penalties are for offences caused by the behaviour of individual patrons yet the patron is not subject to an infringement under the Act.
- Under section 115, it is an offence for a licensee and/or an approved manager to have permitted drunkenness or violent, quarrelsome, disorderly or indecent behaviour to take place in a licensed premise and the licensee or manager can be fined up to \$10 000. Yet there is no penalty under the Act for the individual(s) who are drunk or engage in violent anti-social behaviour in a licensed premise.
- There needs to be a deterrent to unacceptable behaviour from patrons and the public.
- The addition of offences and penalties directed at individuals who are drunk and/or engage in violent, quarrelsome, disorderly or indecent behaviour would serve as a substantial deterrent against anti-social behaviour and intoxication in licensed premises.

AHA Recommendation:

Section 115 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 and they face similar penalties as licensees or approved managers. For juvenile offenders the penalties should be mandatory attendance in an alcohol education program.

Issue: Remove the offence for patrons taking liquor from a licensed area to another within a licensed premise passing through an unlicensed zone

Term(s) of Reference: The interests and needs of persons selling or supplying liquor:

The interests and needs of the tourism industry and other hospitality industries in this State; and

The appropriateness of penalties contained within the Act.

AHA Seeking:

The AHA seeks the removal of the offences that penalise licensed premises which do not have continuous licensed areas.

Reasons:

- At present an anomaly exists within the Act that requires a bartender or waiter to deliver a drink to a table in an alfresco area if it is located separately to the licensed premises.
- This is often the case when the licensed alfresco area is separated from the venue by a public footpath.
- This restriction is an out-dated requirement that staff at licensed premises carry clients' drinks from the bar where they were ordered to the alfresco table where they are seated. It can cause trouble between bar staff and patrons and creates an unnecessary burden on staff.
- The offence is an unintended outcome of the section of the Act which penalises people and/or licensees when a patron purchases liquor on the licensed premise and then leaves the premise with the drink.

AHA Recommendation:

The AHA seeks the removal of the offences that penalise licensed premises which do not have continuous licensed areas.