

APRIL 1994

LIQUOR LICENSING IN WESTERN AUSTRALIA

**Report of the Independent Review Committee
Appointed by the Government of Western Australia**

Presented to

**The Hon. Max Evans, MBE, FCA, MLC
Minister for Finance;
Racing and Gaming; and
Minister assisting the Treasurer**

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CONTENTS

	Page
1. REVIEW COMMITTEE	5
2. TERMS OF REFERENCE	6
3. INTRODUCTION	8
4. BACKGROUND	12
5. HISTORY	15
6. RECOMMENDATIONS - SUMMARY	21
7. OBJECTS OF ACT	30
8. LIQUOR LICENSING AUTHORITY	37
9. MANDATORY INDUSTRY TRAINING	77
10. HOST RESPONSIBILITY STRATEGIES	86
11. COMMUNITY AWARENESS	88
12. CROWD CONTROLLERS	103
13. PROMOTIONS, DISCOUNTING AND "BINGE" DRINKING	106
14. TRADING HOURS	110
15. EXTENDED TRADING PERMITS	129
16. SPECIAL FACILITY LICENCE	137
17. OCCASIONAL LICENCES	139
18. RATIONALISATION	142
19. WINE INDUSTRY	150
20. JUVENILES	152
21. PENALTIES	157
22. INFRINGEMENT NOTICES	159
23. SALE OF LIQUOR - OFFENCES	161
24. REFUSAL OF ENTRY	163

CONTENTS - Cont.

25.	DEFINITION OF DRUNKENNESS	164
26.	ROLE OF LOCAL GOVERNMENT	167
27.	LANDLORD/TENNANT RIGHTS	173
28.	COMMISSIONER OF POLICE	176
29.	AVERMENT	177
30.	AIR FORCE ASSOCIATION	178
31.	COMPUTERISED RECORDS	179
32.	ABORIGINAL DEATHS IN CUSTODY	180
33.	TECHNICAL AMENDMENTS - OFFICE OF RACING AND GAMING	183
34.	ANNEXURES -	
	COPY OF ADVERTISEMENT	Annexure 1
	FORMAL SUBMISSIONS RECEIVED	Annexure 2
	SUBMISSIONS RECEIVED AFTER CLOSING DATE	Annexure 3
	INDIVIDUALS AND LOCAL GROUPS CONSULTED	Annexure 4
	VISITS TO REGIONAL AREAS	Annexure 5
	REPORT ON VISIT TO SOUTH WEST	Annexure 6
	INTERSTATE AND OVERSEAS	Annexure 7
	SUMMARY OF LIQUOR PURCHASES BY LICENCE TYPE	Annexure 8
	LICENCE FEES PAID BY INDUSTRY GROUPS	Annexure 9
	CLAIMS THAT DIVISION IS UNDER-RESOURCED	Annexure 10
	REPORT FROM PUBLIC SECTOR MANAGEMENT OFFICE	Annexure 11
	REPORT FROM INFORMATION POLICY UNIT AT TREASURY	Annexure 12
	COMPARISON ALL STATES	Annexure 13
	NSW LIQUOR LICENSEES COURSE - No 0766	Annexure 14
	NSW RESTAURANT COURSE	Annexure 15

CONTENTS - Cont.

PATRON CARE - MODULE ADFB 11	Annexure 16
COMPARISON OF APPARENT CONSUMPTION OF ALCOHOL	Annexure 17
THE AHHA CODE OF PRACTICE	Annexure 18
MEDIA COUNCIL OF AUSTRALIA	Annexure 19
AMERICA'S CUP HOURS	Annexure 20
COMPARISON OF STANDARDS LLD/LOCAL GOVERNMENT	Annexure 21
LETTER FROM COMMANDER MCMILLAN	Annexure 22

1. REVIEW COMMITTEE

Mr K. V. Mattingley, AO, FAICD, FAIM,
former Managing Director, West Australian Newspapers Limited
Chairman

Mrs P. M. Morris, JP,
Councillor and former Mayor, City of Gosnells;
former President, Women Justices' Association of Western Australia
Member

Mr J. E. Karasek,
former Manager Western Australia for Ansett Australia; Fellow and former
National President, Australian Marketing Institute
Member

Mr P. M. Minchin
Executive Officer

Mrs A. Russo
Secretary

2. TERMS OF REFERENCE

The terms of reference which the Minister for Racing and Gaming, the Hon. Max Evans, announced on 8 October 1993 were to report on whether the Liquor Licensing Act 1988 should be amended having regard to -

- . The interests and needs of the Western Australian community;
- . The interests and needs of persons selling or supplying intoxicating liquor;
- . The effectiveness of the operations of the licensing authority; and
- . Any other issues affecting tourism and the public interest.

Without limiting the generality of the foregoing, the committee was required to report on -

1. Whether Section 5 of the Act should be expanded to include control over the supply and sale of liquor to the public with the aim of contributing to the reduction of alcohol abuse so far as that can be achieved by legislative means.
2. Whether an industry funded program should be established to educate the public in respect of health issues and for the compulsory training of licensees, managers and staff involved in the sale and supply of liquor.
3. Whether the administration and enforcement of the Act could be simplified. In particular, whether the number of regulatory authorities - for example, local authorities, Health Department, fire brigade, police and town planning - is necessary.
4. Whether to continue the provision of a special facility licence and the extended trading permit;
5. Whether a licence rationalisation scheme is needed, including consideration of the number of existing licences, the criteria by which they may be obtained or cancelled and how such a scheme could operate.

The committee also was required to examine and if thought fit make recommendations about the operation of the licensing authority with particular reference to :

- (a) The constitution of the authority and the resources necessary to support its administration;
- (b) The role and functions of the Director of Liquor Licensing;
and
- (c) The jurisdiction of the Liquor Licensing Court, including the operation of the present adversary system of applying for and objecting to licences, and in particular the possibility of reducing the costs of appearing before the Court, whether as an applicant or an objector.

NOTE : In clarifying the terms of reference, the Minister advised the Committee that the issue of electronic gaming machines in licensed premises was not a matter for the committee to examine. The Committee did not examine liquor licensing in relation to the Burswood Casino for which the licensing authority is responsible under the Liquor Licensing Act 1988 but cannot impose or vary a condition of the licence unless the Gaming Commission consents. Similarly, the Committee did not examine liquor licensing on Christmas Island, where a new casino was to be controlled by the Casino Control Division of the Office of Racing and Gaming under a service delivery agreement between the Gaming Commission of WA and the Commonwealth Government.

3. INTRODUCTION

Because of the wide terms of reference, members of the Liquor Licensing Review Committee realised at the outset that they faced a major challenge.

The challenge was to understand the needs of a wide range of industry, community and government interests associated with the sale, consumption and regulation of alcohol, to establish a balance between commercial and social issues and to make recommendations which were seen as fair to all concerned; above all to enable industry and the community to handle future opportunities and responsibilities from a sensible base - namely, the Liquor Licensing Act.

The Review Committee has spared no effort to meet this challenge. Soon after the Hon. G. M. (Max) Evans announced the Committee's appointment, the Committee advertised the terms of reference and the closing date for submissions in the West Australian and the Sunday Times newspapers (Annexure 1) and arranged for copies of the Minister's announcement and terms of reference to be delivered to all Members of State Parliament so that the Members could take appropriate steps to support the review process. The Committee also wrote many of the major industry players involved to bring the review to their notice.

Altogether 133 formal submissions (Annexure 2) were received from a wide cross-section of commercial and community interests throughout the State. Submissions received after the closing date were not formally accepted but the Committee noted their contents (Annexure 3). Pending receipt of submissions, the Committee invited concerned organisations and people (Annexure 4) to take part in informal discussions so that members of the Committee, all of whom were independent of the industry, would understand the issues better.

Informal discussions were held with 105 representatives from 30 interested parties, which included local government, health professionals, Aboriginal people, hotel brokers, students, judicial officers, lawyers, taxi drivers, police and crowd controllers (bouncers) as well as major industry groups, including - hotels, cabarets, restaurants, stores, wine producers and the Swan brewery. The informal discussions continued after submissions closed.

While the needs of industry, tourism and the community were covered formally by the many submissions received, Committee members extended their understanding of issues by making regional visits to Kalgoorlie, Geraldton, Bunbury, Northam, Busselton, Margaret River, Albany and Mount Barker. (Annexure 5)

In Kalgoorlie the Chairman discussed alcohol related problems with among other groups the Eastern Goldfields' Aboriginal health workers, the Eastern Goldfields' Fringe Dwellers' Support Group and the newly appointed manager of Ninga Mia Aboriginal Corporation, and joined in a 7am "breakfast run" to fringe dwellers who needed food because of excessive drinking from early morning.

In the south-west, Mr Karasek had the benefit of discussions with wine growers, licensees and tourism and local government officials (Annexure 6). The wine industry, still smarting from sales tax increases of 2% per annum 1993-95, is seeking relaxation of a number of restrictions originally introduced to balance the decision to exempt producers from the 11% fee on retail sales.

As required, the Committee has examined the operation of the licensing authority, the role and functions of the Director and the jurisdiction of the Court. Extensive inquiries have been made among industry representatives, planners, architects, local government officers and legal practitioners experienced in working with the authority at all levels.

The Executive Director of the Office of Racing and Gaming, which administers the Liquor Licensing Division, gave approval for the Director of Liquor Licensing and his senior officers to appear individually before the Committee and for senior consultants from the Management Improvement Branch of the Public Sector Management Office and from the Information Policy Unit of Treasury to review and report on the effectiveness of the management and computer systems in use in the Division.

The Committee appreciates the willingness of the Public Sector Management Office and of Treasury to undertake these reviews on a tight deadline. The Committee also appreciates the Executive Director's co-operation and his initial briefings, which were most helpful, and the co-operation of the Director of Liquor Licensing and his senior staff.

Despite the vast amount of published material and research studies which the Committee examined, members felt a need to check liquor licensing procedures and outcomes elsewhere to enable them to reach balanced and informed opinions. Accordingly the full Committee visited New Zealand, Victoria, New South Wales and South Australia, discussing issues with a total of 33 senior executives from other licensing authorities, police, health organisations and other interested groups. The Chairman also discussed liquor licensing with a wide range of interested groups in Brisbane. (Annexure 7)

In New Zealand the Committee had the privilege of discussing trends and policies with Sir George Laking, Chair of the 1986 working party on liquor, whose report substantially deregulated the national liquor industry. His philosophy is simple : Licences should be easy to get, but easy to lose for a breach of the law. Trading hours are not specified in the legislation. No guidelines are provided. There is only one significant factor to be taken into account when fixing hours, that is "neighbouring land use". What this means is that establishments in the middle of a residential zone will have more difficulty obtaining longer hours than establishments in the middle of the central city/commercial area or perhaps in the rural outback. Since the landmark decision to deregulate, investment in the liquor industry in New Zealand has increased. Within a square mile in the central business district of Wellington, the number of hotels increased by 10.5%, taverns 66.6%, restaurants 115%, nightclubs 15% and bottle shops 25% as the following table shows -

	1989	1993
Hotels	19	21
Taverns	24	40
Restaurant	38	82
Nightclubs	11	13
Bottle shops	8	10
Supermarkets (unfortified wines only)	-	1
Complementary	-	6
Totals	<u>100</u>	<u>173</u>

The Liquor Licensing Authority sees this increase in investment as complete justification of de-regulation. The Committee was told that the figures are a reasonable indication of the growth experienced in most metropolitan areas in New Zealand.

Broadly the Committee brought back these messages from the visits :

- (1) That the emphasis in all states now is on industry and the community working together, with the strict enforcement of liquor laws, to reduce the harm caused by excessive alcohol consumption;
- (2) That market forces and public demand are clearly becoming the main regulatory influence; and
- (3) That the grant, transfer and control of licences has become more administrative than judicial.

In conclusion, the Committee wishes to express its appreciation to all those involved in liquor licensing, the legal profession, local government, industry, business, the police, government agencies and research locally and in other states and New Zealand who contributed so generously whenever their co-operation and advice was sought, often at short notice and sometimes outside normal working hours. Without their support the Committee would not have completed its task to best advantage.

The Committee particularly thanks members of organisations who took the opportunity to lodge formal submissions and members of the public who expressed their views by letter or by telephone. It also is indebted to its Executive Officer and to its Secretary for their loyal and efficient support.

Finally, all members of the Committee appreciate having had the opportunity to serve in this way and are honoured to be able to propose a new philosophical direction in liquor licensing which enhances not only the social development needs of the present and the future, but also shapes an appropriate framework for the continued progress of the liquor industry itself and the state of Western Australia.

The report represents the best endeavours of all concerned in the time available.

With the Minister's endorsement of the Committee's proposals, the Liquor Licensing Act 1988 should be re-written in an easy-to-understand form with a minimum of cross references.

4. BACKGROUND

Section 178 of Western Australia's Liquor Licensing Act 1988 requires that the Minister reviews the operation of the Act. The Act states :

- (1) The Minister shall carry out, or cause to be carried out, a review of the operation of this Act as soon as is practicable after the expiration of 5 years from the coming into operation of this Act, and in the course or as a consequence of such review the Minister shall consider and have regard to -
 - (a) the effectiveness of the operations of the licensing authority; and
 - (b) such other matters as appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (2) The Minister shall prepare a report based on the review of this Act and shall, as soon as practicable after its preparation, cause that report to be laid before each House of Parliament.

On this basis, the Act was due to be reviewed as soon as practicable after 1 February 1994. However, a Liberal-National Party Government replaced a Labor Government on 6 February 1993 and three days after the new Ministry was commissioned the Minister for Finance; Racing and Gaming; Minister assisting the Treasurer, the Hon. G. M. (Max) Evans, MBE, FCA, MLC, announced that the review would be brought forward.

The Minister's announcement came after numerous concerns had been expressed about liquor licensing problems, particularly circumstances surrounding the death on 26 July the previous year of 24-year-old Kim Anthony Thomas following a competition to drink more than six "snorters" at a South Perth hotel. The Coroner found that Mr Thomas died accidentally of acute alcohol poisoning. Evidence was given that after the contents of eight wine glasses containing equal proportions of sambuca (about 39% alcohol) and chartreuse (about 55% alcohol) had been set alight, Mr Thomas, who earlier had been playing football, "snorted" the fumes and gulped the lot within 15 minutes.

The Coroner said his concern about the death was heightened by the knowledge that there had been at least five similar deaths during 1992, including one in Kalgoorlie only six weeks before and added, "Apart from the obvious problems of road traffic trauma and domestic violence, there is abundant evidence that people suffer from the abuse of alcohol in private homes and licensed premises".

The Coroner said he was impressed with the efforts being made to train some hotel bar staff in their legal obligations but it was clear from the witnesses before him that as casual bar staff they had no real understanding of their legal obligations when serving alcohol. It was time for those involved in both the management and regulation of licensed premises to get "fair dinkum" about the problem of excessive consumption of alcohol on licensed premises.

Similarly, a District Court judge in the case of a truck driver who was involved in an accident in which two car drivers were killed commented, "It must have been obvious to hotel staff who served the truck driver that he was affected by alcohol". The former licensee of the hotel criticised the law which made bar staff responsible for judging whether a patron is drunk.

In his announcement that he was bringing the review forward, the Hon. Max Evans said, "It is the responsibility of those in the liquor industry to regulate the behaviour of their bar staff, but if they fail to do this, then new regulations may have to be imposed". The Minister said that the conflicting position taken by various industry sectors over a number of issues was one of the main reasons why he had brought the review forward.

Other warnings had been given to the hotel industry before this. The Minister for Racing and Gaming in the previous Government, the Hon. Pam Beggs, MLA, had urged publicans and other bar owners to ensure that their staff were aware of the Australian Hotels' Association code of conduct and the dangers of "binge" drinking and alcohol abuse. "They have to be more responsible and acknowledge the fact that when it comes to alcohol the customer is not always right," she said.

Overcrowding, disturbances outside hotels and cabarets and under-age drinking also were causing concern. A spokesman for the Alcohol Advisory Council criticised a suburban hotel for "exploiting" young people by offering students cheap drinks and free champagne and challenged the Australian Hotels' Association to censure the hotel publicly "to show that the Association is serious about its code of conduct". The President of the WA Hotels and Hospitality Association replied that the Association had always preached server responsibility, but the liquor industry would not be dictated to on marketing. "We have got no right to say to our members that they cannot have happy hours, but we certainly discourage them from having laybacks or syringe drinking," he said.

In his defence, the manager claimed that the hotel had been unfairly singled out because it was one of many in Perth which offered special deals for students.

After the Hon. Max Evans announced the review, he received many recommendations from interested parties on the composition of the proposed review committee and on its terms of reference. However, the Minister said, "In determining the composition of the review panel I considered it important to avoid the possibility of any sector of the industry claiming that any person appointed had a vested interest in alcohol-related matters. I am particularly concerned that the review takes into account the economic problems being suffered by certain industry sectors at this time.

"I am also concerned to ensure that the Act is appropriately framed in regard to the provision of service for our increasingly important tourist industry. The terms of reference have been determined following representations from a number of parties involved in the industry, and I am confident they will satisfy not only the industry but also the wider public interest".

The Minister stated that the review was expected to take 6 months.

5. HISTORY OF REVIEWS

Since the first liquor laws which concerned only public revenue and drunkenness were passed following the foundation of the State in 1829, licensing laws in Western Australia have been reviewed 10 times through two Royal Commissions (1921, 1984), a Parliamentary Committee of Inquiry (1957), an independent Committee of Inquiry (1969), three departmental reviews (1911, 1987, 1990) and three consolidations (1856, 1872, 1880).

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

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

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

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

The statutory closing time was extended to 11pm in 1886 (before temperance movement influence).

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

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

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

In the period after World War II, a maturing community influenced by overseas travel and the influx of European cultures accepted the benefits of more relaxed drinking. In line with these trends, the report of the 1969 inquiry recommended that the law should be changed to "meet the varying needs and conveniences" of all sections of the public provided it was consistent with the safety and wellbeing of all. The Committee decided, first, that liquor is a service to the public; secondly, that those who sell liquor for consumption on the premises should also provide adequate food at all reasonable times for those who may require it; and thirdly, that the interests of those engaged in the industry should be regarded as important but not as important as the first two points.

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

An editorial in the West Australian at the time commented, "The Committee has brought refreshingly enlightened views to the challenge of re-writing WA's archaic licensing Act It is to be hoped that the committee's liberal approach to the whole gamut of the liquor business - from the need to lower the drinking age and extend Sunday trading to the recognition of the paradox of prohibiting liquor sales at the restaurant in Kings Park - will bring an equally liberal response from Parliament".

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

At this stage the pressure from self-interest groups fighting for commercial protection increased, particularly between cabarets, hotels and liquor stores. It ushered in "the golden age of objections", liquor licensing lawyer Mr Dan Mossenson recalled. As the pressure increased, the system for resolving disputes and deciding the needs of industry and the community received a lot more attention.

Soon after the Burke Government was elected in February 1983, it appointed a Committee of Inquiry with terms of reference which included, "To give particular attention to the submissions of the representative groups in the liquor industry". Another term of reference was almost identical with one of the current terms of reference; that was, "To examine the operation of the present adversary system of applying for and objecting to licences and in particular the possibility of reducing the costs and expenses of appearing before the Licensing Court, whether as an applicant or as an objector".

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

Required under its terms of reference to examine the operations of the Licensing Court, the Royal Commission addressed concerns that the Licensing Court had a dual role of judging licence applications while its lay members and principal clerk administered the Act.

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

Judge Syme was on the same pay as a District Court judge but formally did not have the same status.

The Australian Hotels' Association supported the recommendation - perhaps suggested it - but wanted a judge to be appointed commission chairman and a legally qualified magistrate to be deputy chairman. This was in addition to the appointment of a judge to head the Licensing Court. The arguments went backwards and forwards - the Royal Commissioners opposing an AHA claim that the commission should include an industry representative and the AHA opposing a Royal Commission claim that the commission should include a nominee of the Alcohol and Drug Authority, the Royal Commission proposing that the new commission should have a largely regulatory role, but the AHA wanting a wider role which included the formation of policy on liquor matters.

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

Behind the scenes, the then Executive Director of the Office of Racing and Gaming was advising the Minister that the proposed commission would be far too expensive and in any event unnecessary because regulatory, fiscal and social policies in relation to the sale and consumption of liquor were matters for the Government. The records show that the Office was developing an alternative, more modest plan involving the appointment of a Director and Deputy Director of Liquor Licensing financed from existing staff budget positions.

Two years after the Honorary Royal Commission's report, the Liquor Amendment Act (No 2) 1986 announced a liquor licensing authority comprising a Liquor Licensing Court and a Director of Liquor Licensing. It was noted then that the Director, who had been given substantial discretionary powers, would be responsible to the Executive Director of the Office of Racing and Gaming for the efficiency and effectiveness of the newly created administrative Division, but not to the Minister or the Executive Director on matters in which the Director had specific statutory authority.

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

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

A year after the current Act was introduced, the then Director of Liquor Licensing, a lawyer, pointed out that Western Australia and South Australia were the only jurisdictions in Australia in which a Liquor Licensing Court heard matters in the first instance - that is, original applications. He suggested that there was no need for a Court at all because in all other parts of the country original applications were determined, largely informally by boards or commissions.

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

The Government did not act on this suggestion.

"Lots of things are wrong which neither Parliament nor Government departments nor ministers nor policemen nor judges can cure. These are the things which depend upon the general stability and good sense of people as a whole and their compassion and common sense".

- Lord Scarman, Lord Justice of Appeals in Britain

The Committee was attracted by Lord Scarman's comment, which appeared in a Department of Justice discussion paper in New Zealand.

The Committee agrees that legislation alone will not substantially reduce the harm caused by alcohol. Nevertheless legislation reflects government policy and is important as part of a strategy to minimise alcohol-related harm in the community.

6. RECOMMENDATIONS - SUMMARY

The following is a summary of the Committee's recommendations.

Objects of Act

1. The Objects of the Act be changed to include social growth and economic prosperity by reducing the harm to the individual and the community caused by excessive consumption of alcohol.

Constitution of the Authority

2. The Liquor Licensing Court be abolished and replaced by a Liquor Licensing Commission, comprising a full-time Commissioner and Deputy Commissioner appointed by the Governor in Council;
3. The Commission be located in the Ministry of Justice and take over the judicial responsibilities of the Court and the main quasi-judicial responsibilities at present handled by the Director of Liquor Licensing;
4. The Commission report direct to the Attorney General as and when required;
5. Accountability of the Liquor Licensing Division be transferred from the Office of Racing and Gaming to the Ministry of Justice (with the Liquor Licensing Commission) to administer matters under the Act which are not handled by the Commission;
6. The Liquor Licensing Commission and the Liquor Licensing Division be empowered to decide issues and to implement decisions, subject to appeal processes, without political or commercial interference;
7. Appeals from decisions of the Liquor Licensing Commission on matters of fact and law be heard by the District Court;
8. Appeals from decisions of the District Court be heard by the Full Court of the Supreme Court by leave on a question of law;

9. A core responsibility of the new Liquor Licensing Division be in the area of industry training and education, community awareness and liaison with Aboriginal people. This would involve the creation of an industry development unit comprising a senior consultant appointed from existing FTEs, two qualified training officers (additional) and an Aboriginal liaison officer (additional).
10. A budget of \$100,000 be approved to enable a thorough review to be made of information technology needs and opportunities for the Liquor Licensing Division, as suggested by the Public Sector Management Office;
11. While the Office of Racing and Gaming proposes to introduce a local area network for its office systems and has asked the State Supply Commission to call tenders for the replacement of 37 PCs, no further commitment be made on information technology until the Division's future has been decided;
12. The Public Sector Management Office further investigate staffing resources and management systems at the Liquor Licensing Division to determine whether the Division is under-resourced as claimed by industry;
13. As a matter of priority, six additional liquor licensing inspectors be appointed to the Liquor Licensing Division to work in conjunction with the Police Liquor and Gaming Branch, days and nights, to enforce provisions of the Liquor Licensing Act, particularly in relation to juvenile drinking and practices which lead to alcohol abuse;
14. An intelligence liaison officer be appointed, ideally from the WA Police but alternatively from the Liquor Licensing Division, to coordinate police and other incident reports and information to develop joint strategies to ensure liquor licensing is policed to community standards.
15. The Liquor Licensing Act be re-drafted in an easy-to-read form with a minimum of cross-references, instead of the present complicated form which confuses all except those who work closely with it.
16. The operation of the Liquor Licensing Act be reviewed departmentally within three years and again by an independent review committee in five years.

Mandatory Training

17. A mandatory training course be developed for all sections of the liquor industry.
18. The mandatory training course include modules on patron care and knowledge of the Liquor Licensing Act.
19. The training modules be a minimum qualification for all licensees, managers, servers and crowd controllers.
20. There be a transitional phase for completion of the course.
21. A working committee be established to finalise the industry training program.
22. Two qualified training officers be appointed to the Liquor Licensing Division to provide in-house industry training.

Host Responsibility

23. A working committee be appointed to develop a host responsibility program incorporating the National Alcohol Beverage Industries Council guidelines.

Community Awareness

24. \$5.5 million be spent over two years on coordinated community projects, including -
 - . Mandatory industry training \$1.55 million;
 - . Community awareness programs \$1.2 million;
 - . Sobering Up Shelters \$1.95 million;
 - . Aboriginal Community Patrols \$600,000; and
 - . Research into liquor abuse \$100,000.

25. The projects be funded by increasing the fee on liquor with a high alcohol content by 1% from 11% to 12% and reducing the fee on liquor with a low alcohol content by 1% from 7% to 6%.
26. The money raised be re-allocated from the Consolidated Fund to a special Treasury trust fund.
27. Payments from the trust fund be approved by the Minister on a recommendation from the (Alcohol) Host Responsibility Committee.
28. The Host Responsibility Committee comprise representatives from :
 - The Liquor Industry Council of WA 2
(one of whom shall be chairman)
 - The Director - Administration 1
 - The Commissioner of Public Health 1
 - The Commissioner of Police 1
 - The Industry Employment Training Council 1
(Hospitality and Tourism)
 - The Director of Technical and Further Education,
Department of Education and Training 1
29. Before Government finalises the 1995-96 budget, the community value of each project be examined.
30. An offence be created in the Act for transporting liquor to "dry" areas imposed under the Aboriginal Communities Act 1979.

Crowd Controllers

31. The Government to legislate to provide for registration and training of bouncers.
32. The legislation to require bouncers to wear photographic identification and a registration number while on duty.

33. All bouncers employed on licensed premises complete training on the liquor licensing laws.

Promotions, Discounting and "Binge" Drinking

34. The Director - Administration to be empowered to impose conditions on licences to restrict promotions and discounting practices which encourage "binge" drinking or intoxication.

Trading Hours

35. Hotels be permitted to trade until 2am Monday to Saturday by way of extended trading permits.
36. Hotels be permitted to trade on a Sunday from 10am to 10pm.
37. Liquor stores be permitted to trade on a Sunday from 12 noon to 6pm.
38. Cabarets be permitted to trade on a Sunday from 6pm to 6am Monday.
39. Trading on Good Friday be liberalised by -
- (a) Permitting hotels to trade from 12 noon to 10pm provided the sale of liquor is ancillary to a meal;
 - (b) Permitting restaurants to trade at any time; and
 - (c) Permitting wine producers to trade from 12 noon to 10pm.
40. Trading on Christmas Day be liberalised by -
- (a) Permitting hotels to trade from 12 noon to 10pm provided the sale of liquor is ancillary to a meal; and
 - (b) Permitting wine producers to trade from 12 noon to 10pm.
41. Clubs be permitted to trade to 2am if New Year's Day falls on a Sunday.

Extended Trading Permits

- 42. The role of extended trading permits be continued under the Act.
- 43. Section 60(4)(g) of the Act be amended to clarify the authorisation for granting such permits.

Special Facility Licence

- 44. That the role of the special facility licence to continue under the Act.
- 45. The Act to provide that a special facility licence may be granted where it is clearly demonstrated to be in the public interest.

Occasional Licences

- 46. The provision of an occasional licence to remain in the Act.
- 47. Applicants for an occasional licence in respect of a major function must satisfy the Director - Administration that they have an adequate knowledge of their responsibilities under the Act and of responsible serving practices.
- 48. There be better monitoring of major functions held under an occasional licence.
- 49. Section 75 of the Act be amended so that applications for an occasional licence must be lodged 21 days before the function.

Rationalisation

- 50. Re-introduction of a rationalisation scheme is not justified.

Wine Producers

- 51. There be only one class of licence for producers and exempted producers.

Juveniles

52. The Act be amended to provide that the only acceptable evidence of proof of age is a document that has photographic identification and is
 - (a) An approved proof-of-age card;
 - (b) Drivers licence; and
 - (c) Australian or foreign passport.
53. Security of the "18+" card be improved by the addition of a hologram and mandatory photograph.
54. The cost of production for the new "18+" card be recovered by means of a charge.
55. The Act to create an offence for a juvenile to enter or remain on licensed premises.
56. The Act to provide that a person who engages a juvenile in the sale of liquor on regulated premises commits an offence.
57. Section 125(2)(b)(ii) of the Act dealing with authority over a juvenile be deleted as it is too broad.
58. The Act to provide that a person who is in fact a juvenile may be removed from licensed or regulated premises.
59. The Government direct more resources to the policing of licensing laws, particularly on under-age drinking.

Penalties

60. The Director - Administration be empowered to compel a licensee or his staff to attend the liquor licensing training program.
61. The Act be amended to increase the monetary penalty imposed for disciplinary action from \$5000 to \$10,000.

Infringements

- 62. The Act to expand the list of offences for which an infringement may be issued.
- 63. The reference to section 145(5) in section 167(2) of the Act be deleted.
- 64. Unpaid infringement notices be included with driver's licence in the Justices Act, part VIBA (INREP) to simplify their collection.

Offences by Licensees

- 65. The Act to provide that a breach of a term or condition of the licence must not necessarily be as a result of or cognate to the sale of liquor.
- 66. The Act to provide that any persons involved in a breach of a licence should be held accountable.

Refusal of Entry

- 67. The Act to provide that all licensees have the right to refuse entry or remove persons from licensed premises.
- 68. The Act to grant a police officer the right to remove a person from licensed premises without the licensee's approval.

Definition of Drunkenness

- 69. The word "drunk" to be replaced in the Act by the word "intoxicated".
- 70. The definition of intoxication be improved.

Role of Local Government

- 71. Inspections of licensed premises be devolved to Local Government.
- 72. Ongoing maintenance inspections become the responsibility of Local Government.

- 73. The Act to delete the exclusion provisions.
- 74. All licensed premises be covered under the Health Act (public buildings).
- 75. The Act to make it clear that a complaint may be lodged by fewer than 10 adults.
- 76. The Act to provide that an application may be granted subject to the later provision of specified Local Government approvals.
- 77. The Liquor Licensing Division notify Local Government of any additional conditions in respect of the building.
- 78. The section of the Health Act dealing with "eating houses" to apply to hotels, taverns and clubs.

Commissioner of Police

- 79. The Act to provide that the Commissioner of Police or his/her delegate may lodge a complaint for disciplinary action.

Averments

- 80. The Act to provide for an averment on the matter of consent.

R.A.A.F. Association

- 81. The Act to include the R.A.A.F. Association's retirement village in Merriwa.

Computerised Records

- 82. The Act to provide that liquor purchase registers may be in computerised format.

7. OBJECTS OF ACT

The objective of liquor industry regulation, according to the Office of Racing and Gaming's annual report, is "to ensure that the commercial supply of liquor is in accordance with statutory criteria".

The Office summarises the functions of regulation this way : To receive and process applications in accordance with the Liquor Licensing Act 1988, assess and collect licence fees and other revenue, check the standard of licensed premises and provide administrative support to the Liquor Licensing Court. The Office's mission statement is "to promote and maintain the integrity of lawful racing, gaming and liquor activities".

The Office consists of five divisions - casino control, gaming, liquor licensing, racing and corporate services. The Liquor Licensing Court is attached to the Office, although constituted as a separate authority under the Act. The judge is appointed by the Governor on the recommendation of the Minister. The registrar and staff of the Court are appointed under the Public Service Act.

The objectives in Section 5 of the Act are :

- (a) To regulate and to contribute to the proper development of the liquor, hospitality and related industries in the State;
- (b) To cater for the requirements of the tourism industry;
- (c) To facilitate the use and development of licensed facilities reflecting the diversity of consumer demand;
- (d) To provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
- (e) To provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.

Only two other states, Queensland and Victoria, and New Zealand include specific objectives in their Acts. They are :

Queensland (Liquor Act 1992)

Objects

- (a) To facilitate and regulate the optimum development of the tourist, liquor and hospitality industries of the State having regard to the welfare, needs and interests of the community and the economic implications of change; and
- (b) To provide for a Liquor Appeals Tribunal with jurisdiction to hear and determine appeals authorised by this Act; and
- (c) To provide for a flexible, practical system for regulation of the liquor industry of the State with minimal formality, technicality or intervention consistent with the proper and efficient administration of this Act; and
- (d) To regulate the liquor industry in a way compatible with -
 - (i) minimising harm arising from misuse of liquor; and
 - (ii) the aims of the National Health Policy on Alcohol; and
- (e) To provide revenue for the State to enable the attainment of the objects of this Act and for other purposes of government.

Victoria (Liquor Control Act 1987)

The object is to respond to community interest by -

- (a) Promoting economic and social growth in Victoria by encouraging the proper development of the liquor, hospitality and related industries; and
- (b) Facilitating the development of a diversity of licensed facilities reflecting consumer demand; and
- (c) Providing adequate controls over the sale, disposal and consumption of liquor; and
- (d) Contributing to the effective co-ordination of the efforts of government and non-government agencies in the prevention and control of alcohol abuse and misuse.

New Zealand (Sale of Liquor Act 1989)

Object

- (1) The object of this Act is to establish a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse, so far as that can be achieved by legislative means.
- (2) The Licensing Authority, every District Licensing Agency, and any Court hearing any appeal against any decision of the Licensing Authority, shall exercise its jurisdiction, powers, and discretions under this Act in the manner that is most likely to promote the object of this Act.

The Committee notes that the main thrust of the objects of the Western Australian Act is to regulate the industry and those who work in it. No reason is given for this control other than to contribute to the proper development of industry and to cater for tourism.

The Committee considers that these objects are valid so far as they go.

However, in the Committee's opinion, a broader community objective to increase the state's net economic and social value by reducing the harm caused by excessive consumption of alcohol would be equally valid and should be adopted even though most Western Australian's drink sensibly and consumption levels and retail purchase levels have dropped (Annexure 8).

The Committee does not see how this could be regarded as "commercially vindictive" as stated by the Swan Brewery Company Limited, or "overly reactive" as stated by the Liquor Industry Council (note comment in summary of submissions at the end of this section). It would simply give the Act and the Liquor Licensing Division a community focus and help to clarify the Division's role in balancing all viewpoints when endeavouring to reach fair and sensible decisions.

It certainly would not mean that health bureaucrats - including those who agree that drinking in moderation can benefit health - would have the final say; or that the liquor licensing authority would become responsible for solving health issues, a responsibility which should remain with health professionals or individuals.

Nor would it reflect criticism of the industry, in particular breweries and the hotel industry whose leaders support sensible drinking (and worthwhile community causes) but cannot bring maverick licensees into line.

Instead, the addition of harm reduction to the objects of the Act would reflect a recognition that excessive drinking is too widespread for the good of the community, particularly among juveniles and Aboriginal people, and that the cost in human terms and to the state is too high.

No one believes that people, especially young people, will stop drinking to excess just because someone tells them that it is harmful or unlawful. The issues involved are too complex for such a simplistic approach. The reasons behind "binge" drinking, the effects of different drinking environments, peer pressure and many other factors are still not fully researched.

The Committee notes that Associate Professor in Economics at Macquarie University David Collins and senior lecturer in Health Economics at the University of New South Wales Helen Lapsley have accepted that an estimated 30% of total alcohol consumption can be categorised as abuse and, while the Committee has no way of proving this, it accepts the estimate as substantially correct because the figure appears to have been subject to peer review.

Professor Collins and Ms Lapsley divide the costs associated with liquor abuse into two parts. They state that the tangible cost in medical, hospital and nursing care, road accidents, use of ambulance services, absenteeism and welfare, totals \$3.2 billion a year throughout Australia and that another \$2.8 billion can be added for intangible costs such as the value of loss of life and pain and suffering of road accident victims. The National Centre for Research into the Prevention of Drug Abuse at Curtin University of Technology further calculates that the cost to Western Australia on a population basis is \$500 million a year and that "normally moderate drinkers" contribute to the bulk of the problem.

While these are formidable figures, the non-government Western Australian Network of Alcohol and Other Drug Agencies (WANADA) tells the story even more graphically. Between 1981 and 1990 at least 4000 Western Australians died as a direct result of problems related to alcohol and 62,447 hospital admissions were wholly attributable to alcohol. A survey shows that in 1986 alone alcohol was the cause of 114,000 short-stay bed days in hospital.

Apart from this, the findings and comments from coroners, media reports of assaults, vandalism and accidents involving alcohol, the experiences of authorities in other states and overseas as well as in Western Australia convince the Committee that the time for a community-based strategy supported by law enforcement and an updated Liquor Licensing Act is overdue.

The Director of Liquor Licensing, despite misgivings about his rights under the Liquor Licensing Act, acknowledged the need for a new approach when he responded to community concern over the harm caused by excessive alcohol consumption at Halls Creek (population 1200, 80% Aboriginal). As reported at the time, the Director prohibited the Halls Creek Liquor Store and the Kimberley Hotel from selling packaged liquor before midday and casks or flagons of wine outside 4pm - 6pm, and then only one cask or flagon to any one person.

The result has been a marked reduction in accident and alcohol-related injuries, a drop in consumption of about 3 litres a person a day among those over 15 years of age, while the number of Royal Flying Doctor evacuations has halved. The police and Aboriginal people agree that their relationships have improved. Moreover, there are fewer intoxicated people early in the morning and grocery stores report higher food sales to Aboriginal people. Halls Creek District Hospital also reports a dramatic drop in outpatients and domestic violence.

While the Director's action in this instance might not be as appropriate in a larger community with more liquor outlets, the Committee sees a need to confirm the Director's legal right to act like this in the community interest. In the Committee's opinion, the inclusion of harm reduction as an object of the Act, together with existing supporting provisions in the Act, would put the Director's legal right beyond doubt.

The choice of wording for such an object in the Act would be important. The Committee is not persuaded that the object should be simply to "reduce alcohol abuse" because of the difficulty of setting practical guidelines on how to achieve this. The term "impact on public health" which was suggested by some health officials is vague, while to "reduce consumption" would be as simplistic as expecting young people to curtail their drinking on being told that it is bad for them.

The Committee, however, sees merit in clearly stating the objective to minimise harm caused by excessive consumption, the outcome of which can be measured.

Because of possible Government concern that a licensing authority might depart from the intentions of Parliament through its interpretation of the need to respond to community interest, the Committee considered recommending that the Act acknowledge the Minister's right to issue policy guidelines to the licensing authority. On reflection, however, the Committee felt that it would be more appropriate for the Act to state Parliament's intentions clearly.

The Committee found on its visit to New Zealand, where the liquor industry is largely deregulated, that the objective of establishing reasonable controls over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse is fully accepted. The need to support the local liquor industry is no longer an object of the Act.

The Queensland and Victorian liquor Acts, as shown earlier, also recognise the need for their licensing authorities to direct their attentions to liquor misuse and abuse, besides supporting industry development. The Committee does not see any reason why the objectives of the Act should not recognise at the one time community health and industry matters.

While agreeing with the Liquor Industry Council that health measures must be sensible, well considered and formulated in conjunction with industry, the Committee makes the following recommendation -

Recommendation

1. That the objects of the Liquor Licensing Act 1988 be redrafted in simple terms as follows -
 - (a) To enhance social growth and economic prosperity by reducing the harm to the individual and the community caused by excessive consumption of alcohol;
 - (b) To contribute to the development of the liquor and tourism industries;
 - (c) To ensure compliance with the Act; and
 - (d) To provide a flexible system for the administration of the Act, with as little formality and technicality as possible.

Summary of Submissions

Forty-five of the 133 written submissions which the Committee received were in favour of including some aspect of health or harm reduction in the objects of the Act. Two submissions were against.

The submissions in favour included those from the Health Department of Western Australia, the Office of Womens' Interests, the Office of Racing and Gaming (Liquor Licensing Division), the Salvation Army, the Perth City Mission, the WA Council of Social Services, the WA Network of Alcohol and other Drug Agencies, the Kalgoorlie Regional Hospital, Pilbara Youth Services Inc., the Kimberley Health Region and the Shire of Halls Creek.

The Liquor Industry Council and the Swan Brewery Company Limited are strongly against including health or harm reduction in the objects of the Act.

The Council objects to "overly reactive provisions suggested by some sections of the health lobby", which it states include -

- Amendment of Section 5 to include the prevention of alcohol abuse as an object.
- A generally worded provision prohibiting irresponsible service of alcohol including the limiting of licensees in serving alcohol imaginatively but responsibly; and

- Provisions restricting the ability of licensees to promote, market and advertise their businesses, particularly through price advertising.

The brewery opposes "the notion that this Act should endeavour to enshrine public health objectives in its provisions". It claims that alcohol-related problems are responsibly handled in Western Australia by the "Drinksafe" and "Respect Yourself" campaigns conducted by the Health Department, alcohol-related programs conducted by the WA Alcohol and Drug Authority and many other state and federal projects. Besides, the Brewery says that it achieved a "world-first in cooperation in 1991" when it introduced the "Drinksafe" logo on all its packaging and point-of-sale advertising.

"We do not, however, support the introduction of social engineering type restrictions into the Liquor Act which would be unnecessary, commercially vindictive and unlikely to address the real causes of alcohol problems in society", the Brewery stated.

While the Liquor Industry Council opposes harm reduction as one of the objects of the Act, it supports the need for a public awareness and education program, but only on the condition that the liquor industry does not have to pay.

The Liquor Industry Council comprises representatives of the Western Australian Hotels and Hospitality Association (Inc), Wine Industry Association of Western Australia (Inc), Wholesale Wine and Spirit Merchants' Association of W.A., Licensed Stores' Association of Western Australia (Inc), Restaurant & Caterers' Association of Western Australia (Inc), Association of Licensed Clubs of Western Australia (Inc), the Swan Brewery Company Limited and the Cabaret Owners' Association of Western Australia (Inc).

Paradoxically the Cabaret Owners' Association's own submission and mailout campaign did not support the Liquor Industry Council but instead favoured emphasising the objective of reducing alcohol related problems "so far as can be achieved through legislative means".

Again paradoxically, the W.A. Hotels and Hospitality Association, a senior member of the Liquor Industry Council, has a long-standing code of practice for its members but the Cabaret Owners Association, another important member of the Council, has not yet adopted a code in W.A.

8. THE LIQUOR LICENSING AUTHORITY

The Committee, as required by its terms of reference, now examines :

- (a) The constitution of the W.A. liquor licensing authority and the resources necessary to support its administration;
- (b) The role and functions of the Director of Liquor Licensing; and
- (c) The jurisdiction of the Liquor Licensing Court (including the operation of the present adversary system of applying for and objecting to licences, and in particular, the possibility of reducing the costs of appearing before the Court, whether as an applicant or an objector).

Constitution

The WA liquor licensing authority comprises the Liquor Licensing Court and the Director of Liquor Licensing.

The Act provides that, "The Director is responsible for the administration of this Act, other than those aspects of the administration that relate to the Court, to the chief executive officer of the relevant department of the Public Service".

Although Liquor Licensing is not mentioned in the title, the relevant department is the Office of Racing and Gaming which includes a gaming division, casino control division, racing division and a corporate services division all serviced by a records section and sharing corporate services facilities.

The 1992/93 annual report of the Office of Racing and Gaming gives the following profile of the department -

- . Annual revenue \$101 million - \$62 million from Liquor Licence and application fees (Annexure 9), \$37 million from the Casino tax;
- . Total expenditure \$5.5 million (Liquor Licensing Division \$1.38 million; Liquor Licensing Court \$568,000);
- . 95 full time equivalent staff (25 in the Liquor Licensing Division, excluding those on Christmas Island duties, and four in the Liquor Licensing Court);

- FTE staff expected to increase to 112.50 as Commonwealth-funded appointments to administer liquor and gaming on Christmas Island are finalised;
- Responsibility for 17 different Acts associated with racing, trotting, bookmaking, gaming and betting, besides the Liquor Licensing Act 1988; and
- Associated agencies :

Gaming Commission, Totalisator Agency Board, Betting Control Board, Race Course Development Trust, Western Australian Greyhound Racing Association, Western Australian Turf Club, Western Australian Trotting Association and Racing Penalties (appeals) Tribunal - in addition to the Liquor Licensing Court.

Under the Liquor Licensing Act 1988, the Liquor Licensing Court determines -

Applications for the grant or removal of contested *category A licences;

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;

Disciplinary action against licensees or cancellation of licences where they are no longer being used;

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

*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 47% of all licences, but about 90% of the value of all retail liquor transactions.

The Director of Liquor Licensing, who heads up a Division, determines all matters in which jurisdiction is not specifically vested in the Court. These include-

- Applications for the grant or removal of uncontested category A licences;
- Applications for the grant or removal of category B licences whether or not there are objections (Category B licences cover restaurants, clubs, producers and wholesalers);

- 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;
- Matters relating to procedural requirements or applications such as advertising, lodgement of documents, definitions of the affected area and the like; and
- All matters relating to the assessment, reassessment and collection of licence fees. The Director has discretionary power in calculating annual liquor licence fees (totalling \$62 million), which range from under \$1000 to over \$300,000. The fees he fixes are not subject to appeal.

The criteria to be satisfied before either a category A or 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).

Liquor Licensing Division

From a wide range of industry and legal practitioners' comments, the Committee is of the opinion that the Division is working effectively in the face of difficulties.

A leading planner/architect who deals regularly with the Division stated in his submission, "With the separation of the Court and the Division initially under the 1970 Act and now under the 1988 Act the Division has shown vastly improved standards.

"The staff are fairly skilled, information is readily available and may be obtained at short notice. A better control of licensed premises is being achieved through procedural steps being put in place; for example, insisting that proper plans, liquor returns, registers etc are produced at transfer stage thus lifting the standard of the industry.

"The weakness is that when quasi-judicial functions are to be carried out by the Director, the Director and his staff at present have no legal training. These formal hearings are in the main adequately conducted, but a person with legal training needs to assist the Director and his staff on legal issues".

The submission added that the Director's powers should be increased to "truly sanction" recalcitrant licensees who fail to comply with the conditions of their licence or the requirements of the Act or who fail to maintain an adequate standard of licensed premises.

The planner/architect who made the submission may not have been aware that the division calls on the Crown Solicitor's Office for advice whenever necessary.

* The partner of a legal firm which specialises in liquor licensing raised a different weakness. The partner stated, "The weakness in the Division lies in the exposure of the Director to political influence of the government of the day. The Director cannot be truly independent while he remains a public servant."

"The Director is required to make hard and unpopular rulings at times, all done in the interest of the proper administration of the Act. The Director needs to be immune from Ministerial removal. Perhaps three-year private contracts should be entered into to ensure the Director retains a degree of independence".

Earlier, the partner had said, "I have no criticism of the Division. I find it very useful, very open, very helpful. The staff issue policy decisions and insofar as they are able to assist the public they do a good job. The staff are helpful right from transfer clerk up to the Director. They'll take the phone calls and get back to you. I don't get that in a lot of other public services".

Asked to comment on the Division, an official of the Wholesale Wine and Spirit Merchants Association replied, "Very cooperative, very helpful". This was typical of many comments which industry made to the Committee about the Division.

The Liquor Industry Council, however, talked about delays caused by lack of resources. The Council's submission stated :

"Members are constantly frustrated with the delays in the operations of the Division. Although there may well be room for some administrative and procedural streamlining within the Division, the LIC believes that the primary cause of the problem is insufficient resources, including facilities, staff and funding. This lack of resources has caused unacceptable delays in administrative operations such as approvals for transfers of licences and alterations to licensed premises. The LIC strongly voices its concern of the situation and expresses an urgent call for the Division to be provided with sufficient resources to enable it to perform its role properly".

Twenty-nine submissions to the Committee contained 18 comments that the Division appears to be short of funds, 18 that it is short of staff, six that its facilities are inadequate and 21 that its procedures need improving (Annexure 10).

Besides the Liquor Industry Council, the following organisations were among those which claimed that the Division is under-resourced - The WA Hotels and Hospitality Association; The Restaurant and Caterers' Association; Liberty Liquors; Radisson Observation City Hotel; WA Police Liquor and Gaming Branch; Director of Liquor Licensing; Corrs Chambers Westgarth, solicitors; The National Centre for Research into the Prevention of Alcohol and Drug Abuse; The Alcohol Advisory Council; The Western Australian Municipal Association; The WA Council of Social Services; The Australian Institute of Environmental Health (WA Division); The City of Fremantle; and The City of Melville.

During a tour of inspection of the Division, the Committee noted -

- High staff turnover because, although happy in the job, the staff do not see a career path;
- Outdated records management facilities;
- Lack of a strategic plan for information technology to assist the Division and industry;
- Outdated information technology (two terminals to a desk) which provide limited administrative support; and
- Premises inspection staff reduced from six to two since 1985 (although staff numbers had been maintained at six for nine years before).

* In informal discussions with the Committee, senior staff all expressed concern about the operations of the Division. Their concerns are best expressed by the following official claims : "The independence of the Court contrasts with that of the other arm of the licensing authority (the Director) where political and bureaucratic pressures have been brought to bear to restrict some of its operations."

"There have been incidents where aggrieved parties to decisions of the licensing authority have sought political or bureaucratic redress; where the Director has made a decision detailed explanations have been required and sometimes alternative outcomes have been suggested, particularly where the Director has discretion".

✂ The Executive Director also expressed concern about his position. In a letter to the Chairman of the Committee, he said : "I do not sit comfortably with the provision of the Act which places the Director of Liquor Licensing responsible to me for administrative matters. I find the demarcation between administrative matters and other matters dealt with by the Director of Liquor Licensing to be unclear".

Later, in a telephone discussion with the Chairman of the review Committee, the Executive Director said that he would rather give away any responsibility for the Liquor Licensing Division than to continue under the present arrangement.

Staff concern also was expressed about resource allocation and priorities in the following terms :

First, for the past two years the obligation of the Director to ensure that licensed premises are managed and maintained in accordance with Act has been severely curtailed by -

- (a) A shortage of staff due to inspectors acting in other positions within the Office of Racing and Gaming - such as gaming inspectors; and
- (b) Non-allocation of funds to carry out country inspections, particularly those that involve travel by air or incur overnight expenses.

Secondly, the computerised information and records system operated by the Division is "probably one of the most basic of any system operated by a liquor licensing authority in Australia". It is "virtually useless" as a management tool and provides very little by way of meaningful statistical information that would be of benefit to the public or the industry.

Resources originally allocated to liquor licensing for computer services have been reallocated to meet the corporate needs of the Office of Racing and Gaming. "Other priorities" have been determined for computer funds, made available in successive budget allocations.

Thirdly, vehicles purchased expressly to provide for the demonstrated needs of liquor licensing inspectors have been placed in a common pool to meet the demands of other divisions within the Office. Vehicles are now allocated on a first come, first served basis.

The Committee, of course, appreciates the responsibility of a chief executive to balance the resources of his department and that the Division might be receiving support in other directions which is not obvious. However, members also understand staff concerns when their efforts seem not to be supported.

The formal submission of the Office of Racing and Gaming, which the Committee has been told was prepared by the Liquor Licensing Division, commented on the need for political independence in this way :

"Given the commercial opportunities that are available or denied by the application of the law many of the decisions made by the licensing authority will be challenged by interested parties.

"To properly withstand these challenges the authority must be relatively immune from political or bureaucratic influence or pressure.]

"The authority should also have enough status in its own right to be accepted by the community as the final decision maker except when a question of law has emerged and normal rights of appeal are available.

"Under the present structure the Judge of the Licensing Court is afforded that status whereas the Director is subjected to external control and influences both overt and covert which can change the way the Act is administered and the way matters are determined.]

"The consequence is a preparedness by some individuals to seek to use the political and bureaucratic system to have some decisions of the Director changed".

The Committee found the reduction in premises inspection staff from six to two difficult to understand in view of the Division's responsibilities under the Act, and is disturbed by a suggestion made within the Division that the number of premises inspectors was allowed to run down to avoid upsetting licensees.

As stated in the 1992/93 Annual Report of the Office, only one country region was visited for inspections last year. In an interesting aside during informal discussions, which might or might not relate to the problem, a researcher told the Committee, "The liquor industry has captured the (liquor licensing) agenda to the extent that the Liquor Licensing Division now operates on mundane activities, reviewing applications for new licences, doing very important work collecting Government revenue, but when it comes to how premises are actually operated, whether they are operated responsibly, whether there are problems, there is a total information vacuum".

For an independent assessment of the operations of the Division the Committee sought the assistance of the Public Sector Management Office (Annexure 11) and of the Information Policy Unit at Treasury. (Annexure 12)

The Public Sector Management Office reported in part -

"Division processes for the granting of licences are conducted reasonably efficiently and effectively. However, the numbers of applications, types of forms required, revenue to be collected and inspections to be done have coincided with increasing numbers of hearings at this location.

"The effect of this is to distort the output of senior management positions through the increase in volume of regulatory work at the expense of managerial duties. Many shortcuts are taken in an attempt to cope with the work load and an immediate short-term solution is seen in simply adding more staff in critical areas.

"As no controls on the numbers of licensed applications or permits by the liquor industry are possible from the Divisions perspective, the need for more resources will continue to escalate. In an atmosphere of economic restraint, the most practical attitude must be that the level of financial underwriting for the liquor licensing authority is unlikely to be increased.

"In that context structural changes need to be carefully considered, both to enable more balanced prioritisation of work loads and for the conservation of resources through more effective usage of staff. Any changes, of course, will effect the type and extent of information technology systems planned for the Division".

The Information Policy Unit at Treasury reported on the Division's computer facilities as follows -

"There is no provision to transfer data from the accounting system on the Department of Racing and Gaming computer to the Division's assessment system and there is only one annual download of assessment data to the accounting system.

"This means that re-assessments or contested assessments later in the year must be manually transcribed to the accounting system.

"This once annual data transfer is clearly a very unsatisfactory arrangement. In addition, it prevents Division officers having quick access to a complete picture of an applicant's status as some information must be obtained from the assessment system, some from the accounting system and some from divisional records.

"The support systems for the Division and the Liquor Licensing Court comprise personal computers with word processing software and laser printers. These systems are mostly between three and six years old and near the end of normal economic life for such devices. The older ones face increased risk of failure in disk drives, monitors and power supplies.

"Software on these computers is used in basic ways to automate the production of form letters used in the course of applications processing, but staff do not appear to be confident about the use of these machines and clearly seek more technical support.

"The opportunity created by this review of the Licensing Act should be taken to examine the business processes of the Division and seek new methods of operation for efficiency. The opportunity is given by modern information technology to speed up correspondence to clients and to maintain reliable records - and easing the burden of reporting for licensees can be exploited in that process.

"For example, with well designed connections to the assessment system and to the accounting system a full mailing to licensees with details unique to each licensee could be completed on the word processor in hours rather than weeks of manual work.

"It is recommended that independent expert advice be obtained to assist the Division and the Liquor Licensing Director to design appropriate information technology support into the work processes in order to maximise efficiency in administration of all aspects of the Act.

"This project should start with the assessment and accounting systems but also examine the need for quick access to applicant or licensee details, office automation options, records management options and the opportunities to exploit electronic messages between the Liquor Licensing Division and Police, Local Government, Australian Securities Commission etc.

"Advice is needed on how to provide for effective audit and also to reduce the burden on reporting placed on licensees. The study should address the essential requirement to maintain proper administration of public records for both the paper records and electronic mail or documents. A commercial consultant may charge about \$15,000 to give a thorough analysis and a pragmatic detailed solution".

The Information Policy Unit's report added :

"The lack of connection between the assessment system and the accounting system should be given priority attention. Minor program changes on the accounting system will resolve some of the present problems expressed by the Liquor Licensing Division's staff but will not achieve the easy access on one system sought by the Division to all the details about an applicant or licensee.

"To achieve this, a present assessment system will need to be extended or a replacement built which will integrate with the Racing and Gaming accounting system - this latter is the path proposed by Racing and Gaming but has not yet been defined and costed (an independent assessment of either option could cost, say, \$100,000).

"Regardless of steps taken to integrate these systems, unless a complete rebuild of the assessment system is to proceed immediately to meet possible changes to the Act arising out of this review, the proposed move to a smaller DBR - base system should proceed, reducing costs from \$12,000 a month to \$7,270 a month (DBR is Commercial Dynamic Business Resources Pty Ltd).

"The Division also should consider ways to reduce the licensees cost and time. The present collection of information from licensees both retail and wholesale about their purchases and sales by supplier and by alcohol content implies a significant reporting burden on those licensees".

The Information Policy Unit suggested these possible options using information technology :

- (a) Use of standard format diskette for licensees to use and then mail, or establishment of an electronic mail box so that returns can be submitted on-line. Use of either of these methods would help the licensees and also save the Division's costs because the data received electronically does not have to be keyed-in. Wholesalers and large retailers are the ones most likely to have computers to send their returns electronically.
- (b) The use of desk top publishing systems by skilled staff in the preparation of policy documents, events bulletins, notices and in the training and education of licensees. This would improve the quality of publications. Notices would be laid out so that they were more easily read, diagrams and charts could be included and matters of critical importance could be framed or highlighted to help the licensee understand.
- (c) Possible preparation of material that licensees could display in premises to encourage safer drinking habits with their clients. "The cost is low", the Unit stated. "If one of the replacement PCs is fitted with a bigger disk and better monitor (about \$600 total) then good quality desk top publishing software should be available for under \$1500".

Liquor Licensing Court

Under the Liquor Licensing Act 1988 the Judge of the Liquor Licensing Court, who as stated earlier is appointed by the Governor on the recommendation of the Minister, is given the status of a District Court Judge with the same salary, non-contributory superannuation and other benefits, but is not a member of the District Court.

The Liquor Licensing Court is one of the inferior courts and a court of record. Proceedings are conducted formally as in the superior courts, those present bowing to the judge when entering and leaving, microphones for all parties, formal submission of evidence with exhibits marked, representation by lawyers and all proceedings taped and transcribed.

Independent of the Liquor Licensing Division and standing apart from other courts, the Liquor Licensing Court has no on-line access to the computer systems of the Division and no connection or support from other courts or the computer systems provided by the Ministry of Justice.

The Registrar of the Court and the Court's support staff-including the Judge's Associate, are appointed under the Public Service Act. As such the Associate's position normally would be advertised and subject to the normal Public Service processes of employment. In effect, however, the position has been a personal appointment to the Judge on an annual renewable contract.

The Director of Liquor Licensing, is responsible to the Executive Director of the Office of Racing and Gaming for the administration of the Act, and has considerable statutory authority in his own right under the Act.

* The Registrar of the Court has a dual reporting relationship with Judge and the Executive Director. However, as reported by the Management Improvement Branch, the demands of the Judge hold sway with the Registrar's daily work as with the other court staff.

The Public Sector Management Office noted that the Registrar's position was "typical of such situations where the undue stress created by the effort to do justice to both sets of requirements may often be dysfunctional for the position holder". The Director's position also "presented a dilemma" in that requirements under the Act for his involvement in applications, hearings and liaison with the Court appeared to outweigh his administrative responsibilities. This was noticeable "particularly with respect to sufficient time being available for the coordination of strategic planning for the Division". During 1993 the Director presided over 78 hearings at the Division.

So far as court duties are concerned, the Registrar conducts interlocutory hearings to resolve problems or streamline procedures before a formal court hearing and provides advice to legal practitioners for those attending the Court. The Associate attends the Judge in Court, ensures the efficient scheduling of court business, prepares confidential correspondence for the Judge, checks the accuracy of orders and decisions, maintains confidential records and liaises with organisations and individuals on behalf of the Judge.

Other court staff perform secretarial and clerical functions, maintain registers and other records, handle counter enquiries and receive fees payable on documents.

The 1993/94 budget estimate for the Court is \$568,000 (salaries, wages and related staff costs \$310,000, services and contracts \$222,000, communications \$3000 and "other" \$33,000). Last year supplementary funding of \$20,000 was approved to cover additional court expenditure. This was noted in the annual accounts and no detailed explanation was given other than that the initial expenses of the court were "due to the demand driven nature of its operations".

Both the Public Sector Management Office and the Information Policy Unit at Treasury reported that the Court handled approximately 100 matters during the past year, including licence applications and disciplinary hearings. The Committee appreciates that this limited work load does not reflect on the Court's capacity because, as the Judge points out, the Court is demand driven.

As part of its review the Committee would have been interested in further details on the Court's work, but the Court does not produce an annual report and inquiries did not produce the information requested.

An unusual cost problem in relation to the Court is that the area leased for the Court is caught up in a "ratchet" lease under which the rent may be increased but not decreased.

The Court occupies 412 square metres of office space in the May Holman Centre, 32 St Georges Tce, Perth, at an annual cost \$123,000, including outgoings. The "ratchet" lease which expires 6 January 1996 is based on **\$214 per square metre** plus \$85 outgoings.

The Liquor Licensing Division on the other hand occupies 1046 square metres in the Hyatt Centre, 87 Adelaide Tce, Perth, at a cost of \$146,000 a year, including outgoings. This lease, which was extended recently to 30 June 2000 is based on **\$70 per square metre** plus \$70 outgoings.

Commenting on the procedures of the Court, the report by the Public Sector Management Office stated :

"From an examination of divisional documentation, including an earlier review of the Act, and from discussions with the Director of Liquor Licensing, the Deputy Director, the CEO of Racing and Gaming and the Director of Corporate Services, it is clear that hearings for licence applications were attempted to be made less formal and legalistic.

"It was decided by the reviewer to attend at least one hearing of both the Liquor Licensing Court and the Liquor Licensing Division. Details are provided below to illustrate some of the complexity and time taken in these forums.

"With respect to the Court, the tone of proceedings generally was intimidating for the applicant, especially where attention to the due processes of the law was seen as not being observed properly.

4 L "The pace of proceedings was slow, with lengthy silences while the Judge considered issues, points raised and objections to these points. Every minute detail was considered, referrals were made to precedent, and a large number of witnesses were to be called (22 by the licence applicant) to offer such information as site details, fittings and furnishings, and storage space. Most of this detail could have been obtained through reports by inspectors tendered as sworn statements prior to hearings.]

"It is obvious that the turnover of application and objection hearings would be expedited under a less formal system, as was intended under the 1988 Act. From concern expressed by the industry to the Director, this 'speeding up' has not occurred through the requirements of a formal court. It is not in the public interest to encourage any escalation of legal costs because of time taken in formal processes.

"With respect to the hearing attended within the Division, the general style was much more informal, possibly because parties other than the licence applicant were not present. Information was freely exchanged between the Acting Director (Deputy Director) and the applicant, and there was no bench clerk or recording of proceedings (although there is provision for this).

"However, in spite of greater informality and pace of the hearings, lawyers may still be present to argue their case at length and the Director or Acting Director presides over matters from a court-style bench.

"Apart from the time involved in preparing for a (Court) hearing, which can be anything up to five days, the costs incurred by all parties are considerable. Information provided informally by divisional staff indicate that amounts of up to \$65,000 for the licence application process are not uncommon.

"It is possible that a similar amount may be incurred if an objection is raised to the application as this must be heard by the Court. If costs are awarded against the applicant, then the financial burden becomes greater".

* [The report of the Public Sector Management Office concluded that from research and discussion with various officers it was apparent that the linkages between Court and Division needed to be changed "to enable the spirit of the Liquor Licensing Act to be upheld in a more positive way than purely adhering to the letter of the law".]

A proposal which re-occurred constantly was the need for the establishment of a Liquor Licensing Commission in favour of a formally constituted Court.

A Commissioner, supported by one or more Assistant Commissioners, would handle all matters concerning the granting of licences and permits which are now handled by the Liquor Licensing Court. This would be with as little formality as practicable and submissions would not be bound by the legal rules of evidence or procedure. The replacement of the existing court by a less formal commission would also have the benefit of freeing a resource for assistance to other heavily loaded court systems, the report stated.

The idea of a Liquor Licensing Commission instead of a Court was flagged in the Office of Racing and Gaming's 1990 review of the Act. Discussing "serious problems" which had arisen, the 1990 review made the following points :

- 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 has to be determined by the Court all aspects (other than the assessment of licence fee) 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.
- 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.
- More than in many other jurisdictions, in liquor licensing matters lost time can result in a loss of a 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 remains 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.
- *• The present system is unsuitable. It is too rigid, time consuming and costly. People who benefit from these deficiencies are those in the industry who want to prevent competition, and the legal profession. Significantly, several members of the legal profession itself have pointed to these problems even though they are resulting in a great deal of work for solicitors.

The 1990 review then supported the Liquor Licensing Division's competency to decide some of the matters coming before the Court. The review stated :

"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 effected 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.

"The Director of Liquor Licensing determines all transfers under the Act whether or not objections are lodged. The principle 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 the 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".

The present review Committee received serious complaints arising from the adversary system in the Court, but expressions of support as well.

The Law Society of Western Australia came out strongly in support of the Court, making the following points among others :

1. There is no doubt that the two judges who have held office in the Liquor Licensing Court have conducted themselves and their courts in accordance with the very highest standards expected of judicial office.
2. The Director (of Liquor Licensing) and his senior officers do not conduct themselves with the independence and aloofness expected of judicial office in that they -
 - (a) Mix with sections and individuals in the industry;
 - (b) Are open to lobbying and informal discussion of matters before them; and

- (c) Possess but the rudimentary understanding of principles of natural justices and rules of evidence.
3. The Society considers it therefore of paramount importance that the Liquor Licensing Court as a court be retained to ensure from the public perspective there is a forum which is -
 - Independent;
 - Impartial;
 - Detached from the various rivalries and competing interests within the liquor industry; and
 - Above the perceived position of a Government Department in its application of the Act.
 4. There are compelling reasons for the judicial decision associated with liquor licensing to continue to be a province of a judicial body rather than an administrative body, namely -
 - The importance of the subject matter in dispute from a public perspective;
 - The value of the only matter in dispute from the parties' perspective;
 - The difficulty of application of this important piece of social legislation which the Act is;
 - The complaint resolution role that the Court plays; and
 - The determination of conflicts of interests that regularly occur from the basis of a judicial perspective.
 5. The Society considers that the licensing authority however constituted has under the Act carried out a wide ranging, often difficult task to a standard well surpassing that in place when the Act came into operation.
 6. Any step to merge the Liquor Licensing Court with the Liquor Licensing Division or to restrict the jurisdiction of the Liquor Licensing Court would, the Society considers, be retrogressive and highly prejudicial to the proper implementation of the objects of the Act.

7. In some respects the role of the Director of Liquor Licensing is more important than that performed by the Court. More decisions under the Act are made by the Director than by the Court which has a limited jurisdiction under section 30. The Division is the section of the licensing authority which has more interface with the public and licensees than the Court.
8. The Society therefore considers it important that the status of the Director (as head of the Liquor Licensing Division) be maintained as a high profile position with which not only licensees and the public but also Government, Local Government authorities, the police and the tourism authority can deal with confidence.
9. Because of the financial consequences of success with an application or objection, many licensees, particularly "regulars" in the Court, have not been reticent to utilise every legitimate tactic available to them under the Act to achieve their purpose. Much time has been spent and cost incurred on legal council pursuing in Court the interpretation of various sections under the Act at the behest of belligerent applicants or objectors in pursuit of personal commercial benefit.
10. For an initial trial period from January to June 1993, the Court dispensed with the most onerous and expensive requirements of the Practice Direction, including the abandonment of the need to file witness proofs at the Court before a hearing. The Practice Direction has recently been permanently amended - a move which the Society wholeheartedly supports and endorses.
11. Some of the positive consequences of the new Practice Direction have been the reduction in trial costs before the Court by some 50% on average, a significant reduction in the duration of Court sittings and a much shorter wait for listings.
12. The Court continues to sit and dispense its decisions with the same independence and expertise expected of a Supreme Court of Law.

The law firm of Mcleod and Co disagreed with many of the points contained in the Law Society's submission. In a letter to the Committee the firm stated :

"Recently we became aware that the Law Society made a submission in respect of which this firm had no knowledge or input, as we believe was the case with several other firms who practice in the area.

"We disagree with many of the points in the submission and its recommendations. In particular we would make the following points -

1. Liquor Licensing Division

We would seek to distance ourselves from the criticisms that the Director and his senior officers do not conduct themselves with the independence and aloofness expected of judicial office. We have always found both the Director and his senior officers to be capable and willing to deal with matters in a practical and commonsense manner and they have in our experience always been even handed when dealing with either applicants or objectors.

2. Liquor Licensing Court

We make no comment as to where the fault might lie, however we believe there is something dreadfully wrong with the jurisdiction where an application for a suburban liquor store can take 10 to 14 days to hear, with the parties bearing all of the associated costs that go with such a lengthy hearing, when a matter of similar complexity can be dealt with in the Town Planning Appeal Tribunal in one to two days at a fraction of the cost.

To therefore compare the Liquor Licensing Court's jurisdiction favourably with that of the Town Planning Appeal Tribunal, a jurisdiction in which this firm has had considerable experience over many years, is in our opinion misleading.

Furthermore, we know of no other jurisdiction in this state where the same application can end up being appealed to the Full Bench of the Supreme Court a number of times involving substantial costs and inordinant delays (up to three or four years) before the matter is finalised. That has been an experience of this firm, and we believe other firms also, in the Liquor Licensing Court.

"It cannot be said that the public or related industries are well served by such a system, and we therefore cannot agree with the Law Society's submission that it should be retained, certainly not without significant changes which would remove the problems referred to above.

"We have found that the Court on occasions has become bogged down on technical and legal arguments, thereby allowing objectors to use the system to effectively block new applicants, a fact we note with interest is admitted in the Law Society's submission.

"The industry must understand that since the removal of premiums under the 1988 Act, a monopoly no longer exists. A fact that could not have been stated more clearly than was done by His Honour the Chief Justice in *Charlie Carters v Streeter and Male* (1990/91) for WAR 1 at PG 12.

"In the circumstances therefore we cannot agree with the Law Society's submission that the Liquor Licensing Court's jurisdiction should not only remain untouched but be extended.

"No doubt an argument may be mounted that an independent body apart from the Liquor Licensing Division is necessary to deal with some aspects of the Liquor Licensing Act 1988, but the Liquor Licensing Court has to date not served that purpose effectively. We cannot say who or what precisely is the cause of the problems. We have simply observed and experienced the problems.

"Hopefully the current review of the legislation will result in the removal of the great expense, inconvenience and delay presently associated with contested category A liquor licensing applications".

A Corrs Chambers Westgarth partner, Mr Gavin Crocket, also wrote the Committee stating that the views of the Law Society of Western Australia, (prepared by Mr Ian Curlewis, of Messrs Phillips Fox, in his capacity as a member of the Society's Administrative Law Committee) did not necessarily represent the views of all legal practitioners associated with the Liquor Licensing Court.

In a separate submission Mr Crocket made the following points as a partner of Corrs Chambers Westgarth :

- The Liquor Licensing Court has not created any form of certainty concerning the interpretation and operation of the Act;
- A flexible system with little formality has not been achieved but rather a complex web of technical rules with hearings bogged down for days and often weeks on end;
- The entire Court procedure is technical and cumbersome;
- Decisions of the Court have resulted in a "voluminous" number of appeals to the Full Court;
- Legal costs have been totally out of proportion to the real issues in contest between the parties;
- The Court has misconceived its role believing it is the duty of the Court to "regulate" liquor licensing affairs in Western Australia, rather than placing proper weight on evidence before the Court and interpreting the Act according to the principles of law; and
- The Liquor Licensing Court ought to be abolished and a more efficient, cost effective and flexible system introduced.

Solicitors Phillips Fox did not make a formal submission to the Committee but forwarded a paper prepared by partner Mr Dan Mossenson for the Australasian Liquor Licensing Conference which was held at Fremantle on 28 October 1993. In his paper Mr Mossenson said that the two judges of the Liquor Licensing Court, who had held office since the 1986 amendment, conducted themselves strictly in accordance with the very highest standards expected of judicial office.

The Liquor Licensing Court exercising a judicial function enjoyed total independence which was essential for the administration of justice, Mr Mossenson said. Administrative bodies such as the Liquor Licensing Division did not have this independence as they were ultimately subject to the direction of the Minister for Racing and Gaming, unlike the Liquor Licensing Court Judge. It was therefore important that the Court system with the Judges judicial independence be maintained.

Mr Mossenson added that the alternative to the Liquor Licensing Court as a review body was to allow appeals directly from the Liquor Licensing Division to the Supreme Court. It was well known that the Supreme Court was experiencing difficulty dealing with matters at first instance and appeals. To create another source of work for the Supreme Court would only result in further time delays and potentially would represent as big if not a greater cost than was currently being incurred by parties going straight to the Liquor Licensing Court.

One potential area of cost saving would be for the Judge to delegate responsibility for all preliminary points to the Registrar which could be dealt with informally with the right of review to the Judge if the party was aggrieved by the decision of the Registrar.

The Liquor Licensing Division or any other administrative body would be ill-equipped to handle the determining of legal rights without serious risk of an explosion of prerogative writs being issued by the Supreme Court. This would add to the load of that court and the costs of the parties. Numerous such writs had been successful in overturning decisions of the Director to date in circumstances where only a limited judicial role was currently exercised by the Director.

Happily the Liquor Licensing Court had changed its procedures by removing the great paper war associated with applications and objections, Mr Mossenson said. The time spent and costs associated with appearing in the jurisdiction had as a result of the changes been reduced by at least 50%. Gone were the days of the \$100,000 fee for a 15-day liquor store or cabaret application.

Mr Mossenson said that the time was right for the Liquor Licensing Court to become a specialist division within the District Court of Western Australia. It was very difficult to expect one man in a judicial office of the nature of the Licensing Court to be able to maintain fresh and keen interest in the subject matter of proceedings that continuously came before him without any relief from that jurisdiction or any opportunity to communicate with any colleague on the bench as there were no brother judges in the jurisdiction.

The extent of changes brought about by the current Act and the departure from the previous law was partially reflected by the relatively high number of appeals which had been made to the Full Court of the Supreme Court. The outcome of several of those appeals had materially changed the approach of the licensing authority on a number of occasions.

Mr Mossenson said that in an historical perspective the timing of the liquor licensing review was unfortunate because the liquor industry had not yet recovered from the recession, the impact of the outcome of appeals would not be felt during the life of the review, the licensing authority had not fully developed the public interest concept and procedural changes which the Court had introduced had not been "fully experienced".

A submission by the commercial law firm Freehill Hollingdale and Page and Coles/Myer subsidiaries Liquorland and Pennys acknowledged that Liquor Licensing Court decisions and procedures had been criticised publicly and privately. However, their submission claimed that the evolution of a correct interpretation of section 38 of the Act (requirements for a category A licence) had taken time and appellate decisions of the Full Court of the Supreme Court had introduced a new test which had imposed particular burdens on the Court in identifying a "relevant section of the public".

As the functional jurisdictions of the Court and the Division were working well, there was no need for change, the submission added.

A Liberty Liquors submission commented on four areas of criticism of the Liquor Licensing Court. They were :

- Its functions are unnecessary and should be subsumed by the general court system;
- Its views are at odds with the Higher Courts;
- It adds unnecessarily to costs (partially state but primarily private); and
- It had too little work

"Our view is that a specialist tribunal is essential", the Liberty Liquors' submission stated. "The specialist tribunal (court) needs to be separated from the Liquor Division as it is now to ensure balance, objectivity and a dispassionate approach and to provide for a court of review.

"In recent years, decisions by the Liquor Licensing Court have consistently been overturned on appeal. As a result criticism has been levelled at both courts in the industry for indulging in a power struggle or for being out of step with society's requirements.

"Problems are far deeper than just a power play. Firstly the Act itself is founded on a bed of sand. The Objects of the Act do not address the core issue - that it is necessary in the public interest to control the use and lessen/prevent the misuse of alcohol.

"Consequently seldom in our experience do legal council, expert witnesses or the courts address this issue and provide empirical research to deal with it. Public interest is poorly defined and developed and the end question starts to centre on public need, convenience and standard commercial criteria.

"The higher courts appear to view alcohol as just another commercial commodity and lean in the direction of giving liquor licences where they are asked for and are impatient with the restraints of a restrictive licensing system".

On costs and the volume of court work, the Liberty Liquors' submission added, "It is not the Court that generates the high costs but the legal profession and its clients.

"We cannot comment on the volume of work for the Court but it would seem self-evident that the specialist tribunal could extend its function into racing and gaming per se as well as drugs other than alcohol. Substance abuse is a major social issue. A wide-responsibility for the Liquor Licensing Court could improve its relevance and productivity".

The submission also said, "It is important that the licensing procedure remains a judicial process and that the opportunity for objections to be made is continued. The public interest demands a careful appraisal.

"What needs to be ended, however, is an adversary system which is based on deceit. Lawyers for objectors will pursue minor and moronic meaningless points about, for instance, where doors are, how alcohol is to be merchandised, the quality of furnishings and so on. These have minor if any relevance to the control of the use and lessening the misuse of alcohol.

"Commercial objectors to liquor licence applications almost always object because a proposed new licence will affect their business. Commercial objections are about minimising competition. From one point of view it may be regarded as obscene that Liquorland, say, with 46 liquor stores should constantly object to new licences. On the other hand it makes perfect commercial sense to do so. Why on earth let someone in to attack your business?

"What needs to change is the deceit. If the principle reason for an objection is commercial, say so. It is not something to be ashamed of and certainly fits object 5(a). What the Court must then do is to require the objector to focus on his prime motivation and show why it is in the public interest not to allow his business to be attacked commercially by a new licence.

"In liquor store applications, licences have been seen as a means to make money. Many have been on-sold soon after they were granted. The duplicity of many who swear in court that their intention is to run the business themselves is exposed by the facts. They hardly ever do run it themselves but prefer to make a rapid capital profit".

The Liquor Industry Council favoured retaining the Court system but wanted the administration and procedures modified to reduce costs and lengthy proceedings.

On the other hand, architects and planners Thomson Ong and Associates stated, "The Liquor Licensing Court has gradually become bogged down in excessive legalistic attention to detail. During the period of Judge Sharkey, changes to the procedures were introduced which were similar to those of the Town Planning Appeals Tribunal. These changes included exchange of evidence from experts 28 days before the hearing and were intended to streamline and speed up the actual hearing. This reform failed to succeed because only portion of the Tribunal's procedures were adopted.

"The need for informality has not occurred. Whereas exchanged evidence should be lodged and cross examined if necessary, cases tend to battle on over admissibility, credibility and at times honesty of the evidence. Long argument on relevance occurs.

"The adversarial role taken by the lawyers and encouraged by the bench has resulted in the whole process being blown up to an exaggerated state of its own importance.

"The Review Committee should closely examine the procedures of the Town Planning Appeals Tribunal which were set up by David Malcolm, QC, now Chief Justice of WA, as the inaugural Chairman".

Chartered accountant Mr Graham Hardie whose investments include taverns, cabarets and special facilities, told the Committee, "The Court costs are horrendous. It took us three years, with three appeals to the Full Court of the Supreme Court, to move the Arcadia tavern licence 350 metres. When we finally received approval in January this year, it had cost us \$250,000 in legal costs. Even a modification could cost us \$100,000. The Court is becoming more dominant, and I don't know whether that should be the case. The Division certainly runs a very good operation and should be given more authority, "but now there's a conflict between the Court and the Division, in which a Division's decision has been appealed by a single objector".

When members of the review Committee called by arrangement at His Honour's chambers, Judge Greaves discussed many aspects of the Court's work, his awareness "from the beginning" that some proceedings were taking too long, his removal of written proofs of evidence to speed things up, the need for cooperation from the legal profession and the need for sensitivity in dealing with new legislation which, the Judge said, needed a lot of care and attention.

Judge Greaves also agreed to comment on proposed amendments to the Act which the Office of Racing and Gaming had submitted to the Committee.

Early in his discussion, His Honour said, "What has caused enormous difficulties with respect to this legislation and its early childhood is that the Supreme Court regularly interferes in this operation, and that has meant that the licensing authority has not been left to get on with the business of the licensing authority".

Asked how the Supreme Court's interference was expressed, Judge Greaves replied, "Through appeals and dealing with what seems to be questions of law because it is only on questions of law, of course, that the Supreme Court may intervene. But they are not questions of law. And I say that with the greatest respect to the judges. . . I guess if they say they're questions of law to some extent you and I have to accept that they are.

"But you are charged with the review of people's legislation and where people are saying it takes too long and the proceedings are complex, part of the reason why they become complex is because the Supreme Court has entertained a lot of issues which it should never have even given the light of day to.

"The best example and perhaps the principle one is the question of reasonable requirements. The concept of reasonable requirements has been known to liquor licensing in this state and elsewhere in Australia and overseas for many years. There is a whole line of cases where judge after judge after judge has explained and demonstrated how that principle is to be applied. For reasons which are not apparent, this Supreme Court decided that it would rediscover reasonable requirements".

Asked whether the Supreme Court had changed the concept of reasonable requirements, Judge Greaves said, "I don't know on that".

In response to a Committee member's comment that the Supreme Court presumably had reversed his decisions, Judge Greaves said, "Indeed, yes. I should add though that that's not my concern. That's what the appellant process is about.

"I'm not now talking about one judge saying, 'Well an appeal court has said it's wrong'. That's for appeal courts to do. I've been born and bred in a system where appeal courts do that. There can be no comment on that.

"The question is what is the effect over the longer term of continual interference, and reasonable requirements is one which I think is the best example.

"To give it balance, I should say that there have been questions that the new legislation has thrown out which I came to a conclusion on and they did raise substantial questions of law and those matters were taken to the Full Court quite properly and the Full Court decided them, and I don't say anything about that.

"A good example is the one relating to the position of liquor store licensees at the end of their lease term. Now that's a complex issue where the liquor store licence holder is a lessee and there is or is not provision in the lease relating to what shall happen to the licence".

Later Judge Greaves told the Committee that the "relevant section of the Act was an enormous compromise", which was not surprising to find in a "negotiated piece of legislation". Like most enormous compromises, the section did not find itself all that well expressed and it was not easy to apply.

Invited to comment on the constitution of the licensing authority and its resources, Judge Greaves said that in his view the Director of Liquor Licensing did not have the resources to deal with many of the uncontested applications in a way which the Act required. The applications should be dealt with for the sake of consistency and in making sure that the liquor industry develop consistently and fairly. He considered the licensing authority should continue to exist as an independent authority, where the Director is responsible to the Minister and the Court is placed as it is now.

So far as uncontested applications and extended trading permits were concerned, there may be room, particularly in relation to category A licences, for them to be dealt with by the Court, His Honour added. Unless they were being dealt with consistently on explained criteria, people would perceive that they were not getting a fair go, not because someone was not being fair but because one case was not being dealt with in the same sort of way as a case six months ago.

Judge Greaves understood that in South Australia there was "room" to look towards legislation being amended to provide that all category A licences be determined by the Court, but there may be room for some halfway house to prevent matters getting clogged up.

On extended trading permits, Judge Greaves said, "If you have a piece of legislation which you choose to base on licensed applications, you can't go about creating one sort of licence out of another by extending the hours in one licence and substantially merging, affecting another licence. The whole question of what is a licence is a very complicated one".

Judge Greaves said that he had "absolutely no criticism of Geoff Aves" (Director of Liquor Licensing) and that he was "not looking after his own for a moment" in the comments he had made.

Finally, Judge Greaves said he hoped that the Liquor Licensing Act would be amended to allow a legal practitioner to be appointed Acting Judge to make it easier to find a replacement when he went on leave, as he intended to do soon.

The Committee carefully considered all the reports and opinions expressed by the liquor industry, legal practitioners, the Office of Public Service Management and others on the constitution of the authority, role and functions of the Director and the adversary system of applying for and objecting to licences.

From its inquiries interstate and elsewhere the Committee has no doubt that liquor licensing is becoming more administrative and less legalistic, which is reducing costs both for licence applicants and objectors, hence it considers that industry and the community would be better served by a commission than a court with the Division becoming basically an administration and industry development body.

The Committee sees the division of responsibility between a Commissioner of Liquor Licensing and a reconstituted Division (administration) as follows -

Commissioner to handle -

1. Disciplinary proceedings including -
Fines;
Suspension or
Cancellation
2. Grant of all category A and B licences (except occasional).
3. Grant of removals of all licences required to be advertised.
4. Alteration or redefinition for which an objection is lodged.
5. Transfer for which an objection is lodged.
6. Matters referred by the Division's Director - Administration on a question of law or importance.

Director - Administration

The Director - Administration and divisional staff to determine all other matters under guidelines, including -

1. Assessment and reassessment of fees.
2. Complaints about noise and behaviour (section 117).
3. Transfer of licence.

4. Extended trading permits.
5. Extension of time to pay fees.
6. Alteration or redefinition of premises (where no objection is lodged).
7. Vary condition of licence.
8. Occasional
9. Disputes between licensee and landlord over lease (section 89).
10. Protection orders and interim authorisations.
11. Change in shareholding.
12. Approval for profit sharing.
13. Suspension of licence.
14. Advertising of applications.
15. Setting of affected area for category A applications.
16. Temporary removal of licence.
17. Surrender of licence.
18. Initiation of disciplinary action before the Commissioner.
19. Work orders in respect of premises.
20. Cancellation (for non disciplinary matters).

The Commissioner, it is proposed, would hear appeals from decisions of the Director - Administration, except matters dealing with -

- i. Extensions of time to pay fees;
- ii. Occasional licences;
- iii. Extended trading permits (except extended hours for any period more than 28 days); and
- iv. Setting of "affected areas" to determine need and qualification to object.

The District Court it is proposed would hear appeals from decisions of the Commissioner on questions of law or fact, but not from the Commissioner's rulings on appeals from the Director - Administration. The Full Court of the Supreme Court would hear appeals by leave on a question of law.

The Committee considered various alternatives for relocating the Liquor Licensing Division, including the Ministry of Fair Trading. However, the Committee considered that the overriding consideration was to keep the Commission close to the Division for administrative support. At the same time, the Committee was advised that the Ministry of Fair Trading would be interested in accepting an administrative division but not a judicial body.

After investigating liquor licensing in the Northern Territory, the Committee was most impressed with the appointment of a special intelligence liaison officer in the Division of Liquor Licensing to work with the police to target major alcohol problems. This has worked extremely well in the Northern Territory because the liquor licensing officer appointed to work in the Police Department was a former policeman. In proposing such an appointment here, the Committee believes that a police officer on a matter of the liquor licensing authority could fill the position but a special police appointment might be justified because of the confidentiality of working with police records and information.

As the details below show, there is no consistency in responsibility for liquor licensing in other states.

1. NEW SOUTH WALES

The licensing authority consists of:

- (1) The Liquor Licensing Court
- (2) The Liquor Administration Board

The Court

The Court consists of a Chairman, who is a magistrate, and three members, who are also magistrates.

The jurisdiction and powers of the Court are conferred on it by the Liquor Act 1982.

A matter before the Court can be determined by one magistrate sitting alone, or by two or more magistrates. The full bench of the Court consists of three magistrates sitting together. The full bench will determine appeals against a decision of the a magistrate or any important or contentious issue.

Appeals against a decision of the full bench, only on a question of law, can be made to the Supreme Court.

The Court determines such matters as the grant of new licences and certificates of registration, variation of trading conditions, removals, transfers and disciplinary proceedings.

The Chairman of the Court is responsible to the Minister for Justice.

The Liquor Administration Board

The Board consists of a Chairman and three members (the same persons that form the Court). A Secretary, who heads an administrative staff, also undertakes specific responsibilities, including the assessment of fees.

In addition to the functions conferred on it by the Act, the Board:-

- (a) Shall keep under constant review the operation of the Act and make such recommendations to the Minister in relation there as it thinks fit;
- (b) Shall, upon being directed by the Minister so to do, inquire into, and make a report and recommendations to the Minister upon any matter connected with the administration of the Act;
- (c) Shall keep under constant review the standard of licensed premises;
- (d) May receive submissions or reports from any person with respect to the operation of the Act; and
- (e) May impose conditions with respect to any matter within its jurisdiction and revoke or vary any such condition.

The Board is responsible to the Chief Secretary, who is also the Minister.

Staff responsible to the Secretary (CEO) of the Chief Secretary's Department also support the Liquor Administration Board in such areas as information and technology, finance, client services, liquor and gaming and investigations.

2. VICTORIA

The licensing authority is the Liquor Licensing Commission.

The Liquor Control Act 1987 provides for:

- (a) The Commission
- (b) The Chief Executive Officer and Staff

The Commission

The Commission consists of a Commissioner, a Deputy Commissioner, an Assistant Commissioner and a part-time Assistant Commissioner.

All Commissioners are appointed by the Governor-in-Council.

The Commission determines all applications for licences and permits, setting terms and conditions where appropriate and where necessary conducting hearings.

A matter may be determined by a single Commissioner. An appeal against the decision of a single Commissioner is heard by a Full Commission (3 Commissioners). Appeals against the decision of the Full Commission on a question of law can be made to the Supreme Court.

The Commission must consult with the Minister from time to time in relation to the performance of its functions and exercise of its powers under the Act.

Chief Executive Officer

The Chief Executive Officer (CEO) is the administrative head responsible for the overall management of the staff, resources and systems of the Commission. He is also responsible for the assessment and collection of fees and provides a recommendation to the Commission on all licence applications.

The CEO is independent of the Commission and is appointed by the Governor-in-Council. He is directly responsible to the Minister for Small Business.

3. SOUTH AUSTRALIA

The licensing authority consists of :

- (a) Licensing Court
- (b) Office of the Liquor Licensing Commission

The Court

The Court is constituted by a Licensing Court judge, or some other District Court judge who is vested with authority to exercise the jurisdiction of the Court.

The Court determines:

- (1) All applications for the grant of a category A licence;
- (2) All applications for approval of a proposed alteration to licensed premises in respect of which a category A licence is in force;
- (3) An application for variation or revocation of a condition of a category A licence;
- (4) An application by the holder of a hotel licence for a late night permit or for exemption from the obligation to provide accommodation;
- (5) Appeals on a decision of the Liquor Licensing Commissioner;

- (6) Any other matter in respect to which the Court is vested with jurisdiction by some other provision of the Act or by a provision of the regulations;
- (7) Any matter (other than the assessment of licence fees) incidental or ancillary to a matter determined under the above sub-paragraphs.

An appeal on a decision of the Licensing Court Judge can be made to the Supreme Court.

Liquor Licensing Commissioner

The Liquor Licensing Act 1985 provides for the appointment of a Liquor Licensing Commissioner and such other staff as are necessary for the administration of the Act.

The Commissioner is responsible to the Minister for Consumer Affairs and is appointed by the Governor.

The Commissioner determines all other matters not under the jurisdiction of the Court.

4. QUEENSLAND

The licensing authority consists of the Liquor Licensing Division, the Liquor Appeals Tribunal and the Liquor Advisory Board.

Liquor Licensing Division

The Liquor Licensing Division is a part of the Department of Tourism, Sport and Racing. It administers the Liquor Act 1992 through its Executive Director on behalf of the Chief Executive Officer of the Department. The Division consists of three units whose functions are:

Industry Development Unit

- * Undertakes training and awareness programs relating to the Act
- * Monitors, evaluates and provides advice on industry issues and trends
- * Investigates compensation for surrender and determination of premiums for purchase of general licences
- * Undertakes special projects on behalf of the Division

Licensing Administration Unit

- * Applications for a new licence
- * Transfer of licence
- * Change of nominee
- * Issue of permits
- * Alteration\additions to premises

- * Variations to conditions and trading hours
- * Applications for bottleshop approval
- * Registrations of financial interest

Investigations and Complaints Unit

- * Complaints regarding licences and permits
- * Detection of breaches under the Act
- * Prosecutions through the Magistrates' Court
- * Under-age drinking investigations

Liquor Appeals Tribunal

The tribunal consists of a Chairperson, Deputy Chairperson and an unlimited number of members who are appointed on a part-time basis by the Governor-in-Council. The tribunal may hear and determine appeals against decisions of the Chief Executive with respect to:

- * The grant, refusal, cancellation, suspension or surrender of a licence or permit, or renewal of a restricted club licence
- * The grant or refusal of an authorisation
- * The conditions imposed on a licence or permit
- * An order imposed on a licensee or permittee or person authorised
- * Assessment, reassessment, or fee payable
- * Apportionment of liability for the payment or refund of fees
- * Any other appeals

Liquor Advisory Board

The Liquor Advisory Board consists of a Chairperson, Deputy Chairperson and an unlimited number of members who are appointed on part-time basis by the Governor-in-Council. The function of the Board is to act in an advisory capacity in considering any application for a licence or transfer of licence which is specifically referred to it for comment by the Chief Executive.

5. TASMANIA

Under the Liquor and Accommodation Act 1990, the licensing authority consists of the Licensing Board and the Office of the Commissioner for Licensing.

The licensing authority is part of the Department of Tourism, Sport and Recreation.

Licensing Board

The Licensing Board consists of a presiding member and two other members appointed by the Governor. A quorum for a meeting of the board is two.

The Board determines whether or not a licence should be granted or refused. If a licence is to be granted the board instructs the Commissioner to issue the licence.

The Board hears applications for an appeal against a decision made by the Commissioner.

The Board may at any time - and shall if ordered to do so by a judge in chambers following an application made in a summary way by an applicant or appellant at a hearing of the Board - state a case for the opinion of the Supreme Court on any question of law arising on an application or appeal.

Office of the Commissioner

A person may be appointed to the office of Commissioner by the Governor for a period of 5 years.

The Commissioner is in charge of the administration of the Act and is responsible for all matters not under the jurisdiction of the Board, including such matters as the issue of permits, assessment of fees, and surrender of licences.

6. NORTHERN TERRITORY

The Northern Territory Liquor Act establishes the Liquor Commission, which is a body corporate with perpetual succession, having a common seal, and is capable in its corporate name of acquiring, holding and disposing of real (including leasehold) and personal property and of suing and being sued.

The Commission consists of the following members appointed by the Minister:

- (a) The Chairman
- (b) A legal practitioner
- (c) Three other members

A quorum of the Commission is constituted by the Chairman and two other members.

The Commission determines all applications for the grant of a licence.

The Chairman alone has the delegated authority from the Commission to determine all other applications under the Act. The Chairman also controls the administration of the Act.

A decision of the Chairman may be appealed to the Commission. A decision of the Commission is final and cannot be challenged or appealed against.

7. AUSTRALIAN CAPITAL TERRITORY

The Liquor Act 1975 provides for a Licensing Board and the Registrar of Liquor Licences (including a Deputy Registrar)

Licensing Board

The Board consists of:

- (a) A Chairperson appointed by the Minister
- (b) The person holding the office of Registrar
- (c) One other person appointed by the Minister

The functions of the Board are-

- (a) To consider and determine applications or other matters referred to it under the Act
- (b) To conduct inquiries, including hearings, in relation to applications or other matters referred to it under the Act
- (c) To advise the Minister, as required, on matters of policy and administration
- (d) To perform such other functions and duties as are conferred on it by or under this Act or another Act.

A decision of the Board may be appealed to the Australian Capital Territory Administrative Appeals Tribunal.

Registrar of Licences

The Registrar, who is also the Director of Liquor Licensing, is appointed by the Minister and while he reports to the Liquor Board, his formal reporting line is to the Secretary of the Department of Administration, Law and Justice.

The Registrar performs such duties as are conferred on him under the Act.

A decision of the Registrar may be appealed to the Australian Capital Territory Administrative Appeals Tribunal.

Annexure 13 provides a brief comparison of the features of legislation in each state.

Recommendations

- 1. The Liquor Licensing Court be abolished and replaced by a Liquor Licensing Commission, comprising a full-time Commissioner and Deputy Commissioner appointed by the Governor in Council;**
- 2. The Commission be located in the Ministry of Justice and take over the judicial responsibilities of the Court and the main quasi-judicial responsibilities at present handled by the Director of Liquor Licensing;**
- 3. The Commission report direct to the Attorney General as and when required;**
- 4. Accountability of the Liquor Licensing Division be transferred from the Office of Racing and Gaming to the Ministry of Justice (with the Liquor Licensing Commission) to administer matters under the Act which are not handled by the Commission;**
- 5. The Liquor Licensing Commission and the Liquor Licensing Administration Division be empowered to decide issues and to implement decisions, subject to appeal processes, without political or commercial interference;**
- 6. Appeals from decisions of the Liquor Licensing Commission on matters of fact and law be heard by the District Court;**
- 7. Appeals from decisions of the District Court be heard by the Full Court of the Supreme Court by leave on a question of law;**
- 8. A core responsibility of the new Liquor Licensing Division be in the area of industry training and education, community awareness and liaison with Aboriginal people. This would involve the creation of an industry development unit comprising a senior consultant appointed from existing FTEs, two qualified training officers (additional) and an Aboriginal liaison officer (additional).**

9. A budget of \$100,000 be approved to enable a thorough review to be made of information technology needs and opportunities for the Liquor Licensing Division, as suggested by the Public Sector Management Office;
10. While the Office of Racing and Gaming proposes to introduce a local area network for its office systems and has asked the State Supply Commission to call tenders for the replacement of 37 PCs, no further commitment be made on information technology until the Division's future has been decided;
11. The Public Sector Management Office further investigate staffing resources and management systems at the Liquor Licensing Division to determine whether the Division is under-resourced as claimed by industry;
12. As a matter of priority, six additional liquor licensing inspectors be appointed to the Liquor Licensing Division to work in conjunction with the Police Liquor and Gaming Branch, days and nights, to enforce provisions of the Liquor Licensing Act, particularly in relation to juvenile drinking and practices which lead to alcohol abuse;
13. An intelligence liaison officer be appointed, ideally from the WA Police but alternatively from the Liquor Licensing Division, to coordinate police and other incident reports and information to develop joint strategies to ensure liquor licensing is policed to community standards.
14. The Liquor Licensing Act be re-drafted in an easy-to-read form with a minimum of cross-references, instead of the present complicated form which confuses all except those who work closely with it.

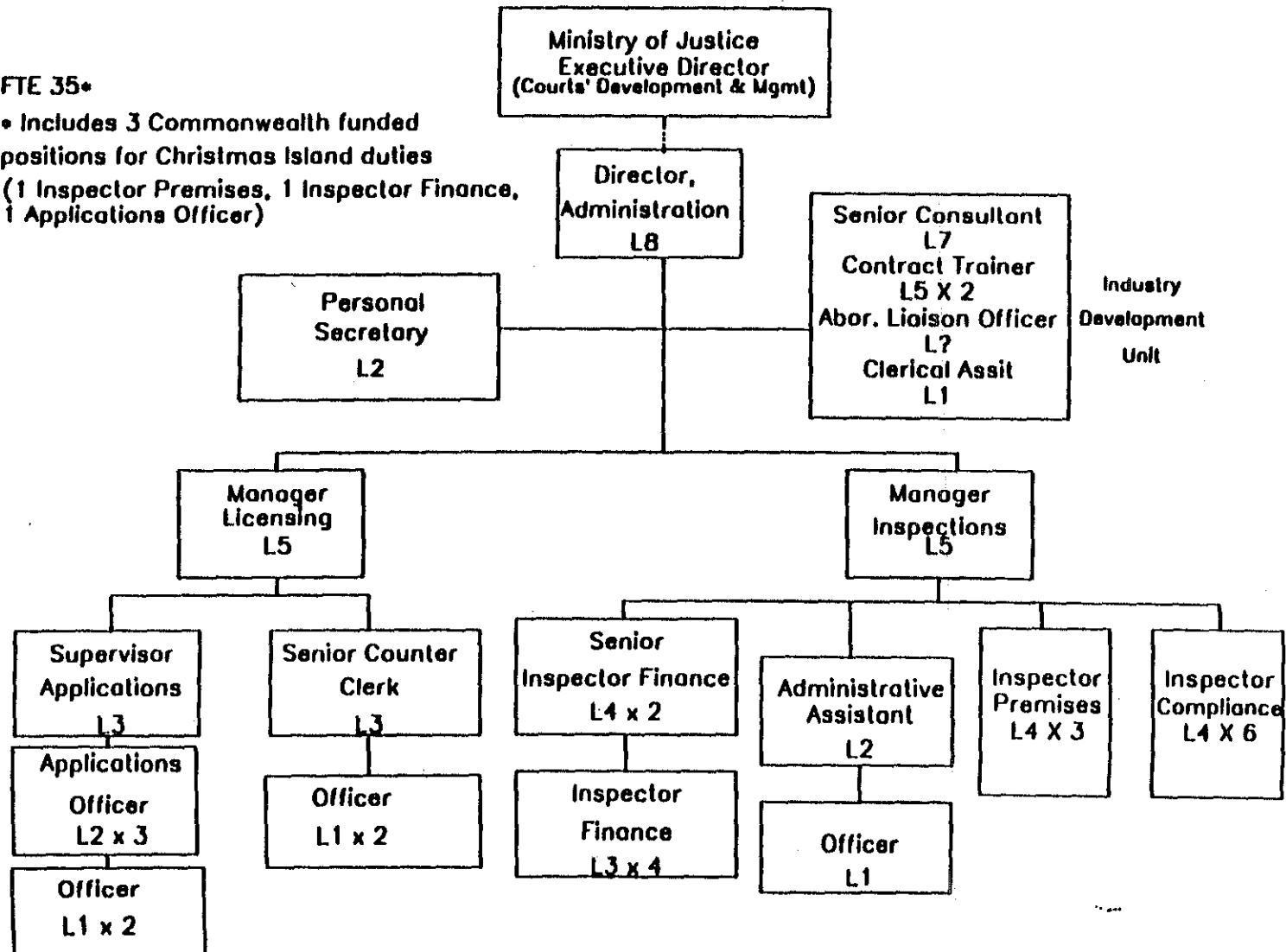
THE FOLLOWING ORGANISATION CHARTS SHOW THE STAFFING ARRANGEMENTS FOR THE PROPOSED LIQUOR LICENSING COMMISSION AND LIQUOR LICENSING ADMINISTRATION DIVISION, COMPARED TO THE PRESENT LIQUOR LICENSING COURT AND THE LIQUOR LICENSING DIVISION.

LIQUOR LICENSING ADMINISTRATION DIVISION

Proposed Structure

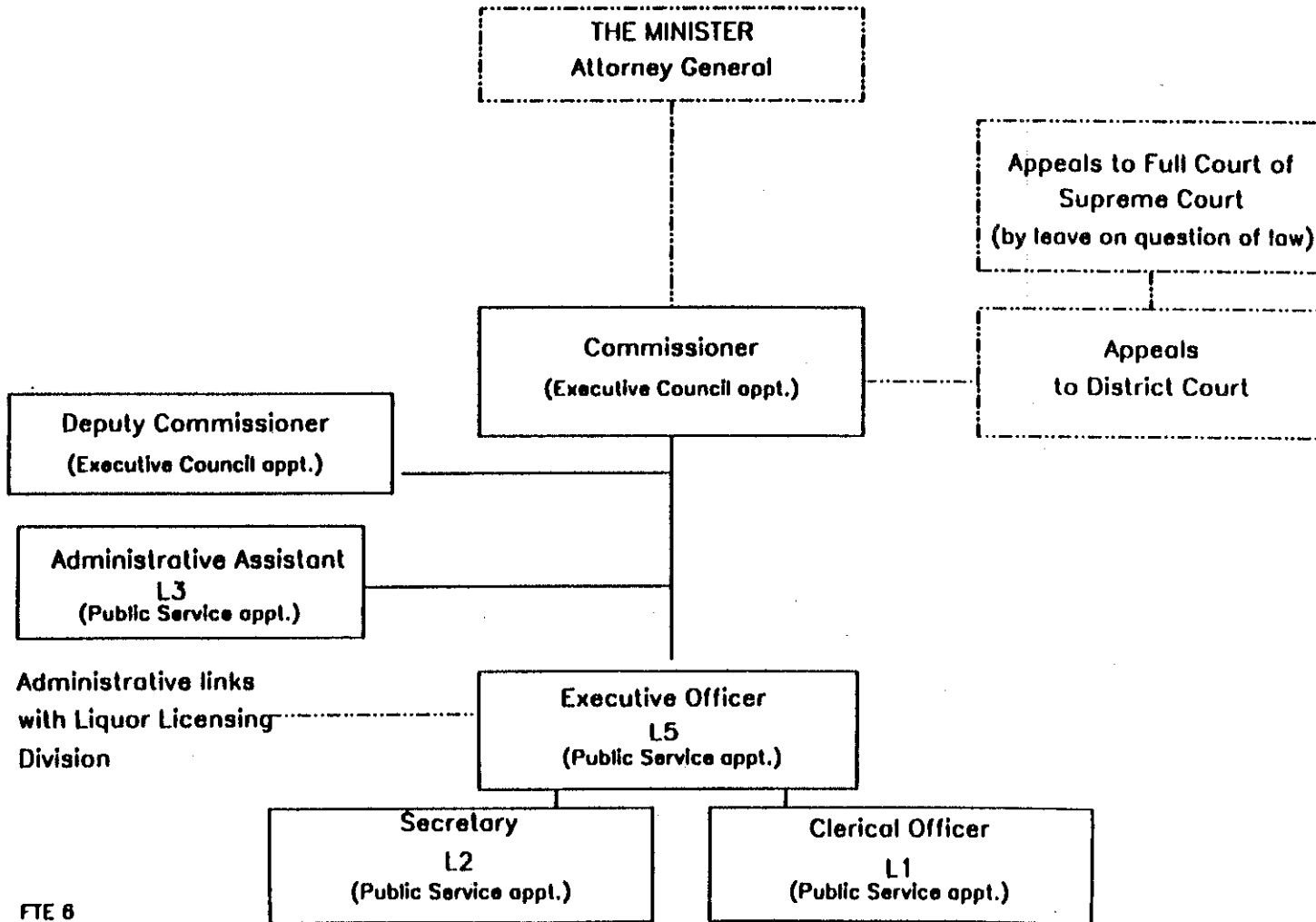
FTE 35*

* Includes 3 Commonwealth funded positions for Christmas Island duties
(1 Inspector Premises, 1 Inspector Finance, 1 Applications Officer)



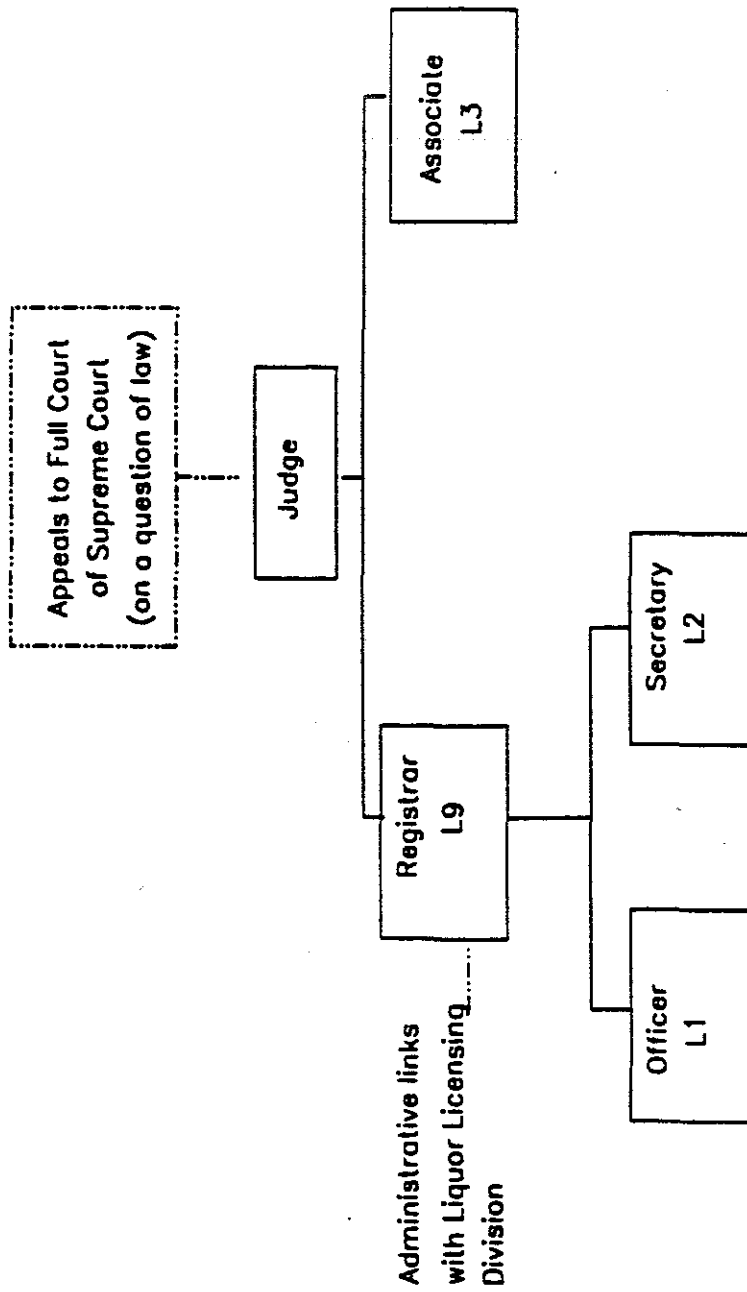
Industry
Development
Unit

LIQUOR LICENSING COMMISSION
Proposed Structure

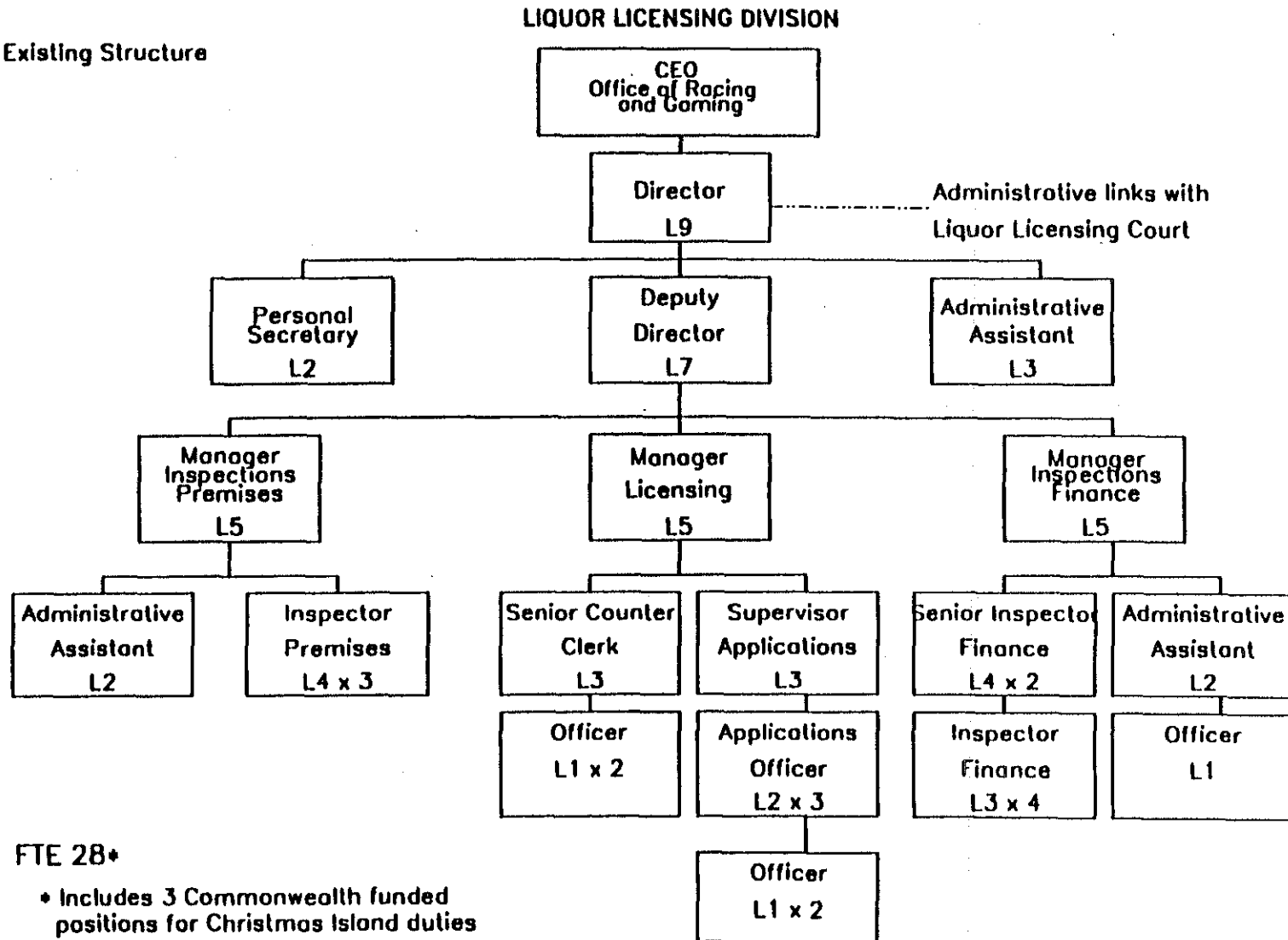


FTE 6

**LIQUOR LICENSING COURT
Existing Structure**



Existing Structure



FTE 28*

- * Includes 3 Commonwealth funded positions for Christmas Island duties (1 Inspector Premises, 1 Inspector Finance, 1 Applications Officer)

9. MANDATORY INDUSTRY TRAINING

Of the written submissions and oral presentations to the Committee, 56 supported the need for industry training in good serving practices, the provisions of the Liquor Licensing Act and aspects of management from senior management down through supervisory to serving staff of each organisation selling liquor retail.

Research shows that while only about one-third of all alcohol sold in WA is consumed on licensed premises, approximately two-thirds of all problems of intoxication are associated with such consumption. Half of all drivers who fail a roadside breath-test have had their last drink on licensed premises; up to 60% of street offences (assaults, offensive behaviour and offensive language) occur on or near licensed premises; and 72% of respondents who reported experiencing alcohol-related harm in a community survey did so after drinking on licensed premises.

These facts weaken the argument that the use of liquor licensing laws to combat alcohol problems involves punishing the many for the sins of the few. They suggest instead that our liquor laws should be framed to deter episodes of excessive consumption and promote moderation in the use of alcohol at all times and by all who like a drink.

While many submissions expressed the need for industry training, at least two submissions dealt with the subject in depth and provided course outlines.

One of these submissions was from the Liquor Industry Council of WA. As indicated elsewhere, the Council comprises representatives of -

The Western Australian Hotels and Hospitality Association;
Wine Industry Association of Western Australia;
Wholesale Wine and Spirit Merchants' Association of W.A.;
Licensed Stores' Association of Western Australia;
Cabaret Owners' Association of Western Australia;
Restaurant & Caterers' Association of Western Australia;
Association of Licensed Clubs of Western Australia; and
Swan Brewery Company Limited.

The other submission was from the National Centre for Research into the Prevention of Drug Abuse, Curtin University of Technology. Both of these submissions strongly advocated mandatory training.

The Liquor Industry Council stated, "The Council is confident that the training scheme can be self-funded".

The National Centre for Research stated, "Australian legislation has few specific provisions dealing with the qualifications and training of licensees and permittees. Although applicants must be 'fit and proper persons', they are not generally required to demonstrate that they understand their responsibilities under the alcohol laws or have adequate experience in the hospitality industry. Ironically, under the current Australian legislation, the premises are subject to far more exacting and specific requirements, than the people who own and manage them".

The Centre added, "Consideration should be given to requiring all applicants to have some basic training as a pre-condition to obtaining or renewing a licence. Applicants who can demonstrate that they have adequate legal knowledge and relevant management experience should be exempt from the training requirement".

The W.A. Liquor Licensing Act 1988 has no specific requirement for the minimum qualification or training of applicants for licences; neither have the Acts in South Australia, Tasmania and the Australian Capital Territory.

The Queensland Act has no specific qualification or training requirement, but an industry development unit established about a year ago with a staff of three conducts free training and awareness programs on an ad hoc basis.

New South Wales legislation, however, provides for the qualification of applicants for hotel and restaurant licences as follows :

"Unless the court or otherwise determines in relation to a particular applicant or class of applicants, an application for or for the transfer of a hotelier's licence or an on-licence (restaurant) shall not be granted unless the applicant has attended the complete course of instruction provided by the Department of Tertiary and Further Education numbered * 0766 and entitled "Liquor Licensees' Course" (Annexure 14) or such other courses of instruction as may be approved by the Board".

Implementation of this NSW regulation has been achieved without difficulty and from all reports is working well from an administrative standpoint and is well accepted by the liquor industry. A hotelier must have had at least two years' experience within the hotel industry or have completed the approved course of instruction for hoteliers which is available at Ryde College, East Sydney Technical College and Hamilton Technical College.

** Material for the course number 0766 has not been submitted to the NSW Governments' Vocational Training Board or the Australian Hospitality Industry Review Panel for accreditation and therefore does not automatically qualify a student for an exemption (credit) for a diploma course.*

A restaurant licence in NSW shall not be granted or transferred unless the intending licensee has :-

- (1) Satisfied the Court that he/she has at least 12 months' managerial/supervisory experience in a licensed restaurant in New South Wales (This does not include restaurants contained within hotels or registered clubs); or
- (2) Completed the restaurant course conducted by the NSW Tourism Industry Training Committee, 15 Belvoir Street, Surry Hills, 2010. (Annexure 15)

While no compulsory training course exists under Victorian legislation, a recent amendment to the 1987 Liquor Control Act provides for the Chief Executive of the Liquor Control Authority to object to the granting of a licence on the following grounds -

- That the applicant does not have an adequate knowledge of the Act; or
- If the applicant is a body corporate, that no director of the body corporate has an adequate knowledge of this Act.

The Liquor Control Authority in Victoria conducts optional courses on responsible server practices and charges the licensee at cost. TAFE provides a one-day course on liquor laws in a curriculum developed in conjunction with the authority.

Similarly, the Northern Territory Act does not provide for mandatory training, but the Registrar of the Northern Territory Liquor Commission conducts a course at no charge to licensees. The course covers the Act and server responsibilities. A short examination is conducted by liquor inspectors to ensure all new applicants know the Act and the principle responsibilities.

New Zealand

New Zealand might well lead in training for the liquor industry. All licensees/managers/temporary managers must be in possession of a managers' certificate under current legislation.

The New Zealand Act provides -

1. Section 116: Manager to hold certificate - No person shall be appointed as manager of any licensed premises for the purposes of this Act unless that person is the holder of a manager's certificate granted under this Part of this Act.

2. Section 117: Kinds of managers' certificates - Every manager's certificate shall be of one of the following kinds -
 - (a) A general manager's certificate, which shall authorise the holder to manage any licensed premises in respect of which a licence is in force; and
 - (b) A club manager's certificate, which shall authorise the holder to manage any premises in respect of which a club licence or a special licence is in force.
3. Section 121: Criteria for managers' certificates -
 - (1) In considering any application for a general manager's certificate, the Licensing Authority shall have regard to the following matters :
 - (a) The character and reputation of the applicant;
 - (b) Any convictions recorded against the applicant;
 - (c) Any experience that the applicant has had in managing any premises or conveyance in respect of which a licence was in force;
 - (d) Any relevant training that the applicant has undertaken and any relevant qualifications that the applicant holds;
 - (e) Any matters dealt with in any report made under section 119 of this Act.

In considering an application for a club manager's certificate, the Licensing Authority must have regard to (a) - (e) above and, where the applicant intends to be the manager of a particular club, the extent of the applicant's involvement in the management and activities of the club.

An Hotel and Catering Industry Training Board (HCITB) has been established as a statutory body in New Zealand to -

- Liaise with industry, training providers and government on all training matters;
- Promote the benefits of systematic training to industry;
- Identify the training needs of industry and develop or review resources to meet those needs;
- Establish minimum standards for workplace competence;

- Ensure that all off-job training is relevant to industry's needs and includes recognised training standards;
- Co-ordinate the delivery of off-job training to meet the needs of industry.

When managers' certificates were introduced by legislation, exemption was granted to long-standing managers. However, relatively new managers were required to undergo a short examination on the legal aspects of the legislation in relation to host responsibilities, penalties under the Act and server responsibilities.

Canada

Legislation proclaimed in Canada by the Ontario Provincial Government in September 1990 followed a three-year review by an advisory committee. One of the recommendations contained in the advisory committee report reads in part : "The Liquor Licensing Board of Ontario (LLBO) should set minimum standards for a mandatory training program for all beverage alcohol servers in Ontario and the Board should expand its training seminar for new licences to include all licensees and managers".

LLBO and the Ministry of Consumer Relations adopted this recommendation and a training program for servers of beverage alcohol has been developed by the Addiction Research Foundation. It provides bartenders, waiters and waitresses with information on such topics as legal liability, the factors which effect blood alcohol levels, how to recognise signs of impairment and how to deal with a patron who has had too much to drink. A similar program has been adopted in the province of New Brunswick.

Civil Liability

A licensee's active support of staff training in good serving practices, Host Responsibility, business practices, the display of house codes and other "duties of care" are recognised as defence against civil liability law suits in Canada and America. So-called "dram shop" laws in 29 states in the USA allow injured third parties to recover damages sustained in accidents resulting from service of alcohol to intoxicated patrons. One research study listed 200 charges laid for serving juveniles, but only two for serving an intoxicated person.

Australian case law on civil liability and "duty of care" is still limited, but already there have been several cases and the issue is being increasingly reported at seminars.

In one reported Australian case a licensee has been sued for over \$100,000 for serving an intoxicated patron who then assaulted another patron.

In view of the level of harm associated with the excessive consumption of alcohol it is necessary for all those whose work place them in contact with clients to have the knowledge and skill on the harmful effects of alcohol abuse in order for them to exercise an effective and preventative role.

The Committee sees an urgent need not only to train many licensees, managers and servers in the obligatory aspects of the Liquor Licensing Act, but also in the social problems and harm caused by excessive consumption. Servers in particular should be knowledgeable in the effects of alcoholic beverages, able to identify under-age drinkers and deal in an effective and caring manner with affected drinkers.

For these reasons a mandatory training program should be commenced as a matter of priority and the first two year's funding subsidised as part of an overall program of expenditure - details page 100.

Recommendations

1. **That a comprehensive and structured course of mandatory training, funded by a variation in liquor licence fees, be developed to serve all sections of the liquor industry, including crowd controllers (bouncers) who work in or at the doors of licensed premises;**

Note : Expenditure on projects - page 100

2. **That the course include -**
 - (a) **The Patron Care module ADFB11 (Annexure 16) listed in the structure of TAFE Liquor Licensing Course ASF3;**
 - (b) **A specially developed module to ensure a proper knowledge of the WA Liquor Licensing Act at the time;**
 - (c) **Modifications to meet the needs of the security industry for crowd controllers (bouncers) at licensed premises; and**
 - (d) **The development of adequate certification and records of those who successfully complete the training.**
3. **That the WA Liquor Licensing Act be amended to include the foregoing modules of the course 2(a)-(d) as minimum qualification for licensees, approved managers, servers and crowd controllers.**

4. To facilitate the transitional phase of this legislation -

- (a) All licensees and approved managers with five years' and more satisfactory service in the industry at 1 January, 1995, to receive automatic exemption.
- (b) All licensees and approved managers with less than five years' experience at 1 January, 1995, to complete the mandatory training course within two years;
- (c) From 1 January, 1995, all new licensees and approved managers to complete the training course before being approved;
- (d) From 1 January, 1997
 - All servers of liquor to have completed the training course in order to be able to serve liquor.
 - All crowd controllers (bouncers) to have completed approved course, modified as required, to qualify for registration and a licence to work at licensed premises.

5. That a working committee be established to finalise the industry training program, including the module specifically covering the WA liquor licensing legislation and the development of adequate certification of those who successfully complete the training, and that this working committee comprise representatives nominated by:

- | | |
|--|---|
| • The Liquor Industry Council of WA
(one of whom shall be chairman) | 2 |
| • The Director of Liquor Licensing
Administration Division | 1 |
| • The Commissioner of Public Health | 1 |
| • The Commissioner of Police | 1 |
| • The Industry Employment Training Council
(Hospitality and Tourism) | 1 |
| • The Director of Technical and Further Education,
Department of Education and Training | 1 |

The Review Committee envisages that the working committee would need limited resources, such as secretarial support, which could be provided by industry or one of the Government ministry's involved.

6. That two additional qualified training officers be appointed to the Liquor Licensing Division to provide in-house training to industry staff in accordance with the proposed module on the WA Liquor Licensing Act and the Patron Care module of TAFE Liquor Licensing Course ASF3.

These officers are to have passed the formal training course in 2 above and to undertake a trainer's course at TAFE, Edith Cowan University or similar establishment.

Besides in-house training, the training officers would be expected to share with other liquor licensing staff the following tasks in a pro-active manner-

- **Dissemination** of advice and instruction to industry and other groups on any aspects of liquor legislation which require special focus and action;
- **Production** of "responsible service" literature and display material for distribution to industry and the community, much of which could be sponsored;
- **Production** of an inexpensive quarterly newsletter to keep industry and other groups informed of trends and developments locally, interstate and overseas, which also could be sponsored;
- **Liaison** with schools and community groups on educational matters.
- **Maintenance** of a computer register of all persons within the liquor industry who have completed the mandatory training referred to in 2 above, and
- **Collection and collation** of information and statistics to service the foregoing.

Summary of Submissions

Fifty six submissions advocated training for the liquor industry. A further three submissions, while not opposed to training in principle, considered either that training is management's responsibility or that adequate programs exist to encourage responsible service.

The Liquor Industry Council was one of two organisation which proposed course details. It comprises representatives of the Western Australian Hotels and Hospitality Association; Wine Industry Association of Western Australia; Wholesale Wine and Spirit Merchants' Association; Licensed Stores' Association; Cabaret Owners' Association; Restaurant & Caterers' Association; Association of Licensed Clubs; and Swan Brewery Company Limited. The other organisation was the National Centre for the Research into the Prevention of Drug Abuse. Both of those two submissions strongly advocated mandatory training. The L.I.C. expressed confidence that the training could be self-funded, whereas the National Centre for Research listed various funding options, including user-pays, a premium on new licences, the Department of Employment Education and Training "training guarantee" (payrolls in excess of \$226,000), a percentage of licensing fees, an additional alcohol levy and an allocation of the fines paid for breaches of the liquor Act.

10. HOST RESPONSIBILITY STRATEGIES

Host Responsibility or Responsible Beverage Service strategies, which originated in the United States of America in the late 1970's, have been adopted actively in Canada, New Zealand and in the eastern states of Australia.

Host Responsibility embraces a set of strategies which aim to create safer drinking environments by altering the behaviour of people providing alcohol either in a private situation or on licensed premises.

Based on formal industry and community cooperation, Host Responsibility Programs are mandatory in the USA and Canada. In New Zealand, while not mandatory, they and liquor licensing legislation form the nucleus of the New Zealand Hotel and Catering Industry Board's examination scheme for the liquor industry.

In Australia, national guidelines for the responsible serving of alcohol which the National Alcohol Beverage Industries Council (NABIC), an industry body, issued in 1990 were in fact based on what has become known as Host Responsibility, while the "Freo Respects You" drink-safe project in Fremantle last year in turn was a pilot study on the introduction of Host Responsibility in a specific locality. An industry body, NABIC comprises the Australian Associated Brewers, the Winemakers Federation of Australia, the National Restaurant and Catering Association of Australia, the Liquor Stores Association, the Registered and Licensed Clubs Association of Australia, the Australian Hotels Association and United Distillers (Aust.) Limited.

Although of limited success, the project was a good example of cooperation locally by the Hotels and Hospitality Association, the Alcohol and Drug Authority, the health promotion unit of the Health Department, the Liquor Licensing Division, the Police Liquor and Gaming Branch, a representative of the cabaret owners and the National Centre for Research into the Prevention of Drug Abuse.

The disappointment was that only 10 of 50 licensed premises invited to participate took up the offer over a seven-month period. Managers did not always attend the course with their staff and when they did attend they failed to make use of the opportunity to develop house policies. Strategies for dealing with drunk customers and house policies were only briefly discussed and at the end of one session a manager stood up and told his staff : "Remember that the bottom line is making money".

The foreword to the NABIC guidelines - which cover strategies for the responsible serving of alcohol, recognising signs of intoxication, aspects on staff training, house policies and managing the intoxicated drinker - says :

"The publication of these guidelines is welcome evidence of a co-operative approach to the problems associated with alcohol consumption in Australia. Australians like drinking alcohol and society condones sensible drinking practices. Research, however, shows that Australian's are increasingly concerned about the misuse of alcohol, particularly "binge" drinking by young people.

"The solution must be to find the correct balance between enjoyable drinking and the avoidance of problems. In this respect these guidelines provide a national framework to assist industry efforts to promote the responsible serving of alcohol. Everyone in the industry - licensees, waiters and waitresses, table cleaners, cashiers and servers, managers, bar staff and door persons (security) - will benefit from increased awareness, knowledge and job skills".

The publication adds, "Responsible hospitality practices will have other welcomed spin-offs, too - a better environment for both staff and patrons and a greater community appreciation of how you are helping to reduce such problems as under-age drinking, irresponsible behaviour and drink-driving".

The way New Zealand's Host Responsibility program has been developed is considered a model as it promotes responsible practices in the home, work place, social clubs and most importantly at sports and special events. The National Centre for Research says, "In this way the emphasis is shifted away from licensed premises as the sole source of alcohol problems by involving the whole community in addressing the problems".

Recommendation

- 1. That the working committee which has been recommended to finalise an industry training program also develop a coordinated Host Responsibility program incorporating the National Alcohol Beverage Industries Council guidelines*.**

* Copy available from Executive Director AHA (WA BRANCH) 438 Vincent Street, Leederville WA 6007.

Summary of Submissions

In all, 14 submissions dealt with the need for a Host Responsibility program, with at least three of which cited the successful New Zealand program as a model. Submissions from the Liquor Industry Council, WA Alcohol and Drug Authority, the National Centre for the Prevention of Drug Abuse and the Alcohol Action Committee Halls Creek all strongly supported the introduction of a Host Responsibility program. Funding was suggested in a variety of ways with an adjustment of liquor fees being the most popular.

11. COMMUNITY AWARENESS

The Committee considers that in addition to mandatory industry training and a Host Responsibility program, a state-wide public education or community Awareness Campaign is needed to drive home to the community the positive and negative aspects of alcohol consumption.

The campaign would need to be designed to meet regional as well as metropolitan situations throughout the state.

As mentioned elsewhere in this report, the Western Australian Network of Alcohol and other Drug Agencies (WANADA) provides graphic details of the magnitude of the alcohol problem to be solved -

- In 1990-1991 member agencies of WANADA provided direct treatment services to some 10,000 Western Australians.
- Between 1980 and 1986 alcohol accounted for the majority of deaths among people aged 15 - 34 years and that three quarters of these were related to motor vehicle crashes.
- Between 1981 and 1990 at least 4,000 Western Australians died as a direct result of alcohol-related problems and there were 62,447 hospital admissions.
- In 1986 alone, when research was undertaken, alcohol was the cause of about 114,000 short-stay bed days in hospital (5.6% of all such stays).
- For Western Australia the cost of hospital services alone was \$31.7 million in 1986.
- Nationally, the annual cost of alcohol-related problems is estimated to be over \$6 billion, the cost to Western Australians being in excess of \$500 million a year.
- In WA a 1986 phone-in on domestic violence showed that of 300 women who responded 45% said their partner had consumed alcohol beforehand. Other research suggests that alcohol plays a significant part in as much as 40% of judicial separations or divorces and 30% of child abuse and incest cases.

Supporting the need for training, Host Responsibility and Community Awareness programs in his report on the Victorian Liquor Control Act, Dr John Niewuenhuysen said, "Policy directed at education and social attitudes is of fundamental importance in the prevention of alcohol misuse. Awareness of the consequences of alcohol abuse and education towards responsible drinking can affect consumption and reduce misuse. Conversely, acceptance of heavy drinking as part of the way of life of the community can also affect the levels of consumption and abuse. Social attitudes to liquor are created by a mixture of influences, including family and community habits, education, awareness programs, and regulatory devices affecting current behaviour (random breath testing)."

Research and health organisations in all states agree that there are limitations to what liquor licensing legislation alone can do to reduce the harm associated with the misuse of alcohol and that industry training and Host Responsibility and public education or Community Awareness programs are vital.

The Committee is advised that present funding for community awareness of drug abuse in Western Australia is provided annually from three main sources -

- (a) \$500,000 from the State Government.
- (b) \$500,000 from the Commonwealth.
- (c) \$918,000 from the Western Australian Health Promotion Foundation (Healthway) over the three-year period to January 1994.

Apart from overhead costs, only \$300,000 of the total \$1 million from the State and Commonwealth Governments appears to have been directed towards community awareness of alcohol-related problems, the remainder being channelled to programs for the control of tobacco, amphetamines etc.

Typical of the public education programs already funded by the WA Health Department are Drinksafe 1993 (\$ 38,000), Respect Yourself 1993 (\$125,000) and "Freo Respects You" (\$ 12,000);

Alcohol-related projects funded by Healthway in association with organisations in the three years are listed as -

Youth Rock Concert	\$3,400
Compari (Community Mobilisation Prevention of Alcohol Related Injury)	\$266,686
Young People-parental Problem Drinking and Prevention	\$64,821
Minimal Intervention	\$62,015
Public Health Approach to Alcohol Related	\$119,500
A Community Response To Alcohol Abuse	\$30,750
Getting to Health - youth worker training	\$134,000

Lions Drug Education Project	\$36,000
Alcohol and Other Drugs in the Workplace project	\$127,050
Alcohol in the Community of Fremantle	\$28,000
Aboriginal Youth Radio Drama	\$11,214
Rural Youth Alcohol Policy Document	\$1,500
Drugs in Sport : Seminar	\$2,500
Alcohol Education and Awareness Package	\$13,800
Young People/Parental Problem Drinking	\$16,950
Total project on expenditure over 3 years to January 1994	<u>\$918,186</u>

<u>Healthways (Annual Average)</u>	<u>\$306,000</u>
<u>State/Federal Governments</u>	<u>\$300,000</u>
<u>Total Annual Expenditure</u>	<u>\$606,000</u>

The total funds available for the education of all age groups, therefore, represent just under 1% of the fees collected by the Government from liquor licensing. The annual allocation of funds permits only one metropolitan media campaign of approximately five weeks' duration directed towards public education on the need for a responsible attitude to the consumption of alcohol.

Most commercial organisations allocate between two and three per cent of their revenue towards awareness of their products. On this basis at least \$1.24 million would be justified for community awareness, in addition to normal commercial advertising to increase market share. However, the budget provided in this report (page 100) recommends that approximately this amount be spent over two years and that the results be reviewed before further expenditure is committed.

As stated, the Committee agrees with the Liquor Industry Council that health measures must be sensible, well considered and formulated in conjunction with industry. The experience of industry leaders, as well as the cooperation of the community, would be essential for the success of any harm reduction strategy. A coordinated campaign which includes community awareness, mandatory training and enforcement of liquor laws is more than justified in view of the documented costs to the community.

The Committee is sure that community health and industry development go hand in hand. If one is harmed, the other suffers, too, and soon tourism suffers. Encouragingly experience in other States has shown that significant changes in patterns of alcohol-related harm can be achieved over time provided the problems are defined.

"Where's the harm?", a paper published in Sydney by researchers Homel, Miller, MacAvoy (1992), is specific on the approach needed. The paper says:

Attempts to reduce the harm associated with a particular drug (alcohol) must take into account -

- The characteristics of the people using the drug (age, sex, socio-economic background);
- The environment and context of use (availability, peer acceptance and other pressures);
- Characteristics of the drug itself (likely physiological effects on the drinker, including performance-related characteristics and whether it has high dependency producing qualities).

"These three elements are linked and an act in relation to one element will impact on the others", the paper adds. "This means that if access to the drug is restricted without considering the context of use and the characteristics of the users, then the effectiveness of that measure at best will be of limited effectiveness and at worst be counter productive.

"The harm minimisation approach also involves a wide range of agencies and individuals with a responsibility for contributing to the effort required to minimise harm. Effective strategies are based on the understanding that relative contributions will vary from situation to situation. Through a coalition of interest, the impact of different strategies can be maximised".

The Committee supports such an approach.

In the Committee's view, the overall policy should be to discourage drinking to intoxication (not to attempt an overall reduction in the per capita consumption of alcohol). Hence, the Committee focuses on two areas where it considers specific attention is needed; namely, metropolitan and other regions where alcohol is damaging to community health, particularly that of Aboriginal people, and metropolitan and other regions where under-age drinking is a problem (note section 20 : Juveniles).

Aboriginal People

No industry training, Host Responsibility or Community Awareness program would be complete unless it took up consideration to the special needs of Aboriginal people.

The effectiveness of spending on Aboriginal welfare has been widely criticised yet, while no one can excuse waste, the facts on Aboriginal health are well known. Aboriginal mortality is almost three times that of other Western Australians and it is estimated that alcohol is responsible for 8%-10% of Aboriginal deaths.

Submissions to the Committee drew attention to the 1989/90 National Health Survey finding that Aboriginal men consume alcohol at levels likely to be injurious to their health and at twice that among non-Aboriginal men. They also drew attention to a study in W.A. conducted by the National Drug and Alcohol Research Centre, Sydney, on alcohol consumption in a remote Aboriginal population which found that 76% of Aboriginal men and 46% of Aboriginal women are drinkers and that 53% of men and 19% of women drink at harmful levels.

Several submissions focused attention on issues which contribute to the high incidence of alcohol-related harm among Aboriginal people. They included -

- . Early trading in Kalgoorlie from 6am before food stores open, causing families to go without food;
- . Juveniles in Geraldton and Carnarvon consuming alcohol on licensed premises;
- . Facilities in rural and remote areas of a standard that would be unacceptable to other members of the community;
- . Transport and sale of liquor by taxi drivers to some Aboriginal communities, particularly to "dry" areas;
- . Liquor being provided to Aboriginal people on credit by taxi drivers who manage their bank accounts; and
- . Lack of education of Aboriginal people on the harmful effects of excessive alcohol consumption.

Community nurses related heart-rending consequences of excessive alcohol consumption, including child neglect, noise disturbance, cultural decay and death.

In the Committee's opinion all this points to the need to design programs with regional differences in mind, including the characteristics of the people, their environment and what they drink, as stressed in "Where's the harm?"

Sobering up Shelters, Patrols

As mentioned in the introduction to the report, the Committee made a point of visiting as many regions as possible during its review. As a result of a passing remark by police in Geraldton, Committee members became particularly interested in non-discriminatory Sobering Up Shelters and the work being done by volunteer Aboriginal community patrols. The Geraldton police valued the work being done by the local community patrol but were frustrated that there was nowhere to put "drunks" overnight, except in the police lockup.

The Committee is confident that if more resources were put into community patrols and Sobering Up Shelters, which the Alcohol and Drug Authority has pioneered, the health benefits throughout Western Australia and to tourism would be substantial.

The number of people held in police custody would drop dramatically, the relations between police and Aboriginal people would improve considerably, many criticisms of the Royal Commission into Deaths in Custody would be laid to rest and the health and wellbeing of Aboriginal people and non-Aboriginal people alike would be improved.

A striking example of what one shelter can do is in Halls Creek. After the shelter was built last year, the number of drunken people held in police custody in the seven months to January this year dropped by 66%. A total of 1057 people were referred to the shelter, only 523 were detained in the lockup.

Similarly positive results have been achieved in the Northern Territory where Sobering Up Shelters have been established in Darwin, Katherine, Alice Springs and Tennant Creek, expenditures in 1992-93 ranging from the \$132,187.00 (Tennant Creek) to \$487,333.00 (Alice Springs).

Because of "burnout" among volunteers, the Northern Territory Government is considering providing more financial support to patrols on a needs basis.

Without shelters the alcoholics, young and old men and women, would have nowhere to go but into a police cell or back on the streets without food. No one pretends that the shelters and patrols in themselves will prevent alcohol abuse but they are a good starting point for counselling and vital at the present on the grounds of humanity and in the community interest. The problem is that the Government decriminalised drinking, but at the time did not provide anywhere for the "drunks" in parks and on the street to be placed.

The story on shelters is illustrated in the following reprints of articles on the Roebourne and South Hedland shelters.

There aren't too many places in Australia where you HAVE to be drunk to get through the door, but shelters aren't hostels for someone who couldn't find a motel.

Shelter policy is that the client must be:

- * intoxicated
- * cooperative
- * non-violent

If someone becomes agitated staff can usually calm them by talking.

Some individual counselling is available at the shelter if requested.

The shelter in South Hedland opened in 1991 in an old building.

In mid-1992 new premises were built, fully air-conditioned with four bedrooms each with four beds.

"Sleep is the only thing that really helps sobering up," said Mr Dunnett.

Although some may go back to the creek to drink again there are already signs that the shelter is making a difference to their lives.

"The police here are very cooperative and happy to bring the drunks to us rather than lock them up."

Mr Dunnett is convinced that domestic violence amongst Aboriginal

The aim is to keep people out of courts, lock-ups and jails, and make sure they get health care and other services.

people has decreased since the shelter opened.

more time to do other work instead of caring for drunks.

In 1992 the shelter won an Australian Violence Prevention Award.



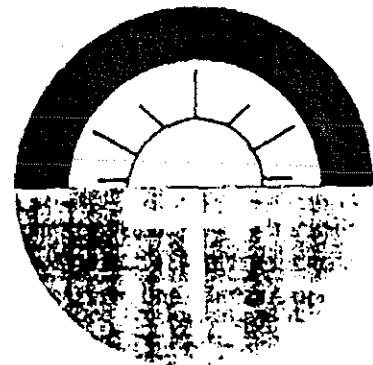
** Acting manager, Ruth Ellis and caregiver, Warren Poultney, ponder the future outside Roebourne Shelter.*

The Roebourne shelter opened last February after the Pilbara Aboriginal Church agreed to sponsor the project.

The aim is to keep people out of courts, lock-ups and jails, and make sure they get the right health care and other services.

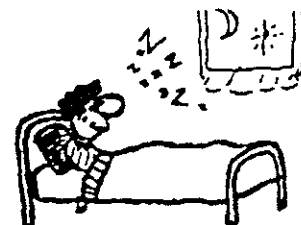
Helping to stop violence and crime is another part of the plan.

The idea is also to give the police



ROEBOURNE SHELTER'S 'FIVE EASY RULES'

- * Be willing to have a shower
- * Put on clean pyjamas
- * Lay down for a bamba (sleep)
- * Cause no harm to others
- * Stay until you're sober



"I think domestic violence amongst Aboriginal people has decreased since South Hedland shelter opened."

POLICE VITAL FOR SHELTER SUCCESS

The key to the success of a sobering-up shelter lies with the attitude of the local police.

That's the view of caregivers at the two Pilbara shelters, and the number of clients they get seems to support their opinion which is backed by research in Australia and overseas.

For example, staff at the shelter in South Hedland say they have good relations with the local police and most nights have a full house of drunks.

There are now five sobering up shelters in WA.

The others are in Perth, Hall's Creek and Fitzroy Crossing. One more is planned at Kalgoorlie (opening mid March).

One of the recommendations of the Royal Commission into Aboriginal Deaths in Custody was to set up shelters where the police can take drunks to get sober instead of putting them in the lock-up.

The Police Act (law) says drunks should only be taken to the lock-up as a last resort.

(When there is no-where else for the drunk to go.)

The South Hedland sobering-up shelter, funded by the Western Australian Alcohol and Drug

Authority, has its own management committee.

Acting manager Stephen Dunnett who has been at the shelter since June last year, said: "The South Hedland shelter is very successful.

"Already hygiene has improved, even amongst the people who come back regularly."

The shelter is open daily from 4 pm to 8 am except Sunday.

There are 16 beds and most used by Aboriginal people.

Drunks are picked up by the police, usually from the back of the Coles shopping centre in South Hedland

Provided they're not violent, and agree to the move, they're taken to the shelter. (If they start throwing punches, then it's off to the lock-up)

At the shelter they have a shower and are given a bed for the night.

Their clothes are washed and dried ready for the morning, or if badly torn, replacements are supplied.

They must stay at the shelter for at least four hours but few leave before the 6.30 breakfast.

The shelter employs a state enrolled nurse. Mr Dunnett is a registered psychiatric nurse.

If staff believe the client needs to see a doctor he or she is taken to the hospital for treatment.

Otherwise small wounds are dressed at the shelter.



South Hedland Sobering-Up Shelter acting manager, Stephen Dunnett, proudly displays the rules of the house.

South Hedland staff say they have good relations with police and most nights have a full house ...

The Committee understands that Sobering Up Shelters have been established in Perth, South Hedland, Halls Creek and Roebourne and that other centres are expected to be operating soon in Fitzroy Crossing and Kalgoorlie. Communities in Derby, Wyndham/Kununurra, Geraldton, Newman, Wiluna and Meekatharra have expressed a need, too.

The bulk of funding so far has been provided by the WA Alcohol and Drug Authority, while ATSIC also has given support.

Shelters are being established on the basis of expressed community interest and available funding sources, which has caused Aboriginal leaders to express concern that a more pro-active and planned approach has not been adopted.

An analysis of alcohol related arrest and lockup rates and alcohol consumption data (Annexure 17) and advice from local communities suggests that consideration should be given to establishing shelters at -

- Broome, Derby,
- Newman, Marble Bar,
- Geraldton, Mullewa, Carnarvon, Meekatharra, Wiluna,
- Kalgoorlie, Laverton,
- Narrogin, Bunbury and Albany,
- Midland (Bayswater, Bassendean, Lockridge),
- Fremantle (Medina),
- Mirrabooka (Balga, Girrawheen).

Establishment and operating costs for Sobering Up Shelters vary from community to community, according to facilities and infrastructure, size of the potential "client" population and hours of service required, but on average establishment costs are about \$350,000 and annual operating costs about \$150,000 for a 14-20 bed shelter.

Under the term of reference "the interests and needs of the Western Australian community", the Committee considers that more Sobering Up Shelters and community patrols are needed to help combat the negative effects of alcohol and that the use of revenue from liquor licensing fees to fund them would represent a valuable contribution to minimising alcohol-related harm.

While the present shelters appear to be resource intensive, the Committee believes that wherever possible they should be modest in scale, modular and portable, and available to be used for other community purposes, if only to spread the cost across a number of programs.

The Northern Territory Police Commissioner Mr Michael Palmer, told the Committee, "Patrols and shelters are great, especially for tourism, because they take drinking away from the public view." The Commissioner in comments to the Committee commended Aboriginal people involved in patrols for "taking ownership of their own problems". Broome Shire President Cr. Ron Johnston told the Committee, "The idea (of patrols and Sobering Up Shelters) is as big as the Kimberley. We were waiting a long time for the break-through".

No Formal Funding

Voluntary community patrols have been established in Broome, Geraldton, Kalgoorlie and Derby over the past 12 months but more stable funding is needed. The Committee understand that at present there is no formal funding mechanism and program structure to support the patrols. Some assistance has been provided by the Aboriginal Affairs Planning Authority in recognition of the value of this type of community self-help initiative and the importance of maintaining the impetus throughout the early stages of development.

The aim of patrols is to provide an Aboriginal response to the problem of intoxication, under-age drinking, alcohol-related violence and self-harm. Besides checking parks, beaches and streets, the patrols attend large sporting events, social events, cabarets and hotels to ensure an early response to disruptive behaviour resulting from excessive consumption. They also work to promote mutual understanding and respect between the Aboriginal community and police.

Patrols are being established at Fitzroy Crossing, Halls Creek, Kununurra and Roebourne. Other centres considered to be in need of patrols either on a full or part-time basis are-

Kimberley	Wyndham
Pilbara	Onslow, Newman, Marble Bar
Gascoyne/Murchison	Mullewa*, Carnarvon*, Meekatharra* and Wiluna*
Goldfields	Laverton
Southern Region	Narrogin, Bunbury, Albany, Katanning and Mt Barker
Perth	Perth Central, Midland, Fremantle and Mirrabooka

* Two days a fortnight

Recommendations

1. That the State Government approve expenditure of \$5.5 million over two years on industry training and Host Responsibility and Community Awareness projects, as outlined below under the heading "Proposed Expenditure on Projects".
2. That the expenditure be financed by varying the present differential in liquor licence fees - increasing the fee on (high alcohol) liquor by 1% from 11% to 12% and reducing the fee on low alcohol liquor by 1 per cent from 7 % to 6%;

On the current method of collecting liquor licence fees, a 1% variation up and down would increase revenue by an estimated \$3.3 million a year. Fees are collected in instalments paid in January, April, July and October.

3. That the money raised be re-allocated from the Consolidated Fund to a special Treasury trust fund entitled the Alcohol Community Projects Trust Fund;
4. That payments from the Alcohol Community Projects Trust Fund be approved by the Minister in Charge on the recommendation of an honorary advisory committee to be called the Alcohol Host Responsibility Committee;
5. That the Alcohol Host Responsibility Committee comprise senior representatives of -

• The Liquor Industry Council of WA; (one of whom to be chairman)	2
• The Director of Liquor Licensing Administration Division;	1
• The Aboriginal Affairs Planning Authority (AAPA);	1
• The Commissioner of Public Health; and	1
• The Commissioner of Police;	1
• The Director of Technical and Further Education, Department of Education and Training.	1
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It is envisaged that Members of the Alcohol Host Responsibility Committee would be different to the representatives on the industry training program working committee (Recommendation 5 page 83) and that the Alcohol Host Responsibility Committee could become a standing advisory body to Government.

6. That before Government finalises the 1995-96 budget, the success or otherwise of each project be examined in association with industry to decide whether the project should continue to be funded, whether money should be spent on alcohol-related problems in some other way or whether the trust fund should be suspended.
7. That any revenue in excess of expenditure be held in the Alcohol Projects Trust Fund, pending a Government decision on the program and licence fees.
8. That it be made an offence in the Liquor Licensing Act to transport alcohol without a permit on to or near an Aboriginal community which has declared itself "dry" or imposed limitations on the availability of alcohol under the provisions of the Aboriginal Communities Act 1979.

Summary of Submissions

The following comments are typical of the submissions received and indicative of the general concern in the community over the harm caused by excessive consumption of alcohol.

Distilled Spirits Industry Council of Australia Inc: In addition to research, educational programs should play an integral role. They should incorporate development of programs targeting students (primary, secondary and tertiary) and broader-based community education and awareness programs.

Goldfields Health Services: An industry funded community education program is needed to inform the public about the harm caused by excessive alcohol consumption and a host responsibility agency is needed to promote the responsible service of alcohol in the industry and the community.

National Centre for Research into the Prevention of Drug Abuse: One of the problems faced by managers and bar staff in refusing service to drunken persons is there is very little awareness among drinkers that this is against the law. Public awareness and education campaigns are needed to change the climate of opinion regarding the acceptability of drunken behaviour.

Carlton and United Breweries Ltd (Matilda Bay Brewing Co) commented: "Voluntary industry programs exist to educate the public and to encourage responsible service. These require full evaluation before any enforced replacement programs can be considered."

The idea of applying revenue from liquor license fees to projects with the aim of reducing the negative impact of alcohol on the community was proposed in a number of submissions to the Committee.

At the same time Acting Assistant Commissioner (Police Operation Support) Bruce Brennan advised the Committee, "There is no doubting the effectiveness of Aboriginal community patrols. They are accepted without reservation by the various communities in which they operate. It is interesting to note that although the objectives of these patrols may be global, each patrol runs differently from the other. Each community settles on a structure which suits its particular needs and operates accordingly. Kullari patrol at Broome operates on an entirely different basis to the Kalgoorlie patrol. Both are effective and achieve the same ends. Funding of community patrols is always somewhat of a problem and if a predictable source of funding is identified, either in part or totally, then the continuation of the patrols as an effective tool will be assured.

PROPOSED EXPENDITURE ON PROJECTS

	Year 1	Year 2	Over 2 Years
<u>SOBERING UP SHELTERS</u>	\$	\$	\$
(3 @ \$350,000 - estimates for North West WA and NT)			
Establishment	1,050,000	-	1,050,000
Operating	450,000	450,000	900,000
(equivalent of 3 @ \$150,000)			
	<u>1,500,000</u>	<u>450,000</u>	<u>1,950,000</u>

COMMUNITY PATROLS (4 @ \$50,000)

Establishment	200,000	-	200,000
Operating	200,000	200,000	400,000
	<u>400,000</u>	<u>200,000</u>	<u>600,000</u>

INDUSTRY TRAINING

Licensees, approved managers, and security officers (bouncers) (5000 @ \$50 in Year 1)	250,000	100,000	350,000
Staff, incl. public (9,000 @ \$50)	450,000	450,000	900,000
Educational aids (brochures etc.)	150,000	150,000	300,000
	<u>850,000</u>	<u>700,000</u>	<u>1,550,000</u>

COMMUNITY AWARENESS
PROGRAMS

To include state-wide TV, press, radio, schools, alcohol-free activities for young people, pamphlets	800,000	400,000	1,200,000
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RESEARCH

Study of harm, alcohol, juveniles	100,000	100,000	200,000
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IN SUMMARY	Year 1 \$	Year 2 \$	Over 2 Years \$
Sobering up Shelters	1,500,000	450,000	1,950,000
Community Patrols	400,000	200,000	600,000
Industry Training	850,000	700,000	1,550,000
Community Awareness Program	800,000	400,000	1,200,000
Research	100,000	100,000	200,000
TOTAL	<u>\$3,650,000</u>	<u>\$1,850,000</u>	<u>\$5,500,000</u>

Cost estimates for a community patrol are -

			\$
Salary	Co-ordinator	FT Level 4	36,689
		20% on Costs	7,337
		Sub-Total	44,026
Operating Costs	Vehicle - fuel & maintenance		
	Stationary & Postage		
	Training		
	Travel		
	Rent	Sub-Total	5,500
Capital Equipment			
(Establishment fees)	Vehicle		42,000
	Radio		3,000
	2-way communication		2,000
	Office furniture & equipment		5,000
	Uniforms (T-shirts)		200
		Sub-Total	\$54,000
		TOTAL	\$103,526

Note : The Committee considers that it may be important to include a salary component for patrol members. Provision for 1-2 FTEs that can be split across a number of part-time or casual positions is one possible arrangement. The Kullari patrol in Broome through the Bidyadanga Aboriginal Community has obtained Community Development Employment Program funding to enable its people to relinquish unemployment benefits. This could be an appropriate model to guide the establishment of a state - wide community patrol program.

12. CROWD CONTROLLERS

Security staff, otherwise known as crowd controllers or bouncers, are licensed in New South Wales, Victoria and South Australia but not in Western Australia, Queensland, Tasmania, the ACT or the NT (where the Minister is reported to be keen to introduce legislation).

Regulation of this section of the growing private security industry against undesirable or unsuitable elements has been discussed between the WA Police and the security industry over the past three years at least, but has not received a high priority. However, the introduction of a Controlled Activities Bill is understood to be under consideration again.

When originally considered, it was reported that the Bill would provide licences for bouncers, private investigators and security guards to give security workers the opportunity to obtain employment in other parts of the industry.

The New South Wales Act has three types of licence, one for employees or sole operators, another for security agencies and a third for security industry advice services.

Discussions with police, licensees, bouncers themselves and young people who go to hotels and cabarets have convinced the Committee that the introduction of a licensing system which would involve training in how to handle trouble without violence, general accountability, an understanding of licensing laws and responsibilities of management, including the maintenance of incident registers, should be given a priority.

Bouncers are in a position of power in relation to the people they deal with, many of whom are intoxicated and aggressive, yet they have limited accountability to the community for any abuse of that power.

In its tour of Perth cabarets with officers of the WA Police Liquor and Gaming Branch, the Committee appreciated the problems that bouncers face in having to approve or reject patrons in situations in which alcohol and hurt egos may lead to aggression. It also appreciated the problems which police face in proving an offence when witnesses of an assault and the victim or victims are intoxicated. Obviously it is hard with, say, 10 bouncers working in a cabaret for a person who is slightly intoxicated or sometimes very intoxicated to say, "Right, this person assaulted me".

Police and security agents agree that the problem of assaults involving bouncers in Perth has increased in recent years, rival bouncers now threatening each other - as well as patrons - in trying to control the market. "Kick-boxing" has become a tool of trade. Police report that some over enthusiastic bouncers would "run a mile for a fight". Many bouncers believe they are untouchable and that if anyone has too much to drink or becomes a bit rowdy, they have the power to drag them outside and assault them.

To contain the problem of assaults in the city, the WA police formed a city CIB Assault Team just over two years ago. Records show that 171 assaults were reported in licensed premises in Perth last year, 27 of which involved bouncers who were charged with an offence.

All police and licensing authorities in other states who deal with similar problems support a system which requires bouncers to be registered annually, to wear numbers and photographic identification while on duty, to undergo training in the handling of difficult patrons and in diffusing potentially violent situations.

In Victoria when bouncers became licensed under the Private Agents' Act in 1990, the number of complaints of physical assault, provocation and harassment dropped considerably. Screening procedures resulted in 20% of applicants being refused on the basis of previous criminal history, the Government's Community Council Against Violence reported.

A Victorian liquor licensing official said, "Before licensing some of our bouncers were straight out psychopaths. That is all gone from the industry now. We just don't have the cases of serious assault that we had previously".

While the Committee received 16 submissions from as far afield as the Kimberley and Kalgoorlie as well as the metropolitan area advocating licensing or training or both, neither the WA Hotel's and Hospitality Association nor the Liquor Industry Council really addressed the issue.

In Victoria, however, the AHA recommended to the Victorian Community Council Against Violence that bouncers be trained in handling trouble without violence, the psychology of a drinking person, self-defence and restraint and in a basic knowledge of the law. The AHA recommended that training be on-going to keep bouncers up to date in such things as changes in law and management policies and for discussion of problems.

While the W.A. Hotels and Hospitality Association made no recommendations, the Cabaret Owners' Association told the Committee that training for bouncers in non-violent techniques should be mandatory.

In South Australia a bouncer commits an offence if he cannot produce an identity pass on demand.

The licensing authority in South Australia says that the position on assaults involving bouncers is "far better than before they were licensed". The authority believes that it sees the emergence of a better educated bouncer who knows how to control premises.

In Queensland there has been talk of licensing bouncers but nothing has come of it. It is believed that this may be because of the problems involved in setting up registration systems when comparatively few incidents occur and workers in the industry are largely casual. Other states consider that licensing and training provides a more stable industry.

Recommendations

- 1. That the Government give priority to legislation for the mandatory registration and training of bouncers in Western Australia;**
- 2. That the legislation provide that bouncers be required to wear photographic identification, including a registration number, while on duty; and**
- 3. That all bouncers employed on licensed premises be required to complete the proposed liquor licensing law module of the Liquor Licensing Training Program ASF3 by 1 January 1997.**

Summary of Submissions

Of 16 submission which advocated training for bouncers, 15 called for the training to be mandatory and 11 favoured licensing. Submissions were received from the WA Health Department, Australian Medical Professional Society on Alcohol and Drugs, Women's Health Care Centres, Alcohol and Drug Authorities or organisations, the National Centre for Research into the Prevention of Drug Abuse, a shire council and the WA Council of Social Services.

Two security operators supported training and licensing in informal discussions with the Committee, while the National Centre for Research reported that 90% of people surveyed in the Perth metropolitan area in 1992 supported mandatory training in non-violent methods of control and 82% of those currently or previously employed in the liquor industry endorsed the idea.

13. PROMOTIONS, DISCOUNTING AND "BINGE" DRINKING

Shooter frenzies, laybacks, blasters, snorters, bladder busters, test tubes, slammers . . . The mind boggles at the thought, but these are drinking entertainments at some licensed premises. They lead to irresponsible and excessive consumption of alcohol in the form of "binge" drinking and worry leaders of the liquor industry as well as the Committee.

They are contrary to the published code of practice of members of the WA Hotels and Hospitality Association, especially the "spirit" of the code which is "to conduct the business in a professional and responsible manner" (Annexure 18) - yet the practices go on. Apart from being uncivilised, some have led to the death of patrons.

The advertising and promotion of the practices are also contrary to the Advertising Codes of the Media Council of Australia, which state in part that advertisements shall "promote an adult, balanced and responsible approach to the consumption of the product and shall not encourage excessive consumption, abuse or under-age drinking". (Annexure 19)

Although "binge" drinking is the cause of many problems, the Liquor Licensing Act 1988 contains no specific mandate for the licensing authority to control the promotions and practices involved.

The Liquor Industry Council, while making the point that most licensees serve alcohol responsibly, supports the banning of lay-backs (that is, pouring alcohol into the mouths of patrons who are "laying back" on the counter) and drinking competitions, but opposes "any generally worded provision prohibiting irresponsible service of alcohol, including the limiting of licensees in serving alcohol imaginatively but responsibly."

All health agencies advocate controls over promotions and discounting practices which encourage "binge drinking" or intoxication. The Alcohol Advisory Council of W.A. proposes that guidelines be developed which assess trading practices to the extent they encourage excessive consumption and that increasingly severe penalties should be applied to licensees who indulge in such practices.

Similarly, the National Centre for Research into the Prevention of Drug Abuse considers that the Act should prohibit promotions which encourage excessive consumption. Researcher Tim Stockwell states, "While aggregate level of consumption is positively correlated with many indicators of alcohol problems, it does not predict very precisely what kinds of drinkers are likely to experience harm. In a now classic paper, Kreitman coined the term the 'preventative paradox' for the perplexing finding that the majority of alcohol problems are contributed by those who drink at moderate levels.

"An Australian study which focused explicitly on problems of intoxication and investigated the types of drinking settings which were associated with these problems, found that consumption of six or more standard drinks on one occasion was associated with over 90% of problems of intoxication, many of which involved instances of alcohol related violence.

"In a study of patrons leaving hotels in Perth at weekends, as many as 23% reported drinking in excess of 10 drinks that night. A random household survey found that, while only 8% of males drank an average of six or more drinks a day, 34% had consumed this amount on at least one of their last four drinking occasions. When persons aged 16 to 29 are considered, this last figure jumps to over 50% of respondents."

The Committee believes that this evidence is substantiated by other similar studies and cannot be ignored in addressing the issues of alcohol-related harm.

The consumption of alcohol per capita has fallen in recent years from a maximum of 9.77 litres per capita in 1982 to today's figure of 7.37 litres. While this reduction might or might not be encouraging to some, policies still need to be designed to reduce alcohol-related harm.

Tragically in recent times in W.A., there have been several deaths due to alcohol poisoning from persons drinking on licensed premises. Regrettably, industry codes for licensees cannot be enforced and do not appear to be working well enough. All it takes is for one operator to "break ranks" and others follow.

A review of advertising in the X-PRESS magazine (a free entertainment publication aimed at young people) found the following :

- 55% of all advertisements in the publication were placed by licensed venues;
- 11.2% could be classified as responsible inducements such as reduced price low-alcohol beer, food and soft drinks; movie passes, T shirts, CDs and holidays;
- 47.2% contained an offer of free and/or reduced-price alcohol; and
- 14.6% contained an offer of free alcohol.

One licensee has advertised "half-price drinks 9pm to midnight. Phone for free pickup". Asked whether patrons would be driven home, an official said, "No way".

The Committee views with concern, practices by licensees which promote or directly contribute to alcohol abuse.

Recommendations

1. That section 63 of the Liquor Licensing Act be amended to authorise the Director of Liquor Licensing Administration Division to impose conditions on licences to restrict promotions and discounting practices which in the Director's opinion encourage "binge" drinking or intoxication.

The Committee considers that the following practices encourage "binge" drinking-

- "Shooters", "laybacks", "test-tubes", "blasters" or similar drinks in non-standard measures;
- indiscriminate offering of drink cards or extensive discounts for limited periods which result in the lining up of drinks or encourage rapid consumption to take advantage of the offer;
- "all you can drink" offers for a set price; and
- promotions such as "boat races", "booze-ups", "drink till you drop".

The Committee agrees with the Chief Executive Officer of the Liquor Licensing Commission in Victoria, Mr Brian Kearney, that the following practices are capable of satisfying responsible serving criteria provided they are effectively controlled :

- "happy hours" during the times of 4pm and 10pm;
- in-house promotions involving low alcohol beer;
- reduced price liquor provided it is available across a reasonable trading period (the period should not be so limited as to encourage rapid consumption);
- responsible product promotions run in conjunction with liquor producers/distributors; and
- drink cards offering limited liquor.

In the Committee's view, this recommendation does not impinge on a licensee's normal right to advertise.

Summary of Submissions

Twenty-eight submissions called for the introduction of restrictions on promotions which "contribute in any way to increased levels of consumption of alcohol". No directly opposing submission was received. The Liquor Industry Council, health organisations, the National Centre for Research into the Prevention of Drug Abuse and the Alcohol Advisory Council, as well as a strong representation of private citizens, were among those who raised strong objection to practices, including free drinks, lay backs, shooters, bladder busters, syringes and drink-all-you-can for \$20.

14. TRADING HOURS

The question of trading hours was one of the most vigorously debated issues in the submissions received by the Committee. Industry submissions varied in their approach, each section seeking to improve its market share, but not wanting to give ground to others.

Hotels claim that protection for their Sunday take-away trade is justified by the additional overheads they have to carry and that Sunday trading for liquor stores would force many hotels out of business, particularly country hotels, resulting in a valuable loss of amenity for country people.

Certainly the market has changed dramatically for country hotel owners. First, motels took business away from them because of the motels' appeal to travellers and as a more attractive meeting place for some community service organisations. Now licensed sporting and social clubs, with Government and Local Government support, have taken additional business away, while the drift of families from the country to the city continues.

The hotels do not agree that as a matter of commercial fairness and in the public interest liquor stores should be allowed to open on a Sunday, even though their prices are lower and many women prefer to shop at a store in preference to an hotel. At the same time the hotels agree that many of their financial problems have been self-inflicted through over-borrowing at high interest rates and over-capitalisation during the 80's boom and failure to meet a changing market.

The picture is not all gloom for the hotel industry, however. Business sources say that there has been a shake-out of poor business operators in the industry. Values have come back to more realistic levels. Owners are leasing premises over longer periods to service bank loans with the aim of realising on their assets profitably at a later date. A new wave of investment is anticipated in the next three or four years. In fact, a new wave already is occurring in South Australia.

Business interests reject reports that some 200 hotels have gone into receivership in Western Australia in recent years. They estimate that perhaps about 60 or 10% went into receivership largely because of the excesses in the 80's, while another 30% are "being held together" by the banks which over-lent in the first instance.

The present permitted trading hours are as follows -

Hotels

(includes taverns)	Mon - Sat	6 am to 12 midnight
	Sunday	12 noon to 9 pm
	Good Friday	At any time to a lodger
	Christmas Day	At any time to a lodger
	Anzac Day	12 noon to 12 midnight

Clubs

Mon - Sat	6 am to 12 midnight
Sunday	10am to 10 pm
Good Friday	Any time to a lodger who is a member of the club.
Christmas Day	12 noon to 10 pm ancillary to a meal or any time to a lodger who is a member of the club.
Anzac Day	12 noon to 12 midnight or at any time to a lodger who is a member of the club.

Cabarets

Mon - Sat	6 pm to 6 am
Sunday	8 pm to 12 midnight
Good Friday	No trading
Christmas Day	No trading
Anzac Day	6 pm to 12 midnight

Liquor stores

Mon - Sat	8 am to 10 pm
Sunday	No trading
Good Friday	No trading
Christmas Day	No trading
Anzac Day	12 noon to 10 pm

Restaurants

Mon - Sat	At any time
Sunday	At any time
Good Friday	Any time to a lodger (some restaurants are attached to residential accommodation)
Christmas Day	At any time
Anzac Day	At any time other than between 3am and 12 noon

Producers

Mon - Sat	At any time
Sunday	At any time
Good Friday	No trading
Christmas Day	No trading
Anzac Day	Any time after 12 noon

Wholesalers

Mon - Sat	At any time
Sunday	At any time
Good Friday	No trading
Christmas Day	No trading
Anzac Day	Any time after 12 noon

Casino

The Casino may trade 24 hours per day, with the exception of Good Friday, Anzac Day and Christmas Day.

The following are the trading restrictions on those days:

Good Friday	no trading between 3am and 10pm
Christmas Day	no trading between 3am and 10pm
Anzac Day	no trading between 3am and 12 noon

ANZAC DAY, GOOD FRIDAY, CHRISTMAS DAY, SUNDAY TRADING HOURS IN OTHER STATES

NEW SOUTH WALES

Anzac Day	Normal, no restrictions.
Good Friday,	Hotels and restaurants are restricted :
Christmas Day	Hotels - noon - 10pm (ancillary to a meal) Restaurants - noon - 10pm Clubs - no restriction Vineyards - no restriction
Sunday	Hotels - 10am - 10pm Liquor Stores - 10am - 10pm

SOUTH AUSTRALIA

Anzac Day	Normal, no restrictions.
Good Friday	Hotels (ancillary to a meal), restaurants and clubs (ancillary to a meal) - at any time.
Christmas Day	Same as Good Friday except; Bars in hotels can trade 9am - 11am.
Sunday	Hotels - 11am - 8pm Liquor Stores - 11am - 6pm

VICTORIA

Anzac Day	General licence (i.e. hotel), residential licence, on premises licence, clubs and producers : noon - 11pm. Vignerons : 10am - 11pm. Packaged liquor sales : 12 noon - 9pm.
Good Friday	General licence, residential licence, on premises licence, clubs and producers : noon - 11pm. Vignerons : 10am - 11pm. Packaged liquor sales : Not permitted.
Christmas Day	Normal trading all licensed premises, except packaged liquor sales, which are not permitted.
Sunday	General licence noon - 8pm Liquor Stores - 10am - 5pm

QUEENSLAND

Anzac Day	Before 1pm ancillary to a meal, after 1pm normal trading.
Good Friday	Normal hours ancillary to a meal.
Christmas Day	Normal hours ancillary to a meal.
Sunday	General licence 10am - 12 midnight (With detached bottleshop)

A.C.T.

Anzac Day, Good Friday, Christmas Day	No restrictions apart from : If a hotel chooses to open, it must open a bar between noon and 8pm; and if a restaurant chooses to open, it must remain open for at least six hours.
Sunday	24 hours

TASMANIA

Anzac Day	Normal, no restrictions.
Good Friday	Normal, except general licences (i.e. hotels) and on licences which have the following restrictions; Trading in any form between 11am and p, trading ancillary to a meal between 5am and 12 midnight bottle shops of hotels between 5am and 12 midnight.
Christmas Day	Normal, no restrictions.
Sunday	Hotels - 5am - 12 midnight Liquor stores - no trading

NORTHERN TERRITORY

Anzac Day	Normal, no restrictions.
Good Friday, Christmas Day	Hotels and clubs are closed. Restaurants only ancillary to a meal. Some roadside inns and special licences are exempt.
Sunday	Hotels - 10am - 12 midnight Liquor stores - no trading

LIQUOR LICENCES IN COUNTRY AREAS

Of 1085 licensed premises operating in 22 country electorates, 290 are hotels or taverns, 359 are clubs and 121 are liquor stores, half of which could be considered in the tourist areas of Albany, Broome, Bunbury, Geraldton, Greenough, Kalgoorlie, Mandurah, Stirling, Vasse and Warren.

The following breakdown of licensed premises in rural Western Australia shows that clubs and restricted clubs now outnumber hotels and taverns by 23% and are obviously preferred by local communities for their social and recreational pursuits. It is apparent that hotels and taverns have not met the needs of these communities in this respect in most localities.

<u>Number of Licences :</u>		<u>Summary</u>	
Hotels, taverns	290	Number of centres	141
Clubs	188	Population *	269,284
	} 359		
Clubs 'Restricted'	171	Total premises	1085
Licensed Stores	121	<i>*Australian citizens on 1993 state electoral roles.</i>	
Restaurants	131	Number of licences provided by the Liquor Licensing Division.	
Wineries	50		
Canteens	50		
Others	84		

Albany Electorate

Centre	1
Population	11284
Total Premises	49
Hotels	6
	} 9
Taverns	3
Clubs	13
	} 16
Clubs 'Restricted'	3
Liquor Stores	6
Restaurant	13
Wineries	2
Other	3
TOTAL	<u>49</u>

Ashburton Electorate

Centres	6
Population	8657
Total premises	41
Hotels	7
	} 11
Taverns	4
Clubs	8
	} 14
Clubs 'Restricted'	6
Liquor Stores	6
Restaurants	5
Canteens	2
Other	3
TOTAL	<u>41</u>

Avon Electorate

Centres	6
Population	12922
Total Premises	47
Hotels	11
	} 20
Taverns	9
Clubs	11
	} 20
Clubs 'Restricted'	9
Liquor Stores	3
Restaurant	1
Wineries	2
Other	1
TOTAL	<u>47</u>

Bunbury Electorate

Centre	1
Population	10697
Total premises	59
Hotels	8
	} 9
Taverns	1
Clubs	9
	} 15
Clubs 'Restricted'	6
Liquor Stores	8
Restaurants	14
Others	13
TOTAL	<u>59</u>

Collie Electorate

Centres	7
Population	11086
Total premises	41
Hotels	12
	} 15
Taverns	3
Clubs	8
	} 16
Clubs 'Restricted'	8
Liquor stores	5
Restaurants	1
Wineries	2
Other	2
TOTAL	41

Eyre Electorate

Centres	7
Population	11635
Total premises	53
Hotels	14
	} 16
Taverns	2
Clubs	5
	} 13
Clubs 'Restricted'	8
Liquor Stores	4
Restaurant	5
Canteens	14
Other	1
TOTAL	53

Geraldton Electorate

Centre	1
Population	11708
Total premises	56
Hotels	8
	} 12
Taverns	4
Clubs	9
	} 16
Clubs 'Restricted'	7
Liquor Stores	6
Restaurants	14
Nightclubs	2
Canteens	2
Other	4
TOTAL	56

Greenough Electorate

Centres	9
Population	12900
Total premises	39
Hotels	11
	} 13
Taverns	2
Clubs	9
	} 13
Clubs 'Restricted'	4
Liquor Stores	10
Restaurant	2
Other	1
TOTAL	39

Kalgoorlie Electorate

Centres	3
Population	11015
Total premises	76
Hotels	23
	} 29
Taverns	6
Clubs	11
	} 20
Clubs 'Restricted'	9
Liquor Stores	8
Restaurants	6
Canteens	1
Other	12
TOTAL	<u>76</u>

Kimberley Electorate

Centres	6
Population	12422
Total premises	57
Hotels	10
	} 13
Taverns	3
Clubs	4
	} 7
Clubs 'Restricted'	3
Liquor Stores	8
Restaurants	7
Canteens	5
Other	17
TOTAL	<u>57</u>

Mandurah Electorate

Centre	1
Population	11045
Total premises	32
Hotels	3
	} 9
Taverns	6
Clubs	7
	} 9
Clubs 'Restricted'	2
Liquor stores	4
Restaurant	6
Other	4
TOTAL	<u>32</u>

Merredin Electorate

Centres	12
Population	11203
Total premises	49
Hotels	13
	} 14
Taverns	1
Clubs	18
	} 31
Clubs 'Restricted'	13
Liquor Stores	2
Restaurant	2
TOTAL	<u>49</u>

Moore Electorate

Centres	16
Population	12523
Total premises	48
Hotels	10
	} 15
Taverns	5
Clubs	7
	} 25
Clubs 'Restricted'	18
Liquor Stores	5
Restaurant	3
Other	-
TOTAL	48

Murray Electorate

Centres	2
Population	15646
Total premises	16
Hotel	4
	} 4
Tavern	-
Clubs	3
	} 5
Clubs 'Restricted'	2
Liquor stores	2
Restaurant	3
Race - trot clubs	2
Other	-
TOTAL	16

Northern Rivers

Centres	11
Population	10793
Total premises	85
Hotels	21
	} 25
Taverns	4
Club	7
	} 20
Clubs 'Restricted'	13
Liquor Stores	10
Restaurants	9
Canteens	16
Other	5
TOTAL	85

Pilbara Electorate

Centres	6
Population	10311
Total premises	45
Hotels	8
	} 9
Taverns	1
Clubs	5
	} 13
Clubs 'Restricted'	8
Liquor Stores	6
Restaurants	5
Canteens	9
Other	3
TOTAL	45

Roe Electorate

Centres	9
Population	12373
Total premises	60
Hotels	11
	} 13
Taverns	2
Clubs	8
	} 31
Clubs 'Restricted'	23
Liquor Stores	6
Restaurant	9
Other	1

TOTAL 60

Note : Esperance has 33 licensed outlets.

Stirling Electorate

Centres	6
Population	12225
Total premises	38
Hotels	5
	} 6
Taverns	1
Clubs	7
	} 10
Clubs 'Restricted'	3
Liquor stores	5
Restaurant	1
Wineries	16
Other	-

TOTAL 38

Vasse Electorate

Centres	5
Population	11520
Total premises	61
Hotels	7
	} 8
Taverns	1
Clubs	8
	} 11
Clubs 'Restricted'	3
Liquor stores	6
Restaurant	13
Wineries	18
Canteens	1
Other	4

TOTAL 61

Wagin Electorate

Centres	9
Population	11744
Total premises	53
Hotels	14
	} 19
Taverns	5
Clubs	13
	} 28
Clubs 'Restricted'	15
Liquor Stores	2
Restaurants	3
Other	1

TOTAL 53

<u>Warren Electorate</u>		<u>Wellington Electorate</u>	
Centres	8	Centres	8
Population	11336	Population	11425
Total premises	50	Total premises	28
Hotels	9	Hotels	4
	} 11		} 9
Taverns	2	Taverns	5
Clubs	11	Clubs	7
	} 14		} 12
Clubs 'Restricted'	3	Clubs 'Restricted'	5
Liquor stores	5	Liquor stores	4
Restaurants	8	Restaurants	1
Wineries	10	Other	2
Other	2		
TOTAL	<u>50</u>	TOTAL	<u>28</u>

The W.A. Hotels and Hospitality Association (WAHHA) wants more flexible trading hours with the right to trade after midnight and after 9 pm on Sundays. It quotes research conducted in England and Scotland which found that despite a relaxation of trading hours for hotels in both Scotland (1976) and England (1988) "the extensions to permitted hours . . . have not led to a marked increase in overall alcohol consumption". Research also found that "deaths due to alcohol from cirrhosis of the liver had not increased and admissions to hospitals from alcohol related psychiatric treatment had actually fallen".

WAHHA quotes research by Market Equity Pty Ltd which surveyed 400 people to establish the attitudes of visitors to Western Australia. The findings reported were -

- . 80% of tourists use hotels, taverns and cabarets.
- . Only 9.7% of tourists who use hotels and cabarets said they would be inclined to go home after midnight.
- . Only 15.2% of tourists interviewed said they were satisfied with the current system of trading hours.
- . 55% of tourists agreed that hotels should be given greater flexibility in their trading hours and only 10.1% of tourists disagreed.

- 60% of tourists believed that hotels should be allowed to open after midnight from Monday to Saturday.

Survey results in relation to residents of the Perth metropolitan area were reported to be -

- 57% of persons interviewed agreed that hotels should be allowed greater flexibility in their trading hours. Only 35% disagreed.
- 64% of persons between the age of 18 years and 34 years agreed that hotels should be given increased flexibility of trading hours.
- Of Perth residents who attend cabarets and hotels, about 60% said that if hotels as well as cabarets were allowed to trade after midnight they would go to a hotel instead of a cabaret.

On the opposition from cabaret owners, WAHHA says, "Cabarets presently enjoy a virtual monopoly on the market for late-night licensed premises, evidenced by the significant and steadily growing profitability of this type of licence over the past five years".

Hotels and taverns are presently required to remain open generally between 11am and 7pm in the metropolitan area and between 3pm and 7pm in country areas. While some members of the hotel industry have expressed concern that obligatory hours oblige them to trade during unprofitable periods. WAHHA said that it recognised the historical reasons for hotels to provide food, beverages and accommodation for residents and travellers, particularly in country areas and did not request their abolition on the understanding that there would be no restriction of the present ability for hotel and tavern licensees to vary core hours in appropriate circumstances.

The Licensed Stores' Association wants the right for liquor stores to trade on Sundays between 8 am and 10 pm. Currently stores cannot trade on a Sunday. The Association contracted the Roy Morgan Research Centre to undertake a survey on Wednesday 6 October 1993 to establish public opinion on Sunday trading for its stores. It reported that 305 men and women in the Perth metropolitan area were surveyed by telephone. The survey, which included 12% of respondents who said they never buy take-away liquor, showed that 74% were of the opinion that liquor stores not attached to hotels should be allowed to trade on Sunday. Only 20% of those surveyed opposed Sunday trading, and 6% could not say.

Of the people who purchased take-away liquor, 58% preferred to purchase from liquor stores not attached to hotels, only 6% preferring bottle shops attached to hotels; 35% had no preference and 1% could not say.

The reasons for preferring to buy at a bottle shop attached to a hotel were drive-through convenience (3% of sample), close to home (2%), and better prices (1%). Reasons given for preferring to purchase at a liquor store not attached to a hotel included better prices (29%), close to home (18%) and bigger range (12%).

The Morgan research also found that women are much more likely to shop at liquor stores with 65% of female liquor buyers preferring these outlets, compared to 52% of male liquor buyers. Men are slightly more likely to prefer bottle shops than women (7% to 4%)."

On the issue of public health, and the "common hypothesis that increased availability of alcohol will lead to increased consumption", the Licensed Stores' Association quoted from these research projects -

Finland

(Bruun et al., 1975)." (Osterberg, E., 1992, *Effects of Alcohol Control Measures on Alcohol Consumption, The International Journal of the Addictions*, 27 (2), 209-225, 1992.)

"The most extreme example of alcohol consumption is total prohibition of alcoholic beverages, when the frequency of legal outlets is reduced to zero. There can be little doubt that during the first few years of prohibition in Canada, Finland, and the United States, all indicators of alcohol consumption and alcohol problems reached the lowest level yet achieved in any period for which there are relevant data. It is also clear that in later years - say roughly 1923-33 in the United States as an illegal trade became well established and the speak-easy and other clandestine outlets made their appearance - consumption increased substantially

Scotland

(Duffy J and Plant M, *Scotland's liquor licensing changes: an assessment, British Medical Journal*, Vol. 292, 4/1/86, pp 36-39.)

A study after the opening of public houses on Sundays concluded : This evidence suggests that in relation to health, the new Scottish licensing arrangements may be viewed neither as a cause of harm nor as a source of benefit. They have, in effect, been neutral and the main conclusion to be drawn from the evidence is that the Clayson committee was correct in declaring in its report that "licensing, a negative and restrictive process, can play only a strictly limited part in the control of alcohol misuse."

Fremantle

McLaughlin K and Harrison-Stewart A; The Effect of a Temporary Period of Relaxed Licensing Laws on the Alcohol Consumption of Young Male Drinkers, The International Journal of the Addictions, 27 (4), 409-423, 1992."

A total of 778 men aged between 18 and 28 years was interviewed approximately 1 month before and 6 months after extensions to trading hours were granted during the America's Cup. The study reported : Analyses conclusively showed that the weekly consumption of the Fremantle residents had not increased 6 months after the licensing laws were relaxed. Drinking patterns were very stable for both groups of respondents over the six-month survey period. Further research is clearly needed to identify how changes in availability influence drinking behaviour and related problems. Respondents were asked in the "after" survey whether they would prefer extensions to trading hours to continue or revert back. The majority approved of the America's Cup extensions for hotels, taverns, restaurants, cabarets, and liquor stores being continued in the "long term".

The Restaurant & Caterers' Association of W.A. (RCA) while not seeking an extension of trading hours (restaurants can generally trade 24 hours a day) proposed that 20% of public seating area in restaurants be designated for drinking at a table, adding "members of the public who travel to Europe where they are able to sit at a cafe or restaurant and enjoy a coffee with a liqueur are disgruntled on returning to Western Australia to remember that they cannot do so in their home State". The W.A. Hotels & Hospitality Association supported the RCA proposal on the basis of "sensible development of the hospitality industry as a whole and in particular to allow for the tourism industry in this state to grow to its full potential with flow-on benefits to all participants in the liquor industry."

The Cabaret Owners' Association of W.A. (COA) opposed any extension of hours or increased availability of liquor stating, "The present ailing financial situation of hotels and taverns is the product of a combination of factors, including the extensive number of hotel and tavern licences on issue, the lack of responsiveness of many hotel operators to changing market needs and the continuing decline in Australia's alcohol consumption levels. . . Deregulation of liquor trading hours either across the breadth of the State or in a two-tourism-precinct concept (Fremantle and Northbridge) not only will have painful economic effects on the hospitality and entertainment industry in Western Australia, it could also have undesirable effects on the amenity of the communities in this State."

The COA quoted the following International Visitors' Survey to show that relaxation of trading hours could not be substantiated.

Visitors Dissatisfied with Tourism Facilities in Australia	Total 1992 Per cent
Times when you can buy a drink	3
Times when shops are open	21
Cost of goods in shops	20
Tourism information	3
Service provided in hotels, restaurants	3
Quality of hotel or motel rooms	3
Cost of hotel or motel rooms	5
Cost of domestic airfares	4
Cost of other forms of transport	6
Convenience, availability of public transport	4
Airport facilities	8

Source : Bureau of Tourism Research. Since 1988 the International Visitors' Survey has been jointly sponsored by the Commonwealth, State and Territory Governments through the Bureau of Tourism Research.

The Liquor Industry Council did not address the issue of trading hours except to advocate the freeing up of trading restrictions on Good Friday and Christmas Day, which it claimed would bring the Act up to date with modern community attitudes and values in line with most other states.

Most health agencies oppose any extension of trading hours. Their opposition is mainly based on concerns about crime, violence and motor accidents which occur round current closing times. The W.A. Alcohol and Drug Authority recommended that community groups and/or concerned individuals be given the right to decide whether or not extended trading hours were granted to any licensee.

The National Centre for Research into the Prevention of Drug Abuse does not believe that the current provisions for extended trading permits should continue "as they will lead to a continuing round of rival applications from different operators, taking up unnecessary authority and court time and demand greater use of police resources". The Centre proposes a liquor store licence for all outlets which currently sell alcohol for off-premise consumption to standardise trading hours for what are currently termed bottle shops and liquor stores will be standardised."

The Health Department of W.A. states that "liberalisation of standard controls over the availability of alcohol which may have a disproportionate impact on the susceptible youth population can be anticipated to worsen the impact on this population. Examples include lowering the drinking age and extending trading hours across the board. Such changes would need to be accompanied by strict application of alternative controls over abuse e.g. pricing, server training and responsibility and policing if alcohol-related harm is not to be aggravated"

The WA Police are not in favour of any extension of trading hours because of limited police resources.

The W.A. Tourism Commission, a statutory State Government body, supports liberalisation of trading hours "with the market place being the primary determination of opening and closing times for all types of licensed outlets."

The Taxi Control Board favours extended hours for hotels to spread demand and negate the current peak created by existing uniform closing of hotels. Referring to the America's Cup period, the Board stated, "Patrons tended to head home gradually between midnight and 2 am, resulting in an even spread of demand that was much more easily catered for by taxi operators. . . Patrons appeared to be less, or at least no more, affected by alcohol than was usual."

The Committee found no evidence to show any unfavourable social effects from the America's Cup trading hours (Annexure 20).

While supporting extended hours for hotels, the W.A. Music Industry Association, asks that "true live entertainment" be made a condition of any post-midnight trading.

The Australian Federation of Travel Agents supports more flexible or special licensing provisions for hotels that have tourist or special needs.

The difficulty facing the Committee is one of finding the balance between more sensible trading hours, the interests of the industry and the needs of the public, particularly as each section of the industry - hotels, cabarets, liquor stores, clubs, producers and wholesalers - has a role to play in the sale and consumption of liquor. In framing its recommendations, the Committee might be seen to have favoured one section of the industry to the detriment of another. The Committee, however, would reject such criticism.

The Committee does not agree with the submission from the Restaurant and Caterers' Association that the restriction on restaurants to sell liquor only ancillary to a meal should be eased. Part-deregulation of this restriction in New South Wales and Victoria as a step towards industry deregulation has been impossible to enforce or police. However, the Committee suggests that some form of relaxation in this respect be considered in any future review of the Act.

The following recommendations on trading hours should not be viewed in isolation. While advocating more liberal hours, and therefore greater access to liquor, the recommendations should be viewed with others, particularly those on mandatory industry training, server responsibility, community awareness and enforcement of provisions of the Act.

The Committee considers that the community and tourists should be able to have a greater freedom of choice and this should not prove detrimental if liquor is both served and consumed responsibly.

Recommendations

1. **That hotels (including taverns) be permitted to trade to 2am Monday to Saturday by way of extended trading permits at the discretion of the Director - Administration in accordance with the Act.**

The Committee recognises the rights of local residents to enjoy the quiet amenity of the neighbourhood. For this reason it is against any general extension of hotel trading hours in the State and considers that applications for trading permits to 2am should not be granted if the Director of Liquor Licensing considers that they would be likely to create annoyance, disturbance or inconvenience to residents.

All applications should be advertised both on the premises and in a newspaper in accordance with the Act. In addition, the applicant should be required to lodge a copy of the application with Local Government, which has the right to intervene.

In most other states of Australia, hotels (or the equivalent class of licence) have post-midnight trading by way of extended hours permits - NSW, SA and Tasmania - 5am, Queensland - 7am.

2. **That section 97 of the Act be amended so that the permitted hours of trade for a hotel on a Sunday are 10am to 10pm.**

9pm.

This would bring Sunday trading for hotels into line with clubs.

3. **That liquor stores be permitted to trade on a Sunday between 12 noon and 6pm.**

While the Licensed Stores' Association has sought Sunday trading from 8am to 10pm, the Committee is of the view that Sunday trading for liquor stores should be phased in, and that in the next review of the legislation consideration should be given to further liberalisation of the 12 noon to 6pm restriction. In Victoria, New South Wales, South Australia, Queensland and the A.C.T., liquor stores (or the equivalent class of licence) have Sunday trading for periods more extensive than that now proposed. (Note details - page 112)

4. **That cabarets be permitted to trade on a Sunday from 6pm to 6am Monday (now 8pm to midnight).**

The Committee believes that the current midnight closing of cabarets on Sunday is unnecessarily restrictive for tourists, shift-workers and those in the entertainment industry who might work on a Sunday night.

5. That trading on Good Friday be liberalised by -

- (a) Permitting hotels to trade between 12 noon and 10pm provided the sale of liquor is ancillary to a meal
- (b) Permitting restaurants to trade at any time. Section 51 of the Act, which creates an offence for a person to bring liquor into or consume liquor in any unlicensed restaurant between 3am and 12 midnight on a Good Friday, should be deleted.
- (c) Permitting wine producers (including those holding Certificates of Exemption) to trade between 12 noon and 10pm.

6. That trading on Christmas Day be liberalised by -

- (a) Permitting hotels to trade between 12 noon and 10pm provided the sale of liquor is ancillary to a meal
- (b) Permitting wine producers (including those holding Certificates of Exemption) to trade between 12 noon and 10pm.

7. That clubs be permitted to trade to 2am if New Year's Day falls on a Sunday

The Act currently permits other licence holders to trade to 2am if New Year's Day falls on a Sunday.

This appears to have been a drafting anomaly.

Summary of Submissions

Sixty three submissions were received on trading hours generally - 48 against extended hours, 15 in favour. Of the 48 against, 41 reflected concern for the harmful effects of alcohol, two were "in the public interest", four referred to disturbance of the quiet amenity of the neighbourhood and one opted for "no change". The submissions against came from 19 health and health-care organisations, 23 individuals, 2 religious organisations, 2 industry groups, 1 city council and 1 shire council. The 15 submissions which supported more liberal trading hours represented industry (6), legal (2), transport (1), union (1), architect (1) and entertainment (1). Three were private.

Eleven submissions, 9 from the liquor industry and one each from a travel association and a union, raised the question of Sunday trading, which did not appear to be a public issue as in past reviews. The need to provide a service to tourists, residents and the district was raised. Liquorland Australia Pty Ltd and Liberty Liquors claimed discrimination against liquor stores at present.

15. EXTENDED TRADING PERMITS

The Committee became the focus of attention in a battle to stop extended trading permits from being issued by the Liquor Licensing Division.

In an aggressive, sometimes controversial campaign against hotels trading beyond midnight, the Cabaret Owners' Association (COA) with the support of the Alcohol Advisory Council mailed 15,000 standard form letters and pamphlets to business owners and residents claiming that extended trading would "see the destruction" of the cabaret industry and warning of the results of excessive alcohol consumption.

The Association also claimed that a broad range of community and special interest groups, including the Western Australian Municipal Association, were opposing later trading for hotels based on the fact that alcohol use was associated with street violence, many forms of crime, suicides, rape, accidents and injuries on the roads, physical and mental health problems as well as family disruption and domestic violence. However, the Western Australian Municipal Association (WAMA) wrote the Committee expressing "concern" that its name had been used and asking the Committee to record that WAMA did not give approval and had not formally supported the COA.

The WA Hotels and Hospitality Association (WAHHA) also wrote the Committee: "You will note that the covering letter from the Cabaret Owners' Association in conjunction with the Alcohol Advisory Council encloses a pro-forma letter intended for the review panel. The pro-forma letter makes no reference to either the Cabaret Owners' Association or the Alcohol Advisory Council but misleadingly purports to represent the attitudes of independent members of the public.

"Such cheap and manipulative tactics are unhelpful to the review process. The WAHHA welcomes any input from members of the public expressing their own views but does not consider it helpful for a small, irresponsible sector of the industry (in co-operation with a section of the health lobby equally desperate in its fight to survive) to attempt to engineer public opinion.

"It would be too easy for the WAHHA to react by drafting its own letter and engineering a mountain of such letters to be sent to the review panel by persons friendly to the hotel industry. We decline to do so, however".

Later, the Alcohol Advisory Council of WA saw fit to write the Committee. It wanted to "correct any misconception" the Committee might have about the Council's support of the Cabaret Owners' campaign. The Council stated, "It appears that some people have suggested that the Council is in some way in cahoots with the Cabaret Owners' Association (COA) due to the statements we have made opposing the extension of trading hours for hotels and taverns in WA. The AACWA management committee is aware that the COA are challenging the move to introduce post midnight trading for hotels and taverns for commercial reasons, wishing to avoid the substantial competition such a change would bring. The Council opposes the relaxation in trading conditions for public health and safety reasons. Such a position is perfectly in keeping with our organisational objectives. . .

"It should be noted here that we have had significant contact with the WA Hotels and Hospitality Association (WAHHA) on the issue of the introduction of a Host Responsibility program in WA. We have made our views clear to both the COA and the WAHHA that both groups should actively encourage their members to take up practices supporting the responsible service of alcohol. We have strongly made the case to the COA that there is probably a higher proportion of their membership who need substantial improvement in this area, compared to the WAHHA".

In response to the mailout, the Committee received 956 standard form letters supporting the COA, including 74 containing deletions, and comments ranging from an observation that "one vested interest is trying to stop another with the same vested interest" to requests for a ban on alcohol advertising on the one hand and for total deregulation of hours on the other.

The Committee acknowledged each standard letter received, although such letters often are regarded as a single petition.

During earlier informal discussions, the Vice President of the Cabaret Owners' Association had assured the Committee that the campaign was not directed at influencing the Committee, but was merely to advise people of their rights to object to extended trading hours.

In view of the cabaret owners' concerns, members of the Committee arranged a tour of inspection of city night spots with the Police Liquor and Gaming Branch which proved interesting. It saw nothing wrong apart from some overcrowding.

Extended trading permits are an amalgamation of three permits - a caterers' permit, a voluntary association permit and an occasional permit. They were introduced in the 1988 Act mainly to extend the trading hours of any category of licence in the public interest and to enable liquor to be sold in places other than licensed premises, also in the public interest. They are granted for periods varying from 1 hour to indefinite.

After the Act was passed, the then Minister for Racing and Gaming assured the Cabaret Owners' Association that ETPs would not be used to subvert fixed trading hours.

The Minister wrote the Association : "Clause 63(a) of the Bill does not have the meaning which you suggest. It allows trading hours to be varied only if those hours relate to a type of licence under which the trading hours are set by the licensing authority instead of by a provision of the Act. That is, it applies only to licences such as special facility licences and club restricted licences.

"Where trading hours are specified by the Act itself (which includes hotels, taverns and cabarets), those hours may not be varied by the licensing authority.

"In theory clause 60(4)(g), if read alone, could allow the Director to grant an extended trading permit to a hotel licence, for example, to authorise trading until 2am every day. Similarly in theory the Director could do the same now by granting an occasional permit every day, as that too is not subject to appeal or review. However, the scheme of the Bill, and the Act now, is such that this would not be done".

The Minister added : "The general intent of the Act is that the ordinary trading hours be those set out in clause 97, and this intent would be subverted by the grant of an extended trading permit as you suggest.

"The grant of extended trading permits would be an administrative act by the Director and could therefore be made the subject of directions by the Executive Director of the Office of Racing and Gaming and, through the Executive Director, the responsible Minister. If the function were exercised contrary to the scheme of the Act action could be taken to remedy it administratively.

"The intention of section 63(4)(g) is clearly to allow extended trading permits to be granted in circumstances similar to the occasional permit which now exists - that is, for special occasions. However, it is deliberately worded to provide as much flexibility as possible, precisely to avoid the sort of rigidity and practical problems which arise now under the Liquor Act.

"To place the matter beyond doubt, I shall ensure that the Director is provided with a copy of this letter so that he is aware of my thoughts on the matter".

Later, after meeting with industry groups, the Minister sought Cabinet approval to advise the Director of Liquor Licensing that there should be more opportunities for licensees to extend their trading hours by obtaining extended trading permits, but Cabinet did not support the Minister's proposal and indicated that any general changes to trading hours should be as a consequence of an amendment to the Act, thereby allowing for public debate on the issue.

As a result of the Minister's initial direction, the Director of Liquor Licensing did not approve applications for general extensions of trading hours.

However, in a written judgement in the Supreme Court in May 1992, in the case of Palace Securities Pty Ltd vs Director of Liquor Licensing, the Chief Justice, Malcolm C.J., said that the refusal of the Director to grant an extended trading permit pursuant to a policy would be neither in accordance with the scheme of the Act nor in accordance with law and would constitute a failure to exercise the relevant discretion. A decision made by the Director on a matter within his discretion by simply applying a policy decided on by the Minister, rather than determine the merits of the application under the Act, would be invalid, the Chief Justice said.

On the 4 March 1994, His Honour Judge Greaves of the Liquor Licensing Court, in his determination of a reference by the Director of Liquor Licensing stated, "I have come to the conclusion that the Director of Liquor Licensing is empowered to issue an extended trading permit authorising the holder of a hotel licence, in circumstances such as those referred, to sell liquor under the licence during the extended hours beyond midnight for a prolonged period which is specified when that extension is not for the purposes of a function or event for which the extended trading hours appear necessary in the public interest".

Generally since the Liquor Licensing Act came into force on 1 February 1989, sections of the liquor industry, in particular hotels, taverns and liquor stores, had sought amendments to the Act to allow them to trade until 2am Monday to Saturday, and between 11am and 10pm on Sundays. Liquor stores also had sought to trade on Sundays. The Western Australian Hotels and Hospitality Association (WAHHA) objected to liquor stores being allowed to operate on Sundays. The Cabaret Owners' Association (COA) objected to hotels and taverns being given the right to trade to 2am on any day.

The request for extended trading hours is largely industry generated. The Committee itself has received little evidence of any significant public demand.

Despite talks prior to the inquiry, WAHHA, the Licensed Stores' Association and COA were not able to reach agreement on changes to hours.

Since the decision handed down by the Chief Justice, the Director of Liquor Licensing has had an absolute discretion to grant or refuse an application for an extended trading permit.

It has taken time for the Director and the liquor industry to work through this change in granting extended trading permits.

The Director's view now is that it is not the intent of the Act to allow licensees to trade outside the permitted hours pursuant to section 60(4)(g) just because it is commercially attractive and some members of the public would like to purchase and consume liquor outside the permitted hours. The Director has taken the view that there has to be some other reason such as special events, special occasions, or that it would be in the public interest.

In granting ETPs the Director takes into account a range of factors, including -

1. Is the application likely to reduce the extent of alcohol abuse? (In some instances, extended hours could encourage patrons to drink more sensibly.)
2. Are people who reside, work or travel in the vicinity of the licensed premises likely to experience an undue degree of offence, annoyance, disturbance or inconvenience.
3. Do the local council and police support the proposal? If they object, are there reasonable grounds to support the objection?
4. Is there a public need for the application? (Public need can be demonstrated by petitions, survey results, letters of support and statements of evidence.)

The Committee considers that trading after midnight should be by way of permit because, if problems with premises arise, permits can be withdrawn.

Extended trading hours in other states are controlled essentially in the same way as they are in Western Australia, although in some cases extensions are more liberal. New South Wales, South Australia and Tasmania set a range of midnight to 5am, Queensland midnight to 7am. The ACT has 24-hour trading.

In WA about 2,300 ETPs are issued each year, for "one off" occasions. A limited number are issued for periods from one to 12 months. These normally permit hotels and taverns to trade up to two hours later.

From January 1993 to March 1994 approximately 101 applications were received in the latter category, of which 48 were approved, 22 refused, 4 withdrawn and 27 are still outstanding.

As licensees' permits expire, they may seek a further extension, in which case interim permits may be issued while applications are being considered.

Recommendations

1. That the role of extended trading permits be continued under the Act.
2. That section 60(4)(g) be amended to make it clear that authorisation may be given to a licensee to sell liquor under the licence at specified hours that would not otherwise be permitted for such periods as the Director - Administration deems appropriate.

The Director is urged to encourage any licensee who serves liquor for consumption on the premises after midnight to have available finger food and non-alcoholic beverages including tea or coffee in accordance with the Host Responsibility strategies outlined in this report.

Summary of Submissions

A total of 17 submissions on extended trading permits was received, ten favouring ETPs, seven against.

From submissions received it is evident that most objections to extended trading permits arise from disturbance to the quiet amenity of the neighbourhood, drink driving, harm and commercial considerations.

The Cabaret Owners' Association referred to the detrimental economic effect on "a small, young, finite and shrinking market post-midnight".

Thompson Ong and Associates, architects and planners, say that ETPs have become subject to objection by other licensees in a manner they did not believe was envisaged in the original concept. They gave the example of an application by Leisure Inn Hotel in the regional centre in Rockingham successfully objected to by a cabaret located at the Rockingham Beach which provided a bus service from the hotel to the cabaret for customers seeking to continue drinking.

This, according to Thompson Ong, seemed to be a case of licensed premises being prevented from meeting a service need because of commercial considerations. The hotel was not located in an area where its late trading would lead to community disturbance from noise or anti social behaviour.

Radisson Observation City Hotel submitted that permits should not be used to extend normal trading except on special occasions, such as long weekends or the festive season. Instead, an application should be made for a variation in licence.

Corrs Chambers Westgarth, solicitors, stated that criteria should be developed to ensure that permits did not impinge on accrued rights and privileges of other licensees or encroached into areas of the industry which already were adequately served by different categories of licences.

Ridgewell Holdings Pty Ltd believed that the provision for permits should be removed from the Act as they were only a vehicle to "cross hours established under the Act".

Two private submissions dealt briefly with the harm considerations of extended trading in residential areas.

The National Centre for Research into the Prevention of Drug Abuse recommends that the current provisions for extended trading permits be dropped as they will lead to a continuing round of rival application from different operations, take up unnecessary authority and court time and demand greater use of police resources. However, the Centre says that in the event of trading permits being continued new applications should be publicly advertised on a readily seen sign outside the applicants establishment.

Fremantle City Council supported ETPs provided council approval was obtained for each application. This view also was expressed by the Australian Institute of Environmental Health (WA Division), City of Perth and the Western Australian Municipal Association.

Oldfield Knott Architects Pty Ltd, stated that the flexibility provided by ETPs was essential. "It is very important in the public interest that extended trading hours are permitted so long as they meet with the objects of the Act," the firm said. For example -

- Remote localities where a hotel or tavern exists but a cabaret does not;
- Where cabarets exist but do not cater for a certain sector of the market;
- For special events;
- To cater for diversity of consumer demand; and
- To provide additional services not adequately catered for in the hospitality and liquor industry.

The Western Australian Hotels and Hospitality Association (WAHHA) firmly believes that there is "an indisputable need among the West Australian public for greater flexibility of hotel and tavern hours and that to do so would clearly be in the public interest". At the same time WAHHA recognises that a large proportion of hotels are located in residential areas and that any negative impact on persons residing and working in the vicinity of hotel and tavern premises should be avoided.

On behalf of hotels and taverns WAHHA requested that the Act be amended to provide that -

- The Director of Liquor Licensing be required to consider an application from any hotel or tavern licensee;
- The Director's discretion to grant an extension of hours be limited only by public disturbance, not public interest.

- The issue of public need be removed. "The public and visiting tourists have a substantial need for hotel and tavern services after midnight which is not presently catered for. It is therefore inappropriate for the Director to reconsider this issue for every ETP application".
- The suitability of the hotel or tavern premises should not be a matter which the Director should be required to consider. "If premises are suitable during normal hours they should be equally suitable during later hours given, of course, that there will be no disturbance to residents".
- Fitness of the licensee should not be an issue. "If a licensee is fit and proper to hold a licence during normal hotel hours, he or she must be equally so during later hours".

Dalden Properties Pty Ltd submitted that the current method of granting ETPs should be maintained to enable each applicant to be assessed on merit. They stated, "The recognition within the Act of specific and special community and tourist designated areas such as Fremantle and Northbridge is necessary and ultimately extremely important in the proper development of the liquor industry in this state".

The WA Police addressed the subject from an operational point of view: "Police human resources are limited and fully extended. Any general or universal extension of the hours of hotel trading naturally requires alteration to the police operation hours of duty and in some cases this would be contrary to the Police Service Award 1993".

A prominent solicitor told the Committee during an informal discussion, "Extended trading permits are reasonable. Decisions have got to be on a case by case basis. There are cases where I think it's reasonable that they be allowed to trade later and there are others when its not. If it's a residential area, then there is a strong argument against letting hotels trade later. It's just horses for courses".

The Committee rejects the suggestion by the Cabaret Owners' Association that extended trading permits should not be used to generally extend the permitted hours of trade detailed in section 97 of the Act.

As indicated in the recommendations on trading hours, the use of extended trading permits to facilitate additional trading hours, unless undue offence or disturbance to residents is likely to occur, is better than any general extension of the permitted hours.

16. SPECIAL FACILITY LICENCE

Section 46 of the Act deals with special facility licences and the purposes for which they may be granted. This licence type consolidated under one heading a number of miscellaneous licence categories and provides for circumstances where no licence of another class (ie hotel, cabaret) would be reasonably adequate for the purpose.

Purposes for which a special facility licence may be granted which are listed in section 46(5), include a works canteen, seafarers canteen, theatre, ballroom, reception centre, private or public transport, historical or cultural venue, tourism and sports promotions. This list is not exhaustive as section 46(6) provides that nothing in subsection (5) precludes the licensing authority from granting a special facility licence for a purpose to which the subsection does not refer.

In 1990, 150 special facility licensees were in operation, whereas at June 30, 1993 this figure had increased to 202.

In its submission, the Liquor Industry Council expressed concern at the proliferation of special facility licences and called for tighter controls and limiting the use of this class of licence to the purposes detailed in section 46(5). This included the discarding of the discretionary powers contained in section 46(6).

The Council believes that on the grant of a special facility licence, the licensing authority be under a duty to impose conditions which strictly to take into account:

- i. The purpose for which that special facility licence is granted;
- ii. The services already provided to the public by existing licences in the area; and
- iii. The economic hardship of existing licences in the area.

The National Centre for Research into the Prevention of Drug Abuse supported the retention of the special licence for the reason that "this licence category permits a flexible set of hours appropriate for particular circumstances".

This view was also supported in submissions from architects Oldfield Knott and solicitors Corrs Chambers Westgarth. Both believe that the flexibility of the industry is dependant on the ability to adapt to the modern needs of the public without placing at risk and commercial detriment the large private investments already made in licensed premises.

The Committee sees great benefit in the Act being flexible enough to allow industry to adapt to the changing needs of the public.

The use of special facility licences would seem to fulfil this requirement.

The Committee does not agree with the proposal by the Liquor Industry Council that the issue of this licence type should be curtailed, but does agree that the licensing authority must ensure that suitable conditions are imposed on the licence so that the operation of the licence is strictly in accordance with the purposes for which it is granted.

Recommendation

- 1. That the role of the special facility licence should continue under the Act.**
- 2. That section 46(2) of the Act be amended so that a special facility licence may be granted where it is clearly demonstrated to be in the public interest.**

Summary of Submissions

Submissions in favour of retaining special facility licences were received from the Liquor Industry Council, the National Centre for Research into the Prevention of Drug Abuse, architects Oldfield Knott and barristers and solicitors Corrs Chambers and Westgarth. The Liquor Industry Council, called for tighter controls with the grant of licences limited to the purposes listed in section 46(5) of the Act (canteens, theatres, ballrooms, reception centres and approved transport) and discretionary powers under section 46(6) deleted.

17. OCCASIONAL LICENCES

The operation of occasional licences, which are issued to individuals or groups, who seek to sell or supply liquor on a one-off basis, is of concern both to the industry and the health lobby.

Section 59 of the Act provides for the issue of occasional licences. Generally this licence is used for individuals or groups who have no other form of licence under the Act and are seeking to sell or supply liquor on a one-off basis.

Section 75 of the Act requires all applications for an occasional licence to be lodged with the Director of Liquor Licensing no later than seven days before the licence is to take effect. During 1992/93 approximately 6,000 occasional licences were issued by the Liquor Licensing Division and the managing registrars of the various court offices throughout the state.

The Division requires that all the liquor to be sold under an occasional licence must be purchased from a nominated retail outlet - hotel, tavern or liquor store.

The Liquor Industry Council (LIC) is concerned at the "plethora" of occasional licences being issued, many of which it claims are for functions organised by entrepreneurs who pay a minimal fee (\$10) to sell liquor at functions attended by hundreds or thousands of people.

The Council believes that small functions not involving a net profit should continue under the occasional licence system but that operators of these licences should be trained in responsible server practices and obtain Health Department permission from the relevant local council.

It also believes that functions aimed at making a net profit should not be controlled by occasional licences, but the organiser of such a function should be required to approach an existing licensee, who would subsequently obtain an extended trading permit under section 60 of the Act. The LIC argues that such functions would then be properly controlled by a trained licensee.

The health lobby supports greater controls over the issue of occasional licences, arguing that since the holder of an occasional licence can legally sell liquor, there should be an onus to conduct the operation of the licence in a responsible manner.

Both the Alcohol Advisory Council of W.A. and the National Centre for Research into the Prevention of Drug Abuse believe that :

- occasional licences should be issued only to bona fide organisations (community groups);
- the applicant for such a function should be required to undertake training in responsible serving practices;

- there should be greater enforcement of licence conditions;
- the application fee for an occasional licence should be substantially increased; and
- the applicant should be required to lodge a bond which is forfeited if the function is not conducted in a proper manner.

The W.A. Music Industry Association believes that the one-off functions held under occasional licences provide alternative venues for live music. However, the Association is critical that these licences are overly restrictive particularly in terms of trading hours.

The Liquor Licensing Division has sought an amendment to Section 75 of the Act to require the applicant for an occasional licence to lodge the application at least 14 days before the function instead of seven as at present. This would allow the Division a better opportunity to consider the application. The police, however, would have liked applications to have been lodged 21 days before the function.

The repealed Liquor Act 1970 (section 43) provided for a function permit to be issued to a body or association of persons who were not licensed to sell and supply liquor at an event or function.

When the current Act was drafted, the function permit was replaced by the occasional licence, which served a similar purpose. However, the restriction on who may apply (body or association of persons) was removed so that an individual also could apply.

While several thousand occasional licences are issued each year, the police say they have few complaints or problems. By and large, functions under an occasional licence appear to operate satisfactorily. Admittedly, however, there is a lack of monitoring, which is due to a lack of resourcing.

The claim by industry and the health lobby that all operators of an occasional licence should be trained in responsible serving practices is not practical and to a large extent unnecessary. Most functions held under occasional licences are small, well run functions. Nonetheless, there are some where it would be desirable that the operator should demonstrate that he or she has an understanding of responsible serving practices. In the Committee's view, this decision should be left to the discretion of the Director of Liquor Licensing.

The Committee endorses the policy that the liquor sold under an occasional licence must be purchased from a retail outlet, which means that the industry is not substantially disadvantaged.

Any suggestion that occasional licences should be issued only to organisations or non-profit groups is considered by the Committee to be unnecessarily restrictive, which is why it was removed from the repealed Liquor Act 1970.

With the Director of Liquor Licensing able to scrutinise applications and if necessary ensure that an applicant has a proper understanding of responsible serving practices, together with increased monitoring, the Committee considers that no further changes are necessary in the operation and use of occasional licences.

Recommendations

1. **That the provision of an occasional licence remain in the WA Liquor Licensing Act.**
2. **That before an occasional licence is granted for a major function, the Director - Administration must be satisfied that the applicant has an adequate knowledge of his/her responsibilities under the Act and of responsible serving practices;**
3. **That the Liquor Licensing Division and WA Police monitor more effectively all major functions held under an occasional licence; and**
4. **That section 75 of the Act be amended so that applications for an occasional licence must be lodged at least 21 days before the licence is to take effect, not seven as is now required.**

Summary of Submissions

The Swan Brewery Company Limited, City of Fremantle and the W.A. Music Industry Association advocated that occasional licences should be continued in accordance with present policy, but nine submissions from the health lobby and elements of the liquor industry most likely to be disadvantaged by them (the WA Hotels and Hospitality Association and the Licensed Stores' Association) called for stricter control.

18. RATIONALISATION

The repealed Liquor Licensing Act 1970 provided for rationalisation, which was defined as a "reordering of licences on an economic basis by removal, discontinuance or change of nature of some or other of them or the improvement of the services and amenities provided under them, by the renovation, rebuilding, or substantial rebuilding, of some or other of the premises to which they relate or by other means."

In 1981 the Licensing Court actually conducted a rationalisation exercise in Boulder, Meekatharra and York. All licensees - hotels, taverns, liquor stores, restaurants and clubs - were asked to supply final accounts and balance sheets for the years to 30 June 1980 and 1981 and if the information was not forwarded, a second letter reminded the licensee of sub-section 3 of section 112 of the Act which enabled the Court to suspend a licence when a licensee failed to produce books or documents.

The Court also asked the local authorities for estimates of population, number of tourists and whether licensed and unlicensed accommodation was adequate. Arrangements were made for the Court to sit in each of the towns and to conduct investigations and hearings. Licensees, owners of licensed premises, shire clerks and local police were invited to attend the hearings and to meet privately with the Court members to discuss any personal or confidential matter. The court also inspected premises in the towns.

On 29 June 1983 the Court wrote the Australian Bureau of Statistics requesting population figures for Fremantle, Geraldton, Toodyay, Northam, Bunbury, Kalgoorlie, Albany and Bridgetown with a view of conducting rationalisation exercises in those areas, but it is understood that they did not go ahead.

In 1985 the Court instigated rationalisation exercises for Fremantle and for Wagin where licensees rose up in arms because they thought they were going to be closed down.

Out of all this the only rationalisation was the removal of three inactive licences, which were described in a report as follows :

- * The licence of the Court Hotel, Boulder, which was removed to Perth as a tavern, had not traded in years and the premises were in ruin;
- * The licence of the Imperial Hotel, York, ultimately removed to Perth as a tavern, had not been open for some time and the premises were in such a state as to be uneconomic to re-establish; and

- * The licence of the Railway Tavern, Meekatharra, ultimately removed to Perth as a tavern, had been closed for a short time during which the premises had been substantially vandalised.

Not surprisingly rationalisation checking systems and investigations were found to be cumbersome and laborious. Government refused to fund the scheme, so the only money the licensee would have received would have been from the sale of the licence, the licensee still left holding the land and buildings, which were not worth much. An annual levy was proposed to fund the scheme which the industry opposed. However, the industry was not pleased when the scheme was abandoned.

The 1987 review of the Act by the Office of Racing and Gaming stated, "The current rationalisation scheme contained in the Liquor Act has been ineffectual in achieving its defined aims, and on the basis that -

- * The number of current hotel licensees seeking conversion of their licences to taverns is almost non-existent;
- * Only one request has been made for a rationalisation exercise to be carried out in 16 years; and
- * The Court, having of its own volition carried out so few rationalisation exercises.

it is difficult to justify the retention of these provisions in the new Act."

Surrender of Licences

The records of the Liquor Licensing Division show the following movement of hotel, tavern and special facility licences :

1989

9 hotels surrendered licences and 9 tavern licences were issued in place.

1990

4 hotels surrendered licences and 2 tavern and 4 special facility licences were issued in place.

1991

4 hotels surrendered licences and 4 tavern licences were issued in place (2 with permanent extended trading permits).

1992

8 hotels surrendered licences and 8 tavern licences were issued in place.

It will be seen from these movements that no hotel has gone out of business in the four-year period but has rather changed to a category of licence more suited to its continued operation and no doubt to meet both the economic needs of the owner of the business and the changing public demand. The tavern licence relieved the owner/licensee of the requirement to maintain accommodation and provide meals to guests.

As far back as 1969 the Australian Hotels' Association submitted a rationalisation scheme for Kalgoorlie-Boulder, Fremantle, Bridgetown, Toodyay and other places, where it was claimed too many old-style hotels were doing too little business to keep them all profitable.

This scheme envisaged that the licensee who surrendered his licence should be compensated out of a fund to be set up by a surcharge of ½% on the licensing fees paid by all licensees of licensed premises. It was then that Mr Cohen, of the Swan Brewery, said that his company believed that a hotel business is a venture like any other business and that, in a private enterprise community, a businessman cannot take the profits and at the same time expect the public to compensate him for the loss when the business becomes unprofitable.

The W.A. Government's 1969 Committee of Inquiry reported :

"The fact of the matter is that most of the hotels in the state were built well over fifty years ago and in different circumstances to those which exist today. The buildings are old and generally unadaptable to the needs of the present day. In most cases, it would be impossible to upgrade them to a proper standard on any economic basis. Moreover, the accommodation which they provide is now not necessarily in the locality where it is required by the traveller and, consequently, rebuilding would not, in many cases, achieve any useful purpose.

"Another factor is that in over 70% of the hotels in the state the proprietor of the hotel business is not the owner of the freehold. The passing of the years has brought about the situation where the business has become divorced from the premises. In many cases, the proprietor of the business owns only the stock and plant and pays rent for the premises. The original owners are long since dead and the premises have devolved on their estates and beneficiaries or have been sold to investors.

"Successive owners over the years have taken out what they could in rent and have not been able or inclined to put money back into the old and outmoded building.

"In these circumstances, it is little wonder that the tenant publican has lost interest in the house trade. He sees it as a burden and a drag on the profitability of his business. He has, therefore, concentrated on the payable facet of his business - the bar trade. He can see no future in putting money and effort into improving the meals and accommodation side of his business. He is, of course, loath to admit this publicly but in reality beer has become his business. No one can have any doubt that some hotels are operating now more as taverns than as hotels".

The report added : "In one town it was said that there were thirteen hotels and only a bulldozer could improve any of them" and concluded, "We agree with Mr Cohen".

Currently no legislation exists in Australia for the rationalisation of licences. The Queensland Act 1912 contained rationalisation provisions for A class licences (hotels and taverns) which were repealed in 1992. The Queensland Liquor Act 1992 retains a carry over system of compensation from the previous Act for the voluntary surrender of licences but this applies only to A class licences issued before the current Act became effective on 1 July 1992. This system has been under review with other aspects of the Act following 12 months' operation.

In Victoria the last compensation payment was made in 1981 after rationalisation legislation was repealed.

The WA Liquor Licensing Act 1988 does not provide for rationalisation but Section 38 "Requirements for the grant of a Category A licence" requires that the applicant must satisfy the licensing authority that the licence is necessary in order to provide for the reasonable requirements of the public for liquor and related services or accommodation in that area having regard to-

- . The number and condition of the licensed premises in the area;
- . The manner in which and extent to which those premises are distributed throughout the area;
- . The extent and quality of the services provided on those premises; and
- . Any other relevant factor.

These provisions effectively provide the mechanism for the control of the oversupply of Category A licences in a particular area in future.

Population and outlets data in the following table shows that Western Australia ranks second in Australia with most persons per outlet. Residential population figure are estimates for August 1991 released in March 1993 and outlets are for all categories licensed at 30 June or 30 August 1991 in some cases. Although the dates vary slightly this should not have any significant effect on the position portrayed.

RESIDENTIAL POPULATION OUTLETS RATIO

As at 30 August 1991

	POPULATION	OUTLETS	RATIO	RANKING MOST PERSONS PER OUTLET
ACT	280,096	544	1 : 514	5
NSW	5,732,032	9557	1 : 599	4
QLD	2,977,810	3685	1 : 808	1
SA	1,400,622	3292	1 : 425	7
TAS	452,837	1381	1 : 327	8
VIC	4,244,221	6719	1 : 631	3
NT	175,891	372	1 : 472	6
WA	1,586,625	2422	1 : 655	2
TOTAL	16,850,334			

Horwath and Horwath, consultants to the hospitality, tourism and leisure industry, in a report to the W. A. Hotels and Hospitality Association in February this year, said :

"Hotels generally were large multi-bar outlets, often featuring large entertainment venues for live music. Food service was limited to "counter meal" operations with limited hours of availability.

"In 1971, the tavern licence was created, which led to the introduction of smaller outlets with only one or two bars. One of the desired objectives of introducing this form of licence was to encourage the provision of food service and to encourage customers to develop a greater propensity to consume food rather than just beverage on licensed premises.

"As taverns were not required to enter into the extensive expenditure of the provision of accommodation, as was required for a hotel licence, it was considered by the Government that the additional operating costs incurred through the provision of meals at all hours of opening of the tavern, was a suitable compromise or offset to those with hotel licences.

A number of hotels transferred their licences to tavern category. However, in reality taverns did not provide the level and standard of food service which was envisaged by the government and heavy emphasis on beverage service was maintained."

Mr A H Boys of Horwath and Horwath added :

"From my knowledge and my firm's experience with various assignments as receiver and manager of taverns and hotels, the key reasons for their financial failures are :-

- Under-capitalised owners/lessees;
- Poor management;
- Deterioration in sales and profits; and
- Excessive rents on leased premises."

This means that three out of the four reasons identified by Horwath and Horwath for the failure of hotels and taverns (apart from sales and profits) might not necessarily be rectified by any rationalisation scheme.

No comprehensive and reliable statistics are available on the level of bankruptcies in the liquor industry, however, the limited information presented to this review shows that approx 48% of a restricted sample of hotels and taverns in the inner western suburbs of Perth were either in receivership or the lessor had entered into possession over the past three years. All of these premises are still trading.

This figure contrasts with the following information taken from the latest Australian Bureau of Statistics Publication. "Small business in Australia 1993", which states :

"The impact of the economic recession has varied between States and this is reflected to some degree in the bankruptcy data. Between 1989-90 and 1991-92 business bankruptcies in NSW/ACT and Victoria increased by 117 per cent and 100 per cent respectively. Over the same period business bankruptcies in Western Australia increased by 63%, Queensland by 58%, Tasmania by 49% and South Australia by 43%, while the Northern Territory showed an increase of only 18%".

If the restricted sample of receivership and lessor possessions were accurate for the position of hotels and taverns throughout Western Australia, it would reflect a more favourable position for hotels and taverns compared with small businesses generally. These small businesses did not receive Government protection and it is therefore difficult to justify any form of financial subsidy or protection for liquor based enterprises.

The Committee in the circumstances does not favour the re-introduction of either rationalisation or premiums. In short, it agrees with Mr Cohen, of the Swan Brewery, that a hotel business is a venture like any other business.

Recommendation

1. That rationalisation of liquor licensing be left to market forces; and that premiums and moratoriums should not be re-introduced as they are an unnecessary barrier to entry into the market place.

Summary of Submissions

Submissions advocating the introduction of one or another form of rationalisation of liquor licences/outlets fell into the following groupings of mutual interest and objects -

<u>ORGANISATION</u>	<u>OBJECTS</u>	<u>NO OF SUBMISSIONS</u>
Health	harm reduction	11
Industry	economic viability	7
Local community	harm reduction	2
Private	quiet enjoyment of amenity	8
Temperance	traditional view	1
Religious	harm reduction	2
Community	harm reduction	1
Licensing authority	administration of Act	1
Legal	economic rationalisation	1
	TOTAL	<u>34</u>

Submissions from the National Centre for Research into the Prevention of Drug Abuse and the Alcohol Advisory Council were representative of the "harm" viewpoint : That the community is over serviced by licences, which is leading to intense competition in a period of recession for the industry due to the economic climate and the reduced consumption of alcohol as the result of a global trend.

The private group, in the main, objected to any increase in outlets for reasons of neighbourhood disturbance, violence, noise pollution, street drinking, indecent acts, vandalism and crime as a result of the proliferation of outlets and or late night trading in or near residential precincts.

The industry viewpoint, reflected in the submission from the Liquor Industry Council, is based on straight out commercial interest and profitability.

The industry wants a premium payable on all new A and B class licences to retard the issue of new licences in a market where it is claimed "that the total number of licensees in the various section of the liquor industry (including hotels and taverns, licensed stores and licensed restaurants) exceeds the total consumer demand for these licences and that therefore a proportion of existing licences are under-utilised and unprofitable."

The object of the proposal is to influence potential applicants to "first consider the purchase of an under-utilised licence (e.g. country town) paying the market value for the licence but avoiding the premium. The success of operation of this system will depend upon the premium being sufficiently high."

Both the "harm" and industry groups propose restrictions on the issue of new licences, either by a moratorium until a study is conducted of the needs of the community in terms of the number of licences appropriate to any area or by the imposition of a premium for all new licences to influence applicants to negotiate for the purchase and transfer of licences in unprofitable locations.

19. WINE INDUSTRY

As Mrs Di Cullen recalls, the history of the Western Australian wine industry began with the founding of the colony over 160 years ago. The first vines were planted two days after the founding colony at Captain Fremantle's campsite. Various other early settlers such as James Drummond and Charles McFaul also planted soon after their arrival.

The first successful commercial venture was established by Thomas Waters at South Guildford (now known as Olive Farm), the first wine being produced in 1834.

Within 15 years of the Colony's settlement, grapes were planted 100 miles south near the Margaret River region, east of the Darling ranges, north to New Norcia and south-east at Katanning. Nevertheless, the Swan Valley remained the focal point of the wine industry for the first 150 years.

Production in Western Australia has increased at a healthy rate with by far the largest proportion being taken up by overseas and interstate sales. Latest statistics from the Wine Industry Association of WA (Inc.) show that -

- Approximately 7 million litres of wine are produced annually in WA representing only 2% of total Australian production;
- There are 90-100 producers;
- Annual wholesale value is \$60 million;
- 10-20% of WA production is sold overseas; 60% is sold interstate and 15-20% is sold in WA.

The Wine Industry Association contends that the Act is over prescriptive and that its regulatory framework was designed originally to introduce controls at consumption points not production points.

The industry, aggrieved by the wine sales tax increases of 2% per annum over the years 1993 to 1995 which will raise the tax from 20% to 26% per annum, is seeking relaxation from a number of restrictions which the Committee is told were originally set to balance the decision to exempt wine producers from the 11% licence fees on retail sales.

A producer's licence permits the sale of wine from the licensed premise to members of the public and to wholesale and retail outlets without the payment of annual licence fees paid by other sections of the industry.

The subject of suspected illicit sales from cellar doors through agents to the corporate market was raised in a Legislative Assembly Committee B meeting in October 1993, but Mr Barry Sargeant, Executive Director, Office of Racing and Gaming, informed the committee that evidence of this was difficult to obtain and that claims came largely from rival liquor stores.

Direct sales from cellar doors to the corporate sector are legal under section 55(1) of the present Act, provided the sale takes place on the licensed premises.

Sections 54 and 55 of the Act provide for the licensing of exempted producers as well as producers. A significant difference between these two classes of licence is that a producer must have his own production facilities, whereas an exempted producer needs only to have "the use of appropriate wine producing facilities."

Section 54 imposes certain conditions on the holder of a certificate of exemption, including;

- * the wine shall be sold in sealed containers, no quantity sold being less than 740 millilitres;
- * the wine sold shall not be consumed on the premises.

Given the changing nature of the wine industry and a desire to free the industry of unnecessary restrictions, the Committee is of the view that these conditions are obsolete. This position is supported by the Wine Industry Association of W.A. (Inc).

In particular there is a compelling need to provide flexible conditions which will continue to facilitate and encourage the development of tourism in regional areas.

Recommendation

1. **That there be only one class of licence (producer's licence) for producers and exempted producers.**

Section 54 of the Act should be repealed and the issue of a licence to an exempted producer incorporated under section 55. The conditions imposed on the certificate of exemption in section 54 (2) would no longer apply.

Summary of Submissions

Submissions were received from the Wine Association of WA (Inc), the Margaret River Wine Association, Westcoast Wine Cellars Pty Ltd and three wineries - Ashbrook Estate Pty Ltd, Happs Pty Ltd and Glouster Ridge Vineyard.

20. JUVENILES

The Committee found that young people under the legal drinking age of 18 have no trouble getting alcohol from hotels, taverns and clubs in Perth, Fremantle and country centres. This is despite substantial penalties for those who serve alcohol to juveniles (maximum \$5000), permit them to enter or remain on licensed premises (maximum \$5000), purchase liquor on their behalf (maximum \$2000) or leave a juvenile on licensed premises (\$500).

While many young people do not drink, the Perth Children's Court, police and community workers who see the results of "binge" drinking in injuries, illness, crime and family disruption, confirm that the problem is widespread and causing deep concern.

They say that young people who drink to excess often do not buy alcohol, they steal it because they cannot afford it. The Court finds that some irresponsible adults will give juveniles a bottle of liquor on their birthday and that adult friends of under-age drinkers act as couriers from liquor outlets, even after junior sporting events.

A group discussion with students of both sexes aged 15 to 23, which the Ministry of Sport and Recreation organised at the Committee's request, confirmed what Committee members had heard wherever they went; that is, hundreds of young people are going where the liquor is available. If they are refused service at one outlet, they go elsewhere or ask an older friend, even someone they may not know but who seems friendly, to buy liquor for them.

If refused entry at one cabaret or hotel, they move to another. The young people who took part in the discussion with the Committee laughed in agreement when one said he could drive into a bottle shop on P-plates, no questions asked.

Before going to a nightclub, young people often drink alcohol purchased from a hotel or liquor store, where it is cheaper. They drink at parties, in parks, sometimes sitting in a car. Then they only have to "top up" at the higher prices charged elsewhere. The police try to catch them and often hassle them but they still keep drinking. Sometimes they drink until they are "off their face just for the sake of it", but generally they drink "because everyone else drinks" and "to help them fit in socially".

Judicial officers of the Perth Children's Court say that there is a fine line between use and abuse. If alcohol is promoted in a way that appeals to young people in whatever activity they're involved in, it doesn't take much to tip them over to abuse and then the problems start.

Unfortunately a culture of under-age drinking, in which apparently no event can be celebrated without alcohol, has developed among young people in a generation, along with a general weakening in family life and parental control despite the efforts of many caring parents. The Children's Court finds that when young people get involved in burglaries and assaults and other things they would not normally get involved in, they go off and drink a cask of Moselle first. That gives them whatever they need; they do not go off and smoke cannabis first.

In any event, whatever the cause, Health Department of WA studies in 1988 and 1991 showed an increase in "binge" drinking among 15 to 17 year olds.

Surprisingly all the young people interviewed by the Committee agreed that, because a licensee commits an offence by serving under-age drinkers, they themselves also should be held responsible. They know they are committing an offence but they will continue to take the chance "because everyone else does".

The Committee heard similar stories in all the other states it visited. Under-age drinking is a serious problem. A youth worker involved in a research project in Melbourne reported having had to cancel an appointment with a 13-year-old girl because she arrived intoxicated.

An evaluation of a research project in Fremantle on responsible alcohol service called "Freo Respects You" confirmed that young people under 18 find it "relatively easy" to buy alcohol, even though "the vast majority of managers and bar staff are aware of the legal consequences".

But managers, bar staff and crowd controllers are not always to blame for the serving of under-age drinkers. Forgery and general misuse of identity cards, including driving licences, appears widespread in all states. Besides forged student cards, WA police have found evidence of juveniles entering licensed premises using borrowed motor driver's licences (without photo), forged motor driver's licences, forged "18+" cards and motor drivers licence's obtained by fraudulent means. WA driver's licences even have been obtained through the production of forged overseas driver's licences which have been translated into English.

Sometimes forged "18+" cards with photographs have been produced from driver's licences which did not have photographs. In this instance a juvenile's ID contains the details of an adult, but the photograph of the juvenile involved.

Police in all states are concerned that while some forgeries appear to have been done with professional equipment copying and printing facilities at some universities and technical colleges are being misused.

When members of the WA Police Liquor and Gaming Branch invited the Committee to "pick the forgery" among a collection of 20 drivers' licences and student identity cards, a member of the Committee picked a likely card, but every one of the cards was a forgery.

An alert officer from the Branch recently found a 17-year-old girl in a nightclub whom he had seen earlier getting out of a car with P-plates. It turned out that she was carrying a forged driver's licence which she said she had bought for \$50 dollars from a man who approached her at a technical college.

She did not know the man personally and inquiries revealed that it was unlikely that he was a student at the college. The forged licence was a replica of the original but with the year of birth changed so that she appeared to be 18.

The penalty for presenting a false identity card is described in section 126(2)(b) of the Liquor Licensing Act 1988, which states "a person who makes a statement or produces alleged evidence that is false or misleading in any material effect commits an offence. Penalty : \$1000".

Arising from the under-age drinking problem, police in 1992 charged 485 juveniles with having driven while under the influence of alcohol. Of a total of 2882 infringement notices issued for offences under the Act, 421 involved juveniles. Another 35 juveniles elected to go to court rather than accept infringement notices under which penalties are 10% of the maximum penalty of the offence.

A total of \$61,200 was received from infringement notices involving juveniles. Of this \$16,750 came from juveniles attempting to obtain liquor, \$13,500 for purchasing liquor on behalf of a juvenile, \$11,600 for permitting a juvenile to enter or remain on licensed premises and \$10,800 from juveniles consuming liquor on licensed or regulated premises. Police and liquor licensing inspectors say that this is only the "tip of the iceberg" in under-age drinking. Judicial officers estimate that 2000 of about 200,000 juveniles aged between 10 and 18 have serious alcohol problems.

One of several weaknesses which the Committee finds in the Liquor Licensing Act is that it does not create an offence for a juvenile to enter or remain on licensed premises. Similarly, Section 121(10) creates an offence for a juvenile to be employed in the sale and supply of liquor on licensed premises, but not on regulated premises, which include BYO restaurants.

Further, a juvenile is permitted to be on licensed premises if under the supervision of a person who "might reasonably have been expected" to have authority over him or her. Under this definition it has been argued that an 18-year-old friend of a 16 or 17-year-old drinker is a responsible adult, thus creating a dubious defence for the juvenile.

Unlike other States, legislation in WA does not specify criteria for proof of age.

Recommendations

1. That the Liquor Licensing Act be amended to provide that the only acceptable evidence of proof of age is a document -

(a) That is -

- (i) a proof-of-age card issued to the person by the prescribed department or by a corresponding public authority of another State or Territory; or
- (ii) a motor vehicle driver's or motor cycle rider's licence or permit issued to the person under a law of the State or a law of another State or Territory; or
- (iii) an Australian or foreign passport issued to the person.

(b) that bears a photograph of the person; and

(c) that indicates by reference to the person's date of birth or otherwise that the person has attained a particular age;

2. That security of the "18+" card in Western Australia be improved by the addition of a hologram and a mandatory photograph of the licence holder.

A hologram which is a secure multi-dimensional computer image, would cost \$15,000 to \$20,000 to produce and thereafter 15 cents a card.

3. That the costs of production and issue of "18+" cards, upgraded with a hologram and a photograph of the card holder, be recovered by means of a charge as in other states (Victoria \$25, South Australia \$15, Queensland \$8, Tasmania \$7 and Northern Territory \$5.30. No charge in NSW);

4. That section 121 of the Act be amended to create an offence for a juvenile to enter or remain on any part of the licensed premises where liquor is being sold or supplied.

This should carry a maximum penalty of \$1000 and should be included in section 167 as an offence for which an infringement can be issued. It would also be necessary to amend section 121(5).

5. That section 122 of the Act be amended so that a person who employs or engages a juvenile in the sale, supply or serving of liquor on or from regulated premises commits an offence.
6. That section 125(2)(b)(ii) of the Act be deleted because the reference to "a person who might reasonably have been expected to have had authority over the conduct of the juvenile" is too open.
7. That section 126(3) of the Act be amended so that not only can a suspect juvenile be removed from licensed or regulated premises but also a person who is in fact a juvenile.
8. That the Government and WA Police as a matter of policy direct more resources to enforce the licensing laws, particularly on under-age drinking.

Summary of Submissions

Eight submissions dealt with the Act's failure to make the juvenile on licensed premises equally liable with the licensee. The Liquor Industry Council, WA Police, several community groups and a private citizen requested that juveniles be held responsible in addition to the licensee.

The Aboriginal Legal Service, Perth Aboriginal Medical Service and the Aboriginal Advisory Council Royal Commission Reference Group urged that the Liquor Licensing Division encourage the hospitality industry to promote the use of proof-of-age cards, that the police be more active in prosecuting breaches of the Act and that penalties be increased for repeat offenders.

The National Centre for Research into Prevention of Drug Abuse asked that photographic ID be specified in the Act as the only acceptable proof of age for permitting entry of young people to licensed premises.

However, the Licensed Stores' Association of Western Australia warned of possible conflict with the Anti-Discrimination Act "in the instance that a proof of age was not deemed credible but in actuality was legitimate then refusal of service is deemed discriminatory". A private submission from a Rockingham resident suggested a mechanism for tracing alcohol sales to under-age children by a serial or bar-code system.

21. PENALTIES

Maximum penalties for breaches of the various liquor licensing laws throughout Australia, while varying slightly from state to state, are reasonably similar.

There are some obvious exceptions namely, Victoria, New South Wales and the Northern Territory which have prison sentences for breaches of their legislation. However most have monetary penalties.

Several submissions received by the Committee questioned whether the current penalties imposed under the WA Liquor Licensing Act were adequate, most calling for harsher penalties.

The Committee considered, but rejected, the possible introduction of minimum penalties because current penalties generally are considered to be appropriate. At the same time, the Committee did not wish to interfere with the discretion normally exercised by a court when imposing a penalty.

Further, the Committee believes that the existing penalties available under section 96 of the Act (disciplinary powers) are adequate with the exception of the monetary fine available under section 96(1)(m), which should be increased.

The Committee is unanimous in its belief that disciplinary action against recalcitrant licensees should be pursued with the utmost vigour with a view to cancellation of their licence should they continue to breach the Act.

Recommendation

- 1. That the Director - Administration be empowered to compel a licensee (and or his staff) who has breached a requirement of the Act or a term or condition of the licence to attend the liquor licensing training program within such time as he thinks fit.**

Failure by a licensee or approved manager to comply or ensure compliance by staff should result in the suspension of the licence.

Summary of Submission

A total of 16 submissions urged harsher penalties for repeat offenders, particularly licensees who fail to comply with the Act or the conditions of their licence. Offences involving sales to intoxicated persons, sales to juveniles and sales without a licence get special mentions. Restrictions on trading hours, temporary licence suspensions and ultimately licence cancellation are widely proposed as penalties. A broad spectrum of the community submitted views, including representations by architects Oldfield Knott, the Alcohol Advisory Council of WA, solicitors Corrs Chambers Westgarth, the WA Council of Social Services and the Halls Creek Action Advisory Committee.

22. INFRINGEMENT NOTICES

Infringement notices (10% of the maximum prescribed penalty) have enabled matters previously dealt with by the courts to be disposed of quickly.

In 1992/93, 2876 infringements were issued for breaches of the Act.

Now both the Police Liquor and Gaming Branch and the Liquor Licensing Division seek to extend the list of offences for which an infringement notice may be issued to include sale or supply of liquor to a juveniles, trading outside permitted hours and breach of a condition of licence. In particular, several health agencies would like to see the serving of alcohol to an intoxicated person on the list.

Despite the system's advantages, however, about 35% of infringements issued in 1992/93 were not paid and required prosecution in the Court of Petty Sessions.

In such cases, the issuing officer must make a complaint, issue a summons, prepare a brief and have the matter listed and heard in the court. While many of these matters are comparatively minor in nature, the process is time consuming, expensive and labour intensive. In practice, a large proportion of such actions result in ex-parte hearing where the defendant does not appear to put a case.

Part VIBA of the Justices Act (INREP) provides for an unpaid infringement to be disposed of by a warrant of execution. This system is used for all traffic infringements and has proved very successful, but infringements under the Liquor Licensing Act do not come under the provisions of the Justices Act.

The INREP system prevents infringements which have been ignored by the alleged offender from being processed through the court system. This saves time for the judiciary and the police. Importantly, it does not prevent a person who genuinely wishes to contest the matter from doing so in court.

The Liquor and Gaming Branch of the Police Department have sought to have unpaid infringements under the Liquor Licensing Act 1988 included in the INREP system.

Recommendations

1. That section 167(2) of the Liquor Licensing Act be amended to expand the list of offences for which an infringement may be issued to include section 51(2), 51(4), 100(4), 104(1), 106(1), 108(2), 110(1), 110(2), 110(4), 110(7), 111(1), 114(1), 115(1), 115(2), 118, 121(1), 121(2) 145(4).

2. That section 167(2) of the Act be amended by deleting the reference to section 145(5), which through an original drafting error does not exist.
3. That to facilitate their collection, unpaid infringements issued under section 167 of the Liquor Licensing Act be included in the Justices Act, part VIBA (INREP) so that they can be disposed of by warrant of execution in the same way as traffic infringements.

23. SALE OF LIQUOR - OFFENCES

The Act provides that licences and permits will be conducted subject to the terms and conditions which are imposed specifically by the Act or which from time to time may be attached to a particular licence by the licensing authority.

Section 110 of the Act contains provisions which create an offence for the sale and supply of liquor in contravention of the terms or conditions placed on a particular licence. It states;

110(1) Where a person, being the licensee of licensed premises or premises which are pursuant to Section 54 deemed to be licensed premises or the employee or agent of such a person -

- (a) sells liquor on or from the premises -
 - (i) in a manner that contravenes this Act or any term or condition of the licence or permit; or
 - (ii) otherwise than as, and at the place, authorised under this Act; and so on...

That person commits an offence.

The wording of this section is such that before an offence is committed the alleged contravention must be as a direct result of or linked to the sale of liquor. While most licences include a condition which prohibits immodest or indecently dressed persons being employed on the premises, if the licensee does not involve these persons (i.e. dancers) in the selling of liquor, no offence is committed that would make the licensee liable under Section 110(1)(a).

However, this apparently has not been the intention of the Act and the Police Liquor and Gaming Branch recommends an amendment to ensure that the intent of the Act is not circumvented.

The Committee supports this recommendation.

The police also seek to amend the Act so that a person (dancer or barperson) who breaches a condition of the licence by being immodestly or indecently dressed can also be held accountable under the Act. If the above amendment to Section 110(1)(a) is accepted, only the licensee is liable, however, in the interests of justice, all persons involved in a breach of a licence condition should be held accountable.

The Committee also supports this recommendation.

Recommendations

- 1. That section 110(1)(a) of the Act be amended so that a breach of a term or condition of the licence must not necessarily be as a result of or cognate to the sale of liquor.**

A suggested amendment could read :

110(1) Where a person, being the licensee of licensed premises or premises which are pursuant to section 54 deemed to be licensed premises or the employee or agent of such a person -

- (a) sells liquor on or from the premises, or conducts, or permits or assists in the conduct of, the business or affairs of the licensee -
 - (i) in a manner that contravenes this Act or any term or condition of the license or permit; or
 - (ii) otherwise than as, and at the place, authorised under this Act . . .

- 2. That section 115(1)(a) of the Act be amended so that all persons involved in a breach of a licence should be held accountable.**

This will mean that any person who breaches a condition of the licence by being immodestly or indecently dressed can be held accountable.

The suggested amendment is :

"Any person, employed engaged or otherwise contracted to undertake or perform any activity or entertainment on licensed premises, or premises to which a permit relates, in a manner that contravenes this Act or any term or condition of the licence or permit, commits an offence".

A suggested penalty is \$2000.

24. REFUSAL OF ENTRY

Section 115(4) of the Act gives the licensee, manager or an employee or agent of the licensee the right to refuse entry to licensed premises. It also provides the power for a person to be removed from the premises but this power is provided only to the licensee or manager, who may not be available at the time.

Another anomaly is that hotels, special facilities and liquor stores have the power to refuse entry to someone who is drunk and disorderly and to remove that person from the premises, but currently the holders of cabaret, restaurant, casino, club or club restricted licences have no power to do so. They must rely instead on the common law right of peaceable possession and the provisions relating to trespass contained in the Police Act 1898.

Also, under section 110(8) of the Liquor Licensing Act a member of the Police Force may only assist in the removal of a person from licensed premises. An officer has no autonomous power to refuse entry or remove from the licensed premises a person who is committing an offence under the Act.

Recommendations

- 1. That sections 115(4) and 108 of the Act be amended so that all licensees and authorised employees have the right to refuse entry or remove persons from licensed premises; and**
- 2. That section 110(8) be amended to grant a police officer the right to remove a person from licensed premises without first seeking out the licensee to make a demand on that person to leave.**

25. DEFINITION OF DRUNKENNESS

Section 115(2) of the Liquor Licensing Act states : A person shall not on licensed premises -

- (a) sell or supply liquor, or cause or permit liquor to be sold or supplied, to a drunken person;
 - (b) allow or permit a drunken person to consume liquor;
 - (c) obtain or attempt to obtain liquor for consumption by a drunken person; or
 - (d) aid a drunken person in obtaining or consuming liquor.
- Penalty : In the case of the licensee or manager \$5,000, in the case of an employee or agent \$2,000, and in any other case \$1,000.

Section 115(4) of the Act then states that a person shall be taken to be drunken if, at the time, the person is visibly affected by liquor to the extent that any further consumption of liquor is liable to induce drunkenness. This provision is widely regarded as unreasonable because it makes a bar attendant responsible for deciding whether one more drink would make a person intoxicated.

The Liquor Industry Council states that this definition is cumbersome, confusing and in need of amendment. However, the Council says that in considering this issue it should be kept in mind that the legislative intent is to keep good order on the licensed premises and is not in any way aimed at ensuring public health. It should also be noted that licensees often walk a thin line in attempting to comply with opposing provisions of the Act. Section 115 prohibits licensees from supplying liquor to drunken persons with a maximum fine of \$5,000, while section 108 prohibits a licensee from refusing to supply liquor to a person who is not drunk. The maximum fine for this is \$5,000.

The Council suggests that the definition of drunkenness be "For the purposes of this Act the person shall be taken to be drunk if that person's physical and mental capacities are appreciably impaired so as to affect that person's performance of ordinary activity".

The National Centre for Research into the Prevention of Drug Abuse believes that the definition should be "For the purposes of this Act a person shall be taken to be intoxicated if at the time the person is observedly affected by alcohol and/or other drugs to the extent their speech, balance, coordination or behaviour is clearly impaired".

The Alcohol Advisory Council advocates a definition based on a "reasonable person's" definition and that judgement be made on a case by case basis. Admissible evidence would include behavioural signs (staggering, slurred or overly loud speech, decreased alertness, red eyes, tired or sleepy appearance, etc) and breath analysis as an indicator of blood alcohol level.

Public submissions advocated greater enforcement of the provisions on serving intoxicated patrons.

The WA Police believe that the current definition requires two distinct tests to be made. The first, an objective test whether the person is visibly affected by liquor and the second, a subjective test, as to the consequences of further consumption of liquor and if it is liable to induce drunkenness. For all practical purposes the subjective test cannot be fulfilled. They recommend that the definition of drunkenness be : "For the purpose of this Act a person shall be taken to be drunk if, at the time, the person is visibly affected by liquor."

A number of states use the word "intoxicated" rather than "drunk". Queensland legislation defines the term "unduly intoxicated" as a state of being in which a person's mental and physical faculties are impaired because of consumption of liquor so as to diminish the person's ability to think and act in a way in which an ordinary prudent person in full possession of his or her faculties, and using reasonable care, would act under like circumstances.

In 1992/93 only one person was convicted for having sold liquor to a drunken person.

The Committee agrees that the current definition is unworkable.

Recommendations

1. **That the word "drunk" be replaced in the Liquor Licensing Act by the word "intoxicated".**

The Committee considers that the word "drunk" is somewhat outdated, derisive and generally suggestive of a state of hopelessness.

2. **That the definition of "intoxicated" read as follows -**

A person shall be taken to be intoxicated if, at the time, speech, balance, co-ordination or behaviour is affected by liquor.

The usefulness of this provision in the legislation will succeed only if all parties who are required to interpret it - licensees, servers, police and the courts - adopt a commonsense approach to a potentially serious situation. In any event, the interpretation will be subjective.

Summary of Submissions

Thirty-five submission want the Liquor Licensing Act amended to make it easier for the liquor industry and policy to deal with drunkenness. The Liquor Industry Council, the Alcohol Advisory Council, the WA Police, the National Centre for Research into the Prevention of Drug Abuse and the public all supported the need for a more practical definition of drunkenness that can ben understood by bar attendants and others responsible for good serving practices.

26. ROLE OF LOCAL GOVERNMENT

Local Government councils are responsible for town planning, new developments, new buildings, modifications and extensions to existing buildings, public health and hygiene. Under the Environmental Protection Act, they investigate complaints about loss of amenity due to noise and have the right to object to the Liquor Licensing Division on behalf of residents who experience problems arising from licensed premises.

Council building approvals include approvals from other regulatory authorities, such as the fire brigade and water and sewerage authorities. While building maintenance is not their responsibility at the moment except for council buildings, it is proposed that they will be given authority over maintenance under an Integrated Building Act, which the Department of Local Government says will consolidate 37 sections of Building Regulations, within two years.

The Committee considers, therefore, that the Liquor Licensing Division should now arrange for any special standards that it requires for licensed premises to be transferred to Local Government through a state variation to the Building Code of Australia and to hand over to Local Government the authority to control the building and maintenance of licensed premises - subject to the Division holding reserve power to intervene if necessary to ensure that standards are properly maintained.

This should remove a lot of duplication. At present inspectors from the Liquor Licensing Division as well as municipal environmental health officers are required to inspect licensed premises. Before issuing a section 39 completion certificate, a number of council officers visit a site to certify to the Liquor Licensing Division that the completed premises comply with the requirements of the Health Act and the Local Government Act. However, an inspector from the Liquor Licensing Division also has to conduct an inspection to be satisfied that the Division's responsibilities under the Liquor Licensing Act are met. This is even though a comparison of the standards imposed by the Division and those applied by Local Government are not that far apart, particularly in the bar and toilet areas which the Division regards as most important. (Annexure 21)

In the past, the concept of Local Government handling premises inspections for the licensing authority has been a controversial issue, concern having been expressed that standards would vary widely with the 139 councils throughout the State and that some local authorities under pressure from commercial interests might not be impartial.

The argument perhaps has been more over centralised versus decentralised power. On the other hand a tourism official queried with the Committee whether Local Government would have the expertise state-wide to take on additional work in this area because, unlike local governments in other States, they have not been merged to attract more senior officers. Approximately 20 shires for instance, have fewer than 700 people.

The Liquor Licensing Division itself has felt for sometime that administration and enforcement would be simplified by devolving responsibility to Local Government, provided provisions of the Health Act 1911 and the Local Government Act 1960 were strengthened. The Division's main concerns have been that Local Government building regulations prevent the standards of the Building Code of Australia from being applied retrospectively and that, because sections of the Health Act covering eating houses do not apply in all parts of the State, some local authorities could not specify that the restaurants have toilets, let alone specify the number and location. The concern over toilets, however, has been rectified by the Model Health By-laws which applied throughout the state from 1 April 1994.

As the Department of Local Government's principal building officer also agrees that duplications occur, both parties now presumably will be able to sort things out together. Local Government and the Liquor Licensing Division would have to negotiate the best way to provide for the maintenance of old premises, which at present only the liquor licensing authority has the authority to inspect.

Building plans still would need to be submitted to the Liquor Licensing Division for it to approve licensed areas, but the Division would be freed of much of the detailed work which has led to duplication between the Division and Local Government and to complaints by some applicants and lawyers.

Only some licensed premises (i.e. cabarets) are covered under the Health Act (public buildings). Premises that do not provide entertainment are not classified as public buildings, however these premises can attract large numbers of people, sometimes creating situations of over crowding. A number of Local Government submissions have suggested that all licensed premises should be classified as public buildings.

The change also would eliminate industry complaints about varying standards between the liquor licensing authority and Local Government on the number of patrons permitted in licensed premises, although technical at present it would seem there should be no ground for complaint.

Local Government councils, the Western Australian Municipal Association, the Australian Institute of Environmental Health (W.A. division) and individuals have called for the Liquor Licensing Act to be strengthened to overcome perceived problems on noise.

However, in framing the Liquor Licensing Act 1988, the previous Government significantly widened the grounds for objection to enable the community to influence licensing decisions. The new grounds include of neighbourhood amenity and disturbance to residents and provided for a complaint to be lodged with the Director of Liquor Licensing by local councils, police, local residents, worshippers or workers. This would include, of course, Aboriginal people.

If a complaint is established and the parties cannot agree on a solution, the Director may and does impose conditions aimed at eliminating the problem. Regrettably the Committee finds that many people and organisations who may want to complain do not know their rights or are apprehensive about making an official complaint. One way to avoid this would be for the two bodies most concerned, that is the Liquor Licensing Division and Local Government, to ensure that the rights of residents and others under the Act are more widely known.

While the Australian Institute of Environmental Health (W.A. Division) submits that there is not sufficient control under the Liquor Licensing Act to control excessive noise, which can be caused by amplified music, freezer units and airconditioning as well as patrons arriving at or leaving licensed premises, the Committee considers that the provisions of the Act are adequate, assuming that they are understood.

Local Government on the other hand also has expressed concern that the Environmental Protection Act lacks adequate power to control noise.

The Liquor Licensing Division has never had inspectors equipped with sound measuring instruments as inspectors apparently have been in some areas of Local Government in W.A. and as licensing inspectors have been in Queensland, where the Government holds the licensing authority primarily responsible.

In accordance with the terms of reference, the Committee also has looked at whether the number of regulatory authorities is necessary. It finds that generally the answer is yes. While water, fire brigade, town planning, health, sewerage and building regulations are all involved at some stage, applicants for a licence need only deal with Local Government and the Liquor Licensing Division in those matters.

An exception would arise if the application were for a licence on the river. This would necessitate the applicant dealing with the Swan River Trust, the Department of Transport and Communication, the Department of Marine and Harbours and the Department of Conservation and Land Management as well as Local Government and the Liquor Licensing Division, but it is unlikely that anyone of these authorities would forego its responsibility.

Apart from the constitution and resources of the liquor licensing authority, which the Committee deals with in another section, the Committee makes the following recommendations.

Recommendations

- 1. That to avoid duplication of building inspections, the requirements of the Liquor Licensing Division relating to bars and toilets be transferred to Local Government through a State variation to the Building Code of Australia; but that the Liquor Licensing Division retain reserve powers to ensure that the standards of all licensed premises are maintained and to take into account any failure to observe Local Government on other statutory requirements.**
- 2. That ongoing maintenance inspections of licensed premises become the responsibility of Local Government when the Integrated Building Act is introduced;**
- 3. That section 95(5)(c) dealing with disciplinary action be amended to delete provisions which prevent police and municipal councils from lodging complaints detailed in subsection 4; and**
- 4. That all licensed premises be covered under the Health Act (Public Building Code) to enable Local Government to impose number limitations on these premises.**
- 5. That section 117(3)(c) be amended so that it is clear that a complaint under section 117 may be lodged by fewer than 10 adult persons.**

A suggested amendment is :

"The Director - Administration may accept a complaint under this subsection, even though it is lodged by less than 10 adult persons, if he is satisfied that the nature or gravity of the complaint warrants it".

- 6. That to enable applicants, planners and architects to proceed more confidently with projects, sections 39, 40 and 77(5) of the Act be amended to provide that the liquor licensing authority can grant on application, subject to the provision later of specified Local Government approvals.**

A proposed amendment to section 77(5) is :

77(5)(b) "Notwithstanding the requirements of subsection 5(a), where an application is made pursuant to subsection (4) and the licensing authority is not satisfied that all other approvals, consents or exemptions required by law have been obtained, if the licensing authority is satisfied that the application should be approved, the licensing authority may, upon request, approve the application subject to the condition that such other approval, consent or exemption required by law be lodged prior to the commencement of work".

Additionally, simplify sections 39 and 40 and their relationship to sections 37(1)(d) and (2) by providing all Local Government certificates of approval must be produced by the applicant unless the liquor licensing authority considers there is good reason to exempt the applicant.

7. **That the Liquor Licensing Division notify the Local Government of any additional conditions that an applicant for a licence should comply with in respect of the building, until such time as the Integrated Building Act becomes law.**
8. **That sections of the Health Act dealing with "Eating Houses" be amended to apply to hotels, taverns and clubs to enable Local Government inspection.**

Summary of Submissions

Submissions were received from the following Local Government bodies : municipalities of Armadale, Canning, Fremantle, East Fremantle, Gosnells, Halls Creek, Irwin, Meekatharra, Melville, Nedlands, Peppermint Grove, Perth City Council, Rockingham, Subiaco, Williams, the West Australian Municipal Association (on behalf 139 member councils) and the Australian Institute Environmental Health Officers (W.A. Division) representing the views of Local Government Environmental Health Officers (representing 300 E.H.O. from State - Local Government and private agencies). A further six councils submissions received after the close of the submission period.

A wide range of issues were covered including planning and land use, conditions placed on new premises, complaints and objections, noise emission, excessive court costs, extended trading permits, overcrowding, serving juveniles, training and education, the Health Act and council by-laws.

Most submissions raised the matter of planning and land use under section 39 and 40 of the Act.

Section 117 was also commented on by more than half the submissions received, claiming difficulties for both councils and community members in actioning complaints, with deficiencies of the Environmental Protection Act 1986 and the Liquor Licensing Act to adequately address this problem.

The high cost of pursuing matters before the Court was raised in many submissions.

27. LANDLORD/TENNANT RIGHTS

The Office of Racing and Gaming sought to amend section 84 of the Act to declare void any contractual arrangement in which a tenant/licensee consents to the transfer of a liquor licence to a landlord at a later date. The Office proposed that the amendment be retrospective and that the practice of licensees signing blank transfer documents to be held by lessors in escrow also be declared void.

At issue is an agreement in some leases which requires a tenant/licensee to transfer the liquor licence (and automatically with it the goodwill of the business) to the landlord at the expiration of the lease.

The Licensed Stores' Association claims that this creates an unfair situation in which the goodwill of the business, built up over many years by the tenant/licensee, passes to the landlord without compensation being paid to the tenant.

The Association is supported on the issue by the Liquor Industry Council, Liberty Liquors and the Restaurant and Caterer's Association.

The Office of Racing and Gaming in its submission to the Committee proposed the following -

Section 84

Provide in relation to (1)(a) that the consent must be current at the time the application is determined, and that any prior contractual requirement that a tenant/licensee consent to a transfer of the licence at a later date is void at law. Associated with this, render void the practice of blank transfer documents being signed by the licensee when taking up the licence and being held in escrow by the lessor to be produced when a subsequent transfer is to take place.

Provide in relation to (2) 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 unless the Director waives it in a particular case. This is to overcome the argument that the effect of the wording of (2) at present, if a contract does not include a condition required under (2), is to make the contract void altogether so that neither party may rely on it, and the parties have committed an offence under section 166.

Related to this, make it clear that a contract referred to in section 84(1)(a) is such a conditional contract.

It should also be specified that any term of a contract under which a party agrees to consent to a transfer at a later date is void.

All the above points should specifically be made retrospective to apply to any agreement, practice or arrangement entered into (including one under the repealed Act).

Also, amend (3) to remove the impression that a transfer may be applied for on the ground that the licensee has vacated the premises, in conflict with the aims of section 87(1)(a). (It could, for example, refer to transfer application made in circumstances where the licensee has vacated the premises).

Legal Opinion

In an attempt to reach a conclusion, the Committee referred the matter for comment to solicitors Phillips Fox, who had agreed to assist the Committee in any way possible. Phillips Fox reported -

"The provision that a consent must be "current" at the time an application is determined is impractical and an interference with many contractual arrangements already made between landlords and lessees to govern their relationships. If brought into the Act it would be, effectively, a retrospective amendment interfering with existing contractual arrangements between landlords and lessees.

"Any suggestion that section 84 should be amended to apply retrospectively is contrary to the well established principles as to legislation being for the future and not for the past. Moreover, if section 84 is to be amended as suggested, it is such a fundamental alteration it should not apply to contracts which were entered into by parties in good faith under previous licensing legislation, or indeed under the existing Liquor Licensing Act".

The Committee also sought the opinion of Judge Greaves, of the Liquor Licensing Court. His Honour said :

"It is apparent that these proposals seek to address matters of substantial importance in the policy of this legislation which should not be regarded as "technical". They are questions which were explored at some length in the case of Jericho Nominees Pty Ltd v Dillium Pty Ltd in this Court and in the full Court reported at (1992) 6 WAR 380. To avoid further confusion very careful consideration must be given to both the policy behind these provisions and the expression of any change in the redrafting of that. Otherwise, it is not appropriate for me to comment at the moment".

In light of these reports, the Committee considers that it is not able to resolve the issue in the time available. However, the Committee includes the matter in the report as an issue which the Minister may wish followed up with Crown Law and the parties concerned.

In principle the Committee considers that the tenant/licensee, having maximised the profits from the business for the term of the lease, is not entitled to "compensation" from the landlord for goodwill when the lease expires, unless the lease contains a legal commitment to this effect.

Moreover, there should be no doubt that the liquor licensing authority controls the issue, transfer and operation of a licence at all times.

The only exception to this principle should be if the Court ruled that agreement between a landlord and licensee/tenant was made lawfully under the Liquor Licensing Act. The validity of any attempt to declare the terms of a lease void retrospectively would need to be determined from a viewpoint of natural justice and the law.

28. COMMISSIONER OF POLICE

Section 95 of the Act which relates to disciplinary proceedings against a licensee, provides that the Director, Commissioner of Police or a municipal council may lodge a complaint, but it does not provide for the Commissioner to delegate his authority. This means that the Commissioner must personally sign each complaint.

Recommendation

- 1. That the Act be amended so that the Commissioner or his/her delegate may lodge a complaint for disciplinary action.**

29. AVERMENT

The Police Liquor and Gaming Branch seeks an amendment to section 172 of the Act, which makes it easier for administrators and enforcers when taking proceedings.

Matters such as alleging that a person was or was not a licensee or premises are or are not licensed are deemed to be proved in the absence of any proof to the contrary. These averment save time and expense in that issues not central to the proceedings can be taken to be proved.

However, the Act does not provide for an averment on the matter of consent, for example, in the case of park or reserve drinking.

Recommendation

- 1. That section 172(1) of the Act be amended to provide for an averment on the matter of consent.**

Such an amendment does not affect the right of a defendant to have the issue of consent fully tested at a hearing if consent is in issue.

30. AIR FORCE ASSOCIATION

Division 2 of Schedule 2 of the Act refers to the Air Force Association Club.

This section of the Act prescribes the licensed premises for the club as being located at Bull Creek Drive, Bull Creek.

In a submission to the Committee, the Association sought an amendment to this section to include its proposed development of a retirement village located at the corner of Marmion Avenue and Baltimore Parade, Merriwa.

Recommendation

- 1. That Division 2 of Schedule 2 of the Act be amended to include the Association's proposed retirement village located at the corner of Marmion Ave and Baltimore Parade, Merriwa.**

31. COMPUTERISED RECORDS

The issue of licensees keeping liquor registers in computerised format was raised by a number of people, particularly during the Committee's regional visits.

The Committee is aware that the Liquor Licensing Division has given approval for computerised records. However, the industry seems unaware that such approval can be obtained.

In order to clarify this situation, the Committee recommends that section 145 be amended to specifically refer to computerised records.

Recommendation

- 1. That, to assist licensees who use information technology, section 145(2) of the Act be amended to read :**

The record -

- (a) shall be in *computer* or other prescribed format; and**
- (b) shall contain the prescribed information, unless the Director - Administration otherwise approves;**

32. ABORIGINAL DEATHS IN CUSTODY

As undertakings were given that the Review Committee would examine recommendations of the Royal Commission into Aboriginal Deaths in Custody which had not yet been acted on, the Committee makes the following comments -

Royal Commission recommendation 58

That Government give consideration to amending the liquor laws to provide a right of appeal to persons excluded from a hotel where that exclusion or its continuation is harsh or unreasonable.

The Committee considers that this should be resolved between the licensee and patron. Some submissions have requested that licensees have a statutory right to exclude patrons for up to six months if the patrons are disruptive, abusive or otherwise offensive, but the Committee does not support this proposal either.

Royal Commission recommendations 210

That :

- a. All employees of government departments and agencies who live and work in areas with significant Aboriginal and Torres Strait Islander population and whose work involves the delivery of services to Aboriginal and Torres Strait Islander people be trained to understand and appreciate the traditions and culture of contemporary Aboriginal and Torres Strait Islander society.
- b. Such training programs should be developed in negotiation with local Aboriginal and Torres Strait Islander communities and organisations.
- c. Such training should wherever possible be provided by Aboriginal and Torres Strait Islander adult education providers with appropriate input from local communities.

The Office of Racing and Gaming advised the Commissioner for Aboriginal Planning by letter on 24 September 1993 that "two officers from the liquor licensing division will be nominated as special advisers allocated to work with Aboriginal and Torres Strait Islander people on liquor licensing and other liquor matters".

The Committee questions whether such an arrangement would be effective but sees merit in appointing an appropriate Aboriginal liaison officer to the Liquor Licensing Division.

The Committee recommends that the Government makes such an appointment.

Royal Commission recommendation 272

That governments review the level of resources allocated to the function of ensuring that holders of liquor licences meet their legal obligations (in particular laws relating to serving intoxicated persons) and allocate additional resources if needed.

The Committee considers that enforcement of the provisions of the W.A. Liquor Licensing Act is an integral part of efforts to reduce the harm caused by excessive alcohol consumption.

However, before proposing additional resources, the Committee recommends to the Minister that Liquor Licensing Division management systems be reviewed to establish whether or not they can be simplified to reduce the workload and at the same time be improved.

Royal Commission recommendation 273

That consideration be given for legislating for the appointment of community workers who have the power to inspect licensed premises to ensure that licensees comply with the applicable legislation and license conditions.

The Committee recommends that inspections of licensed premises be transferred to Local Government councils, which are closer to the people. Under this arrangement, the liquor licensing authority would retain reserve power to ensure that standards were maintained and that the operations of licensed premises were in accordance with the Act.

Royal Commission recommendation 274

That governments consider whether there is too great an availability of liquor, including too many licensed premises, and the desirability of reducing the number of licensed premises in some localities where concentrations of Aboriginal people are found.

The Committee finds that rationalisation of liquor licences has not worked in the past and in any event it prefers that market forces regulate such matters.

However, it anticipates that policy and other changes which it recommends in this report will assist industry and help to overcome community problems.

Royal Commission recommendations 276-277

That consideration be given to the desirability of legislating to provide for a local option as to liquor sales trading hours, particularly in localities where there are high concentrations of Aboriginal people; and

That legal provision be available in all jurisdictions to enable individuals, organisations and communities to object to the granting, renewal or continuance of liquor licences, and that Aboriginal organisations be provided with the resources to facilitate this.

The Committee does not favour a provision for local option in the Liquor Licensing Act. However, it recommends that the Act be amended to clarify the right of the Director - Administration to act as he did in response to the Halls Creek community.

While the Act already enables individuals, organisations and communities to object, the appointment of an Aboriginal liaison officer to the Division, if approved (note comment on Royal Commission recommendation 210) would help Aboriginal people to understand their rights.

Royal Commission recommendation 279

That the law be reviewed to strengthen provisions to eliminate the practices of "sly grogging".

The Committee recommends that it be made a specific offence in the Liquor Licensing Act of W.A. to transport alcohol without a permit on to or near an Aboriginal community which has declared itself "dry" or imposed limitations on the availability of alcohol under the provisions of the Aboriginal Communities Act 1979.

33. TECHNICAL AMENDMENTS - Office of Racing and Gaming

In its submission to the review Committee the Office of Racing and Gaming proposed a number of "technical" amendments to the Act to assist in administration and rectify anomalies.

The Committee believes, however, that some of the proposed amendments may require further consideration by Government in view of comments by His Honour Judge Greaves and solicitors Phillips Fox.

These amendments are divided into two lists, (A) which are fully endorsed by the Committee and (B) those to which attention is drawn for further consideration. To assist Government and Parliamentary Council in this regard, the comments made by His Honour and independently by Phillips Fox are provided.

(A) The Committee endorses the following amendments :

1. INTERPRETATION

Section 3

Amend the definition of "liquor" so that "1.15%" is replaced by "0.05%".

Expand the interpretation of a meal to include "while seated at a luncheon counter" or similar description.

2. INTERPRETATION OF AMOUNT PAID OR PAYABLE

Section 4

In section 4(2), insert in line 4 after "value" the words "or where no amount is so paid or payable". The words are necessary to remove any doubt on the power of the Director to determine a value for liquor where a person claims that no amount was paid for the liquor obtained or disposed of, no licence fee can be determined pursuant to section 132.

The Liquor Licensing Act 1988 required that all liquor transactions entered into by a licensee should be assessable unless provided for by the Act under section 134.

3. DURATION OF LICENCES

Section 32

Clarify (5) to ensure that offences which would apply outside permitted trading hours for a licence not under suspension apply for the whole period that the licence is suspended (e.g. offences under section 111(2)).

4. DISCRETION VESTED IN LICENSING AUTHORITY

Section 33

Provide specifically in (6) that the person's character and reputation are relevant, and offences under any Act, whether or not an Act of Western Australia, may be taken into account.

5. RESTRICTIONS ON CERTAIN APPLICATIONS

Section 34

Delete all references to shareholders.

6. REQUIREMENTS FOR GRANT OF CATEGORY A LICENCE

Section 38

In (5), extend the limit on further applications for the same site to any place within the affected area defined for the first application. The Director would still be able to overrule this in the special cases described.

7. CABARET LICENCES

Section 42

Remove the apparent inconsistency between (1) and (3) by inserting in (3) a reference to other types of entertainment allowed under (1).

8. SPECIAL FACILITY LICENCES

Section 46

Include a section 5 a provision for a Special Facility Licence to be granted for the operation of a food hall or food market type of business where liquor is to be consumed in a common area servicing multiple food outlets.

In (4), provide that it is a further condition that the club must not contravene, or operate outside, its aims and objects.

In relation to (5)(e), provide that the purpose is receptions, rather than a reception centre. This is to allow for cases where receptions is one of several purposes justifying a special facility licence for premises that are not wholly a reception centre.

9. CLUB OR CLUB RESTRICTED LICENCES

Section 48

In (4), provide that it is a further condition that the club must not contravene, or operate outside, its aims and objects.

Create offences for breaches of this section.

10. RESTAURANT LICENCES

Section 50

As with hotel and hotel restricted licences under section 41(5), provide that holders of restaurant licences which have extended trading permits under section 60(4)(c) must provide meals and accommodation for lodgers on request. The exemptions from this under section 41(5) should also apply.

Also provide that the requirement under section 105 to keep a register of lodgers should also apply to these licences.

11. WHOLESALE'S 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 wholesaler's 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. 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 with a licence. There should be no limit on such sale of supplies.

12. OCCASIONAL LICENCES

Section 59

Section 93 of the Liquor Licensing Authority 1988 permits the Director to refer a licence to the Court for cancellation. Authority is needed to allow the Director to cancel an occasional licence.

13. EXTENDED TRADING PERMITS

Section 60

Provide that the requirement under (3)(c) does not apply in the case of an extended trading permit granted to a restaurant licence under subsection (4)(c). Make it clear that permits may be granted to holders of club licences to allow liquor to be sold outside the constraints of section 48(2), provided that they are not so frequent as to affect the nature of the club as a facility for its members, or cause significant detriment to other licences in the vicinity.

14. RESTRICTIONS ON POWER TO VARY TERMS FIXED OR CONDITIONS

Section 63

To facilitate conversion of a "club restricted" licence to a "club" licence, provide that the authority may remove the "restricted" conditions and status from a club licence under section 48(1).

15. POWER OF LICENSING AUTHORITY TO IMPOSE, VARY OR CANCEL CONDITIONS

Section 64

Provide that it is a condition of every licence (except a cabaret licence) that lewd or indecent behaviour, and immodest or indecent modes of dress, by staff or employees of the licensee are prohibited, along the lines of the conditions already imposed on those licences by the Director.

Also, provide 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 on the licensee, applies.

16. PLANS AND SPECIFICATIONS

Section 66

Amend (6) (or perhaps section 99) to provide that the Director may also require new plans if there is no application before the Director.

17. NOTICES OF APPLICATION

Section 68

Make it clear that solicitors acting for an applicant may sign and lodge an application on their client's behalf.

18. REQUIREMENTS FOR CONSENT

Section 72

Amend (1)(b) to provide that the requirement to obtain the consent of the owner or premises before a licence is removed also applies in the case of a temporary removal, to protect the owner's interests.

Clarify (6) by specifying 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.

19. APPLICATION FOR REMOVAL

Section 81

Delete (3)(a), as the applicant's fitness is not relevant to a removal application.

20. INTERIM AUTHORISATION

Section 86

Strengthen (5) to allow a receiver and manager or an administrator to take over the licence temporarily. Clarify whether (6) refers to an official receiver or an official manager.

Provide that banks, building societies, credit unions and other licensed financial institutions may take over a licensed business temporarily under section 86 to protect an interest they have in the business.

21. EFFECT OF A PROTECTION ORDER

Section 88

Amend (1) so that it also refers to a protection order granted under section 89, and an authorisation under section 86.

22. SUSPENSIONS

Sections 90-93

Insert a provision to allow an application to be made to lift a suspension, as no such provision exists now.

23. DISCIPLINARY ACTION

Section 95

Expand (4)(f) to allow relevant offences under any other Acts (e.g. the Environmental Protection Act for exceeding permitted noise levels, and the Police Act) also to be taken into account.

Make it clear in (4)(f) that Infringement Notices issued under section 167 to, and paid by licensees, staff or employees of the licensee can be used as a ground of complaint. (Section 167(7) also may need amendment).

24. MAINTENANCE OF PREMISES

Section 99

Simplify the scheme of issuing directions by deleting the step set out in subsection (4), 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.

25. SUPERVISION AND MANAGEMENT

Section 100

Simplify the procedures relating to changeover of managers so that 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) should remain, but the other subsections should be repealed in favour of the simplified requirements above.

An amendment to Section 35(2)(d)(ii) may be required.

Provision also should be made for the authority to approve more than one manager in respect of the one premises.

In Section 100(11) delete the reference to "7 days".

26. CERTAIN SERVICES TO BE PROVIDED

Section 108

Provide that (3) applies to all classes of licence, not just those under (1).

Delete the requirement in (5) that hotel and relevant special facility licences have to display price lists for food and liquor.

27. SALE OR CONSUMPTION OF LIQUOR

Section 110

Amend (7)(c) so that it does not prohibit the sale of liquor on credit between liquor merchants, as defined in section 3.

28. APPLICATIONS OF SECTIONS 109,110 AND 111

Section 112

Amend 112(1)(b) by deleting the words "the sale to, or" from the section to make it unlawful for unlicensed persons to sell liquor door-to-door to a person at their place of residence. This was clearly never the intent of the legislation.

29. REASSESSMENT BY THE DIRECTOR

Section 138

Amend section 138(3) to add after "the original assessment" the words "and any such reassessment is subject to any further reassessment".

Section 138 is at present impractical. Legal advice indicates that an annual licence fee can only be reassessed once, irrespective that the reassessed licence fee itself may be based on information that a later date has proved to be false or incomplete.

The present provision is both a hinder to the Director and the liquor industry and should be amended to enable the Director to reassess a licence fee even though it may have been previously reassessed.

30. INFRINGEMENT NOTICES

Section 167

Delete the period of "28 days" from section 167(5), which permits the withdrawal of an infringement notice that has been issued.

31. COMPLAINTS FOR AN OFFENCE

Section 169

Amend section 169(2) to read "4 years" in lieu of the current 2 years. This has been found not to be enough time to commence prosecutions, given that any financial examination by inspectors will be occurring some 12 months after the return is lodged.

Insert in section 169(3) after "the sale or purchase" the words "or other disposal or acquisition". This is necessary so that the terminology matches section 145(1).

32. TRANSITIONAL PROVISIONS

Schedule 1

Correct the error in clause 5(6) by changing "section 115(4)" to "section 116(5)".

33. LIQUOR LICENSING REGULATIONS

Regulation 4

Regulation 4 of the Liquor Licensing Act 1988 is amended -

- (a) by deleting the subheading and substituting the following subheading -
 - "low alcohol liquor"- prescribed level
 - "liquor" - prescribed substance; and
- (b) by inserting after paragraph (2) the following paragraph -
 - (3) For the purposes of the expression "liquor" in section 3(1) packages of essences containing ethyl alcohol in containers that exceed 50ml.

Regulation 7

Amend regulation 7 by inserting "or other training course approved by the Director".

(B) The Committee believes that the following proposed amendments may need further consideration in light of the comments from His Honour Judge Greaves and solicitors Phillips Fox.

1. INTERPRETATION

Section 3

Amend the definition of "licensed premises" to make it clear that all parts of the licensed premises, whether or not on more than one title, shall not be separated from one another by any other premises, property or road.

Expand the definition of "protection order" to include a reference to section 89, under which those orders may also be made.

Judge's Comments

Definition of "protection order" agreed subject to a reconsideration of the whole place of Section 89 in the Act.

Phillips Fox's Comments

We do not see why in particular circumstances where the public interest dictates, licensed premises should not be separated by other premises, properties or roads. It is too rigid a proposal, in our view, to suggest that the Licensing Authority should have its discretion fettered to preclude in particular circumstances, licensed premises being separated by a road or lane. By way of an example, it is realistic in certain instances for the residential component of an hotel to be separated from the hotel's function rooms which could be, for a variety of reasons, across the road from the residential component of the hotel premises.

2. LICENCES, GENERALLY

Section 31

Provide that the licensee may only "operate under the licence" as opposed to selling and supplying liquor.

Phillips Fox's Comments

Section 31(3) of the Act, refers to the words "sell and supply liquor" as distinct from the words "sell or supply liquor". It is not entirely clear to us what distinction is sought by altering this section with the provision of the word "operate". If the amendment is really necessary, it may be more preferable to stipulate that a licensee may only "trade under the licence" as opposed to selling and supplying liquor.

3. DURATION OF LICENCES

Section 32

Provide for (2)(b) also to apply to a protection order under section 89, and an interim authorisation under section 86.

Amend (5) to provide that it applies only while section 37(5) is complied with. This will overcome a Supreme Court decision 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, the Court decided that when a licence is suspended, the licensee may vacate the premises and hold the licence in abeyance indefinitely).

However, provide 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.

Judge's Comments

Subsection (2)(b)) : agreed subject to a reconsideration of the place of section of 89 in the Act.

Phillips Fox's Comments

To allow the Director to suspend a licence and allow a licensee to vacate the existing premises where there is a conditional removal in place could result in difficult situations. If a conditional removal was granted and then the premises vacated by the licensee, and then the conditional removal was not completed, this would result in the licence which was to have been removed being unattached to any premises. The issue of a licensee incurring costs on two sets of premises is essentially a commercial matter and should be left to a licensee to negotiate with prospective or existing lessor.

4. REQUIREMENTS RELATING TO LICENCES AND PERMITS

Section 37

In (1)(a), clarify the distinction between a body corporate in (i) and a company in (ii).

In (1)(a)(ii), 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 in that case be made a further condition to be satisfied under section 62 before the licence may operate. This is to cater for cases when there is a delay between the conditional grant and the commencement of operations under the licence, during which period the conditional licensee will find a person to be manager.

Also in relation to (1), provide that, where it is clear that the person applying for the licence does not intend to be the eventual operator (i.e. the applicant is an entrepreneur or developer), the licence may be granted subject to a condition that it be transferred to a suitable person before the licence commences operations.

In (1)(d)(iii), make sense of "would not to be appropriate" by deleting "to".

Include licence transfer in (5)(a).

In relation to (5)(a), make it clear that, in the case of a conditional grant or conditional removal, occupation of the premises does not become necessary until the licence comes into operation.

In the case of a conditional removal, provide that, once the order is made, the licensee may vacate the existing licensed premises, if the Authority consents, without his interest in the licence terminating as provided by subsection (5)(b).

Judge's Comments

Subsection (1)(a)(i) & (ii) : agreed. There should be provision that the Licensing Authority has a residual discretion to require approval of a manager prior to grant in the exercise of its discretion.

The suggested amendment in the situation where it is clear that the person applying for the licence does not intend to be the eventual operator is in my opinion already and adequately provided for by section 62(2)(e).

Subsection (5)(a) : it is not immediately apparent why this subsection should refer to transfer of a licence and in those circumstances I cannot comment.

In relation to subsection (5)(a) the suggestion that, in the case of a conditional grant or conditional removal, occupation of the premises does not become necessary until the licence comes into operation seems to me on its face to ignore the nature of a conditional grant. To date the law has clearly been that a conditional grant is in the nature of a "promise" and does not take effect until the conditions have been complied with. This is confirmed by section 62 itself and in my view the suggested change is not necessary.

Phillips Fox's Comments

We have the same comments as to a "conditional removal" as are set out in our comments on the proposed section 32.

5. HOTEL LICENCES

Section 41

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" without further advertising, 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.

In (8), provide 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.

Phillips Fox's Comments

In addition to what is said, section 41(2) should make it clear that a tavern licence may be granted without the requirement to sell packaged liquor if that restriction is in the public interest.

6. SPECIAL FACILITY LICENCES

Section 46

In (3)(a), provide that "elsewhere" does not necessarily mean premises exclusively occupied by the licensee.

Judge's Comments

Subsection (3)(a) : in a few words this suggested amendment raises substantial issues in the scheme and operation of this Act, particularly in relation to the sale of liquor to and consumption by juveniles. More generally, it involves consideration of the clear policy of the Act that licensees and their managers are personally responsible for the supervision of premises. This is not a "technical" matter and requires very careful consideration. The suggested amendment should not be adopted as a matter of course without that consideration in the scheme of the Act and in the sort of circumstances which have arisen in and are reflected by the decisions of the Court. It is not appropriate for me to make further comments at the moment.

7. CONDITIONAL GRANTS FOR UNCOMPLETED PREMISES

Section 62

Make it clear that the licence does not exist until the condition as to completion, or any other relevant condition attaching to the grant, is satisfied.

However, also provide that a conditional grant shall be deemed to be a licence for the purposes of an application to transfer the licence to another person or removal to other premises.

Amend section 62(7) to allow the cancellation of a conditional grant if not completed within the time allowed.

Judges Comments

Section 62 : this proposal raises the question of the nature of a liquor licence and a conditional grant of a liquor licence under this Act. It is not a "technical" question and the proposal should not be implemented without careful consideration of its implications in the scheme of the Act as a whole. By way of preliminary comment, it is worth observing that the Act nowhere makes clearly expressed provision for the grant of a liquor licence conditional or otherwise. The Act does not make the nature of a liquor licence issued under the Act clear and whether it is divisible so that it should be regarded as a licence to a person and separately as a licence for the premises. The law under The previous legislation was clear but it is arguable that that is not now the case. Accordingly, no amendment of the sort suggested should be made without further consideration. To do so may only confound the issue.

Phillips Fox's Comments

Under the Liquor Act 1970, that Act made provision for the grant of a Provisional Certificate before a licence came into operation. The Provisional Certificate was held by the Supreme Court not to be a licence. We believe it is retrogressive to provide that a licence "does not exist" until the condition as to completion is satisfied. The conditional grant of a licence for incomplete premises is founded upon the basis that a licence is actually granted which is, however, subject to certain terms and conditions, one of which is the completion of the premises. If section 62 is amended to provide that the licence does not exist until premises are completed, various other amendments will have to be made to provide for the rights of the holder of the "non-existent licence".

8. GENERAL RIGHT OF OBJECTION

Section 73

Clarify section 73(1) of the Act, to provide that interveners under section 69 (but not section 70) are deemed to be parties to proceedings in which they have intervened, for the purposes of reviews or appeals.

Provide that the Licensing Authority may grant leave for substitution of an objector before the matter is determined, where the objector is a licensee and has obtained that licence between the date of application and the hearing date.

Provide that all notices of objection must be served on the applicant by or on behalf of the objector, and may be signed by a solicitor acting for the objector.

Provide that the Authority's discretions under (5) and (6) do not apply if the application is one that does not have to be advertised.

Judge's Comments

Subsection (1) : agreed. This proposal also requires amendment to the definition of "party" in section 3. Clarification is also necessary of a separate question whether the council of a municipality intervening in proceedings under section 69(7) or a local health authority under section 69(8) may rely on the grounds of objection under section 74(1).

Substitution of an objector : agreed.

Service of notice of objection : agreed.

Subsection (5) & (6) : this proposed amendment does not explain the purpose of the proposal which is to negate the decision of the Court in the Explorer Cruise Lines case reported at (1990 5 State Reports) WA 297, a copy of which is attached. This is not a "technical" amendment. It is a matter of policy upon which I make no further comment.

Phillips Fox's Comments

We do not consider that the Director should have the power to refuse to deal with an application which does not, as the example is given, have filed with it, the necessary planning certificates. Such a provision is onerous, impractical and contrary to the object of the Act suggesting procedures should be "flexible".

9. APPLICATION FOR REMOVAL

Section 81

Provide that the waiver under (4) may be granted only on application by the applicant, so that it may be required to be advertised under section 67(2).

Judge's Comments

Subsection (4) : the purpose of this amendment is not clear and it is therefore difficult to comment. the place of section 81(4) in this Act has considerable implications and any amendment to it should not be regarded as "technical".

10. DISPUTES AS TO LEASES

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.

Judge's Comments

Section 89 : I have already observed that the place of this section in the scheme of the Act requires reconsideration. It is a matter of policy upon which I make no comment.

11. APPROVAL OF PROFIT SHARING

Section 104

In (2), add to the list of profit sharing exceptions disbursement by way of dividends to a company shareholder or benefits to approved beneficiaries under trusts related to the licence. (where the licensee is a body corporate, the Act already covers the situation).

In (3)(b) include the holder of an exempted producer's certificate to allow unlicensed agents to be appointed.

Phillips Fox's Comments

The words "business carried on under or in relation to a licence", should be defined either under this section or in the definition section 3 to make it clear that the business carried on is, for instance, in relation to a tavern licence, also inclusive of any kitchen operated under that licence or in the case, for instance, of a cabaret, the entertainment component as well as the provision of liquor.

12. LICENCES TO BE PRODUCED AND NAMES EXHIBITED

Section 116

In relation (1), also provide that any purported appointment of an attorney to operate or deal with a licence on behalf of a licensee is void. The whole of (1) should be specified to apply retrospectively, including to before the new Act commenced.

Phillips Fox's Comments

The retrospectivity suggestion is counterproductive and likely to create substantial difficulties in relation to existing commercial arrangements entered into under the present Liquor Licensing Act or previous legislation.

FORMAL SUBMISSIONS RECEIVED

1. W.A. Hotels & Hospitality Association Inc.
2. Liquor Industry Council of W.A.
3. Ridgewell Holdings Pty Ltd
4. Cabaret Owners' Association
5. G. R. Chambers
6. West Coast Wine Cellars Pty Ltd
7. The Australian Associated Brewers Inc.
8. Oldfield Knott Architects Pty Ltd
9. Distilled Spirits Industry Council of Australia Inc.
10. Dalden Properties Pty Ltd
11. The Swan Brewery Company Limited
12. Ashbrook Estate Pty Ltd
13. Lowmond Pty Ltd
14. The Association of Licensed Clubs W.A. Inc.
15. Wine Industry Association of W.A. (Inc)
16. Licensed Stores Association of W.A. (Inc)
17. Restaurant & Caterers Association of W.A. Inc.
18. Margaret River Wine Industry Association Inc.
19. Carlton & United Breweries Ltd
20. Serenity Holdings Pty Ltd
21. Liberty Liquors
22. Radisson Observation City Hotel
23. B. Jones & D. Mack
24. Happs Pty Ltd (Happs Winery)
25. Gloucester Ridge Vineyard
26. Liquor Trade Union
27. Office of Racing & Gaming
28. Director of Liquor Licensing
29. Liquor & Gaming Branch of the W.A. Police
30. G. Crocket, partner, Corrs Chambers Westgarth, solicitors
31. Messrs Phillips Fox (Solicitors)
32. Messrs Freehill Hollingdale & Page (Solicitors)
33. Law Society of W.A.
34. McLeod & Co (Solicitors)
35. Alcohol Advisory Council of W.A. Inc.
36. W.A. Alcohol and Drug Authority
37. Goldfields Women's Health Care Centre
38. Goldfields Health Services - Health Department of W.A.
39. The W.A. Council of Social Services Inc.
40. Perth Women's Centre
41. National Centre for Research into the Prevention of Drug Abuse
42. Daughters of Charity - Kalgoorlie
43. Kimberley Health Region - Health Department of W.A.

44. M. Martin
45. L. M. Harding
46. Country Community Physicians Council
47. W.A. Network of Alcohol and other Drug Agencies
48. Public Health Association of Australia
49. The Australian Medical and Professional Society on Alcohol and other Drugs
50. Serenity Lodge
51. Alcohol Action Advisory Committee - Halls Creek
52. De Paul Day Centre (Daughters of Charity)
53. Injury Control Council of W.A. (Inc)
54. Health Department of W.A.
55. Women's Christian Temperance Union of W.A. Inc. (Albany)
56. Ngunytju Tjitji Pirni
57. Kalgoorlie Regional Hospital
58. Aboriginal and Torres Strait Island Commission - Yarleyel Regional Council
59. Salvation Army - Bridge Program Intake Centre
60. Australian council of Health, Physical Education and Recreation Inc.
61. Pilbara Youth Services Inc.
62. Nursing Staff - Aboriginal Community
63. Perth City Mission
64. Whitford Women's Health Centre
65. Brewer Street Welfare and Advocacy Service
66. Aboriginal Legal Service of W.A, Perth Aboriginal Medical Service, Aboriginal Advisory Council Royal Commission Reference Group at the National Centre for Research into the Prevention of Drug Abuse.
67. Shire of Williams
68. City of Canning
69. Shire of Irwin
70. City of Fremantle
71. City of Gosnells
72. City of Perth
73. West Australian Municipal Association
74. Kalgoorlie - Boulder Chamber of Commerce
75. Shire of Halls Creek
76. City of Melville
77. Shire of Meekatharra
78. Australian Institute of Environmental Health (W.A. Division)
79. City of Armadale
80. City of Rockingham
81. Town of East Fremantle
82. City of Nedlands
83. Shire of Peppermint Grove
84. City of Subiaco
85. M. Alexander
86. Social Workers, Public Hospital (petition)
87. Inspector I. Duggan

88. A. H. Makin
89. N. J. Cornish
90. K. Cannon
91. PL & LJ Forrest
92. Sky Channel
93. S. Harley
94. J. Dowson
95. Messrs Forbes and Fitzhardinge (Architects & Planners)
96. B. Newell
97. W.A. Music Industry Association
98. A. Hine
99. P. Sheridan
100. M. DiGregorio
101. A. Lloyd
102. Thompson Ong & Associates (Architects & Planners)
103. Fathers T. Pires & P. Toohey (Parish Kalgoorlie - Boulder)
104. W.A. Tourism Commission
105. G. Lysle
106. T. James
107. V. Kennedy
108. Small Business Development Corporation
109. A. Sewell
110. S. de la Hunty
111. L. Cook
112. J. White
113. R. Chapple
114. Taxi Control Board of W.A.
115. G. Catchpole
116. Australian Federation of Travel Agents Ltd
117. J. Henderson
118. P. Davenport
119. R. Hamilton
120. Office of Women's Interest
121. J. Gracia
122. A. Cable
123. A. Dufty
124. F. Robinson
125. A. Fehervary
126. J. Davies
127. Geraldton Resource Centre
128. Royal Australian Air Force Association
129. JA & SL Turner
130. E. Romato
131. YMCA (Inc) & Youth Services (Eastern Goldfields)
132. A. Zinnecker
133. Womens Christian Temperance Union of W.A. Inc. (Perth)
134. 956 form letters

**SUBMISSIONS RECEIVED AFTER CLOSING DATE
(26 November 1993)**

1. City of Stirling
2. Town of Claremont
3. East Pilbara Shire Council
4. A. Herlihy
5. The Australian Association of Social Workers Ltd
6. A. Lee
7. E. Tapping
8. I. Cameron
9. Shire of Gingin
10. Australian Medical Association
11. G. Burton
12. C & G Good
13. Department of Community Development
14. Perth Hills Vignerons' Association (Inc.)
15. Bridgetown Club
16. M. Di Gregono
17. Mingenew Shire Council
18. C. Burger
19. Shire of Wyndham - East Kimberley
20. Family Support Association
21. G. Thomas
22. J. Burns
23. I. Bacon
24. Perth Jazz Society
25. Shire of Swan
26. J. Drinkwater
27. T. Blechynden
28. Inspector I Higgins - Regional Police Office Broome
29. Western Australian Police Union of Workers
30. Mr & Mrs D. Hutchison
31. 35 form letters