

R E V I E W

OF THE

LIQUOR LICENSING ACT 1988

Office of Racing and Gaming
Perth, W.A.

February 1990

REVIEW OF LIQUOR LICENSING ACT 1988

I N D E X

	Page No.
1. <u>INTRODUCTION AND BACKGROUND</u>	1
2. <u>SCOPE OF REVIEW</u>	3
3. <u>METHODOLOGY</u>	5
4. <u>MAJOR MATTERS FOR REVIEW</u>	7
(a) The Licensing Authority	7
(b) Objections and Interventions	23
(c) Financiers' Security over Licensees' Assets	36
(d) Infringement Notices	39
(e) Rationalisation of Licences	42
5. <u>OTHER MATTERS FOR REVIEW</u>	47
6. <u>ADMINISTRATIVE AND OTHER CONSEQUENCES</u>	78
(a) The Liquor Licensing Court	78
(b) Administrative Resources	84
7. <u>SUMMARY AND RECOMMENDATIONS</u>	91
(a) Summary	91
(b) Recommendations	94

APPENDICES

Appendix 1	101
Appendix 2	102
Appendix 3	103
Appendix 4	104

REVIEW OF LIQUOR LICENSING ACT 1988

1. INTRODUCTION AND BACKGROUND

Following a Review of the Liquor Act 1970 during 1987, the Government agreed in early 1988 to implement most of the recommendations of that Review by means of a statute which repealed the Liquor Act 1970 and enacted a new Liquor Licensing Act.

The Bill was introduced and dealt with in the Spring Session of Parliament in 1988. At that stage, it was generally considered in Parliament that the Bill was a good document, and amendments were made to only one provision of the Bill (Clause 117).

During the course of Parliamentary debate and other contact with interested parties, the Minister at the time, Hon. Pam Beggs, J.P., M.L.A., stated that the operation of the new Act would be continually monitored during its first 12 months of operation and that, if as a result problems were discovered which needed remedying, legislation would be introduced to make appropriate changes. These assurances were repeated by the Minister who handled the Bill in the Legislative Council, Hon. G.J. Edwards, M.L.C.

Section 178 of the new Act contains the usual requirement that the responsible Minister review the operation of the Act after it has been in operation for five years.

The new legislation was assented to on 9 December 1988 and came into operation on 1 February 1989.

In late July 1989, following a meeting between the Hon. Minister and representatives of the Liquor Industry Council, the Hon. Minister agreed to bring forward the review of the Act to consider several matters of concern raised by those industry representatives.

In answer to a Parliamentary question from Hon. P.G. Pendal on 21 November 1989, the Hon. Minister also indicated that the review had been instituted to identify shortfalls resulting from the new Act. The Hon. Minister also stated that, if matters needed to be addressed in relation to the resourcing of the new Act, they would be addressed at the completion of the review. To assist this process, resources problems are discussed in Chapter 6(b) of this report.

This document has been prepared by the Office of Racing and Gaming and constitutes the review of the new Act in accordance with the commitment of the Hon. Minister.

2. SCOPE OF REVIEW

From the beginning, it was made clear that the review would not look into all the operations of the Act and its policy, nor the objects of the legislation. In other words, it was not to be a review of the type to be carried out under section 178 of the Act after five years of operation, but was to be more in the nature of a post-implementation review.

At subsequent meetings with industry representatives and others, it was made clear that questions such as permitted trading hours, categories of licences, overall conditions defining the tenor of a licence and other such policy areas would not be covered by the review, although it was also made clear that there was nothing to prevent persons making submissions on these matters to the Hon. Minister as a separate exercise.

The review covers problems with both the provisions of the Act and the administration of the Act. In the case of administrative and procedural matters, several points of concern were noted early and prompt action taken where to do so would not involve a breach of the Act. In some cases procedures are necessary because of requirements of the Act, and these are addressed in the review.

Where administrative problems have already been addressed and no legislative action is needed, these are not discussed further in this report.

In short, the report covers current matters of concern relating to the technical operation of provisions of the Act, either in the way that they directly affect licensees in the conduct of their businesses or proceedings before the Licensing Authority, or in the way that they require the administration to be carried out.

In general, amendments are recommended only where they are causing actual problems in operation. Some proposals, for example, to further clarify provisions or to make minor changes have therefore not been recommended even though strictly they may improve the wording of the Act.

Similarly, there are many areas where the Authority has discretion whether or not to take action, but has adopted a policy as to when the discretion should be exercised. One such area is in the case of extended trading permits which under the Act could be granted to licensees to allow indefinite extensions of trading hours, but the Director has a policy of not granting such extensions. It has been submitted that certain restrictions on the Director's discretion should be written into the Act, but where the policy achieves the same end as the proposed provision these submissions are not supported.

3. METHODOLOGY

Following the original meeting with representatives of the Liquor Industry Council in late July 1989, the Hon. Minister invited industry representatives and representatives of support professions (solicitors, agents and the like) to attend a meeting on 15 August 1989 at which the review was formally announced.

Further meetings were then held with industry representatives on 7 September and 21 September 1989. At the completion of those meetings, the industry representatives agreed that all the concerns of the Liquor Industry Council relevant to the review had been raised and discussed. It was agreed that the Liquor Industry Council would be shown a draft copy of this review document before it was finalised. That has occurred and comments of the Council representatives have been taken into account in formulating this final document. In some cases, the Council's comments were agreed with or highlighted unclear drafting in the report, and appropriate changes have now been incorporated. In other cases, the Council's comments are not agreed with. Where this occurs, the points are noted and discussed.

Meetings were also held with representatives of the W.A. Licensed Sporting and Community Clubs' Association, which is not a member of the Council, and their comments were taken into account.

On several other occasions, meetings were held with individuals who had made submissions and also with representatives of other relevant Government and semi-Government agencies. Several written submissions were received from solicitors practising in the area and from other interested parties.

Appendix 1 to this report lists all those who made written submissions to the review. Where parties were met to discuss submissions, those meetings were held informally.

4. MAJOR MATTERS FOR REVIEW

(a) **The Licensing Authority**

A major topic of concern of many licensees, solicitors and agencies in the tourism field was the complexity of proceedings before the Liquor Licensing Court, and the delay, time and cost involved in having a matter determined by the Court.

As background, it should be explained that under the Act the Licensing Authority comprises two arms, namely the Liquor Licensing Court and the Director of Liquor Licensing.

Each of these arms of the Authority has specific tasks assigned to it under the Act. Generally, these are set out in section 30 of the Act. The following is a brief explanation of the separation.

The Court is responsible to determine proceedings under four main headings:

- . applications for the grant or removal of a Category A licence, but only where an objection is lodged and proceeded with;
- . applications relating to the imposition, variation or cancellation of certain conditions on Category A licences, or substantial alterations to licensed premises the subject of a Category A licence;
- . complaints for disciplinary action to be taken against licensees, or for licences to be cancelled where they are no longer being used;

- . applications for review of a decision of the Director or Registrar, or determination of substantial matters or questions of law referred to the Court by the Director.

The Director of Liquor Licensing is responsible for determining all matters on which jurisdiction is not specifically vested in the Court. These include:

- . applications for the grant or removal of Category A licences where there are no objections;
- . applications for the grant or removal of Category B licences whether or not there are objections;
- . applications for the transfer of Category A or Category B licences whether or not there are objections;
- . all other matters relating to Category B licences;
- . all applications for occasional licences and extended trading permits;
- . many matters relating to procedural requirements for applications, such as advertising, lodgement of documents, definition of the affected area, and the like;
- . all matters relating to the assessment, re-assessment and collection of licence fees.

The Director is also head of the Liquor Licensing Division, which accepts all applications under the Act. Where the application is a matter to be determined by the Court, the Director then forwards that matter to the Court for determination once relevant documents and reports have been gathered and consolidated.

Category A licences cover hotel licences (including tavern licences and hotel restricted licences), liquor store licences, special facility licences, cabaret licences and the casino liquor licence. These account for about 55% of all licences, but about 90% of the value of all retail liquor transactions.

In general, the criteria which have to be satisfied before either a Category A or a Category B licence may be granted are the same except that, in the case of Category A licences, the licensee must also prove that the licence is required to satisfy the reasonable requirements of the public in the affected area (section 38 of the Act). It is because of the controversies, complexities and need for some formalities in relation to the determination of this criterion when objections have been lodged that contested applications for the grant or removal of a Category A licence are determined by the Court.

The Act provides for a Registrar of the Court. Under the Act, the Registrar is responsible to the Judge of the Court and has power to carry out duties of a preliminary nature in respect of matters to be determined by the Court. For example, the Registrar conducts preliminary hearings for the purpose of setting hearing dates before the Court and for giving

directions as to the lodging of affidavits and the like.

As a final matter of background, the Court, Registrar and Registry staff (comprising a secretary and clerical officer and the Judge's Associate) are located at the May Holman Centre, 32 St George's Terrace, Perth. The Liquor Licensing Division, comprising 22 staff, is located at the Hyatt Centre, 87 Adelaide Terrace, Perth, approximately 1 kilometre away. This separation causes practical problems which will be discussed below.

The present Liquor Licensing Court and office of Director of Liquor Licensing were established in February 1987. This marked a clear separation between the administration and the Court. Till then, there had been disquiet about, and a lack of confidence in, the system under which the Court determined matters in a proper Court setting, and at the same time headed the office which attended to clerical tasks, inspections and the like.

The arrangements instituted in February 1987 and carried over under the new Act placed the Director at the head of the administrative functions under the Act (responsible to the Executive Director of the Office of Racing and Gaming), other than those carried out by the Court Registry staff. The Court now acts independently as a judicial body, determining only applications put to it, on the basis of evidence before it. The Court no longer has the administrative role which the Licensing Court of W.A. had before February 1987.

This separation in the licensing authority has led to some definite and clear benefits since it was introduced 3 years ago. By creating a separate head of administrative matters (the Director), and taking all administrative functions from the Court, there has been a definite increase in confidence, both in the legal profession and in the industry, in the impartiality and integrity of the Court and the competence of the administration.

The physical separation of the Court and the Division from early 1988 initially helped to emphasise this separation and to accelerate acceptance of the changes.

On the other hand, serious problems have also been caused. Principal among these are:

- . because of the provisions of the Act, the Court sometimes has to spend considerable time on technical matters such as the physical state of premises and the suitability of licensees and proposed managers. This is because, once a matter is one which has to be determined by the Court, all aspects of that matter (other than the assessment of the licence fee), no matter how trivial, must be determined by the Court. Some objectors, who have an obvious interest in delaying decisions as long as possible, exploit this by testing to as great extent as possible even these minor matters. This was especially so in the cases immediately after the introduction of the new Act;

- . it takes too long to get a hearing before the Court. At the time of writing this report, cases

were set down for hearing in the beginning of 1991. This represents a period of up to a year, in many cases, between the lodging of the application and the final determination. Of greater concern is the fact that there are many applications which have not yet had hearing dates assigned to them. Taking into account the average time taken for a hearing, it may well be that these matters cannot be determined until well into 1991. This is not acceptable. There are two main reasons for this delay.

The first reason is that each case takes too long - usually at least 5 days, often much longer. The second reason is that there is only one Judge of the Court to determine these matters.

The Court is set up with the trappings of a Court and largely follows rules of procedure and evidence like other courts. While there may be good reason for this, it takes up a lot of time. This is especially so if a lot of that time is concerned with matters relating to the state of the premises and the suitability of the applicant.

If one or more acting Judges could be appointed pursuant to the Act, the time between lodging of an application and its determination may be able to be substantially reduced. However, this could not be achieved unless at the same time resources were provided in the form of properly fitted out court rooms, transcription services, support staff and the like. Good arguments must be put forward before additional resources can be made

available. It would be preferable, if possible, to reduce the listing time by other means such as streamlining the hearing procedures and reducing the workload of the Court;

- . because of the length of hearings, they are very costly. It has been said by one solicitor that it is not uncommon for an applicant to have to spend \$60,000 or \$70,000 on legal costs to obtain a liquor licence before the Court. Objections may cost just as much, although often these costs are shared between several objectors using the same legal counsel. Apart from a party's own solicitor/client costs for several days in Court, the party may also be liable for the other party's costs if they are awarded;
- . expressions of concern have been received from solicitors acting in the jurisdiction and parties about whether the pre-hearing procedures carried out by the Registrar pursuant to the Act are needed. Concerns expressed cover areas such as the formality, time and expense involved in these preliminary matters;

(In all these matters relating to the operations of the Court and the Registry, it must be stressed that to a large extent they are dictated by the Act itself and are not the invention of the Court or the Registry. Even the Rules of Court formulated by the Court to specify pre-hearing procedures and the like are in response to the nature and functions of the Court as expressed by the Act. No criticism is implied of the Judge or the Registrar in this regard, but of the system created by the Act itself. It is considered that the concerns in this area are very real and

impose an unreasonable burden on parties to applications before the Court. It is therefore suggested that there must be amendments to the Act to change the system which results in these problems.)

- . as mentioned above, the Court and the Division are located in separate offices some distance apart. This physical separation creates delays in movement of files and other documents, and duplication of resources. In addition, the Director has a strong statutory role to play in making representations before the Court under the Act on public interest matters but is seriously hindered by the sheer physical problem and waste of time involved in travelling from one place to another;
- . this statutory role of the Director is also hampered because, once an application to be determined by the Court is sent to the Registrar, the Director is largely unaware of developments such as interlocutory applications. If any of these raise public interest factors, the Director therefore does not have the practical opportunity of addressing the Court on them;
- . there are undue delays in having matters processed by the Liquor Licensing Division. This has been acknowledged in some areas and steps have been taken to remedy the problem by a reallocation and re-ordering of resources and priorities. It is not considered that any provisions of the Act need to be altered to allow this process to run its course and achieve an acceptable result. However, further resources are needed, as discussed in Chapter 6 below.

More than in many other jurisdictions, in liquor licensing matters lost time can result in a loss of great deal of money. Where somebody is applying for a licence in the first place, they often cannot generate funds to service debts and other expenses until they are operating under the licence. Persons applying for a licence must have either tenure of the relevant premises or in most cases some sort of option over them. This usually means that the premises remain idle until the licence application is determined, and if the party has had to borrow large sums of money for development costs, substantial losses can result. In some cases, this can be enough to prevent the project proceeding at all. This again is a situation which should not be allowed to continue as a result of provisions of the Act.

There must be a fresh look at the statutory provisions relating to matters to be determined by a judicial body and the procedures to relate to them.

It is not suggested that there be any change to the basic requirement for an applicant for a licence to prove that the proposed licensed premises are suitable to be licensed, and the applicant (and all persons concerned with the applicant in the business) are fit and proper persons. This model of a licence being vested personally in a person who can satisfy these criteria is still relevant and desirable. There still needs to be a mechanism to vet applications and approve premises, and the question is only what the components of that mechanism should be.

The present system is unsuitable. It is too rigid, time consuming and costly. The people who benefit from these deficiencies are those in the industry who want

to prevent competition, and the legal profession. Significantly, several members of the legal profession itself have pointed to these problems even though they are resulting in a great deal of work for solicitors.

Nor is it suggested that there should be any change in the classes of licence which form Category A under the Act, or in the general requirement that holders of Category A licences must prove to the licensing authority that the licence is needed to satisfy the reasonable requirements of the public in that locality.

The Review considers that there should be a further limiting of the jurisdiction of the Court.

The Court's role in reviewing decisions of the Director, determining points of law and hearing disciplinary matters should remain. It is in the area of licence grant and removal applications that the jurisdiction needs examination.

At present, if a matter is to be determined by the Court, the Court determines all matters relating to criteria to be established on the application. For example, the Court determines whether the premises are suitable and whether the applicant is a fit and proper person, as well as the question of whether the licence is required to meet the reasonable requirements of the public in the affected area. Coupled with this, persons may object to the licence application on grounds including that the premises are not suitable or the applicant is not fit and proper. These objections on the grounds of suitability of premises and fitness of the applicant were not generally available under the repealed Act, and many of the

problems, at least initially, in proceedings under the new Act before the Court were because of parties' objections on these new grounds.

The Director of Liquor Licensing determines all transfers under the Act, whether or not objections are lodged. The principal criterion in relation to a transfer is whether the applicant is a fit and proper person. Therefore the Act recognises that the Director is competent to determine this issue of fitness of the applicant, even if there is an objection. This role has been exercised properly by the Director. Similarly, in Category B licence applications and applications to approve minor alterations to premises, the Director already has a role under the Act of determining matters relating to the suitability of premises, whether or not objections are lodged on that ground. This covers technical matters such as whether relevant planning and building approvals, and requirements under health legislation, have been satisfied. Staff in the Liquor Licensing Division are competent and qualified to prepare reports and make recommendations on these issues for the Director to base a determination. Indeed, reports of these staff are passed to the Court for consideration when a matter is determined by the Court.

In relation to applications for the grant or removal of a Category A licence, or for major alterations to Category A premises, the criterion which most merits the attention of a body such as the Court is the "reasonable requirements" criterion under section 38 of the Act. It is considered that in relation to applications for the grant or removal of a Category A licence where objections are to be dealt with, the Court's role should be limited to that of determining this "reasonable

In other words, it is proposed that, when an application is lodged with the Director of Liquor Licensing, staff responsible to the Director will examine the application and collate all relevant documents and other material. Reports on the technical suitability of the premises and the suitability of the applicant will be prepared on the basis of material supplied by the police, local councils and other authorities, and inspections by staff responsible to the Director. These reports will include a recommendation to the Director on the question of whether the premises are physically suitable to be licensed and whether the applicant is suitable to be licensed. If the Director is satisfied that these two criteria are met, the Director should prepare a report for forwarding to the Court advising it of this decision. This report should summarise the licence proposal in terms of its premises size, proposed trading conditions, location and other relevant factors.

In carrying out this process, the Director should give objectors to the application an opportunity to make submissions on matters in the report before it is forwarded to the Court. Any questions which objectors or other persons may have about approvals, permits and the like in relation to the premises, or the character, fitness or background of the applicant, can therefore be addressed and determined informally and administratively at this stage, in accordance with natural justice requirements.

The Act should, as with the corresponding Act in Victoria, require the Director wherever practicable to complete this process within 28 days after the end of

Once the matter is referred to the Court, and it will only be referred where (as now) it is a Category A licence and an objection has been lodged, the role of the Court will be only to consider the points raised by the applicant and objector on the "reasonable requirements" question, or on public interest questions. To assist the Court in this process, the Division should include in its report to the Court a summary of other relevant factors for the purposes of the section 38 "reasonable requirements" criterion. These include factors such as the number and condition of licensed premises already existing in the affected area, the manner in which and the extent to which those premises are distributed throughout the area, and the extent and quality of the services provided on those premises. Again, parties will be able to make submissions on these questions to the Director before the report is finalised and sent to the Court. However, once that process is completed and the report is forwarded to the Court, the Director's report on these aspects must be accepted as fact by the Court and may not be disputed by the parties. The Court may, however, call for clarification from the Director on any point raised, where ambiguity exists.

Commensurate with this, there should no longer be a ground of objection to any application on the basis of the suitability of the applicant or of the premises, except by relevant authorities such as the police or local planning authorities or local councils. The Liquor Licensing Division has sufficient expertise and knowledge of these aspects to be able to reach a proper decision without giving parties the right to object on these grounds. (This aspect of objections is discussed at Chapter 4(b) below.) This, however, would

not preclude the Director from accepting relevant submissions on these questions from persons who are not objectors.

If the Director determines that the premises are not suitable or that the applicant is not suitable, the applicant should have a right to have the matter referred to the Court for review in the normal way. If the Director determines that the premises are suitable and the applicant is suitable, no person will have a right to apply to the Court for a review of this decision.

It is considered that a restructuring of the jurisdiction of each arm of the Authority and the appeal provisions, as outlined in the following Recommendations, will result in a more responsive Authority much better able to meet the valid demands of the industry and the public. Questions as to the suitability of premises and fitness of the applicant will continue to be determined in accordance with natural justice, although in an administrative and less formal (and therefore, it is expected, less expensive and more prompt) way. The crucial question of the reasonable requirements of the public for contested Category A matters will continue to be determined more formally at a hearing, but that hearing will be shorter and therefore less expensive. The waiting time for hearings before the Court will also be reduced.

RECOMMENDATIONS

1. It is recommended that the jurisdiction of the Court now be to:

21.

- (a) determine points of law and special matters referred by the Director to the Court;
- (b) determine disciplinary complaints and applications for cancellation of abandoned licences;
- (c) determine whether the grant or removal of a Category A licence, or a major alteration to premises under or conditions applicable to a Category A licence, is needed to satisfy the reasonable requirements of the public in the relevant affected area or are otherwise in the public interest, but only where -

- (i) the application has been objected to; and

- (ii) the Director has determined that all other statutory criteria have been satisfied,

and that the Director have jurisdiction to determine all other matters under the Act.

- 2. It is recommended that the provisions relating to reviews of decisions of the Director, and to the way in which the Director is to determine matters, not be changed.
- 3. It is recommended that there be no appeal from a decision of the Court on a question of fact. On a question of law, there should continue to be an appeal available to the Full Court of the Supreme Court.

The Liquor Industry Council has raised several concerns about these proposals. These can be summarised as follows:

The number of matters to be heard by the Court should not be reduced.

This is accepted if it means that the number of applications should not be reduced. However, what is proposed is that within those applications some aspects (suitability of the premises and fitness of the applicant) should no longer be determined by the Court. Those aspects are already determined properly by the Director in other contexts (e.g. transfers of all licences, and grants of Category B licences). It is proposed that he do so in contested Category A applications as well, to prevent precious Court time being taken up on those issues. In determining these issues, the Director will still give the parties an opportunity to be heard, but in an informal and administrative process.

The Court cannot make a properly informed decision on the reasonable requirements question without also receiving evidence and allowing examination and cross-examination of witnesses on questions such as the suitability of the premises and fitness of the applicant.

A distinction must be made between what the Court and Director will determine under the review's proposals. Those proposals will not prevent objectors and the Court from testing the adequacy of a proposed venture. In other words, for example, the Director's determination that the premises are suitable will not mean that those premises are necessary to be licensed. It will only mean that questions such as whether planning

approval has been obtained, and whether the Health Act and building regulations have been complied with, are settled in advance. It would still be open for the objectors to argue and produce evidence, and for the Court to determine, that the premises as proposed are too large, too small, or wrongly located, or otherwise not appropriate to be licensed because there is no reasonable requirement for premises in that form or location.

In short, the Director's report will describe the proposal as to the premises and applicant and will conclude that they are suitable from a technical point of view. The Court must then determine whether that proposal, as described by the Director, should be licensed. In doing so, the Court may hear evidence from all the parties on whether the proposal is necessary to meet the reasonable requirements of the public.

The review does not suggest that the Director address or determine questions such as what financial or economic impact a proposal will have on other licensees or on a particular area. As far as they are relevant to the reasonable requirements question or the public interest criterion, they will continue to be addressed by the Court on the basis of evidence before the Court.

(b) Objections and Interventions

The scheme of the Act in relation to applications is that the applicant must prove certain matters (e.g. that the applicant is a fit and proper person to be

licensed). In the case of significant applications, certain persons are given a right to object to the application or to intervene, and the grounds of objection/intervention are specified.

The reason for having both objections and interventions is to account for different levels of influence by persons concerned about an application.

An objection gives the objector status as a party to the proceedings, and also gives the right to appeal against or to seek a review of a decision which aggrieves the objector. Intervention is not in most cases meant to bestow status on the intervener as a full party to proceedings, but is meant to give the intervener a statutory opportunity to make his or her concerns known to the Licensing Authority, without normal constraints as to lodging of notices and the like.

There are two classes of intervener under the Act: statutory authorities; and others. The first class is described in section 69 of the Act and comprises:

- . the Commissioner of Police, who may intervene in any proceedings before the Licensing Authority to make submissions or adduce evidence on questions relating to an applicant's fitness to be licensed, and on whether the grant of an application is likely to result in public disorder or disturbance;
- . a local health authority, which may intervene before the Authority to be heard on questions relating to health, sewerage or drainage laws, or Local Government Act matters;

a local council or shire, which may intervene before the Authority on questions as to the suitability of premises or alterations to premises, or as to likely noise, disturbance or the like;

the Director of Liquor Licensing, who may intervene on any question or matter before the Court.

These rights of intervention are not restricted by the usual rules as to time limits and the like for objections, and recognise the special role played by these authorities.

It is not proposed that these rights be further restricted. These "section 69" authorities should be able to intervene to raise relevant matters at any time before determination of an application, as in doing so they represent the public interest.

In section 70 of the Act, a right of intervention is also vested in persons with a valid interest in an application relating to a club licence. These could be persons such as local residents, licensees or associations. For example, a hotel licensee might be concerned about a proposed easing of trading hour restrictions on a club licence in the same country town. Section 70 recognises the special effect which club licence operations may have on other nearby licence operations. Statutory authorities would not intervene under section 70, but under section 69 as already described.

It is not proposed that this right of intervention before the Director for non-statutory interveners under section 70 be further restricted.

In relation to objections, several problems have arisen which need to be addressed.

The first is section 73(1), which provides that a person authorised to intervene in any proceedings may also object to the application. This has several undesirable consequences, including:

- . it gives the intervener a greater status than was intended. Because of this provision, there is virtually no need at all for interventions;
- . in practice, interveners are also lodging objections by virtue of section 73(1) and, because of the greater status of objectors, are able to delay even relatively minor applications (e.g. for the grant of a restricted club licence) unduly;
- . it is not clear whether the objection may be made only on matters covered by the ground of intervention, or on all grounds of objection under section 73.

While there is a need to have both interventions and objections, they should be kept separate to avoid these problems. Section 73(1) should therefore be repealed. At the same time, statutory interveners under section 69 (that is, the Director, Commissioner of Police, and local health authorities and municipalities) should be deemed to be parties to proceedings for the purposes of appeals because of the

statutory interests which they represent. This should not be so in the case of non-statutory interveners (i.e. those under section 70). Section 69(13) will need to be amended.

RECOMMENDATION

4. It is recommended that section 73(1) of the Act be repealed, and that interveners under section 69 (but not section 70) be deemed to be parties to proceedings in which they have intervened, for the purposes of reviews or appeals.

The Liquor Industry Council has opposed this recommendation. This appears to arise partly over a misunderstanding of the proposals. It is not proposed to restrict the right of intervention of persons under either section 69 or 70, but rather to draw a distinction between these two sets of interveners. Those under section 69 are statutory authorities, and it is proposed that because of the statutory interests they represent they should be able to appeal against decisions of the Authority when they have intervened. Section 70 interveners are in a different class. Their rights to intervene in section 70 matters are not proposed to be curtailed except that they cannot lodge a formal objection on the same grounds as those on which the intervention is made, unless those intervention grounds also constitute grounds of objection under section 73. As now, these section 70 interveners would not in their capacity as interveners be able to appeal against decisions of the Director.

Another area causing problems relates to who may lodge an objection and on what grounds. Under section 73 of

the Act, once a person has a right to object, that person may object on any of the grounds set out in section 74.

Objections may be lodged only where an application is advertised. Where an affected area is specified (i.e. in the case of applications to grant or remove a Category A licence, or to carry out major alterations to Category A licensed premises), any resident or Category A licensee in the affected area may object. In other cases, the regulations provide that any person may object.

Under the repealed Act, rights of objection were not so wide. For example, objections on the ground of the suitability of premises or their compliance with relevant health laws could be made only by a local municipality or a supervisor of licensed premises. The extension of the right to object under the new Act has resulted in many objections being lodged on these grounds and too much time has been taken up before the Authority on them (see Chapter 4(a)).

Also, section 74 is not clear as to whether certain grounds of objection are restricted to certain applications, or can be lodged in the case of any application. For example, it is arguable that an objection to the transfer of a licence can be lodged on the ground that the licence is not necessary to provide for the reasonable requirements of the public. This was never intended, as that criterion would have already been satisfied when the licence was first granted.

Amendments are needed to sections 73 and 74 of the Act to overcome these problems.

Grounds of objection under section 74 cover six main areas:

- . that the grant of the application would be contrary to the public interest or some provision of the Act;
- . that the applicant or associated persons are not suitable to be licensed;
- . in the case of Category A licences, that the licence is not necessary to provide for the requirements of the public;
- . that the proposed premises or related services are inadequate, unsuitable or unsatisfactory, or are in an unsuitable location;
- . in the case of clubs, that the club is not genuine;
- . that the grant of the application would result in undue disturbance, offence, annoyance or inconvenience to locals, or would lessen the amenity, quiet or good order of the area.

In recommendation 1 above, proposals were made about matters to be determined by the Court and Director respectively on contested Category A matters. Consistent with this approach, the grounds of objection in section 74 should be rationalised by deleting those areas to be determined by the Director. By doing so, however, the Director will not be required to make decisions on those matters in a vacuum.

The Director would still consider matters raised by statutory interveners under section 69 and, as stated previously, would still allow parties to the application to comment on proposed findings before reaching a determination, if those parties raised a relevant issue.

The remaining grounds of objection can then be rationalised as indicated in the following recommendation.

RECOMMENDATION

5. It is recommended that the grounds of objection under section 74(b) and (c) be deleted, and that the remaining grounds be rationalised so that they are:
 - . on an application for the grant or removal of a Category A licence, or for a variation to premises under or conditions on a Category A licence - that the grant of the application is not necessary, or the proposal of the applicant is not adequate or suitable, to provide for the reasonable requirements of the public as stipulated in section 38 because of the size, nature, design or location of the proposed premises, the nature of the business proposed to be carried on, or for any other relevant reason;
 - . as stated now in section 74(1)(a), (g), (h) and (j).

The Liquor Industry Council has raised strong concerns in relation to some of these proposals. Some have been

addressed by redrafting of parts of the draft report supplied to the Council for comment, and it is hoped that these changes will remove many of the concerns of the Council.

However, the Council in general opposes the deletion of any grounds of objection which now appear in the Act. For reasons given earlier in Chapter 4(a), the review considers that deletion of some grounds is consistent with the approach adopted on the respective roles of the Court and Director. The review maintains that approach.

To ensure that the public interest objection ground is not used to raise indirectly those grounds to be deleted under recommendation 5 above, it should be made clear that any public interest ground must relate to a matter other than the grounds of objection which will remain. In other words, the public interest ground should be used only in exceptional cases not already covered by grounds of objection or intervention.

Section 74(4) should be amended by deleting the role of the Registrar in striking out objections, as this has not worked. Instead, the Licensing Authority itself should be required to strike out objections which cannot be reasonably supported. (In this context, "Licensing Authority" means the Court in a matter to be determined by the Court, and the Director in a matter to be determined by the Director.)

RECOMMENDATION

6. It is recommended that the public interest ground of

objection be available only in relation to a matter not already falling within a ground of objection or intervention, and that the arm of the Licensing Authority responsible to determine a matter be required to strike out any ground of objection before the hearing, either on application by a party or of its own motion, if the ground cannot reasonably be expected to succeed.

Under the repealed Act, it was a ground of objection that the grant of the licence would cause substantial economic hardship to existing licensees. This ground was abolished and does not appear in the new Act. The inference must be that Parliament intended that this ground no longer be available. However, some objectors have tried to raise essentially the same objection under the public interest ground. That is, they argue that it is not in the public interest to grant a licence which may have such severe effects on another licensee's business as to make that business unviable.

The Act does not exist primarily to protect licensees' businesses. Its major purpose is to ensure that a reasonable liquor supply is maintained for the public from suitable premises - that is, it is there to protect the public interest. In doing so, the result may be that individual licensees' businesses are protected, but that is only an incidental effect. Individual licensees' businesses are protected only where that contributes to the objects of the Act.

What needs to be considered in relation to an application is its overall effect on the supply of liquor in the affected area. If granting an

application would result in a net decrease in the service to be provided to the public, it may be in the public interest to refuse the application. For example, the Authority may consider that to grant a liquor store licence in a town which has as its only

other outlet a hotel would result in the hotel going out of business, in which case it might consider that not to be in the public interest because the community would lose bar and accommodation facilities.

On the other hand, to grant a liquor store licence might result in an existing liquor store licence reducing its viability, but might increase overall the level and standard of packaged liquor availability. In this case, it might be in the public interest to grant the licence, despite its severe effects on a particular existing licensee.

This approach is consistent with that adopted by the High Court in planning matters, and should be applied in this area.

RECOMMENDATION

7. It is recommended that the public interest ground of objection not be available to an existing licensee alleging that the grant of an application would adversely affect that licensee's business, unless the objector can show that the overall liquor service to the public and related services (e.g. food, accommodation, entertainment) in the affected area would also be substantially reduced or it would otherwise result in a reduction in the satisfaction of the reasonable requirements in the public in the area.

The Liquor Industry Council considers that the combined effect of recommendations 5 and 6 above is to prevent altogether an individual licensee from raising as part of the public interest ground of objection the question of that particular licensee's economic viability, and opposes recommendation 7. This is not intended.

As has already been stated above, the intention of these proposals is that an individual licensee will not be able to raise the public interest ground of objection solely to express concern about that licensee's economic viability - in other words, the public interest ground should not be used to repeat in effect the economic hardship ground under the repealed Act. But a licensee may use the public interest ground in relation to the licensee's viability if it can be shown that that viability is relevant to the wider public interest in the orderly supply of liquor and satisfaction of the general public's reasonable requirements for liquor and related services.

Nor has the review suggested, as claimed by the Council, that the Director's report to the Court on aspects of premises and the applicant in contested Category A matters will address any economic factors. That report will only describe factors such as the extent of the affected area, the size and nature of the proposed licensed premises, and the size and nature of, and services offered by, existing licensees in the area.

There are some other technical matters relating to objections which should be addressed. In particular, it should be made clear that notices of objection must include full particulars of the grounds cited, must be

served on the applicant by the objector, and may be signed by a solicitor acting for an objector.

RECOMMENDATION

8. It is recommended that all notices of objection -

- (a) include full particulars of the grounds cited;
- (b) be required to be served on the applicant by the objector;
- (c) be allowed to be signed by a solicitor acting for the objector.

The Liquor Industry Council opposes the proposal that an objector should lodge full particulars of each ground of objection when the notice of objection is lodged. This is on the basis that it may take longer than the statutory period for advertisement of the application (usually 28 days) for the objector to gather all the evidence necessary to draft the particulars.

This is tantamount to conceding that an objector does not know why he is objecting to an application. Just as an applicant must be in a position under our proposals to proceed at the end of the advertising period, so too the objector should be in a position by then to know why he is objecting and to state particulars of those grounds sufficiently detailed to inform the applicant and Licensing Authority of the essence of the objection.

None of these points, however, should derogate from

the Authority's powers to approve the lodging of notices of objection which do not strictly comply with these requirements, if it is appropriate to do so. That power exists already and should also apply to these matters. Nor should they restrict the Authority's power to require additional details, such as a summary of evidence, to be produced.

(c) **Financiers' Security Over Licensees' Assets**

There has been considerable concern from the industry that, since the new Act commenced, financiers, especially lending institutions such as banks and finance companies, have become unwilling to lend money for the purchase of businesses involving a liquor licence. The unwillingness seems to arise from a perceived lack of security over the licensee's assets.

Consistent with the need to ensure that only fit and proper persons sell liquor from suitable premises, the law has for decades recognised that a liquor licence is not property in the normal sense of the word. It is not an asset which forms part of the estate of a bankrupt or dead person, for example, and may not pass from the licensee to another person unless the Licensing Authority has approved the transfer or the Act otherwise allows it to pass.

A liquor licence is a personal right vested in a specified person authorising the sale of liquor at specified premises. It is analogous to a driver's licence which allows only the licensee to drive only certain types of motor vehicle.

This concept is common to all liquor licensing schemes

in Australia, and is crucial to ensure that the licensing system retains integrity. It follows from this concept that a liquor licence should not be capable of being mortgaged, firstly because only property (which a licence is not) can be mortgaged and, secondly, because if the licensee defaulted in payments the lender/mortgagee could claim the licence for sale to satisfy the debt. If the lender/mortgagee were an undesirable person, this would thwart one of the central concepts of liquor licensing. This concept is enshrined in section 116(1) of the Act, and also existed under the repealed Act (section 124).

At the same time, it must be recognised that businesses which operate under a licence do have considerable value, including goodwill of several hundred thousand dollars in some cases. If the proprietor did not have a liquor licence, the value of the business would be greatly reduced.

Some financiers are now saying that they will only lend money to cover the value of the business without a licence, as they cannot be assured of taking over the business with the licence if the licensee defaults on the loan repayments.

This has occurred because of new provisions in the Act regulating what happens if some event occurs as a result of which the licensee can no longer operate the licence.

The repealed Act had corresponding provisions under section 88, which provided that if, for example, a licensee company defaulted in a mortgage payment, the mortgagee could automatically and without approval enter the premises and take over the running of the

licensed business until a formal transfer to a new licensee could be processed and approved. That often took several months. The problem with this procedure was that, while the lender had security for the debt, there was no control over undesirable persons taking over licences through their status as lenders.

The new Act, in sections 86 and 87, tries to overcome this deficiency by providing that, if any of the listed events occurred, in general only approved persons could take over the licence pending a transfer. Financiers are concerned at the possibility that they would not get approval and so do not have proper security.

The possibility of this is more theoretical than real. Institutions in other States, which have had similar provisions for years, do not seem to have the same concern. No financial institution in this State has ever been refused approval, and it is the Director's policy always to approve such bodies. However, they appear to be acting on legal advice that there is no statutory guarantee of approval, and their stance is causing considerable disruption to the financing of these licensed businesses.

The new Act already recognises a small class of persons who do not need approval. These include persons such as official receivers, persons appointed to administer the licensee's estate and official liquidators. The rationale for not requiring the Licensing Authority's approval of these persons is that they have already been approved and appointed under some other statutory process.

The concerns of financial institutions would be

overcome by maintaining the basic need for approval of persons in proceedings under sections 86 and 87, but by adding to the list of persons who do not need approval bodies such as banks, credit unions, building societies and other institutions licensed to lend money.

The provisions of section 116(1) of the Act should remain. Licences should still themselves not be able to be subject to a mortgage, lien or other charge (as was the case under the repealed Act, and is the case in all other States), but by allowing a lender to take over the licensed business temporarily pending a transfer, the lender's debt will be protected by allowing it to be recovered through trading or sale of the licensed business to an approved purchaser.

RECOMMENDATION

9. It is recommended that banks, building societies, credit unions and other licensed lending institutions not be required to obtain approval to take over a licensed business temporarily under section 86 or 87 of the Act.

(d) Infringement Notices

Section 167 of the Act provides for the issue of infringement notices instead of legal proceedings by complaint in the case of many offences under the Act.

If an offence is detected, action is normally taken by the police. If the offence is one to which section 167 refers, the police could either issue an infringement notice or proceed by complaint in the usual way.

In the case of an infringement notice, the expiation fee is 10% of the maximum fine under the Act for the offence. In practice, this means that expiation fees range from \$50 to \$500, with most in the \$100 to \$500 range.

Once an infringement notice is issued, the offender has 28 days to pay the expiation fee. If it is not paid, proceedings may be issued against the offender who may then be subject to a higher penalty in a court of summary jurisdiction.

The aim of these infringement notices is to provide a swift penalty for licensees, their staff and members of the public where offences occur. In the case of licensees, disciplinary action can still be taken by the Liquor Licensing Court as an additional penalty.

The scheme is administered by the Director of Liquor Licensing. It does not form part of the INREP (Infringement Notice Registration and Enforcement Procedure) under the Justices Act, for two main reasons.

First, the INREP scheme does not apply to juveniles, and one of the main reasons for infringement notices under the Liquor Licensing Act is to attack the problem of juveniles obtaining or consuming liquor on licensed premises. Second, because the offences relate to holders of licences already regulated by the Licensing Authority, the Director should have control over whether to allow an extension of time to pay expiation fees, whether to institute disciplinary proceedings before the Liquor Licensing Court, and the like. His control over the administration of these notices is essential in making these decisions.

For these reasons, the infringement notice scheme should remain under the Director's control. However, some features of the INREP scheme should be incorporated into this scheme. In particular, if a person fails to pay the expiation fee, the Director should have available the course of proceeding direct to execution of a judgement, rather than through costly and time-consuming court proceedings to obtain a judgement. In other words, as in the INREP scheme, failure to pay the expiation fee should be deemed to be an admission by the offender that the offence took place.

RECOMMENDATION

10. It is recommended that the Infringement Notice scheme continue to be administered by the Director of Liquor Licensing, but that it be altered to allow failure by an offender to pay the expiation fee to be treated as an admission of guilt for the offence.

This recommendation is opposed by the Liquor Industry Council on the ground that it is contrary to the normal presumption that the prosecution must prove the offender's guilt. Two responses can be made to this.

The first is that the proposal simply adopts a procedure which has been in place for some time in relation to Infringement Notices under the Justices Act. Second, the procedure comes into play only when the Notice has been issued and followed up with a warning letter which advises the offender that failure to respond will result in a conviction. In those

circumstances, the offender's failure to respond can reasonably be taken to signify an admission of the offence.

It is not crucial that this recommendation be implemented. It is proposed only as an efficiency measure in the same way as the procedure under the Justices Act.

The Infringement Notice scheme was instituted in mid-December 1989. In the six weeks between then and the end of January 1990, Notices with expiation fees totalling about \$11,500 had been issued. Staffing implications of this for the Liquor Licensing Division are discussed in Chapter 6(b).

(e) Rationalisation of Licences

The W.A. Hotel and Hospitality Association is especially concerned about the proliferation of some classes of licence. The effect of this, it is claimed, is to make some hotels and taverns, especially, less viable. This leads to a "siege mentality" for licensees which is manifested in many cases in objections to the grant of new licences, in an attempt to delay as long as possible the hearing of those applications.

Hotels and taverns are no longer required to provide meals to the public (although meals at breakfast and dinner must still be supplied to lodgers on request), and the obligatory trading hours outside the metropolitan area have been reduced from 8 hours to 4 hours on Monday to Saturday. These concessions were included in the new Act. However, where there is no

alternative facility in the locality, hotels must still provide accommodation. This, and the nature and design of hotels and taverns, often leads to high operating costs for these venues.

Recent legislative changes in Victoria have removed altogether the "reasonable requirements" criterion on the grant or removal of what we call Category A licences. It is not recommended that this be introduced in W.A. The geography and demographic constitution of this State make the position of hotels and taverns, especially those outside the large centres, much more susceptible to adverse effects from introduced competition.

This is not to say that there should be undue artificial protection for licensees. That only breeds operational laziness and an unwillingness to adopt to consumer demand. If any protections are included, they should not be in order to bolster the viability of licensees, but to protect the public's expectation of a reasonable satisfaction of their liquor needs from suitable premises.

The W.A.H.H.A.'s suggestion to increase general industry confidence is to introduce a scheme of licence rationalisation and pooling. Rationalisation schemes in the past have not been successful. The W.A.H.H.A.'s scheme has not been tried before, and appears worthy of consideration. Its features are as follows.

The Director should identify defined geographical areas of oversupply of hotel and tavern licences (hotel restricted licences would not be included). Licensees within those areas should be given a finite

period - say, six months - within which to nominate their licence as one which they are willing to transfer and remove if called upon to do so. When someone applies for a new licence anywhere in the State, and the Authority determines that the application should be granted, it may require the applicant to purchase a licence from a licensee who has joined the scheme. In other words, the application to grant a licence would be required to be converted to one for the transfer and removal of a licence from the pool.

It would then be up to the applicant to negotiate an acceptable purchase price with eligible licensees. Provided there are enough licences in the pool, prices should not become exorbitant. Once pooled licences become scarce, the Director should close the scheme.

The main advantages of this scheme over past licence rationalisation schemes are that:

- . it concentrates on defined areas of licence over-supply; and
- . it does not rely on acquisition of licences by the Government, but on negotiation between the parties.

On this basis, the scheme should be implemented, provided that it can be abandoned by the Director at any time if it appears not to be working. It must also be provided that, where a licensee leases the licensed premises, both the lessor and licensee must agree to the licence being available for the scheme.

RECOMMENDATION

11. It is recommended that a hotel and tavern licence rationalisation scheme be implemented with the following features:

- (a) the Director may declare defined geographical areas to be areas in which there is an over-supply of hotel and/or tavern licences;
- (b) within six months after the declaration, holders of hotel and/or tavern licences in the declared area (as well as the lessor, where the licensee is a tenant) may nominate their licences as ones which they are willing to have transferred and removed;
- (c) any person applying for a hotel or tavern licence after the end of the nomination period will, if all other statutory criteria are met, be required to transfer and remove a "pool" licence to the new site to be licensed;
- (d) the purchase of a "pool" licence by the applicant will be settled by negotiation between the applicant and any holder of a "pool" licence;
- (e) the Director may at any time declare that the scheme, or its application to a particular area, is to cease.

It is hoped that this scheme will, over time, restore confidence to licensees and increase stability in the industry. It is also expected that it will lead licensees and their representative associations to

adopt a reasonable stance in relation to litigation before the Authority.

The Liquor Industry Council supports this recommendation but adds that the scheme will work only if a premium is reintroduced for new licences or alterations to premises. Such a premium would, in the Council's view, encourage serious negotiations between the applicant and licensees in the pool.

The review cannot see how premiums on alterations to existing premises will be of any assistance in this regard. As to new licences, serious negotiations will be guaranteed by the fact that the Authority will not grant the licence unless the applicant purchases an existing licence in the pool.

The W.A. Cabaret Owners' Association wanted cabaret licences included in the scheme. This proposal is not supported as there is no evidence of over-supply of these licences.

5. OTHER MATTERS FOR REVIEW

Many matters were raised in submissions to the review. Some of these are not discussed here because it is considered that the Act is already adequate to deal with them, or because the changes suggested were not agreed with. The points which follow are those which were considered to merit legislative change.

Rather than provide a recommendation in each case, the points are discussed in the order in which they appear in the Act, and a final recommendation relates to them all. Where the recommended change is obvious or technical in nature, there is little discussion of it.

Where more than one change is proposed within a particular section of the Act, each proposed change is signified by an asterisk.

Section 3(1)

- * The Act covers liquor transactions, and liquor is defined as "a beverage which at 20° Celsius contains more than 1.15% ethanol by volume".

Many States are moving towards a definition of liquor where the relevant percentage is 0.05% instead of 1.15%. The main reason for this is to ensure that "ultra-light" beers, such as Swan Special Light, may be sold only through licensed outlets. At present, they may be sold in any supermarket or delicatessen. There is concern that these products, which are labelled as beer, may be attractive to juveniles and get them used to the taste of beer and its availability. As an analogy, the sale of confectionary

"cigarettes" is to be banned because they are attractive to children and get them used to the tobacco culture.

It is desirable for there to be consistency between States on this issue, so that data exchanged between authorities in those States is directly comparable. This consistency is an important tool in countering fee evasion through failure to declare cross-border transactions. Conferences of licensing authorities have recommended that all States adopt the 0.05% benchmark. (Victoria, Queensland and New South Wales have already done so.)

For these reasons, it is recommended that W.A. also adopt a benchmark of 0.05% in the definition of liquor. (It should be noted that a similar recommendation was rejected by Cabinet in 1988.) If this is implemented, licensees would get the sole right to sell these products. It would not affect the Swan Brewery's operations as it already sells them only to licensed outlets (from which unlicensed stores then purchase them).

At the same time, transactions in this type of product should be exempt from licence fee, so that the price is not raised with resulting discouragement for purchasers.

The Alcohol and Drug Authority has been consulted about this proposal to alter the definition of liquor and supports it.

The Liquor Industry Council, however, opposes the proposal on the ground that there may be confusion amongst licensees as to what the alcohol content is of

a particular product and, therefore, uncertainty as to what rate of licence fee applies to them. The Council also states that the measure may also capture some other products (such as ginger beers, ciders and fruit juices) which have small amounts of alcohol.

These problems do not, as far as can be ascertained, occur in those States which have adopted 0.05% as the benchmark, and the review maintains its proposal.

- * The definition of "protection order" should be amended to include a reference to section 89, under which those orders may also be made.
- * The definition of "sell" should be altered to make it clear that it includes any delivery of liquor in Western Australia, whether or not the liquor came from or was purchased outside the State. This is needed for two reasons.

First, it will make it clear that persons may not set up businesses under which, claiming to be a licensee's agent, they take customers' orders for liquor over the telephone, obtain the order from a licensee and deliver it to the customer in return for the cost of the liquor and a delivery fee. Such businesses should be carried out only by licensed persons, so that controls over the orderly distribution of liquor can be maintained.

Second, it will prohibit the delivery of liquor direct to consumers from sources outside the State, usually following orders sent by customers by mail. Millions of dollars worth of liquor are delivered into W.A. by this method annually through schemes operated by banks and other lending institutions alone. This has several

undesirable effects. For example, it allows considerable disruption of the orderly scheme of licensing by taking trade from local licensees; it is open to abuse by the delivery of liquor direct to juveniles; it is very hard to monitor; and it results in considerable forgone licence fee revenue. (For every \$1 million worth of wine delivered into the State, the Government revenue forgoes \$110,000 in licence fees.)

It is considered that any objections to such a scheme which could be raised under section 92 of the Commonwealth Constitution would be countered by section 113 of the Constitution, which states that any liquor passing into a State shall, for the purposes of that State's laws, be deemed to have been produced in that State. Even if that proves to be incorrect, and the scheme were to be declared unconstitutional by the High Court, that would not affect the validity of the remainder of the licence fee scheme already in place.

It is stressed that these mail order schemes would not have to cease. Instead, the operators will have to obtain a licence in this State, and be subject to State law like all other liquor vendors. A special new licence for these operators is discussed below in relation to section 46.

If this proposal is implemented, section 4(8) should probably be repealed, as it would be repetitive.

Section 7

This section describes the two arms of the Licensing Authority, and in subsection (3)(b) provides that the

Director may not impose a licence condition which is inconsistent with a condition imposed by the Court.

An exception should be made to this in the case of conditions to be made by the Director under section 117 on a "noise" complaint. In those special cases, the Director will have carried out an inquiry in the presence of the parties, and the aims of achieving neighbourhood peace under section 117 should not be frustrated just because in some cases the remedy will involve altering a licence condition previously imposed by the Court.

The Liquor Industry Council opposes this as it considers that the section 117 powers vested in the Director are already wide enough. For the reasons stated, the review does not agree with this view.

Section 13

Subsection (1) provides for the appointment of the Director.

In keeping with recent Government policy, there should be provision for the appointment to be made by the Governor In Council and published in the Gazette, as the Director has quasi-judicial functions under which the personal and property rights of persons may be affected.

Section 21

It should be made clear that the power of the Court to award costs in subsection (1) relates not only to proceedings, but also any step in proceedings (e.g. interlocutory matters). This will deter parties from

making spurious points which are dismissed in chambers.

Section 24

- * The Director should also be empowered to refer for determination by the Court any matter from which the Director disqualifies himself (e.g. because of a conflict of interest).
- * The power to refer questions of law should apply whether or not the question relates to current proceedings. This will allow definitive legal rulings to be obtained to dispel doubts about interpretation of the Act, without the need for there to be proceedings on foot.

Section 30

Consistent with the remainder of section 30(1), the Court should determine applications for substantial alterations to Category A licensed premises or conditions only if an objection has been lodged.

Section 31

- * Subsection (3) provides that a licensee may sell and supply liquor only in accordance with the terms and conditions of the licence. It should be made clear that the licensee may only operate the licence in accordance with its terms and conditions. This will make it clear that the licensee must comply with licence conditions which do not directly relate to liquor sale or supply (e.g. conditions relating to meals or entertainment).

- * Subsection (6)(a) is not clear in its wording. Its meaning would be clearer if the words "if imposed" (or similar) were inserted before "on the grant of the licence".

Section 32

- * Subsection (2)(b) should apply also to a protection order under section 89, and an interim authorisation under section 86.
- * Subsection (5) provides that a licence remains in force if suspended but does not authorise the sale of liquor. It is not clear what "remains in force" means in this context. It should be made clear that offences which would apply outside permitted trading hours for a licence not under suspension apply for the whole time when the licence is suspended (e.g. offences under section 111(2)).
- * Section 37(5) of the Act provides that, if a licensee ceases to occupy licensed premises, the licensee's right to the licence terminates. This is consistent with one of the central tenets of liquor licences, namely that a licence relates only to the premises specified on the licence. The Supreme Court has recently held that the effect of section 32(5), when read with section 37(5), is that section 37(5) does not apply when a licence is under suspension. In other words, when a licence is suspended, the licensee may vacate the premises and hold the licence in abeyance indefinitely. This is not desirable. The Act should be amended to provide that section 32(5) applies only while section 37(5) is complied with. However, there should be an exception in cases where a licensee obtains a conditional removal of a licence under

section 62 and wishes to suspend the licence pending completion of the new premises. In those cases, the Director should have discretion to suspend the licence and allow the licensee to vacate the existing premises, so that the licensee does not continue to incur costs on two sets of premises.

Section 33

- * Subsection (3) allows the Licensing Authority, however constituted, to waive or modify any requirement for formal compliance with any procedure relating to an application. A recent Supreme Court decision gave an interpretation of this, as a result of which the Authority's flexibility to deal with procedural matters is limited. In particular, the Authority may not waive altogether the usual requirement to advertise an application and therefore expedite a matter.

This provision (or section 67(3), or both) should be amended to make it clear that the Authority may waive compliance altogether with any or all procedures (including advertising) relating to an application or objection, or any step required to be otherwise taken in proceedings. To ensure that this discretion is properly applied, it should be stated that the discretion may be used only where the Authority considers that it will further an object of the Act or is otherwise in the public interest.

A consequential amendment should be made to section 81(4) to provide that the power there to waive advertising requirements in relation to removals is additional to the above general power, and does not limit the general power.

- * Subsection (6) sets out some of the relevant matters to be considered in deciding whether a person is a fit and proper person to be involved in, or to hold, a licence. While these criteria are not exhaustive, it would be beneficial to provide specifically that the person's character and reputation are relevant, as are offences under any Act, whether or not an Act of Western Australia.

Section 34

This provision sets out classes of persons who may not obtain licences (e.g. bankrupts, juveniles). It also provides that such persons may not be approved as shareholders in proprietary companies. This is unnecessary, as shareholders do not necessarily direct the affairs of a company.

There are already adequate provisions elsewhere in the Act to refuse approval for shareholders who are undesirables (e.g. section 37(1)), so all reference to shareholders in section 34 should be deleted.

Section 37

This section sets out criteria which applicants for the grant, removal or transfer of a licence must satisfy before the Authority may grant the application. The basis of these provisions is sound, but changes are needed to remedy some practical problems.

- * In subsection (1)(a), it is not clear what the distinction is between a body corporate and a company. This should be clarified.
- * In subsection (1)(a)(ii), it appears that a licence may not be granted unless there is also a manager who may be approved. Often, when a large project is involved, a licence will be sought by an entrepreneur before building commences, with the intention that approval of a manager will not be sought until the licence is to commence operating. This may be several months after the licence (which would be a conditional licence under section 62) is granted. This provision should be amended to provide that a manager does not have to be approved until the licence is to commence operations. The nomination and approval of a manager should be made a further condition to be satisfied under section 62 before the licence may operate.
- * Subsection (1) provides that the matters in subsection (2) (as to planning approvals and the like) must be satisfied by the applicant before the application is approved. Subsection (2), however, states that the Authority may require to be satisfied of these matters. This apparent inconsistency should be remedied by making it clear that, in all applications which relate to the use or state of premises or land under a licence, all relevant approvals, consents, permits and the like must be produced by the applicant unless the Authority considers there is good reason to exempt the applicant from this. Here, and in section 77(5) relating to alterations to premises, it should also be provided that the grant of an application may be made subject to the provision of specified approvals or the like.

Further, it should be provided that these approvals, consents, permits and the like must be provided at the time the application is lodged, or else the application may be dismissed or not further processed. This is to avoid hearing time being taken up by applications which are incomplete. Words must be carefully chosen to ensure that only relevant authorities need be provided - for example, a building permit need not be produced if a conditional licence is being sought, but the production of such a permit must be made a condition of the grant.

- * Subsection (5) requires a licensee to be in exclusive occupation of the licensed premises. It should be provided that a conditional licence or removal under section 62 is not included in this. Where the licensee in that case does not occupy the premises, it should be made a further condition of the grant or removal that the licence may not operate until proof of occupation is produced.
- * In the case of a conditional removal, it should also be provided that, once the order is made, the licensee may vacate the existing licensed premises, if he wishes, without his interest in the licence terminating as provided by subsection (5)(b).
- * In subsection (1)(d)(iii), "would not to be appropriate" makes no sense. The word "to" should be deleted.

Section 38

- * This section describes the "reasonable requirements" criterion to be satisfied before the grant or removal of a Category A licence may be approved. This is

discussed further in Chapter 4(a) above, in the context of changes to the jurisdiction of the Licensing Authority. Consequent on these changes, section 38 should be amended by taking the factors (a) - (d) from subsection (1), so that subsection (1) simply provides that the applicant must satisfy the Authority that the licence is necessary in order to provide for the reasonable liquor, accommodation and other related requirements of the public in the affected area.

The subsection (1)(a)-(d) factors should be added to those which, under subsection (2), the Authority shall take into account. Added to that list should be consideration of the size and nature of the proposed licensed premises and their location, and any other relevant factor. All these resulting factors should be stated to be the matters to be addressed in the Director's report to the Court discussed in Chapter 4(a).

- * Subsection (5) provides limits on further applications for the same site if an application has been refused on the "reasonable requirements" criterion during the preceding 12 months. This limitation should be extended beyond that site to any place within the affected area defined for the first application. The Director would still be able to overrule this in special cases.

Section 41

- * The new Act introduced the concept of one hotel licence class to replace the previous hotel, tavern and limited hotel licence classes. The conditions attaching to the hotel licence dictate its character -

for example, sales of take-away liquor may be prohibited, or residential accommodation might not be required to be provided. The former is, for convenience sake, referred to in the Act as a hotel restricted licence, while the latter is still referred to as a tavern licence.

The applicant might apply for a hotel licence under which take-away sales are authorised and accommodation is to be provided. The Authority might determine that take-away sales are not justified. Section 41 should make it clear that, on an application for any of the three "types" of hotel licence, the Authority may grant that "type" or one of the other "types", depending on what the evidence reveals are the reasonable requirements of the public.

Related to this, the passage following section 41(1)(b) should preferably be deleted.

- * Subsection (8) allows a tavern licence to be substituted for a hotel or hotel restricted licence where accommodation is found no longer to be necessary. This is satisfactory except in the case of a hotel restricted licence, as to substitute a tavern licence would authorise the licensee to sell take-away liquor where that authorisation did not exist previously.

It should be provided that a tavern licence may be substituted for a hotel restricted licence only if the Authority is satisfied that the reasonable requirements of the public justify take-away liquor sales.

Section 42

There is an inconsistency between subsections (1) and (3). The former requires a live entertainment, or pre-recorded music played by a "disc jockey", to be provided under a cabaret licence. Subsection (3) refers only to live entertainment. A reference to other types of entertainment allowed under subsection (1) should be inserted in subsection (3).

Section 46

This section sets out the cases in which a special facility licence may be granted.

In comments above on section 3(1) on the definition of "sell", it was suggested that deliveries of liquor in W.A. be deemed to be sales, so that mail-order businesses must be licensed in this State.

To enable this, it should be provided in section 46(5) that another purpose for which a special facility licence may be granted is to facilitate the delivery of liquor ordered by customers by mail or from interstate sources. The Authority can then impose conditions on the licence to ensure that only this purpose is fulfilled.

Section 48

In subsection (4), which imposes conditions on club licences, it should be provided that it is a further condition that the club must not contravene, or operate outside of, its aims and objects. This is needed to counter some instances where, through a change in membership, clubs have begun to operate in

a way which is quite inconsistent with their aims and objects, to the detriment of neighbours and other licensees in the area.

Section 50

- * This describes restaurant licences, including those which have extended trading permits under section 60(4)(c) authorising the sale of liquor to lodgers.

As with hotel and hotel restricted licences under section 41(5), it should be provided that holders of these restaurant licences must provide meals and accommodation for lodgers on request. The exemptions from this under section 41(5) should also apply.

- * The requirement under section 105 to keep a register of lodgers should also apply to these licences.

Section 58

Under this section, holders of wholesaler's licences may, during a financial year, sell no more than 10% of the total value of liquor sales to unlicensed persons. Given the size of wholesalers' gross turnover, this 10% can be a very large amount of retail sales, in competition to other retailers.

In fact, very few wholesalers sell liquor to unlicensed persons to any significant extent. It is considered that, to ensure that wholesalers do not compete with retailers (especially those in Category A), the right to sell liquor retail should be deleted altogether, effective from 1 July 1990. This will involve deleting subsections (3)(b) and (4), and

amending subsection (3)(a) and clause 18(2) of Schedule 1.

However, wholesalers should continue to be able to offer free samples to prospective customers, and to sell or supply liquor to employees, and to sell liquor to bodies such as Parliament House, army canteens or police canteens which are not licensed but are authorised by law to sell liquor without a licence. There should be no limit on such sales or supplies.

Section 60

Subsection (3)(b) provides that, where an extended trading permit is granted in relation to a restaurant licence, the sale of liquor must still be ancillary to a meal. Clearly, this should not be so in the case of an extended trading permit granted under subsection (4)(c) authorising the sale of liquor to lodgers in accommodation adjacent to restaurants.

Section 62

- * This section relates to conditional grants - that is where the grant or removal is approved subject to the completion of the proposed licensed premises. Strictly, the licence does not exist until the condition as to completion, or any other relevant condition attaching to the grant, is satisfied.

Section 62 should provide that, although this is so, a conditional grant shall be deemed to be a licence for the purposes of an application to transfer the licence to another person.

- * Other matters relating to section 62 are discussed above in relation to section 37.

Section 64

- * Since early 1987, conditions have been imposed by the Director on most licences prohibiting the provision of lewd or indecent behaviour, and prohibiting licensees from allowing staff or employees to be dressed immodestly or indecently. This condition is considered desirable to prevent the instances of gross behaviour which existed previously.

However, it is considered that the imposition of such a condition is a matter of public policy, and should be effected by force of the Act itself (in section 64 or elsewhere), rather than by conditions imposed by the Director.

- * Also, there is sometimes confusion when different authorities impose different conditions on licences in relation to the same subject. For example, a local health authority might restrict to 1,000 the number of persons who may be on the premises at one time. The Licensing Authority might specify a different number, unaware of the other restriction.

It should be provided that, if a condition imposed by or under the Act on a particular licensee or premises conflicts with, or is inconsistent with, a condition imposed lawfully by or under any other law, whichever is more restrictive applies.

Section 66

Subsection (6) allows the Director to require new

plans of premises to be lodged if those lodged under an application are no longer accurate or adequate.

This power should apply whether or not there is an application before the Director. The accuracy of plans is crucial as they are used to define the licensed premises for the purposes of offences and authorisations, and a general power of this type vested in the Director is needed to ensure that this accuracy is maintained.

The Liquor Industry Council is concerned that, if this power were used freely, licensees could be put to a great deal of expense in having new plans drawn. Certainly this is not intended. New plans would be required only if the existing plans were damaged beyond reasonable repair or were no longer accurate and could not be amended to show the correct position.

Section 67

It is recommended above (see Chapter 4(b)) that there should no longer be any right to object to the transfer of a licence. Therefore, the requirement under subsection (1)(c) to advertise a transfer application should be deleted.

The police will still be able to make reports and submissions on an applicant's fitness under section 69, and the industry and public will still be notified of any new approved licensee under section 67(5)(b).

Section 68

- * Under subsection (3), any person may inspect an application and accompanying documents before the

objection period elapses.

As some of these documents may contain sensitive information (e.g. financial details), there should be a power for the Director not to make such sensitive documents available.

The Liquor Industry Council opposes this proposal as it considers that a potential objector should have full access to all documents lodged by an applicant so that proper and complete objections can be lodged. This argument has merit. The review now considers that the power to keep information confidential should relate only to personal details of the applicant, as under previous proposals there will be no right to object on the basis of such details. (See Chapter 4(b) above.)

- * Consistent with previous recommendations as to the increased role of the Director, it should be made clear in subsections (10) and (14)(a) that it is the Director's responsibility to do the things described there.
- * This section relates generally to the lodging of applications. It is not clear whether solicitors acting for an applicant may sign and lodge an application on their client's behalf. To remove any doubt raised by some parties, the Act should make it clear that, as with other jurisdictions, solicitors may sign and lodge applications for their clients.

Section 72

- * The requirements under subsection (1)(b) to obtain the consent of the owner of premises before a licence is

removed should also apply in the case of a temporary removal, to protect the owner's interests.

- * Consistent with other recommendations, "licensing authority" in subsection (2) should be replaced by "Director".
- * Subsection (6) is ambiguous. It should be made clear that, in the case of a removal application, "lessor" there means the lessor of the premises to which the licence is to be removed, not the lessor of the premises from which it is to be removed.

Section 73

- * Several recommendations have already been made above in relation to rights of objection (see Chapter 4(b)).
- * It should also be provided that the Licensing Authority may grant leave for substitution of an objector before the matter is determined, where the party is a licensee and the licence is transferred between the date of application and the hearing date.
- * It should also be provided that the Director may reject or refuse to deal with a notice of application or objection which is not in accordance with the Act, for example because it does not have attached the necessary planning certificates. This will avoid time being wasted on spurious matters. There should be no review of such a decision.

Section 81

- * This section relates to licence removals; that is, the relocation of a licence from one premises to another.

The fitness of the licensee is not at issue. Subsection (3)(a), which relates to the applicant's fitness, should therefore be deleted.

- * Subsection (4) allows advertising requirements to be waived where the removal is over a short distance to premises within the same locality as the existing premises. It should be provided that this waiver may be granted only on application by the applicant, so that it may be required to be advertised under section 67(2). This will then give other licensees within the locality an opportunity to make submissions on the question.

Section 84

- * Under subsection (1)(a), a transfer may be approved where the outgoing licensee has consented to it. This consent must be current at the time that the transfer is considered. Some lessors attempt to avoid the spirit of this by including in the lease a requirement that, at completion of the tenancy, the tenant/licensee must consent to a transfer to the lessor or the lessor's nominee. If the tenant/licensee refuses to give that consent, the transfer would not go ahead but the tenant/licensee could be sued for damages. In this sense, the consent, if given, may not be "freely" given.

To overcome this, it should be provided that any contractual requirement that a tenant/licensee consent to a transfer of the licence at a later date is void at law.

- * Under subsection (2), it is unlawful for a licensee to sell or assign a licensed business unless the contract

is subject to a condition that the licence transfer has been approved by the Director. The aim of this is to prevent settlement of sales before the new licensee is vetted and approved, so that persons who are not fit to be licensed do not take over licensed premises.

While this aim should be continued, the wording has caused problems. Arguably, if a contract does not include such a condition, it is void altogether and neither party may rely on it, and the parties have committed an offence under section 166. This is too drastic.

It should be provided instead that every contract for the sale or assignment of a licensed business is impliedly subject to a condition that the contract does not take effect until the transfer is approved. It should be specified that the parties may not agree to exclude this condition, but they may apply to the Director to waive it in a particular case.

- * Related to this, it should be made clear that a contract referred to in section 84(1)(a) is such a conditional contract.
- * Furthermore, the wording of subsection (3) seems to provide that a transfer may be applied for on the ground that the licensee has vacated the premises. This may conflict with the aims of section 87(1)(a), so section 84(3) should be amended to remove this impression. It could, for example, simply refer to transfer applications made in circumstances where the licensee has vacated the premises.
- * Subsection (4) should be amended to provide that the

Director may also require an outgoing licensee (the transferor) to provide specified returns or details of liquor transactions, to ensure that data is maintained for licence fee assessment purposes.

Section 86

This section defines the circumstances under which defined persons may temporarily take over and operate licensed premises pending a later transfer of the licence. The aim is to ensure continuity of trade in the case of emergencies or other extraordinary events.

Subsections (5) and (6) relate to bankruptcies, receiverships and the like on the part of licensees. Subsection (5) seems deficient in that it does not allow a receiver and manager to take over the licence temporarily, and subsection (6) refers to an official receiver when an official manager may be meant. Parliamentary Counsel should clarify these terms.

Section 87

- * The question of protection orders and financiers' interests have been discussed at length above (see Chapter 4(c)).

As an additional point, subsection (6) should be amended to provide that the Director, not the Court, should determine any dispute between two or more persons claiming the temporary right to operate a licence under sections 86 or 87. It is important that such a dispute be settled quickly, and the Director is in the best position to do this.

- * Also, subsection (6) refers only to disputes between two persons each applying for a protection order, or two persons each claiming to exercise a right under section 86. It should be expanded to include a dispute between two persons, one claiming a right under section 86 and the other applying for a protection order.

Section 88

- * The opening words of subsection (1) refer to a protection order granted under section 87. It should be amended so that it also refers to a protection order granted under section 89, and an authorisation under section 86.
- * It should also provide that where a protection order or authorisation applies, the Director may require the person using it to comply with the terms of the lease which most recently was in force in relation to the property if the person is not the owner. Otherwise, it is arguable that the person does not need to pay rent or comply with other covenants of the lease.

Section 89

This section allows certain action to be taken by the Director where a dispute arises between parties to a lease of licensed premises. As worded, it is too wide as it can conceivably relate to disputes which are not relevant to the licence.

Section 89 should be clarified by providing that action may be taken by the Director only where he considers it is appropriate to protect the licence or the public's ability to obtain liquor, or is otherwise

relevant to the integrity of the licence.

Sections 90-93

These provisions relate to suspension of licences. A provision should be inserted to allow an application to be made to lift the suspension, as no such provision exists now.

Section 95

- * Under this section, grounds of complaint are listed under which disciplinary action can be taken against licensees. One ground is where the licensee has been convicted of certain offences. This should be expanded so that it refers to relevant offences under the Environmental Protection Act (e.g. exceeding permitted noise levels), and the Police Act.

The Liquor Industry Council opposes any increase in the grounds for disciplinary action as it believes that it could lead to action being taken where an employee of the licensee caused the offence to occur. The review is confident that, if action is instituted and the licensee shows that this occurred, the Court has the flexibility to tailor disciplinary action accordingly, or indeed to take no action at all. On the other hand, if this proposal is not implemented, a licensee who blatantly and deliberately created excessive noise at licensed premises could not have disciplinary action taken against him. For this reason, the review maintains this proposal.

- * In subsection (7), there is a printing error which should be remedied. The word "on" in paragraph (a) should follow "Registrar".

- * Under section 95(5)(b), the Commissioner of Police is one of the persons who may make a complaint to the Court. Administratively, it is not always convenient to obtain the Commissioner's signature to a complaint. It should be provided that a delegate of the Commissioner may also lodge complaints on behalf of the Commissioner. As similar comments apply to the Commissioner's role under sections 117 and 155 of the Act, it may be preferable to include a definition of the Commissioner in section 3(1) to include a delegate of the Commissioner.

Section 96

There is an obvious printing error in subsection (6)(b). "Mortgagor" should read "mortgagee".

Section 99

- * This section requires licensees to keep the licensed premises at an acceptable standard. It also allows the Director to issue directions to licensees or owners of licensed premises to remedy defects in the premises.

Where licensed premises are leased, the lease usually sets out the respective obligations of lessor and lessee in relation to repairs and maintenance. Section 99 should provide that, in issuing a direction under that section, the Director shall have regard to relevant terms of the lease, although the lease terms should not necessarily be conclusive.

- * The scheme of issuing directions under section 99 is complex and tortuous in its present form. To simplify this, the step set out in subsection (4) should be

deleted, so that if a direction is issued but not complied with, the next step is to impose the penalty set out in subsection (7) once the licensee has been given a chance to be heard.

Section 100

This sets out the responsibilities of managers and a licensee's responsibilities on changeover of a manager.

The procedures relating to changeover of managers have been found to be too complicated and onerous. What is needed is a simple requirement that, where a manager is required to be appointed, it shall be an offence for a licensee, once the position of manager is vacant, to allow more than seven days to pass without applying for a replacement manager (who may be temporary). Once an application is lodged, the manager may commence work even though the application is not determined.

Subsections (1), (2), (3) and (5) may remain, but the other subsections should be repealed in favour of the simplified requirements above.

Section 102

This section provides that approval must be obtained before a person assumes a position of authority in a licensee company, or changes a shareholding in a proprietary company.

The provisions relating to shareholders are unduly onerous and should be replaced with a requirement that any change in shareholding of a proprietary company be

notified to the Director within seven days. If it appears that the new shareholding vests control of the company in an undesirable person or persons, the Director should have power to require the licensee, within 28 days of being advised of the change, to show cause why the change should not be vetoed.

Section 104

Subsection (2) sets out some exceptions to the general rule that the profits or proceeds of business under a licence should not be disbursed to unlicensed persons.

To this list should be added disbursements by way of dividends to a company shareholder or benefits to approved beneficiaries under trusts related to the licence, and arrangements under which managers of licences have an incentive scheme arranged with a licensee who is not a body corporate. (Where the licensee is a body corporate, the Act already covers the situation.)

Section 108

Subsection (5) requires holders of hotel and relevant special facility licences to display price lists for food and liquor at times when liquor may be supplied only ancillary to a meal.

If this requirement is to apply, it should also apply to restaurant licences.

On balance, however, it is considered that this requirement is unreasonable and should be deleted altogether.

Section 110

Subsection (7)(c) prohibits the sale of liquor on credit. This is a carryover from past days when publicans would get customers drunk on credit and then sue the customers for recovery of the amount owing.

The provision is no longer needed and inadvertently seems to prohibit most wholesalers' transactions. It should be deleted.

Section 115

Subsection (4) allows a manager or licensee to cause certain types of undesirable persons to be removed from licensed premises. This right should be extended to an employee or agent of the licensee, in the same way that such staff may refuse admission to those undesirable persons in the first place.

Section 121

- * Subsection (4) makes it an offence for a licensee to allow a juvenile to enter or remain in certain parts of licensed premises. To be consistent, it should also be an offence for a juvenile to enter or remain on licensed premises in those circumstances.
- * Subsections (6) and (7) allow certain parts of premises to be declared as out of bounds to juveniles, and make it an offence for juveniles to enter those areas. Subsection (8) exempts some juveniles from this prohibition (e.g. juveniles who are children of the licensee or are employed as food waiters). There

should also be an exception in cases where the Director has granted a temporary dispensation (e.g. for a youths' function at which liquor is not available), under section 120 (1)(e).

Section 125

- * Juveniles who are on licensed premises in the company of a responsible adult are not covered by the usual prohibitions about being on those areas. Subsection (2)(b) defines a responsible adult to include the juvenile's parent, step-parent, spouse, legal guardian or other person in loco parentis. It also includes "a person who might reasonably have been expected to have had authority over the conduct of the juvenile".

This last part of the definition has proved to be too wide and should be deleted. There are cases where, for example, a 17-year old youth claims that his accompanying 19-year old brother is a responsible adult.

- * Section 125 sets out several defences available to persons charged with selling or supplying liquor to juveniles. The same defences should apply in cases where the offence relates to a juvenile's presence on premises.

Section 126

This section empowers licensees and their staff to remove from premises persons who refuse to answer questions about their age.

The removal power should be extended to the cases where a person is, or is reasonably suspected of

being, on the premises contrary to the law (e.g. if the person appears to be, or is, a juvenile).

Schedule 1

There is a printing error in clause 5(6). In that sub-clause, "section 115(4)" should read "section 116(5)".

RECOMMENDATION

12. It is recommended that the changes to provisions of the Act explained in Chapter 5 of this report be implemented.

6. ADMINISTRATIVE AND OTHER CONSEQUENCES

(a) The Liquor Licensing Court

In Chapter 4(a), problems with Court procedures were discussed and recommendations made, which were aimed at reducing delays in obtaining hearings. In this sub-chapter, it is suggested that there is no longer need for a court at all in liquor licensing, and that it should be replaced by a less formal Commission.

The recent trend in Western Australia and in other liquor licensing jurisdictions in Australia has been to characterise more and more licensing functions as matters to be determined under a process of administrative adjudication rather than by a judicial body.

Western Australia and South Australia are now the only liquor licensing jurisdictions in Australia in which a court hears matters in the first instance - that is, original applications. In all other parts of the country, courts hear only appeals or disciplinary matters. Original applications are determined by bodies called boards or commissions, which generally act informally. (In this State and in South Australia, of course, many matters in the first instance are also not determined by the respective Courts.)

The Court in this State is established as a Court of Record to be comprised of a Liquor Licensing Court Judge or Acting Judge. It has a formal Registry and office of Registrar established under the Act. The Judge has the same protection and immunity as a Judge has in respect of proceedings in the Supreme Court, has powers to punish for contempt in the same way as

a District Court Judge may, and is appointed until 70 years of age. A Judge or Acting Judge must be a person who is, or is eligible to be, appointed as a District Court Judge. Although the Court is required to act without undue formality and is not bound by legal rules relating to evidence or procedure, in practice court hearings are held in premises set up as a court with separate bench, bar table, witness box, public gallery and the like. The Judge and Counsel are not robed, but generally follow procedures similar to civil courts. To a large extent this is understandable, as the Judge and Counsel are legally trained and act within a system with which they are familiar.

Under administrative law, licensing tribunals are usually seen as specialist bodies which are not constrained by the usual rules relating to judicial notice. In other words, the body may (and to a large extent is expected to) take into account in considering a particular matter general knowledge of the liquor industry learnt from previous cases, rather than being strictly confined to considering matters raised in evidence before it. It is recognition of this aspect which has resulted in the provisions in the Act stating that the rules of evidence do not have to be complied with, that the Authority shall act without undue formality, and that in reaching determinations the overriding consideration is the public interest.

To emphasise this aspect of the character of the Court, the Act should be amended to include a clear statement that in proceedings it shall accept all relevant, reliable and logically probative evidence available to allow it to reach an informed decision,

and may itself call for and accept expert reports and other evidence. It should also be made clear that it must, in reaching decisions and in conducting proceedings, do so in accordance with the objects of the Act (which include the need to provide a flexible and non-technical administration). It should also be made clear that it may take wide notice of trends and facts which it perceives in the liquor and related industries, both generally and in relation to specific licences.

By naming the body a court, a certain degree of formality of operations is conjured up in people's minds, irrespective of statements in the Act relating to its special status as a licensing tribunal. The facts that it is called a court and is established as a Court of Record, and has the powers relating to contempt and the protection and immunity already referred to, enhance this perception of the Court. So too does the fact that it is headed by a Judge. As a judicial body of this sort, it is to a large extent expected to have the trappings of a court already referred to. This in turn leads to procedures which, it is suggested, are not needed for licensing matters.

To remove this perception it is considered that the Act should also clearly state that the Court is an administrative tribunal, not a judicial body. As a result, there is little use in continuing to name the body a court at all. It is suggested that a title of Liquor Licensing Commission is more appropriate. This still suggests a place where decisions are made judicially and in such a way that they are adjudicated between parties, which is necessary for the matters to be determined by this body, but it gives the impression that the body will operate less formally

than a court and with a definite administrative flavour. All of this is appropriate to a body carrying out functions of this sort in an area like liquor licensing.

If the Act is amended to make the Court a Commission, the need for the position of Registrar to continue in its current form must be questioned.

It is envisaged that the new Commission would operate much less formally and rely more heavily on the resources of the Liquor Licensing Division in respect of setting hearing dates and clearing up preliminary matters. This is consistent with the position in all other States and Territories of Australia, where the administrative arm of the licensing authority also provides the support services to the adjudicative body. The position of Registrar exists in few jurisdictions at all, and where it does exist it is more in the nature of a lower level Clerk of Court. Even where those positions do exist, the person is responsible in all administrative senses to the head of the administrative arm of the Authority (in this case, the Director). If this scheme were introduced in this State, it is envisaged that the person responsible for providing these sorts of services would be a Level 4 or Level 5 officer also responsible to the Director for other aspects of vetting of licensing applications.

If this occurred, the staff (excluding the Judge's Associate) now in the Court Registry would become staff items under the supervision of the Director of Liquor Licensing. Given the less formal role of the Commission, it would be desirable and feasible to locate the Commission and the Division in the same

building. This is the case again in all other States and Territories of Australia, and it does not appear to cause any problems in practice or raise concerns about lack of independence of the tribunal, even where it is a Court of record, or introduce fears that parties are not treated fairly.

13. It is recommended that:

- (a) the Liquor Licensing Court be replaced by a new Liquor Licensing Commission;
- (b) the Commission be constituted by a Commissioner, who is legally qualified and appointed for a set term of up to five years; or one or more Acting Commissioners with the same eligibility for appointment;
- (c) the Commission members not be public servants;
- (d) the Commission not be a court of record but an administrative tribunal. However, judicial notice should be taken of decisions of the Commission, and its members and proceedings should attract the same immunity protections as courts;
- (e) the Commission be required to act with as little formality as practicable, and not be bound by legal rules of evidence or procedure. The Act should recognise the Commission as a specialist licensing tribunal not bound by the concept of judicial notice applicable to courts;
- (f) the Commission be specifically required to act in pursuance of the objects set out in section 5 of the Act;

- (g) the office of Registrar of the Court be abolished. Support services for the new Commission, including preparation of matters for hearing, should be provided by staff of the Liquor Licensing Division responsible to the Director;
- (h) three of the four staff items now attached to the Court (1 x Level 9 Registrar; 1 x Level 2 Personal Secretary; 1 x Level 1 Officer) become items responsible to the Director of Liquor Licensing, with revised levels and duties, to allow the Director to carry out new functions;
- (i) the new Commission and the Liquor Licensing Division be located in the same building.

In preceding Chapters, reference is made to the present Court in many cases. In all cases, "Commission" can be substituted for "Court" in relation to future action.

Such a system as described above ~~and in preceding Chapters~~ should be able to deal adequately and promptly with all applications which may arise in the future. However, the present backlog of cases must be dealt with urgently. This could be achieved either by the appointment of Acting Judges under the current system, and the provision of ancillary services to allow those Acting Judges to operate; or by the swift introduction of the new Commission with as many Commissioners or Acting Commissioners appointed in the short-term as are needed to deal with all outstanding matters; or both, the latter taking over from the former at an appropriate time.

No recommendation is made on this point because the course adopted will depend on the timing of the introduction of the new Commission.

However this backlog is cleared, it is essential that the new provisions apply also to existing applications which are waiting to be determined.

The proposals to change the Court to a Commission, to reduce its jurisdiction, to alter its organisational support and to relocate it near the Division, all form a coherent package. It is aimed at ensuring that, in the longer term, contested licensing applications are determined with a proper balance between the rights of parties to be heard, and the expectation of prompt, informal hearings which are not too costly. The package cannot be altered without adversely affecting these aims. If any aspect of the package is not proceeded with, the whole package should be reviewed to see whether it is still able to achieve its aims.

(b) Administrative Resources

The recommendations in the preceding parts of this report will, if implemented, have important resource implications.

At present, the Liquor Licensing Division has the equivalent of 22 full-time staff (i.e. 22 FTE staff). Of these, two are temporary items to administer the Infringement Notice scheme, and they will be reviewed at the end of the 1989/90 year.

These 22 staff items are deployed in 4 main parts of the Division as follows:

- . executive area (3 FTE staff);
- . financial inspections, fee assessment and revenue accounting (5 FTE staff);
- . premises inspections (5 FTE staff);
- . licensing and processing of applications, and Infringement Notices (9 FTE staff).

The Liquor Licensing Court and Registry comprise a Judge and four public service FTE staff.

The current organisation of the Division and Court is shown in Appendix 2.

In addition, revenue is collected and records kept for the Division by staff in other parts of the department.

During the first few months of operation of the new Act, the introduction of new functions and new procedures resulted in unacceptable delays in many areas. These were addressed by the concentration of resources in problem areas, sometimes to the detriment of other functions (especially financial inspection of licensees' books and records, which was commented on by the Auditor-General).

Divisional procedures and systems are constantly monitored, but the workload appears to have stabilised and staff are now used to the new Act and its procedures. As a result, it is now possible to assess objectively the demands of the new Act and whether the Division is able properly to meet those demands.

The essence of the new Act is meant to be a flexible, informal and non-technical administration. This is a

specific object of the Act (section 5(e)). That was not the case with the repealed Act.

In the licensing and applications area, the new Act requires many decisions to be made at virtually every stage of an application (e.g. whether advertising requirements should be modified, whether late objections should be accepted). Under the repealed Act, applications followed a set, rigid course.

This new flexibility creates a need for more resources, otherwise delays will follow at each stage where decisions need to be made. While delays are no longer undue in this area, they are still greater than the level needed to meet the objects of the Act. More importantly, the quality of decision making is still not as high as it should be because the lack of resources does not allow applications to be scrutinised as closely as they should be.

If the Division takes on the increased licensing role as proposed in this report, the need for extra resources will be critical in this area.

The case is similar with premises inspectors. Under the proposals in this report, their role will become less that of carrying out regular inspection of premises State-wide (which has greatly diminished anyway over the past year as those inspectors have been diverted to tasks related to introduction of the new Act, and should increasingly become a role for local government). Instead, they will concentrate on preparing reports for the new Commission and for the Director on applications. Each time an affected area

is set for an application, those inspectors will have to report comprehensively on the population and demographics of the affected area, and the location and condition of licensed premises in that area. Their role of reporting on applications for alterations to premises will continue, and there will still need to be some random inspection of licensed premises.

This changed role in relation to new applications is the lynchpin of the proposals to reduce the industry expense and delay involved in contested Category A applications. It will involve a re-examination of the Job Description Forms for these positions, an increase in the number of such staff items, and a changed organisation to create better training and career opportunities. Unless resources can be provided to allow this new task to be carried out promptly and competently, the transfer of this function to the Division will not result in any appreciable benefit for the administration of the Act, and may in fact result in further delays.

In the case of financial inspectors, four staff items now assess and reassess all licence fees annually and on the grant of a new licence, and carry out random inspections of licensees' records. This latter function is to ensure that licensees properly and accurately record all relevant liquor transactions, as those records are the basis of licence fees (amounting to an estimated \$60 million in 1989/90). Another staff item accounts for revenue which has been assessed and initiates action to recover outstanding revenue. (The actual receipt of revenue is carried out elsewhere in the Department.)

The assessment of annual licence fees and fees on the grant of licences, and the accounting for revenue, are carried out properly, subject to some changes now under way in relation to computer software. However, the financial inspectors spend months of each year on these tasks, so that the random inspection of records cannot be carried out to the extent necessary to ensure that proper liquor records are kept by licensees.

This is another an area in which extra resources and organisational changes are needed, whether or not the other proposals for changes to the Act are implemented. Unless those resources are provided, the program of inspection of licensees' financial records will be superficial and inadequate, and it is considered that significant licence fee revenue will not be assessed and collected.

At the end of Chapter 4(d), the results of the initial period of the Infringement Notice scheme were summarised. Although this covers only a short period of six weeks, it is already clear that the revenue to be raised from this measure will be much greater than the costs of the two FTE staff temporarily (to 30 June 1990) approved to administer the scheme. Approval for those two FTE staff should therefore be approved indefinitely.

In Chapter 4(a), it was recommended that some of the Court's jurisdiction be transferred to the Director, and that the Court and Liquor Licensing Division be located together to make best use of resources. In Chapter 6(a), it was recommended that the Court be replaced by a new Commission, and that three of the four staff items now in the Court registry be

transferred to the Division.

To enable the Division to operate properly under these proposals, so that the objects of the Act and the valid needs of the Division's clients are met, it is considered that the Division needs to be organised as shown in Appendix 3. (The classification levels of various positions may also have to be reviewed, but that task has not been undertaken here. For the moment, classification levels in Appendix 3 follow, as closely as possible, those in Appendix 2.) Appendix 3 also shows how the new Commission would relate to the Division.

A comparison of the present and proposed organisations of the Division, and its current and proposed functions, reveal a need for seven additional items. Given the proposed transfer of three items from the Court to the Division, the net result is a need for an increase of four items for the Division.

RECOMMENDATION

14. It is recommended that, in addition to the three staff items recommended to be transferred from the Court to the Division, four FTE staff items be approved for the Division to allow it to carry out its functions effectively under the Act as amended, and the two temporary FTE staff items for the Infringement Notice scheme be made permanent.

If these changes are implemented, it is estimated that there will be a net increase in annual staff salaries of approximately \$58,577, as outlined in Appendix 4. This does not take into account the cost savings from

a substantial decrease in rent of premises by bringing the two arms of the Authority together, although this saving has not been quantified.

More importantly, even if the net extra cost of these four staff items is not offset by the savings in rent, the exercise will still be worthwhile as it will result in greater productivity and efficiency in the processing of applications and the collection of revenue, and in the reduced cost and delays to industry and the public which the Authority exists to serve.

If these proposals are not approved, the only way to reduce the hearing delays before the Court/Commission will be to appoint extra members of the tribunal, which will be a much more costly exercise when costs such as additional court rooms and chambers are added. Even then, the problems of the length and cost of hearings themselves will not be solved.

7. SUMMARY AND RECOMMENDATIONS

(a) **Summary**

When the Liquor Licensing Bill was before Parliament late in 1988, it was stated that once the new legislation came into force it would be constantly monitored to ensure that any problems in operation were detected.

The new Act came into operation on 1 February 1989, and this process of monitoring has taken place. There has also been regular contact with industry organisations to obtain views on the new Act's implementation.

In general, the new Act has achieved its aim of creating a more flexible and responsive licensing scheme while at the same time ensuring that proper controls over the sale and disposal of liquor are maintained. However, there have also been some problems, which is not unusual in any case where such a comprehensive piece of legislation is totally rewritten.

These problems have occurred in four main areas:

- . administrative systems and procedures within the Liquor Licensing Division;
- . the system of hearings and proceedings before the Liquor Licensing Court;
- . technical problems with the wording of the Act; and
- . resource problems.

The first of these has been addressed so far as is possible within existing resources and the provisions of the Act.

The remaining three areas are addressed in this report.

In relation to the Court, it is considered that the scheme outlined in the Act inevitably leads to undue delays and expense in proceedings before the Court. It is also considered that the nature of the Court as set up in the Act is one of the factors leading to these undue delays and expenses, and it is no longer appropriate for a Court to determine liquor licensing matters in the first instance. Even if additional Judges are appointed to reduce the backlog, the system will ensure that a backlog is re-established once those acting appointments expire. Structural change is needed.

As a result, it is recommended that:

- . the Court be replaced by a Liquor Licensing Commission comprising one or more legally qualified Commissioners who are not public servants but are appointed for fixed terms;
- . the jurisdiction of the new Commission be restricted to determining legal questions and reviews of decisions of the Director of Liquor Licensing; disciplinary questions; and questions as to whether a Category A licence is necessary in order to provide for the reasonable liquor and related requirements of the public in a locality (but not any other aspect of such applications

except the public interest question) in cases where applications for such licences have attracted objections;

- . the Commission be located adjacent to the Liquor Licensing Division, which is to provide all support services to the Commission;
- . the provisions relating to objections and interventions be amended to delete provisions which have proved to be impractical, or to lead to unnecessary delays.

These proposals are discussed in more detail in Chapter 4(a) and (b), and Chapter 6(a).

A review of the resources of the Liquor Licensing Division is carried out in Chapter 6(b). This covers the additional resources necessary to allow the Division to carry out its existing functions in an efficient and effective manner, as well as an examination of the resources needed to carry out new functions proposed to be transferred from the Court to ease the hearing backlog and prevent future delays.

It is stressed that the resources of the Division are stretched to the limit now, and the proposals to shift some Court functions to the Division should not proceed unless additional resources are made available. The reduction in hearing delays is therefore inextricably connected with the provision of additional resources and redeployment of existing resources.

If these proposals do not proceed, the only way to overcome the serious problems with Court hearings will

be the relatively expensive one of appointing Acting Judges more or less indefinitely. Even then, the problems of the formality, length and cost of hearings themselves will not be solved.

The technical problems with the wording of several sections of the Act are addressed in Chapter 5. Other technical matters relating to financiers' security over licensed businesses, and relating to Infringement Notices, are discussed in Chapter 4(c) and (d).

It is alleged that there are too many hotel and tavern licences in some parts of the State, leading to reduced viability and, more importantly in a licensing sense, reduced service to the public. A voluntary rationalisation scheme is proposed in Chapter 4(e).

If Cabinet agrees with the recommendations in this report, legislation to implement them should be drafted at once so that amendments can be introduced in the Autumn Session of Parliament. The scale of problems experienced by some applicants for licences is so severe that this urgency is justified. In the meantime, the temporary appointment of an Acting Judge should be considered.

Immediate steps should also be taken to implement the recommendations relating to resources for the administration of the Act if the legislative changes are to be effective at the earliest opportunity.

(b) Recommendations

1. It is recommended that the jurisdiction of the Court now be to:

- (a) determine points of law and special matters referred by the Director to the Court;
- (b) determine disciplinary complaints and applications for cancellation of abandoned licences;
- (c) determine whether the grant or removal of a Category A licence, or a major alteration to premises under or conditions applicable to a Category A licence, is needed to satisfy the reasonable requirements of the public in the relevant affected area or are otherwise in the public interest, but only where -

- (i) the application has been objected to; and

- (ii) the Director has determined that all other statutory criteria have been satisfied,

and that the Director have jurisdiction to determine all other matters under the Act. (See page 20.)

- 2. It is recommended that the provisions relating to reviews of decisions of the Director, and to the way in which the Director is to determine matters, not be changed. (See page 21.)
- 3. It is recommended that there be no appeal from a decision of the Court on a question of fact. On a question of law, there should continue to be an appeal available to the Full Court of the Supreme Court. (See page 21.)
- 4. It is recommended that section 73(1) of the Act be repealed, and that interveners under section 69 (but

not section 70) be deemed to be parties to proceedings in which they have intervened, for the purposes of reviews or appeals. (See page 27.)

5. It is recommended that the grounds of objection under section 74(b) and (c) be deleted, and that the remaining grounds be rationalised so that they are:

- . on an application for the grant or removal of a Category A licence, or for a variation to premises under or conditions on a Category A licence - that the grant of the application is not necessary, or the proposal of the applicant is not adequate or suitable, to provide for the reasonable requirements of the public as stipulated in section 38 because of the size, nature, design or location of the proposed premises, the nature of the business proposed to be carried on, or for any other relevant reason;
- . as stated now in section 74(1)(a), (g), (h) and (j).

(See page 30.)

6. It is recommended that the public interest ground of objection be available only in relation to a matter not already falling within a ground of objection or intervention, and that the arm of the Licensing Authority responsible to determine a matter be required to strike out any ground of objection before the hearing, either on application by a party or of its own motion, if the ground cannot reasonably be expected to succeed. (See page 31.)
7. It is recommended that the public interest ground of objection not be available to an existing licensee

alleging that the grant of an application would adversely affect that licensee's business, unless the objector can show that the overall liquor service to the public and related services (e.g. food, accommodation, entertainment) in the affected area would also be substantially reduced or it would otherwise result in a reduction in the satisfaction of the reasonable requirements in the public in the area. (See page 33.)

8. It is recommended that all notices of objection -
 - (a) include full particulars of the grounds cited;
 - (b) be required to be served on the applicant by the objector;
 - (c) be allowed to be signed by a solicitor acting for the objector.(See page 35.)
9. It is recommended that banks, building societies, credit unions and other licensed lending institutions not be required to obtain approval to take over a licensed business temporarily under section 86 or 87 of the Act. (See page 39.)
10. It is recommended that the Infringement Notice scheme continue to be administered by the Director of Liquor Licensing, but that it be altered to allow failure by an offender to pay the expiation fee to be treated as an admission of guilt for the offence. (See page 41.)
11. It is recommended that a hotel and tavern licence rationalisation scheme be implemented with the following features:

- (a) the Director may declare defined geographical areas to be areas in which there is an over-supply of hotel and/or tavern licences;
- (b) within six months after the declaration, holders of hotel and/or tavern licences in the declared area (as well as the lessor, where the licensee is a tenant) may nominate their licences as ones which they are willing to have transferred and removed;
- (c) any person applying for a hotel or tavern licence after the end of the nomination period will, if all other statutory criteria are met, be required to transfer and remove a "pool" licence to the new site to be licensed;
- (d) the purchase of a "pool" licence by the applicant will be settled by negotiation between the applicant and any holder of a "pool" licence;
- (e) the Director may at any time declare that the scheme, or its application to a particular area, is to cease.

(See page 45.)

12. It is recommended that the changes to provisions of the Act explained in Chapter 5 of this report be implemented. (See page 77.)

13. It is recommended that:

- (a) the Liquor Licensing Court be replaced by a new Liquor Licensing Commission;

- (b) the Commission be constituted by a Commissioner, who is legally qualified and appointed for a set term of up to five years; or one or more Acting Commissioners with the same eligibility for appointment;
- (c) the Commission members not be public servants;
- (d) the Commission not be a court of record but an administrative tribunal. However, judicial notice should be taken of decisions of the Commission, and its members and proceedings should attract the same immunity protections as courts;
- (e) the Commission be required to act with as little formality as practicable, and not be bound by legal rules of evidence or procedure. The Act should recognise the Commission as a specialist licensing tribunal not bound by the concept of judicial notice applicable to courts;
- (f) the Commission be specifically required to act in pursuance of the objects set out in section 5 of the Act;
- (g) the office of Registrar of the Court be abolished. Support services for the new Commission, including preparation of matters for hearing, should be provided by staff of the Liquor Licensing Division responsible to the Director;
- (h) three of the four staff items now attached to the Court (1 x Level 9 Registrar; 1 x Level 2 Personal Secretary; 1 x Level 1 Officer) become items responsible to the Director of Liquor

Licensing, with revised levels and duties, to allow the Director to carry out new functions;

(i) the new Commission and the Liquor Licensing Division be located in the same building.

(See page 82.)

14. It is recommended that, in addition to the three staff items recommended to be transferred from the Court to the Division, four FTE staff items be approved for the Division to allow it to carry out its functions effectively under the Act as amended, and the two temporary FTE staff items for the Infringement Notice scheme be made permanent. (See page 89.)

APPENDIX 1

PERSONS AND BODIES MAKING SUBMISSIONS TO THE REVIEW

Ms M. Alexander, Nedlands

Cabaret Owners Association of W.A. Inc

Messrs Corrs, Solicitors

Messrs. P. Evans, C. Hood, C. Stevenson, G. Crocket
and M. Hitchkin, Solicitors (combined submission)

Liquor Industry Council of W.A.

Hon. Minister for Regional Development

Messrs Northmore, Hale, Davy & Leake, Solicitors

Mr K. Oliver

Messrs Parker and Parker, Solicitors

Mr G.P. Prendergast, Director, Gunrohan Pty Ltd

Ms M. Sheen, Nedlands

W.A. Hotels Association Inc (now W.A. Hotel and
Hospitality Association)

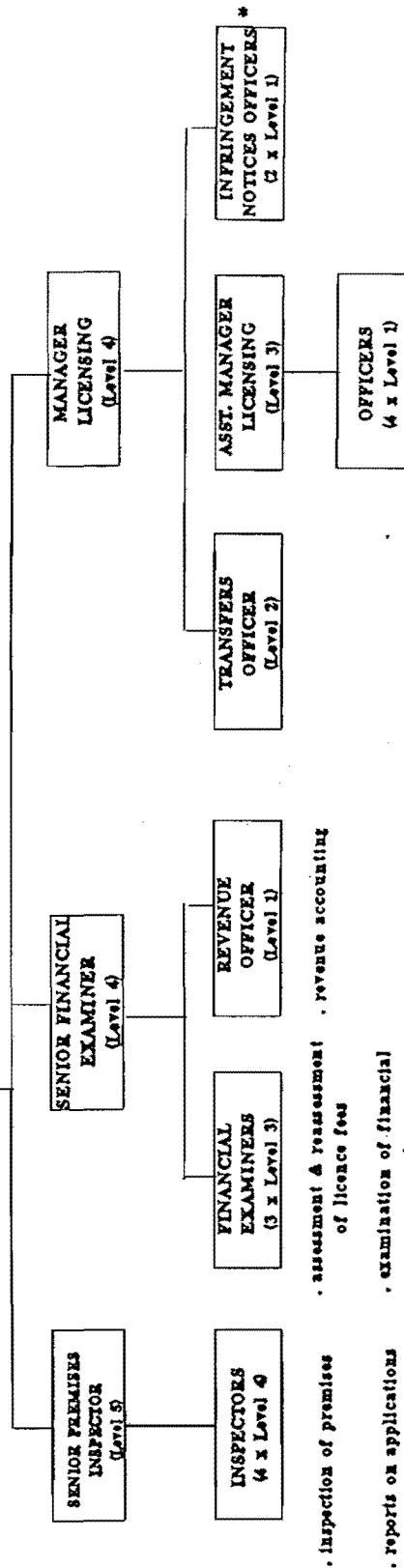
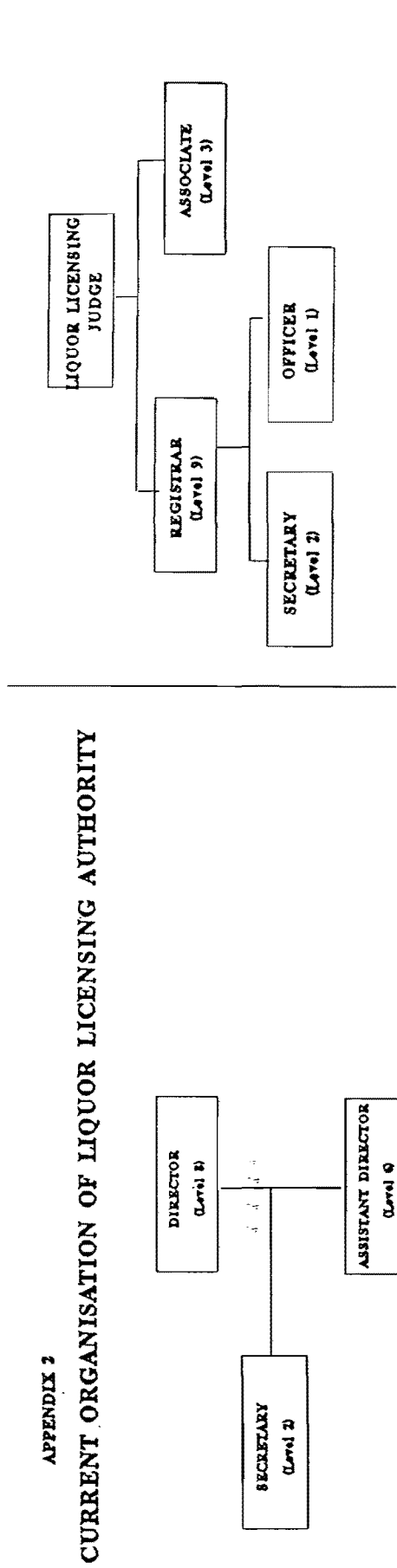
W.A. Licensed Sporting & Community Clubs' Association
Inc.

W.A. Police Department, Liquor & Gaming Branch

W.A. Tourism Commission

APPENDIX 2

CURRENT ORGANISATION OF LIQUOR LICENSING AUTHORITY



- . processing of applications
- . front counter
- . support services
- . data input

. transfers of licences

. licence fee evasion detection

. inspection of premises

. reports on applications

CLASSIFICATION DISTRIBUTION

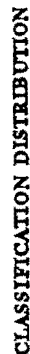
(a) DIVISION	(b) COURT
1 x Level 8	1 x Judge
1 x Level 6	1 x Level 9
1 x Level 5	1 x Level 3
6 x Level 4	1 x Level 2
4 x Level 3	1 x Level 1
2 x Level 2	
7 x Level 1	

22 (2 temporary to 30.6.90) FTE's

5 FTE's

* to be reviewed from 1.7.90

APPENDIX 3



1 x Commistoner
1 x Level 8
1 x Level 6
1 x Level 5
6 x Level 4
9 x Level 3
5 x Level 2
7 x Level 1

31 PTE.

APPENDIX 4

COMPARISON OF STAFF SALARY COSTS UNDER EXISTING
AND PROPOSED ORGANISATIONS

FTE STAFF		SALARY (\$)
(a) <u>Existing Organisation</u>		
1 x Judge (District Court level)		119,215
1 x Level 9		65,037
1 x Level 8		56,665
1 x Level 6		42,743
1 x Level 5		36,618
6 x Level 4 @ \$32,838		197,028
5 x Level 3 @ \$29,075		145,375
3 x Level 2 @ \$25,103		75,309
8 x Level 1 @ \$19,052		152,416
<hr/>		
27 FTE staff	TOTAL	\$890,406
(b) <u>Proposed Organisation</u>		
1 x Commissioner (Stipendary Magistrate level)		95,375
1 x Level 8		56,665
1 x Level 6		42,743
1 x Level 5		36,618
6 x Level 4 @ \$32,838		197,028
9 x Level 3 @ \$29,075		261,675
5 x Level 2 @ \$25,103		125,515
7 x Level 1 @ \$19,052		133,364
<hr/>		
31 FTE staff	TOTAL	\$948,983