

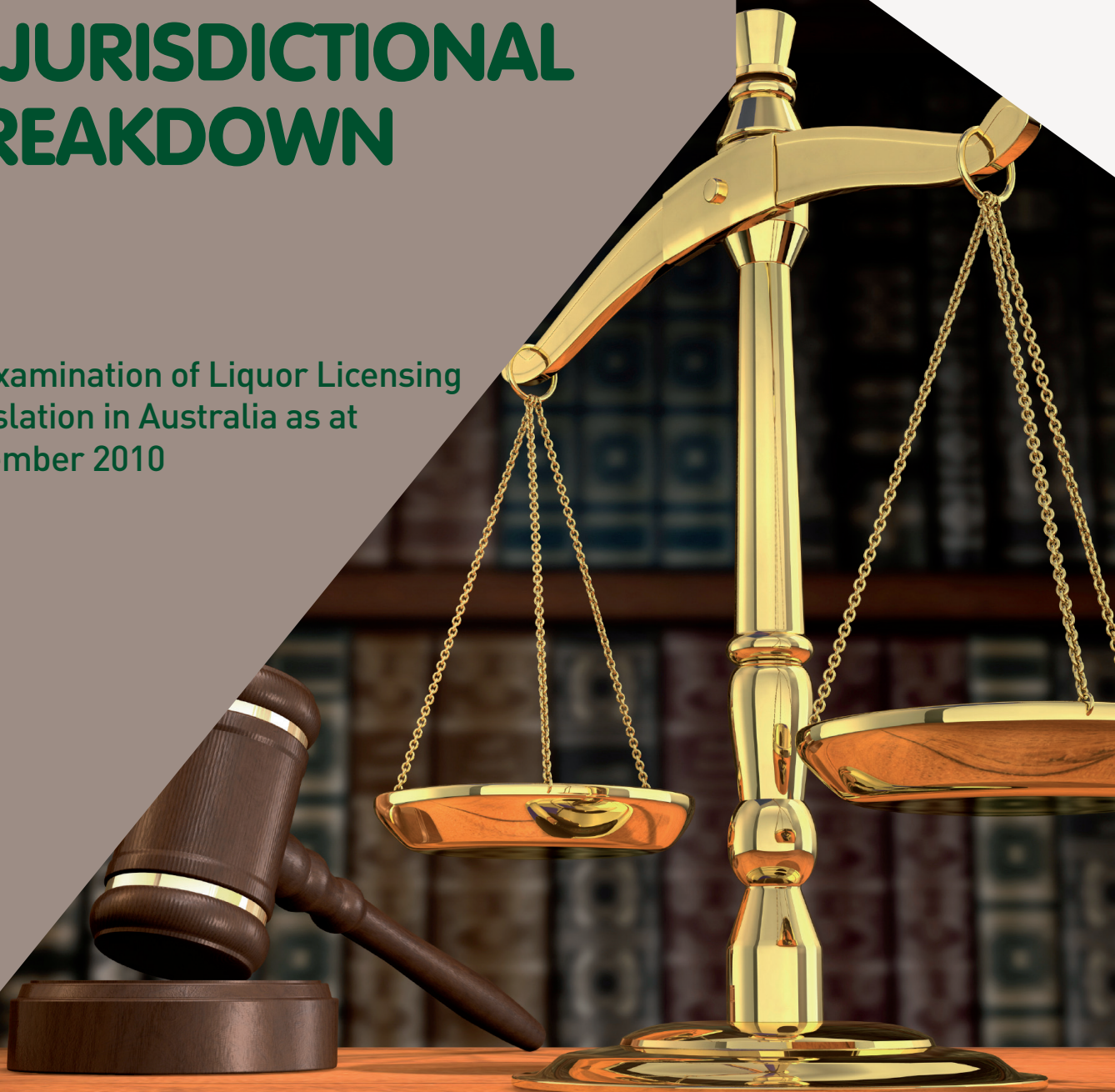
LIQUOR LICENSING LEGISLATION IN
AUSTRALIA: PART 2

A JURISDICTIONAL BREAKDOWN

An examination of Liquor Licensing
Legislation in Australia as at
December 2010

Allan Trifonoff • Rachel Andrew • Tania Steenson • Roger Nicholas • Ann M Roche

Commissioned by the Intergovernmental Committee on Drugs through
the National Drug Strategy Cost Shared Funding Model



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SOUTH AUSTRALIA POLICE
KEEPING SA SAFE



**Government
of South Australia**



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Australia's National Research Centre
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Citation Details:

Trifonoff, A., Andrew, R., Steenson, T., Nicholas, R. and Roche, A.M. (2011). *Liquor Licensing Legislation in Australia: A Jurisdictional Breakdown*. National Centre for Education and Training on Addiction (NCETA). Flinders University, Adelaide, SA.

ISBN: 978-1-876897-44-4

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Published by the National Centre for Education and Training on Addiction
www.nceta.flinders.edu.au

Design and Layout by Inprint Design
www.inprint.com.au



Acknowledgements

This report was commissioned by the Intergovernmental Committee on Drugs through the National Drug Strategy Cost Shared Funding Model.

NCETA would like to thank Senior Sergeant Tim Pfitzner, Assistant Commissioner Bronwyn Killmier, Ms Fiona Bruce and the staff of the Drug and Alcohol Policy Section, South Australia Police for their support with the wider project. In addition we would like to thank South Australia Police for its generous contribution towards the cost of publishing and printing the project reports.

The input of the members of the Project Advisory Group is also gratefully acknowledged:

Senior Sergeant Tim Pfitzner, South Australia Police
Chief Inspector Guy Haberley, New South Wales Police
Inspector Andrew Jay, Victoria Police
Acting Inspector Brad Little, Queensland Police
Mr Daniel Di-Giuseppe, Western Australia Police
Ms Debra Salter, Tasmania Police
Brevet Sergeant Scott Mitchell, Northern Territory Police
Acting Superintendent Dennis Gellatly, ACT Policing
Mr Leon Atkinson-MacEwan, Liquor and Gaming Branch, Department of Treasury and Finance, Tasmania

We would also like to thank Tarryn Gagliardi, Administrative Assistant and Paula Wilson, Project Officer, NCETA, for assisting with the preparation of this document and Karen Brandon, Administrative Assistant, NCETA, for providing administrative support throughout the project. The document was proof read by Dr Campbell Aitken of *Express Editing Writing and Research*.

This report has been provided under the oversight of the Intergovernmental Committee on Drugs and is a product of collaboration between governments under the National Drug Strategy.

Disclaimer

The opinions expressed in this document are those of the authors and do not necessarily represent the views of the police services and other agencies that participated in the study from which this document was derived. In addition, they do not necessarily represent the views of the former Ministerial Council on Drug Strategy, the Intergovernmental Committee on Drugs or South Australia Police.

Please note that legislation is dynamic and may change but was correct at the time of writing this report. Readers are advised to check with their local jurisdiction for any revisions to the relevant liquor licensing legislation subsequent to December 2010. Since this document represents a historical “snap shot in time” of liquor licensing legislation in Australia it has been written in the past tense. Importantly however, the use of past tense should not be taken to imply that the legislation and other arrangements described herein no longer apply.

This document is not a legal interpretation or analysis of the liquor licensing legislation which exists in Australian states and territories. Statutory provisions are broadly provided as a means of comparing the legislative arrangements in each jurisdiction, as well as contextualising the experiences and expectations of the interviewees. To enable comparison across jurisdictions generic headings are utilised throughout the document, and in some instances, long statutory sections have been condensed. Readers are advised to seek further advice from the relevant authority in their jurisdiction regarding any liquor licensing matters which may impact them.



Preface

This publication is part of a larger project initiated under the former Ministerial Council on Drug Strategy (MCDS) Cost Shared Funding Model, now administered under the Intergovernmental Committee on Drugs, National Drug Strategy, Cost Shared Funding Model. In April 2009 the MCDS approved South Australia Police as the lead agency to oversee a project to review liquor licensing legislation in each Australian jurisdiction.

South Australia Police contracted the National Centre for Education and Training on Addiction at Flinders University in South Australia to undertake the project.

The project, undertaken between March 2010 and February 2011, involved an extensive literature review, a comprehensive examination of each Australian state and territory's liquor licensing legislation, data collection systems and interviews with key informants. Three publications have been developed from this project¹.

Part 1:

Trifonoff, A., Andrew, R., Steenson, T., Nicholas, R., and Roche, A.M. (2011). *Liquor Licensing Legislation in Australia: An Overview*. National Centre for Education and Training on Addiction (NCETA), Flinders University, Adelaide, SA.

Part 2:

Trifonoff, A., Andrew, R., Steenson, T., Nicholas, R. and Roche, A.M. (2011). *Liquor Licensing Legislation in Australia: A Jurisdictional Breakdown*. National Centre for Education and Training on Addiction (NCETA), Flinders University, Adelaide, SA.

Part 3:

Trifonoff, A., Andrew, R., Steenson, T., Nicholas, R., and Roche, A.M. (2011). *Liquor Licensing Legislation in Australia: Police Expectations and Experiences*. National Centre for Education and Training on Addiction (NCETA), Flinders University, Adelaide, SA.

This document, *Liquor Licensing Legislation in Australia: A Jurisdictional Breakdown*, examines liquor licensing legislation and arrangements in Australian jurisdictions. Part 1 presents the background and introduction to the project, the methodology, findings of the literature review, and a summary of the legislation and associated structures in each Australian jurisdiction. The major findings from the consultations with police personnel are presented in Part 3.

The aim of the project was to review the enforcement provisions in the liquor licensing legislation of all Australian states and territories. A national review was undertaken to identify the key features of Australia's diverse liquor licensing legislation. In addition, these issues were examined from a law enforcement perspective.

The objectives of the project were to:

- identify the key features of liquor licensing legislation in each state and territory
- identify examples of good practice in relation to the drafting and operation of liquor licensing legislation

¹ These three reports are designed to be used as both stand-alone documents, as well as a complementary suite of reports on liquor licensing in Australia.

- identify the perspectives and needs of law enforcement personnel in relation to liquor legislation to ensure that they are able to adequately perform their role in preventing and reducing alcohol-related crime and associated harms
- examine and recommend improvements to liquor licensing legislation across all Australian jurisdictions.

The project was designed to provide an insight into the perspectives of a range of stakeholders, especially police, concerning the capacity of existing liquor licensing legislation and associated administrative and judicial structures to reduce acute harms associated with alcohol consumption in Australia.



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Executive Summary

This document is part of a series of three reports examining liquor licensing legislation in Australia as at December 2010 undertaken by the National Centre for Education and Training on Addiction (NCETA) at Flinders University. NCETA conducted an extensive literature review, a comprehensive examination of each Australian state and territory's liquor licensing legislation and data collection systems and interviews with key informants. This report is the second in the series; it presents an overview of liquor licensing legislation in Australia. Details of the number of licensed premises, changes over time (where available), and an outline of police alcohol-related data collection systems are contained in this report.

The project examined liquor legislation in each of Australia's eight jurisdictions, together with issues related to its application from a policing and enforcement perspective. It involved in-depth interviews with 60 key informants drawn from all jurisdictions, 55 of whom were police officers/ personnel, with the balance comprising liquor licensing officials and other key stakeholders with an interest in liquor licensing legislation. This is the first time such an examination of these issues has been undertaken largely from a law enforcement perspective.

The first document in the series, *Liquor Licensing in Australia: An Overview*, describes the key elements of each jurisdiction's liquor licensing legislation as at December 2010. It also outlines the nature and purpose of the project, the

context and background of the issues addressed and includes an extensive literature review of key contextual issues, covering alcohol availability, alcohol-related harm, initiatives to curb these harms, public amenity and perception.

The third document in the series, *Liquor Licensing in Australia: Police Expectations and Experiences*, presents the results of consultations. The legislation and associated strategies that assist police with their efforts to regulate licensed premises, as well as factors that hinder effective enforcement, are outlined in that report.

Taken together, these three reports are intended to provide policy makers with information upon which to base future decisions on liquor licensing issues.

General Liquor Licensing Principles

All Australian states and territories contain statutory provisions that regulate:

- who may sell and supply alcohol
- the commercial practices of licensed premises
- offences and duties of licensees
- disciplinary procedures and penalties
- who may consume and access alcohol
- where alcohol may or may not be consumed and/or possessed.

The relevant legislation is described in detail in *Liquor Licensing Legislation: An Overview* (Part 1, Chapter 4).

Liquor Licensing in Context

Liquor licensing legislation in Australia is developed independently in each state and territory, and is characterised by a high degree of diversity and variation. In addition, the legislation is continually changing to reflect shifts in commercial and community needs, priorities and concerns.

Australia’s liquor licensing legislation cannot be viewed in isolation. It was assessed in this project in the context of:

- the structures and resources available to implement and enforce it
- the decision-making and review processes
- licensee disciplinary processes, including the degree of specialist knowledge of judicial members involved in the process
- the extent to which enforcement of legislation is a priority
- the ways in which key stakeholders perceive the objectives of the legislation

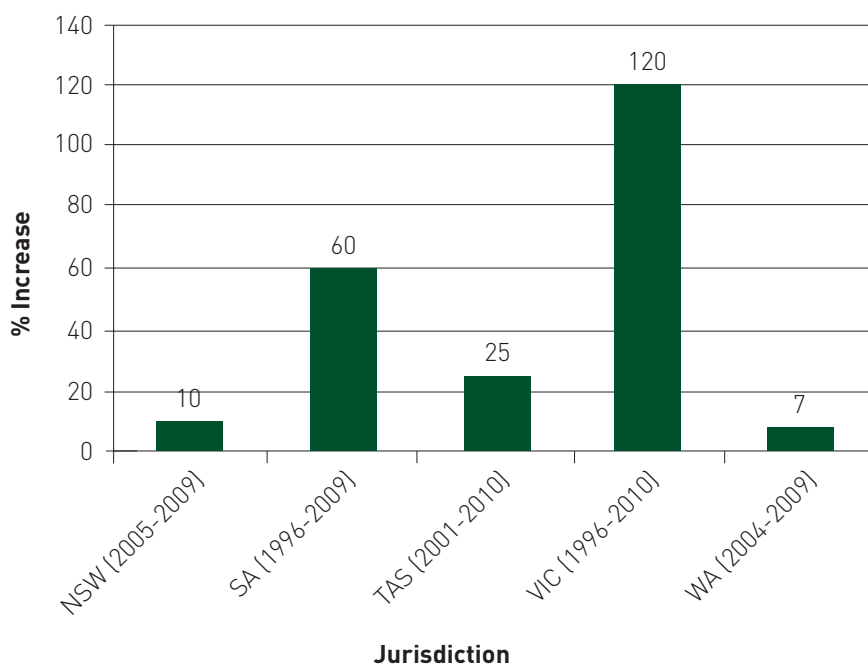
- the extent and nature of legislative powers that sit outside of liquor licensing legislation that can also be used to reduce alcohol-related harm
- the degree of influence that key stakeholders have over the nature and implementation of liquor licensing legislation.

Key features of the legislation are displayed in Tables 2, 3 and 4 below.

Availability of Alcohol in Australia

Alcohol availability, as reflected in the number of liquor licences and licensed premises, has consistently increased over the past 10 to 15 years in Australia.

Figure 1 shows the percentage growth in liquor licences or licensed premises in New South Wales, South Australia, Tasmania, Victoria and Western Australia. The increase in the number of liquor licences and licensed premises is indicative of the extent to which alcohol has become more available over the last decade.



Note that:

- reporting time-spans vary across each jurisdiction
- VIC and WA figures show data for licensed premises not liquor licences
- data were not accessible for the other jurisdictions at the time of writing

Figure 1: Percentage growth in liquor licences in NSW, SA and TAS and licensed premises in Vic and WA

Consistent with the growth in numbers of liquor licences, the number of licences per head of population aged over 18 years has also increased. At the time of writing there were approximately 53,533 liquor licences in Australia. The total number of licences/licensed premises in each state is shown in Table 1, together with the ratio of licences per head of population aged 18 years and over.

On 30 June 2010, the Australian population aged 18 years and over was 16,948,232. Across Australia, there was a licensed premise for every 317 persons over 18 years. The highest number of licensed premises per head of population were found in South Australia and Victoria with a liquor licence for every 224 and 229 persons over 18 years, respectively.

Table 1: Number of Australian liquor licences by number of persons aged 18 years and over

Jurisdiction	Number of current liquor licences	Australian Population ≥ 18 years old ⁱ	Population ≥ 18 years per licensed premises
Australian Capital Territory	650 ⁱⁱ	279,273	430
New South Wales	15,193 ⁱⁱⁱ	5,601,746	369
Northern Territory	622 ^{iv}	166,626	268
Queensland	6,770 ^v	3,428,226	506
South Australia	5,752 ^{vi}	1,288,256	224
Tasmania	1,433 ^{vii}	388,984	271
Victoria	18,872 ^{viii}	4,316,946	229
Western Australia	4,241 ^{ix}	1,757,448	414
TOTAL	53,533^x	16,948,232	317

i Source: Australian Bureau of Statistics. Accessed from: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3201.0Jun%202010?OpenDocument> on 11 January 2011.

ii Source: ACT Office of Regulatory Services. As at 20 December 2010.

iii Source: NSW Department of the Arts, Sport and Recreation (2009). As at 30 June 2009.

iv This is the number of full and special continuing licences (which trade for less than 30 hours per week). This number does not include liquor licences for one-off events. Source: the Northern Territory Licensing Commission Annual Report 2010/2011, pages 9 and 14. The figures refer to the year ending 30 June 2010.

v Source: Queensland Office of Regulatory Policy: Department of Employment, Economic Development and Innovation. As at 30 June 2009.

vi Source: Office of the South Australian Liquor and Gambling Commissioner (as cited in SA Police, 2010). As at 30 June 2009.

vii Source: Tasmania Department of Treasury and Finance: Retrieved 23 November 2010 from: <http://www.tenders.tas.gov.au/domino/dtf/dtf.nsf/fcce52186e9867674a25665500244b46/2a23cfeaac81a794ca257354001b2152?OpenDocument>. As at 10 August 2010.

viii Source: www.justice.vic.gov.au as at 30 September 2010.

ix Source: Department of Racing, Gaming and Liquor (2009). *Annual Report*. East Perth: Department of Racing, Gaming and Liquor (2009). As at 30 June 2009.

x This figure should be regarded as an approximation because the point in time at which these counts occurred varied between jurisdictions. Also note that this does not include the 1,484 Special Continuing Licences in the Northern Territory. In addition, some of these 53,533 licences may be inactive or only sell alcohol for limited periods of time.

Many licensed premises are not problematic; most are well run and operate within the law. However, the increased availability of alcohol in general (especially where associated with cheaper prices and easier access to take-away products) can exacerbate alcohol-related problems in the community, further highlighting the importance of both the role of liquor licensing legislation and its effective and appropriate enforcement.

Summary of the Legislation (Part 1 and Part 2)

This legislative review found that:

- despite the differences that exist in liquor licensing legislation across Australia there were strong common themes across all jurisdictions
- appropriate governance arrangements are pivotal to the administration of liquor licensing legislation in Australia
- trading hours for licensed premises were legislated in all states
- all Australian jurisdictions had provisions in their liquor licensing legislation that allowed licensees, police, courts and government authorities to prohibit certain people from attending licensed premises
- all jurisdictions provided a method by which to instigate disciplinary proceedings against licensees. In some states and territories, this was an unlimited right, while in others, the right was invested in designated people and bodies
- serving and supplying an intoxicated and/or drunk person was an offence in every state and territory. There were, however, differences among jurisdictions in regard to how the terms drunk and intoxicated were defined, the context in which those terms were used and the elements needed to prove that an offence had been committed
- lockout conditions had been adopted in some Australian jurisdictions in an attempt to increase community safety by reducing high levels of alcohol-related problems in specific areas.

Summary of Consultation Findings (Part 3)

Despite the diverse legislative, geographical, historical and structural differences that existed in liquor licensing legislation and regulatory mechanisms across Australia, strong common themes emerged from the key informant consultations as summarised below.

Preventing Alcohol-Related Harm

1. Police have become active players and committed stakeholders in relation to alcohol and community safety, and play a central role in the prevention and resolution of alcohol-related harm.
2. Police placed a high priority on addressing alcohol-related community harms associated with licensed premises.

Principles of Liquor Licensing Legislation

3. Harm minimisation was a central tenet² of the relevant legislation and regulatory mechanisms in each of Australia's eight jurisdictions.
4. Police strongly supported harm minimisation principles in relation to the legislation and regulations surrounding licensed premises. This was particularly evident in relation to public amenity and public safety issues.
5. While very supportive of the harm minimisation principles expressed in the legislation, police were not necessarily of the view that the legislation provided the requisite tools or latitude to deliver harm minimisation outcomes.
6. Liquor licensing legislation in Australia was largely viewed by police as unnecessarily complex and challenging to enforce. Police highlighted the complexity of liquor licensing legislation, the associated regulations, codes of practice and other industry standards.

² Whether stated explicitly within the "black letter" law of the legislation or reflected in its principles.

7. From the perspective of police, most liquor licensing regimes did not offer an adequate balance between empowering police or regulatory authorities to reduce alcohol-related harms and the need to protect the interests of the alcohol industry.

The Challenge of Intoxication

8. Dealing with intoxication at a conceptual and practical level was a priority for police and one of the most challenging issues that they face. While serving and supplying an intoxicated and/or drunk person was an offence in every state and territory, jurisdictions defined these terms in different ways and applied different evidentiary burdens in relation to an offence of intoxication.

Liquor Licensing Legislation Review and Reform

9. There was consensus that:
 - in some jurisdictions aspects of the liquor licensing legislation were outdated and needed review and fundamental reform
 - the legislation was complex and continually evolving
 - there was strong support for greater involvement by police in legislative and regulatory reform processes
 - liquor licensing legislation should be written in language that is easily understood by police, liquor licensing authorities, licensees and members of the public
 - liquor licensing legislation should focus more broadly on patterns and levels of supply at the community level.

The Roles of Police and Liquor Licensing Authorities

10. Ambiguity surrounding the respective roles of police and liquor licensing authorities in enforcing liquor licensing legislation was highlighted. A number of police noted that there would be a greater understanding of

all key stakeholders' roles (including police, licensing authorities/regulatory bodies and licensees) if they were clearly outlined in liquor licensing legislation.

11. Across all jurisdictions, the relationship between police and liquor licensing authorities was identified as having improved substantially in recent times with greater recognition of respective roles and willingness to work together.
12. A need was identified for liquor licensing authorities to be more adequately resourced. From a policing perspective, this would create greater opportunities for joint operations with liquor licensing authorities.
13. Scope was identified for police to be more fully engaged in liquor licensing decision-making processes, such as raising objections to new licences or changes to existing licences. Participants supported improved police training in this area and provision of appropriate resources.

Partnerships

14. Partnerships were identified as crucial for effective implementation and enforcement of liquor licensing legislation. This included partnerships between police, liquor licensing authorities, the alcohol industry, local government and other stakeholders (such as transport, health and welfare agencies).
15. Respondents indicated that partnerships with the alcohol industry (such as through liquor accords) were important but noted that these relationships could not be substituted for strong enforcement of the legislation.

Effective Tools to Reduce Alcohol-Related Harm

16. Banning/barring orders were considered to have merit in reducing problems associated with licensed premises and warrant further attention.

17. Liquor infringement notices were regarded positively by police for their immediate impact and moderate resources requirement.
18. Police supported greater use of lockout provisions, particularly when utilised in conjunction with other measures and strictly enforced.
19. Risk-based licensing fee structures were regarded as a positive initiative because they imposed costs on licensed premises that were the source of most problems.

Centralised Police Licensing Enforcement Functions

20. Four of the eight police jurisdictions had developed a centralised licensing enforcement function, and a further two had similar models in place or planned.
21. Police organisations that had a centralised licensing enforcement unit, with oversight for matters related to the policing of licensed premises and associated alcohol-related problems, reported that these arrangements worked better than where there was no such centralised function. In the latter case, it was perceived that making “everyone” responsible for the complex area of liquor licensing meant in many cases that “no-one” was responsible.

Alcohol-Related Data Collection (see Table 6)

22. Participants highlighted the importance of police continuing to invest in improved alcohol-related data collection.
23. An opportunity existed for police agencies to build on recent investments in alcohol-related data collections and use that information to have a greater impact on liquor licensing decisions.
24. Wholesale data is an important aspect of any alcohol data collection and was identified as being of considerable potential benefit to police.

Criminal Intelligence

25. Participants expressed concern that licensing authorities were required under administrative law principles to provide applicants with notification about why their application was not granted.
26. Probity information provided by police about an applicant and their associates was sometimes of a classified nature and police did not wish to jeopardise ongoing criminal investigations by providing licensing authorities with this information.

Investing in Data Collection

27. Police indicated that their ability to collect data on alcohol-related crime, public disorder and amenity problems was central to their ability to understand and monitor liquor licensing-related matters and to inform decisions of liquor licensing authorities. Respondents also asserted that having a legislated requirement for jurisdictions to produce and provide wholesale sales data would assist policing efforts in this area.

Recommendations

A range of issues and strategies were identified by police that could improve their effectiveness in this area.

To achieve this, it is recommended that:

1. strategies be put in place to increase role clarity between police and liquor licensing enforcement bodies
2. relevant aspects of current and future legislation and regulations be developed to allow police to be more fully engaged in liquor licensing-related decision-making processes
3. police have greater involvement in legislative and regulatory reform processes
4. more resources, training and support be allocated to police to carry out their roles in relation to liquor licensing
5. a national annual forum be conducted to:
 - a. allow police the opportunity to identify the key features of liquor licensing legislation and its enforcement in their respective jurisdictions, and to share this information across jurisdictions
 - b. progress the implementation of recommendations 1 to 4 in a coordinated manner.

Table 2: Liquor licensing regulatory structures (December 2010)

	ACT	NSW	NT ⁱ	QLD
Legislation	<i>Liquor Act 2010</i>	<i>Liquor Act 2007</i>	<i>Liquor Act Northern Territory Licensing Commission Act</i>	<i>Liquor Act 1992</i>
Regulations	<i>Liquor Regulation 2010</i>	<i>Liquor Regulation 2008</i>	<i>Liquor Regulations</i>	<i>Liquor Regulation 2002</i>
Department	Department of Justice and Community Safety	Office of Liquor, Gaming and Racing, Communities NSW	Department of Justice	Department of Employment, Economic Development and Innovation
Administrative authority	Office of Regulatory Services	Casino Liquor and Gaming Control Authority (CLGCA); Office of Liquor Gaming and Racing ⁱⁱ	Director of Licensing, Licensing, Regulation and Alcohol Strategy Division	Office of Liquor, Gaming, and Racing (OLGR)
Decision-making authority	Commissioner for Fair Trading, Office of Regulatory Services	Casino Liquor and Gaming Control Authority (CLGCA)	Licensing Commission	Chief Executive, Office of Liquor, Gaming, and Racing (OLGR)
Review decisions/ hear appeals from decisions	ACT Civil and Administration Tribunal (ACAT)	Communities NSW; Casino Liquor and Gaming Control Authority (CLGCA)	Licensing Commission	Queensland Civil and Administrative Tribunal (QCAT)
Breaches of conditions/ offences/ complaints	Commissioner (complaints) ACAT (occupational discipline) Magistrates' Court/ Infringement notices (offences)	Local Court (summary offences & breach of conditions) Director-General, Communities NSW (complaints)	Magistrates' Court (summary offences) Licensing Commission (complaints)	Magistrates' Court (summary offences) Chief Executive (disciplinary action)

i Please note that the Northern Territory was also subject to the provisions of the *Northern Territory National Emergency Response Act 2007* (Cth).

ii These bodies shared a dual administrative function.

Table 2 continued: Liquor licensing regulatory structures (December 2010)

	SA	TAS	VIC	WA
Legislation	<i>Liquor Licensing Act 1997</i>	<i>Liquor Licensing Act 1990</i>	<i>Liquor Control Reform Act 1998</i>	<i>Liquor Control Act 1988</i>
Regulations	<i>Liquor Licensing (General) Regulations 1997ⁱⁱⁱ</i>	<i>Liquor Licensing Regulations 2003</i> <i>Liquor Licensing (Fees) Regulations 2005</i> <i>Liquor Licensing (Infringement Notices) Regulations 2008</i>	<i>Liquor Control Reform (Prescribed Class of Premises) Regulations 2008</i> <i>Liquor Control Reform (Prohibited Supply) Regulations 2005</i> <i>Liquor Control Reform Regulations 2009</i>	<i>Liquor Commission Rules 2007</i> <i>Liquor Control Regulations 1989^{iv}</i>
Department	Attorney-General's Department, Financial and Business Services Division	Department of Treasury and Finance	Department of Justice	Department of Racing, Gaming and Liquor (RGL)
Administrative authority	Office of the Liquor and Gambling Commissioner	Liquor and Gaming Branch, Revenue, Gaming and Licensing Division	Responsible Alcohol Victoria	Director-General, Department of Racing, Gaming and Liquor (RGL)
Decision-making authority	Liquor Licensing Commissioner/Licensing Court ^v	Commissioner for Licensing/Licensing Board	Director of Liquor Licensing/Liquor Licensing Panel ^{vi}	Director of Liquor Licensing/The Liquor Commission
Review decisions/hear appeals from decisions	Licensing Court	Licensing Board/Supreme Court of Tasmania	Victorian Civil and Administrative Tribunal (VCAT)	The Liquor Commission
Breaches of conditions/offences/complaints	Licensing Court (disciplinary matters) Magistrates' Court (summary offences)	Liquor and Gaming Branch Magistrates' Court (when prosecution for an offence is required)	VCAT (inquiries and disciplinary matters) Magistrates' Court (summary offences)	Magistrates' Court (summary offences) The Liquor Commission (disciplinary matters)

iii *Liquor Licensing (Dry Areas—Long Term) Regulations 1997; Liquor Licensing (Dry Areas—Short Term) Regulations 1997.*

iv *Liquor Control (Bayalu Restricted Area) Regulations 2010; Liquor Control (Irrungadji Restricted Area) Regulations 2010; Liquor Control (Jigalong Restricted Area) Regulations 2009; Liquor Control (Juwurlinji Restricted Area) Regulations 2009; Liquor Control (Koongie Park Restricted Area) Regulations 2010; Liquor Control (Kundat Djaru Restricted Area) Regulations 2010; Liquor Control (Nicholson Block Restricted Area) Regulations 2010; Liquor Control (Noonkanbah Restricted Area) Regulations 2009; Liquor Control (Oombulgurri Restricted Area) Regulations 2008; Liquor Control (Punmu Restricted Area) Regulations 2010; Liquor Control (Wangkatjungka Restricted Area) Regulations 2008; Liquor Control (Yakanarra Restricted Area) Regulations 2010.*

v The Licensing Court (SA) determined contested applications.

vi The Liquor Licensing Panel considered contested applications and reported its findings (including recommendations) to the Director of Liquor Licensing.

Table 3: Key features of Australian liquor licensing legislation and regulation by jurisdiction

	ACT	NSW	NT ^{iv}	QLD	SA	TAS	VIC	WA
No of licence types	8 + 2 permits	6 ⁱⁱ	3 ^v	5 licences ^{xi} + 5 permits	11	5 licences + 4 permits	8 licences + 2 temporary licences + 1 permit ^x	9
Fee structure	Risk-based	Set fees	Set fees	Risk-based	Set fees	Set fees ^{xvii}	Risk-based	Graduated fees
Harm minimisation objectives in Act	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Accords	No	Yes	Yes ^{vi}	Yes	Yes, voluntary	No	Yes	Yes
Infringement notices	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Barring orders	No	No	Yes	No	Yes	Yes	No	Yes
Banning notices	No	Yes	Prohibition Order Exclusion Order	Civil Banning Orders ^{xiii}	No	No	Yes	Prohibition Orders
Lockouts	Yes	Yes	Yes ^{vii}	Yes	Yes ^{xiv}	No ^{xviii}	Yes	Yes
Secondary supply legislation	Yes ⁱ	Yes	Yes ^{viii}	Yes	Yes ^{xv}	Yes ^{xix}	No	No
Public drunkenness a criminal offence	No	No	No ^{ix}	Yes ^{xiii}	No	No	Yes	No
Mandatory RSA	Yes	Yes	Yes ^x	Yes	No	Yes	Yes ^{xxi}	Yes
Licence duration	Expires ⁱⁱ	Continuing	Continuing	Continuing	Not stated ^{xvi}	Continuing	Renewed Annually	Continuing ^{xii}

Table 3: Key features of Australian liquor licensing legislation and regulation by jurisdiction

- i Under Section 204 of the *Liquor Act 2010* (ACT), it was an offence to supply liquor to a child or young person in a public place.
- ii Licences expired on a date determined by the Commissioner and could not be more than three years after issue. Expiry was determined with reference to its trading hour classification and/or occupancy loading. Both young people's events and permits expired on the day stated in the approval. Licensees had to apply to the Commissioner for their licence to be renewed at least 30 days before it expired.
- iii In NSW Community Impact Statements needed to be completed when applying for club, hotel, on-premises and packaged liquor licences.
- iv Since the completion of this report, the *Northern Territory Liquor Act* has been amended by the provisions of the *Alcohol Reform (Liquor Legislation Amendment) Act 2011* (Act No. 17, 2011) and *Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011* (Act No. 19, 2011). These provisions commenced on 1 July 2011. This table does not incorporate these recent amendments.
- v There were only two categories of licence contained within the legislation. However, a third category was issued to social clubs and like organisations. This was a continuing special licence.
- vi Inserted in 2010.
- vii Lockouts were not a statutory provision in the Northern Territory. However, the Northern Territory Licensing Commission had adopted a policy of imposing lockouts on licensed premises as part of its power to determine the conditions of a licence.
- viii In the Northern Territory, secondary supply offences were directed at preventing the sale, supply, and possession of liquor in restricted areas.
- ix In the Northern Territory, Section 128 of the *Police Administration Act* permitted police to hold a person who was intoxicated in a public place in protective custody until they were no longer intoxicated.
- x Even though mandatory Responsible Service of Alcohol was not a statutory provision, the Licensing Commission had adopted a policy mandating that all staff must have responsible service of alcohol training within one month of commencing employment. This was part of the licence conditions.
- xi There were five other sub-categories of licence which could be issued under the Commercial Other Licence category.
- xii Only applicable in declared Drink Safe Precincts.
- xiii Under the *Summary Offences Act 2005*, Section 10.
- xiv There were no provisions for lockouts under the South Australian *Liquor Licensing Act 1997*. However, lockouts could be imposed on individual premises under Section 43 of the Act.
- xv Under Section 117 of the South Australian *Liquor Licensing Act 1997*, it was an offence for a minor to consume or have possession of liquor in a public place, and it was an offence to supply liquor to a minor in a public place, unless the consumption or possession was in the company of an adult, guardian or spouse of a minor.
- xvi The South Australian legislation was unique in that neither the legislation nor the regulations contained any provisions regarding licence renewals and no fees were required to be paid on renewal.
- xvii Fees were paid annually.
- xviii While there were no provisions for lockouts in the *Liquor Licensing Act 1990* (TAS), lockout conditions could be imposed on an out-of-hours permit.
- xix Sale or Supply of Alcohol to Youths (*Police Offences Act 1935*).
- xx These primary licence types were required consistent with Sections 7 & 14 of the *Liquor Control Reform Act 1998*. Further sub-categories of licences were contained within Sections 10, 11A and 14.
- xxi In Victoria, following amendments to the *Liquor Control Reform Act 1998*, as from 1 January 2011, all new applicants and existing licensees and their staff were required to complete an RSA course approved by the Director of Liquor Licensing.
- xxii Licences continued in force unless they were surrendered under Section 94, or cancelled by the Licensing Authority in accordance with the provisions of the Act. A special facility licence expired when it was granted for an express period of time or when the Director determined that it was no longer necessitated. Occasional licences also expired in accordance with their terms, or on a specified date.

Table 4: Powers to remove, exclude, and prevent problem patrons from attending licensed premisesⁱ

State	Order	Behaviour	Authorised	Period	Extent of Prohibition
NSW	Self-exclusion Orders	Not specified.	Licensee. Individual.	Not specified	Specified in form
	Non-voluntary Exclusion Order (Refuse entry, remove from premises)	Intoxicated, violent, quarrelsome or disorderly, or whose presence on the licensed premises renders the licensee liable to a penalty under this Act. Smoking on any part of the licensed premises that is a smoke-free area. Uses or possesses, on the premises, a prohibited plant or a prohibited drug. May refuse access if in accordance with a condition of licence or liquor accord.	Licensee. Employee. Police Officer.	≤24 hours However, authorised person have right to refuse entry at any other time	Single premise
	Banning Orders	Satisfied person has repeatedly been intoxicated, violent, quarrelsome or disorderly on or in the immediate vicinity of licensed premises.	Casino, Liquor, Gaming, and Racing Authority. ⁱⁱ	≤6 months	Specified premises
	Power to remove or exclude	Intoxicated. Violent. Quarrelsome. Disorderly. Incapable of controlling own behaviour.	Licensees. Employees. Inspectors. Police.	12 hours	Single premise
NT ⁱⁱⁱ	Prohibition Orders	Applies to specified offences. Has conditions attached. See <i>Alcohol Court Act</i> .	Alcohol Court.	≤12 months	

i In the Australian Capital Territory it was an offence for people to refuse to leave after they had been requested to do so by the licensee, an employee of the licensee, or a crowd controller. Besides this implied power, there were no express provisions contained within the Act giving the licensee or anyone else a power to ban.

ii May be applied for by the Director-General, Commissioner of Police, a licensee who is a party to a local liquor accord, any other person (or class of persons) prescribed by the regulations.

iii Since the completion of this report, the *Northern Territory Liquor Act* has been amended by the provisions of the *Alcohol Reform (Liquor Legislation Amendment) Act 2011* (Act No. 17, 2011) and *Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011* (Act No. 19, 2011). These provisions commenced on 1 July 2011. This table does not incorporate these recent amendments.

Table 4 continued: Powers to remove, exclude, and prevent problem patrons from attending licensed premises

State	Order	Behaviour	Authorised	Period	Extent of Prohibition
NT	Banning Orders	Specified offence committed.	Police.	48 hours	Designated area All licensed premises in the designated area
	Exclusion Orders	Applies to specified offences. Has conditions attached. See <i>Alcohol Court Act</i> .	Courts of Summary Jurisdiction.	< 12 months	Designated area All licensed premises in the designated area Certain class of licensed premises in the designated area
QLD	Power to refuse entry, remove a person	Unduly intoxicated. Disorderly. Creating a disturbance.	Licentee. Permit-holder. Employees. Agents.	N/A	Single Premise
	Civil Banning Order	Person committed an act of violence, against another person or property, of such a nature that the act of violence would cause a person in the vicinity to reasonably fear bodily harm to any person or damage to property. Act of violence was committed: <ul style="list-style-type: none"> within the previous 12 month period in licensed premises, or in an area in the vicinity of licensed premises, located within a drink safe precinct Person did not have a reasonable excuse for committing the act of violence. 	Court authorised to make order when satisfied that unless the order is made, the person would pose an unacceptable risk to: <ul style="list-style-type: none"> the good order of licensed premises, and areas in the vicinity of licensed premises, located within a drink safe precinct; or the safety and welfare of persons attending licensed premises, and areas in the vicinity of licensed premises, located within a drink safe precinct. 	≤12 months	Declared DrinkSafe Precincts
SA	Power to refuse entry, remove a person	Intoxication. Speech, balance, coordination or behaviour is noticeably impaired due to consumption of liquor. Offensive or disorderly behaviour.	Licentee. Responsible person. Police officer. Approved crowd controller.	≤24 hours	Single premise

Table 4 continued: Powers to remove, exclude, and prevent problem patrons from attending licensed premises

State	Order	Behaviour	Authorised	Period	Extent of Prohibition
SA	Licensee Barring Notices	<ol style="list-style-type: none"> 1. Welfare of the person, or the welfare of a person residing with the person, is seriously at risk due to the consumption of alcohol. 2. Person commits an offence, or behaves in an offensive or disorderly manner, on, or in an area adjacent to, the licensed premises. 3. Any other reasonable ground. 	Licensee. Responsible person.	<p>Indefinite period for reason 1</p> <p>First barring: ≤ 3 months</p> <p>Second barring: ≤ 6 months</p> <p>Commissioner may approve longer periods</p> <p>Third + barring: indefinite period</p>	Single premise
	Commissioner of Police Barring Notices	On any reasonable grounds.	Commissioner of Police.	Indefinite or specified period	<p>Specified premise</p> <p>Licensed premises of a specified class</p> <p>Licensed premises of a specified class within a specified area</p> <p>All licensed premises within a specified area</p>
	Police Officer Barring Notices	Same reasons as licensee barring orders.	Police officer. ^{iv}	<p>Same periods as licensee barring orders if authorised by an Inspector</p> <p>If authorised by a Sergeant, order applies for a period ≤ 72 hrs</p>	As Above
TAS	Request to leave	Violent, quarrelsome or disorderly behaviour. Disgusting, profane or foul language.	Licensee. Police Officer.	≤ 24 hrs	Single premise

^{iv} Notices needed to be authorised by an officer of or above the rank of Inspector. In some instances, the officer who authorised the notice could be a Sergeant or any police officer in charge, for the time being, of a police station.

Table 4 continued: Powers to remove, exclude, and prevent problem patrons from attending licensed premises

State	Order	Behaviour	Authorised	Period	Extent of Prohibition
VIC	Banning Notices	Specified offence.	Police.	≤72 hrs	Designated area All licensed premises in the designated area
	Exclusion Orders	Specified offence.	Courts.	≤12 months	Designated area All licensed premises/specified premises in the designated area
WA	Prohibition Order	Prove order is warranted due to person's actions.	Director of Liquor Licensing.	≤5 yrs	Specified in Order
	Barring Orders	Violent, disorderly, indecent behaviour. Contravention of any written law.	Commissioner of Police (power may be delegated to officers above rank of Inspector).	≤12 months	Specified licensed premises Specified class of licensed premises
	Power to refuse entry, sell liquor, and remove from premises	Person is or appears to be drunk. Offensive behaviour. Not conforming with relevant, reasonable, and notified dress standards. Reasonable belief and/or knowledge person: <ul style="list-style-type: none"> cannot or will not pay is quarrelsome or disorderly seeks to obtain liquor by begging is an associate of, a reputed thief, prostitute, supplier of unlawful drugs, or person convicted of an offence involving unlawful drugs or violence that is punishable by a term of imprisonment exceeding 3 years is or appears to be a person whose presence on the licensed premises will occasion the licensee to commit an offence under this Act. 	Licensees. Managers. Employees. Police.	≤24 hours	Single premise

Table 5: Definition of intoxication and drunk, offences and defences

State	Offence	Definition	Offender	Defence
ACT	A person commits an offence if the person supplies liquor to another person; and the other person is intoxicated; and the supply happens at licensed/ permitted premises.	A person is intoxicated if the person's speech, balance, coordination or behaviour is noticeably affected; and it is reasonable in the circumstances to believe that the affected speech, balance, coordination or behaviour is the result of the consumption of liquor.	Licensees Permittees Employees Other persons	See The Criminal Code, chapter 2.
NSW	Licensees must not permit intoxication. Licensees, employees, other persons must not sell or supply liquor to an intoxicated person.	A person is intoxicated if the person's speech, balance, coordination or behaviour is noticeably affected, and it is reasonable in the circumstances to believe that the affected speech, balance, coordination or behaviour is the result of the consumption of liquor. A reference in this Act to "intoxication" in relation to licensed premises is a reference to the presence of intoxicated persons on the licensed premises.	Licensee Employees Other persons	If an intoxicated person is on licensed premises, the licensee is taken to have permitted intoxication on the premises unless they prove: <ul style="list-style-type: none"> the person was asked to leave the premises the person did not consume alcohol on the licensed premises the licensee contacted, or attempted to contact, a police officer for assistance in removing the person from the premises the licensee refused to serve the person any alcohol after becoming aware that the person was intoxicated the licensee had taken all other reasonable steps.
NT	A licensee or a person employed by a licensee shall not sell or supply liquor to a person unless the person to whom it is sold or supplied is not intoxicated at the time (the onus of proof of which lies with the defendant).	N/A	Licensees Employees	Contravention of offence: <ol style="list-style-type: none"> occurred in an emergency and was necessary to preserve life, prevent injury, or protect property authorised by being in obedience to the order of a competent authority whom the defendant was bound by law to obey unless the order is manifestly unlawful (the determination of which is a matter of law).

i After the cut-off date for data collection for this report of December 2010, the Northern Territory Liquor Act was amended by the provisions of the *Alcohol Reform (Liquor Legislation Amendment) Act 2011* (Act No. 17, 2011) and *Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011* (Act No. 19, 2011). These provisions commenced on 1 July 2011. While this table does not incorporate these recent amendments, readers are referred to the current provisions in sections 7 and 102 of the *Liquor Act (NT)* which state that: A person is drunk if: the person's speech, balance, coordination or behaviour appears to be noticeably impaired; and it is reasonable in the circumstances to believe that the impairment results from the person's consumption of liquor.

Table 5 continued: Definition of intoxication and drunk, offences and defences

State	Offence	Definition	Offender	Defence
QLD	Supply, permit or allow liquor to be supplied to; or allow liquor to be consumed by an unduly intoxicated person.	Unduly intoxicated means 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.	Any person	For licensees: 1. the offence happened without the defendant's knowledge or authority; and 2. the defendant had exercised due diligence to avoid the commission of the offence.
SA	Liquor sold or supplied on licensed premises to an intoxicated person; or liquor sold or supplied on licensed premises to a person in circumstances in which the person's speech, balance, coordination or behaviour is noticeably impaired and it is reasonable to believe that the impairment is the result of the consumption of liquor.	N/A	Licensee Responsible person Person who supplied the liquor	Defendant believed on reasonable grounds that the person was not intoxicated and/or that the impairment of the speech, balance, coordination or behaviour of the person was not the result of the consumption of liquor. Manager/responsible person exercised proper care to prevent the sale or supply of liquor in contravention of the Section.
TAS	A person must not sell liquor to a person who appears to be drunk. A person shall not supply liquor to a person who appears to be drunk on licensed or permitted premises.	N/A	Person who sells and/or supplies the alcohol	Infringement notices were given for offences.

Table 5 continued: Definition of intoxication and drunk, offences and defences

State	Offence	Definition	Offender	Defence
VIC	<p>A licensee or permittee must not supply liquor to a person who is in a state of intoxication, or permit drunken or disorderly persons to be on the licensed premises.</p> <p>A person must not, on licensed premises procure liquor for a person in a state of intoxication; or aid or abet a person in a state of intoxication to obtain liquor.</p>	<p>For the purposes of this Act, a person is in a state of intoxication if his or her speech, balance, coordination or behaviour is noticeably affected and there are reasonable grounds for believing that this is the result of the consumption of liquor.</p>	<p>Licensee Permittee Any person</p>	<p>Defendant did not know that drunken or disorderly persons were on the premises; and had taken reasonable steps to ensure that drunken or disorderly persons were not on the premises.</p>
WA	<p>Licensees and employees who permit drunkenness on premises.</p> <p>Persons who sell or supply liquor, or cause or permit liquor to be sold or supplied, to a drunk person; or allow or permit a drunk person to consume liquor, or obtain or attempt to obtain liquor for consumption by a drunk person; or aid a drunk person in obtaining or consuming liquor on licensed premises.</p>	<p>A person is drunk for the purposes of this Act if the person is on licensed premises or regulated premises; and the person's speech, balance, coordination or behaviour appears to be noticeably impaired; and it is reasonable in the circumstances to believe that the impairment results from the consumption of liquor.</p>	<p>Licensee Employee Any person</p>	<p>Persons and employees may prove that they were instructed by the licensee, an approved manager or another person in a position of authority in relation to the person charged to sell or supply the liquor to the drunk person.</p>

Table 6: Jurisdictional data collection systems/source

Jurisdiction	Data Collection Systems/Sources	Summary
ACT Policing	<ul style="list-style-type: none"> Police Realtime Online Management Information System (PROMIS) 	<p>ACT Policing used a mandatory alcohol recording field on the PROMIS case management system to record and extract whether an individual involved in an incident reported to police had consumed alcohol. People in police custody charged with an alcohol-related assault were asked to indicate [voluntarily] if they had consumed alcohol prior to the offence. At time of writing, the alcohol recording field in PROMIS was monitored by ACT Policing.</p>
New South Wales Police	<ul style="list-style-type: none"> Alcohol-Related Crime Information Exchange (ARCIE) 	<p>ARCIE contained significant information across a range of domains representing a combination of intelligence shared between the NSW Police, the NSW Bureau of Crime, Statistics & Research (BOCSAR), the Office of Liquor, Gaming and Racing (OLGR) and the Office of State Revenue (OSR). NSW Police considered the system a “complete” solution for alcohol-related crime queries.</p>
Northern Territory Police	<ul style="list-style-type: none"> NT Integrated Justice Information System (IJIS) Police Realtime Online Management Information System (PROMIS) 	<p>Data collection was related to a specific incident. The PROMIS data collection system collected information on both the offender and victim. IJIS data was offender specific. The data from both databases were used by police when lodging objections or raising concerns about liquor licensing matters with the Northern Territory Liquor Commission. This data could be accessed by outside agencies, subject to appropriate approval.</p>
Queensland Police Service	<ul style="list-style-type: none"> Queensland Police Records and Information Management Exchange (QPRIME) 	<p>The data generated in QPRIME was used by general duties police, local tactical crime squads and the Liquor Enforcement and Proactive Strategy (LEAPS) units throughout the state. It captured police occurrence data across a range of domains. The data had been used to dispel some misconceptions concerning locales and demographic groups often perceived to be problematic.</p>

Table 6 continued: Jurisdictional data collection systems/source

Jurisdiction	Data Collection Systems/Sources	Summary
<p>South Australia Police</p>	<ul style="list-style-type: none"> • Police Information Management System (PIMS – Mainframe system) • Traffic Online (Data warehouse application) • Expiation Database • Alcohol Incident Reporting (AIR) data collection 	<p>South Australia Police collected data on alcohol-related offending from its existing data systems. These systems were accessed or analysed via a web-based application. The AIR data was used to identify problem licensed premises across the state, and to engage management at these venues to improve compliance with licensing regulations.</p>
<p>Tasmania Police</p>	<ul style="list-style-type: none"> • Non-specific 	<p>While Tasmania Police did not have a specific alcohol-related offences database, data was nevertheless collected in relation to a number of alcohol-related matters using multiple data systems. A range of information/data was routinely collected for reporting on a monthly basis. Tasmania Police was moving towards a new information technology platform and will be reviewing existing data collection systems and future needs.</p>
<p>Victoria Police</p>	<ul style="list-style-type: none"> • Law Enforcement Assistance Program (LEAP) • Alcohol & Drug Reporting Incidents for Tasking (ADRIFT) • Interpose <ul style="list-style-type: none"> » Licensed Premises Incident Report (LPIR) • Attendance Register • Traffic Incident System (TIS) • Taskforce RAZON • Divisional Licensing Units (DLU) • Computer Aided Dispatch System 	<p>A variety of data systems incorporating a diverse and comprehensive set of alcohol and non-alcohol specific data were used to monitor alcohol-related crime and disorder. There was potential for the various information sources to be rationalised as a single database. Identity scanning at licensed premises had been identified as a potential new initiative.</p>
<p>Western Australia Police</p>	<ul style="list-style-type: none"> • Incident Management System (IMS) 	<p>The IMS contained a mandatory “alcohol flag” which was recorded against a particular incident. It was examined daily to identify incidents connected to particular licensed venues. The potential existed for the collection of computer aided dispatch (CAD) data for incidents in which alcohol was a factor.</p>



1 Introduction

This document, Part 2 in a three-part series, comprises details of liquor licensing legislation in all Australian jurisdictions. Findings are presented in individual stand-alone chapters for each jurisdiction, arranged alphabetically. Each chapter contains a summary overview of the current status³ of liquor licensing legislation in a given jurisdiction, including licence categories and associated administrative arrangements, the numbers of licensed premises, changes over time (where available) and an outline of police alcohol-related data collection systems. Fundamental elements of the legislative and governance arrangements in each state are displayed in tables to provide a clear overview of salient features of liquor licensing in Australia.

The legislation cannot be viewed in isolation. For this project, the liquor licensing legislation was assessed in the context of:

- the structures and resources available to implement and enforce it
- decision-making and review processes
- licensee disciplinary processes, including the degree of specialist knowledge of judicial members involved in the process
- the extent to which the enforcement of legislation is a priority

- the ways in which key stakeholders perceive the objectives of the legislation
- the extent and nature of legislative powers that sit outside of liquor licensing legislation that can also be used to reduce alcohol-related harm
- the degree of influence that key stakeholders have over the nature and implementation of liquor licensing legislation.

In each of the eight chapters presenting specific jurisdictional liquor licensing legislation details, specific attention was directed to a range of issues including:

- trading hours
- conditions placed on licences
- venue numbers and density
- serving practices
- opportunities for take-away sales
- special events licences
- tests for licensees being a fit and proper person to hold a licence
- disciplinary matters.

From the review of liquor licensing legislation in Australia, general liquor licensing principles were identified. All Australian states and

³ Please note that legislation is dynamic and may change but was correct at the time of writing this report. Readers are advised to check with their local jurisdiction for any revisions to the relevant liquor licensing legislation subsequent to December 2010.

territories contained statutory provisions that regulated:

- who may sell and supply alcohol
- the commercial practices of licensed premises
- offences and duties of licensees
- disciplinary procedures and penalties
- who may consume and access alcohol
- where alcohol may or may not be consumed and/or possessed.

The review of liquor licensing legislation also highlighted the variation that existed between Australian jurisdictions as well as the need to view it in an appropriate context. Liquor licensing legislation in Australia is developed independently in each state and territory, and thus is characterised by a high degree of diversity and variation. In addition, the legislation is continually changing to reflect shifts in commercial and community needs, priorities and concerns. For an overview from a national perspective the reader is referred to Part 1 of this series, which provides detailed summaries and collated information on liquor licensing legislation in Australia.

The following chapter outlines the methodology for the legislative review undertaken for this project, followed by eight chapters presenting details of liquor licensing legislation in each Australian jurisdiction.



2 Methodology

2.1 Legislative Review

A comprehensive review of each Australian state and territory's liquor licensing legislation was undertaken by accessing the Australasian Legal Information Institute's (AustLII) databases. All relevant legislation was examined in conjunction with the appropriate regulations that apply in each jurisdiction. In addition, AustLII, Casebase, and FirstPoint databases were used to access relevant case law and journal articles.

Relevant case law was identified through a mixture of keyword searches along with any cases which had been considered and applied throughout the determination of a case. While keyword searches and case law was generally limited to decisions made under liquor licensing legislation, for some issues (e.g., public interest, duty of care) interpretations and application of the law were derived from other legislation and common law principles. This approach was taken because these decisions usually reflected precedents which were either binding or persuasive upon the decision-maker. In addition, specific case law judgements were explored further when they were identified by interview participants (findings from the interviews undertaken as part of this project are presented in Part 3 of this series).

Keyword searches used during the legislative review included: liquor, alcohol, public interest,

community amenity, intoxic!, intox*, drunk!, drunk*, harm minimisation, duty of care, and liquor legislation.

The following chapters outline the relevant liquor licensing legislation for each Australian jurisdiction.



3 Australian Capital Territory⁴

3.1 Australian Capital Territory Liquor Licensing Arrangements

The Department of Justice and Community Safety had oversight of the Office of Regulatory Services (ORS), the authority responsible for liquor licensing matters within the ACT. The Department of Justice and Community Safety was responsible to the Attorney General and the Minister for Police and Emergency Services. The Commissioner for Fair Trading also had powers and responsibilities under the *Liquor Act 2010* (also under the *Liquor Act 1975*) in relation to

provisions contained within the *Liquor Act 2010*. The ACT Civil and Administrative Tribunal (ACAT) took over from the previous Liquor Licensing Board, and a range of other tribunals and boards, on 2 February 2009. The ACAT reviewed a range of decisions in relation to liquor licensing, including reviewing administrative decisions and determining civil disputes.

Table 7 provides an overview of the liquor licensing regulatory structures in the ACT, including the legislation, the relevant government department, and the associated regulatory regimes for the administration of the legislation.

Table 7: Liquor licensing regulatory structures in ACT (December 2010)

Legislation	<i>Liquor Act 2010</i>
Regulations	<i>Liquor Regulations 2010</i>
Department	Department of Justice and Community Safety
Administrative Authority	Office of Regulatory Services
Decision-making authority	Commissioner for Fair Trading, Office of Regulatory Services
Review decisions/hears appeals from decisions	ACAT
Breaches of conditions/offences/complaints	Commissioner (complaints) ACAT (occupational discipline) Magistrates Court/Infringement notices (offences)

⁴ Please note that legislation is dynamic and may change but was correct at the time of writing this report. Readers are advised to check with their local jurisdiction for any revisions to the relevant liquor licensing legislation subsequent to December 2010.

3.2 The *Liquor Act 2010* and its Objectives

The objectives of the ACT's *Liquor Act 1975* had a primary focus on regulation of alcohol, but not explicitly harm minimisation. It focused on the promotion and encouragement of the responsible sale and consumption of alcohol, specifically through established liquor licences and permits. In contrast, the recently drafted *Liquor Act of 2010* explicitly considered harm minimisation within its objectives, together with the personal responsibility of consumers. The *Liquor Act of 2010* also outlined how decisions made under the Act must take into consideration the principles of harm minimisation and community safety, along with examples of how these principles were to be examined in different situations. To this extent, the *Liquor Act of 2010* paid greater regard to principles of harm minimisation than the *Liquor Act 1975*.

The objectives of the *Liquor Act 2010* were to regulate the sale, supply, promotion and consumption of liquor in a manner which:

- minimises the harm associated with the consumption of liquor
- facilitates the responsible development of the liquor and hospitality industries in accordance with community safety principles
- encourages and supports liquor consumers to take responsibility for their
 - » consumption of liquor
 - » behaviour when it is affected by the consumption of liquor.

Section 10 of the *Liquor Act 2010* also described how a decision-maker must have regard to the harm minimisation and community safety principles that are listed under that section.

3.3 Administration Bodies, Police and Powers

Commissioner

The Commissioner of Fair Trading was the person responsible for administering the

Liquor Act 2010. The Commissioner was also responsible for receiving and determining licence and permit applications, and making various decisions in regards to provisions within the *Liquor Act 2010*.

ACT Civil and Administrative Tribunal

The ACT Civil and Administrative Tribunal (ACAT) was responsible for reviewing decisions made by the Commissioner and determining occupational discipline matters. Reviewable decisions were enunciated in Schedule One which related to refusals to issue, amend, transfer and renew licences and permits, refusals to approve risk management plans, refusals to approve young people's events and responsible service of alcohol (RSA) training courses, and cancellations of non-commercial permits. Persons who could apply to ACAT in order to have a decision reviewed were also detailed at schedule one; they were applicants, licensees, and permit-holders. Further to this, anyone whose rights were affected by a decision of the Commissioner could apply to ACAT for the decision to be reviewed. The requirements for a reviewable decision notice were prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

A liquor licence could be suspended for contravening a direction of the Commissioner and breaching a licence condition. Under Section 183, licences could also be suspended in the public interest and when it was not appropriate to cancel the licence. After the Commissioner investigated the complaint, they could decide to take no further action or apply to ACAT for an occupational discipline order.

Liquor Advisory Board

A Liquor Advisory Board was established by Section 216. The function of the Board was to advise the Minister responsible for administering the Act about matters associated with the operation of the Act. The Minister appointed members who were representative of various stakeholders:

- The Commissioner – the Chair
- Australian Federal Police
- Liquor Consumer Representative

- Aboriginal and Torres Strait Islander Representative
- Small Business Representative
- Clubs ACT Representative
- Australian Hotels Association (ACT branch) Representative.

Police

Police were given specific powers under the *Liquor Act 2010*, as well as powers which are shared with investigators. Investigators were appointed under the provisions of the *Fair Trading (Consumer Affairs) Act 1973* and both police and investigators were defined as authorised persons under the *Liquor Act 2010*. Authorised persons were permitted to:

- Enter premises, which the public was entitled to use, at any reasonable time or at any time the premise was open for business
- Inspect, examine, measure, test, and take samples, photos, video, audio and other recordings of the premises or anything at the premises
- Seize anything at the premises if they were satisfied on reasonable grounds that the:
 - » Object was connected with an offence against the *Liquor Act*, and
 - » Seizure was necessary to prevent the thing from being
 - » Concealed, lost or destroyed; or
 - » Used to commit, continue or repeat the offence.
 - » Object posed a risk to the health or safety of people or of damage to property or the environment
- Seize any liquor consumed or possessed in a public place
- Apply to a magistrate for a search warrant.

“At any reasonable time” was defined to include times when the public is entitled to use the premises, or when the premises were open to or used by the public. Such entry could be with or without the occupier’s consent, and could be carried out in conjunction with a

search warrant. Further to this, police were able to enter the premises if they believed on reasonable grounds that the circumstances were so serious and urgent that immediate entry to the premises without the authority of a search warrant was necessary. The power to enter premises did not include the power to enter parts of the premise used for residential purposes only.

Persons were subject to a maximum penalty of 50 penalty units⁵ if they fail to provide reasonable help to authorised persons in exercising their powers under section 154 or failed to take reasonable steps to comply with a requirement made by an authorised person.

3.4 Licence Categories and Conditions

There are five primary licence categories, and several categories contain sub-licences. Categories include:

1. A general licence
2. An on-licence
 - a. Bar licence (section 22)
 - b. Nightclub licence (section 23)
 - c. Restaurant and café licence (section 24)
3. An off-licence
4. A club licence
5. A special licence.

General Licence

General licences were authorised to sell liquor in open containers for on-premise consumption and in sealed containers for off-premise consumption. Authorised hours could vary for on-premise and off-premise sales.

⁵ According to Section 133 of the *Legislation Act 2001*, when a penalty for an offence is expressed as a number of penalty units, the penalty for that offence is a fine for that number of penalty units. For an offence committed by an individual, one penalty unit is equal to \$110, and when an offence is committed by a corporation, one penalty unit is equal to \$550.

On-Licence

On-licences authorised the licensee to sell liquor in open containers for consumption on the premises. There were three types of on-licences: bar licences, nightclub licences, and restaurant and café licences.

Bar Licence

Bar licences were authorised for premises where the predominant activity at the licensed times is the serving of liquor for consumption. The regulations may also prescribe premises which were to be classified as a bar.

Nightclub Licence

Nightclub licences were issued to premises where the predominant activity at the licensed times was dancing and entertainment. The regulations may also prescribe premises which were to be classified as a nightclub.

Restaurant and Café Licence

Restaurant and café licences were issued to premises where the predominant activity at the licensed times was the serving of meals for consumption on the premises. The regulations could also prescribe premises as restaurants or cafés. The licence only authorised sales for consumption on the premise.

Off-Licence

An off-licence authorised the sale of liquor in sealed containers for off-premise consumption.

Club Licence

Club licences authorised the sale of liquor for on-premise and off-premise consumption. Consistent with on-licences and off-licences, liquor sold for on-premise consumption had to be in open containers, and liquor sold for off-premise consumption had to be in closed containers. Liquor could only be sold to club members and their guests, or anyone else authorised by the club to be at the club.

Special Licence

Special licences authorised the licensee to sell liquor at a single licensed premise and at the licensed time.

Permits

Under Section 47 of the *Liquor Act 2010*, a commercial permit and a non-commercial permit were available. Applications for permits were subject to the same evaluation criteria regarding suitability of permit-holder and premises to which licences are subject. A commercial permit authorised liquor to be sold at a single premise at the event stated in the permit and at the permitted times. The retail value of liquor allowed to be sold was also stated within the permit. Non-commercial permits authorised non-profit organisations to sell liquor in open containers for consumption at the premises or in sealed containers for consumption off the premises. Liquor could only be sold at a single premise, at the times stated, and the amount sold was unable to exceed the retail value stated within the permit.

Conditions

Licences, permits, and young people's events were subject to any condition that the Commissioner considered relevant. Further to this, it was a condition of the licence/permit that both the licensee/permit-holder and premise comply with all provisions contained within the *Liquor Act 2010* and the *Liquor Regulations 2010* (which were authorised by the Liquor Act).

3.5 Trading hours

The trading hours for licensed and permitted premises were contained within the *Liquor Regulations 2010*. Regulation 33 provided that there were four kinds of licensed times and three time periods which the Commissioner could apply to a licence/permit. For general licences (liquor consumed on-premises), on-licence, club licence and special licence (liquor consumed on-premises) trading hours were:

- standard trading hours: 7 am-midnight, 7 am-1 am the following day on 25 April, 24 December, 31 December
- late night licensed times: 7 am-2 am the following day
- extended late night licensed times: 7 am-4 am the following day

- 5 am approval licensed times: 7 am-5 am the following day.

For a general licence for the sale of liquor to be consumed off premises, a special licence for the sale of liquor to be consumed off premises, and for off-licences the standard licensed hours were 7 am to 11 pm. The permitted times for a commercial permit or a non-commercial permit were as follows:

- standard permitted times: 7 am-midnight
- late night permitted times: 7 am-2 am the following day
- extended late night permitted times: 7 am-4 am the following day.

3.6 Risk-Based Licensing Fees

Under Section 227 of the *Liquor Act 2010*, the Minister was responsible for determining the fees payable under the *Liquor Act 2010*. The fees for licences were determined based on criteria prescribed under Section 229(2) of the *Liquor Act 2010*. Schedule 1 of the Determination⁶ set out new risk-based licensing fees for licences that traded within high-risk time zones between midnight and 2 am, midnight and 4 am and midnight and 5 am. Licensing fees differed for low-risk licensed premises that had an occupancy loading of 80 patrons or less. Schedule 1 also outlined licence fees for off-licences which were proportional to the amount of wholesale liquor that was purchased for sale.

3.7 Legislative Approaches to Intoxication

Similar to other jurisdictions, section 104 of the *Liquor Act 2010* defined the demonstrable characteristics of an intoxicated person. To this end, a state of intoxication occurred when a person's speech, balance, coordination or behaviour was noticeably affected. However, for the purposes of the *Liquor Act 2010* (i.e., when

establishing the elements of an offence), it had to also be reasonable, in the circumstances, to believe that the affected speech, balance, coordination or behaviour was the result of the consumption of liquor.

Several provisions in the *Liquor Act 2010* created an offence for supplying liquor to an intoxicated person with an infringement notice as the penalty. The only variances within the provisions were to whom they were directed and the penalty imposed (Table 8). As such, Section 105 created an offence for a licensee or permit-holder who supplied liquor to an intoxicated person on licensed premises. Additionally, this Section extended the liability of the licensee and permit-holder if their employees supplied an intoxicated person on licensed premises.

Table 8: Provisions and penalties relating to the supply of liquor to intoxicated persons within the *Liquor Act 2010*

Section	Offender	Maximum penalty units
105	Licensee/permit-holder	50
106	Employees	10
107	Other person	5

Each section also specifically provided that the offence was a strict liability offence. This meant that the prosecution did not need to prove that the offender intended to serve, had knowledge of, or was recklessly indifferent as to whether the person was intoxicated (Bronitt & McSherry, 2001). However, the prosecution did need to establish beyond a reasonable doubt that the:

1. person's speech, balance, coordination or behaviour was noticeably affected
2. intoxication was caused by the consumption of liquor
3. supply occurred on licensed premises.

Section 108 created another offence to protect staff members from abuse, threats, and intimidation when they refused to supply liquor to an intoxicated person. The maximum penalty for this offence was 10 penalty units.

⁶ Liquor (Fees) Determination 2010 (No 1) made under the *Liquor Act 2010*, Section 227 (Determination of fees) available at <http://www.legislation.act.gov.au/di/2010-273/current/pdf/2010-273.pdf>

Any defences available to the defendant were found within Chapter 2 of the Criminal Code and only needed to be established on the balance of probabilities. In order to secure a conviction, the prosecution had to negate the defence beyond all reasonable doubt. This made the challenge more difficult for the prosecution than for the defence.

Responsible Service of Alcohol

The *Liquor Act 2010* created several offences for supplying liquor without an RSA certificate. Under Section 100, offences were created for licensees and commercial permit-holders who supply liquor on licensed/permitted premises or who permit an employee to supply liquor without an RSA certificate. The maximum penalty for an offence against this Section was 50 penalty units. Under Section 101, an offence was also created for employees who supply liquor on licensed/permitted premises without an RSA certificate, with a maximum penalty of 10 penalty units. Crowd controllers were also required to hold RSA certificates, with a maximum penalty of 50 penalty units for licensees/commercial permit-holders and 10 penalty units for the crowd controller. Licensees and commercial permit-holders were required to keep copies of RSA certificates and failure to do so could result in a maximum penalty of 20 penalty units. All offences contained within these sections were expressed as strict liability offences.

RSA certificates expired three years after issue. The Commissioner was responsible for approving the registered training organisations which provide RSA courses and the courses themselves. Approval could only be issued if the Commissioner was satisfied that it was in the public interest.

3.8 Public Spaces

In the ACT, alcohol-free zones could be developed in several ways. The regulations could create “permanent alcohol-free places” where liquor could not be consumed and the commissioner could declare “temporary alcohol-free places” where alcohol could not be consumed for a stated period of no more than one month. Permanent alcohol-free places were prescribed in the Liquor Regulations 2010 (Regulation 31).

Certain public places were legislated under Section 199 as being alcohol-free and an offence was created to prevent people from drinking there. These places were bus interchanges, bus stations, and places within 50m from a bus interchange, bus station, shop, licence or permitted premises, permanent alcohol-free place, or temporary alcohol-free place. It was an offence under Section 200 for a person to possess and intend to consume an open container of liquor at these places.

3.9 Record-Keeping

Licensees were statutorily required to make and keep records relating to liquor sales, incidents, and RSA certification. Further to this, club licences were required to keep records of members. The legislation (Section 142) created offences for failing to make and keep records of liquor sales in an easily retrievable electronic format (a maximum penalty of 20 penalty units), and for failing to keep the records for at least six years (maximum penalty, 50 penalty units).

Licensees and permit-holders were statutorily obligated to keep an incident register to record details of all incidents which occur at the licensed/permitted premises. A failure to keep an incident register was a strict liability offence, with a maximum penalty of 10 penalty units.

3.10 Number of People Aged 18 Years and Over per Licensed Premises in the Australian Capital Territory

As at 20 December 2010, there were 650⁷ liquor licences in the ACT. On 30 June 2010, the population in the ACT aged 18 years and over was 279,273.⁸ Hence, in the ACT in 2010 there were 430 people aged 18 years and over per licensed premise.

⁷ Source: ACT Office of Regulatory Services. As at 20 December 2010.

⁸ Source: Australian Bureau of Statistics. Accessed from: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3201.0Jun%202010?OpenDocument> on 11 January 2011.

3.11 ACT Policing Alcohol-Related Data Collection

ACT Policing used the Police Realtime Online Management Information System (PROMIS) of the Australian Federal Police to record and manage its operations and supporting activity. Alcohol-related incidents were recorded on and extracted from the PROMIS case management system. A mandatory alcohol field was used to record whether individuals involved in an incident reported to police had consumed alcohol. ACT Policing monitor the mandatory alcohol-related recording field on PROMIS to ensure that it meets the needs of operational police.

Data on alcohol-related violence were generated by analysing a series of questions asked of people in the ACT Watch House who had been arrested and charged with an assault-related offence. Arrestees were asked to respond on a voluntary basis whether they had consumed alcohol prior to the commission of the offence. A visual assessment was also made by the ACT Watch House supervising officer to determine whether the charged person appeared to be under the influence of alcohol or other drugs.



4 New South Wales⁹

4.1 New South Wales Liquor Licensing Arrangements

In New South Wales, the Office of Liquor, Gaming and Racing (OLGR) was accountable for the development, implementation and integrity of the overall regulatory framework to address alcohol, licensed clubs, charitable fundraising and gambling activities. The OLGR was a division of Communities NSW.

The regulatory domains that the OLGR coordinated include:

- sale and consumption of alcohol
- operation of licensed clubs.¹⁰

The OLGR provided policy direction and advice (including advice to government on legislative change) in relation to all regulated activities, early intervention, education activities and coordination of licensing, compliance and enforcement functions. It also provided secretariat and administrative support to the Casino, Liquor and Gaming Control Authority (CLGCA).

Under the *Liquor Act 2007*, the Director-General, Communities NSW (to whom the OGLR reported) had the power to:

- impose, vary or revoke liquor licence conditions
- give a written direction to a licensee, or any employee or agent of a licensee concerning any matter relating to the licensed premises (including any conduct on the licensed premises)
- deal with complaints about noise and disturbances associated with licensed premises
- make, vary or revoke a late hour entry declaration (i.e., lockout) to prevent patrons entering licensed premises during late trading hours even though the premises are authorised to trade during that time
- restrict or prohibit the sale or supply of undesirable liquor products (declared undesirable by regulation)
- restrict or prohibit the undesirable promotion of liquor
- give a direction to any licensee in an accord area (including any licensee in the area who is not a party to the local liquor accord concerned) to contribute to the costs of promoting or giving effect to the accord.

⁹ Please note that legislation is dynamic and may change but was correct at the time of writing this report. Readers are advised to check with their local jurisdiction for any revisions to the relevant liquor licensing legislation subsequent to December 2010.

¹⁰ http://www.olgr.nsw.gov.au/about_us_home.asp

The CLGCA, an independent statutory authority within Communities NSW, was responsible for performing regulatory and other decision-making functions related to casino, liquor and gaming machines on behalf of government. It commenced operations on 1 July 2008, under the *Casino Liquor and Gaming Control Act 2007*. The Authority assumed the former roles of the Licensing Court of NSW and the Liquor Administration Board.

Liquor licensing applications were lodged with the CLGCA which had licensing and approval (but not compliance) functions under the *Liquor Act 2007*. As part of the liquor licensing application process, police, local councils, individuals and organisations could make submissions to the Authority. Prior to making a decision on whether to grant an application, the Authority allowed the applicant to respond to any submissions that have been made.

In accordance with Section 45(3) of the *Liquor Act 2007*, the CLGCA would not grant a liquor licence unless it was satisfied that:

- a. the applicant was a fit and proper person to carry on the business or activity to which the proposed licence related
- b. practices would be in place at the licensed premises as soon as the licence was granted that ensure, as far as reasonably

practicable, that liquor was sold, supplied or served responsibly on the premises and that all reasonable steps were taken to prevent intoxication on the premises, and that those practices would remain in place

- c. if development consent was required under the *Environmental Planning and Assessment Act 1979* (or approval under Part 3A of that Act was required) to use the premises for the purposes of the business or activity to which the proposed licence relates, the development consent or approval was in force.

Among its roles, the CLGCA considered applications seeking a review of the decisions of the Director-General, Communities NSW under Section 153 of the *Liquor Act 2007*.

In its 2009/2010 Annual Report, the CLGCA noted that it could only approve a liquor licensing application when satisfied that there would be no detriment to the community. The Authority further noted that it was committed to implementing the law properly with a firm regard for community wellbeing.¹¹

Table 9 provides an overview of the liquor licensing regulatory structures in NSW including the legislation, relevant government department, and associated regulatory regimes for the administration of the legislation.

Table 9: Liquor licensing regulatory structures in NSW (December 2010)

Legislation	<i>Liquor Act 2007</i>
Regulations	<i>Liquor Regulations 2008</i>
Department	OLGR, Communities NSW
Administrative Authority	CLGCA; OLGR ⁱ
Decision-making authority	CLGCA
Review decisions/hears appeals from decisions	Communities NSW CLGCA
Breaches of conditions/offences/complaints	Local Court (summary offences & breach of conditions) Director-General, Communities NSW (complaints)

i These bodies share this administrative function.

11 http://www.clgca.nsw.gov.au/resource/reports/CLGCA_AR2009-10.pdf

4.2 New South Wales *Liquor Act 2007* and its Objectives

The Minister responsible for the administration of the *Liquor Act 2007* was the Minister for Gaming and Racing.

The *Liquor Act 2007* sought to regulate and control the sale and supply of liquor and the use of premises on which liquor is sold or supplied. The objectives of the Act were to:

- a. regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community
- b. facilitate balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality
- c. contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.

In order to secure the objectives of the Act, each person who exercised functions under the Act (including a licensee) was required to have due regard to:

- a. the need to minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour)
- b. the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor
- c. the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

4.3 Categories of Licence

There were six types of liquor licences in NSW. Each licence type is described in detail below, and Table 10 provides a summary of the categories and associated fees in NSW. Most types of liquor licence needed to be accompanied by a Community Impact Statement.¹²

¹² A community impact statement could be required for a particular type of application. It allowed the CLGCA to be aware of the impact that granting an application would have on the local community. There were two types of Community Impact Statements, Category A and Category B. The major difference between the two categories was that more stakeholders needed to be consulted when a Category B Community Impact Statement was prepared. Category B Community Impact Statements were used for hotel, club, packaged liquor, and extended trading licence applications.

Table 10: Types of liquor licences, types of activity, application fee & Community Impact Statement

Type of Licence	Type of activity	Application Fee	Community Impact Statement Required
Club	A registered club selling alcohol to members and guests	\$300	Yes
Hotel (including a general bar licence)	Hotel, bar, tavern	\$2,000 for a full hotel licence \$500 for a general bar licence	Yes
Limited	Functions held by non-profit organisations, as well as special events and trade fairs	\$40 for a single function licence if applying online \$75 for a single function licence if applying on a paper-based form \$50 for a special event and trade fair licence \$300 for a multi-function licence	No ⁱ
On-premises	Can be tailored for one or more types of business activities including a restaurant, entertainment venue, motel, function centre and other settings where alcohol is consumed on the premises	\$500	Yes, but only where the on-premises licence relates to a public entertainment venue (other than a cinema or theatre)
Packaged liquor	Liquor stores, internet operators selling alcohol to the public	\$1,500	Yes
Producer/wholesaler	Brewer, distiller winemaker, wholesaler	\$500	No*

ⁱ A Community Impact Statement could be required for a particular application if necessary, depending on the nature and potential impact of the proposal on the community.

Source: NSW OLGR website: http://www.olgr.nsw.gov.au/pdfs/L_FS_AFAL.pdf

Club Licence¹³

A club licence could only be granted to a club that had been registered under the *Registered Clubs Act 1976*. The club licence allowed alcohol to be sold for consumption on and off the club's premises to members and their guests. A club licence was held by the club, hence the club was the licensee and was referred to as a "corporate licensee" in the *Liquor Act 2007*.

If a registered club owned or occupied more than one set of premises, each set of premises

had to be separately licensed under the *Liquor Act 2007*.

Hotel (Including General Bar Licence)¹⁴

A hotel licence allowed alcohol to be sold to the public for consumption on and off the licensed premises. All hotel licences were required to operate with the primary purpose of selling alcohol to the public.

A hotel licence was subject to various regulatory controls including:

¹³ http://www.olgr.nsw.gov.au/pdfs/L_FS_RC.pdf

¹⁴ http://www.olgr.nsw.gov.au/pdfs/L_FS_HL.pdf

- it had to be open to the public (and not run as a private club)
- free drinking water had to be available to patrons whenever alcohol was served
- a sign had to be displayed at the front of the premises that showed the name of the premises, the type of liquor licence held and the name of the licensee
- an incident register had to be maintained if the premises regularly traded past midnight
- conditions could be imposed on a licence, either under the *Liquor Act 2007* or by the Director-General, Communities NSW or the CLGCA.

A general bar licence was a limited type of hotel licence that allowed for alcohol to be sold for consumption on the licensed premises but did not allow take-away sales.

Limited Licence¹⁵

A limited licence allowed liquor to be sold at functions held by a non-profit organisation. Applicants could apply for a multi-function or a single function limited licence. A function was defined as a dinner, ball, convention, seminar, sporting event, race meeting, exhibition, performance, trade fair or other fair, fete or carnival, or any other event or activity intended to raise funds for a charitable purpose.

All alcohol sold at a limited licence function had to be sold in opened cans or bottles or other types of opened containers and could only be consumed at the specified function/s.

On-Premises Licence¹⁶

On-premises licences allowed alcohol to be sold with another product or service. On-premises licences required the alcohol to be consumed on the premises from which it was sold. On-premises licences were relevant to settings/activities such as:

- restaurants and cafés
- places providing accommodation, e.g., motels

- nightclubs, theatres and cinemas
- public halls
- sporting clubs or stadiums
- tertiary institutions
- airports.

Packaged Liquor Licence¹⁷

A packaged liquor licence enabled a licensee to sell alcohol on licensed premises through a bottle shop or home delivery, mail order, or the internet. The following regulatory controls applied to packaged liquor licences:

- packaged liquor could only be sold for consumption off the licensed premises
- alcohol could be sold to employees of the licensed premises for consumption off the premises
- tastings could be conducted on the licensed premises, with or without charge.

Under the *Liquor Act 2007*, packaged liquor licences could not be granted to the following types of premises:

- general store (this includes a convenience store, mixed business or milk bar with a retail floor area not more than 240 square metres used primarily for the sale of groceries)
- service station
- take-away food outlet.

Producer/Wholesaler Licence¹⁸

Producer/wholesaler licences applied to wine producers, brewers, distillers, and wholesalers. The licence allowed wholesalers to sell to other liquor licensees.

Wine producers were allowed to provide tastings (with a charge if desired), cellar door sales, direct sales to the public at wine shows and farmers' (producer) markets, and the operation of multiple premises in an area. For

15 http://www.olgr.nsw.gov.au/pdfs/L_FS_LLMF.pdf

16 http://www.olgr.nsw.gov.au/pdfs/L_FS_OPG.pdf

17 http://www.olgr.nsw.gov.au/pdfs/L_FS_PLL.pdf

18 http://www.olgr.nsw.gov.au/liquor_licence_apps.asp#pl

small-scale regional brewers and distillers, the licence also allowed tastings and retail sales in bottles at the licensed premises.

4.4 Liquor Licensing “Freeze”¹⁹

Under the *Liquor Act 2007* a temporary freeze was applied to the granting of the following licence types and trading authorisations for premises in prescribed “Freeze” precincts in the City of Sydney local government area:

- new liquor licences for:
 - » hotels
 - » general bars
 - » nightclubs
 - » liquor stores
 - » producer/wholesale premises
- applications for extended trading hours.

The Freeze commenced on 1 October 2009 and was due to expire on 24 June 2011. The areas covered by the Freeze included Kings Cross, the Oxford Street Darlinghurst precinct and parts of the southern Sydney Central Business District around George Street. These areas were included in the Freeze because they had large numbers of licensed premises, particularly venues with late night trading, and were identified trouble spots for alcohol-related anti-social behaviour and violence.

The primary aim of the Freeze was to prevent an increase in the:

- number of people who entered the Freeze precincts to consume alcohol
- patron capacity of the premises within the freeze precincts.

4.5 Hassle Free Nights²⁰

The *Liquor Act 2007* was amended in mid-2010 to include provisions for Precinct Liquor Accords and Community Event Liquor Accords.

¹⁹ http://www.olgr.nsw.gov.au/news_liquor_licence_freeze_sep_09.asp

²⁰ <http://nsw.gov.au/hassle-free-nights>

These provisions were part of the NSW Government’s *Hassle Free Nights* initiative.

Hassle Free Nights was a comprehensive plan to reduce alcohol-related crime and anti-social drunken behaviour in five main entertainment districts throughout NSW – the Sydney Central Business District, Manly, Parramatta, Wollongong and Newcastle-Hamilton. The selected precincts were identified on the basis of significant liquor licensing issues including the number and nature of recorded incidents. Two activities aimed at reducing alcohol-related assaults in the five precincts included strengthening the monitoring and enforcement of the most violent licensed premises and increasing the powers to regulate trading hours.

The *Hassle Free Nights* initiative involved mandatory membership of liquor accords for late night traders in the five identified precincts and the cooperation of key stakeholders such as police, the OLGR, licensees, food outlets and transport service providers. Under the *Liquor Act 2007*, measures implemented as part of Hassle Free Nights included lockouts, patron security measures and restrictions on alcohol service.

4.6 A Scheme to Regulate Licensed Premises with High Assault and Other Violent Incident Levels²¹

In October 2008, the New South Wales Government implemented a scheme to regulate licensed premises that had recorded high levels of assaults and other violent incidents. Under the scheme, these premises were categorised as Level 1, 2 or 3 venues, depending on the number of incidents a venue recorded between 1 July 2009 and 30 June 2010. Venues categorised as Level 1 or 2 had additional licence conditions imposed on them by an amendment of Schedule 4 of the *Liquor Act 2007*. Level 3 venues did not incur additional conditions on their liquor licences. The following is a brief summary of the three levels and the associated conditions:

²¹ http://www.olgr.nsw.gov.au/News/news_pdfs/0909_scheme_to_regulate_licensed%20premises.pdf

- Level 1 venues had 19 or more recorded incidents. Six additional conditions were imposed: mandatory lockout at 2 am; cessation of alcohol service 30 minutes prior to closing; no glass containers after midnight; no shots and drink limit restrictions after midnight; 10-minute alcohol sales time-out every hour after midnight; and one or more additional security measures.
- Level 2 venues had 12-18 incidents. Three additional conditions were imposed: cessation of alcohol service 30 minutes prior to closing; no glass containers after midnight; no shots and drink limit restrictions after midnight; and 10-minute alcohol sales time-out every hour after midnight.
- Level 3 venues had 8-11 incidents. No additional special licence conditions.

The Scheme was implemented utilising violent incident data compiled twice yearly by the NSW Bureau of Crime Statistics and Research (BOCSAR).

4.7 Section 11A *Liquor Act 2007*: Special Licence Condition – 6 Hour Closure for Licensed Premises²²

Following an amendment to the *Liquor Act 2007* in 2008, a six hour closure applied to all liquor licences granted from 30 October 2008 onwards, and to existing licences that had an extended trading authorisation granted from that date. The closure clause was introduced into the legislation in response to 24-hour trading and was aimed at reducing the incidence of alcohol-related violence. The closure required these venues to cease the sale and supply of alcohol for a continuous period of six hours each day. The closure operated from 4 am to 10 am unless otherwise specified by the CLGCA. The closure did not affect the sale of alcohol to residents in the accommodation areas of a licensed venue. Exceptions to the closure could be applied for in certain circumstances (e.g., international hotels).

²² http://www.olgr.nsw.gov.au/legislation_amended_6_hr_closure.asp

4.8 Legislative Approaches to Intoxication

Section 5 of the *Liquor Act 2007* defined intoxication as follows:

1. For the purposes of this Act, a person is intoxicated if:
 - a. the person's speech, balance, coordination or behaviour is noticeably affected, and
 - b. it was reasonable in the circumstances to believe that the affected speech, balance, coordination or behaviour is the result of the consumption of liquor.
2. Accordingly, a reference in this Act to intoxication in relation to licensed premises was a reference to the presence of intoxicated persons on the licensed premises.
3. The Director-General was to issue guidelines to assist in determining whether or not a person is intoxicated for the purposes of this Act. Such guidelines were to be made publicly available in such manner as the Director-General considered appropriate.
4. The guidelines issued by the Director-General could also indicate circumstances in which a person may be assumed not to be intoxicated for the purposes of this Act.

In 2008, the Director of Liquor and Gaming²³ published a set of intoxication guidelines under Section 5 of the *Liquor Act 2007*. The guidelines were designed to assist licensees and their staff to determine if a person was intoxicated and provide advice on preventing intoxication and what to do if someone was intoxicated.²⁴

Section 73 of the *Liquor Act 2007* included several clauses are aimed at preventing

²³ The Director of Liquor and Gaming is a statutory officer located within the OLGR. Under the *Liquor Act 2007* the Director of Liquor and Gaming can initiate investigations, make disciplinary complaints and take prosecution action. The Director can also make submissions to the CLGCA relating to the grant or variation of a liquor licence. Source: http://www.olgr.nsw.gov.au/pdfs/L_FS_DLG.pdf

²⁴ Source: Office of Liquor, Gaming and Racing - http://www.olgr.nsw.gov.au/pdfs/intox_guidelines.pdf

excessive consumption on licensed premises and placed the onus on the licensees and their staff to ensure that patrons did not become intoxicated. Specifically, Section 73 (4) of the Act stated that:

If an intoxicated person is on licensed premises, the licensee is taken to have permitted intoxication on the licensed premises unless the licensee could prove:

- a. that the licensee, and the licensee's employees or agents, took the steps set out in subsection (5) or all other reasonable steps to prevent intoxication on the licensed premises, or
- b. that the intoxicated person did not consume alcohol on the licensed premises.

In addition, Section 73 (5) of the Act stated that:

For the purposes of subsection (4) (a), the following were the relevant steps that a licensee could have taken:

- a. ask the intoxicated person to leave the premises
- b. contacted, or attempted to contact, a police officer for assistance in removing the person from the premises
- c. refused to serve the person any alcohol after becoming aware that the person had become intoxicated on the premises.

Responsible Service of Alcohol

Under Section 99 (2) (c) of the *Liquor Act 2007*, licensees, managers, and other persons (including bar staff, volunteers and crowd controllers) engaged in the sale, supply, service and promotion of liquor and other activities on the licensed premises must have completed an RSA training course and hold an RSA certificate. In NSW, RSA training could only be conducted by a training provider approved by the CLGCA.²⁵

Regulation 44 of the *Liquor Regulations 2008* stated that licensees must keep a register of RSA certificates for all employees on the licensed premises. The register of recognised RSA certificates had to be made available, upon request, to either a police officer or an inspector from the OLGR. Licensees who employed staff who did not have a recognised RSA certificate could be fined a total of \$5,500. In addition, employees without a recognised certificate could also be fined a maximum of \$1,100.

²⁵ Source: Office of Liquor, Gaming and Racing - http://www.olgr.nsw.gov.au/courses_rsa.asp

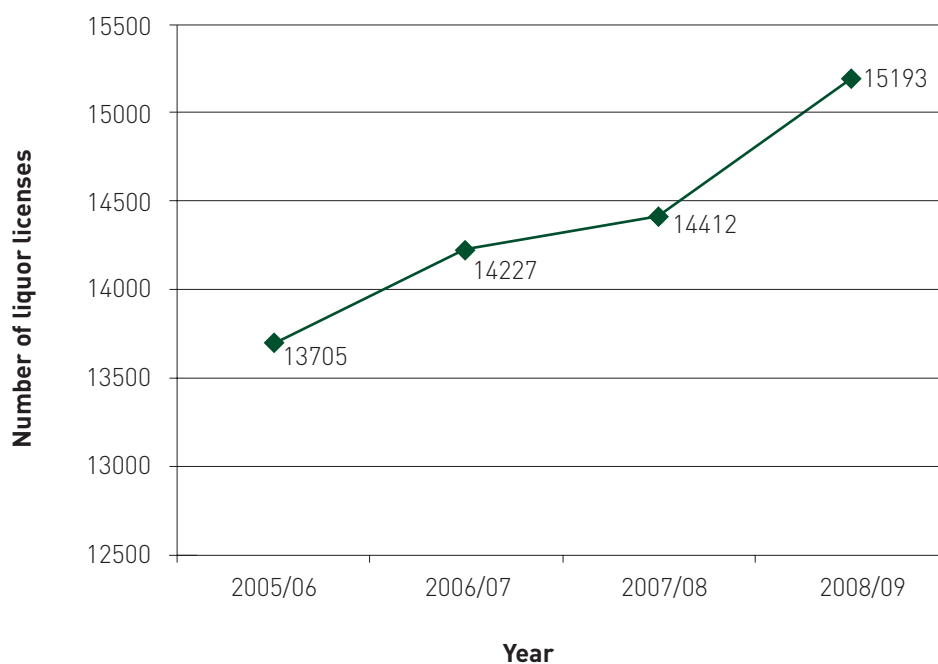


Figure 2: Number of liquor licences in NSW from 2005/06 to 2008-09

Source: NSW Department of the Arts, Sport and Recreation (2009).

4.9 Number of Liquor Licences in New South Wales

As shown in Figure 2, the number of liquor licences in NSW steadily increased between 2005/06 and 2008/09; the total increase over that period was approximately 11%. There was a particularly sharp increase between 2007/08 and 2008/09, when 781 new licences were issued.

As at 30 June 2009, there were 15,193 liquor licences in NSW.²⁶ On 30 June 2010, the population aged 18 years and over was 5,601,746. Hence, in 2010 there were 369 people in NSW aged 18 years and over per licensed premise.

4.10 New South Wales Police Alcohol-Related Data Collection

A large amount of alcohol-related information was available to police including liquor accord reports, business inspections, linking data, crime data, and underage infringements and proceedings. This data was shared between New South Wales Police, the New South Wales BOCSAR, the OLGR and the Office of State Revenue.

The New South Wales Police Force utilised the Alcohol Related Crime Information Exchange (ARCIE) system. ARCIE combined intelligence from three databases: the New South Wales Police Force, the OLGR and the Office of State Revenue. The system captured information on liquor and gaming-related infringements and offences, court proceedings and outcomes related to licensed premises and licensees. This centralised database enabled NSW Police personnel and OLGR compliance inspectors to identify problematic premises. It then allowed them to develop effective and strategic responses to target the small number of licensed premises responsible for a disproportionate amount of alcohol-related crime.

²⁶ Source: NSW Department of the Arts, Sport and Recreation (2009).

Specifically, the ARCIE database contained:

- alcohol-related crime data
- alcohol-linking project data
- information on underage, violent and malicious damage offences
- criminal intelligence
- *Security Industry Act 1997* breaches
- enforcement activity (such as legal action taken)
- licensing court results
- licensed premises details (such as company Australian Business Numbers, trading hours, individuals associated with the premises, licence conditions)
- alcohol-related crime infringement notices from the Office of State Revenue.

NSW Police collected data on both victims and offenders involved in alcohol-related incidents and there appeared to be a high level of compliance with data reporting requirements. Alcohol linking data and criminal intelligence included some subjective information. Consolidation of available information provided reliable indicators of locations where alcohol-related incidents were occurring in NSW. This enhanced the ability of NSW Police to address identified risks. Intelligence-based rostering and deployments were guided by this information; such deployments sought to target the most appropriate premises/precincts. Licensing police also utilised ARCIE data in their negotiations with licensed venues to identify measures to address problems, or provide assistance to premises in the form of police deployments targeting problem patrons.



5 Northern Territory²⁷

5.1 Northern Territory Liquor Licensing Arrangements

5.1.1 Responsible Bodies

5.1.1.1 Licensing Commission

The Northern Territory Licensing Commission was established by Section 4 of the *Northern Territory Licensing Commission Act*. The Commission had at least three members who were appointed by the Minister responsible for the Act. One of the members must have been a lawyer for at least five years. Positions were tenured for three years, however, a member could be reappointed. The Commission was responsible for approving applications, imposing conditions, and conducting hearings if objections to a licence application were submitted and after complaints against a licensee were lodged.

Matters before the Commission were determined by a majority. At least three members had to be present for a quorum, and records of proceedings had to be kept. Unless otherwise prescribed by the *Northern Territory Licensing Commission Act* or another Act, the Commission could determine its own procedures and review its own decisions. Decisions were reviewed upon application from the applicant or upon the initiative of the Commission. Decisions could be reviewed when applications were refused or when conditions were imposed. When making a decision under the Act, the Commission had to consider the objectives of the Act and public interest criteria.

5.1.1.2 The Director and Deputy Directors

The Director and Deputy Directors were employed within the Licensing, Regulation and Alcohol Strategy Office of the NT Department of Justice. The Director of Licensing was appointed by the Minister under the terms of the *Northern Territory Licensing Commission Act*.²⁸ The Director was responsible for liaising with licensees, the Commission, and other parties, and was subject to the directions of the Commission. The Director received licence applications, objections to applications, surrendered licences, notified local councils regarding applications, corresponded with

²⁷ Please note that legislation is dynamic and may change but was correct at the time of writing this report. Readers are advised to check with their local jurisdiction for any revisions to the relevant liquor licensing legislation subsequent to December 2010. Since the completion of this report, the Northern Territory *Liquor Act* has been amended by the provisions of the *Alcohol Reform (Liquor Legislation Amendment) Act 2011* (Act No. 17, 2011) and *Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011* (Act No. 19, 2011). These provisions commenced on 1 July 2011 and have not been incorporated in this report.

²⁸ Section 22(1).

licensees regarding licensing matters, forwarded correspondence regarding licence applications onto the Commission, and kept registers of licences.²⁹ The Director was also required to forward copies of prohibition orders to licensees. Deputy Directors could also be appointed to assist the Director. Even though Deputy Directors could exercise the same powers as the Director, they were subject to the directions of the Director and the Commission.

Deputies were subject to the same appointment and experience requirements as members of the Commission.

Table 11 provides an overview of the liquor licensing regulatory structures in the Northern Territory including the legislation, the relevant government department, and the associated regulatory regimes for the administration of the legislation.

Table 11: Northern Territory liquor licensing regulatory structures (December 2010)ⁱ

Legislation	<i>Liquor Act</i> <i>Northern Territory Licensing Commission Act</i>
Regulations	<i>Liquor Regulations</i>
Department	Department of Justice
Administrative Authority	Director, Licensing, Regulation and Alcohol Strategy Division
Decision-making authority	Licensing Commission
Review decisions/hears appeals from decisions	Licensing Commission
Breaches of conditions/offences/complaints	Magistrates Court (summary offences) Licensing Commission (complaints)

ⁱ Please note that the Northern Territory is also subject to the provisions of the *Northern Territory National Emergency Response Act 2007* (Cth).

5.1.1.3 Police

Police were appointed as inspectors under section 18(10) of the *Liquor Act*. As such, police could enter and inspect any premises at any time they are open for the sale of liquor. They were, however, constrained from entering a private room in those premises unless they obtained the consent of the occupant or had reasonable grounds for believing that an offence had occurred, or was likely to occur. This limitation upon the exercise of their power, however, was subject to any classifications which apply (i.e., restricted premises and/or public place restrictions extended to a private premises by regulation; police would be able to enter these private premises). Police were permitted to examine, take stock of and take samples of any liquor on the premises; inspect any books, documents or other papers on the

premises; remove any books, documents or papers from the premises for the purpose of having copies made; seize and remove any liquor on the premises which they had reasonable grounds to believe was evidence of, or otherwise related to, an offence against this Act; and require a person on the premises to provide their name and address and date and place of birth, evidence of their age, and the name or identity of the seller or supplier of any liquor in the person's possession.

5.1.2 Northern Territory Police Alcohol-Related Data Collection

Northern Territory Police used two databases to capture data on alcohol-related offences and problems: the Northern Territory Integrated Justice Information System (IJIS) and Police Real Time Online Management Information System (PROMIS). An incident was deemed to be alcohol-related if:

²⁹ Section 113A – the Director must keep a register of liquor wholesalers.

- any of the people involved in the incident had consumed alcohol
- the incident was a specific offence which was, or was highly likely to be, alcohol-related, or
- police had exercised any of their powers in relation to seizing and/or tipping alcohol out.

The data collected could relate to both victims and offenders in the PROMIS database; however, it was difficult to obtain statistics as the data were incident-specific. Unique entries were loaded into the database; therefore, it was necessary to inspect every entry in order to obtain statistics. In the IJIS database, offender was a mandated field. Both databases are updated daily.

Data regarding alcohol-related offences could be extracted by operational police, statistical services and management and was used to inform police concerns, complaints and objections about licence applications and licensed premises. Complaints and objections could be lodged with the Director of Liquor Licensing and sent to the Liquor Commission. Other agencies could also access the data once they obtained the appropriate approvals. Apart from drink-driving offences, whether an incident was recorded as being alcohol-related depended upon the subjective assessment of the officer involved. Northern Territory Police would like to collect data regarding where a person had their last drink.

5.1.3 Alcohol Court³⁰

The Alcohol Court was established by the *Alcohol Court Act*. The purpose of the Act was to:

- establish a court which could make orders for people with alcohol dependency found guilty of committing certain offences
- provide increased opportunity for rehabilitation
- reduce the commission of offences associated with alcohol dependency
- reduce risks and harm associated with alcohol dependency.³¹

Besides the regular powers of the Court to conduct proceedings and determine sentences, the Court was empowered to make alcohol intervention orders and prohibition orders.

5.1.3.1 Alcohol Intervention Orders

The primary purposes of an alcohol intervention order were to:

- facilitate the rehabilitation of the offender
- reduce the commission by the offender of offences associated with alcohol dependency
- reduce the offender's health risks associated with alcohol dependency.³²

For alcohol intervention orders, offenders were referred to the Court when they pleaded guilty to a relevant offence and sentencing was yet to occur, it was highly likely that a term of imprisonment would be imposed, the person appeared to be dependent on alcohol and their dependency contributed to the commission of the relevant offence, they agreed to be referred to the Alcohol Court, and they were willing to comply with an alcohol intervention order.³³ Orders were made after consideration of an assessment report.³⁴

Alcohol intervention orders suspended a term of imprisonment in exchange for the offender undergoing treatment for alcohol dependency. This treatment was supervised by the Director of Correctional Services. Amongst the conditions which attached to the order was

³⁰ Since 1 July 2011, the Alcohol Court has been replaced by the Substance Misuse Assessment and Referral for Treatment (SMART) Court. The SMART Court is presided over by a Magistrate and has the power of a court. Its objective is not only punishing offenders, but arranging for people to receive appropriate treatment and rehabilitation. The aim is to reduce the number of people reoffending. The SMART Court is only for people who are guilty of an offence in which alcohol or drug misuse is a factor. The order made in the SMART Court is part of the sentencing process. See provisions of the *Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011* (NT) for further information.

³¹ *Alcohol Court Act*, Section 3.

³² *Alcohol Court Act*, Section 16.

³³ *Alcohol Court Act*, Section 14.

³⁴ *Alcohol Court Act*, Section 17.

the proviso that the offender does not consume alcohol.³⁵

5.1.3.2 Prohibition Orders

Similar to the purpose of an alcohol intervention order, the primary purposes of a prohibition order were to:

- facilitate the rehabilitation of the offender
- reduce the commission by the offender of offences and reduce other harm associated with the offender's alcohol dependency
- reduce the offender's health risks associated with alcohol dependency.³⁶

Eligibility criteria for referral to the Court were similar to those for referrals for alcohol intervention orders. Eligibility criteria for referral to the Court that were not found in the criteria for referral for an alcohol intervention order are:

- evidence that a person has been taken into protective custody at least six times in the past three months³⁷
- the Section did not expressly exclude those offenders already on a parole order under the *Parole of Prisoners Act*, a sentencing order under Section 7(g) or (h) of the *Sentencing Act*, or an alcohol intervention order.

For the Court to make a prohibition order, the offender had to have been found guilty of a relevant offence, and be dependent upon alcohol and, therefore, benefit from either withdrawing or reducing their alcohol consumption levels and receiving treatment. The order also had to be necessary to protect the offender from severe harm or prevent them from causing a serious risk to the health and safety of others due to their regular and excessive alcohol use. Matters which the Court was required to take into account when determining whether to impose an order included:

- the number of times the offender had been taken into protective custody

- the criminal history of the offender and whether the commission of these offences was alcohol-related
- the advice and assessment of the assessment report.³⁸

Prohibition orders proscribed offenders from consuming alcohol and entering or remaining on licensed premises for a specified period of time (less than 12 months). They also required that the offender attend treatment for alcohol dependency. The prohibition imposed could be absolute or conditional and forbid the bearer from:

- consuming specific types of alcohol
- being on licensed premises at certain times.³⁹

If a prohibition order was executed, the Court was required to give a copy of the order to the Director of Licensing.⁴⁰ The Court could also order the Director of Licensing to issue notices to relevant licensees, determine which licensees were to be notified and identify the area in which the prohibition order applied.⁴¹ If licensees were given a notice relating to a prohibition order, the licensee was required to take all reasonable steps to ensure the prohibited person was not:

- permitted to enter or remain on the licensed premises except in accordance with conditions of the prohibition order
- sold or supplied liquor in contravention of the order and its conditions.⁴²

A failure to observe the terms of the prohibition order was a breach of a licence condition.⁴³

5.1.4 Indigenous Peoples

Indigenous people in the Northern Territory make up 30% of the total population. Two thirds of the Indigenous population reside in

35 *Alcohol Court Act*, Section 20.

36 *Alcohol Court Act*, Section 31.

37 *Alcohol Court Act*, Section 29.

38 *Alcohol Court Act*, Section 33.

39 *Alcohol Court Act*, Section 34.

40 *Alcohol Court Act*, Section 45.

41 Section 34.

42 Section 122.

43 Section 122.

areas classified as very remote.⁴⁴ The historical relationship between Indigenous people and liquor laws is complex and political and has fluctuated from total prohibition, to controlled use, to self-management. When considering the impact of liquor laws upon Indigenous populations, the historical context is important. Indigenous Australians' access to alcohol has often been conflated with notions of citizenship, equality, and criminality. These laws have influenced both the method of drinking adopted by Indigenous populations as well as non-Indigenous attitudes to Indigenous drinking behaviours.⁴⁵

There have been three ways of introducing alcohol restrictions within Indigenous communities:

- absolute statutory control
- community control
- complementary control.⁴⁶

5.1.4.1 Northern Territory Emergency Response (The Intervention)

In 2007, the Australian Government declared a state of emergency in relation to Indigenous affairs in the Northern Territory. Legislation⁴⁷ was enacted and a raft of measures introduced that aimed to protect children, make communities safe, and create a better future for Aboriginal communities in the Northern Territory.⁴⁸ Several provisions involved widespread alcohol restrictions which are discussed further in Part 3 of this series

under Section 5.2.1 Restricted Areas. The Northern Territory Emergency Response was an example of absolute statutory control. It created prescribed areas which were enforced through the use of statutory powers. The local community had very little control over its provisions and sanctions.

5.1.4.2 Alcohol Management Plans

Alcohol Management Plans have been implemented in various communities throughout the Northern Territory.⁴⁹ The plans represented a form of complementary control as they were developed at a local level by communities and targeted towards the specific problems encountered within the community. Alcohol Management Plans generally sought to implement strategies aimed at reducing supply, demand, and harm. The community was able to determine the extent of restrictions (i.e., total prohibition or restricted access), and permits were available for those who required an exemption. Plans developed by the community could be enforced through the provision of statutory powers if the plans were lodged by the applicable parties with the Director of Licensing and declared as restricted areas by the Licensing Commission.⁵⁰

5.1.5 Object of Legislation

In the Northern Territory, the primary objects of the *Liquor Act* were to regulate the sale, provision, promotion and consumption of liquor in a way that:

- minimises the harm associated with the consumption of liquor
- takes into account the public interest in the sale, provision, promotion and consumption of liquor.

Additional purposes of the Act were to:

- protect and enhance community amenity, social harmony and wellbeing through the responsible sale, provision, promotion and consumption of liquor

44 NT Government website. Indigenous Territorians Population Profile. Source: ABS Cat. No 3238.0.55.001.

45 Brady, M. (1990). Indigenous and government attempts to control alcohol use among Australian Aborigines. *Contemporary Drug Problems*, 17, 195-220.

46 d'Abbs, P. (1990). Restricted Areas and Aboriginal Drinking. Originally published *Alcohol and Crime* Julia Vernon [Ed]. Canberra, Australian Institute of Criminology.

47 *Northern Territory National Emergency Response Act 2007; Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007; Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007.*

48 Report of the NTER Review Board. 2008. Attorney-General's Department: Canberra ACT.

49 Alice Springs, Tennant Creek, Katherine, Nhulunbuy/ East Arnhem and Palmerston.

50 See sections 74 and 76 of the *Liquor Act* (NT).

- regulate the sale of liquor in a way that contributes to the responsible development of the liquor and associated industries in the territory
- facilitate a diversity of licensed premises and associated services for the benefit of the community.

These objectives were binding upon Commissioners, who were required to have regard for them in exercising their power and to perform their functions in a manner consistent with these objectives.⁵¹

The public interest criteria that were required to be considered by the Commission were specified in Section 6 of the Act. This section provided more than 20 criteria which the Commissioner was required to consider prior to issuing a licence and when determining what conditions should be imposed upon a licence. Criteria the Commissioner was required to consider were:

- whether any harm or ill-health caused to people, or a group of people, by the consumption of liquor needs to be minimised
- the responsible sale and consumption of liquor on-premises
- whether public order and safety would be jeopardised (particularly relevant where circumstances or events are expected to attract large numbers of persons)
- whether the safety, health and welfare of persons who use licensed premises were placed at risk
- whether noise emanations from licensed premises was excessive
- whether business conducted at licensed premises would cause undue offence, annoyance; whether disturbance or inconvenience would be caused to persons who reside/work in/attend the neighbourhood of the premises, a place of public worship, hospital or school
- whether the licensee would comply with

provisions of this Act and any other law in force in the territory which regulated in any manner the sale or consumption of liquor or the location, construction or facilities of licensed premises, including:

- » the *Local Government Act* and associated by-laws
- » *Planning Act* provisions
- whether each person involved in the business was required to receive suitable training relevant to the person's role in the conduct of the business
- the control of credit in the sale of liquor
- practices which encourage irresponsible drinking were to be prohibited
- whether it was necessary or desirable to limit any of the following:
 - » the kinds of liquor that could be sold
 - » the manner in which liquor could be sold
 - » the containers, or number or types of containers, in which liquor could be sold
 - » the days on which and the times at which liquor could be sold
 - » particular persons or the number of persons who could be on licensed premises, or on any particular part of licensed premises, or in an adjacent area subject to the control of the licensee
 - » entertainment, or the kind of entertainment, which could be provided on licensed premises or in an adjacent area under the control of the licensee
 - » promotional activities in which drinks could be offered free or at reduced prices.

Further to these mandated criteria, the Commission was required to consider the application and/or conditions in regard to a range of public interest criteria:

- any other matter they believed to be relevant to the public interest in the sale, provision, promotion and consumption of alcohol

⁵¹ See Section 3 of the *Liquor Act* (NT).

- any information/matter contained within the application or raised by the applicant which was relevant to the public interest.⁵²

5.1.6 Licences and Conditions

The NT *Liquor Act* contained two licence types. One was a general authorisation issued by the Commissioner that permitted an applicant to sell liquor.⁵³ The other was a special licence.⁵⁴ The absence of legislated authorisations permitted the Licensing Commission to impose any condition considered “necessary or desirable”. Prior to issuing a licence and determining which conditions should be imposed on the licence, the Commissioner was required to consider the public interest criteria⁵⁵ (detailed in the above section). Conditions which could be imposed included, but were not limited to:

- construction, furnishing, equipment, and facilities
- restriction of days when and times during which licensed premises could be open for the sale of liquor
- minimum facilities and services to be operative on the days and times the licensed premise was open for the sale of liquor
- method of sale of liquor, including restrictions on the type of container in which liquor could be sold and limitations as to the quantities or type of liquor which could be sold by a licensee
- standard of repair, cleanliness and hygiene to be maintained
- provision of entertainment and food
- display and content of notices which relate to the *Liquor Act*
- persons who may be admitted to licensed premises
- prohibition of specified activities by the licensee, employees, and patrons.

⁵² See Section 6 of the *Liquor Act* (NT).

⁵³ See Section 24 of the *Liquor Act* (NT).

⁵⁴ See Section 57 of the *Liquor Act* (NT).

⁵⁵ See Section 6 of the *Liquor Act* (NT).

These conditions could be imposed subject to the Regulations.

Further to these discretionary conditions, legislated conditions applied to all licensees. These conditions mandated that licensees must not:

- take any action that would induce the irresponsible or excessive consumption of liquor on licensed premises
- publish or cause to be published, in any media, an advertisement which could be construed as inducing the irresponsible or excessive consumption of liquor on licensed premises.

As these two conditions were subject to the opinion of the Commission, they did not bind the licensee until the Commission published guidelines.

Other conditions imposed upon licensees required them to comply with:

- any code of conduct, code of ethics, or rules approved by the Commission and accepted and disseminated by the Minister by notice in the Gazette. However, these publications may only relate to the advertising of liquor
- every prohibition notice given to them.⁵⁶

Applications for special licences needed to be lodged with the Director at least seven days prior to an event; however, this requirement could be waived by the Director at their discretion.⁵⁷ A special licence could be issued by the Director upon receipt of the \$20 fee, subject to whatever conditions the Commission determined applicable.⁵⁸ Applications for special licenses needed to be submitted to the Commission if the application related to a period or periods which exceeded more than 10 hours in one 24-hour period, or where the Director considered that facts or circumstances existed which would make it more desirable for the Commission to consider the application.⁵⁹

⁵⁶ See Section 31 of the *Liquor Act* (NT).

⁵⁷ See Section 58 of the *Liquor Act* (NT).

⁵⁸ See Sections 59 & 60 of the *Liquor Act* (NT).

⁵⁹ See Section 61 of the *Liquor Act* (NT).

Further to this, the Minister could also determine conditions if it was considered that they were urgently needed for the wellbeing of any communities that could be affected by the operation of the licence. These conditions could relate to:

- hours of trade
- type of liquor sold
- amount of limit sold for off-premise consumption
- proof of identity for purchases exceeding an amount prescribed by regulation
- any record-keeping requirements which may be prescribed by regulation.

Any conditions determined by the Minister were required to have regard to the objectives of the Act and be tabled in the Legislative Assembly. The Minister could seek the advice of the Commission when determining these matters.⁶⁰

5.1.6.1 Trading Hours

The Northern Territory *Liquor Act* did not have stipulated trading hours. Section 31 provided that the Commission could issue any conditions it considered necessary and desirable in the particular circumstances. There was an express power contained within the Act empowering the Commission to restrict days and times during which liquor could be sold. Any condition imposed was subject to the regulations.

The *Liquor Regulations* only contained trading hour provisions in relation to liquor sold for off-premise consumption.⁶¹ As such, the Commission was able to exercise its discretion when issuing licenses and imposing trading hours for on-premise consumption. The *Liquor Regulations* prescribed trading hours for two licence types: Licences and Store Licences.

Licences were authorised to trade Sunday to Friday, 10 am until 10 pm, and Saturday and Public Holidays 9 am until 10 pm. Store licences were authorised to sell liquor for off-premise consumption Monday to Friday 10 am until

10 pm, and Saturday and Public Holidays 9 am until 10 pm. In addition to these authorisations, the regulations further provided that the Commission could:

- determine shorter periods of time in respect of particular licenses and store licenses. This may affect the whole class of licenses or just one particular business
- authorise other times of trade if it was satisfied that the liquor sold was not likely to be consumed in public or to lead to public drunkenness.

5.1.6.2 Duration of Licences and Fees

In the Northern Territory, a licence remained in force until it was surrendered, suspended or cancelled under the provisions of the *Liquor Act*.⁶² Fees varied depending upon what the application was for and ranged from \$2 for a licence transfer to \$200 for a full licence application.

5.1.6.3 Reporting Requirements

In accordance with sections 111, 112 and 113 of the *Liquor Act*, licensees were required to record and lodge with the Director every purchase of liquor for sale or supply during the preceding three month period. Lodgements were to occur within 28 days after the last day in March, June, September and December. These records needed to include liquor purchased, date of purchase, name and address of the person from whom the liquor was purchased and the gross price paid or payable for the liquor. However, most venues were not required to provide these statistics and they were obtained from wholesalers.⁶³

⁶⁰ Section 59A.

⁶¹ Part 2 General Matters, Section 4 Days and times at which liquor may be sold (NT).

⁶² Section 30.

⁶³ Personal Communication Micheil Brodie, Department of Justice, NT.



6 Queensland⁶⁴

6.1 Liquor Licensing Arrangements

6.1.1 Responsible Bodies

6.1.1.1 Administrative

In Queensland, the Office of Liquor, Gaming, and Racing (OLGR), a branch of the Department of Employment, Economic Development and Innovation, was the government body responsible for administering the *Liquor Act 1992*. A Chief Executive was appointed under the provisions of the *Public Service Act 2008* (Qld), Section 89 to administer the *Liquor Act 1992*. In conjunction with the responsibilities and standards imposed under the *Public Service Act 2008*, the Chief Executive was empowered under the *Liquor Act 1992* to approve licences and permits, impose conditions on licences, and dispense sanctions for breaches of conditions under the *Liquor Act 1992*. The OLGR had a licensing unit and a compliance unit.

6.1.1.2 Queensland Civil and Administrative Tribunal

The Queensland Civil and Administrative Tribunal (QCAT) was empowered under the

Liquor Act 1992 to review certain decisions of the OLGR's Chief Executive.⁶⁵ These decisions included:

- licence/permit grants and refusals
- extended hours permit renewals
- conditions specified in licences/permits
- extended trading hours grants, refusals, cancellation or variation of conditions
- disciplinary action resulting in the urgent suspension of a licence, or the cancellation or suspension of, or imposition or variation of conditions on a permit
- the grant or refusal of an authorisation under this Act
- any orders directed to a licensee or permittee or a person holding an authorisation under this Act
- the refusal to grant an application to change an approved risk-assessed management plan
- the refusal to grant an application for, or refusal to renew an approval as an approved manager
- the suspension or cancellation of an approval as an approved manager
- a fee payable in respect of a licence.

⁶⁴ Please note that legislation is dynamic and may change but was correct at the time of writing this report. Readers are advised to check with their local jurisdiction for any revisions to the relevant liquor licensing legislation subsequent to December 2010.

⁶⁵ *Liquor Act 1992* (Qld), Section 21(1).

When exercising this function, QCAT was subject to the same powers, discretions, duties and limitations as the Chief Executive. The Tribunal was, however, restrained from reviewing decisions of the Chief Executive on a *de novo* basis as it could only review the evidence that was presented to the Chief Executive. However, if new evidence emerged of which the party did not have knowledge prior to the original hearing and it was unfair in the circumstances not to present the evidence, the decision could be reviewed *de novo*.⁶⁶

6.1.1.3 Police

Police performed various functions under the *Liquor Act 1992*. These functions ranged from an advisory role to the OLGR Chief Executive, a coordination role in liquor accords, and an enforcement role when:

- conditions were breached
- alcohol-related violence and disturbances occurred, and
- drinking occurred in public spaces and/or restricted areas.

Police were designated as investigators,⁶⁷ authorised persons,⁶⁸ and community police officers⁶⁹ under the *Liquor Act 1992*. Further to this, the Chief Executive could request the Commissioner of Police to report an applicant's criminal history,⁷⁰ and police could proffer comments and objections regarding extended hours permits⁷¹ and applications for licences in restricted areas,⁷² as well as furnish the Chief Executive with requisite information when determining whether to classify premises as high-risk.⁷³ However, while the Police Commissioner had a mandatory obligation to provide information when requested, there was no similar obligation placed upon the Chief Executive to seek out the services and expertise

of the police in the above matters in the first instance. Nor was there an obligation to act in accordance with the supplied information. The Chief Executive merely needed to have "regard to" the information provided.⁷⁴

Despite the OLGR Chief Executive's discretionary powers, there were some non-discretionary matters which the Chief Executive had to refer to police. The Chief Executive had to refer applications regarding adult entertainment permits to the Police Commissioner so an investigation could be carried out into the probity of the applicant as well as any other matter that the Commissioner considered appropriate. Upon completion of the inquiry, the Commissioner was required to provide the Chief Executive with a report which could include recommendations and detail any convictions committed by the applicant under the *Criminal Law (Rehabilitation of Offenders) Act 1986*.⁷⁵ Further to this, the Chief Executive was also mandated to inform the relevant Assistant Commissioner of Police if they had received an application for an extended trading hours approval or an adult entertainment permit for the following types of premises:

- any premise type in which a community impact statement needed to be submitted (Section 116 applies)
- a community club licence.

The Chief Executive had the discretion to forward any other type of licence application to the police for comment if it was reasonably considered that the licence could adversely affect the amenity, quiet or good order of a locality. Police were authorised to comment upon the "reasonable requirements of the public in the locality", and/or object to the grant of the application on the grounds that the amenity, quiet, or good order of the locality would be lessened.⁷⁶

Table 12 provides an overview of the liquor licensing regulatory structures in Queensland including the legislation, the relevant government department, and the associated regulatory regimes for the administration of the legislation.

66 *Liquor Act 1992* (Qld), Sections 33 & 34.

67 *Liquor Act 1992* (Qld), Section 4.

68 *Liquor Act 1992* (Qld), Section 173Q.

69 *Liquor Act 1992* (Qld), Section 4.

70 *Liquor Act 1992* (Qld), Section 107(5).

71 *Liquor Act 1992* (Qld), Section 110.

72 *Liquor Act 1992* (Qld), Section 117A.

73 *Liquor Act 1992* (Qld), Section 99G.

74 *Liquor Act 1992* (Qld), Section 117A.

75 *Liquor Act 1992* (Qld), Section 107F.

76 *Liquor Act 1992* (Qld), Section 117.

Table 12: Liquor licensing regulatory structures in Queensland (December 2010)

Legislation	<i>Liquor Act 1992</i>
Regulations	<i>Liquor Regulations 2002</i>
Department	Department of Employment, Economic Development and Innovation
Administrative Authority	OLGR
Decision-making authority	Chief Executive, OLGR
Review decisions/hears appeals from decisions	QCAT
Breaches of conditions/offences/complaints	Magistrates Court (Summary offences) Chief Executive (Disciplinary action)

6.1.2 Queensland Police Alcohol-Related Data Collection

The Queensland Police Service used the Queensland Police Records and Information Management Exchange (QPRIME) system to capture data on alcohol-related crime and related problems in that jurisdiction. QPRIME captured police occurrence data across a range of domains including legal proceedings and charges, sudden deaths, intelligence submissions, crime-stopper files, criminal offences, domestic violence, traffic crashes, marine incidents and other police-related matters. Alcohol-related occurrences, activity reports and street checks that occurred on or in the vicinity of licensed premises were also collected and collated. The data included the date and time of the incident, the premises involved and last place of drinks consumed or purchased.

QPRIME data could be extracted by operational police, statistical services and management through the QPRIME database and the Information Analysis tool. This facilitated the effective use of policing resources and performance management. Operational police and intelligence officers could use the system to forecast crime trends and map police occurrences using the Geographic Information System.

Queensland Police collected data on both victims and offenders in alcohol-related incidents. One participant in the consultations conducted for this project (described in Part

3 of this report) indicated that there was a reasonable level of compliance with the data reporting requirements, particularly when the incidents were clearly alcohol-related. Queensland Police were also of the view that the available data provided an accurate picture of alcohol-related offending in a given jurisdiction. This information had highlighted misconceptions concerning the demographic groups often perceived to be problematic.

The data generated in QPRIME was used by general duties police, local tactical crime squads and the Liquor Enforcement and Proactive Strategy units throughout the state. The data also formed the basis of targeted patrols in response to high-risk or problematic venues and provided a basis to proactively address issues with licensed premises. In addition, QPRIME data were used by law enforcement to provide evidence to OLGR in support of action being taken by them against premises that were non-compliant with licensing legislation.

Legislation in Queensland enabled relevant information generated in QPRIME to be shared with the OLGR, and this information was provided electronically to the OLGR weekly. The data was de-identified for privacy reasons. Particular aspects of the data were available to other agencies upon formal request and approval.

6.1.3 Number of Liquor Licences

As at June 2009, there were 6,700⁷⁷ liquor licences in Queensland. On 30 June 2010, the Queensland population aged 18 years and over was 3,428,226.⁷⁸ Hence, the number of people aged 18 years and over per licensed premises in Queensland in 2010 was 512.

6.1.4 Objects of Legislation

The objectives of Queensland's *Liquor Act 1992* were multifarious. They were to:

- regulate the liquor industry in a way compatible with minimising harm caused by alcohol abuse and misuse
- 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
- provide for the jurisdiction of the tribunal to hear and decide reviews of certain decisions under this Act

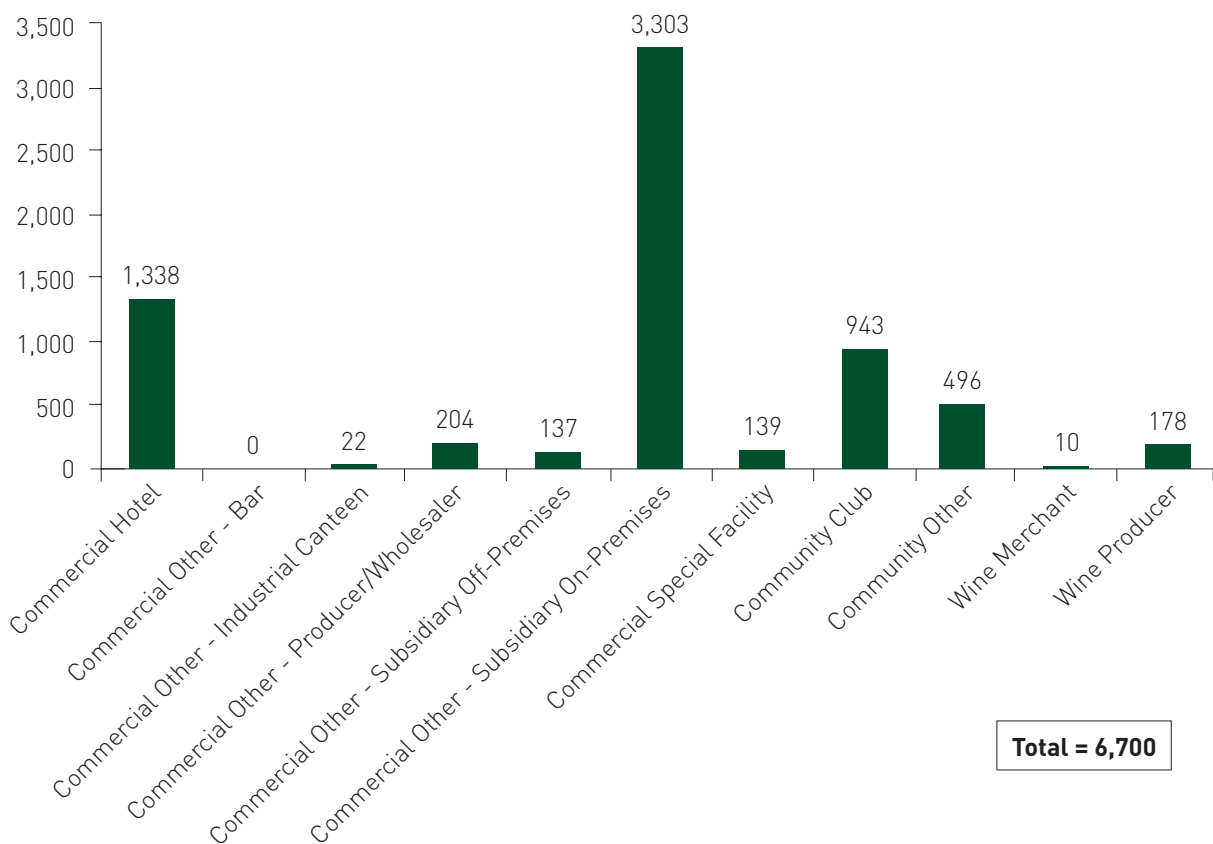


Figure 3: Licences issued in Queensland as at 30 June 2009

NB: Wine Merchant and Wine Producer Licences are not authorised under the *Liquor Act 1992*.

⁷⁷ Source: Queensland Office of Regulatory Policy: Department of Employment, Economic Development and Innovation. As at 30 June 2009.

⁷⁸ The preliminary estimated population of Australia as at 30 June 2010. Source: Australian Bureau of Statistics. Accessed from: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/3101.0> on 11 January 2011.

- 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
- regulate the sale and supply of liquor in particular areas to minimise harm caused by alcohol abuse and misuse and associated violence
- regulate the provision of adult entertainment
- provide revenue for the state to enable the attainment of this Act's objects and for other purposes of government.⁷⁹

Further to the objectives listed above, in 2001 Section 3A was inserted. Section 3A provided that the underlying principles of the Act in relation to the sales and supply of liquor were that:

- a person may obtain a licence to sell or supply liquor as part of conducting a business on-premises
- liquor may only be sold or supplied on the licensed premises as part of the person conducting a business on the licensed premises. This was the principal activity under the licence.⁸⁰

Section 3A was included when the Act was amended to incorporate the recommendations of the National Competition Policy Review of the Act.⁸¹ Subsequently, the authority given to various licence types became more general and less tailored towards individual businesses. These changes increased the importance of the primary purpose tests,⁸² which were based upon the primary activity of the business. However, in 2008, the objectives of the Act were reprioritised so that the harm minimisation principle gained prominence.⁸³ Further to this, Section 3A was amended so that the principles underlying the

Act for facilitating and regulating the liquor industry were made subject to the primary achievement of the harm minimisation objective.

6.2 Licences and Permits

Queensland had a variety of licences and permits. The primary difference between the categories of licences and permits available was whether they were commercially or community based.⁸⁴ All licences were subject to a principal activity test. If the licensee failed to comply with the principal activity test, then the authority to sell liquor ceased to have effect. Licence types and their principal activities are outlined in Table 13.

Queensland also had a number of permits which could be granted to applicants:

- commercial public event permit
- community liquor permit
- extended hours permit
- restricted liquor permit
- adult entertainment permit
- restricted area permit.⁸⁵

For the purposes of this report, an adult entertainment permit is not discussed.

⁷⁹ *Liquor Act 1992* (Qld), Section 3.

⁸⁰ *Liquor Act 1992* (Qld), Section 3A(1).

⁸¹ See National Competition Policy Review 1 Of *The Queensland Liquor Act 1992*. (1999).

⁸² *Liquor Amendment Bill 2001*, Explanatory Notes.

⁸³ *Liquor Amendment Bill 2008*, Explanatory Notes, page 2.

⁸⁴ *Liquor Act 1992* (Qld), Section 58.

⁸⁵ *Liquor Act 1992* (Qld), Section 100.

Table 13: Queensland licences, authority and principal activity

Licence	Authority	Principal Activity
Commercial hotel licence ⁱ	Sell liquor for consumption on- and off-premises.	The sale of liquor for consumption on the licensed premises, or on and off the premises, together with the provision of meals and accommodation, and the provision of premises and catering facilities for use by persons genuinely attending a function held on the premises. ⁱⁱⁱ
Commercial special facility licence	Sell liquor for consumption on- and off-premises.	Provision of the following facilities: <ul style="list-style-type: none"> • airport • casino • convention centre • a facility which makes, or is likely to make, a significant contribution to the development of tourism. Sporting facilities are not included within this category. ^{iv}
Commercial other licences		
Subsidiary on-premises licence	Sell liquor for consumption on- and off-premises ⁱⁱ .	The supply of liquor must be ancillary to the provision of an activity, matter or service. Legislated principal activities include entertainment, meals, and accommodation.
Subsidiary off-premises licence	Sell liquor on the licensed premises for consumption off the premises.	Provision of an activity, matter or service to which the sale of liquor for consumption off the licensed premises is a subsidiary aspect. ^v
Bar licence	Sell liquor for on-premise consumption.	The sale of liquor on licensed premises.
Industrial canteen licence	Sell liquor for on- and off-premise consumption to "relevant persons".	The sale of liquor on licensed premises located on remote industrial localities.
Producer/wholesaler licence		The production and wholesale sale of liquor made on the premises, or the wholesale sale of liquor on the licensed premise. ^{vi}

i Sections 59 & 60.

ii Off-premise consumption may only occur when approved by the Chief Executive.

iii Sections 59 (1)(a)-(b).

iv *Liquor Act 1992* (Qld), Section 63.

v *Liquor Act 1992* (Qld), Section 68.

vi *Liquor Act 1992* (Qld), Section 72.

6.2.1 Licences

6.2.1.1 Commercial Hotel Licence

A commercial hotel licence authorised liquor to be sold for consumption on- and off-premises during ordinary trading hours, and if approved, during extended trading hours. The business was required to have specific facilities including:

- a commercial kitchen
- at least two of the following:
 - » a dining, restaurant, or bistro-style facility
 - » self-contained accommodation of at least three rooms
 - » a function room facility
- the capacity to seat more than 60 patrons at any one time
- toilet facilities for males and females.⁸⁶

The OLGR Chief Executive was restricted from granting a commercial hotel licence for premises used primarily as a supermarket, or if another licence type was more appropriate, or if the organisation was an incorporated association under the *Associations Incorporation Act 1981*.⁸⁷

Liquor could be sold to residents and their guests at anytime. If purchased by the guest or supplied outside approved trading hours, consumption needed to occur in an on-premise residential unit. Guests could only purchase liquor when they were with the resident.⁸⁸

Commercial hotel licences could also extend to the sale of liquor off the licensed premises, for consumption off the premises, while the licensee was catering for a function,⁸⁹ or where a detached bottle shop was approved by the Chief Executive in accordance with the conditions prescribed in the *Liquor Regulations 2002*.⁹⁰

Detached bottle shops could only be approved if the applicant was the licensee of the licensed premise and the bottle shop was 10 kilometres or less from the main premise location.

Further to this, the bottle shop had to be directly accessible from a public place and be permitted under the local planning scheme.⁹¹ The regulations also provided approval for the on-premise consumption of liquor if patrons were supplied free liquor for sampling purposes only.⁹² However, the legislation emphasised that commercial hotel licences were inapplicable for off-premise sales only.⁹³

6.2.1.2 Commercial Special Facility Licence

A commercial special facility licence authorised the sale of liquor for consumption on or off the premises in accordance with the provisions stated in the *Liquor Act 1992* or conditions imposed by the OLGR Chief Executive. The authorised times were specified within the licence. Sales to residents and their guests were authorised at anytime. As detailed above, if the sale occurred outside the trading times specified in the licence, then consumption could only occur in the resident's unit.⁹⁴

The Chief Executive was not empowered to grant this licence type:

- unless satisfied that the business was compliant with the principal activity
- if another licence type would be more appropriate
- when they reasonably considered the premises was used primarily as a supermarket.⁹⁵

6.2.1.3 Commercial Other Licence

Commercial other licences contained five sub-categories.⁹⁶ Each sub-category authorised liquor to be sold in conjunction with the principal activity of the business.

86 *Liquor Act 1992* (Qld), Section 61.

87 *Liquor Act 1992* (Qld), Section 61.

88 *Liquor Act 1992* (Qld), Section 62.

89 *Liquor Act 1992* (Qld), Section 60.

90 Regulations 7-10.

91 *Liquor Regulations 2002*, Regulation 7.

92 Regulation 11.

93 *Liquor Act 1992* (Qld), Section 59(3).

94 *Liquor Act 1992* (Qld), Section 65A.

95 *Liquor Act 1992* (Qld), Section 65.

96 *Liquor Act 1992* (Qld), Section 66.

Subsidiary on-premise licences authorised liquor to be sold during ordinary trading hours or approved extended hours in association with an activity, matter, or service for consumption either on the licensed premise or, where approved by the Chief Executive, for consumption off the premises (e.g., if the licensee was required to provide liquor in conjunction with a meal, entertainment, or accommodation). If the principal activity was the provision of meals, the licensee could sell liquor for off-premise consumption to customers who had eaten a meal. The licensee could sell and supply one opened and one unopened bottle of wine to each adult consuming a meal.⁹⁷

The authority conferred under this licence was transferable to other locations for the purpose of catering for functions; however, when catering for a function, alcohol was not authorised for off-premise consumption.⁹⁸ Where the principal activity was the provision of accommodation, the licensee was authorised to sell liquor anytime on the licensed premises to residents and their guests for consumption on the premise. A limit of nine litres per day applied for sales to residents for off-premise consumption.⁹⁹

A subsidiary off-premise licence authorised the licensee to sell liquor on the licensed premises, for consumption off the premises. A legislated limit of two litres applied, or the Chief Executive could impose an alternative limit.¹⁰⁰ This licence was unable to be granted to supermarkets or party hire companies.¹⁰¹

A bar licence only authorised the sale of liquor for consumption on the licensed premise during ordinary or extended trading hours.¹⁰² It could only be issued to venues with a limited seating capacity.¹⁰³

97 *Liquor Act 1992* (Qld), Section 67A(2)(b).

98 *Liquor Act 1992* (Qld), Section 67C.

99 *Liquor Act 1992* (Qld), Section 67(B).

100 *Liquor Act 1992* (Qld), Section 69.

101 *Liquor Act 1992* (Qld), Section 69A.

102 *Liquor Act 1992* (Qld), Section 70A.

103 i.e., less than 60. See *Liquor Act 1992* (Qld), Section 70.

Industrial canteen licences authorised the sale of liquor on “remote industrial localities”¹⁰⁴ to “relevant persons” for on- and off-premise consumption. These licences could only be granted in:

- the absence of another licensed premise in the location¹⁰⁵
- locations where there was no permanent residential population and where mining, rail or road construction, activities were occurring.¹⁰⁶

Relevant persons were “persons working at the remote industrial locality ... their family members or guests”.¹⁰⁷ Hours of operation were specified within the licence.

Producer/wholesale licences authorised the sale of liquor in situations where the principal activity of the business was:

- production and wholesale sale on the licensed premises of liquor made on the premises, and/or
- wholesale sale of liquor on the premises.

Producer licences authorised the sale of liquor produced or made on the premises for both on-premise and off-premise consumption. Wholesale licences authorised the sale of liquor for off-premise consumption only.¹⁰⁸ Holders of producer licences were only permitted to sell liquor:

- to specific persons,¹⁰⁹ or
- produced on the premises to visitors for consumption:
 - » on the premises in association with a meal, or
 - » on and off the premises if the liquor is sold as a souvenir.¹¹⁰

104 *Liquor Act 1992* (Qld), Section 71A.

105 *Liquor Act 1992* (Qld), Section 71C.

106 *Liquor Act 1992* (Qld), Section 71.

107 *Liquor Act 1992* (Qld), Section 71B.

108 *Liquor Act 1992* (Qld), Section 73.

109 *Liquor Act 1992* (Qld), Section 75(1).

110 *Liquor Act 1992* (Qld), Section 75(2).

6.2.1.4 Community Club Licence

A community club licence authorised the sale of liquor where the principal activity conducted was the provision of facilities and services to the club's members and the achievements of the club's objectives.¹¹¹ Liquor was authorised to be sold for:

- on- and off-premise consumption to:
 - » members
 - » members from other clubs who enjoy reciprocal rights
- on-premise consumption to:
 - » members' guests
 - » applicants to the club
 - » interstate or overseas visitors, and visitors to the club whose ordinary place of residence was at least 15 km from the club's premises. This includes members of a visiting team.
 - » persons attending a function or club activity, or
 - » defence force members in RSL and Services Clubs.¹¹²

The OGLR Chief Executive could approve the licence to be extended to the sale and consumption of liquor on other premises owned by the club for infrequent events. However, restrictions were placed upon both the Chief Executive's power to grant a community club licence and on the operation of the licence itself. For example, the Chief Executive was unable to grant a community club licence to premises which formed part of a larger venue and which already held an active licence of another type.¹¹³

6.2.1.5 Community Other Licence

A community other licence authorised the licensee to sell and supply liquor during ordinary trading hours for consumption on the licensed premises while the principal activity was conducted.¹¹⁴ The principal activity under a community other licence

was the provision of facilities and services to the relevant club's members and the achievement of the club's objectives.¹¹⁵ Liquor could only be sold and supplied:

- to club members and their guests
- to reciprocal club members and their guests¹¹⁶
- for less than 25 hours a week.¹¹⁷

The Chief Executive could grant a community other licence only if satisfied that the club was a non-proprietary club.

6.2.2 Permits

6.2.2.1 Commercial Public Event Permit

A commercial public event permit authorised licensees to sell or supply liquor at a public event. Licensees were required to submit an event management plan with their applications.¹¹⁸ The OLGR Chief Executive was unable to grant this licence to sell liquor on Good Friday, Christmas Day, or before 1 pm on Anzac Day unless the licensee had an agreement with an RSL Services Club to sell liquor at the club's Anzac Day event. In such an instance, the Chief Executive could grant a commercial public event permit which authorised liquor sales between 5 am and 1 pm on Anzac Day.

6.2.2.2 Community Liquor Permit

A community liquor permit authorised the sale of liquor at the event or occasion; at the times on the day or days; and, subject to the conditions stated in the permit. The authority could extend to on- and off-premise consumption.¹¹⁹ The Chief Executive could not grant the permit for licensed premises if they considered that another licence type would be more appropriate. Net proceeds from the sale of liquor were required to be used for the benefit of the community.¹²⁰

¹¹¹ *Liquor Act 1992* (Qld), Section 76.

¹¹² *Liquor Act 1992* (Qld), Section 77.

¹¹³ *Liquor Act 1992* (Qld), Section 78.

¹¹⁴ *Liquor Act 1992* (Qld), Section 81.

¹¹⁵ *Liquor Act 1992* (Qld), Section 80.

¹¹⁶ *Liquor Act 1992* (Qld), Section 81.

¹¹⁷ *Liquor Act 1992* (Qld), Section 82.

¹¹⁸ *Liquor Act 1992* (Qld), Section 102.

¹¹⁹ *Liquor Act 1992* (Qld), Section 103C.

¹²⁰ *Liquor Act 1992* (Qld), Section 103D.

6.2.2.3 Extended Hours Permit

Extended hours permits authorised the licensee to sell liquor on a particular day under the authority of the licence that related to the licensed premises. Sales were subject to the conditions stated in the permit.¹²¹ Applicants had to provide a copy of the application to the local police and local government authority who could comment or lodge objections. These comments and objections, and the impact on the community, had to be considered by the Chief Executive when deciding whether to grant the permit.¹²²

6.2.2.4 Restricted Liquor Permit

Restricted liquor permits authorised the permit-holder to sell and supply liquor for consumption on the premises to members of the club, their guests, or reciprocal club members and their guests.¹²³ Restricted liquor permits were only able to be issued to non-proprietary clubs authorised to trade for less than 25 hours per week. Trading hours could only be between 10 am and midnight.¹²⁴

6.2.2.5 Restricted Area Permit

Restricted area permits applied to restricted areas. They authorised permit-holders to have more than the prescribed quantity of a type of liquor for the area in their possession at the times and on the days, and for the purpose, stated in the permit.¹²⁵ Permits were unable to operate for more than one year.¹²⁶ The Chief Executive was only authorised to grant a restricted area permit when satisfied that the amount of liquor applied for was reasonable for the purpose stated in the application, and if the purpose was not merely for personal use, and another restricted area permit had not been issued to another person for the purpose.¹²⁷

¹²¹ *Liquor Act 1992* (Qld), Section 103G.

¹²² *Liquor Act 1992* (Qld), Section 110.

¹²³ *Liquor Act 1992* (Qld), Section 103JA.

¹²⁴ *Liquor Act 1992* (Qld), Section 103K.

¹²⁵ The regulations provided for 19 restricted areas. See *Liquor Regulations 2002*, Schedule 1A - 1S. Prescribed amounts varied depending upon the area.

¹²⁶ *Liquor Act 1992* (Qld), Section 103U.

¹²⁷ *Liquor Act 1992* (Qld), Section 103V.

6.2.3 Trading Hours

In Queensland, the legislation authorised that the ordinary trading hours for most licence types were between 10 am and midnight every day. Exceptions were:

- Christmas Day, Good Friday, and Anzac Day
- producer/wholesaler, industrial canteen, and commercial special facility licences, if they related to an airport or casino.¹²⁸

For Anzac Day, the ordinary trading hours for all licensed premises were after 1 pm. Liquor could be sold from 10 am in dining areas when it was consumed in conjunction with a meal. The OLGR Chief Executive could extend these hours if liquor was provided with a meal or if the licensed premises were an RSL or Services Club.¹²⁹

On Good Friday and Christmas Day, liquor was only authorised to be sold in a dining area in conjunction with a meal between 10 am and midnight. For New Year's Eve the ordinary trading hours for the premises were extended until 2 am.¹³⁰

The Chief Executive could reduce trading hours of specified licensed premises on specified days and could approve, as ordinary trading hours, different hours for different parts of the licensed premises to which a commercial hotel licence related.¹³¹

Section 86 provided that licensees could apply to the Chief Executive for an extended trading hours approval for all licence types other than a community other licence. This approval could authorise trading between 12 am and 5 am and/or 9 am and 10 am. However, the Chief Executive was precluded from granting an approval for extended hours trading on Good Friday, Christmas Day or Anzac Day.¹³² In obtaining this approval, the applicant had to satisfy the Chief Executive that there was a demonstrated community need for the application to be granted.¹³³

¹²⁸ *Liquor Act 1992* (Qld), Section 9(1A).

¹²⁹ *Liquor Act 1992* (Qld), Section 9(3).

¹³⁰ *Liquor Act 1992* (Qld), Section 9(5).

¹³¹ *Liquor Act 1992* (Qld), Section 9.

¹³² *Liquor Act 1992* (Qld), Section 87.

¹³³ *Liquor Act 1992* (Qld), Section 86.

Holders of other licences could apply to extend their trading hours on a regular basis to include trading between 7 am and 9 am but only for the purpose of selling and supplying liquor to people attending a function held on the licensed premises during those hours.¹³⁴ The conduct of licensees who were granted an extended trading approval could be reviewed by the Chief Executive at anytime.¹³⁵

The *Liquor Act 1992* also enacted a restriction on applications for extended trading hours during a prescribed moratorium period.¹³⁶ Initially this moratorium period was from 16 September 2009 to 15 September 2010,¹³⁷ but was extended by the Minister until December 2010. The legislation was subsequently amended in December 2010 and the moratorium period was extended to 2013.¹³⁸ In extending the moratorium period, the Minister was required to be satisfied that it was in the public interest having regard to the Act's object of regulating the liquor industry in a way that was compatible with minimising harm caused by alcohol.¹³⁹

While the moratorium applied across Queensland, the legislation provided for certain areas to be defined as an "extended trading hours precincts"; the moratorium period did not apply to these areas.¹⁴⁰ An extended trading hours precinct was defined as an area that (a) had a concentration of premises that had an extended trading hours approval between 12 am and 5 am; and (b) was prescribed under a regulation.¹⁴¹ At the time of writing there were 10 areas prescribed as extended trading hours precincts: Brisbane Central Business District (CBD), the Valley and Caxton St, Broadbeach CBD, Bundaberg CBD, Cairns CBD, Ipswich CBD, Mackay CBD, Rockhampton CBD, Surfers

Paradise CBD, Toowoomba CBD, and Townsville CBD.¹⁴²

6.2.4 Conditions

The authority to sell and supply liquor under all licence types was subject to the provisions contained within the *Liquor Act 1992*. As such, any conditions imposed either statutorily under the Act or by regulation were required to be adhered to by the licensee.¹⁴³ Further to the statutory conditions, the OLGR Chief Executive had a discretionary power to impose conditions on licences and permits. These conditions could be imposed to ensure compliance with the Act, to give effect to tribunal decisions, to minimise harm caused by alcohol and associated violence, and/or to minimise alcohol-related disturbances, or public disorder in a locality. These conditions could also extend to preventing a patron from attending the licensed premise during any period specified.¹⁴⁴ While the regulations could prescribe conditions to all licences or specific licence types, and the conditions were able to be applied prospectively to all licence types despite the licence being granted prior to the condition being imposed,¹⁴⁵ to-date the regulations have not contained any such provisions.

6.2.5 Duration of Licences & Licence Fees

In Queensland, the licence period was for a financial year; however, licences continued in force until they were either suspended or cancelled.¹⁴⁶ Fees were self-assessed by the licensee in the manner prescribed by regulation.¹⁴⁷ Licence assessments related to the amount of fee payable according to licence type and risk criterion.¹⁴⁸ Licence fees were calculated by adding the base fee and any applicable risk criterion fees.

¹³⁴ *Liquor Act 1992* (Qld), Section 86(6).

¹³⁵ *Liquor Act 1992* (Qld), Section 88.

¹³⁶ *Liquor Act 1992* (Qld), Section 90.

¹³⁷ *Liquor Act 1992* (Qld), Section 89.

¹³⁸ See Queensland Government, Office of Liquor and Gaming Regulation website: http://www.olgr.qld.gov.au/industry/liquor_licensing/extended_hours/index.shtml; *Liquor and Other Legislation Amendment Act 2010 No. 51*.

¹³⁹ *Liquor Act 1992* (Qld), Section 95.

¹⁴⁰ *Liquor Act 1992* (Qld), Section 90(3).

¹⁴¹ *Liquor Act 1992* (Qld), Section 89.

¹⁴² Regulation 3A.

¹⁴³ *Liquor Act 1992* (Qld), Section 58A.

¹⁴⁴ *Liquor Act 1992* (Qld), Section 107C.

¹⁴⁵ *Liquor Act 1992* (Qld), Section 58 A.

¹⁴⁶ Sections 200, 201.

¹⁴⁷ *Liquor Act 1992* (Qld), Section 202.

¹⁴⁸ Regulations 36 – 36D.

The OLGR Chief Executive could reassess the fee assessment. This could either be undertaken on their own initiative or if the licensee applied for a reassessment.¹⁴⁹ The licensee could apply for a reassessment if they:

- made an error in calculating the fee
- based the self-assessment on incorrect or incomplete information, or
- changed the operation of the business which would affect the fee payable.¹⁵⁰

Table 14: Queensland licensing fees and risk criteria

Licence Type	Base Fee	Regulations
Commercial Hotel Licence	\$2867.50	36A(1)(a)
For each detached bottle shop	\$3185.75	36A(1)(b)
Commercial special facility licence		36A(2)
No sales or supplies between 5 am and 10 am	\$7964.95	36A(2)(a)(i)
For more than 10 liquor outlets (each)	\$1061.90	36A(2)(a)(ii)
Sales and Supplies between 5 am and 10 am	\$10619.30	36A(2)(b)(i)
For more than 10 liquor outlets (each)	\$1061.90	36A(2)(b)(ii)
Commercial other licence	\$531.45	36(3)
Community club licence	\$531.45	36A(4)(a)
Less than 2000 members	\$2336.00	36A(4)(b)
More than 2000 members	\$265.70	36A(5)
Community other licence		
Risk Criteria		
Extended hours		36B(1)
7 am-9 am (weekends)	\$796.15	36B(2)(a)(i)
7 am-9 am (other days)	\$1061.90	36B(2)(a)(ii)
9 am-10 am (weekends)	\$398.60	36B(2)(b)(i)
9 am-10 am (other days)	\$531.45	36B(2)(b)(ii)
12 am-3 am (weekends)	\$5972.95	36B(2)(c)(i)
12 am-3 am (other days)	\$7964.95	36B(2)(c)(ii)
3 am-5 am (weekends)	\$7964.95	36B(2)(d)(i)
3 am-5 am (other days)	\$10619.30	36B(2)(d)(ii)
Prepared food not available ^{i, ii, iii}	\$1061.90	36C(1)
Compliance history		36CA(1)

i After 7 pm and prior to 2 hours of trade cessation.

ii Not applicable to community other licences, or businesses where liquor is not ordinarily expected to be available (i.e., cinemas, hospitals).

iii Prepared food does not include pre-packaged snacks.

149 Regulation 36I.

150 Regulation 36J.

Licensees were also subject to increased fees if they had been issued with:

- an infringement notice during the previous period and had paid the fine¹⁵¹
- the Chief Executive had taken disciplinary action against the licensee in the previous period, and the licensee had not appealed the decision, or
- the Tribunal had upheld the decision or substituted the decision with another form of disciplinary action.

Additional fees associated with a poor compliance history were:

- Infringement notice issued - \$5,150
- Disciplinary action taken - \$10,300
- Supply offence resulting in death or serious assault - \$20,600

Other circumstances in which licensees were subject to increased fees were when they had been convicted of an offence against the Act, or a supply offence¹⁵² which contributed to the death of a person, or a serious assault¹⁵³ committed against the person on or near the licensed premises. Whether or not the supply offence contributed to the death is a matter for determination by a court or tribunal.¹⁵⁴

6.2.6 Reporting Requirements

Licensees were obligated to keep records and report to the Chief Executive on several matters. Licensees were required to file a return detailing all liquor purchased or obtained for the licensed premise during the licence period, while holders of a producer/wholesaler licence were

required to file a return detailing all liquor sold or supplied. However, the Chief Executive could exempt a licensee from these requirements. Further to this, the Chief Executive could, by written notice, require a licensee to file a certified audited return if not satisfied with the accuracy of the original return lodged. Failure to comply with any of the above requirements could result in a maximum penalty of 25 penalty units.¹⁵⁵

Licensees were also required to keep accounting records, and a transaction record specifying either the purchase and acquisition of liquor by or for the licensee, or the sale and supply of liquor by or on behalf of the licensee.¹⁵⁶ Failure to comply with these obligations was an offence and could result in a maximum penalty of 350 penalty units. Transaction records were required to be kept on all licensed premises for six years, but the Chief Executive could decide that specific licence categories were subject to distinct recording requirements.¹⁵⁷ The regulations prescribed slightly different recording requirements depending on the category of licence. All licensees were required to record details on the following categories of liquor:

- beer: low, medium, and heavy
- other brewed products (e.g., ciders)
- fortified wine¹⁵⁸ and other wines: bottles, casks, bulk, mixed wines
- other fermented products (e.g., sake)
- spirits: mixed/not mixed
- any other mixed liquor.

¹⁵¹ This provision only applied for infringement notices issued for the following offences: Section 146(1) – supplying liquor contrary to provisions contained within the licence or permit; Section 155AA(2) – minors in an area in which adult entertainment is provided; Sections 156(1), (2), (3) – supplying liquor to unduly intoxicated patrons, disorderly patrons, or minors.

¹⁵² A supply offence meant an offence against Sections 155A or 156(1) of the Act.

¹⁵³ Serious assault meant an offence against the Criminal Code, Section 320, 323, 340, 349 or 352.

¹⁵⁴ Regulation 36CA.

¹⁵⁵ *Liquor Act 1992* (Qld), Section 203.

¹⁵⁶ *Liquor Act 1992* (Qld), Section 217.

¹⁵⁷ *Liquor Act 1992* (Qld), Section 217.

¹⁵⁸ Included frontignac, madeira, marsala, muscat, port, sherry and tokay.



7 South Australia¹⁵⁹

7.1 South Australian Liquor Licensing Arrangements

In South Australia the powers and responsibilities of the licensing authority were divided between the Liquor and Gambling Commissioner and the Licensing Court. The Office of the Liquor and Gambling Commissioner sat within Consumer and Business Services in the Attorney-General's Department. The Minister responsible for the Act was the Minister for Business Services and Consumers. The Liquor and Gambling Commissioner's role was, inter alia, to determine all non-contested licensing matters except those required to be determined by the Licensing Court (such as those to which an objection has been lodged by the Commissioner of Police on the grounds that to grant the application would be contrary to the public interest). The Liquor and Gambling Commissioner also heard all contested applications for limited licences. If an application was contested, the Liquor and Gambling Commissioner was required to attempt to achieve agreement between the parties by conciliation. If conciliation failed then the applicant could elect to have the matter heard

and determined by the Liquor and Gambling Commissioner or the Licensing Court.

The Liquor and Gambling Commissioner referred a range of matters for hearing and determination by the Court. These include:

- any proceedings that involved questions of substantial public importance
- any questions of law that arose in proceedings before the Liquor and Gambling Commissioner
- any other matter that should, in the public interest, or in the interests of a party to the proceedings, be heard and determined by the court.

The decisions of the Licensing Court could, by leave of the Supreme Court, be appealed to that body. Licensees or applicants could not appeal to the Supreme Court if the matter concerned an order or decision of the Licensing Court made upon the review of a decision made by the Liquor and Gambling Commissioner, or an order or decision of the Court excluded from appeal under a provision of the *Liquor Licensing Act* or some other Act. Following an appeal, the Supreme Court could:

- affirm, vary or quash the order or decision subject to the appeal
- make any order or decision that should, in the opinion of the court, have been made in the first instance

¹⁵⁹ Please note that legislation is dynamic and may change but was correct at the time of writing this report. Readers are advised to check with their local jurisdiction for any revisions to the relevant liquor licensing legislation subsequent to December 2010.

- remit the subject matter of the appeal for further hearing by the Court
- make any incidental or ancillary order.

A recent amendment to South Australia’s liquor licensing arrangements has meant that police could issue infringement notices to licensees

for transgressions where the offence was relatively clear cut.

Table 15 provides an overview of the liquor licensing regulatory structures in South Australia including the legislation, the relevant government department, and the associated regulatory regimes for the administration of the legislation.

Table 15: Liquor licensing regulatory structures in SA (December 2010)ⁱ

Legislation	<i>Liquor Licensing Act 1997</i>
Regulations	<i>Liquor Licensing (General) Regulations 1997ⁱ</i>
Department	Attorney-General’s Department, Consumer and Business Services
Administrative Authority	Office of the Liquor and Gambling Commissioner
Decision-making authority	Liquor and Gambling Commissioner/Licensing Court*
Review decisions/hears appeals from decisions	Licensing Court
Breaches of conditions/offences/complaints	Licensing Court (disciplinary matters) Magistrates Court (summary offences)

ⁱ *Liquor Licensing (Dry Areas—Long term) Regulations 1997; Liquor Licensing (Dry Areas—Short Term) Regulations 1997.*

7.2 The South Australian Liquor Licensing Act 1997 and its Objectives

The Act sought to regulate and control the sale, supply and consumption of liquor for the benefit of the community as a whole. In particular it sought to:

- encourage responsible attitudes towards the promotion, sale, supply, consumption and use of liquor, to develop and implement principles directed towards that end (the responsible service and consumption principles) and minimise the harm associated with the consumption of liquor
- to further the interests of the liquor industry and industries with which it is closely associated such as the live music industry, tourism and the hospitality industries within the context of appropriate regulation and controls
- to ensure that the liquor industry develops in a way that is consistent with the needs and aspirations of the community

- to ensure as far as practicable that the sale and supply of liquor contributes to, and does not detract from, the amenity of community life
- to encourage a competitive market for the supply of liquor.

7.3 Categories of Licence

South Australia offered 11 different licence types, each of which has specific trading hours authorised. These categories were:

- hotel licences
- residential licences
- restaurant licences
- entertainment venue licences
- club licences
- retail liquor merchant’s licences
- wholesale liquor merchant’s licences
- producer’s licences
- direct sales licences

- special circumstances licences, and
- limited licences.

7.3.1 Licenses that Permit the Sale of Alcohol for Both On- and Off-Premises Consumption

In South Australia, several licence types permitted the sale of liquor for both on-premise and off-premise consumption; these were hotel, residential and special circumstance licences. Hotel licence holders were authorised to sell liquor at anytime to residents, diners consuming a meal in a designated dining area, and people attending a reception. They were authorised to sell liquor to other patrons Monday to Saturday from 5 am until midnight and were able to sell liquor through direct sales transactions, provided that the transaction occurred during trading hours and the delivery address was intrastate.

Residential licences permitted liquor to be sold to residents for on-premise and off-premise consumption anytime, to diners in a designated area with or ancillary to a meal, and to persons attending functions in a designated function area.

The conditions of special circumstance licences were determined by the licensing authority on an individual basis and the premise to which the licence applied was transferable. An extended trading authorisation was still required to engage in extended trade. In order to be approved for a special circumstance licence, the applicant had to satisfy the licensing authority that no other category of licence would suffice, and the issuance of another category of licence to the applicant would “substantially prejudice” the business.

7.3.2 Licenses that Permit the Sale of Alcohol for On-Premises Consumption

South Australia had two categories of licence that permitted the sale of alcohol for on-premise consumption: restaurant and entertainment venue licences. Restaurant licences permitted liquor to be consumed or sold at anytime on the premises as long as it was with, or ancillary to, a meal provided by the licensee. This could occur on any day with the

exception of Good Friday and Christmas Day. Much like a residential licence, the conditions could be loosened so the licensee could sell liquor for on-premise consumption to people seated at a table or attending a function at which food was provided.

Entertainment venue licences authorised the licensee to sell liquor at any time for consumption on the licensed premises in a designated dining area, with or ancillary to a meal provided by the licensee and at a time when live entertainment was provided on the licensed premises between 9 pm on one day and 5 am on the next. It was a condition of the entertainment venue licence that the provision of live entertainment was the primary and predominant purpose of the business.

7.3.3 Packaged Liquor Licences

Two South Australian licence types permitted the sale of packaged liquor. The first was the retail liquor merchant’s licence which also permitted on-premise consumption (i.e., samples) in an area approved by the licensing authority. The premises of retail liquor merchant licensees needed to be physically separate from other commercial premises and be devoted entirely to the business conducted under the licence, unless there was insufficient local demand to justify the establishment of separate premises. In such circumstances, or where there was an appropriate reason, the licensing authority could grant an exception.

The second category of licence that permitted packaged liquor sales was the direct sales licence. This licence was limited to intrastate trade only; dispatch and deliveries could take place between 8 am and 9 pm any day, except Good Friday and Christmas Day, and purchasers were unable to attend the premises.

7.3.4 Club Licences

South Australia had two categories of club licences: the club licence and the limited club licence. The club licence authorised liquor to be sold for on-premise consumption from Monday to Saturday from 5 am until midnight, and Sunday from 11 am until 8 pm unless it was New Year’s Eve and then trade could extend

until midnight. Liquor could be sold to diners in a designated dining area with, or in addition to, a meal provided by the licensee and/or people attending a reception in a designated reception area. Liquor was also able to be sold to a lodger for on-and off-premise consumption at any time. The licensing authority was able to approve packaged liquor sales as a licence condition for off-premise consumption to members of the club if the licensing authority was satisfied that members of the club could not, without great inconvenience, obtain supplies of packaged liquor from another source.

Limited club licences were granted by agreement between the club and the licensing authority. A range of legislated conditions was attached to these grants. Limited club licensees were, for example, prohibited from holding concurrent gaming machine and liquor licences. Liquor could only be sold and supplied to members and their guests for consumption on-premises. Members were restricted to having no more than five guests on the club premises at a time, and the licensing authority had the discretion to reduce this number. In addition, the licence required that the Liquor and Gambling Commissioner be informed about the club committee membership and any changes which occurred. Committee members could be removed upon notification from the licensing authority that the member was not a fit and proper person.

7.3.5 Wholesalers' and Producers' Licences

Under a wholesale liquor merchant's licence, liquor could be sold for off-premise consumption to a liquor merchant anytime, to other persons any day between 8 am – 9 pm and through direct sales transactions. Liquor samples were also able to be supplied for on-premise consumption on a part of the premises authorised by the licensing authority. There were, however, restrictions imposed upon how much liquor could be sold to other persons under this licence type. The quantity sold needed to be less than 4.5 litres and 90% of the gross turnover needed to be derived from the sale of liquor to liquor merchants. This turnover amount did not include sales to employees and/or international sales.

Further to this, direct sales transactions were restricted to intrastate addresses, and the liquor needed to be dispatched and delivered between 8 am and 9 pm.

The producer's licence authorised the licensee's product to be sold anytime for off-premise consumption and through direct sales transactions. The licensing authority was able to approve on-premise consumption for sampling purposes, where the liquor was supplied with or ancillary to a meal in a designated dining area, or on any other part of the premise. When supplying liquor for sampling purposes, liquor other than that produced on the premises could be supplied as a comparison product. In addition, the licensing authority had the discretion to specify any other restrictions within the licence.

Various rules were applicable to a producer's licence. Premises could be both production and retail outlets, where production occurred on the premises. A production outlet needed to comprise either all or part of the production premises, or be located adjacent to the licensee's production premises and be approved by the licensing authority for the purpose. Premises which were retail outlets needed to be approved as such by the licensing authority.

7.3.6 Limited Licences

Limited licences authorised the sale, supply, and consumption of liquor granted for a special occasion or series of special occasions. They had a limited term of one month, and the licensing authority could determine whether specific circumstances justified a longer term. Applicants were able to hold a licence of another class, but did not have to be licensed. There were several restrictions upon the licensing authority's discretion in granting a limited licence. A limited licence was unable to be granted if the licence is sought for a function organised by a particular person or group, and these persons had been granted limited licences for previous functions, and the licensing authority was of the opinion that the trade to be authorised by the licence would, in view of the frequency of applications, be better authorised by a permanent licence or by condition of a permanent licence.

7.4 Legislative Approaches to Intoxication

Section 108 of South Australia's *Liquor Licensing Act 1997* contained the offences of supplying liquor on licensed premises to an intoxicated person, or to a person in circumstances in which the person's speech, balance, coordination or behaviour was noticeably impaired and it was reasonable to believe that the impairment was the result of the consumption of liquor. The Act was recently amended to provide a more detailed description of the characteristics of behaviour that would indicate that a patron is intoxicated. Prior to this amendment it was necessary to rely on common law interpretations and/or dictionary meanings to define intoxication.

Several defences existed against the offence of serving an intoxicated person under Section 108 of the Act. If the defendant was the person who sold or supplied the liquor, it was a defence if the defendant believed on reasonable grounds that the person to whom it was sold or supplied was not intoxicated, or that the defendant believed on reasonable grounds that any impairment of the speech, balance, coordination or behaviour of the person to whom it was sold or supplied was not the result of the consumption of liquor. If the defendant was the licensee or responsible person for the licensed premises and did not personally sell or supply the liquor, it was a defence that the defendant exercised proper care to prevent the sale or supply of liquor to intoxicated patrons.

7.5 Controlling Patron Behaviour

In South Australia, authorised persons (who included the licensee, a responsible person for the licensed premises, a police officer, or an approved crowd controller) were authorised to use reasonable force to remove and/or prevent entry to intoxicated persons, offensive and unruly persons, and/or persons whose speech, balance, coordination or behaviour is noticeably impaired and reasonably believed to be the result of the consumption of liquor. While an offence was created under this Section for persons who attempted to re-enter the premises

within 24 hours, there was no obligation placed upon the licensee to refuse entry.

7.6 Extended Trading Hours Arrangements

Extended trade in liquor was defined as the sale of liquor on any day between midnight and 5 am, between 8 am and 11 am or 8 pm and midnight on a Sunday, or between midnight and 2 am on Good Friday or Christmas Day. This Section specifically excluded the sale of liquor to lodgers and liquor sold with a meal. Prior to issuing an extension to trading hours, the licensing authority had to be satisfied that the authorisation would be unlikely to result in undue offence, annoyance, disturbance, noise or inconvenience to people who, for example, reside, work, study or worship in the vicinity of the licensed premise. The licensing authority also had to be satisfied that the licensee would implement appropriate policies and practices to guard against the harmful and hazardous use of liquor. The licensing authority could also impose any other conditions that it considered appropriate. Operationally, the extended trading authorisation did not authorise the sale of liquor the day after Good Friday or Christmas. In addition, the hours defined applied only in relation to on-premise consumption for hotel licences. Liquor sold for consumption off-premises on a Sunday was only authorised to be sold between 8 am and 11 am and between 8 pm and 9 pm.

7.7 Discretionary Conditions

The licensing authority had power to impose any conditions that it considered appropriate, but these conditions had to be within the scope and object of the legislation. The legislation contained several examples concerning these conditions, such as:

- minimising noise, offence, annoyance and disturbance to others who are within the vicinity of the licensed premise
- preventing offensive behaviour on the premises
- ensuring that the safety of staff and customers and overall public safety is protected.

Conditions could also be imposed on a licence by an application to the Court made by the licensee, the Commissioner of the Police, or the Liquor and Gambling Licensing Commissioner. Conditions could also be imposed in any proceedings under the Act involving the licensee, or if the licensing authority considered the condition necessary for public order or safety, on the Liquor and Gambling Commissioner's own initiative. These non-statutory conditions could be varied or revoked by the licensing authority or upon application by the licensee.

7.8 General Provisions

Several mandatory conditions were statutorily imposed upon licensees in South Australia regardless of licence type. These conditions provided that all licensees needed to:

- comply with codes of practice prescribed or approved under the regulations
- minimise the harmful and hazardous use of liquor
- promote responsible attitudes in relation to the promotion, sale, supply and consumption of liquor.

Further to this, for licensees who were authorised to sell liquor for off-premise consumption, it was a condition of the licence that:

- liquor was delivered in sealed containers, or containers otherwise approved by the licensing authority
- liquor be despatched to the purchaser from the licensed premise if it is not being delivered personally to the purchaser at the licensed premise (exceptions to this are for direct sales licences and where the licensing authority permits to the contrary)
- liquor is not to be consumed or sold on the premise except where duly authorised.

7.9 Duration of Licences

The South Australian legislation was unusual in that neither the legislation nor the regulations contained any provisions regarding licence renewals and no fees were required to be paid on renewal.

7.10 Fit and Proper Persons

As with NSW and Western Australia, in South Australia managers, responsible persons and licensees were also required to fulfil the fit and proper person criteria. In addition, where the applicant was not a natural person but an organisation or partnership, the test could extend to all those who may have had an influence upon the business. In South Australia the fit and proper person test extended to close associates of the licensee, the manager and responsible persons. The term "close associates" was defined under the Act.

7.11 Regulating Supply and Consumption Beyond Licensed Premises

In South Australia, the consumption and possession of liquor in a public place prohibited by regulation as a dry area was an offence. To this end, public places proscribed by regulation could:

- have related either to a specified place (e.g., Rundle Mall) or places of a specified kind (e.g., the foreshore)
- be absolute or conditional
- operate continuously or at specified times.

South Australian law contained three pieces of subsidiary legislation which prohibited the possession and consumption of liquor within a public place:

- *Liquor Licensing (Dry Areas—Long Term) Regulations 1997*
- *Liquor Licensing (Dry Areas—Short Term) Regulations 1997*
- *Liquor Licensing (General) Regulations 1997.*

The long-term regulations provided for the prohibition of the consumption and possession of liquor in the areas outlined in the schedule of the regulations. The short-term regulations provided for prohibition in 34 areas for periods of time which generally ranged from a day to a week at specified times.

7.12 Record-Keeping

The South Australian legislation contained provisions that could require licensees to:

- keep records of all transactions involving the sale or purchase of liquor
- lodge returns with the Liquor and Gambling Commissioner either at periodic intervals or at times specified by the Commissioner.

The provisions could require that the records be made as soon as practicable after the transactions to which they related and be in the form and contain the information required by the licensing authority. Licensees could be required to retain the records for six years and a failure to do so would be an offence. It should be noted that the Commissioner did not require the lodgement of returns.

7.13 Number of Liquor Licences in South Australia

As indicated in Figure 4, the number of liquor licences in South Australia increased steadily by a total of 60% (from 3,593 licences to 5,752 licences) over the 13-year period from 1996 to 2009. The largest growth in the number of licences occurred from 2000 to 2009 where the number of licences increased from 4,081 to 5,752 (representing an increase of 41%).

As at 30 June 2009, there were 5,752 liquor licences in South Australia.¹⁶⁰ At the same time the South Australian population aged 18 years and over was 1,288,256;¹⁶¹ hence, there were 224 people aged 18 years and over per licensed premises in South Australia in 2009.

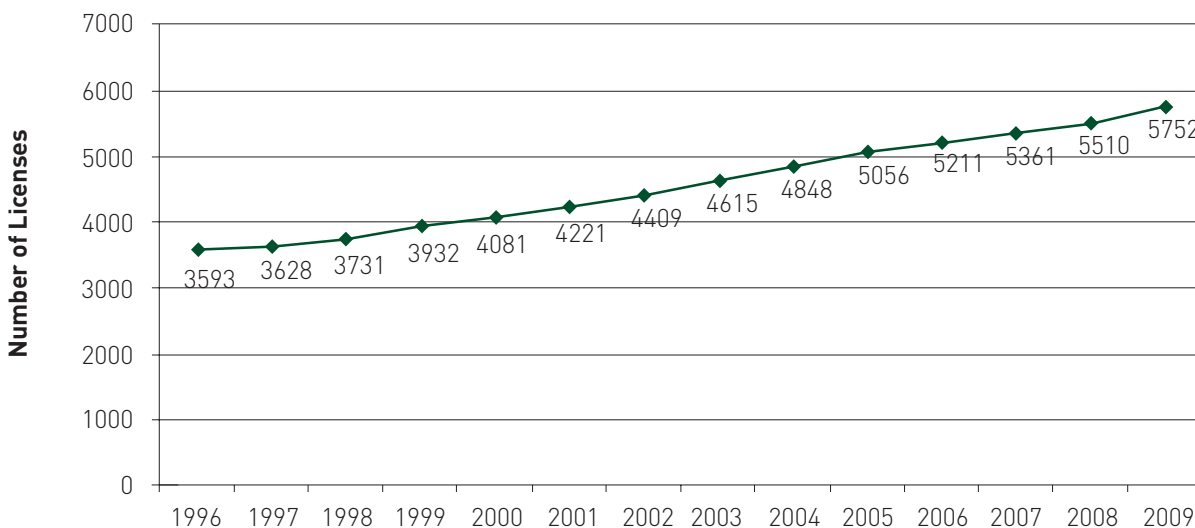


Figure 4: Number of South Australian liquor licences between 1996 and 2009

Source: Office of the South Australian Liquor and Gambling Commissioner, as cited in SA Police (2010).

¹⁶⁰ Source: Office of the South Australian Liquor and Gambling Commissioner (as cited in SA Police, 2010). Accessed from: http://www.police.sa.gov.au/sapol/safety_security/alcohol_and_other_drugs/alcohol_and_crime.jsp on 11 January 2011.

¹⁶¹ Source: Australian Bureau of Statistics. Accessed from: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3201.0Jun%202010?OpenDocument> on 11 January 2011.

7.14 South Australia Police Alcohol-Related Data Collection

South Australia Police did not have a separate database for collecting data on alcohol-related offending; the organisation collected these data from within the following pre- systems:

- Police Information Management System (PIMS - Mainframe system)
- Traffic Online (Data warehouse application)
- Expiation Database.

Data from these systems could be directly accessed or analysed through structured queries using “Business Objects”, a web-based application that permitted retrieval of information in a variety of formats for further manipulation and analysis.

The Alcohol Incident Reporting (AIR) data collection system commenced in November 2007. Reports taken by police resulted from either a victim-reported crime or crime detection. A series of questions was implemented into PIMS for the recording of alcohol-related information on Apprehension Reports (APs) and Police Incident Reports (PIRs). AIR system requirements were incorporated into PIRs for offences and domestic violence incidents and APs for report, arrest and domestic violence applications.

The AIR system incorporated questions concerning the role of alcohol in the events which required APs and PIRs to be completed. These included:

- whether the victim/accused consumed alcohol prior to the incident
- the level of intoxication assessed at the time of contact
- the place where the victim/accused had their last drink.

Additionally, where possible, police were required to assess the sobriety of the victim and the accused and to record any observations. Perpetrator and victim reports could include text information about both the victim and offender, while the specific alcohol-related data were collected in relation to one or the other,

depending on the type of report. In PIRs the data related to the victim, while in APs it related to the perpetrator.

South Australia Police had a high degree of compliance with its data collection and it is intended that alcohol incident data be collected for every report. In PIMS, completion of the relevant fields was mandatory. According to a representative from South Australia Police, while the validation processes associated with the AIR system still required refinement, early indications were that compliance was very good. Overall, the data appeared to accurately reflect the extent of alcohol-related offending.

The South Australia Police’s Licensing Enforcement Branch has successfully used intelligence gained from the AIR data to identify problem licensed premises across the state and to engage management at these venues to improve compliance with licensing regulations. AIR data have been used to highlight breaches of the *Liquor Licensing Act 1997* that have resulted in court action and changes to licence conditions.

The information derived from the AIR Project was regarded as intelligence and therefore subject to the limitations that applied to other police intelligence. In addition, the information was indicative in nature, based on self-reported data and subjective observations (such as sobriety of an offender as observed by police). There were also confidentiality and privacy issues in that the data related to commercial premises and individuals. Consequently, it was not made available to agencies outside South Australia Police. Requests for AIR data were considered on individual merit by the South Australia Police Research and Survey Coordination Committee.

In consultations, a representative from South Australia Police suggested that a possible enhancement to the AIR data collection process would be to include the specific address details of public drinking locations. While the type of location was recorded, the specific address was only recorded for licensed premises or licensed events. If other types of public drinking locations were fully documented, there would be an opportunity to consider hot spot priorities for policing or even amendments to dry zones.



8 Tasmania¹⁶²

8.1 Tasmanian Liquor Licensing Arrangements

There were two bodies responsible for the regulation of liquor sales in Tasmania:

- The Commissioner for Licensing
- The Tasmania Licensing Board.

The Commissioner for Licensing:

- issued and administered applications for licences, permits and interim authorities for individuals to act as licensees
- ensured that individuals were qualified to hold a liquor licence or liquor permit
- granted licences following a direction from the Licensing Board
- transferred liquor licences from one person to another
- cancelled liquor permits in circumstances permitted under the Act
- applied to the Licensing Board for liquor restriction orders and for the cancellation and suspension of liquor licences.

The Tasmania Licensing Board:

- heard applications for new liquor licences
- determined applications by the Commissioner to cancel or suspend licences or permits
- heard appeals against the decisions of the Commissioner.

Under the *Liquor Licensing Act 1990 (Tas)* existing licences could not be permanently altered nor have conditions placed upon them, as licences were issued with certain conditions contained within the Act. The maximum permissible hours of operation of licensed premises, i.e., 5 am until midnight, were set in legislation and could not be changed by the Commissioner, the Board or Police. The Commissioner for Licensing or Board could only place restrictions on the conditions for up to 12 months (by means of a Liquor Restriction Order). To do this, the Licensing Commissioner needed proof that there was a causal link between a particular premise and undue annoyance, disturbance, or disorderly conduct. Despite the limited powers of the Board and Commissioner to place conditions on licensees, the Board had significant discretion in issuing licences.

Under the Tasmanian *Liquor Licensing Act 1990*, police could issue breach notices to licensees. These notices identified breaches of licence conditions and acted as a warning to licensees.

¹⁶² Please note that legislation is dynamic and may change but was correct at the time of writing this report. Readers are advised to check with their local jurisdiction for any revisions to the relevant liquor licensing legislation subsequent to December 2010.

A copy of the notice was given to the licensee and a copy was forwarded to the Commissioner for Licensing. The Commissioner subsequently wrote to the licensee advising them that a breach has been detected. If there were further breaches, the Commissioner could issue a Notice under Section 41 of the *Liquor Licensing Act 1990*. A breach of a direction in a Section 41 Notice could lead to the suspension of the

licence for a maximum period of three months. Police could also issue infringement notices which involve an immediate fine for licensees.

Table 16 provides an overview of the liquor licensing regulatory structures in Tasmania including the legislation, the relevant government department, and associated regulatory regimes for the administration of the legislation.

Table 16: Liquor licensing regulatory structures in Tasmania (December 2010)

Legislation	<i>Liquor Licensing Act 1990</i>
Regulations	<i>Liquor Licensing Regulations 2003</i>
Department	Department of Treasury and Finance
Administrative Authority	Liquor and Gaming Branch, Revenue, Gaming and Licensing Division
Decision-making authority	Commissioner for Licensing/Licensing Board
Review decisions/hears appeals from decisions	Licensing Board/Supreme Court of Tasmania
Breaches of conditions/offences/complaints	Liquor and Gaming Branch Magistrates Court (when prosecution for an offence is required)

8.2 Categories of Licences

Tasmania had five categories of liquor licences:

- a general licence authorised the sale of liquor for consumption on or off the premises between 5 am and midnight on any day and the sale of liquor at anytime to a resident of the premises
- an on-licence authorised the sale of liquor between 5 am and midnight on any day for consumption on the premises, and the sale of liquor at any time to a resident of the premises specified in the licence for consumption on those premises, or to a resident of any premises of which the licensed premises formed a part for consumption on those premises
- an off-licence authorised the sale of liquor between 5 am and midnight, on any day on the premises, for consumption off those premises
- a club licence authorised the sale of liquor between 5 am and midnight on any day on the premises of the club to prescribed persons for consumption on or off those

premises, and was subject to any conditions relating to record-keeping of membership and visitors to the club as specified in the licence

- a special licence authorised the sale of liquor between times, on-premises and subject to compliance with any condition specified in the licence.

Tasmania also had four liquor permit categories. To obtain a liquor permit, an applicant needed to be 18 years of age and have satisfied the Commissioner of their ability to exercise effective control over the sale and any consumption of liquor on the premises in respect of which the permit was sought. Out-of-hours permits, off-permits or on-permits could only be held by the licensee of the licensed premises to which the permit related. The four permits were:

- an out-of-hours permit, which authorised the sale of liquor on the licensed premises between the times (being times after midnight and before 5 am on any day, subject to compliance with any condition specified in the permit)

- an on-permit, which authorised the sale of liquor on the premises specified in an off-licence between any times and subject to compliance with any condition specified in the permit for consumption on those premises
- an off-permit, which authorised the sale of liquor on the premises specified in an on-licence between any times and subject to compliance with any condition specified in the permit for consumption off those premises
- a special permit, which authorised the sale of liquor on the premises between times and subject to compliance with any condition specified in the permit.

8.3 Legislative Approaches to Intoxication

Sections 78 and 79 of the Tasmanian *Liquor Licensing Act 1990* made it an offence to sell liquor to a person who “appears to be drunk”. Under Section 78, the licensee is guilty of an offence if a person authorised by the licensee to sell liquor on the licensed premises sells liquor to a person who appears to be drunk. Under Section 79, it is an offence to supply liquor to a person who appeared to be drunk on licensed premises or on-premises specified in a special permit. There are no further criteria provided in the legislation regarding the definition of “drunk”.

8.4 Controlling Patron Behaviour

Sections 80 and 80A of the Act required a person to leave licensed premises or special permit premises when required to do so by the licensee (or a person acting with the authority of the licensee), or a police officer acting in accordance with this Act. Such persons were not permitted to re-enter or attempt to re-enter those premises for 24 hours immediately after leaving or being removed from the premises. Without a warrant, a police officer could arrest a person that the officer reasonably believed is committing, or has committed, an offence under this Section. A police officer could also use reasonable force to remove a person from

licensed premises whom the officer reasonably believed had committed an offence under this Section. Section 62 also allowed a licensee to require a person who was acting in a violent, quarrelsome or disorderly manner or was using disgusting, profane or foul language to leave the licensed premises.

Licensees were able to ban, or “bar”, someone from the venue for a period of between three to six months.

8.5 Extended Trading Hours Arrangements

Section 19 of the Act authorised the extension of trading hours on specific occasions if the Commissioner considered it appropriate. As noted above, an out-of-hours permit authorised the sale of liquor on the licensed premises after midnight and before 5 am on any day and subject to compliance with any condition specified in the permit.

8.6 Discretionary Conditions

Under Section 39 of the Act, the Board could prohibit or restrict all or any of the activities authorised to be carried out on licensed premises, including the hours of liquor trading. Section 40 allowed the Commissioner to cancel or vary out-of-hours permits. The Board needed to be satisfied via a hearing that a premise is having an undue negative impact on the amenity of the premise’s environs. These orders could be in effect for up to a year but could be revoked at anytime by the Board. The Board could hear matters under this Section following either an investigation carried out after complaints made to the Commissioner, or a report received from an authorised officer. Sections 41 and 42 permitted the Commissioner to suspend a licence for more serious transgressions.

8.7 Duration of Licences

Tasmanian liquor licences were valid from the date specified until terminated in accordance with the Act. Annual licence fees are payable.

8.8 Fit and Proper Persons

The Commissioner needed to be satisfied that an applicant was a fit and proper person to be a licensee and that the applicant would be able to exercise effective control over the premises. Applicants were also required to have successfully completed a course or traineeship approved by the Commissioner relating to the service of liquor, or have satisfied the Commissioner that they had the necessary knowledge, experience and competency. If the Commissioner reasonably suspected or believed that any associate of the applicant who had any influence over the management of the business was not a fit and proper person, then the application could be denied. The term “associate” was defined under Section 3A of the Act.

8.9 Regulating Supply and Consumption Beyond Licensed Premises

The *Police Offences Act 1935* regulated alcohol supply and consumption that occurred beyond licensed premises. Section 25 made it an offence to consume liquor, or to have an opened

or unsealed container of liquor in a public street, or in any public place prescribed by the regulations for the purposes of the Section. This included being in a stationary motor vehicle.

8.10 Secondary Supply of Alcohol to Minors

The issue of secondary supply of alcohol to minors was dealt with in Section 71 of the *Liquor Licensing Act 1990* (in relation to supply on licensed premises). It was also addressed in Section 26 of the *Police Offences Act 1935* (in relation to supply on private premises).

8.11 Number of Liquor Licences in Tasmania

Over the eight-year period from 2001-02 to August 2010, the number of liquor licences in Tasmania increased by 25% (from 1,147 to 1,433) (Figure 5). Most of this increase was associated with an expansion in the number of restaurant, special and special wine producer licence categories (see Table 17).

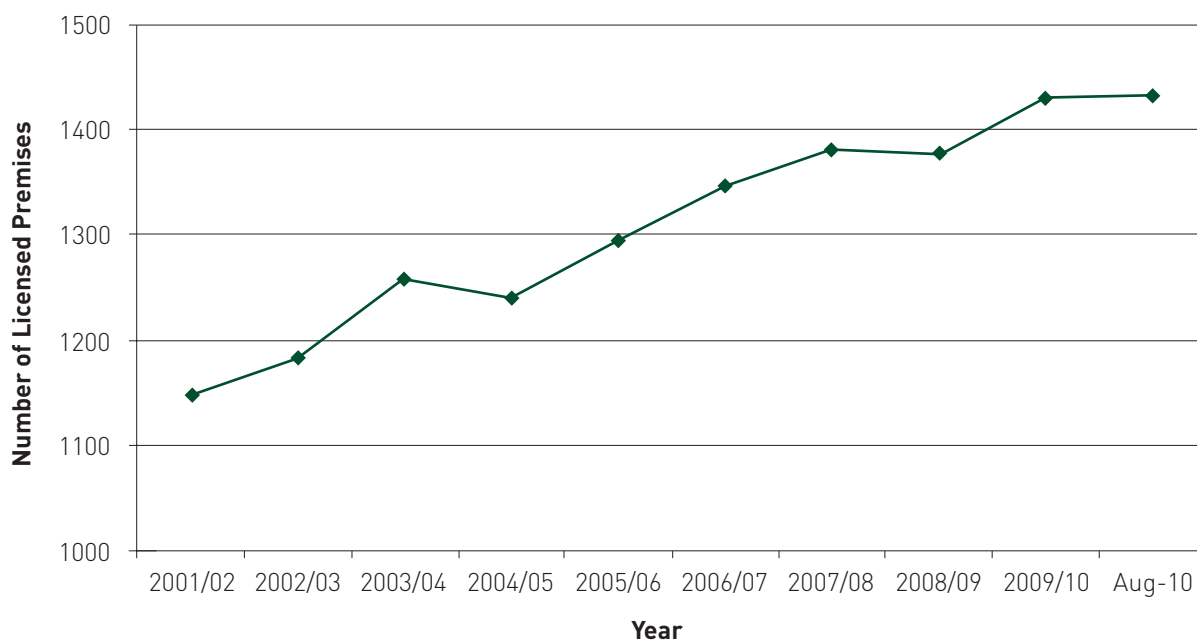


Figure 5: Number of liquor licences in TAS from 2001/02 to August 2010

Source: Tasmanian Department of Treasury and Finance. <http://www.treasury.tas.gov.au/domino/DTF/DTF.nsf/6f7ab9ece723e864ca25728a00129307/2a23cfeaac81a794ca257354001b2152?OpenDocument>

As at 10 August 2010, there were 1,433¹⁶³ liquor licences in Tasmania. On 30 June 2010, the Tasmanian population aged 18 years and over was 388,984.¹⁶⁴ Hence, in Tasmania in mid-2010, there were 271 people aged 18 years and over per licensed premise.¹⁶⁵

8.12 Tasmania Police Alcohol-Related Data Collection

Tasmania Police did not have a specific alcohol-related offences database, but collected data on alcohol-related matters using multiple data systems. A range of information/data was routinely collected for reporting on a monthly basis at the organisational level. These included:

- family violence issues, including the number of offenders and victims affected by alcohol
- the number of persons taken into custody for public drunkenness
- the number of liquor confiscations
- the number of Liquor Infringement Notices issued
- the number of random breath tests conducted and the numbers exceeding the prescribed blood alcohol concentration limit
- the number of alcohol-related road safety incidents.

Data related to alcohol and victims and offenders were recorded for *Safe-at-Home*, a cross-sectoral family violence initiative. Tasmania Police reported a high level of compliance with data reporting requirements as data were reported at an organisational level on a monthly basis.

Tasmania Police used alcohol-related data in conjunction with other data to assist in identifying problem areas/venues, and then allocated resources to target those problems. In each of the Tasmania Police District Commands, public place assaults that occurred during the night and day were mapped. This information highlighted issues that occurred on, or around, particular licensed venues and within entertainment precincts.

Tasmania Police did not make these data available to other agencies, except on request. However, at the time of writing, Tasmania Police was moving towards making a range of data available to government, non-government, the media and the community in general. It was also moving to a new information technology platform, and will review existing databases and determine current and future information technology needs. As part of the process, the need for improved mechanisms for linking alcohol with a range of crimes, in particular assaults, has been highlighted.

163 Source: Tasmania Department of Treasury and Finance: Retrieved 23 November 2010 from: <http://www.tenders.tas.gov.au/domino/DTF/DTF.nsf/fc52186e9867674a25665500244b46/2a23cfeaac81a794ca257354001b2152?OpenDocument> as at 10 August 2010.

164 Source: Australian Bureau of Statistics. Accessed from: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3201.0Jun%202010?OpenDocument> on 11 January 2011.

165 As noted above, many of these licences relate to venues which are restaurants or cafes. In addition, Tasmania has a decentralised population, which means that the venues tend to be geographically dispersed.

Table 17: The number of liquor licences on issue in Tasmania at the end of the financial years, 2002–2010

End of financial year	Type of Liquor Licence							Total
	General	Special	Off	Club	Special Wine Producer	On	Total	
2002	304	467	8	208	129	31	1,147	
2003	302	477	17	206	137	44	1,183	
2004	306	511	18	210	151	62	1,258	
2005	307	489	18	210	145	71	1,240	
2006	308	512	29	209	153	84	1,295	
2007	311	530	35	210	155	106	1,347	
2008	312	544	40	209	164	113	1,382	
2009	310	536	46	205	160	121	1,378	
2010	325	565	49	205	161	124	1,429	
As at 10 August 2010	325	565	51	205	161	126	1,433	

Source: Department of Treasury and Finance website <http://www.treasury.tas.gov.au/domino/dttf/dttf.nsf/6f7ab9ece723e864ca25728a00129307/2a23cfeaac81a774ca257354001b2152?OpenDocument>



9 Victoria¹⁶⁶

9.1 The Victorian *Liquor Control Reform Act 1998* and its Objectives

The supply and consumption of alcohol in Victoria was regulated through the *Liquor Control Reform Act 1998*. Its primary aims were to:

- minimise the harm arising from the misuse and abuse of alcohol by:
 - a. providing adequate controls over the supply and consumption of liquor
 - b. ensuring as far as practicable that the supply of liquor contributes to, rather than detracts from, the amenity of community life
 - c. restricting the supply of certain other alcoholic products
 - d. encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community
- facilitate the development of a diversity of licensed facilities reflecting community expectations
- contribute to the responsible development of the liquor and licensed hospitality industries
- regulate licensed premises that provide sexually explicit entertainment.

The Minister responsible for administering the *Liquor Control Reform Act 1998* was the Minister for Consumer Affairs. Section 5 of the *Liquor Control Reform Act 1998* established a Liquor Control Advisory Council to advise the Victorian Minister for Consumer Affairs on problems related to alcohol abuse and any other matters referred to it by the Minister. Members of the Liquor Control Advisory Council were appointed by the Minister for Consumer Affairs.

The Director of Liquor Licensing:

- was appointed under Section 149 of the *Liquor Control Reform Act 1998* to oversee the regulation and administration of liquor laws in Victoria
- worked collaboratively with Responsible Alcohol Victoria,¹⁶⁷ Department of Justice to meet the objectives of the *Liquor Control Reform Act 1998*.

¹⁶⁶ Please note that legislation is dynamic and may change but was correct at the time of writing this report. Readers are advised to check with their local jurisdiction for any revisions to the relevant liquor licensing legislation subsequent to December 2010.

¹⁶⁷ Responsible Alcohol Victoria coordinates alcohol policy and related issues within the Department of Justice, and provides leadership across the Victorian Government on alcohol policy reform. Source: Victoria Online website: http://www.vic.gov.au/contactsandservices/directory/?ea0_lfz99_120.&organizationalUnit&a09ac2de-6ced-4ee1-8ae3-5328925524ce

Strategies adopted by the Director of Liquor Licensing and Responsible Alcohol Victoria to minimise the incidence of alcohol-related issues included:

- administering Victoria's liquor laws and regulations to control the circumstances under which alcohol is made available
- improving responsible serving practices by licensees through harm minimisation education and training
- promoting responsible consumption practices by the community.

The Director of Liquor Licensing had the power to grant or refuse a liquor licence and to:

- ban inappropriate alcohol promotions and advertising (licensees who failed to comply with a ban could be fined more than \$14,000)
- suspend liquor licences for up to five days
- issue breach notices to licensees who did not comply with the Act and licence conditions
- investigate issues that may contribute to alcohol-related harm
- ensure that applicants for liquor licences are suitable to hold a licence.¹⁶⁸

Under Sections 45 and 46 of the *Liquor Control Reform Act 1998*, the Director of Liquor Licensing referred all contested applications and each objection to an independent Liquor Licensing Panel.¹⁶⁹ The applicant and objector were given an opportunity to present their cases to the Panel at a public hearing. Once objections were heard, the Panel made a recommendation to the Director of Liquor Licensing to grant or refuse the application. After receiving the Panel's recommendation, the Director of Liquor Licensing made a determination on the application.

168 Source: Responsible Alcohol Victoria website: <http://www.justice.vic.gov.au/wps/wcm/connect/justlib/doj+internet/home/alcohol/licensing+information/justice++alcohol++the+director+of+liquor+licensing>

169 Under Section 160 of the *Liquor Control Reform Act 1998*, the main functions of the Liquor Licensing Panel are to consider and report on contested applications referred to it by the Director of Liquor Licensing.

Under Section 87 of the *Liquor Control Reform Act 1998*, if an applicant or objector was not satisfied with the Director of Liquor Licensing's decision they could appeal that decision to the Victorian Civil and Administrative Tribunal (VCAT). VCAT heard disputed liquor licensing matters and also had a broad remit to hear and determine disputes about the purchase or sale of goods and services, residential tenancies, planning, business licensing and decisions of Victorian government agencies. Appeals against VCAT decisions could be made to the Supreme Court of Victoria, but only on questions of law.

Responsible Alcohol Victoria coordinated alcohol policy and related issues within the Victorian Department of Justice, and provided leadership across the Victorian Government on alcohol policy reform. The role of Responsible Alcohol Victoria's Compliance Directorate was to ensure that alcohol was promoted and sold in a way that encouraged responsible and appropriate drinking. One of the main objectives of the Compliance Directorate was to ensure licensees met the obligations of their liquor licence under the *Liquor Control Reform Act 1998*. The Directorate worked with the alcohol industry, Victoria Police, the Director of Liquor Licensing and other government agencies to build a culture of compliance in regard to liquor licensing. The Directorate acted on behalf of the Director of Liquor Licensing and made recommendations about variations to licence conditions. It also determined disciplinary or prosecution actions that may be needed.¹⁷⁰

Responsible Alcohol Victoria's Compliance Inspectors had the power to:

- enter and inspect licensed premises
- require licensees and their staff to answer questions and provide information, documents, records or equipment for inspection
- require proof of age and seize liquor from a minor

170 Source: Responsible Alcohol Victoria website: <http://www.justice.vic.gov.au/wps/wcm/connect/justlib/doj+internet/home/alcohol/licensing+information/justice++alcohol++the+director+of+liquor+licensing>

- seize property as evidence
- issue infringement notices.¹⁷¹

at December 2010, including the legislation, the relevant government department, and the associated regulatory regimes for the administration of the legislation.

Table 18 provides an overview of the liquor licensing regulatory structures in Victoria, as

Table 18: Liquor licensing regulatory structures in Victoria (December 2010)

Legislation	<i>Liquor Control Reform Act 1998</i>
Regulations	<i>Liquor Control Reform (Prescribed Class of Premises) Regulations 2008</i> <i>Liquor Control Reform (Prohibited Supply) Regulations 2005</i> <i>Liquor Control Reform Regulations 2009</i>
Department	Department of Justice
Administrative Authority	Responsible Alcohol Victoria
Decision-making authority	Director of Liquor Licensing/Liquor Licensing Panel ⁱ
Review decisions/hears appeals from decisions	VCAT
Breaches of conditions/offences/complaints	VCAT (inquiries and disciplinary matters) Magistrates' Court (summary offences)

ⁱ The Liquor Licensing Panel considered contested applications and reports its findings (including recommendations) to the Director of Liquor Licensing.

9.2 Categories of Licence

Eleven categories of licences and/or permits could be issued under the Victorian *Liquor Control Reform Act 1998*. The licence or permit specified the trading hours within which licensed premises could operate. The categories were:

- general licence
- on-premises licence
- restaurant and cafe licence
- club licence
- packaged liquor licence
- late night licence
- pre-retail licence
- vigneron's licence
- limited licence

- major event licence
- BYO (Bring Your Own alcohol) permit.¹⁷²

Temporary Licences

There were two types of temporary licences in Victoria, temporary limited licences and major event licences. Temporary limited licences were usually sought by persons, businesses, clubs or other organisations holding:

- one-off events, such as a ball or presentation night
- a one-off event requiring an extension of trading hours.

¹⁷¹ Source: Responsible Alcohol Victoria website: http://www.justice.vic.gov.au/wps/wcm/connect/justlib/DOJ+Internet/resources/7/1/716ad0804256f29b8e12ce8232c1b2cd/Grapevine_Autumn_2010.pdf

¹⁷² These licence types are consistent with the types specified in Section 7 of the *Liquor Control Reform Act 1998*. Club licences provided under Section 10 of the Act may be issued as a full club licence or a restricted club licence. Late night licences may be issued as a late night (general) licence, late night (on-premises) licence, or late night (packaged liquor) licence (Section 11A), and a limited licence may be issued as a temporary limited licence or a renewable limited licence (Section 14).

A major event licence was a form of temporary limited licence that aimed to set apart events likely to have a significant impact on the Victorian community. It applied to events which:

- required significant regulatory enforcement effort or oversight
- had a significant impact on the provision and organisation of public transport or emergency services
- were likely to have a significant impact on public safety or the amenity of the area in which the event was to be held.

9.3 Risk-Based Fee Structure

Fees were charged when an application for a liquor licence was made. Licences were renewed annually. The Victorian State Revenue Office posted an annual renewal notice to existing licensees.

Annual renewal fees were calculated using a risk-based fee structure; licensed venues that presented a greater risk of harm to the community paid higher liquor licence fees. The annual renewal fees included a base fee differentiated by licence category, risk fees for extended operating hours and a history of non-compliance, and a venue capacity multiplier based on patron numbers. Thus the total annual fee was comprised of several components:¹⁷³

- the base fee was a set amount determined by the licence category (e.g., a general licence incurred a base fee of \$812.70)

- an operating hours risk fee. This additional fee only applied to:
 - » general and on-premises licences that traded past 11 pm and closed before 1 am
 - » late night (general) and late night (on-premises) that traded past 1 am
 - » packaged liquor licences that operated outside ordinary trading hours and late night (packaged liquor) licences
- the Compliance history risk fee was only applicable for premises that had paid infringement notices or had been successfully prosecuted for specific offences (e.g., supplying alcohol to an intoxicated person or a minor, permitting a drunk or disorderly person or a minor on the premises). These fees were graduated and fixed according to the amount of infringement notices received and paid, or the number of successful prosecutions pursued under the specified offences¹⁷⁴
- the Venue Capacity Multiplier was only applicable to:
 - » general, on-premises, late night (general), late night (on-premises) restaurant and cafe, full club and restricted club licences where the compliance history risk fee applied and the venue had more than 200 patron capacity
 - » late night (general) and late night (on-premises) licences with more than 200 patron capacity.¹⁷⁵

Thus, the annual licence renewal fee was calculated using the following formula:

$$\text{Annual Licence Renewal Fee} = \left[\text{Base Fee} + \text{Operating hours risk fee (if applicable)} + \text{Compliance history risk fee (if applicable)} \right] \times \text{Venue capacity multiplier (if applicable)}$$

175

¹⁷³ *Liquor Control Reform Regulations 2009* (VIC), Part 5.

¹⁷⁴ See Liquor Licensing Fees Fact Sheet http://www.justice.vic.gov.au/wps/wcm/connect/justlib/DOJ+Internet/resources/9/4/94742f00404aa820ae1fff5f2791d4a/Liquor_licence_fees_update_for_Jan_2011.pdf

¹⁷⁵ Source: Responsible Alcohol Victoria website: http://www.justice.vic.gov.au/wps/wcm/connect/justlib/DOJ+Internet/resources/9/4/94742f00404aa820ae1fff5f2791d4a/Liquor_licence_fees_update_for_Jan_2011.pdf

9.4 Legislative Approaches to Intoxication

The *Liquor Control Reform Act 1998* stated that it was an offence for a licensee or permittee (i.e., the holder of a BYO permit) to supply alcohol to a person in a state of intoxication or to permit drunken or disorderly persons to be on the licensed premises.

Section 3AB (1) of the Act defined intoxication as follows: a person is in a state of intoxication if his or her speech, balance, co-ordination or behaviour is noticeably affected and there are reasonable grounds for believing that this is the result of the consumption of liquor.¹⁷⁶

In August 2010, the Victorian Department of Justice issued a new set of Intoxication Guidelines (including behavioural indicators) designed to assist licensees to serve alcohol responsibly, to determine if someone was intoxicated, and to refuse service.¹⁷⁷

9.5 Number of Liquor Licences in Victoria

Figure 6 shows that the number of licensed premises in Victoria increased by 120% over a 14-year period from approximately 8,240 licensed premises in 1996 to 18,114 in 2010.

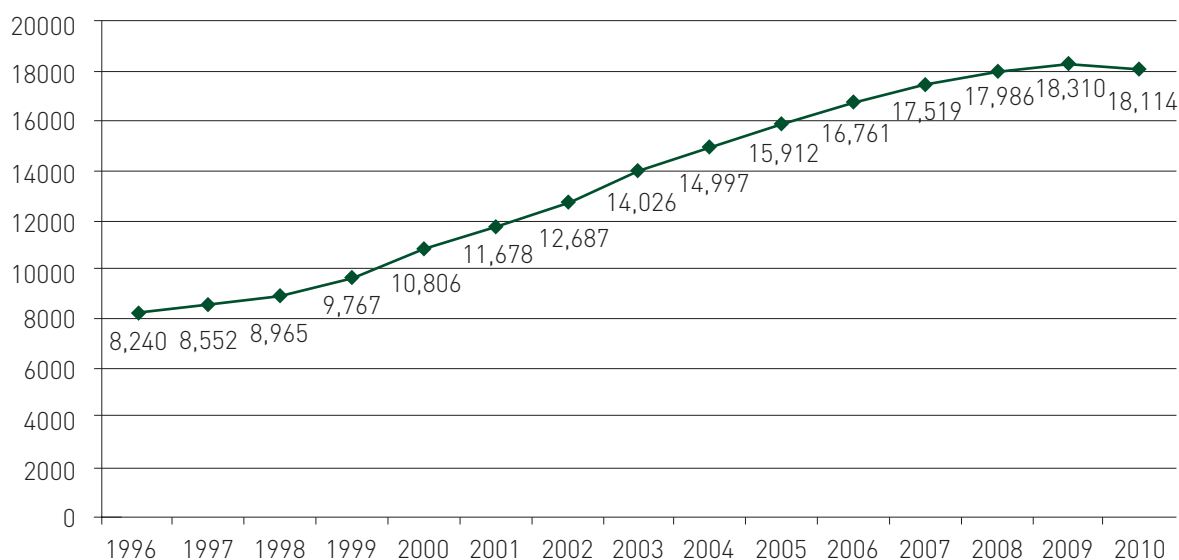


Figure 6: Number of licensed premises in Victoria from 1996 to 2010

Source: Responsible Alcohol Victoria

http://www.justice.vic.gov.au/wps/wcm/connect/4dfe6c00404aa318a02afb5f2791d4a/Intoxication_guidelines_LoRes.pdf?MOD=AJPERES.

176 Source: Responsible Alcohol Victoria website: http://www.justice.vic.gov.au/wps/wcm/connect/4dfe6c00404aa318a02afb5f2791d4a/Intoxication_guidelines_LoRes.pdf?MOD=AJPERES

177 http://www.justice.vic.gov.au/wps/wcm/connect/4dfe6c00404aa318a02afb5f2791d4a/Intoxication_guidelines_LoRes.pdf?MOD=AJPERES

As at 30 September 2010, there were 18,872¹⁷⁸ liquor licences in Victoria. On 30 June 2010, the Victorian population aged 18 years and over was 4,316,946. Hence, there were 229 Victorians aged 18 years and over per licensed premises in mid-2010.

9.6 Victoria Police Alcohol-Related Data Collection

Victoria Police used a range of measures to monitor alcohol-related crime and disorder. They included the Law Enforcement Assistance Program (LEAP), a database system mainly used by general duties members for managing criminal offences. LEAP contained information about whether victims and offenders were affected by alcohol or other drugs at the time of the offence.

The Alcohol and Drug Reporting Incidents For Tasking (ADRIFT) provided information to Victoria Police on the last place of drinking for those involved in street offences, assaults and drink-driving. Victoria Police also used Interpose, a database that predominantly records larger investigations. Interpose encompassed a Licensed Premises Incident Report (LPIR) so that general duties members could report on incidents involving licensed premises. The LPIR could be linked into larger investigations documented on Interpose and included the following information on licensed premises:

- assaults, brawls and glassing incidents
- property damage within or in the vicinity of premises
- excessive noise emanating from premises or their patrons
- intoxicated or offending patrons
- liquor offences (underage and other)
- when written or verbal warnings were given or infringement notices were issued
- illicit drug offences
- party bus involvement in incidents
- drink-driving offences
- crowd controller offences.

The Attendance Register recorded details of offenders attending police stations. ADRIFT formed part of the Attendance Register and contained alcohol-related data items including:

- whether the attendee was affected by alcohol/drugs at the time of the offence and the nature of the offences involved
- the type of alcohol involved and the times and location of consumption
- the degree to which the offender was affected
- for traffic matters, the blood alcohol concentration of drivers.

Other information available to Victoria Police included data concerning alcohol-related penalty notices issued by, and information arising from, Taskforce Razon. Taskforce Razon was a state-wide liquor licensing enforcement unit focussed on high-risk licensed premises that:

- performed plain clothes/covert operations that supported localised public order and licensing operations
- provided evidence gathering for liquor licensing prosecutions
- provided assistance to licensing inspectors in preparation of written warnings and applications for disciplinary applications prosecuted by the Liquor Licensing Unit
- undertook a variety of educational roles among general duties and other police.

Victoria Police utilised data generated by Interpose and LEAP and information collected by Taskforce Razon to assist liquor licensing legislation enforcement. These sources of information were used when police interact with licensees about problems that arose in their premises. Information was also collected about incidents and warnings given to licensees prior to formal VCAT hearings. This information was used to strengthen the police case when requesting VCAT to cancel, suspend or vary a licence or BYO permit, impose a fine of up to \$30,000, or disqualify persons who were directly or indirectly involved in the management of licensed premises.

¹⁷⁸ Source: www.justice.vic.gov.au as at 30 September 2010.

Information on alcohol-related issues was also available to Victoria Police from Divisional Licensing Units (DLU). DLUs have been created in Melbourne, Prahran and Geelong as a result of the large number of licensed premises in those regions. The role of the DLUs included among other things:

- co-ordinating and assisting stations/work units in all licensing operations
- collating and analysing intelligence
- assessing liquor licensing applications for licensing inspectors within their areas.

Victoria Police also used the Traffic Incident System database to identify broader alcohol-related traffic matters.

Compliance with the various data collection methods was constantly monitored at operational and strategic levels. Victoria Police believed that these data sources provided an accurate picture of alcohol-related incidents.

Information obtained by Victoria Police could be shared with other agencies via Memoranda of Understanding between Victoria Police and the relevant agency. Where appropriate, de-identified information was provided to ensure compliance with privacy requirements.

While the information available was considered to be comprehensive, a representative from Victoria Police indicated that the data collection systems could be further enhanced by rationalising the number of separate databases into a single, adaptable, and more user-friendly database. Data would be available for use by operational police and for strategic and analytical purposes. It was also suggested that the data collection system could be further enhanced if the Victoria Police data incorporated RAV Compliance Directorate and infringement notice data in a similar manner to that which occurs in NSW with their ARCIE system (see section 12.10). Other potential data enhancement could involve identity scanning at licensed premises (subject to privacy issues and data access).



10 Western Australia¹⁷⁹

10.1 Western Australian Liquor Licensing Arrangements

The Minister for the Department of Racing, Gaming and Liquor (RGL) was the Minister responsible for promoting and maintaining lawful liquor activities for Western Australia in line with harm minimisation principles and as expected by the community (Government of Western Australia, 2007). RGL aimed to achieve these standards through performing numerous functions and services to maintain public confidence in the alcohol industry (Government of Western Australia, 2007). RGL's responsibilities included:

- hearing and determining liquor licence applications in relation to the *Liquor Control Act 1988*
- considering complaints in relation to licensed premises
- monitoring the standards of licensed venues and premises and ensuring compliance (Government of Western Australia, 2007).

Table 19 provides an overview of the liquor licensing regulatory structures in Western Australia including the legislation, the relevant government department, and associated regulatory regimes for the administration of the legislation.

10.2 The *Liquor Control Act 1988* and its Objectives

Section 5 of the *Liquor Control Act 1988* contained both primary and secondary objectives. When carrying out its duties under the Act, the Licensing Authority had to have regard to these objectives. The primary objectives took precedence over the secondary objectives. The primary objectives of the Act were to:

- regulate the sale, supply, and consumption of alcohol
- minimise harm or ill-health caused to individuals or groups of people due to the use of liquor
- cater for the requirements of consumers of liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.

Secondary objectives which the Licensing Authority must consider were:

¹⁷⁹ Please note that legislation is dynamic and may change but was correct at the time of writing this report. Readers are advised to check with their local jurisdiction for any revisions to the relevant liquor licensing legislation subsequent to December 2010.

- to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State
 - to provide adequate controls over, and over the persons directly or indirectly involved
- in, the sale, disposal and consumption of liquor
- to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.

Table 19: Liquor licensing regulatory structures in WA (December 2010)

Legislation	<i>Liquor Control Act 1988</i>
Regulations	<i>Liquor Commission Rules 2007</i> <i>Liquor Control Regulations 1989ⁱ</i>
Department	RGL
Administrative Authority	Director-General, RGL
Decision-making authority	Director of Liquor Licensing/The Liquor Commission
Review decisions/hears appeals from decisions	The Liquor Commission
Breaches of conditions/offences/complaints	Magistrates Court (summary offences) The Liquor Commission (disciplinary matters)

ⁱ *Liquor Control (Bayulu Restricted Area) Regulations 2010; Liquor Control (Irrungadji Restricted Area) Regulations 2010; Liquor Control (Jigalong Restricted Area) Regulations 2009; Liquor Control (Juwurlinji Restricted Area) Regulations 2009; Liquor Control (Koongie Park Restricted Area) Regulations 2010; Liquor Control (Kundat Djaru Restricted Area) Regulations 2010; Liquor Control (Nicholson Block Restricted Area) Regulations 2010; Liquor Control (Noonkanbah Restricted Area) Regulations 2009; Liquor Control (Oombulgurri Restricted Area) Regulations 2008; Liquor Control (Punmu Restricted Area) Regulations 2010; Liquor Control (Wangkatjungka Restricted Area) Regulations 2008; Liquor Control (Yakanarra Restricted Area) Regulations 2010.*

10.3 Administration Bodies, Police and Powers

The Licensing Authority

The Licensing Authority was comprised of the Liquor Commission and the Director of Liquor Licensing. The Director was not subject to any directions by the Liquor Commission, unless a party to proceedings before the Commission, or unless specifically expressed within the Act. The Director was unable to exercise jurisdiction in a matter before the Commission or within the jurisdiction of the Commission. The Commission and the Director could exercise the same jurisdiction in their capacity as the Licensing Authority; however, they were not permitted to exercise this jurisdiction at the same time in relation to the same application. The Licensing Authority was authorised to conduct hearings, grant applications, and review decisions.

Police

Western Australia Police played an integral role in the structure of the liquor licensing process. Police were defined as authorised officers under Section 3 of *Liquor Control Act 1988* and Section 154 detailed the powers of authorised officers. The Director, subject to the consent of the Commissioner of Police, could delegate to a member of the Police Force of or above the rank of sergeant, or a member of the Police Force in charge of a police station, in a prescribed place other than the metropolitan area, any of the functions of an inspector under this Act. As such, amongst other powers, police were able to enter, inspect, and examine licensed/regulated premises at a reasonable time. They were permitted to audit any liquor on the premises, obtain a sample of any liquor, and examine and obtain copies of any records made by the licensee. It was an offence to hinder the exercise of an authorised officer's powers, fail to comply

with a requirement of an authorised officer, or to fail to answer a question by an authorised officer. The penalty for committing any of these offences was \$10,000. However, a person could decline to answer a question if it may incriminate them.

In carrying out their duties, police were entitled to:

- enter and search any premises without a warrant, whether licensed or not, if they suspected on reasonable grounds that:
 - » liquor was being sold, supplied, consumed or stored unlawfully
 - » an offence against this Act was being committed
 - » there was on licensed or other premises evidence of an offence against the Act
- seize and dispose of any liquor possessed in contravention of Section 119
- close the licensed premise if they believed on reasonable grounds that civil disorder, a breach of the peace or a threat to public safety was occurring or was likely to occur at or in the vicinity of the premises, and it was desirable in the interests of maintaining the peace and ensuring public safety that the premises were closed.

Under Section 69 of the *Liquor Control Act 1988*, the Commissioner of Police could intervene in any proceedings before the Licensing Authority in order to introduce evidence or make representations about:

- whether the applicant was a fit and proper person
- whether the grant of the application would be likely to result in public disorder or disturbance
- any other matter relevant to the public interest
- the interest any other person may have in the licence.

The Commissioner of Police was authorised to investigate the background of any applicant or associated person the Licensing Authority or authorised officer may consider held an interest in an application. Further to this, the

Commissioner of Police was required to provide the Licensing Authority with a report upon request that detailed:

- the background, antecedents, character and reputation of the applicant and any associated person thought to have an interest in the licence
- whether the applicant or associated person was disqualified from holding a licence.

Western Australia Police also had a specialised licensing enforcement division: Western Australian Police LED. This division managed the compliance and enforcement of licensing matters in relation to various Acts, including the *Liquor Control Act 1988*.

10.4 Prohibition Orders, Barring and Banning

Under the *Liquor Control Act 1988*, the Commissioner of Police was authorised to apply to the Director for prohibition orders under Section 152 of the *Liquor Control Act 1988* for a period up to five years, but, only if satisfied that it was in the best interest of the public to do so. Under Section 152 (E), the Director could make a prohibition order that:

- prohibited the relevant person from being employed by a licensee at a specific licensed premises, licensed premises of a specified class or any licensed premises
- prohibited the relevant person from entering specified licensed premises, licensed premises of a specified class or any licensed premises.

Barring notices were authorised under Section 115AA of the *Liquor Control Act 1988*, and allowed the Commissioner of Police to give a notice to a person prohibiting them from entering a specified licensed premises or class of licensed premises if the Commissioner of Police believed, on reasonable grounds, the person had on licensed premises:

- been violent or disorderly
- engaged in indecent behaviour
- contravened a provision of any written law.

Under Section 115AB, the Commissioner of Police could also delegate to another member of the police force who was an Inspector (or higher ranking), the power to impose a barring order. The barring notice could be imposed for any length of time less than 12 months from when the notice was given. The penalty for entering prohibited licensed premises or a class of licensed premises as outlined in the barring notice was \$10,000, but this penalty did not apply if the person entered the premises due to work duties. Under Section 115AC, details of those people with barring orders against them were required to be published by the Commissioner of Police on a secure website that was accessible only by:

- the licensee or occupier of a licensed premises
- a manager of a licensed premises
- a prescribed person or class of persons or a person in a prescribed circumstance.

A person could be banned from a casino under Section 26 of the *Casino Control Act 1984*. A person authorised by the licensee of a casino could prohibit a person, either orally or in writing, from entering or remaining in the licensed casino. This prohibition could remain in force for a period of 24 hours from the time it was made or until revoked by an authorised person.

10.5 Licence Categories and Conditions

Licence Categories

Western Australia offered nine different licence types:

- hotel licence
- nightclub licence
- casino liquor licence
- special facility licence
- club or club restricted licence
- restaurant licence

- producer's licence
- wholesaler's licence
- occasional licence.

Hotel Licence

Hotel licences permitted the sale of liquor for consumption on and off the premises. They contained sub-categories including small bar licences, tavern licences, and hotel restricted licences. Small bar licences prohibited the sale of packaged liquor and imposed a limit of 120 patrons on the premise. Hotel restricted licences were subject to conditions which prohibited the sale of packaged liquor to persons other than lodgers, and restricted sales to on-premise consumption sales. The permitted trading hours for this licence were 6 am– midnight Monday to Saturday, and 10 am–10 pm Sunday. There were certain restrictions on hours of trade for New Year's Eve, Good Friday, Christmas Day and ANZAC Day.

Nightclub Licence

Nightclub licences were authorised to sell liquor for on-premise consumption only when it was sold ancillary to continuous entertainment. Entertainment could be provided by live artists or by recorded music presented personally by a person employed or engaged by the licensee to do so. Trading was permitted between 6 pm and 5 am Monday to Thursday, 6 pm and 6 am Friday and Saturday, and 8 pm to 12 midnight on Sundays. Other restrictions applied to trading on New Year's Eve, Good Friday, Christmas Day and ANZAC Day.

Casino Liquor Licence

Casino liquor licences were authorised to sell liquor for on-premises consumption in defined areas approved by the Gaming and Wagering Commission. Under Sections 44–45, the Licensing Authority was only able to impose conditions which were recommended by the Gaming and Wagering Commission. Permitted trading hours were determined by the Gaming and Wagering Commission.

Special Facility Licence

A raft of conditions were required to be fulfilled prior to the Licensing Authority granting a special facility licence under Section 46 of the *Liquor Control Act 1988*. Trading hours were determined on a case-by-case basis and specified within the licence.

Liquor Store Licence

Liquor store licences were authorised to sell packaged liquor and supply free liquor for sampling purposes for consumption both on and off the premises. Permitted trading hours for the Perth Metropolitan Region were between 8 am and 10 pm Monday to Saturday, and 10 am to 10 pm on Sunday. For stores not located in the Perth Metropolitan Region, permitted trading hours were between 8 am and 10 pm Monday to Saturday. Other restrictions applied to trading on Good Friday, Christmas Day and ANZAC Day.

Club Licence

There were two types of club licences: a club licence or a club restricted licence. Club restricted licences were not authorised to sell liquor for consumption off-premises. Both licences authorised the sale of liquor during permitted hours to members and their guests for consumption on the premises or ancillary to a meal supplied at the club. Club licensees were permitted to trade between 6 am and midnight (12.30 am if liquor was sold ancillary to a meal) Monday to Friday, 6 am Saturday to 1 am Sunday, and 10 am to 10 pm on Sunday. Other restrictions applied to trading on New Year's Eve, Good Friday, Christmas Day and ANZAC Day. For club restricted licences, permitted trading was determined on a case-by-case basis with details of permitted trading contained within the licence.

Restaurant Licence

Licensees holding a restaurant licence were authorised to sell liquor during permitted hours to any person consuming a meal at the restaurant. If an extended trading permit applied, licensees were permitted to sell liquor without providing a meal if the liquor was consumed by a person seated at a table and the liquor was supplied in accordance with the

conditions of the permit. This licence allowed trading anytime other than between 3 am and 12 pm on ANZAC Day.

Producer's Licence

A producer's licence authorised the licensee to sell liquor produced by the licensee on and from the licensed premise during permitted hours. For purchases of wine, spirits made from grapes, or liquor supplied for sampling purposes, on-premise consumption could occur on a part of the premises approved by the Director, or it could be sold for consumption off-premises. Spirits not made from grapes and beer could be sold in sealed containers for consumption off the premises. Trading was permitted anytime other than Good Friday, Christmas Day and ANZAC Day, when particular restrictions applied.

Wholesaler's Licence

Wholesalers were authorised to sell packaged liquor for consumption off the licensed premise. Liquor could only be sold in quantities of more than nine litres. Quantities less than this could only be sold to liquor merchants or anyone else to whom they were authorised to sell by law, or any employee of a licensee. Trading hours were unrestricted other than on Good Friday, Christmas Day and ANZAC Day.

Occasional Licence

An occasional licence authorised the sale, supply or consumption of liquor at a specified time/period and at a specified place. An occasional licence could not authorise the sale, supply, or consumption of liquor for any period exceeding three weeks. Other terms and conditions could be specified in the licence. The Director could cancel an occasional licence at any time if satisfied that the licence was no longer appropriate.

Extended Trading Permits

In Western Australia, extended trading permits authorised the licensee to sell and supply liquor at the time, location, and circumstance specified in the permit, over which the Director had discretion. The Licensing Authority could vary the terms and conditions of the permit

on its own initiative, or on application by the licensee, a member of the police force, or anyone else who satisfied the Director that they were entitled to make an objection when they applied for the original licence to which the permit was attached. Extended trading permits could be varied or cancelled if the licence was removed or licensed premises were altered. Further to this, the Licensing Authority could cancel the permit if satisfied that the permit was no longer appropriate.

Licence Conditions

The Licensing Authority had the discretionary authority to impose, vary, or cancel conditions in addition to the statutorily imposed conditions. Conditions imposed by the Licensing Authority could operate to further restrict any legislated condition. The Licensing Authority could exercise the power conferred under Section 64 on its own initiative, upon application by the licensee, or upon written request from the parties of a liquor accord. Contravention of an imposed condition could result in a more restrictive condition being imposed and/or a maximum penalty of \$500 for every day that the licensee operated in contravention of the Section. The authority to act under this Section was not to be regarded as a disciplinary matter.

10.6 Licence Application Process and Fit and Proper Persons

The discretion of the Licensing Authority to grant or refuse an application was absolute. In this regard, the Licensing Authority could grant or refuse a licence on any ground or for any reason that it considered to be in the public interest. This could be invoked even where the applicant met all the requirements of the Act, or when a valid ground for objection was substantiated. However, all applications had to be dealt with on their own merits, and the Licensing Authority could conduct any inquiry it considered fit. The Licensing Authority could also waive or vary formal compliance with any part of the application procedure. The Director could also intervene in any proceedings before the Commission, including proceedings related

to a decision or determination made by the Director, and could introduce evidence, make representations and examine or cross-examine any witness on any question or matter.

Upon receiving an application for a licence, the Director was required to inform the Commissioner of Police about any relevant matters in regard to the applicant and the application. The Director was also required to inform the local government authority about any applications relating to hotel licences, nightclub licences, casino liquor licences, special facility licences or liquor store licences if the Director considered that they may have an interest in the application. The local government council and Executive Director¹⁸⁰ could also intervene in any proceedings in relation to licence application matters and other matters of public interest.

In determining whether to approve a licence/permit application or transfer, the Licensing Authority was required to determine whether the applicant was a fit and proper person and whether the premises were suitable. Section 33 provided the relevant criteria by which the Licensing Authority determined whether an applicant was a fit and proper person. Factors to be considered were:

- the creditworthiness of the applicant
- the character and reputation of the applicant and any other person associated with the applicant
- the number and nature of any convictions of the applicant in any jurisdiction
- the conduct of the person in respect to other businesses or matters to which the *Liquor Control Act 1988* related
- any report submitted or intervention made under Section 69
- whether the person had successfully completed courses of training or assessment in the management of licensed premises and responsible practices in the sale, supply, and service of liquor.

¹⁸⁰ The Executive Director means the Executive Director, Public Health as defined in the *Health Act 1911* Section 3(1).

Under Section 37, licences were unable to be granted if the Licensing Authority was satisfied that persons residing or working in, or travelling through the area to a place of worship, hospital or school would likely be subjected to an undue degree of offence, annoyance, disturbance or inconvenience. In this regard, applicants needed to satisfy the Licensing Authority that the grant or removal of a licence/permit was in the public interest.

10.7 Legislative Approaches to Intoxication

The term “drunk” was used in the Western Australian liquor licensing legislation as opposed to “intoxicated”, which was more commonly used in legislation in other jurisdictions. In the *Liquor Control Act 1988*, drunk was defined under Section 3A as follows:

1. a person is drunk for the purposes of the Act if:
 - a. the person is on licensed premises or regulated premises; and
 - b. the person’s speech, balance, co-ordination or behaviour appears to be noticeably impaired; and
 - c. it is reasonable in the circumstances to believe that that impairment results from the consumption of liquor.
2. if an authorised officer or a person on whom duty is imposed under Section 115 decides ... that a person is drunk at a particular time, then, in the absence of proof to the contrary, that person is taken to be drunk at that time.

An authorised person included the licensee/occupier of the premises, the manager of the premises, an employee/agent of the licensee/occupier/manager, or a member of the police force.

Several provisions within the Act incorporated the concept of “drunk”. Offences involving patrons being drunk on-premises were listed under Section 115 of the Western Australian *Liquor Control Act 1988*. It was an offence under

the Act where a licensee (personally or by an employee or agent) permitted:

- i. drunkenness; or
- ii. violent, quarrelsome, disorderly or indecent behaviour to take place on the licensed premises...

Also:

A person could not, on licensed premises or regulated premises:

- a. sell or supply liquor or cause or permit liquor to be sold or supplied, to a drunk person;
- b. allow or permit a drunk person to consume liquor;
- c. obtain or attempt to obtain liquor for consumption by a drunk person; or
- d. aid a drunk person in obtaining or consuming liquor

Penalties for the above offence varied according to the status of the person who was committing the offence, and in some instances, whether the premise was licensed or regulated. Further to this, there was a statutory defence provided for employees/other persons who were charged with an offence against Section 115(2)(a)¹⁸¹ that they were instructed by the licensee, approved manager, or another person in a position of authority in relation to the person charged, to sell or supply the liquor to the drunk person.

An authorised person could refuse entry to, require a person to leave the licensed premises, and/or refuse to sell liquor to a person if they were drunk or appeared to be drunk. In exercising these powers, an authorised person could use reasonable force.

10.8 Record-Keeping

The Western Australian *Liquor Control Act 1988* contained provisions relating to record-keeping obligations of licensees. Prescribed licensees were required to make and maintain

¹⁸¹ A person shall not, on licensed premises or regulated premises sell or supply liquor, or cause or permit liquor to be sold or supplied, to a drunk person.

a record of all transactions that involved the sale, purchase, other disposal and acquisition of liquor. Prescribed licensees were holders of wholesaler licences, specified special facility licences, and producer's licences.¹⁸²

Licensees were required to keep a register of incidents at the licensed premise; failure to do so could result in a penalty of \$5,000.

10.9 Number of Licensed Premises in Western Australia

Between 2004/05 and 2008/09 the number of licensed premises in Western Australia increased by 7% (from 3,975 in 2004-05 to 4,241 in 2008-09).

As at 30 June 2009, there were 4,241¹⁸³ liquor licences in Western Australia. On June 30 2010, the Western Australian population aged 18 years and over was 1,757,448. Hence, there were approximately 414 people aged 18 years and over per licensed premises in Western Australia in 2010.

10.10 Western Australian Police Alcohol-Related Data Collection

The main data collection system used by Western Australia Police was the Incident Management System (IMS). All incidents reported to and detected by Western Australia Police were recorded in the IMS. The IMS contained a mandatory "alcohol flag" which was recorded against the incident, not the offender; this could involve the victim, the offender or both being under the influence of alcohol at the time of the incident. In addition, the Western Australia Police LED has developed a process in which the IMS is manually examined daily to identify incidents connected to a licensed venue. Specific incident details were recorded separately on an Excel spreadsheet. These details included:

- the incident number, date and time
- the venue, whether it was inside or outside, the suburb and policing district
- the offence

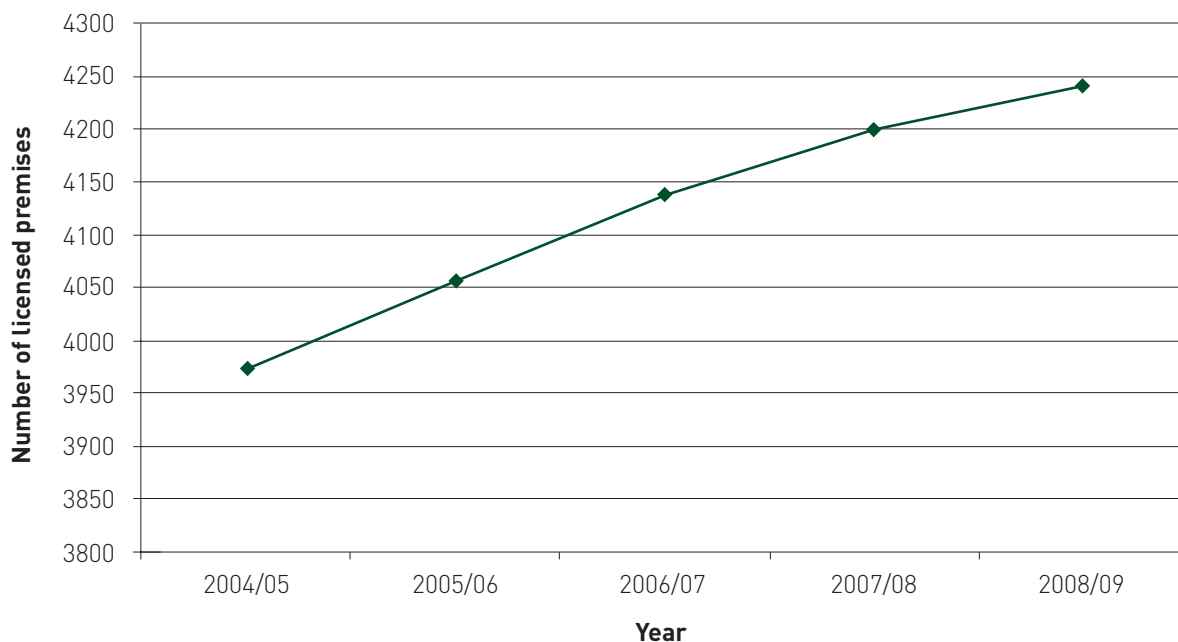


Figure 7: Number of licensed premises in Western Australia from 2004/05 to 2008/09

Source: Department of Racing, Gaming and Licensing Annual Report (2010)

182 *Liquor Control Regulations 1989*, Regulation 21C.

183 Source: Department of Racing, Gaming and Liquor (2009). *Annual Report*. East Perth: Department of Racing, Gaming and Liquor (2009). As at 30 June 2009.

- the person of interest or offender and whether they hold a special position (e.g., crowd controller/venue manager)
- possible gang involvement
- the nature of any weapons involved.

In terms of the enforcement of liquor licensing legislation, this information was primarily used for targeting purposes including the identification of problematic licensed premises and potential candidates for Prohibition Orders (See Part 3, Section 10.3.1). It was also used for statistical purposes to highlight trends and general areas of concern.

Western Australia Police reported a high level of data recording compliance as the alcohol flag was required to be completed every time an incident was entered into the IMS. While recording whether or not an incident was alcohol-related within the IMS is mandatory, it was subjective and based upon the police officer's observations. In some instances an incident may not be recorded on the IMS (whether it is alcohol-related or not). There are two circumstances in which this could occur: if an incident was dealt with by measures that did not require an offence to be recorded (such as move on notices or cautions), or if the parties involved in an incident had dispersed by the time police arrive and/or no complaint was made.

A representative from Western Australia Police indicated that the available data is generally considered to be of high quality and is regularly used by external agencies. The Business Intelligence Office within Western Australia Police maintained a data warehouse including current and historical data contained within the IMS system. When requested, the Business Intelligence Office provided alcohol-related data to external agencies.

Western Australia Police indicated that it would be advantageous to LED to collect computer aided dispatch data for incidents in which alcohol was a factor, particularly incidents at licensed premises. From the perspective of Western Australia Police, this would provide a more accurate picture of alcohol-related offending.



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