# Review of the South Australian Liquor Licensing Act 1997

Prepared by the Hon. T R Anderson QC
for the Government of South Australia

29 June 2016



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29 June 2016

The Honourable John Rau MP

*Deputy Premier*
*Attorney-General*
*Minister for Justice Reform*
*Minister for Planning*
*Minister for Industrial Relations*
*Minister for Child Protection Reform*
*Minister for the Public Sector*
*Minister for Consumer and Business Services*
*Minister for the City of Adelaide*

Dear Deputy Premier

Review of the *Liquor Licensing Act 1997*

On 30 November 2015, Cabinet approved an independent review of the *Liquor Licensing Act 1997* (the Review) and my appointment to conduct the Review.

In accordance with the Terms of Reference, it is my pleasure to submit to you the attached report.

Thank you for the opportunity to undertake this Review.

Yours sincerely

T R Anderson QC

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# CHAPTER 1 – INTRODUCTION

## 1.1 Terms of reference

1.1.1 The South Australian Government has appointed me to review the *Liquor Licensing Act 1997* ('the Act'). The terms of reference (attached as **Appendix 2**) provide that:

> *"This review will assess the adequacy, effectiveness and relevance of the State's present liquor licensing regime and recommend what improvements can be made to the existing liquor licensing framework and the Act to:*
>
> - *modernise the regulation of liquor in South Australia;*
> - *reflect current day community attitudes and standards relating to the accessibility of liquor and related services;*
> - *promote greater business flexibility;*
> - *reduce administrative burden to business and Government alike;*
> - *foster compliance transparency; and*
> - *encourage new bold and dynamic business models."*

1.1.2 The terms of reference also provide that the review will consider the issues raised in the Liquor Licensing Discussion Paper published by the South Australian Government on 2 October 2015 ('Discussion Paper'). I am also to consider any other additional issues raised through the consultation process, including:

> ***Reducing Red Tape***
>
> - *opportunities to reduce red tape surrounding the State's liquor licensing system to enable business owners to easily navigate the liquor licence application process;*
> - *barriers associated with a linear liquor licensing approval process and inconsistencies between liquor licensing and planning frameworks;*
> - *improving the reliability and predictability of the planning and liquor licensing systems;*
> - *the practicalities and effectiveness of imposing individual licence conditions;*
> - *streamlining of appeal processes to reduce processing times and business costs; and*
> - *exploring alternatives that ease the administrative burden on business owners in regard to the approval and ongoing compliance of responsible persons.*

***Promoting A Safer Drinking Culture***

- *considering that our liquor licensing system must place a high value on health and safety for the community, are the current measures to reduce alcohol-related harm effective and can they be improved;*
- *whether the 'needs test' remains an appropriate mechanism in order to balance competition and alcohol-related harm;*
- *enhancing community protection and whether the South Australian Government should play a role in the relationship between minors and alcohol; and*
- *the classification of dry areas that are responsible to community needs.*

***Vibrancy***

- *how the State's liquor licensing framework can be modernised to promote greater flexibility and encourage entrepreneurs to emerge with new and dynamic business models; and*
- *whether statutory liquor licence conditions and mandatory trading hours still reflect community expectations or is there an opportunity to reduce the administrative burden of applying for extended trading hours within each licence category.*

1.1.3 The terms of reference also set out instructions relating to the conduct of the review which include:

- to invite submissions;
- to review submissions from the Discussion Paper;
- undertake public consultation; and
- review and consider relevant developments and practices in the liquor licensing policy interstate and overseas.

1.1.4 For the full terms of reference please see **Appendix 2**.

## 1.2 Review of the *Liquor Licensing Act 1985*

1.2.1 I prepared a report in October 1996 following a review of the *Liquor Licensing Act 1985* for the then Attorney-General. The whole landscape of liquor licensing in South Australia and Australia for that matter has changed quite noticeably over 20 years, but it seems to me that the legislation has not really kept pace with the growth and with the introduction of new concepts in relation to the sale and supply of liquor. There is therefore a need to modernise the legislation which regulates the sale and supply of liquor in South Australia.

1.2.2 At the time of my previous report there were 3,593 liquor licences in operation. There are now 6,518 licences (as at May 2016) with many more applications in the pipeline.

1.2.3 The biggest percentage increase in the number of licences since my last review has been in the categories of Direct Sales Licence followed by the Producer's Licence and Restaurant Licence. Then follows the Entertainment Venue, Limited Club and Special Circumstances classes of licence and more recently, of course, the Small Venue Licence which commenced in 2013. Further details about the number of licences are included in **Chapter 4**.

1.2.4 It is interesting to note that in relation to both Hotel and Retail Liquor Merchant's Licences the statistics show that the number of licences has remained almost static. I will discuss later whether this is related to the existing requirements in section 58 of the Act, known as the 'needs test'. This existing test will occupy some considerable discussion in **Chapter 9** of this report.

## 1.3 General observations

1.3.1 The Direct Sales Licence has had quite an impact in relation to off-premises sales of packaged liquor. The number of Producer's Licences has also grown considerably. Further, I note that some Special Circumstances Licences allow off-premises sales of packaged liquor. This is all relevant to the substantial increase in sales of packaged liquor which has taken place over the last 20 years.

1.3.2 Trading hours generally have been extended over the last 20 years, particularly in relation to late night venues which typically now trade between 9.00pm and 5.00am the following day.

1.3.3 There is now a Late Night Trading Code of Practice ('Late Night Code') published under section 11A of the Act, which imposes restrictions on late night entry and alcohol consumption practices. One of the requirements of the Late Night Code is that a licensee must not permit a customer to enter licensed premises between 3.01am and 7.00am or closing time (whichever is earlier). This is known as the 'Lockout'. Whether this restriction should be retained is discussed in **Chapter 5** of this report.

1.3.4 More recently the introduction of the Small Venue Licence, a government initiative to attract people into the Adelaide Central Business District ('CBD'), allows potential operators to apply for such a licence with minimal red tape requirements.

1.3.5 Anecdotal evidence would tend to suggest that the introduction of this category of licence has been a big success and added to the diversity of outlets in the CBD. The questions to be asked are—

- Should the Small Venue Licence be extended beyond the CBD, and if so, using what criteria?
- Should the prescribed area be geographical or population based or related to tourism destinations?

1.3.6 I discuss a proposed expansion of the Small Venue Licence later in **Chapter 11**.

1.3.7 In the 2011-12 State Budget, the Government announced the introduction of annual liquor licence fees. The maximum annual fee in South Australia is currently $11,590 and is paid by 25 venues[1]. The following table indicates the number of premises which currently pay the maximum annual licence fee by licence class.

**Table 1: Number of venues paying the maximum annual licence fee**

| Licence Class | Number of Venues |
|---|---|
| Hotel Licence | 9 |
| Entertainment Venue Licence | 5 |
| Special Circumstances Licence | 11 |
| **Total Venues** | **25** |

1.3.8 This maximum fee represents those premises which might be thought to be more likely to contribute to breaches of law and order, and increase the risk of harm by the supply of alcohol into the early hours of the morning. In addition, these venues typically have large capacities.

[1] *Source – Consumer & Business Services*

1.3.9 It is my view that annual licence fees generally are too low in South Australia. This particularly applies to large venues which trade beyond 2.00am. I have compared the fees which apply interstate and almost without exception the fees that are charged interstate for various categories of liquor licence are considerably higher than in South Australia.

1.3.10 However, it is not only late night trading venues that create the potential for excessive consumption of alcohol. I am advised that packaged liquor now equates to about 80% of total liquor consumed in Australia.[2]

1.3.11 Undoubtedly, this is because of enforcement of road traffic measures by way of breath testing, publicity campaigns surrounding the risks associated with drink driving and the high cost of purchasing alcohol at a hotel or entertainment venue. As a result, people now tend to drink more at home and in private places. However, this inevitably results in the practice of 'pre-loading' at home, resulting in people visiting licensed venues who are already substantially affected by liquor.

1.3.12 Packaged liquor outlets (i.e. bottle shops) in South Australia currently only pay a flat annual licence fee of $758. Clearly, this is not commensurate with the potential for harm caused by excessive consumption or misuse of alcohol. I have also considered whether multiple licence holders should be required to pay more per licence. For example, where an entity holds 10 licences or more should they pay a higher fee per individual licence compared to an entity holding a single licence? I will discuss these matters in more detail in **Chapter 6**.

1.3.13 Consistent with harm minimisation principles, those who potentially create the greater risks for excessive consumption or misuse of alcohol should pay more. The extra money received from increased fees should be allocated for additional enforcement, including more police officers dedicated to liquor licensing matters and/or so that Consumer and Business Services ('CBS') can have more inspectors who are pro-active and inspect licensed premises more often, particularly to assess compliance with harm minimisation practices.

1.3.14 The additional money should also be used to provide:

- victim support service funding;
- health and safety education campaigns particularly targeted at minors; and
- rehabilitation facilities for intoxicated persons who need assistance (e.g. sobering up centres).

1.3.15 Since I last reviewed the liquor licensing legislation in this State, many other Australian jurisdictions have taken the initiative to modernise the legislation controlling the sale and supply of liquor. I have therefore examined closely the comparative legislation which now exists in other jurisdictions. In examining the position in other States, I have had the opportunity to meet with senior officials in Queensland, New South Wales and Victoria.

[2] *Supplementary Submission from The Foundation for Alcohol Research and Education, The Public Health Association of Australia, The South Australian Network of Drug and Alcohol Services, The Royal Australasian College of Surgeons, The National Centre for Education and Training on Addiction, page 13 referring to Euromonitor International (2012) Passport: alcoholic drinks in Australia. London: Euromonitor.*

1.3.16 There has been an increasing emphasis within interstate legislation to ensure that harm is minimised if supply is increased, either by more outlets or through the introduction of longer trading hours. The existing objects of the Act compare favourably with most other jurisdictions but, as I will say later, can be further improved and I have made suggestions accordingly.

1.3.17 There has also been an increasing emphasis within interstate legislation to give due consideration to harm minimisation, safety and well-being. A consistent theme is that the liquor industry should generally not be allowed to increase the number of liquor outlets and trading hours without a balancing exercise, involving an assessment of the potential risk of harm caused by excessive consumption or misuse of liquor. This of course involves a discretionary decision by the Licensing Authority.

1.3.18 As a result of serious criminal incidents, some States have legislated to prevent entry of persons into licences premises beyond a certain time.

1.3.18.1 New South Wales has legislated to prevent the entry of people into licensed premises in certain city precincts beyond 1:30am and is associated with a closing time of 3am. This restriction is currently under review in New South Wales.

1.3.18.2 In Victoria there is no such restriction or blanket closing time. However, since June 2013 there has been a 'freeze' on granting new licences with an authorisation to trade after 1.00pm (unless 'exceptional circumstances' can be demonstrated).

1.3.19 The requirements in each State and Territory are discussed further in **Chapter 5.1**.

1.3.20 With the caveat that statistics can be used for many different purposes, generally it can be seen that where restrictions have been placed on late night trading venues, including the 3:00am 'Lockout' introduced into South Australia, the number of serious incidents involving patrons who have attended licensed premises, has reduced.[3] This of course, is for the benefit of the community as it reflects on the number of admissions to hospitals and the necessary attendance of police and ambulance services at such incidents. It is also relevant to attempts to reduce domestic violence.

1.3.21 Even with the modernisation of laws discussed above, liquor licencing laws in Australia are amongst the most liberal in the world. England and Wales in particular have some very stringent laws including late night or early morning trade and minimum prices which ban the sale of alcohol below the cost of duty plus the value-added tax (VAT).[4]

1.3.22 Closing times in South Australia, in comparison with other cities around the world are quite liberal. For example, in Sydney the closing time is 3am with a lockout at 1.30am. Whereas, liquor may not be sold after 2.00am in Los Angeles, 3.00am in Vancouver and 4.00am in New York and Auckland.

1.3.23 It is therefore important to balance extended trading hours with safeguards and a regime for stricter enforcement measures for non-compliance.

[3] *Internal Consultancy Services Group, Review of Codes established under the Liquor Licensing Act 1997, April 2015. Submission to this review from the Royal Australasian College of Surgeons refers to the restrictions in New South Wales.*
[4] *https://www.gov.uk/guidance/alcohol-licensing*

1.3.24 In summary therefore, by way of introduction, there have been so many changes in the expectations of the community in relation to the consumption of liquor both on and off licensed premises that ideas and attitudes which prevailed 20 years ago are not necessarily relevant today.

1.3.25 With that in mind, I have carefully considered the 89 submissions which have been made in response to the Discussion Paper and have taken into account the views of the respondents in carrying out this review.

1.3.26 The submissions addressed a wide cross-section of liquor sales and consumption practices throughout South Australia and have been made by all sectors of the liquor industry and by special interest groups opposed to the expansion of trading hours and the number of licences.

1.3.27 A list of the respondents who made submissions in response to the Discussion Paper are detailed in **Appendix 3**.

## 1.4 Conduct of the Review

1.4.1 For the purpose of this review I decided, having read the submissions in response to the Discussion Paper, which submissions may need further elaboration or clarification and accordingly invited a number of respondents and other relevant parties to attend before me.

1.4.2 Through these hearings, I have had the benefit of some interesting and lively discussions with the various sectors of the liquor industry and other interest groups across South Australia, and have been much assisted by the input I have obtained from all those who have made submissions. A full list of the respondents and other parties that I have met with is detailed in **Appendix 4**.

1.4.3 I have also considered in detail the submissions made by respondents who I did not interview. The written submissions of these respondents have also been taken into account during this review.

1.4.4 I have attempted to discuss with those who have made submissions the views which are opposed to that advocated by them, the result being that I have hopefully had the opportunity to reflect on both sides of all arguments.

1.4.5 Overall I have balanced the submissions put to me having regard to the public interest and how it can best be served to address the overriding concern that the potential harm from excessive liquor consumption should be at all times minimised.

1.4.6 If there is a theme, it is that any modern liquor licensing system must look to the likely effect of increased availability of liquor in the community generally. It is no longer simply the case of providing liquor where it can be proved that it is needed, but rather ensuring as far as practicable that the legislation is consistent with the expectations and aspirations of the public and that the categories and individual licences which carry a great risk do not detract from the safety and well-being of the community and are in the public interest.

1.4.7 Most of the population exhibit common sense in relation to alcohol consumption. It is a fact that unless there is total deregulation, which is unlikely given that liquor is not an ordinary commodity, laws need to be made to ensure that the minority do not make it impossible or difficult for the majority to enjoy liquor in a pleasant and safe environment.

1.4.8 My overall aim therefore, has been to provide for the vast majority to be able to purchase liquor in a modern and convenient way without unnecessary red tape. Further, South Australians and visitors alike should be able to enjoy a simple and safe system for the supply of liquor in a friendly atmosphere which caters for all tastes.

1.4.9 We have in South Australia the best wineries, seafood and fresh produce which should be celebrated and promoted. It is important that these attributes are available to be showcased, for example through restaurants and bars, but in an orderly manner through legislation that strikes the right balance.

1.4.10 It should also be a system which enables the majority to enjoy a more liberal system of supply, while not at the expense of increasing the risk of harm to the minority who are most likely to continue to abuse liquor and thereby cost the taxpayers more by additional policing, ambulance and medical services. It is this minority which requires the sale of alcohol to be regulated.

## 1.5 Legislative implications

1.5.1 Due to the extensive amendments which would follow from my recommendations set out throughout this report, it may be preferable for the Government to introduce a new Act to repeal and replace the existing legislation.

1.5.2 While I am mindful, that any new legislation would have regulatory, industry and consumer implications, the degree of amendments discussed in this report would in my opinion make the existing legislation unwieldy and difficult to enforce if sections of the Act were either simply amended in part or repealed and new sections substituted.

1.5.3 It may also be an opportune time to retitle the legislation to reflect the harm minimisation aspects which if adopted, will be a central plank to the legislation. For example the—

- Liquor Control and Licensing Act; or
- Liquor Regulation and Control Act; or
- Responsible Sale and Supply of Alcohol Act; or
- Liquor Regulation and Community Safety Act

## 1.6 Acknowledgements

1.6.1 I would like to acknowledge the special role of the two people who assisted me in the preparation of this report. Anna Markou from the Attorney-General's Department ('AGD') and Stuart Cole from CBS have been tireless in their work in analysing data and compiling this report.

1.6.2 It would have been an impossible task without their generous and helpful assistance. I am indebted to both and thank them for their contribution. I would like to acknowledge the support given by both the AGD and CBS in making these two people available to me.

1.6.3 I would also like to thank the Liquor and Gambling Commissioner ('Commissioner') and his senior management team for giving me free access to data held by CBS, and briefly I would like to acknowledge the generous assistance offered by the Commissioner himself in assisting me with logistical matters relating to reforming the legislation.

# CHAPTER 2 – EXECUTIVE SUMMARY

## 2.1 Objects of the Act

2.1.1 I have recommended that the objects of the Act be simplified and arranged in a more cohesive manner. This includes a suggested object, *"to ensure as far as practicable that the sale and supply of liquor is consistent with the expectations and aspirations of the public",* to complement public interest considerations. This is a change in emphasis from the present objects which refer to the needs of the community to a more contemporary concept of expectations and aspirations of the public.

2.1.2 I also recommend that section 3(2) of the Act be strengthened so that the Licensing Authority shall not grant an application for a liquor licence or removal of an existing licence unless it is consistent with the objects of the Act.

2.1.3 I deal with the topic of the objects of the Act in **Chapter 3**.

## 2.2 Categories of licence

2.2.1 In my view the categories of licence which now exist should be reduced and simplified as follows—

2.2.1.1 There should be a **General Liquor Licence** which authorises both on and off premises liquor sales. This proposed licence would replace the existing Hotel Licence and the existing Special Circumstances Licence *(where licensees are eligible to apply for a gaming machine licence under the Gaming Machines Act 1992)*.

2.2.1.2 There should be a category of **On-Premises Licence** which authorises the sale of liquor for consumption on premises. This would replace the existing Entertainment Venue and Special Circumstances Licences *(where licensees are ineligible to apply for a gaming machine licence under the Gaming Machines Act 1992)*.

2.2.1.3 There should be a category of **Restaurant and Catering Licence** which authorises the sale or supply of liquor for consumption on premises with or without a meal provided that the primary and predominant business conducted under the licence is—

(a) the provision of meals; or

(b) the provision of food as part of a catered function; or

(c) the provision of bona fide cooking classes.

2.2.1.4 The trading conditions relevant to the existing Restaurant Licence should be retained but expanded to reflect catering services and bona fide cooking classes.

2.2.1.5 Although not related to a Restaurant and Catering Licence, I have decided as a result of submissions received, to recommend that there be a BYO Permit, which I discuss in **Chapter 7.9**.

2.2.1.6 I am of the view that the existing category of **Residential Licence** should be retained as a separate class of licence. The existing licence covers the business model of an accommodation provider (e.g. motel) which provides accommodation and possibly meals for guests and members of the public.

2.2.1.7 If however, the primary and predominant purpose of a licensee is the provision of accommodation but the business also offers meals to the public, either as visiting diners or guests at a reception on the licensed premises, then the licence should authorise the sale of liquor with or without a meal.

2.2.1.8 The existing **Club Licence** should be retained to allow for both on and off premises liquor sales from licensed clubs, subject to satisfying the relevant eligibility criteria. However, the Limited Club Licence concept should be abolished and all former Limited Club Licences incorporated under a generic Club Licence with uniform trading conditions and rights.

2.2.1.9 The **Small Venue Licence** should be retained and continue as a discrete licence category due to its trading hours, limited capacity and prescribed location. However, I recommend that the prescribed area for the purposes of this class of licence should be extended to include North Adelaide. It would then logically include all land bounded by the Adelaide Parklands.

2.2.1.10 There should be a **Packaged Liquor Sales Licence** to authorise the sale of liquor in sealed containers, bottles and cans for consumption off the licensed premises. The proposed licence would replace the Retail Liquor Merchant's Licence, Direct Sales Licence and some Special Circumstances Licences *(where the sale of a restricted range of liquor products has been authorised)*.

2.2.1.11 The Packaged Liquor Sales Licence should also include the concept that the related licensed premises may be operated under the same roof as a supermarket business provided that there is separation by a permanent and substantial physical barrier.

2.2.1.12 There should be a liquor industry licence to be known as a **Liquor Production and Sales Licence** to cover the production and sale of a licensees own product and the wholesale sale of liquor. The proposed licence would replace the Producer's Licence and the Wholesale Liquor Merchant's Licence.

2.2.1.13 The present Limited Licence should be replaced by a system of permits comprising of a Liquor Permit, Extended Liquor Permit, Special Event Permit or BYO Permit—

(a) **Liquor Permit—**for a single occasion or part day where there is a low risk of excessive consumption or misuse of liquor; or

(b) **Extended Liquor Permit**—for multiple days to cover occasional events and functions on unlicensed premises; or

(c) **Special Event Permit**—for events, including some one day events, which typically attract large numbers of attendees such as some Adelaide Fringe events, the Clipsal 500, the Cellar Door Festival, Schutzenfest and others where there is potentially a high risk of excessive consumption or misuse of liquor; or

(d) **BYO Permit—**a renewable permit for operators who wish to provide a BYO facility but without the full authorisation and trading rights applicable under a Restaurant and Catering Licence (e.g. gallery, studio and tourism operators)— see chapter 7.9.

2.2.2 I deal with the topic of licence categories in **Chapter 4**.

## 2.3 Trading conditions

2.3.1 The most contentious aspect of present trading requirements is the 3:00am 'Lockout'.

2.3.2 In my view, as the 'Lockout' has only been in operation for a relatively short period of time and the initial anecdotal evidence seems to indicate some success in reducing harm, a further period should be allowed to test the effectiveness of the lockout provisions. I recommend that the Government give consideration to a further review of the 'Lockout' in two or three years' time.

2.3.3 In my view there is no need in this day and age to distinguish between certain days of the week and certain days of the year. I recommend that all trading restrictions on Sundays, Good Friday and Christmas Day be removed from the Act and that each day of the year be treated in the same way and be authorised with the same trading hours. This does not mean that every licensee has to trade, all it means is that there is an authorisation to allow trade between certain hours.

2.3.4 The Act currently provides for hours of trading depending on the particular category of licence. In my view a licensee should be able to nominate the actual trading hours that are within the authorised hours, which best meets the needs of their business model (these are to be known as Nominated Trading Hours). The Nominated Trading Hours and days should be stated on the licence.

2.3.5 I also recommend removing the compulsory hours and meal obligations currently imposed on hotels.

2.3.6 I deal with the topic of trading conditions in **Chapter 5**.

## 2.4 Annual licence fees

2.4.1 In comparison with other States and Territories, it appears that the annual licence fees in South Australia are low. The current fee model is based on a combination of capacity and trading hours.

2.4.2 In my view, the fee structure needs to be modified, in particular, to recognise venues which have a history of non-compliance and breaches of the Act.

2.4.3 The annual fee structure also needs to recognise the risks associated with the sale of packaged liquor and that it does anecdotally contribute to social harms and impacts on the health and wellbeing of the community (i.e. through domestic violence, road traffic accidents and chronic diseases).

2.4.4 I deal with the topic of annual fees in **Chapter 6**.

## 2.5 Red tape

2.5.1 The recommendations made in this report to reduce red tape cover many areas, particularly where the administrative workload for both the Licensing Authority and applicants for a licence can be substantially reduced, so as to minimise the cost and paperwork associated with an application for a licence.

2.5.2 Licence Application

2.5.2.1 Licence application forms should be simplified and where possible the required information collected on one form irrespective of the category of licence being applied for. Full details of the proposed trading conditions should be included in the application, including the Nominated Trading Hours, so that there is no requirement to apply separately for entertainment and any other trading extensions.

2.5.2.2 As I discuss in chapter 5.7, event endorsements should be included under the proposed Club Licence and Liquor Production and Sales Licence (not dissimilar to the current event endorsement affixed to Producer's Licences) to provide the licensee with the flexibility to sell or supply liquor at a number of events per year beyond the licensed premises in lieu of separate Liquor Permit applications.

2.5.2.3 The use of a single application document will streamline the application process and simplify administration.

2.5.2.4 The application forms used to apply for a liquor licence in Queensland[5] and Tasmania[6] may provide guidance in this matter.

2.5.3 Advertising Applications

2.5.3.1 In my view there should no longer be a requirement to place a notice in both local and state-wide newspapers when an application is lodged or to publish the notice in the Government Gazette.

2.5.3.2 In keeping with the Premier's Digital by Default Declaration, this would be an opportune time to direct all enquiries concerning an application to the CBS website.

2.5.3.3 I note that the CBS website currently provides details of all applications that have been lodged and directs members of the public to inspect the application and further documents at CBS. By eliminating the other requirements of advertising and requiring notification on the CBS website, both the cost for the applicant and the paperwork for the administration will be reduced.

2.5.3.4 It may also not be necessary to advertise the application by posting a notice on the premises, although this may be regarded as the means of notifying the local community and the occupiers of adjacent premises who are unable to access the CBS website.

2.5.3.5 The Commissioner should retain an overall discretion to require such further advertising as is considered appropriate depending on the nature of the application made.

[5] *https://publications.qld.gov.au/dataset/liquor-licensing-and-compliance-forms/resource/e18d418a-8d03-4b6a-a854-ab78c49ff877*
[6] *http://www.treasury.tas.gov.au/domino/dtf/dtf.nsf/LookupFiles/LiquorLicenceApplicationSept2015.pdf/$file/LiquorLicenceApplicationSept2015.pdf*

2.5.4 Objections to Applications

2.5.4.1 Many of the submissions describe the delay and cost incurred by applicants as a result of the objections process. In my view, the objections process should be removed and replaced with a system of submissions. Submissions would be considered by the Commissioner in a similar way to the current procedure adopted for the Small Venue Licence.

2.5.4.2 It is my view that submissions be limited to certain grounds, which do not include grounds relating to planning matters or grounds relating to competition. However the Commissioner in his discretion may invite particular bodies or persons to make submissions on any grounds the Commissioner believes appropriate.

2.5.4.3 While it is my view that existing competitors or ratepayers should not have the right to object to the Licensing Authority about an application, both should be able to make submissions on the limited grounds recommended. Further, ratepayers will have had an opportunity to have their objection dealt with at the planning stage.

2.5.4.4 This will in my opinion have the effect of reducing a lot of time and expense wasted in the early days of an application. Removal of objections will also mean a quicker decision time and therefore a saving of commercial expenses in holding premises until a decision is given. It will also prevent a 'deep pocketing' exercise by commercial competitors.

2.5.4.5 Relevantly, if we are to follow the process currently in place for Small Venue Licences, there will also be less applications going before the Licensing Court. However I propose that certain decisions by the Commissioner would still be subject to review by the Licensing Court.

2.5.4.6 The Commissioner should also have the discretion to decide all matters either on the papers (i.e. on the basis of the information that has been submitted) or to convene a hearing and invite participation where it is considered necessary.

2.5.5 There are also opportunities to reduce red tape in respect to:

(a) approvals for responsible persons, crowd controllers and also members of the committee of management of clubs;

(b) clubs, in particular clubs that share premises and clubs that amalgamate;

(c) exemptions for retirement villages, cruise ships and gift makers; and

(d) applications for limited licences which relate to low risk single occasion events (e.g. quiz nights, award ceremonies, art/craft exhibitions, birthday parties, trade fairs and the like). I note that the Discussion Paper reports there were approximately 8,000 applications granted for Limited Licences in 2014-15[7], and according to CBS data around 50% are considered low risk single occasion events.

2.5.6 I deal with the topic of red tape in **Chapter 7**.

[7] *Discussion Paper, page 5*

## 2.6 Planning and liquor licensing regime overlap

2.6.1 I have considered the method used in some interstate jurisdictions to provide notification to nearby residents and businesses of liquor licence applications. In my view this is unnecessary and only duplicates the notification requirements of the planning process which addresses (in most cases) notification to residents and nearby businesses of any likely interference.

2.6.2 While it may not cover all applications, I am of the view that where notification to residents is not necessary at a planning level it would hardly seem necessary at the liquor licensing stage. However, the Commissioner should retain the discretion to require an applicant to notify local residents and nearby businesses in appropriate circumstances.

2.6.3 All requisite local community approvals should be dealt with at the one time, at the planning level. In this way matters such as parking, noise, refuse collection and the like will be dealt with by the council[8] and conditions imposed on the approvals under the *Development Act 1993* (SA).

2.6.4 I recommend that certain licence applications should trigger the need for development approval under the *Development Act 1993*. The applicant will be required to disclose the details of the proposed liquor licence including the type of liquor licence, the nature of the business, the nature of any entertainment and the proposed trading hours.

2.6.5 Further, at present 57(2) of the Act requires that an application must not be granted until development approval is given. I would recommend that an application to the Licensing Authority should not be able to be made until the development approval has been given the under the *Development Act 1993*. Having been granted the relevant approval under that Act, an applicant for a liquor licence can then lodge the requisite liquor licensing application together with the development approval so that there is no possibility of having to run the same gauntlet on two occasions.

2.6.6 The council should not have the right to object or intervene at the liquor licensing level as any relevant matters should have been considered at the planning level. There is unnecessary duplication and expense in the system which prevails at the present time.

2.6.7 In short, if the council approves an application which involves a potential liquor licence, the Licensing Authority must then proceed to determine whether the licence should be granted having regard to the objects of the Act and any other requirements under the Act, including the fitness and propriety of the applicant.

2.6.8 I also acknowledge the *Planning, Development and Infrastructure Act 2016* which is yet to commence and as I understand is expected to take time to fully implement. This Act will amend the present *Development Act 1993* to avoid conflicts between the planning system and liquor licensing system. It is my view that the amendment provided for in the *Planning, Development and Infrastructure Act 2016* needs to be supported by a clear delineation of responsibilities between the local government authority and the Licensing Authority.

2.6.9 I deal with the topic of planning and liquor licensing overlap in **Chapter 8**.

[8] *Note the term used in the Development Act 1993 (SA) is relevant authority, which includes councils. For the purposes of this report, the term council will be used for ease of reference.*

## 2.7 Needs test

2.7.1 It is my view that the provisions of section 58 and 61 of the Act *(known as the 'needs test')* relating to bottle shops and hotels should be replaced by a **Community Impact and Public Interest Test.**

2.7.2 Applicants will have to satisfy the Licensing Authority that the granting of the application will not detract from the safety and well-being of the community and is in the public interest. This involves weighing the benefits to the community and the public as a whole against the detriments caused by an additional liquor outlet.

2.7.3 It is my view that the Community Impact and Public Interest Test should apply only to certain higher potential risk categories of licence. It is my view that the new test should apply to an application for the grant or removal of—

(a) a **General Liquor Licence** (formerly a Hotel and certain categories of Special Circumstances Licence);

(b) a **Packaged Liquor Sales Licence** – not being direct sales (formerly a Retail Liquor Merchant's Licence, Direct Sales Licence and certain categories of Special Circumstances Licence);

(c) a **Club Licence** (including former Limited Club Licences) seeking approval for packaged liquor sales to members of the club or the public for consumption off the premises; and

(d) an **On-Premises Licence** (including former Entertainment Venue Licence and certain categories of Special Circumstances Licence) seeking approval to trade later than 2am to the extent that—

(i) it is intended that licences where the primary and predominant business is live entertainment or those businesses ordinarily known as nightclubs, karaoke bars and other bars are captured by this provision; and

(ii) it is intended that licences where the primary and predominant business is the provision of a conveyance service, accommodation or sporting venues are not captured by this provision.

2.7.4 Ultimately, the test for these high risk categories of licence will be to satisfy the Licensing Authority that—

(a) the sale and supply of liquor will occur in such a manner as to comply with the objects of the Act; and

(b) the grant of the licence will not detract from the safety and wellbeing of the community and is in the public interest.

2.7.5 While there should be no right of objection to these high risk licence category applications, submissions should still be able to be lodged with the Commissioner and considered as part of the decision making process. Notwithstanding these submissions, the Licensing Authority should have unfettered discretion to grant or refuse an application. Guidelines should also be issued to assist applicants with preparing information for consideration by the Licensing Authority.

2.7.6 I note that some jurisdictions require a detailed community impact statement or similar to be completed at length by an applicant for some types of businesses. This has replaced in those jurisdictions any 'needs' type test. It seems to me that any such requirement for an applicant is unduly onerous and inconsistent with attempting to reduce red tape.

2.7.7 However, I am of the view that a simplified document should be prepared by applicants for all licence applications, but with additional requirements for certain higher risk categories of licence. This will enable the Licensing Authority to assess whether the sale and supply of liquor, if the application is granted, will occur in such a manner as to comply with the objects of the Act and the Community Impact and Public Interest Test.

2.7.8 I deal with the topic of the 'needs test' in **Chapter 9**.

## 2.8 Packaged liquor sales in supermarkets

2.8.1 If the 'needs test' is removed as I have suggested and replaced by some form of community impact and public interest test and having regard to the objects of the Act, and in particular to minimise harm, it will not be automatic that a supermarket will succeed in an application to sell liquor for off-premises consumption.

2.8.2 Clearly, there will be many examples where it will not be possible for the Licensing Authority to grant a supermarket such a privilege because of the potential increase in harm and there being no benefit to the community over and above an additional outlet. The considerations of balancing the benefit to the community versus the potential detriment to the community will need to be weighed up by the Licensing Authority.

2.8.3 Section 37(2) of the Act currently requires that the licensed premises in relation to a Retail Liquor Merchant Licence must be physically separate from premises used for other commercial purposes.

> *"It is a condition of a retail liquor merchant's licence that the licensed premises must be devoted entirely to the business conducted under the licence and must be physically separate from premises used for other commercial purposes."*

2.8.4 I recommend that this requirement should be retained in principle under the new Packaged Liquor Sales Licence but amended to make it clear that provided the licensed premises are separated by some form of permanent and substantial physical barrier, licensed premises can co-exist with the supermarket operation under the main roof of a supermarket complex.

2.8.5 In addition, a separate point of sale or check-out should be required on such licensed premises operated by an adult with responsible service of alcohol training. A responsible person, as approved for the purposes of section 97 of the Act, must supervise and manage the licensed premises at all times.

2.8.6 I deal with the topic of supermarkets and liquor licences in **Chapter 10**.

## 2.9 Small Venue Licences

2.9.1 There has been a clear divergence of opinion in relation to whether the Small Venue Licence should be extended beyond the CBD. In my view it makes sense to extend the boundary to include North Adelaide, and a new boundary defined.

2.9.2 However, in my view it is unnecessary to extend the Small Venue Licence beyond the Adelaide City Council area (i.e. the Adelaide CBD and North Adelaide) at the present time.

2.9.3 If, as I have suggested, existing red tape and a right to object are removed from the licensing regime, I see no reason why someone with premises, with a capacity of over 120 on the Norwood Parade or on Jetty Road, Glenelg, who wants to operate on a similar basis to a small venue cannot make an application for an On-Premises Licence, although under the model I propose, this type of licences will trigger a larger annual licence renewal fee than a Small Venue Licence.

2.9.4 The Small Venue Licence has become associated with the Adelaide CBD which is good for the CBD and the promotion of tourism within that precinct. I would recommend that consideration be given to extending it to North Adelaide and that the whole question of further extension be considered again in two or three years' time.

2.9.5 I deal with the topic of small venue licences in **Chapter 11**.

## 2.10 Limited Licences

2.10.1 A Limited Licence is a temporary permission to sell liquor or to authorise the consumption of liquor in unlicensed premises for specified occasions. These occasions vary from one day events (such as a Melbourne Cup lunch) to longer events (such as the Royal Croquet Club and Tasting Australia). Often existing licence holders (such as wine producers and community clubs) also apply for Limited Licences for special functions and events.

2.10.2 I recommend that the Limited Licence be replaced by a system of permits comprising of a Liquor Permit, Extended Liquor Permit, Special Event Permit or BYO Permit—

(e) **Liquor Permit—**for a single occasion or part day where there is a low risk of excessive consumption or misuse of liquor; or

(f) **Extended Liquor Permit**—for multiple days to cover occasional events and functions on unlicensed premises; or

(g) **Special Event Permit**—for events, including some one day events, which typically attract large numbers of attendees such as some Adelaide Fringe events, the Clipsal 500, the Cellar Door Festival, Schutzenfest and others where there is potentially a high risk of excessive consumption or misuse of liquor; or

(h) **BYO Permit—**a renewable permit for operators who wish to provide a BYO facility but without the full authorisation and trading rights applicable under a Restaurant Licence (e.g. gallery, studio and tourism operators)— see chapter 7.9.

2.10.3 Low risk functions and many events for one day should not require an application, but be by way of online notification. CBS will still review the details of the function or event and have discretion to notify the relevant council and SA Police.

2.10.4 I also recommend that special events, in lieu of individual liquor permits, should be able to be endorsed on Liquor Production and Sales Licences (former Producer's License) and Club Licences. An all-encompassing licence that includes all the relevant information about functions would reduce red tape, save expense and assist in enforcement.

2.10.5 I deal with the topic of Limited Licences in **Chapter 12**.

## 2.11 Dry areas

2.11.1 I received a number of submissions which discussed the administration and imposition of dry areas.

2.11.2 Some respondents identified that dry areas have appeared to reduce the risk of harm associated with excessive consumption of alcohol and should remain in place with the ability for both the Minister and the Commissioner to declare short term dry areas for certain occasions retained.

2.11.3 Other respondents, notably the Aboriginal Legal Rights Movement ('ALRM') and Drug and Alcohol Services SA ('DASSA'), on behalf of SA Health share the view that the effect of long-term dry areas is to displace vulnerable people, where they move to areas (often remote areas) where medical and support services are not available.

2.11.4 There was also a view expressed that councils should have the power to declare short-term dry areas. There seems to be good reason for council to have this power, although for a maximum period of 48 hours (e.g. to enable dry areas for Christmas Pageants or events promoted as child friendly).

2.11.5 I deal with the topic of dry areas in **Chapter 13**.

## 2.12 Minors

2.12.1 On Licensed Premises

2.12.1.1 The consumption of liquor by minors on licensed premises is a serious problem faced by all regulators. Anecdotal evidence suggests that licensees are not complying with their obligations to refuse service to minors, particularly in relation to packaged liquor sales.

2.12.1.2 The supply of liquor to a minor should be regarded as a serious charge against a licensee with penalties reflecting the seriousness of the offence.

2.12.1.3 I recommend that CBS inspectors and SA Police on the occasion of a first offence should be able to expiate such offences under the Act, while a second or subsequent offence should trigger mandated disciplinary action before the Licensing Authority, whereby sanctions including monetary penalty, licence suspension or in extreme cases, revocation of a licence could be imposed.

2.12.1.4 There was also a view expressed that all persons who appear to be under the age of 25 years should be able to be requested to produce evidence of age.

2.12.1.5 I support this view and if it were to be legislated as such, young people would become aware that they are under increased scrutiny and would as a matter of course be required to always produce valid identification. This practice should also be supplemented through mandated plain language or symbolic signage to aid in enforcement.

2.12.2 Evidence of Age

2.12.2.1 A contentious matter with requesting evidence of age is that where a licensee or responsible person is provided with a fake identification or identification belonging to another person, it cannot lawfully be confiscated.

2.12.2.2 There seems to be good reason for this to be remedied as the confiscation of fake or fraudulently used identification would enable enquiries and potential prosecutions by SA Police to follow.

2.12.2.3 I have recommended a similar seizure of documents model which is in place in the Australian Capital Territory and Victoria be adopted.

2.12.3 Permitted Hours

2.12.3.1 If the Government adopts my recommendation and abolishes the designation of specific areas within licensed premises, in addition to that, I recommend changes to the hours for which minors may be present in licensed premises, in particular—

- **On-Premises Licence** (where the primary and predominant business is live entertainment or those businesses ordinarily known as nightclubs, karaoke bars and other bars) – minors may not enter, or remain, in the licensed premises between the hours of 9.00pm on one day and 5.00am of the next;

- **Packaged Liquor Sales Licence** – minors may not enter, or remain, in the licensed premises at any time unless accompanied by a responsible adult; and

- **All other licences** *(including **On-Premises Licence** where the primary and predominant business is not live entertainment or those businesses ordinarily known as nightclubs, karaoke bars or other bars)* – minors may not enter, or remain, in the licensed premises (other than a bedroom or some other area of the licensed premises approved by the Licensing Authority) between the hours of 9.00pm and 2.00am unless accompanied by a responsible adult, if liquor may be sold in the area at that time.

2.12.4 Secondary Supply

2.12.4.1 I have noted that there is legislation in all interstate jurisdictions that makes it illegal to supply alcohol to minors in the private home unless the alcohol is supplied by a parent or guardian to a child or with the approval of that child's parent or guardian. I recommend that there be similar legislation in South Australia.

2.12.4.2 I acknowledge that there may be difficulties with the enforcement of such legislation but during my discussions with respondents it has become clear that having a statutory offence will make parents more vigilant in supplying minors with alcohol at private parties for example in private homes and private premises.

2.12.4.3 I also recommend consideration of amendments to regulate the current trend of school after-formal parties, where minors are known to consume alcohol to excess.

2.12.5 I deal with the topic of minors in **Chapter 14**.

## 2.13 Compliance and enforcement

2.13.1 It is my view that there should be a greater visible police presence in and around licensed premises and more harm minimisation and responsible service targeted inspections by CBS inspectors.

2.13.2 I note that the *Summary Offences (Declared Public Precincts) Amendment Bill 2016* was introduced into Parliament on 22 June 2016. This bill, if enacted, will increase police powers in respect of controlling anti-social behaviour of persons outside of licensed premises.

2.13.3 Further, penalties should be capable of being initiated at the time of non-compliance and be easily explained to anyone minded to act unlawfully. Accordingly, I recommend a complete reappraisal of all offences under the Act with the view of making the majority of offences expiable, particularly for a first offence (see appendix 5 of this report).

2.13.4 However—

(a) a second or subsequent offence relating to the supply of alcohol to underage or intoxicated persons; or

(b) a second or subsequent offence which relates to permitting underage or drunken/disorderly persons on the licensed premises; or

(c) where the licensee is convicted of a supply offence, and the offence was taken to have contributed to the death of a person or a serious assault committed against a person on or near the licensed premises;

should be retained as a disciplinary matter before the Licensing Authority.

2.13.5 I deal with the topic of compliance and enforcement in **Chapter 15**.

## 2.14 Licensing Authority

2.14.1 I have discussed the present judicial system with Judge Gilchrist of the Licensing Court of South Australia, the Commissioner and senior legal practitioners who practice in this jurisdiction.

2.14.2 I am of the view that the two tiered system has not caused any problems and for that reason the Commissioner and Licensing Court should continue to determine various aspects of the Act. I have also noted in Chapter 7 that there should be changes to the responsibilities of the Commissioner, particularly in relation to replacing the general right of objection process in section 77 of the Act.

2.14.3 The current right of appeal to the Supreme Court in relation to decisions of the Licensing Court should also be retained.

2.14.4 I deal with the topic of the Licensing Authority in **Chapter 16**.

## 2.15 Other matters

2.15.1 I have also discussed the following matters in this report—

(a) Liquor and gambling overlap in **Chapter 17**;

(b) RSA training standards and competency in **Chapter 18;**

(c) Eligibility to hold a liquor licence in **Chapter 19.1**;

(d) Advertising of alcohol products in **Chapter 19.2;**

(e) Minimum price of alcohol in **Chapter 19.3**;

(f) Wholesale sales data collection in **Chapter 19.4**;

(g) Late night public transport in **Chapter 19.5**;

(h) Premises signage in **Chapter 19.6**;

(i) Application fees in **Chapter 19.7;**

(j) Technical amendments in **Chapter 20**; and

(k) Transitional provisions in **Chapter 21**.

# CHAPTER 3 – OBJECTS OF THE ACT

## 3.1 Current objects

3.1.1 The objects of the Act are currently set out in section 3 of the Act and are as follows—

> *(1) The object of this Act is to regulate and control the sale, supply and consumption of liquor for the benefit of the community as a whole and, in particular—*
>
> *(a) 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; and*
>
> *(b) 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 industry—within the context of appropriate regulation and controls; and*
>
> *(c) to ensure that the liquor industry develops in a way that is consistent with the needs and aspirations of the community; and*
>
> *(d) 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; and*
>
> *(e) to encourage a competitive market for the supply of liquor; and*
>
> *(f) to ensure that the sale and supply of liquor occurs in such a manner as to minimise the risk of intoxication and associated violent or anti-social behaviour including property damage and causing personal injury.*
>
> *(2) In deciding any matter before it under this Act, the licensing authority must have regard to the objects set out in subsection (1).*

3.1.2 The objects of the present legislation are in need of review. They were introduced at a time when responsible service of alcohol and minimising the risk associated with excessive consumption of alcohol were only emerging as themes in liquor licensing legislation.

3.1.3 These concepts have now been successfully embraced by the liquor industry within South Australia and are embedded in codes of practice which appear to be well accepted by industry.

3.1.4 While the topic of harm minimisation was in its infancy at around the time of my last review, it has now generally become the dominant, if not the primary theme in liquor legislation across Australia and New Zealand.

## 3.2 Proposed new objects

3.2.1 While the objects that I have recommended below encapsulate most of the concepts in the current Act, they have been simplified, rearranged to reflect significance and provide greater clarity particularly in respect to harm.

3.2.2 As a result of reviewing the objects in other liquor licensing legislation in Australia, I recommend that section 3 of the Act—Objects of the Act, should be amended to be as follows—

*(1) The object of this Act is to regulate and control the promotion, sale, supply and consumption of liquor—*

*(a) to ensure that the sale and supply of liquor occurs in such a manner as to minimise the harm, and the potential for harm associated with the excessive or inappropriate consumption of liquor; and*

*(b) to ensure that the sale, supply and consumption of liquor is undertaken safely and responsibly in a manner consistent with responsible service and consumption principles; and*

*(c) to ensure as far as practicable that the sale and supply of liquor is consistent with the expectations and aspirations of the public; and*

*(d) to facilitate the responsible development of the licensed liquor industry and associated industries in a manner that is consistent with the objects of this Act including, but not limited to the live music, tourism and hospitality industries.*

*(2) For the purposes of subsection (1)(a), the harm caused by the excessive or inappropriate consumption of liquor includes, but is not limited to—*

*(a) the risk of harm to children, vulnerable people and vulnerable communities; and*

*(b) adverse effects on health; and*

*(c) alcohol abuse or misuse; and*

*(d) domestic violence or anti-social behaviour causing personal injury, death or property damage.*

*(3) The Licensing Authority shall not grant an application for a licence or removal of a licence for premises or proposed premises unless it is consistent with the objects of this Act.*

*(4) The Licensing Authority shall have discretion to have regard to the objects of this Act when determining the conditions of a licence or an application to vary the conditions of a licence.*

*(5) The Licensing Authority must have regard to the objects of this Act in deciding any matter before it, subject to subsection (4).*

| Recommendation 1 | Section 3(1) of the Act be amended to reflect the significance of the objects, contemporary standards and provide greater clarity particularly in respect to harm. |
|---|---|

3.2.3 I have recommended that the current section 3(2) be strengthened so that the Licensing Authority shall not grant an application for a licence or removal of licence unless it is consistent with the objects of the Act, as set out above.

3.2.4 Further, I have also recommended that the Licensing Authority shall also have discretion to have regard to the objects of the Act when determining the conditions of a licence.

| Recommendation 2 | Section 3(2) of the Act be amended so that the Licensing Authority shall not grant an application for a licence or removal of a licence for premises or proposed premises unless it is consistent with the objects of the Act. This section should also provide the Licensing Authority with discretion to have regard to the objects when determining conditions of a licence or an application to vary the conditions of a licence. |
|---|---|

3.2.5 I have omitted the current object in section 3(1)(e) of the Act *"to encourage a competitive market for the supply of liquor"* ('competitive market object'). The purpose of that object was probably to counter the 'needs test'. In chapter 9, I recommend removing the 'needs test', therefore it is my view that the competitive market object is no longer a relevant object.

3.2.6 It should also be noted that South Australia is the only jurisdiction to now have an object that encourages a competitive market.

3.2.7 Further, it will be noted that the proposed object (c) is different to the current object in section 3(1)(d) as reference to the *"amenity of community life"* has been omitted in favour of the *"expectations and aspirations of the public"*. This will allow the Licensing Authority to focus on the broader concept of whether the grant of an application reflects contemporary standards.

3.2.8 In my view, the *"amenity of community life"* has been a concept which in the absence of a definition, has been difficult to quantify within the liquor licensing sphere.

3.2.9 Even in jurisdictions which do provide a definition, such as Victoria, there have still been protracted disputes about what constitutes detraction from or detriment to the amenity of an area or community life.[9]

3.2.10 While traditionally, matters such as the harmony and coherence of the environment, the possibility of nuisance or vandalism, drunkenness, offensive or disorderly behaviour, inconvenience for local residents, obstruction of public places (such as footpath, street or roads) have been relevant matters in considering whether the *"sale and supply of liquor detracts from the amenity of local community life"*, it is important to distinguish between planning type matters and indicators of harm.

3.2.11 In my view, the revised objects clarify the role of the liquor licensing regime when considering harm and ensures that amenity issues such as traffic movement, parking, refuse collection, inconvenience for local residents, obstruction of public places (such as footpaths, streets or roads) remain as planning type matters. Clearly, these should be considered by councils as part of the planning and development approval process rather than the Licensing Authority. I discuss this further in chapter 8.

[9] *Victorian Commission for Gambling and Liquor Regulation, City of Casey and VIC Police vs Woolworths Limited, 11 April 2016*

3.2.12 It is also important to note that section 57(1) of the Act states—

> *(1) An applicant for a licence for premises or proposed premises must satisfy the licensing authority—*
>
> *(a) that the premises for which the licence is sought are, or, in the case of premises not yet constructed, will be, of sufficient standard for the purpose of properly carrying on business under the licence; and*
>
> *(b) that the operation of the licence would be unlikely—*
>
> *(i) to result in undue offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of the premises; or*
>
> *(ii) to prejudice the safety or welfare of children attending kindergarten, primary school or secondary school in the vicinity of the premises.*

3.2.13 The provisions of section 57(1)(b) are also amenity related considerations which, while they may be a consideration for the Licensing Authority, should in my view be considered primarily by councils as part of the planning and development approval process.

3.2.14 I have also given consideration as to whether there should be primary and secondary objects in the Act as is the case in the Northern Territory *Liquor Act* and Western Australian *Liquor Control Act 1988*. It is my view that the objects of the Act should remain as objects of equal importance.

3.2.15 This expectation is further clarified by my recommended amendment to section 3 of the Act, where I propose that the Licensing Authority shall not grant an application for a licence or removal of a licence unless it is consistent with the objects of the Act.

## 3.3 Assessment by Licensing Authority

3.3.1 Pursuant to my recommendation, all applicants will need to satisfy the Licensing Authority that the business to be conducted under a liquor licence will meet each of the objects of the Act. This will allow the Licensing Authority to consider each application on its merit and to make an informed decision.

3.3.2 Relevantly, while it should be up to applicant to provide the information it considers relevant, the Commissioner should issue guidelines to assist applicants with completing this requirement.

3.3.3 The form of application could, as an alternative, require the applicant to make a submission addressing each of the objects of the Act. As occurs in other jurisdictions this could simply be by way of applicants providing a detailed response to questions such as—

- *How will you minimise the harm and the potential for harm associated with the excessive or inappropriate consumption of liquor?*
- *How will you ensure that the sale, supply and consumption of liquor is undertaken safely and responsibly?*
- *Explain the type of business to be conducted under this licence and how the supply of liquor will be consistent with the expectations and aspirations of the public?*
- *How will this licence contribute to the responsible development of the liquor industry in this State and what are the benefits to associated industries?*

| Recommendation 3 | The form of application to require the applicant to make a submission addressing each of the objects of the Act to allow the Licensing Authority to make an informed decision. |
|---|---|

3.3.4 The Licensing Authority should continue to retain the unqualified or absolute discretion under section 53(1) of the Act—

> *(1) Subject to this Act, the licensing authority has an unqualified discretion to grant or refuse an application under this Act on any ground, or for any reason, the licensing authority considers sufficient (but is not to take into account an economic effect on other licensees in the locality affected by the application).*

3.3.5 The Commissioner should also continue to retain an absolute discretion under section 53(1aa) of the Act—

> *(1aa) Subject to this Act, the Commissioner has an absolute discretion to grant or refuse an application for a small venue licence on any ground, or for any reason, the Commissioner considers sufficient (but is not to take into account an economic effect on other licensees in the locality affected by the application).*

3.3.6 Section 51(5) of the Act gives the Licensing Authority power to request an applicant to produce documents and other materials that the Licensing Authority considers relevant to the application. I recommend for clarification purposes that this section also include a reference to the provision of information generally.

3.3.7 As discussed previously, the economics or competitive market object should not be a relevant matter for the liquor licensing regime. The market will determine its own level.

3.3.8 I have also given consideration to the discretionary power of the Licensing Authority under section 53(1a) of the Act which provides—

> *"An application must be refused if the licensing authority is satisfied that to grant the application would be contrary to the public interest."*

3.3.9 Relevantly, I recommend that section 53(1a) of the Act be amended to also reflect the proposed objects of the Act and to state as follows—

> *"An application for the grant or removal of a licence must be refused if the licensing authority is satisfied that to grant the application would be contrary to the public interest or is not consistent with the objects of this Act."*

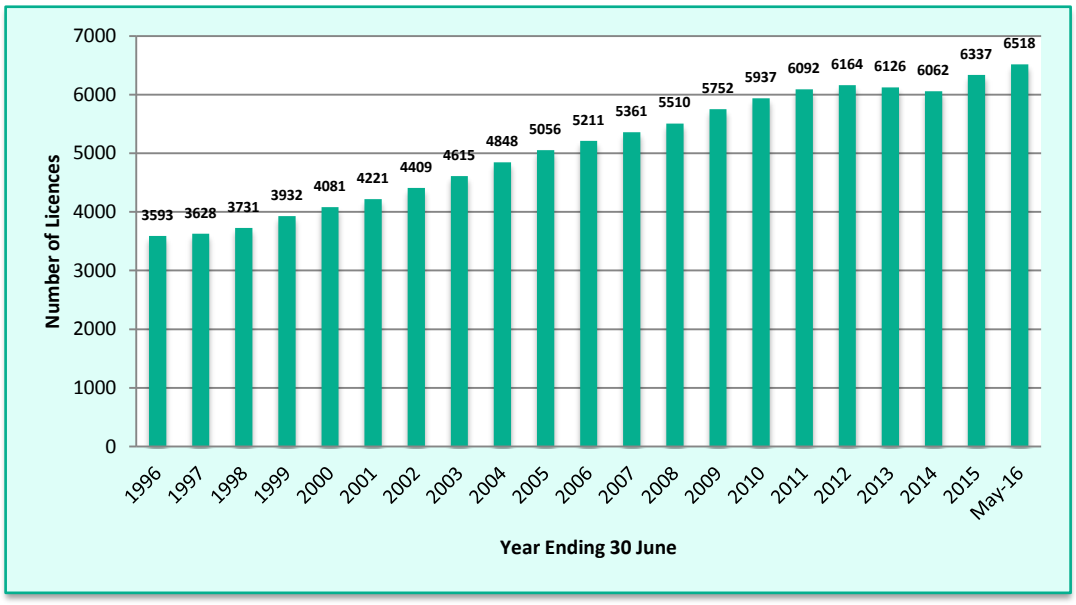
| Recommendation 4 | **Section 53(1a) of the Act be amended to require that an application for the grant or removal of a licence must be refused if the Licensing Authority is satisfied that to grant the application would be contrary to the public interest or is not consistent with the objects of the Act.** |
|---|---|

# CHAPTER 4 – CATEGORIES OF LICENCE

## 4.1 Current categories of liquor licence in South Australia

4.1.1 As at 31 May 2016 there were 6,518 liquor licences in South Australia. The number of licences has increased by approximately 80% since my last review in 1996. The graph below illustrates the steady growth in the number of licences over this period.

*Figure 1: Number of liquor licences in South Australia, 1996-2016*




4.1.2 Pursuant to section 31(2) of the Act, there are currently 12 categories of liquor licence in South Australia, consisting of:

- Hotel Licence;
- Residential Licence;
- Restaurant Licence;
- Entertainment Venue Licence;
- Club Licence *(including a sub-category of Limited Club Licence)*;
- Retail Liquor Merchant's Licence;
- Wholesale Liquor Merchant's Licence;
- Producer's Licence;
- Direct Sales Licence;
- Special Circumstances Licence;
- Limited Licence; and
- Small Venue Licence.

4.1.3 The Small Venue Licence has been a recent addition, being only introduced in April 2013, and has allowed small businesses such as bars, restaurants, art galleries and live music venues to be developed without the potential difficulties and costs associated with the other categories of licence.

4.1.4 The Small Venue Licence with its restricted capacity of 120 persons has seen significant rates of take-up since it was introduced and typically has allowed a number of underutilised and vacant premises within the CBD to be successfully developed.

4.1.5 A comparison of liquor licences held as at 30 June 2005, 30 June 2014 *(being the first 12 months to include the small venue category of licence)* and 31 May 2016 is outlined below:

*Table 2: Number of liquor licences by category in South Australia, 2005-2016*

| Licence Category | 30 June 2005 | 30 June 2014 | 31 May 2016 | Percentage change 2005-2016 |
|---|---|---|---|---|
| Hotel | 627 | 618 | 632 | +0.8% |
| Residential | 186 | 192 | 199 | +6.9% |
| Restaurant | 1009 | 1201 | 1368 | +35.5% |
| Entertainment Venue | 30 | 37 | 39 | +30% |
| Club | 475 | 400 | 404 | -14.9% |
| Limited Club | 726 | 872 | 907 | +24.9% |
| Retail Liquor Merchant | 200 | 194 | 201 | +0.5% |
| Wholesale Liquor Merchant | 262 | 279 | 272 | +3.8% |
| Producer | 892 | 1225 | 1286 | +44.1% |
| Direct Sales | 116 | 415 | 494 | +325.8% |
| Special Circumstances | 533 | 606 | 643 | +20.6% |
| Small Venue | - | 23 | 73 | n/a |
| **Total** | **5056** | **6062** | **6518** | **+28.9%** |

*Source: Consumer & Business Services*

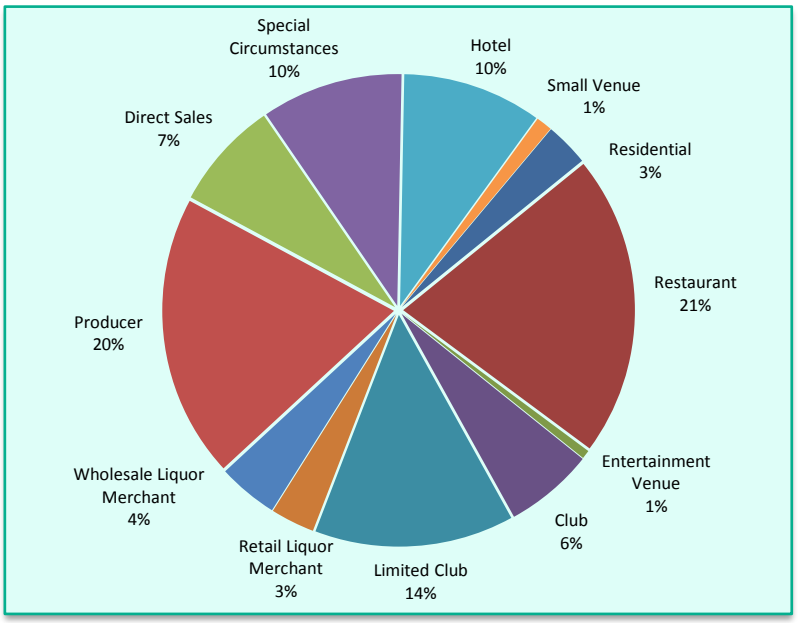
4.1.6 As shown above, there was an overall increase of 28.9% in the total number of liquor licences between 30 June 2005 and 31 May 2016.

4.1.7 While the number of Hotel, Residential, Retail Liquor Merchant's and Wholesale Liquor Merchant's Licences have remained generally constant, the percentage increase attributable to both Producer's Licences and Direct Sales Licences would appear to be indicative of the growth of the wine and craft beer industries within South Australia and the use of online trading (i.e. internet sales) as a point of conducting liquor sales.

4.1.8 However, I note that there has been a reduction in the number of Club Licences. This reduction may reflect the difficulties faced by clubs with attracting membership (particularly clubs which operate in regional areas), increased operating costs and the amalgamation of clubs to ensure ongoing viability. Conversely, the increase in Limited Club Licences may be attributable to the reduced administrative and compliance requirements for conducting business under the limited type of club licence.

4.1.9 The following chart illustrates the composition of liquor licences in South Australia across the 12 licence categories as at 31 May 2016.

*Figure 2: Composition of liquor licences by category in South Australia as at 31 May 2016*[10]




4.1.10 While the present classification and application of licences to various business models would appear to be self-explanatory, I note that there is a prevalence of businesses essentially conducting similar forms of trade, albeit under different types of licences.

4.1.11 In the late night economy particularly, licensees trading with bar, nightclub, lounge, function and/or restaurant type operations are commonly trading either under:

(a) a Hotel Licence with extended trading authorisations; or

(b) a Special Circumstances Licence; or

(c) an Entertainment Venue Licence.

4.1.12 Other examples include:

- accommodation providers which are trading under:

  (a) a Hotel Licence with an extended trading authorisation;

  (b) a Special Circumstances Licence; or

  (c) a Residential Licence, and

- restaurants which are trading under:

  (a) a Restaurant Licence; or

  (b) a Special Circumstances Licence; or

  (c) an Entertainment Venue Licence.

[10] *Source: Consumer & Business Services*

4.1.13 This makes compliance enforcement a difficult proposition. It is further complicated by the fact that only some types of licences are eligible to be authorised to operate gaming facilities. Undoubtedly, this would appear to indicate that the current liquor licence categories do not reflect contemporary business models.

4.1.14 The Discussion Paper questioned whether South Australia needs twelve liquor licence categories. A number of respondents to the discussion paper put forward arguments to either maintain or reduce the number of licence categories.

4.1.15 I am mindful that simply reducing the number of primary licence categories but then introducing sub-categories to reflect different business models would not be conducive to the overall aims of this review.

4.1.16 I note that attempts to streamline the categories of liquor licence within other jurisdictions has led to the introduction of a number of sub-category of licences as shown in the table below:

*Table 3: Examples of liquor licence categories by jurisdiction*

| Jurisdiction | Number of Primary Licence Categories | Actual Including Sub-Categories |
|---|---|---|
| Australian Capital Territory[11] | 5 | 8 |
| New South Wales[12] | 7 | 11 |
| Victoria[13] | 8 | 13 |
| Western Australia[14] | 9 | 15 |

[11] *https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/1654/~/liquor-licensing-and-permits#!tabs-5*
[12] *https://www.liquorandgaming.justice.nsw.gov.au/Pages/liquor.aspx*
[13] *http://www.vcglr.vic.gov.au/home/liquor/new+applicants/select+the+right+liquor+licence/*
[14] *http://www.rgl.wa.gov.au/liquor/liquor-applications/application-kits*

## 4.2 Proposed licensing model

4.2.1 Clearly, any restructuring of the existing categories of licence and relevant trading conditions *(discussed in chapter 5 of this report)* must meet the needs of the different business types that sell and supply liquor in today's contemporary society, be administratively relevant and enforceable for compliance.

4.2.2 I recommend that the twelve existing categories of liquor licence be restructured into a licensing model comprising of eight distinct categories of licence and four categories of permits comprising of—

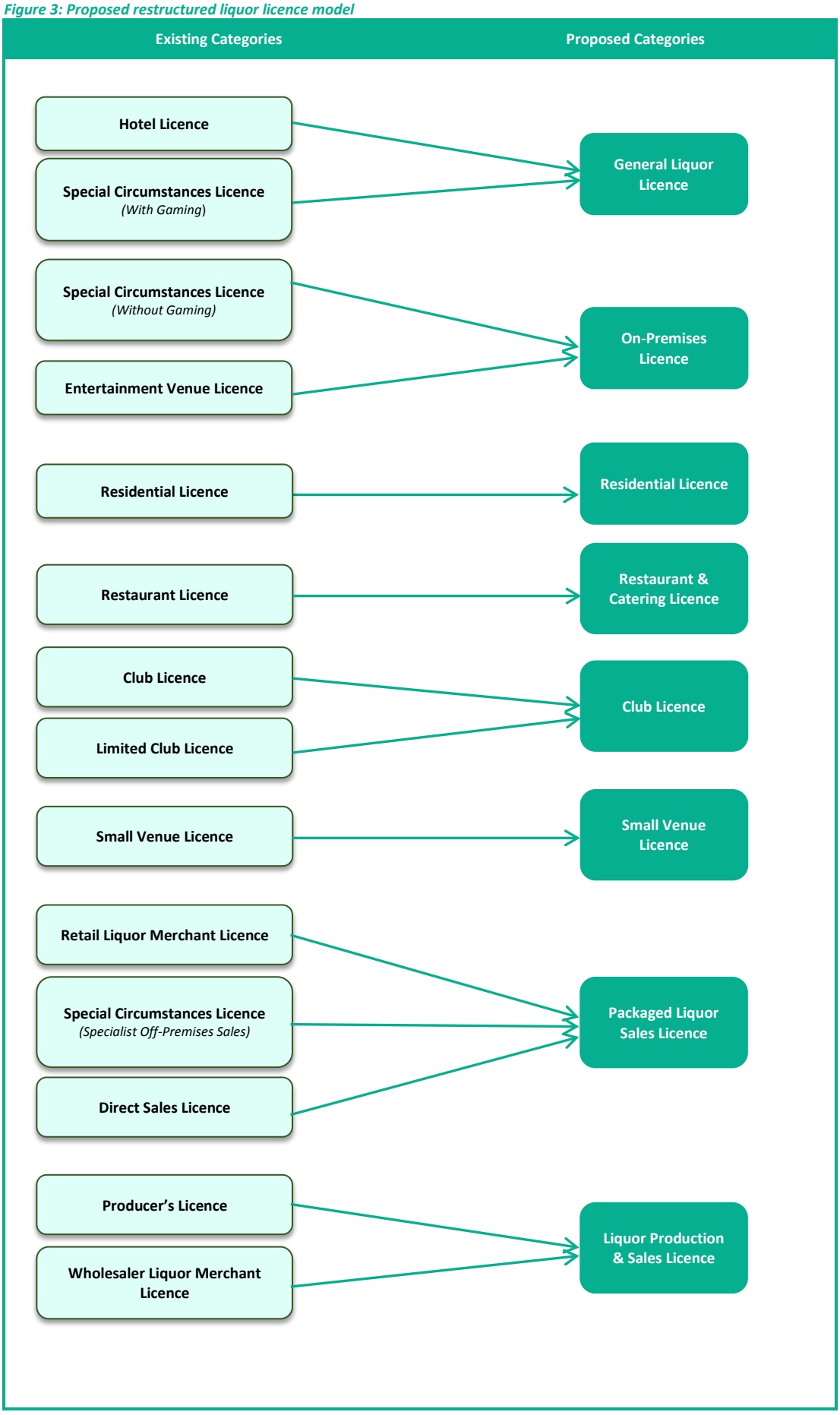
- General Liquor Licence
- On-Premises Licence
- Residential Licence
- Restaurant and Catering Licence
- Club Licence
- Small Venue Licence
- Packaged Liquor Sales Licence
- Liquor Production and Sales Licence
- Liquor Permit
- Extended Liquor Permit
- Special Event Permit
- BYO Permit

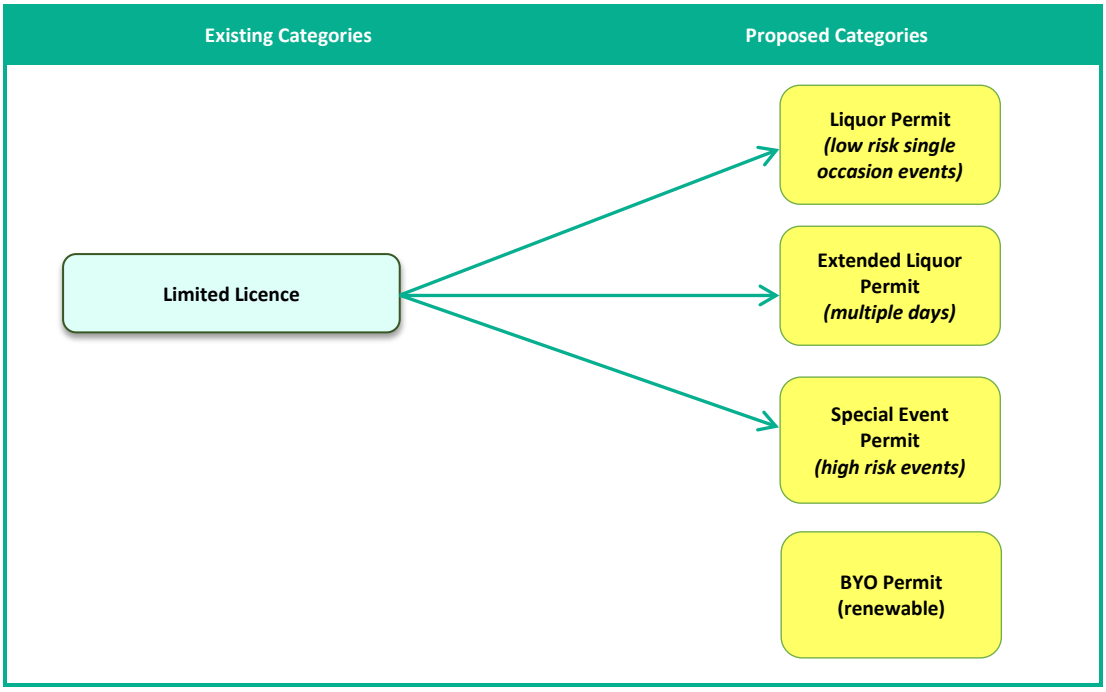
4.2.3 The trading terms and conditions of these proposed new licence categories will be dealt with in chapter 5 of this report.

4.2.4 Should the Government choose to adopt these proposed categories of licence, I have outlined in chapter 20 some transitional provisions the Government may wish to consider.

4.2.5 An explanation of how the existing liquor licences will transition to the new proposed categories of licence is indicated in the following table.

*Figure 3: Proposed restructured liquor licence model*






4.2.6 A further description of each proposed category of licence follows.

## 4.3 Special Circumstances Licence

4.3.1 **Special Circumstances Licence**—the existing Special Circumstances Licence has, since its introduction evolved essentially into a licence of last resort. That is, where trading conditions are outside those allowed for by other licence types, the Special Circumstances Licence is applied.

4.3.2 While this may be viewed as a way for prospective business owners to circumvent the trading conditions applicable to the generally expected primary licence type for that business, it is more likely that the existing licence categories do not adequately reflect contemporary standards and business models.

4.3.3 Accordingly, this has resulted in confusion when conducting compliance activities and potential enforcement of these licence conditions.

4.3.4 It has in my view also further complicated the application process for proposed licensees and led to a protracted decision making process. It has also been difficult, if not impossible, for the Licensing Authority to give any helpful advice as to whether a licence for a proposed business model will be granted or refused.

4.3.5 The special circumstances category of licence would appear to be contrary to the aims of this review and accordingly should be abolished. The holders of such licences will come within one or other of the proposed new categories.

| Recommendation 5 | The special circumstances category of licence be abolished. |
|---|---|

## 4.4 General Liquor Licence

4.4.1 **General Liquor Licence**—will authorise the sale of liquor for consumption on or off the licensed premises.

4.4.2 This category of licence would replace the existing licence categories of:

(a) Hotel Licence; and

(b) Special Circumstances Licence—

- where there is an existing trading right to hold a gaming machine licence under the *Gaming Machines Act 1992*; or
- where there is an existing trading right to sell liquor for consumption on and off the licensed premises to the public.

4.4.3 This proposed change reflects the prevalence of businesses essentially conducting trade substantially similar to that of a licensed hotel or club, but under different categories of licence due to trading condition limitations. This category of licence would potentially also include a number of large accommodation providers which currently hold an existing right to operate gaming machines and/or sell liquor for consumption off the premises to members of the public.

4.4.4 If my recommendation is accepted, the Licensing Authority will also need to be satisfied that the grant or removal of any new General Liquor Licence will not detract from the safety and well-being of the community and is in the public interest. This will be known as the **Community Impact and Public Interest Test** and is discussed in chapter 9.6 of this report.

4.4.5 Eligible businesses would potentially include hotels and taverns but may also include large accommodation providers *(who require gaming and off-premises sales)*.

| Recommendation 6 | The existing Hotel Licence and relevant sub-category of Special Circumstances Licence including trading conditions be abolished and incorporated under a General Liquor Licence with common trading conditions. |
|---|---|

## 4.5 On-Premises Licence

4.5.1 **On-Premises Licence**—will authorise the retail sale or supply of liquor for consumption on the licensed premises where the provision of meals is not the primary activity undertaken by the licensee.

4.5.2 This category of licence would replace the existing licence categories of:

(a) Special Circumstances Licence—

- where there is no existing trading rights to hold a gaming machine licence under the *Gaming Machines Act 1992*; or
- where there is an existing trading right to hold a gaming machine licence under the *Gaming Machines Act 1992* as the premises constitute—

  (i) a major sporting venue; or

  (ii) the headquarters in this State for any particular sporting code,

  and the nature of the undertaking carried out under the gaming machine licence is substantially similar to that of a licensed club; or
- where there are no existing trading rights to sell liquor for consumption off the licensed premises to members of the public; and

(b) Entertainment Venue Licence.

4.5.3 This proposed change reflects that businesses typically operating under these categories of licence while operating substantially different business models, have been authorised to sell or supply liquor (irrespective of whether the sale of liquor is the predominant activity or not).

4.5.4 An eligible business under this category will potentially include an accommodation provider (which while not requiring gaming or off-premises sales, requires public sales of liquor), conveyance provider (e.g. limousine service, vessel), cinema, theatre, sporting arena, nightclub, karaoke lounge, airport bars and the Casino[15].

| Recommendation 7 | The existing Entertainment Venue Licence and relevant sub-category of Special Circumstances Licence be abolished and incorporated under an On-Premises Licence with common trading conditions. |
|---|---|

[15] *The gaming operations of the Casino are governed by the provisions of the Casino Act 1997*

## 4.6 Residential Licence

4.6.1 **Residential Licence**—will authorise the retail sale of liquor for consumption on the licensed premises, where the primary activity undertaken by the licensee is the provision of accommodation.

4.6.2 The trading conditions relevant to the existing residential licence category shall essentially be retained in their present form to the extent as follows—

4.6.2.1 The primary and predominant purpose is to supply accommodation but an ancillary purpose may include the provision of meals to the public either as diners or guests at a reception.

4.6.2.2 The licence shall authorise the licensee to sell liquor for consumption on the licensed premises only—

(a) to a resident *(or a guest of a resident while in the resident's company)*; or

(b) to a member of the public who is dining on the licensed premises or;

(c) to a guest at a reception on the licensed premises.

4.6.2.3 The licence shall authorise the licensee to sell liquor to residents for consumption off the licensed premises.

4.6.3 An eligible business under this category will potentially include an accommodation provider (e.g. a motel), which may or may not wish to offer meals to the public, either as visiting diners or guests at a reception on the licensed premises.

| Recommendation 8 | The existing Residential Licence be retained. |
|---|---|

## 4.7 Restaurant and Catering Licence

4.7.1 **Restaurant and Catering Licence**—will authorise the retail sale or supply of liquor for consumption on premises *(whether their own or not)* where the primary and predominant activity undertaken by the licensee is—

(a) the provision of meals; or

(b) the provision of food as part of a catered function; or

(c) the provision of bona fide cooking classes.

4.7.2 In contrast to other business models where the provision of meals may only *(if at all)* be considered as an adjunct to the business, the provision of meals or preparation of food under this category of licence must be the primary and predominant activity undertaken by the licensee.

4.7.3 The trading conditions applicable to this category of licence shall also make provision, if authorised, to allow for the sale and supply of liquor in-conjunction with the provision of meals provided by a catering service or meals prepared through a bona fide cooking school.

4.7.4 The trading conditions of the licence, if authorised, will also allow the consumption of liquor without a meal if the provision of meals is the primary and predominant activity. Currently the holder of a Restaurant Licence may seek authorisation to allow the consumption of liquor without a meal, but only to a person attending a function at which food is provided or while seated at a table.

4.7.5 Present holders of a Restaurant Licence may operate under a BYO condition under section 34(1)(a) of the Act. In my view, authorisation for this should be made clear by the inclusion of the words 'BYO Authorisation' in brackets after this provision.

4.7.6 An eligible business under this category will potentially include a restaurant, café, catering service or bona fide cooking school.

4.7.7 Although not related to a Restaurant and Catering Licence, I have also decided as a result of submissions received, to recommend that there be a BYO Permit, which I discuss in chapter 7.9.

| Recommendation 9 | **The trading conditions of the existing Restaurant Licence be expanded to reflect catering services and be renamed as a Restaurant and Catering Licence. This licence will also be simplified to allow consumption of liquor without a meal if the provision of meals is the primary activity, without the need for an authorisation as presently required.** |
|---|---|

## 4.8 Club Licence

4.8.1 **Club Licence**—will authorise the retail sale of liquor for consumption on the premises of licensed clubs to members, guests and visitors.

4.8.2 This category of licence would combine the existing Club and Limited Club Licences into a single category of Club Licence. As a result, all former limited clubs as part of this transition would be required to adopt responsible service of alcohol principles and ensure that service staff undertake nationally accredited responsible service training in accordance with the Commissioner's General Code of Practice ('General Code') published under section 11A of the Act.

4.8.3 Under certain circumstances, the sale of packaged liquor products for consumption off the premises may also be authorised *(refer to the discussion on trading conditions in chapter 5 and the Community Impact and Public Interest Test in chapter 9 of this report).*

4.8.4 This proposed change reflects the position put to me by the club industry that the concept of a limited club is antiquated and is not in keeping with contemporary standards. I also note that the club industry accepts that this change will result in former limited clubs losing their exemption from the payment of annual licence fees and the requirement to comply with responsible service principles.

4.8.5 The potential extension of packaged liquor sales to members and visitors of licensed clubs (where authorised) will also allow clubs to be less reliant on grants and sponsorship and allow the additional revenue to be spent within the community and in providing club facilities.

4.8.6 The eligibility for a Club Licence as currently prescribed by section 49(1) of the Act should be retained.

| Recommendation 10 | The existing Limited Club Licence and relevant trading conditions be abolished. All licensed clubs to be incorporated under a single category of Club Licence with common trading conditions. |
|---|---|

## 4.9 Small Venue Licence

4.9.1 **Small Venue Licence**—will authorise the retail sale or supply of liquor for consumption on the licensed premises.

4.9.2 The trading conditions relevant to the existing small venue category licence shall be retained in their present form.

| Recommendation 11 | The existing Small Venue Licence be retained but extended to include North Adelaide. |
|---|---|

## 4.10 Packaged Liquor Sales Licence

4.10.1 **Packaged Liquor Sales Licence**—will authorise the retail sale of packaged liquor products in sealed containers, bottles or cans for consumption off the licensed premises.

4.10.2 This category of licence would replace the existing licence categories of:

(a) Retail Liquor Merchant's Licence; and

(b) Direct Sales Licence; and

(c) Special Circumstances Licence—where a licensee has been authorised to sell a restricted range of specialist liquor products.

4.10.3 This proposed change will incorporate all existing licences which specifically authorise the retail sale of packaged liquor products, under one category of liquor licence.

4.10.4 This category of licence shall also include the concept that the licensed premises which relate to a Packaged Liquor Sales Licence may be contained within or adjacent to premises which are used for other commercial purposes, provided the licensed premises are separated by some form of permanent and substantial physical barrier (e.g. licensed premises if authorised could co-exist under the main roof of a supermarket complex).

4.10.5 In addition, a separate point of sale or check-out (operated by a person over 18 years of age who has completed responsible service of alcohol training) should be required on such licensed premises. A responsible person, approved for the purposes of section 97 of the Act, must be in charge of the licensed premises and present at all times when trading in liquor.

4.10.6 The impact of this change, particularly on the ability for supermarkets to sell packaged liquor products is discussed further in chapter 10.

4.10.7 I recommend that the holder of a Packaged Liquor Sales Licence which was formerly a Special Circumstances Licence should not be able to extend their range of liquor products as a matter of right. In such situations the licensee should have to apply to the Commissioner for such an extension. It may be that the Commissioner may require such an application, to extend the range of liquor product, to pass the **Community Impact and Public Interest Test** as discussed in chapter 9.

4.10.8 Further, except where sales to be undertaken by the licensee are authorised to be solely through direct sales transaction (i.e. where liquor is ordered by the purchaser by mail, telephone, facsimile transmission, internet or other electronic communication), the impact that the grant or removal of a Packaged Liquor Sales Licence will have on the community will need to be assessed by the Licensing Authority under the **Community Impact and Public Interest Test** discussed in chapter 9.

4.10.9 An eligible business under this category will include a bottle shop, specialist wine merchant, specialist grocers authorised to sell specific liquor products, on-line businesses and from within designated licensed premises under the same roof as a supermarket.

| Recommendation 12 | The existing Retail Liquor Merchant's Licence, Direct Sales Licence and relevant sub-category of Special Circumstances Licence including relevant trading conditions be abolished and incorporated under a Packaged Liquor Sales Licence with common trading conditions. |
|---|---|

## 4.11 Liquor Production and Sales Licence

4.11.1 **Liquor Production and Sales Licence**—will authorise the sale of liquor or a licensees own product for consumption off the licensed premises.

4.11.2 This category of licence would replace the existing licence categories of:

(a) Producer's Licence; and

(b) Wholesale Liquor Merchant's Licence.

4.11.3 This proposed change will incorporate all existing licences connected with the:

(a) wholesale sale of liquor or a licensees own product to liquor merchants; or

(b) retail sale of liquor to a person other than a liquor merchant; or

(c) retail sale of a licensees own product,

under one category of liquor licence.

4.11.4 Eligible businesses will include wineries, cellar-doors, micro-breweries, distillers and wholesale liquor merchant's.

4.11.5 Businesses which currently hold both a Wholesale Liquor Merchant's Licence and a Producer's Licence will under this proposed licence be able to operate both aspects of their business under the one licence but in respect of one or more different premises.

4.11.6 Holders of existing Producer's Licences that operate functions, receptions and dining will retain their existing trading rights. If they wish to trade beyond 2am and have relevant planning approval they will be subject to an increased annual licence fee as described in chapter 6.

| Recommendation 13 | The existing Producer's Licence and Wholesale Liquor Merchant's Licence including relevant trading conditions be abolished and incorporated under a Liquor Production and Sales Licence. |
|---|---|

## 4.12 Limited Licences

4.12.1 I have considered the many concerns that have been expressed about the existing limited licence regime, particularly an authorisation to sell liquor at events with a large capacity and for long periods.

4.12.2 The authorisation to sell liquor on these occasions should not be equated with a licence, which connotes something permanent. I therefore consider that the category of licence known as a Limited Licence be replaced with a system of permits as they were previously known.

4.12.3 There should be four types of permits which authorise the sale, supply and/or consumption of liquor—

4.12.3.1 **Liquor Permit (Single Event – Low Risk)**—will authorise:

(a) the licensee to sell or supply liquor; or

(b) the consumption of liquor.

4.12.3.2 This category of permit would replace the existing category of Limited Licence issued by the Licensing Authority for a single special occasion or event where there is potentially a low risk of excessive consumption or misuse of liquor.

4.12.3.3 **Extended Liquor Permit**—will authorise:

(a) the licensee to sell or supply liquor; or

(b) the consumption of liquor.

4.12.3.4 This category of permit would replace the existing category of Limited Licence issued by the Licensing Authority for an event over multiple continuous days with large capacities.

4.12.3.5 **Special Event Permit**—will authorise**:**

(a) the licensee to sell or supply liquor; or

(b) the consumption of liquor.

4.12.3.6 This category of permit would replace the existing category of Limited Licence issued by the Licensing Authority for a special event where the Licensing Authority determines that the nature of the event will require significant resources for the purposes of the administration or enforcement of the Act and where there is potentially a high risk of excessive consumption or misuse of liquor.

4.12.3.7 This will typically apply to events where a licence fee on grant of a Limited Licence is applicable under the *Liquor Licensing (General) Regulations 2012*. Examples would include Clipsal 500, Big Day Out, Royal Croquet Club, Cellar Door Festival, Sea & Vines Festival etc.

4.12.3.8 Consideration should also be given to granting a Special Event Permit for say two or three years' subject to any change in the venue and compliance breaches.

4.12.3.9 **BYO Permit**— for operators who wish to provide a BYO facility but without the full authorisation and trading rights applicable under a Restaurant Licence (e.g. gallery, studio and tourism operators)—see chapter 7.9.

# CHAPTER 5 – TRADING CONDITIONS

## 5.1 Lockout from licensed premises in South Australia

5.1.1 The most contentious aspect of current laws relating to the trade in liquor is the 3:00am 'Lockout' under the Late Night Code.

5.1.2 The Late Night Code was introduced on 1 October 2013 to address alcohol related violence and anti-social behaviour in and around licensed premises throughout the State.

5.1.3 The Late Night Code applies in varying degrees to relevant licensed premises (generally hotels, nightclubs and bars) which trade past midnight, 2am and 3am including:

- queue management;
- drink marshals;
- restrictions on the supply of beverages that promote rapid/excessive consumption;
- restrictions on the use of glassware;
- use of CCTV; and
- use of metal detectors.

5.1.4 In December 2014, the then Minister for Business Services and Consumers commissioned a review of both the General Code and Late Night Code[16] by Internal Consultancy Services Group ('ICSG').

5.1.5 While I do not intend to repeat the findings of this review, I note that 14 of the 18 recommendations, including the continuance of the 3am 'Lockout', were adopted by the Government resulting in a revised Late Night Code coming into operation on 1 February 2016.

### Interstate and overseas trading hours

5.1.6 As identified in the review of the codes by ICSG, a number of jurisdictions have a lockout and/or last drinks regime. While a number of jurisdictions permit exemptions, in all cases the liquor operations of casinos are exempt from the lockout. The reasoning is due to their primary activity being gambling-related, different market and clientele and competition with other casinos that are by and large open 24 hours.

5.1.7 The following table indicates the liquor licensing trading hours in various cities in Australia and around the world.

[16] *Internal Consultancy Services Group, Review of codes established under the Liquor Licensing Act 1997, April 2015*

*Table 4: Examples of liquor licence categories by jurisdiction*

| Location | Lockout | Closing Time |
|---|---|---|
| Adelaide | 3.00am | 7.00am |
| Brisbane | 3.00am | 5.00am |
| Canberra | n/a | 5.00am |
| Darwin | 3.00am | 4.00am |
| Hobart | n/a | Midnight *(some extensions to 5.00am apply)* |
| Melbourne | n/a | n/a<br>*There is no 'blanket' closing time and a small number of 24-hour licenses exist. However, since June 2013 there has been a 'freeze' on granting new licensees with an authorisation to trade after 1:00am (unless 'exceptional circumstances' can be demonstrated)* |
| Perth | n/a | Midnight *(some extensions to 5.00am apply)* |
| Sydney | 1.30am<br>*(Prescribed Entertainment Precincts)* | 3.00am<br>*(Prescribed Entertainment Precincts)* |
| New York City | n/a | 4.00am |
| Los Angeles | n/a | 2.00am |
| Auckland | n/a | 4.00am |
| Vancouver | n/a | 3.00am |

5.1.8 Relevantly, I note that a 2.00am lockout trial in Melbourne was abandoned in 2008, after it was found that there had been an increase in reports of violence during the trial. Pointedly the trial was only voluntary in nature with more than 40% of licensed premises being exempt from the trial.[17]

5.1.9 Since the review by ICSG, I also note that New South Wales has announced an independent review of lockout laws, while Queensland has enacted legislation to strengthen last drinks and lockout provisions including:

- From 1 July 2016 – 2.00am last drinks will apply in licensed premises outside of prescribed safe night out precincts;
- From 1 July 2016 – 3.00am last drinks will apply in licensed premises within prescribed safe night out precincts; and
- From 1 February 2017 – 1.00am lockout will apply to licensed premises within prescribed safe night precincts.[18]

### Submissions to the review

5.1.10 I have received a number of representations both in favour and against a continued lockout from licensed premises. In particular, I note—

(a) the Adelaide City Council are generally supportive of initiatives directed at making the city safer, acknowledging that while earlier closing times would be more effective, such moves would be opposed by late night economy businesses;

[17] *Benedict Brook, 'Melbourne lockout laws were dumped in months, while Brisbane looks to trial laws modelled in Sydney' (9 February 2016) http:www.news.com.au*
[18] *https://www.business.qld.gov.au/industry/liquor-gaming/safe-night-out-strategy/safe-night-precincts*

(b) the Adelaide Fringe submits that trading hours should be more flexible during the four week Adelaide Fringe period (referring to a Fringe Event Classification) as "it will provide greater opportunities for existing bricks and mortar businesses to be involved in the Fringe and to reap the financial benefits of having hundreds of thousands of additional people enjoying themselves in Adelaide";[19]

(c) the Australian Hotels Association (SA) ('AHA SA') is of the view that while the package of restrictions in late night precincts have "had a positive effect and welcomes a reduction in antisocial behaviour"[20] more time is needed to gauge the overall benefits of the newly revised Late Night Code;

(d) in its written submission, the Late Night Venue Association ('LNVA') submits that the 'Lockout' has caused or contributed to a $50m loss to the Adelaide night time economy, 1,000 South Australian job losses and the closure of one-third of late night venues[21]. While respectful of the submission made by the LNVA, I am unable to substantiate these claims. There is no data to support the submission.

(e) submissions by various medical, health and victim support bodies refer to evidence from Australia and overseas which in their view consistently demonstrate that there is a correlation between increased liquor trading hours and an increase in harms and alcohol related assaults.

*"Extended trading hours increase the availability of alcohol, which is associated with an increase in assault, domestic violence, road crashes, child maltreatment and harmful consumption."*[22]

### Discussion

5.1.11 It has been reported that in 2008-09 alcohol was responsible for 58% of victim reported crime and 65% of serious assaults within the Adelaide CBD alone.[23]

5.1.12 On the issue about whether the 'Lockout' has had an impact on the level of taxi rides, the Taxi Council of South Australia ('TCSA') has advised me that the pick-up work in the CBD is the same, but that there appears to be less radio work into the city after 1am.

5.1.13 Of particular note I am advised that there are now less rides between licensed venues (i.e. club hopping) and while the 'Lockout' initially had an impact on the level of taxi rides it has now levelled out. The 'Lockout' has not changed the number of intoxicated people but just the pattern of intoxication. The 'Lockout' has not changed behaviour, although more people now come into the CBD between 10.00pm and 11.00pm having already been drinking prior to coming into the CBD.

5.1.14 This raises the question of whether the requirement to prevent entry of intoxicated persons into licensed premises is being adequately enforced. This is discussed further in chapter 15.

[19] *Submission by the Adelaide Fringe.*
[20] *Submission by the Australian Hotels Association (SA), page 19*
[21] *Submission by the Late Night Venue Association, page 7*
[22] *Submission by Victim Support Service SA*
[23] *Thirty Sixth Report of the Social Development Committee, Inquiry into the Sale and Consumption of Alcohol (5 August 2014), page 37 referring to the Foundation for Alcohol Research and Education written submission 2013, page 7.*

5.1.15 It has also been put to me by a number of licence holders who operate businesses within the late night economy that they support a continuance of the 'Lockout' and late night trading provisions of the Late Night Code.

5.1.16 It has been reported that information presented at the Royal Australasian College of Surgeons Annual Scientific Congress in Brisbane shows there has been a reduction of 60% in relation to serious facial trauma admissions since the lockout laws were introduced in Sydney.[24] In addition single one punch attacks in Sydney have also fallen dramatically since the lockout was introduced into Sydney entertainment precincts.[25]

5.1.17 While initial anecdotal evidence seems to indicate some success with the 'Lockout' in reducing harm, I am not persuaded that given its relatively short operation and lack of definitive data to attest to its effects, that there should be any further roll-back of the 'Lockout' at this time.

5.1.18 I propose that the current 'Lockout' provisions should remain in operation for a further two or three years to allow the effect of those provisions and late night trading provisions to be assessed over a longer term. This will also allow any subsequent evidence from New South Wales and Queensland to be considered when the 'Lockout' provisions are next reviewed.

| Recommendation 14 | **The current 'Lockout' provisions be retained for a further two or three years to allow for their effect to be assessed over a longer term.** |
|---|---|

5.1.19 Relevantly, I also note from the ICSG report that an alternative measure to the 'Lockout' was the proposed introduction of a 'break in trade' provision.[26] ICSG noted that a proposal to introduce a 4.00am to 7.00am 'break in trade' in 2011 was fiercely contested at the time and ultimately was removed due to opposition.

5.1.20 As concluded by ICSG, I am also of the view that some form of 'break in trade' remains a persuasive argument and that a licensee nominated cessation in trading hours is consistent with harm minimisation principles. I note that there is an existing welfare precedent under the Gaming Machine Act 1992.

5.1.21 I recommend that the Government give consideration to requiring that all licensed premises with an authorisation to sell liquor for consumption on premises[27] (other than the licensed casino whose trading hours are prescribed by other legislation) be closed for a minimum of three continuous hours between 3.00am and 9.00am.

[24] *Micahel Safi, 'Sydney lockout: facial trauma cases fall 60% after laws introduced, hospitals say', the guardian (6 May 2016) http://www.theguardian.com/australia-news/2016/may/06/sydney-lockout-facial-trauma-cases-fall-60-after-laws-introduced-hospitals-say*
[25] *Micahel Safi, 'Sydney lockout: facial trauma cases fall 60% after laws introduced, hospitals say', the guardian (6 May 2016) http://www.theguardian.com/australia-news/2016/may/06/sydney-lockout-facial-trauma-cases-fall-60-after-laws-introduced-hospitals-say*
[26] *Review of codes established under the Liquor Licensing Act 1997, ICSG, 30 April 2015, page 93*
[27] *This would typically apply to venues such as hotels or nightclubs that trade late*

5.1.22 If adopted, the Licensee would be able to elect the hours during which trade will cease when nominating the trading hours to be fixed by the Licensing Authority. As an alternative the premises could choose to remain open for the three hours but not sell liquor.

| Recommendation 15 | It is a mandatory condition of a licence that licensed premises must be closed for a minimum of three continuous hours between 3.00am and 9.00am. Alternatively, the premises could remain open for those three hours but not sell liquor. |
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5.1.23 Further, it has been put to me that provision should be made under the Act to allow the Minister to declare a temporary exemption to the 'Lockout' provisions in relation to the conduct of significant events (e.g. Fringe Festival etc).

5.1.24 While this would on the face of it, appear to be contrary to harm minimisation practices, I note that an existing precedent is in place under sections 27B and 27C of the *South Australian Motorsport Act 1984* which despite the provisions of the *Liquor Licensing Act 1997* and the terms and conditions of a licence under that Act, prescribe the days and trading hours when liquor may be sold and consumed during a prescribed period (i.e. during the Clipsal 500 motor racing event).

## 5.2 Trading days

5.2.1 At present there are numerous restrictions on trading throughout the Act for Sundays, Christmas Day, Good Friday and New Year's Eve. There are also inconsistencies in relation to certain types of licences regarding the different days on which trading is permitted and during which hours trading is permitted on those days.

5.2.2 This ambiguity is unnecessary, makes the trading conditions attached to these licences difficult to enforce and creates uncertainty for members of the public as to which premises are open for what times, particularly given our multi-cultural society, beliefs and religious freedoms.

5.2.3 I note that Tasmania, Northern Territory and the Australian Capital Territory do not restrict trading on any day of the week including Sundays, Christmas Day, Good Friday and New Year's Eve.

5.2.4 I propose that liquor trading under all types of licence should be authorised for seven days a week with no differentiation between any given day. Therefore, I would remove from the Act all references to restrictions on Sundays, Christmas Day and Good Friday. For New Year's Eve see 5.6.2.

5.2.5 This does not mean that licensed premises must be open seven days a week or on public holidays. The licensee should be authorised to trade on any day of the year and within the hours authorised under the respective licence category, nominate the actual trading days and hours which best meets the needs of their business model (to be known as Nominated Trading Hours).

| Recommendation 16 | **All restrictions relating to the sale of liquor on Sundays, Christmas Day, Good Friday and New Year's Eve should be abolished. Trading under all types of licence should be able to be authorised on any day of the week without differentiation.** |
|---|---|

## 5.3 Mandatory trading hours and meal provisions

5.3.1 The liquor licensing regime should not place a mandatory obligation on a licensee to trade in liquor. This in my view seems to be at odds with the harm minimisation objects of the Act. Clearly, the onus should be on the licensee to determine the actual trading hours which best meets the needs of their business model.

5.3.2 In my view, the existing mandatory requirement for the holders of Hotel Licences to trade between 11am and 8pm and to provide a meal on request between noon and 2pm and between 6pm and 8pm is not a requirement expected of contemporary society.

5.3.3 These types of conditions are more akin to the days of the horse and stagecoach rather than that of a competitive, modern day hospitality industry. The decision to trade at specific times and whether to provide meals should be a business decision based on the demands of market competition, not a matter of statute.

| Recommendation 17 | The compulsory hours of trading for hotels and any obligation to provide meals during certain hours be abolished. |
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## 5.4 Designated areas and capacities

5.4.1 At present, the Act requires that for the purposes of a number of licence categories that areas on the licensed premises for dining, reception, sampling and consumption must be designated and quite often a capacity set for specific areas within the licensed premises.

5.4.2 In my view there should be no such designated areas. The granting of a licence should relate specifically to the sale and supply of liquor on the licensed premises as a whole, not whether any individual part of the premises is being used for dining, receptions or sampling etc.

5.4.3 In this day and age patrons wish to be free to dine or consume liquor with or without a meal either sitting or standing. A wine producer may for example wish to conduct a sampling of his or her product within the vines as a way of marketing his/or her product.

5.4.4 The requirement to designate areas in my opinion only complicates the licensing process and largely will become irrelevant with the proposed removal of trading restrictions on certain days of the year.

| Recommendation 18 | The designation of areas within licensed premises (including designated dining areas) be abolished. |
|---|---|

5.4.5 The requirement for the capacity of separate areas within licensed premises to be imposed is difficult to enforce and is in my opinion largely ineffectual given that the licensee generally controls the total number of persons entering the premises in accordance with the overall capacity rather than the respective areas within licensed premises. The removal of designated areas also makes this requirement superfluous.

5.4.6 Further, the overall maximum capacity of the premises will be imposed as a condition at the local government planning level to ensure compliance with building regulations and would therefore have regard for the adequacy of toilet facilities, fire exits and other safety measures. It will also relate to local planning conditions in regard to the provision of car parks and crowd management measures.

| Recommendation 19 | The imposition of capacities for individual areas within licensed premises be abolished and a total capacity for the premises imposed. |
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## 5.5 Entertainment consent

5.5.1 On 20 December 2015, changes to the entertainment consent provisions under section 105 of the Act were made to cut red tape, reduce cost to business and encourage the live music industry.

5.5.2 As a result of these changes, licensees no longer require the consent of the Licensing Authority to provide entertainment between 11.00am and midnight on any day. However, a licensee still requires consent to provide entertainment outside of these hours or to provide 'prescribed entertainment'[28] pursuant to section 105 of the Act.

5.5.3 I note in submissions made to me by the AHA SA that despite the recent reforms to section 105 of the Act, that councils have re-applied the conditions which the amendments sought to remove. Further, while the amendment to section 105 of the Act revoked the application of entertainment conditions before midnight due to a previous conciliated matter, conditions imposed due to development approval may still take precedence.

5.5.4 Representatives of the Live Music industry (Music SA, Musitec Ltd and the Live Music Office) also submit that *"subject to evaluation after an annual review of the removal of entertainment consent conditions between 11am and 12am in December 2015, the separate approval for entertainment should be abolished unless an evidence base can be produced that supports its retention."*[29]

5.5.5 I am persuaded by this view and propose that entertainment other than 'prescribed entertainment' should be authorised for all types of licences requiring such a facility as a matter of right. Once again this will only be an authorisation and a licensee will not be compelled to use the authorised hours to their full extent.

5.5.6 The requirement for 'prescribed entertainment' to be authorised should be retained.

5.5.7 I also recommend that the existing complaint mechanism under section 106 of the Act should be retained. This will allow a complaint to be made to the Commissioner if noise or activity relating to a licensed venue is unduly offensive, annoying, disturbing or inconvenient to a person who resides, works or worships in the vicinity of the licensed premises.

5.5.8 Further, in respect to new applications, the provision of entertainment should be a matter for consideration by the local planning authority when considering the proposed use of the premises.

| Recommendation 20 | **Entertainment other than 'prescribed entertainment', for all types of licences requiring such a facility should be permitted as a matter of right at any time during nominated trading hours.** |
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[28] See section 105(6). *Prescribed entertainment means:*
(a) *entertainment of a sexually explicit nature; or*
(b) *a professional or public boxing or martial art event within the meaning of the Boxing and Martial Arts Act 2000; or*
(c) *any other entertainment of a kind prescribed by the regulations for the purposes of this definition,*
*but does not include entertainment of a kind excluded by the regulations for the ambit of this definition.*

[29] *Submission by Music SA, Musitec Ltd and Live Music Office.*

## 5.6 Trading hours

5.6.1 As discussed previously in this chapter, a licensee should be able to nominate the actual trading hours which best meets the needs of their business model **(Nominated Trading Hours)**.

5.6.2 It should be a requirement that these Nominated Trading Hours are detailed on the licence to aid in enforcement. However, a standard automatic extension of nominated trading hours until 2am on New Year's Day should apply to licences which authorise the consumption of liquor on the licensed premises.

5.6.3 Having selected their Nominated Trading Hours (excluding the automatic extension on New Year's Day), these hours will be relevant in assessing the annual licence fee applicable to that licence. Hence the later that a business trades, the higher the fee. I discuss annual licence fees in greater detail in chapter 6.

5.6.4 Proposed authorised trading hours (i.e. the maximum hours that a licensee may trade) are shown in the following table:

*Table 5: Proposed authorised trading hours of new licence categories*

| Licence Type | Authorised hours for consumption ON the licensed premises | Authorised hours for consumption OFF the licensed premises | Authorisation to conduct Direct Sales (by telephone, internet etc) |
|---|---|---|---|
| General Liquor Licence | Any Time | 7am to Midnight | Any Time |
| On-Premises Licence | Any Time | n/a *(except to residents at any time)* | n/a |
| Residential Licence | Any Time | n/a *(except to residents at any time)* | n/a |
| Restaurant and Catering Licence | Any Time | n/a | n/a |
| Club Licence | Any Time | 7am to Midnight *(if authorised)* | Any Time *(to members only)* |
| Small Venue Licence | 8.00am to 2.00am | n/a | n/a |
| Packaged Liquor Sales Licence | n/a | Maximum of 13hrs continuous trade between 8am and 10.00pm | Any Time |
| Liquor Production and Sales Licence | Any Time | Any Time | Any Time |

| Recommendation 21 | Legislate for the authorised trading hours applicable to each category of licence as set out in table 5. |
|---|---|

5.6.5 Further, I propose that the mandatory conditions of a licence include provisions making it unlawful to conduct trade in liquor outside the Nominated Trading Hours specified in the licence.

| | |
|---|---|
| **Recommendation 22** | **Subject to the terms and conditions of the licence, the Licensing Authority shall fix and prescribe on the licence the actual trading hours as nominated by the licensee *(to be known as the Nominated Trading Hours)*.** |
| **Recommendation 23** | **It is a mandatory condition of a licence that a licensee must not conduct trade in liquor outside the Nominated Trading Hours specified in the licence.** |
| **Recommendation 24** | **A standard automatic extension of Nominated Trading Hours until 2.00am on New Year's Day shall apply to licences authorising the consumption of liquor on the licensed premises.** |

## 5.7 Authorised trading in liquor

5.7.1 At present there are inconsistencies in relation to the imposition of trading conditions on licences. This is further complicated due to the practice of a licence simply referring to the general authorisation of a particular licence in accordance with the Act, rather than the actual relevant trading authorisation.

*Example— "To sell and supply liquor in accordance with Section 32 of the Liquor Licensing Act 1997 and any other conditions of this licence"*

5.7.2 This ambiguity is unnecessary and makes the trading conditions attached to these licences difficult to enforce.

5.7.3 I propose that a licence should authorise the licensee to sell and supply liquor in accordance with the terms and conditions specified in a trading authorisation affixed to the licence (including the Nominated Trading Hours fixed by the Licensing Authority) rather than a general authorisation.

5.7.4 I recommend that the Act should require that a licence clearly specify (as relevant)—

(a) the category of liquor licence;

(b) the licence number;

(c) the name and address of the premises;

(d) the name of the licensee;

(e) the name and contact details of the approved nominee/manager/supervisor (see chapter 7.4);

(f) the kind of business or activity carried out on the licensed premises or the kind of licensed premises to which the licence relates;

(g) the overall capacity of the premises;

(h) a specific trading authorisation to sell and supply liquor for consumption on and/or off the licensed premises and the nominated trading hours relevant to the authorisation;

(i) a specific trading authorisation to sell and supply liquor by direct sales transaction;

(j) a specific trading authorisation to sell and supply liquor by way of sample;

(k) a specific trading authorisation to allow prescribed entertainment of a specific type;

(l) a specific trading authorisation to allow the consumption of liquor with or without a meal;

(m) a specific trading authorisation to allow extended trading in lieu of individual liquor permits *(see chapter 12)*; and

*Example— attendance at a number of defined or undefined community, sporting or fundraising events or extending trading to facilitate the broadcast of specific sporting events*

(n) any conditions imposed by the Licensing Authority.

5.7.5 Specimen licences have been provided in Appendix 6, as examples of how this type of trading authorisation could work in practice.

| Recommendation 25 | A licence should state the specific terms and conditions including the Nominated Trading Hours fixed by the Licensing Authority. |
|---|---|

5.7.6 I note that the Discussion Paper also asked respondents to consider whether statutory licence conditions should be captured within a code rather than legislation.[30]

5.7.7 The Act currently includes a number of statutory licence conditions. Some of these conditions are relevant to a specific category of licence. In contrast, the General Code and Late Night Code also stipulate licensing conditions but rather in relation to the operation and management of premises.

5.7.8 It is my view that this present model is effective and should be retained. The ability for the Commissioner to publish a code of practice gives the Commissioner the flexibility to deal with matters that may arise from time to time. This is not to say however, that the statutory licence conditions could not be encapsulated within a specific part of the Act.

| Recommendation 26 | Statutory licence conditions should continue to be retained within the legislation rather than captured within a code. |
|---|---|

5.7.9 As discussed previously in this report, I have proposed that licences are to be of the following classes:

(a) General Liquor Licence;

(b) On-Premises Licence;

(c) Residential Licence;

(d) Restaurant and Catering Licence;

(e) Club Licence;

(f) Small Venue Licence;

(g) Packaged Liquor Sales Licence;

(h) Liquor Production and Sales Licence

5.7.10 I now turn to the terms and conditions that may be authorised under each of these proposed licence classes.

[30] *Discussion Paper, page 19*

### General Liquor Licence

5.7.11 I recommend that a General Liquor Licence may authorise the licensee in accordance with the terms and conditions specified in a trading authorisation—

(a) to sell liquor on the licensed premises at any time for consumption on the licensed premises; and

(b) to sell liquor on the licensed premises on any day between 7.00am and midnight for consumption off the licensed premises; and

(c) to sell liquor at any time to a person residing on the licensed premises for consumption on or off the licensed premises; and

(d) to sell liquor at any time through direct sales transaction (provided that, if the liquor is to be delivered to an address in this State, the liquor is despatched and delivered only between the hours of 8.00am and 9.00pm).

5.7.12 I recommend that a General Liquor Licence shall also be subject to the following conditions—

(a) the keeping or operation of gaming machines (as authorised under the *Gaming Machines Act 1992*) on the licensed premises must not detract unduly from the character of the premises or from the enjoyment of persons using the premises otherwise than for the purpose of gambling;

(b) for the avoidance of doubt, a General Liquor Licence does not oblige the licensee to provide a meal or accommodation at the request of a member of the public on any day on which the licensed premises are open to the public for the sale of liquor;

(c) notwithstanding the above condition, a licensee who wishes to offer meals or accommodation, is not obliged to provide a meal or accommodation to a person if—

(i) the person appears to be intoxicated; or

(ii) the licensee has reasonable grounds to believe that the person cannot or will not pay for the meal or accommodation; or

(iii) the licensee cannot comply with the request because of prior obligations to provide meals or accommodation for others; or

(iv) there is some other proper reason for not complying with the request.

(d) a licensee must comply with any conditions the Licensing Authority considers appropriate in view of the nature and extent of the trade to be conducted under the licence.

| Recommendation 27 | A General Liquor Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption on or off the licensed premises. |
|---|---|

### On-Premises Licence

5.7.13 I recommend that an On-Premises Licence may authorise the licensee in accordance with the terms and conditions specified in a trading authorisation—

(a) to sell liquor on the licensed premises at any time for consumption on the licensed premises; and

(b) to sell liquor at any time to a person residing on the licensed premises for consumption on or off the licensed premises.

5.7.14 I propose that an On-Premises Licence shall also be subject to the following conditions—

(a) the keeping or operation of gaming machines (as authorised under the G*aming Machines Act 1992*) on the licensed premises is unlawful;

(b) an on-premises Licence does not authorise the sale or supply of liquor for consumption off the licensed premises at any time other than to a person residing on the licensed premises;

(c) for the avoidance of doubt, an on-premises licence does not oblige the licensee to provide a meal or accommodation at the request of a member of the public on any day on which the licensed premises are open to the public for the sale of liquor;

(d) notwithstanding the above condition, a licensee who wishes to offer meals or accommodation, is not obliged to provide a meal or accommodation to a person if:

(i) the person appears to be intoxicated; or

(ii) the licensee has reasonable grounds to believe that the person cannot or will not pay for the meal or accommodation; or

(iii) the licensee cannot comply with the request because of prior obligations to provide meals or accommodation for others; or

(iv) there is some other proper reason for not complying with the request.

(e) a licensee must comply with any conditions the Licensing Authority considers appropriate in view of the nature and extent of the trade to be conducted under the licence.

| Recommendation 28 | **An On-Premises Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption on the licensed premises where the provision of meals is not the primary and predominant business of the licensee.** |
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### Residential Licence

5.7.15 I recommend that a Residential Licence may authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor at any time for consumption on the licensed premises—

(a) to a resident (or a guest of a resident while in the resident's company); or

(b) to a member of the public who is dining on the licensed premises; or

(c) to a guest at a reception on the licensed premises.

5.7.16 I propose that a residential licence shall also be subject to the following conditions—

(a) the provision of accommodation to members of the public is the primary and predominate purpose of the business;

(b) the keeping or operation of gaming machines (as authorised under the *Gaming Machines Act 1992*) on the licensed premises is unlawful;

(c) a residential licence does not authorise the sale or supply of liquor for consumption off the licensed premises at any time other than to a person residing on the licensed premises;

(d) for the avoidance of doubt, a residential licence does not oblige the licensee to provide a meal or accommodation at the request of a member of the public on any day on which the licensed premises are open to the public for the sale of liquor;

(e) notwithstanding the above condition, a licensee who wishes to offer meals or accommodation, is not obliged to provide a meal or accommodation to a person if:

(i) the person appears to be intoxicated; or

(ii) the licensee has reasonable grounds to believe that the person cannot or will not pay for the meal or accommodation; or

(iii) the licensee cannot comply with the request because of prior obligations to provide meals or accommodation for others; or

(iv) there is some other proper reason for not complying with the request.

(f) a licensee must comply with any conditions the Licensing Authority considers appropriate in view of the nature and extent of the trade to be conducted under the licence.

| Recommendation 29 | **A Residential Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption on the licensed premises where the provision of accommodation is the primary and predominant business of the licensee.** |
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### Restaurant and Catering Licence

5.7.17 I recommend that a Restaurant and Catering Licence may authorise the licensee in accordance with the terms and conditions specified in a trading authorisation—

(a) to allow the consumption of liquor at any time on the licensed premises with a meal provided by the licensee (i.e. BYO authorisation); and

*Note— while such an authorisation permits the licensee to operate a restaurant with BYO facilities, the inclusion of such an authorisation does not require the licensee to offer BYO if the sale of liquor for consumption on the licensed premises has been authorised.*

(b) to sell liquor at any time for consumption on the licensed premises with or without a meal provided by the licensee; and

(c) to sell liquor at any time for consumption at a place other than the licensed premises, provided that the consumption of liquor is only by a person (other than a minor) attending a pre-booked function ancillary to a meal provided by the licensee; and

(d) to sell and supply liquor for consumption on the licensed premises in-conjunction with the provision of meals provided by a catering service or meals prepared through a bona fide cooking school.

5.7.18 I recommend that a Restaurant and Catering Licence shall also be subject to the following conditions—

(a) the keeping or operation of gaming machines (as authorised under the *Gaming Machines Act 1992*) on the licensed premises is unlawful;

(b) except as otherwise allowed by a condition of the licence, it is a condition of a Restaurant and Catering Licence that the preparation and supply of meals (whether on the licensed premises or at a place other than the licensed premises) is at all times the primary and predominant business carried out under the licence; and

(c) a Restaurant and Catering Licence does not oblige the licensee to provide a meal to a person if:

(i) the person appears to be intoxicated; or

(ii) the licensee has reasonable grounds to believe that the person cannot or will not pay for the meal; or

(iii) the licensee cannot comply with the request because of prior obligations to provide meals for others; or

(iv) there is some other proper reason for not complying with the request; and

(d) a licensee must comply with any conditions the Licensing Authority considers appropriate in view of the nature and extent of the trade to be conducted under the licence.

| Recommendation 30 | A Restaurant and Catering Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption on the licensed premises or at a place other than the licensed premises where the provision of meals is the primary and predominant business of the licensee. |
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### Club Licence

5.7.19 This proposed category of licence is essentially an on-premises licence restricted to clubs that are non-profit associations incorporated under the *Associations Incorporation Act 1985* or a company limited by guarantee under the *Corporations Act 2001 (Cwlth)*.

5.7.20 I note that under certain circumstances the existing club licence conditions authorise the sale of liquor to members for consumption off the premises. Records provided to me by CBS indicate that over 300 existing club licences provide this authorisation.

5.7.21 Further, I also note that a number of incorporated associations or companies limited by guarantee trade in liquor under a Special Circumstances Licence having surrendered their Club Licence under a previous legislative regime.

5.7.22 The existing provisions also include a Limited Club Licence concept which restricts the sale of liquor to members only and up to five guests of a member, who is also on the club premises.[31]

5.7.23 Relevantly, through representations made to me by Clubs SA, the club industry considers that the concept of a limited club is antiquated and is not in keeping with contemporary standards.

5.7.24 Clubs SA submits that it supports any transition of limited club licences to full club licences, noting that this will result in former limited clubs losing their exemption from the payment of annual licence fees and will mandate the requirement to comply with responsible service principles.

5.7.25 It has also been put to me that the extension of packaged liquor sales (where authorised) to members and visitors of licensed clubs will assist clubs to maintain existing critical revenue stream and allow the additional revenue to be spent within the community and in providing club facilities.

5.7.26 As discussed in chapter 4, I have proposed that the concept of Limited Club Licences be abolished and the licences of existing licence holders be converted into a uniform Club Licence.

5.7.27 I recommend that a Club Licence, may authorise the licensee in accordance with the terms and conditions specified in a trading authorisation—

(a) to sell liquor on the licensed premises at any time for consumption on the licensed premises; and

(b) to sell liquor on the licensed premises on any day between 7am and midnight for consumption off the licensed premises; and

[31] *Section 36(3) of the Liquor Licensing Act 1997 (SA)*

(c) to sell liquor at any time to a person residing on the licensed premises for consumption on or off the licensed premises; and

(d) to sell liquor at any time through direct sales transaction to a member of the club (provided that, if the liquor is to be delivered to an address in this State, the liquor is despatched and delivered only between the hours of 8am and 9pm).

5.7.28 I recommend that a Club Licence shall also be subject to the following conditions—

(a) the keeping or operation of gaming machines (as authorised under the G*aming Machines Act 1992*) on the licensed premises must not detract unduly from the character of the premises or from the enjoyment of persons using the premises otherwise than for the purpose of gambling;

(b) a club licence does not authorise at any time the sale of packaged liquor from a facility ordinarily known as a drive-in or drive through bottle shop;

(c) the rules of the club must make provision for the criteria for admission to membership of the club;

(d) for the avoidance of doubt, a club licence does not oblige the licensee to provide a meal or accommodation at the request of a member of the public on any day on which the licensed premises are open for the sale of liquor;

(e) notwithstanding the above condition, a licensee who wishes to offer meals or accommodation, is not obliged to provide a meal or accommodation to a person if:

(i) the person appears to be intoxicated; or

(ii) the licensee has reasonable grounds to believe that the person cannot or will not pay for the meal or accommodation; or

(iii) the licensee cannot comply with the request because of prior obligations to provide meals or accommodation for others; or

(iv) there is some other proper reason for not complying with the request;

(f) a licensee must comply with any conditions the Licensing Authority considers appropriate in view of the nature and extent of the trade to be conducted under the licence.

5.7.29 In chapter 5, I recommend that a Club Licence should have the capacity to be endorsed with additional events to supply liquor subject to the payment of an annual extended event fee. This endorsement would provide the licensee with the flexibility to sell or supply liquor at a number of events per year beyond the licensed premises.

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| **Recommendation 31** | **A Club Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption on or off the licensed premises.** |

### Small Venue Licence

5.7.30 In my view this category of licence appears to have worked very well with 73 Small Venue Licences in operation as at 31 May 2016.

5.7.31 I can see no reason to change the trading conditions applicable to this category of licence other than to provide for the changes I have already recommended in particular to:

(a) ensure that the terms and conditions are specified in a trading authorisation affixed to the licence (including the Nominated Trading Hours fixed by the Licensing Authority) rather than a general authorisation; and

(b) remove references to restricted trading days; and

(c) that the automatic endorsement for entertainment should be extended to the mandatory closing time of 2.00am.

5.7.32 I have discussed further whether the prescribed areas for a Small Venue Licence should be expanded beyond the CBD in chapter 11.

5.7.33 I propose that a Small Venue Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor on the licensed premises on any day between 8am and 2am the following day for consumption on the licensed premises.

5.7.34 I propose that a Small Venue Licence in addition to existing conditions relating to maximum capacity and prescribed areas shall also be subject to the following conditions—

(a) the keeping or operation of gaming machines (as authorised under the *Gaming Machines Act 1992*) on the licensed premises is unlawful;

(b) a Small Venue Licence does not authorise the sale or supply of liquor for consumption off the licensed premises at any time;

(c) for the avoidance of doubt, a small venue licence does not oblige the licensee to provide a meal at the request of a member of the public on any day on which the licensed premises are open for the sale of liquor;

(d) notwithstanding the above condition, a licensee who wishes to offer meals, is not obliged to provide a meal to a person if:

(i) the person appears to be intoxicated; or

(ii) the licensee has reasonable grounds to believe that the person cannot or will not pay for the meal; or

(iii) the licensee cannot comply with the request because of prior obligations to provide meals for others; or

(iv) there is some other proper reason for not complying with the request;

(e) a licensee must comply with any conditions the Licensing Authority considers appropriate in view of the nature and extent of the trade to be conducted under the licence.

| Recommendation 32 | A Small Venue Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption on the licensed premises between 8am and 2am on any day. |
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### Packaged Liquor Sales Licence

5.7.35 As discussed in chapter 4, I have proposed that existing licences which authorise the retail sale of liquor for consumption off the licensed premises should be incorporated under a single category of licence, to be known as a Packaged Liquor Sales Licence.

5.7.36 I propose that a Packaged Liquor Sales Licence may authorise the licensee in accordance with the terms and conditions specified in a trading authorisation—

(a) to sell liquor by retail in sealed containers on the licensed premises on any day over a continuous period of 13 hours between 8.00am and 10.00pm for consumption off the licensed premises; and

(b) to sell liquor by retail in sealed containers at any time through direct sales transaction (provided that, if the liquor is to be delivered to an address in this State, the liquor is despatched and delivered only between the hours of 8.00am and 9.00pm); and

(c) to sell liquor by wholesale on the licensed premises to other liquor merchants during the Nominated Trading Hours which have been authorised by the Licensing Authority; and

(d) except where sales undertaken by the licensee are authorised to be conducted by direct sales transaction only, liquor may be sold or supplied by way of sample for consumption on the licensed premises.

5.7.37 Consistent with the current requirements of section 37(2) of the Act, I consider that the requirement for the licensed premises to be devoted entirely to the business conducted under the licence and that it must be physically separate from premises used for other commercial purposes be retained. The exceptions within section 37(2) should also be retained. I discuss the requirements of section 37(2) in greater detail in chapter 10.

5.7.38 If the licensed premises are to be contained within or adjacent to premises which are used for other commercial purposes, I recommend that the licensed premises should be separated by some form of permanent and substantial physical barrier.

5.7.39 Further, there should be a dedicated point of sale (i.e. a check-out) within the licensed premises and that it be operated only by a person who is 18 years of age or older and has completed responsible service of alcohol training.

5.7.40 In addition, the licensed premises must at all times when open to the public, be personally supervised and managed by a person approved by the licensing authority as a responsible person for the purposes of section 97 of the Act. These requirements in the context of packaged liquor sales by supermarkets are discussed further in chapter 10.

5.7.41 I recommend that a Packaged Liquor Sales Licence shall also be subject to the following conditions—

(a) the keeping or operation of gaming machines (as authorised under the *Gaming Machines Act* 1992) on the licensed premises is unlawful; and

(b) any liquor sold or supplied by the licensee for consumption off the licensed premises under this section must be sealed in containers, bottles or cans only; and

(c) a packaged liquor sales licence does not authorise at any time the sale of liquor from a facility ordinarily known as a drive-in or drive through bottle shop; and

(d) where the sale of liquor of a restricted type or quantity was previously authorised under a Special Circumstances Licence pursuant to section 40 of the Act, such restrictions remain in force and may only be varied with the consent of the Licensing Authority; and

(e) a licensee must comply with any conditions the Licensing Authority considers appropriate in view of the nature and extent of the trade to be conducted under the licence.

5.7.42 It is my view that there are certain premises that should be excluded from obtaining a Packaged Liquor Sales Licence for public interest and harm minimisation reasons. For the avoidance of doubt, it is my view that the Licensing Authority must not grant or allow the removal of a Packaged Liquor Sales Licence to premises —

(a) that are used primarily for the preparation and sale of food for immediate consumption away from the premises (whether or not food is also consumed on the premises); or

(b) that are of a kind ordinarily known as or advertised as a convenience store or deli; or

(c) that are of a kind ordinarily known for the sale of non-consumable, domestic or commercial goods and merchandise; or

(d) connected directly with the sale of petrol, oil or other petroleum products (including the repair and servicing of motor vehicles); or

(e) which primarily sell only tobacco products; or

(f) connected directly or indirectly with the sale of guns or ammunition; or

(g) considered to be non-retail type premises; or

(h) that are a conveyance; or

(i) a facility that the public can reach directly from premises where the primary business carried on is a business of a kind described in condition (a) to (g) above.

5.7.43 The Licensing Authority should retain the right to grant an exemption for those premises identified as excluded if there is some proper reason for granting the exemption.

| Recommendation 33 | A Packaged Liquor Sales Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption off the licensed premises for a maximum of 13 hours in any one day. |
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### Liquor Production and Sales Licence

5.7.44 As discussed in chapter 4, I have proposed that existing licences which authorise the wholesale sale of packaged liquor products or the retail and wholesale sale of a licensee own product should be incorporated under a single category of licence, to be known as a Liquor Production and Sales Licence.

5.7.45 By combining the retail and wholesale elements of liquor production, the trading conditions applicable to this category of licence should allow a liquor producer who currently operates under separate producer's and wholesaler's licences and at different premises to operate under a single category of licence.

5.7.46 Irrespective of whether the licensee trades from multiple outlets (e.g. a production outlet and either/or both a retail or wholesale outlet) the relevant premises and trading conditions should be able to be endorsed on a single licence.

5.7.47 This category of licence should also recognise that many liquor producers are now diversifying their business models to include the provision of meals, accommodation and functions. The removal of designated areas and relaxation of entertainment rules as discussed previously will provide greater flexibility to a producer's product and business offerings.

5.7.48 Relevantly, I also note that many licensees are now actively participating in the promotion of the South Australian wine and tourism industries through their attendance at various functions, trade shows and promotional events across the State and interstate. While the Act currently contemplates that a wine producer may wish to sell or supply their own product at an event (through a producer's event endorsement) this is generally utilised for attendance at specified farmer's markets etc occurring within the producer's own wine region.

5.7.49 While a producer can avail themselves of the existing limited licence provisions of the Act for events beyond those specified under the producer's event endorsement, I am of the view that this is contrary to red tape reduction objectives and as such the event endorsement should be expanded to also provide the licensee with the flexibility to sell or supply their product at a number of additional events per year beyond those specified in the Act.

5.7.50 I note that the South Australian Wine Industry Association in their submission has proposed an additional five events per year[32], which I accept as being a reasonable compromise. There may also be merit in extending this arrangement to an additional 10 or 15 events per year, with an appropriate adjustment to the annual liquor licence fee.

5.7.51 Beyond these five additional events, a licensee would still be required to seek a liquor permit. I discuss the issue of Limited Licences and Permits further in chapter 12.

5.7.52 I propose that the provisions under the existing Producer's Licence relating to premises, collective outlets, producer's event endorsement and definition of a licensee's product be retained to the extent that where appropriate the following matters are incorporated—

(a) the licensed premises may also include a wholesale outlet; and

(b) a producer's event endorsement may include provision for the licensee to sell and supply their own product at up to five, 10 or 15 additional unspecified events per year (subject to the licensee notifying the Licensing Authority prior to the event).

5.7.53 I recommend that a liquor production and sales licence may authorise the licensee in accordance with the terms and conditions specified in a trading authorisation—

(a) to sell liquor by wholesale on the licensed premises to a liquor merchant at any time for consumption off the licensed premises; and

(b) to sell liquor by retail to a purchaser (other than a liquor merchant) at any time for consumption off the licensed premises in an aggregate quantity of 4.5 litres or more; and

(c) to sell the licensee's own product by wholesale on the licensed premises at any time for consumption off the licensed premises; and

(d) to sell the licensee's own product by retail on the licensed premises at any time for consumption on or off the licensed premises; and

(e) to sell liquor at any time through direct sales transaction (provided that, if the liquor is to be delivered to an address in this State, the liquor is despatched and delivered only between the hours of 8am and 9pm); and

(f) to sell or supply by way of sample for consumption on the licensed premises—

(i) liquor; or

(ii) the licensee's own product; or

(iii) for the purposes of comparison with the licensee's own product, other liquor of the same type as the licensee's product; and

(g) to sell liquor at any time to a person residing on the licensed premises for consumption on or off the licensed premises.

[32] *Submission by the South Australian Wine Industry Association (29 January 2016), page 11*

5.7.54 I propose that a Liquor Production and Sales Licence shall also be subject to the following conditions—

(a) the keeping or operation of gaming machines (as authorised under the *Gaming Machines Act 1992*) on the licensed premises is unlawful; and

(b) for the avoidance of doubt, a Liquor Production and Sales Licence does not oblige the licensee to provide a meal or accommodation at the request of a member of the public on any day on which the licensed premises are open to the public for the sale of liquor; and

(c) notwithstanding the above condition, a licensee who wishes to offer meals or accommodation, is not obliged to provide a meal or accommodation to a person if:

(i) the person appears to be intoxicated; or

(ii) the licensee has reasonable grounds to believe that the person cannot or will not pay for the meal or accommodation; or

(iii) the licensee cannot comply with the request because of prior obligations to provide meals or accommodation for others; or

(iv) there is some other proper reason for not complying with the request.

(d) a licensee must comply with any conditions the Licensing Authority considers appropriate in view of the nature and extent of the trade to be conducted under the licence.

| Recommendation 34 | **A Liquor Production and Sales Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor or the licensee's own product for consumption on or off the licensed premises.** |
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### Limited Licence

5.7.55 As discussed in chapter 4, I have proposed that the existing provisions for a Limited Licence be abolished and replaced with a permit system to more adequately reflect the temporary nature of these authorisations.

5.7.56 The Discussion Paper reports that approximately 8,000 applications for Limited Licences were granted in 2014-2015.[33] Many of these licences (about 50%) are low risk functions including quiz nights, award ceremonies, art/craft exhibitions, birthdays, engagements, school fetes, trade fairs and the like.[34]

[33] *Discussion Paper, page 5*
[34] *Information provided by CBS*

5.7.57 I note that in some jurisdictions there is no requirement for an application to be made, but merely a notification to the licensing authority of the details of the function.

5.7.58 I recommend that that consideration be given to dispensing with all requirements for an application in those circumstances where the function is low risk. This in my opinion will reduce the administrative burden on licencing these functions.

5.7.59 In chapter 12, I have recommended that there be three categories of permits—

(a) a Liquor Permit for a single low-risk event;

(b) an Extended Liquor Permit for a low-risk event held over multiple days;

(c) a Special Event Permit for high-risk events; and

(d) a BYO Permit for operators who wish to provide a BYO facility but without the full authorisation and trading rights applicable under a Restaurant Licence (e.g. gallery, studio and tourism operators).

5.7.60 For low-risk single occasion permits, I recommended that there should only be a requirement to notify the Licensing Authority of the event rather than an application for the grant of a permit.

### Summary of trading conditions by licence class

5.7.61 A summary of proposed trading conditions by licence class is provided in the following table.

*Table 6: Summary of proposed trading conditions by licence class*

| Licence Type | General Liquor Licence | On-Premises Licence | Residential Licence | Restaurant and Catering Licence | Club Licence | Small Venue Licence | Packaged Liquor Sales Licence | Liquor Production and Sales Licence |
|---|---|---|---|---|---|---|---|---|
| **Business Type** | Hotel<br>Tavern | Limousine<br>Vessel<br>Cinema<br>Theatre<br>Sports Arena<br>Nightclub<br>Karaoke<br>Lounge<br>Hotel/Motel<br>*(public & guests)* | Hotel/Motel<br>*(guests only)* | Café<br>Restaurant<br>BYO<br>Restaurant<br>Caterer<br>Cooking<br>School | Sporting Club<br>Community<br>Cub | Wine Bar<br>Specialist<br>Liquor Bar<br>Art Gallery<br>Live Music<br>Venue | Bottle Shop<br>Wine Shop<br>Specialist<br>Grocer<br>On-line<br>Retailer<br>Supermarket | Winery<br>Cellar Door<br>Micro Brewery<br>Distiller<br>Liquor<br>Wholesaler |
| **Community Impact & Public Interest Test Applies** *(Refer chapter 9.6)* | ✓ | ✓[35] | ✗ | ✗ | ✓[36] | ✗ | ✓ | ✗ |
| **ON Premises – Consumption** | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✗ | ✓ |
| **ON Premises - Sampling** | ✗ | ✗ | ✗ | ✗ | ✗ | ✗ | ✓[37] | ✓ |
| **ON Premises - Trading Hours** | Any Time | Any Time | Any Time | Any Time | Any Time | 8am to 2am | ✗ | Any Time |
| **ON Premises - Prescribed Entertainment** | If Authorised | If Authorised | If Authorised | If Authorised | If Authorised | ✗ | ✗ | If Authorised |
| **OFF Premises - Consumption** | ✓ | ✓<br>*(Residents Only)* | ✓<br>*(Residents Only)* | ✗ | ✓[38] | ✗ | ✓ | ✓ |
| **OFF Premises - Trading Hours** | 7am to Midnight | Any Time<br>*(Residents Only)* | Any Time<br>*(Residents Only)* | ✗ | 7am to Midnight[39] | ✗ | Max of 13hrs between 8am and 10pm | Any Time |
| **Direct Sales - Telephone, Internet, Mail Order etc** | ✓ | ✗ | ✗ | ✗ | ✓[40] | ✗ | ✓ | ✓ |
| **Direct Sales - Trading Hours** | Any Time | ✗ | ✗ | ✗ | Any Time | ✗ | Any Time | Any Time |
| **Extended Trading Events Authorised On Licence** *(Refer chapter 12)* | ✗ | ✗ | ✗ | ✗ | ✓ | ✗ | ✗ | ✓ |
| **Eligible to conduct gaming under the Gaming Machines Act 1992**[41] | ✓ | ✗[42] | ✗ | ✗ | ✓ | ✗ | ✗ | ✗ |

[35] *Where the sale of liquor is to be authorised after 2am and the licensing authority is of the opinion that the primary and predominant business carried out under the licence is the provision of live entertainment or that ordinarily known as a nightclub, karaoke lounge or bar*
[36] *Applicable only to clubs seeking authorisation for packaged liquor sales*
[37] *Not applicable where sales are authorised by direct transaction only (i.e. telephone, mail order, internet etc)*
[38] *Subject to authorisation by the Licensing Authority*
[39] *Subject to authorisation by the Licensing Authority*
[40] *To club members only*
[41] *The gaming operations of the licensed casino are authorised by the Casino Act 1997*
[42] *Except where authorised under section 15 of the Gaming Machines Act 1992*

# CHAPTER 6 – ANNUAL LIQUOR LICENCE FEES

## 6.1 Current fee structure in South Australia

6.1.1 In the 2011-12 State Budget, the Government announced the introduction of annual liquor licence fees to ensure that licensees contribute to the ongoing costs associated with regulating the liquor industry.

6.1.2 The present fee structure is based on a combination of licence class, capacity and trading hours to ensure that those licensed premises providing greater access to alcohol, with large capacities and longer trading hours pay a higher fee in comparison to those that do not.

6.1.3 Currently, the base fee is $109 and is applicable to all Small Venue Licences and to hotels, sporting clubs and restaurants that close by 2.00am and have a capacity of less than 200 people. In comparison, hotels and entertainment venues (e.g. nightclubs) that trade past 4.00am with a capacity of more than 400 people and the licensed casino pay the highest fee of $11,590.

6.1.4 Licensees can reduce their annual liquor licence fee by applying to CBS, at no cost, to either—

(a) restrict trading hours;

(b) reduce capacity;

(c) claim financial hardship; or

(d) request reassessment on the basis that their business is similar to another licence class that has a lower fee.

6.1.5 A licence can also be surrendered by a licensee if it is no longer required, or it can be revoked by the Commissioner if it is determined that the licensed business is no longer being conducted.[43]

6.1.6 As from 1 January 2013, a new licence fee (currently $758) was also introduced for Limited Licences granted for one-off large, commercial, high risk events. I am advised that this fee is not charged for events held for charitable or community purposes.

6.1.7 If a licensee fails to pay the annual liquor licence fee by the due date, the Commissioner may impose a penalty of 20% of the outstanding amount and require the total amount including the penalty to be paid. If a licensee fails to comply, the Commissioner may suspend the licence until payment has been made. [44]

6.1.8 While in part, the South Australian fee model is representative of a risk based fee structure, there is significant variation between categories of licence, not necessarily reflective of the risk of harm that licensed premises can have on the community.

[43] *Section 66 of the Liquor Licensing Act 1997*
[44] *Section 50A of the Liquor Licensing Act 1997*

6.1.9 A liquor licence can be a significant financial benefit for a business. It not only adds value and variety to the services that a business can make available to the public, but in the case of a hotel or club is a pre-requisite for eligibility to hold a gaming machine licence under the *Gaming Machines Act 1992*. It also adds value to the bricks and mortar of premises which are held under a lease.

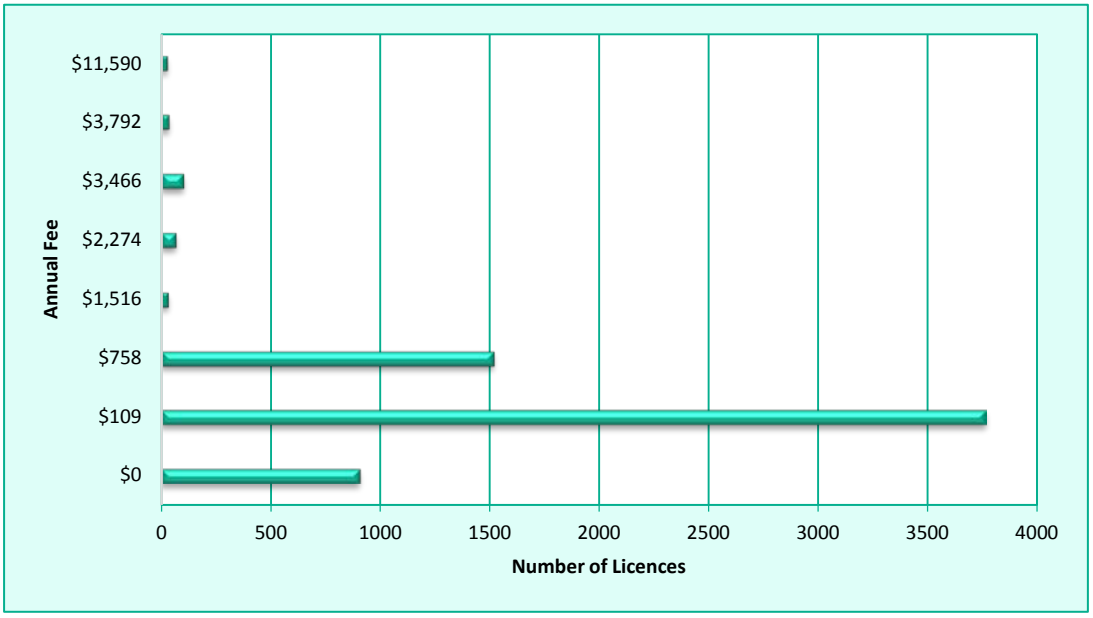
6.1.10 I am of the view that the present fee structure needs to be modified to ensure licensees make a fair and reasonable contribution to the cost of managing and regulating the liquor industry.

6.1.11 Based on CBS data, approximately 70% of all licensees in South Australia are only required to pay the base fee of $109 or less (i.e. the equivalent of $0.30 per day), while a further 23% are required to pay $758 (i.e. the equivalent of $2.09 per day).

6.1.12 In comparison, only 25 licensed venues (or 0.38%) of all licensed venues currently pay the maximum fee of $11,590 (i.e. the equivalent of $32.00 per day).

6.1.13 The following table provides a comparison of annual licence fees currently paid by licensed venues in South Australia.

*Figure 4: Number of licences in South Australia by annual licence fee*



## 6.2 Jurisdictional comparison

6.2.1 All Australian States and Territories with the exception of the Northern Territory have risk based liquor licence fees in some form. In some cases, this is a fixed fee based on licence class alone, or a combination of fees and loadings determined by licence class, trading hours, compliance history, capacity of the premises and location as indicated in the following table—

*Table 7: Jurisdictional comparison of risk based fee models*

| Jurisdiction | Fixed Fee | Base Fee | Trading Hours Loading | Compliance History Fee | Capacity Loading | Location Loading |
|---|---|---|---|---|---|---|
| Australian Capital Territory | ✓ | | | | | |
| New South Wales | | ✓ | ✓ | ✓[45] | ✓[46] | ✓[47] |
| Northern Territory | Not Applicable | | | | | |
| Queensland | | ✓ | ✓ | ✓ | | |
| South Australia | | ✓ | ✓ | | ✓ | |
| Tasmania | ✓ | | | | | |
| Victoria | | ✓ | ✓ | ✓ | ✓[48] | |
| Western Australia | ✓ | | | | | |

6.2.2 I note that the fee structures in New South Wales, Victoria and Queensland provide for the imposition of additional loadings to reflect a venues compliance history. These loadings typically reflect the capacity of the premises, location or nature of non-compliance.

6.2.3 Examples of when the compliance history fee is applied include:

**New South Wales**

- when a strike is recorded against the licensee under the New South Wales three strikes policy; or
- when a court convicts a person of a prescribed offence (i.e. a breach of a licence condition); or
- when a licensee incurs a penalty notice in respect to a breach of a licence condition; or
- a penalty enforcement notice is issued under the *Fines Act 1996 (NSW)*.

**Victoria**

- an offence relating to the supply of alcohol to underage or intoxicated persons; or
- an offence which relates to permitting underage or drunken/disorderly persons on the licensed premises.

[45] *Introduction of the Compliance History Fee in NSW was due to commence from 1 July 2016, however this provision has been suspended pending the outcome of the current review of NSW liquor legislation*
[46] *Only applicable if compliance history risk fee has been applied*
[47] *Only applicable to prescribed entertainment precincts if compliance history risk fee has been applied*
[48] *Only applicable to specified classes of licence or if compliance history risk fee has been applied*

**Queensland**

- an infringement notice was served on the licensee and the licensee paid the fine in the previous licence period; or.
- the Commissioner decides to take disciplinary action relating to the licence, and in the previous licence period; or
- the licensee did not appeal against the decision or the tribunal confirmed or set aside the decision or substituted another decision; or
- the licensee was convicted of a supply offence, and in the previous licence period, the offence was taken to have contributed to the death of a person or a serious assault committed against a person on or near the licensed premises.

6.2.4 I note that in Victoria an additional loading known as a 'venue capacity multiplier' is applied to all late night general and on-premises licences and is also applied to general, on-premises, restaurant and café and club licences if the licensee incurs a compliance history risk fee for serious incidents of non-compliance during the previous fee period.

6.2.5 If applicable, this loading multiplies the total fee by a factor of between one and four according to the capacity of the premises with the multiplier increasing by 0.25 for every 100 patrons over 200. The maximum multiplier of 4 is applied to premises with a capacity greater than 1300 people.

6.2.6 There are also provisions in operation in other States where the base fee levied on licensees is determined by the maximum number of licences the licensee owns or is associated with (e.g. less than four licences, four to nine licences, greater than nine licences). Therefore, those licensees who operate multiple venues and it is said therefore provide more opportunities for excess consumption or misuse of alcohol, pay a higher fee.

6.2.7 Examples of annual liquor licence fees for similar type business models across Australian jurisdictions are shown in the following tables. Where a higher fee is imposed due to non-compliance, the amount has been highlighted.

6.2.8 It should be noted that in New South Wales, it was contemplated that a Compliance Risk Fee would be introduced from 1 July 2016. However, this provision has at this time been temporarily suspended pending the outcome of the current review of New South Wales liquor legislation by the Hon. Ian Callinan AC QC.

*Table 8: Jurisdictional comparison of risk based fee models by business example (Max Fee Highlighted)*

| Business | Capacity | SA | ACT | NSW[49] | QLD[50] | TAS | VIC | WA[51] |
|---|---|---|---|---|---|---|---|---|
| Hotel – Close 11.00pm | 200 | $109 | $4322 | $510 **$16510** | $3388 **$31492** | $845.60 | $924.90 **$8324** | $578 |
| | 400 | $758 | $5186 | $510 **$19510** | $3388 **$31492** | $845.60 | $1387.35 **$12486** | $578 |
| | >400 | $758 | $5186 | $510 **$19510** | $3388 **$31492** | $845.60 | $2312.25 **$20810** | $578 |
| | >1000 | $758 | $5186 | $510 **$19510** | $3388 **$31492** | $845.60 | $3699.60 **$33296** | $578 |
| Hotel – Close 1.00am | 200 | $109 | $8465 | $3010 **$19010** | $12798 **$40902** | $845.60 | $2774.60 **$10173.20** | $852 |
| | 400 | $758 | $11240 | $3010 **$22010** | $12798 **$40902** | $845.60 | $4161.90 **$15260.55** | $852 |
| | >400 | $758 | $11240 | $3010 **$22010** | $12798 **$22652** | $845.60 | $6936.50 **$25433** | $852 |
| | >1000 | $758 | $11240 | $3010 **$22010** | $12798 **$40902** | $845.60 | $11098 **$40692.80** | $852 |
| Hotel - Close 3.00am | 200 | $1516 | $12105 | $5510 **$21510** | $12798 **$40902** | $845.60 | $4624.50 **$12023.60** | $852 |
| | 400 | $2239 | $14699 | $5510 **$24510** | $12798 **$40902** | $845.60 | $6936.75 **$18035.40** | $852 |
| | >400 | $3403 | $14699 | $5510 **$24510** | $12798 **$40902** | $845.60 | $11561.25 **$30059** | $852 |
| | >1000 | $3403 | $14699 | $5510 **$24510** | $12798 **$40902** | $845.60 | $18498 **$48094.40** | $852 |
| Hotel – Close 5.00am | 200 | $2274 | $15564 | $5510 **$21510** | $15938 **$52828** | $845.60 | $8324 **$15723.10** | $852 |
| | 400 | $3720 | $18159 | $5510 **$24510** | $15938 **$52825** | $845.60 | $12486 **$23584.65** | $852 |
| | >400 | $11590 | $18159 | $5510 **$24510** | $15938 **$52825** | $845.60 | $20810 **$39307.75** | $852 |
| | >1000 | $11590 | $18159 | $5510 **$24510** | $15938 **$52825** | $845.60 | $33296 **$62892.40** | $852 |
| Small Venue/Bar – Close 11.00pm | SA – 120 NSW – 60 VIC - <200 | $109 | n/a | $204 **$12204** | $626.50 **$24966.50** | n/a | $924.90 **$8324** | $578 |
| Small Venue/Bar – Close 1.00am | SA – 120 NSW – 60 VIC - <200 | $109 | n/a | $204 **$12204** | $10036.50 **$34376.50** | n/a | $2774.60 **$10173.70** | $852 |
| Small Venue/Bar – Close 3.00am | SA – 120 NSW – 60 VIC - <200 | n/a | n/a | $204 **$12204** | $10036.50 **$34376.50** | n/a | $4624.50 **$12023.60** | $852 |
| Small Venue/Bar – Close 5.00am | SA – 120 NSW – 60 VIC - <200 | n/a | n/a | $204 **$12204** | $13176.50 **$37516.50** | n/a | $8324 **$15723.70** | $852 |

[49] *Introduction of the Compliance History Fee in NSW was due to commence from 1 July 2016, however this provision has been suspended pending the outcome of the current review of NSW liquor legislation.*
[50] *Where a hotel operates a detached bottle shop an additional fee of $3764 per bottle shop is imposed*
[51] *An additional fee of $274 applies where one or two extended trading permits (ETP) are in force and $550 if three or more are in force (e.g. extended trading hours, alfresco, liquor without a meal etc.) Example assumes one ETP in force if trading after Midnight*

| Business | Capacity | SA | ACT | NSW | QLD[52] | TAS | VIC | WA[53] |
|---|---|---|---|---|---|---|---|---|
| Nightclub – Close 1.00am | 200 | $109 | $12969 | $2908 **$18908** | $12798 **$40902** | $596.45 | $2774.60 **$10173.20** | $852 |
| | 400 | $758 | $16861 | $2908 **$21908** | $12798 **$40902** | $596.45 | $4161.90 **$15260.55** | $852 |
| | >400 | $758 | $16861 | $2908 **$21908** | $12798 **$40902** | $596.45 | $6936.50 **$25433** | $852 |
| | >1000 | $758 | $16861 | $2908 **$21908** | $12798 **$40902** | $596.45 | $11098 **$40692.80** | $852 |
| Nightclub – Close 3.00am | 200 | $1516 | $18159 | $5408 **$21408** | $12798 **$40902** | $596.45 | $4624.50 **$12023.60** | $852 |
| | 400 | $2239 | $22050 | $5408 **$24408** | $12798 **$40902** | $596.45 | $6936.75 **$18035.40** | $852 |
| | >400 | $3403 | $22050 | $5408 **$24408** | $12798 **$40902** | $596.45 | $11561.25 **$30059** | $852 |
| | >1000 | $3403 | $22050 | $5408 **$24408** | $12798 **$40902** | $596.45 | $18498 **$48094.40** | $852 |
| Nightclub – Close 5.00am | 200 | $2274 | $23346 | $5408 **$21408** | $15938 **$52828** | $596.45 | $8324 **$15723.10** | $852 |
| | 400 | $3720 | $27238 | $5408 **$24408** | $15938 **$52828** | $596.45 | $12486 **$23584.64** | $852 |
| | >400 | $11590 | $27238 | $5408 **$24408** | $15938 **$52828** | $596.45 | $20810 **$39307.75** | $852 |
| | >1000 | $11590 | $27238 | $5408 **$24408** | $15938 **$52828** | $596.45 | $33296 **$62892.40** | $852 |
| Restaurant – Close 11.00pm | 200 | $109 | $2160 | $408 **$16408** | $626.50 **$24966.50** | $392.60 | $227.70 **$7626.80** | $578 |
| | 400 | $109 | $2591 | $408 **$19408** | $626.50 **$24966.50** | $392.60 | $341.55 **$11440.20** | $578 |
| | >400 | $109 | $2591 | $408 **$19408** | $626.50 **$24966.50** | $392.60 | $569.25 **$19067** | $578 |
| Restaurant – Close 1.00am | 200 | $109 | $4322 | $2908 **$18908** | $10036.50 **$34376.50** | $392.60 | $227.70 **$7626.80** | $852 |
| | 400 | $109 | $5619 | $2908 **$21908** | $10036.50 **$34376.50** | $392.60 | $341.55 **$11440.20** | $852 |
| | >400 | $109 | $5619 | $2908 **$21908** | $10036.50 **$34376.50** | $392.60 | $569.25 **$19067** | $852 |
| Restaurant – Close 3.00am | 200 | $758 | $6050 | $5408 **$21408** | $10036.50 **$34376.50** | $392.60 | $227.70 **$7626.80** | $852 |
| | 400 | $2239 | $7348 | $5408 **$24408** | $10036.50 **$34376.50** | $392.60 | $341.55 **$11440.20** | $852 |
| | >400 | $2239 | $7348 | $5408 **$24408** | $10036.50 **$34376.50** | $392.60 | $569.25 **$19067** | $852 |

[52] *Where a hotel operates a detached bottle shop an additional fee of $3764 per bottle shop is imposed*
[53] *An additional fee of $274 applies where one or two extended trading permits (ETP) are in force and $550 if three or more are in force (e.g. extended trading hours, alfresco, liquor without a meal etc.) Example assumes one ETP in force if trading after Midnight*

| Business | Capacity | SA | ACT | NSW | QLD[54] | TAS | VIC[55] | WA[56] |
|---|---|---|---|---|---|---|---|---|
| Club – Close 11.00pm | 200 | $109 | $4322 | $510 **$16510** | $626.50 **$24966.50** | $392.60 | $455.20 $924.90 (G) **$8324** | $578 |
| | 400 | $109 | $5186 | $510 **$19510** | $626.50 **$24966.50** | $392.60 | $682.80 $1387.35 (G) **$12486** | $578 |
| | >400 | $109 | $5186 | $510 **$19510** | $626.50 **$24966.50** | $392.60 | $1138 $2312.25 (G) **$20810** | $578 |
| | >1000 | $758 | $5186 | $510 **$19510** | $626.50 **$24966.50** | $392.60 | $1820.80 $3699.60 (G) **$33296** | $578 |
| Club – Close 1.00am | 200 | $109 | $8465 | $3010 **$19010** | $10036.50 **$34376.50** | $392.60 | $455.20 $924.90 (G) **$8324** | $852 |
| | 400 | $109 | $11240 | $3010 **$22010** | $10036.50 **$34376.50** | $392.60 | $682.80 $1387.35 (G) **$12486** | $852 |
| | >400 | $109 | $11240 | $3010 **$22010** | $10036.50 **$34376.50** | $392.60 | $1138 $2312.25 (G) **$8324** | $852 |
| | >1000 | $758 | $11240 | $3010 **$22010** | $10036.50 **$34376.50** | $392.60 | $1820.80 $3699.60 (G) **$33296** | $852 |
| Club – Close 3.00am | 200 | $1516 | $12105 | $5510 **$21510** | $10036.50 **$34376.50** | $392.60 | $455.20 $924.90 (G) **$8324** | $852 |
| | 400 | $1516 | $14699 | $5510 **$24510** | $10036.50 **$34376.50** | $392.60 | $682.80 $1387.35 (G) **$12486** | $852 |
| | >400 | $1516 | $14699 | $5510 **$24510** | $10036.50 **$34376.50** | $392.60 | $1138 $2312.25 (G) **$20810** | $852 |
| | >1000 | $3403 | $14699 | $5510 **$24510** | $10036.50 **$34376.50** | $392.60 | $1820.80 $3699.60 (G) **$33296** | $852 |

[54] *Where a hotel operates a detached bottle shop an additional fee of $3764 per bottle shop is imposed*
[55] *Club licence fees in Victoria are set according to whether gaming has been authorised. If so, a higher base fee as shown in the table with a (G) applies*
[56] *An additional fee of $274 applies where one or two extended trading permits (ETP) are in force and $550 if three or more are in force (e.g. extended trading hours, alfresco, liquor without a meal etc.) Example assumes one ETP in force if trading after Midnight*

| Business | Capacity | SA | ACT | NSW | QLD[57] | TAS | VIC[58] | WA[59] |
|---|---|---|---|---|---|---|---|---|
| Bottle Shop – Close 11.00pm | 1 to 3 Outlets[60]<br>4 to 9 Outlets<br>10 or more | n/a | n/a | $510<br>$1020<br>$2040<br>**$14040** | n/a | n/a | n/a | n/a |
| | Per Licence | $758 | n/a | **n/a** | n/a | $596.45 | $1849.70<br>**$9248.80** | $578 |
| | Gross Sales[61]<br>≤$5000<br>>$5K to ≤$100K<br>>$100K to ≤$500K<br>>$500K to ≤$1M<br>>$1M to ≤$3M<br>>$3M to ≤$7M<br>>$7M | n/a | $575<br>$1953<br>$4220<br>$6526<br>$11137<br>$20363<br>$29586 | n/a | n/a | n/a | n/a | n/a |
| Bottle Shop – Close after 11.00pm | | As Above | n/a | n/a | n/a | As Above | $7399<br>**$14798.10** | n/a |
| Wine Producer | Gross Sales[62]<br>≤$5000<br>>$5K to ≤$100K<br>>$100K to ≤$500K<br>>$500K to ≤$1M<br>>$1M to ≤$3M<br>>$3M to ≤$7M<br>>$7M | n/a | $575<br>$1953<br>$4220<br>$6526<br>$11137<br>$20363<br>$29586 | n/a | n/a | n/a | n/a | n/a |
| Wine Producer – No consumption on premises | | $109 | n/a | $204<br>**$11204** | $543.40 | $392.60 | $227.70<br>**$7628.80** | $578 |
| Wine Producer – Close midnight | | $109 | n/a | $2704<br>**$13704** | $543.40 | $392.60 | $227.70<br>**$7628.80** | $578 |
| Wine Producer – Close 2.00am | | $109 | n/a | $5204<br>**$16204** | $543.40 | $392.60 | $227.70<br>**$7628.80** | $852 |
| Accommodation Provider (e.g. motel) – Close midnight | ≤80 | $109 | $2591 | $5408<br>**$21408** | $626.50<br>**$24966.50** | $392.60 | $924.90<br>**$8324** | $578 |
| | 120 | $109 | $3458 | | | $392.60 | | $578 |
| | 200 | $109 | $4322 | | | $392.60 | | $578 |
| | 400 | $109 | $5186 | | | $392.60 | $1387.35<br>**$12486** | $578 |
| Accommodation Provider (e.g. motel) – Close 2.00am | ≤80 | $109 | $4322 | $5408<br>**$21408** | $7686.50<br>**$32026.50** | $392.60 | $4624.50<br>**$12023.60** | $852 |
| | 120 | $109 | $7889 | | | $392.60 | | $852 |
| | 200 | $109 | $10376 | | | $392.60 | | $852 |
| | 400 | $109 | $11240 | | | $392.60 | $6936.75<br>**$18035.40** | $852 |

[57] *Refer to Hotel Licence Class*
[58] *Calculated according to whether gaming has been authorised. If so, a higher base fee as shown in the table applies*
[59] *An additional fee of $274 applies where one or two extended trading permits (ETP) are in force and $550 if three or more are in force (e.g. extended trading hours, alfresco, liquor without a meal etc.) Example assumes one ETP in force if trading after Midnight*
[60] *Calculated per licence based on the maximum number of packaged liquor licences held by the licensee*
[61] *Calculated according to the gross liquor purchase value for the reporting period (i.e. the preceding financial year)*
[62] *Calculated according to the gross liquor purchase value for the reporting period (i.e. the preceding financial year)*

6.2.9 The above table indicates that the annual liquor licence fees currently charged in South Australia are generally the lowest across all Australian jurisdictions, particularly in regard to:

(a) hotels and nightclubs trading between midnight and 4.00am where anecdotally most liquor related incidents stem from;

(b) restaurants, accommodation providers and producers; and

(c) bottle shops where a non-compliance loading applies.

6.2.10 While the fees that are charged to clubs in South Australia are also comparably lower than a number of other jurisdictions, I note that the operating models of clubs interstate differ quite considerably, particularly in relation to size and gaming capacity.

6.2.11 The disparity is undoubtedly due to the very low base fee in South Australia (currently either $109 or $758) and a 200-person minimum capacity threshold (except Small Venue Licences which are subject to a 120-person maximum capacity).

6.2.12 For comparison, the base fees for licences in the other relevant states and territories are shown in the following table (i.e. the lowest fee payable)—

*Table 9: Jurisdictional comparison of base fees*

| Business Type | SA | ACT | NSW | TAS | VIC | QLD | WA |
|---|---|---|---|---|---|---|---|
| Hotel / Tavern | $109 | $2591 | $510 | $845.60 | $924.90 | $3388 | $578 |
| Club With Gaming | $109 | $2591 | $510 | $392.60 | $924.90 | $626.50 | $578 |
| Club Without Gaming | $109 | $2591 | $510 | $392.60 | $455.20 | $626.50 | $578 |
| Small Bar | $109 | $2591 | $204 | $845.60 | $924.90 | $626.50 | $578 |
| Nightclub | $109 | $3889 | $408 | $596.45 | $924.90 | $3388 | $578 |
| Restaurant | $109 | $1294 | $408 | $392.60 | $227.70 | $626.50 | $578 |
| Bottle Shop | $758 | $575 | $510[63]<br>$1020<br>$2040 | $596.45 | $1849.70 | n/a | $578 |
| Wine & Beer Producer | $109 | $575 | $204 | $392.60 | $227.70 | $543.40 | $578 |

6.2.13 Other than Tasmania and Western Australia which has a fixed fee model based on category of licence alone, the Australian Capital Territory, New South Wales, and Queensland models primarily use licence class and trading hours as the foundation of their fee structures. In South Australia, the capacity of the premises and type of business conducted are additional factors taken into consideration.

[63] *Determined by the number of licences held or associated with the licensee (i.e. <4 licences, 4 to 9 licences, >9 licences)*

## 6.3 General comments

6.3.1 It has been put to me that the operators of packaged liquor outlets (i.e. bottle shops and 'big-box' branded liquor outlets) should pay a higher licence fee than a single outlet operator.

6.3.2 I note that in some jurisdictions the fee structure contemplates the association or holding of multiple licences by a single licensee or entity, and as such licensees pay higher licence fees per licence held. I understand that the reasoning for this is that multiple outlets provide more opportunities for excess consumption or misuse of alcohol.

6.3.3 I concur with this view and believe that this should be considered as a means of ensuring that those licensees or entities providing greater access to alcohol and therefore increasing potential harms from excessive alcohol consumption should pay more than a single licensee operation.

6.3.4 Currently, the holders of licenses which authorise the sale of packaged liquor products (i.e. retail liquor merchant, wholesale liquor merchant and direct sales) in South Australia are charged an annual licence fee of $758 ($2.07 per day) irrespective of the number of licences held by the same entity or compliance record.

6.3.5 Relevantly, while the fee in South Australia for packaged liquor sales is mid-range when compared against similar licences in other jurisdictions, I note that—

- in New South Wales a licensee with a single bottle shop can still pay up to $11,500.00 if there is a record of poor compliance history and the location is assessed as being a further risk;
- in New South Wales, an entity that operates 10 or more bottle shops can be charged a minimum fee of $2,000.00 per licence or a maximum of $14,000.00 per licence with a record of poor compliance history and operating in a risk based location;
- in Victoria the minimum licence fee is $1,850.00 but increases to $7,350.00 if trade proceeds beyond 11.00pm. A maximum fee of $9,248.00 can also be imposed against a licensee with a record of poor compliance history.

6.3.6 I am not persuaded that the fees charged in South Australia for packaged liquor sales are representative of the potential harm that alcohol can cause in society. The fact that 80% of alcohol consumed in Australia is packaged liquor sold through off-licence premises[64] such as stand-alone bottle shops and bottle shops attached to hotels, has in my view largely gone under the radar.

6.3.7 It has also been suggested to me that other alternatives would be to base the licence fee applicable to bottle shops on:

(a) the square meterage of the retail area occupied by the store with the rationale being that in a larger store more liquor will be displayed, will allow for more specials at cheaper prices and will hence increase the risk of alcohol abuse; or

[64] *Supplementary Submission from The Foundation for Alcohol Research and Education, The Public Health Association of Australia, The South Australian Network of Drug and Alcohol Services, The Royal Australasian College of Surgeons, The National Centre for Education and Training on Addiction, page 13 referring to Euromonitor International (2012) Passport: alcoholic drinks in Australia. London: Euromonitor.*

(b) a combination of the square meterage of the retail area and compliance history, rather than a location risk; or

(c) to charge a licensee a higher fee per licence if they operate or are associated with 10 or more licences.

6.3.8 It is my view that the annual liquor licence fee structure should ensure licensees make a fair and reasonable contribution to the cost of regulating the liquor industry having regard to the risk and effects caused by alcohol within the community, and especially increased levels of domestic violence.

6.3.9 Further, consideration should be given to the terminology used within the Act to describe the annual fee as an 'annual licence renewal fee' to better reflect that payment of the annual fee renews the licence and allows for the lawful sale or supply of liquor for the following 12 months or fee period.

| Recommendation 35 | Describe the annual fee within the legislation as an 'annual licence renewal fee'. |
|---|---|

6.3.10 While the current system of penalty and possible suspension for licensees who fail to pay their annual licence fee by the due date may have been appropriate during the infancy of the annual fee regime, left unchecked it would appear to leave the system susceptible to abuse. It has been put to me that licensees are essentially able to continue to trade during the period when a notice to pay any penalty has been issued and potentially trade unlawfully while under suspension.

6.3.11 We should not forget that liquor is a regulated product. Hence the liquor licence renewal regime, like other forms of licensing, such as motor vehicle registration or licensed building work contractor renewals, should in my view have less discretionary but rather mandated consequences for failing to pay the annual renewal fee and penalty (if applicable) by the due date.

6.3.12 CBS should also have enhanced compliance processes to detect, monitor and enforce the immediate suspension or cancellation of licences due to a failure by the licensee to pay the annual licence fee. I discuss the administration of licence fees further in 6.7.

## 6.4 Proposed fee structure

6.4.1 Having compared the current fee structure in South Australia with others operating in Australia and New Zealand, I have considered the following annual licence renewal fee models as possible options—

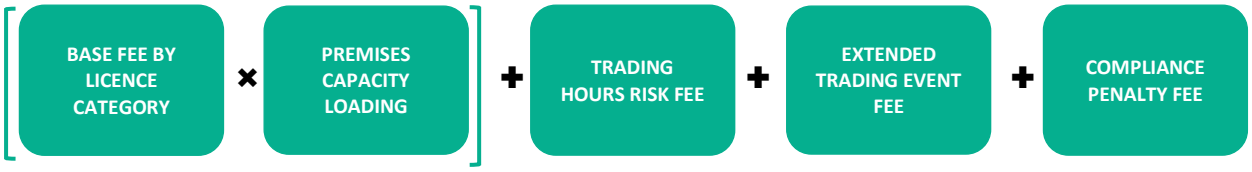
### Model A

This model makes no allowance for the capacity of the premises, but applies a loading/fee based on trading hours, extended trading (in lieu of a limited licence/permit) and compliance history.




### Model B

This model is similar to the above, but introduces the capacity of the premises as a separate loading. I envisage that this loading would be applied as a multiple of the base fee rather than a fixed monetary amount.




### Model C

This model is essentially the same as the current regime with the licence category, nominated trading hours and capacity of the premises determining the licence fee that is due to be paid. An extended trading event fee and compliance penalty fee would also be required to be paid (if applicable).



6.4.2 In each of the above models, the present concept of the same base fee essentially applied to all licence categories has been excluded in favour of base fees having regard to the actual trading conditions and risks associated with each category of licence.

6.4.3 For transparency, I do not favour the fixed fee models currently in operation in the Western Australia and Tasmania which are based on licence category alone. I also view the risk based weighting model adopted in New Zealand as unwieldy and difficult for industry to interpret.

6.4.4 I also do not favour the multiplier model used in Victoria which applies a multiple of between one and four if the licence fee is subject to a compliance history risk fee.

6.4.5 Having considered each of these models, I recommend that the Government consider retaining the current fee structure under Model C, albeit with—

(a) an increase in the monetary amount of the base fee which applies before and after Midnight and subsequent loadings for late trading; and

(b) the existing 2.00am and 4.00am thresholds expanded generally to better reflect business models which trade before and after Midnight, 2.00am, 3.00am, 4.00am and 5.00am; and

(c) the existing 200, 400 and 1000-person capacity thresholds expanded generally to better reflect premises which trade with a capacity not greater than 200, 400, 800, 1200 and over 1200.

6.4.6 The extension of the fee structure to specifically recognise licensed premises which trade continually before and after 5am, while not wanting to curtail the options available to consumers to access liquor products at this time of day, will reflect the additional police, emergency, medical and victim support resources which need to be devoted to tackle the potential excessive consumption or misuse of alcohol connected with continuous or late night trading in liquor.

6.4.7 I envisage that under Model C, the annual licence renewal fee structure could operate as follows—

**LICENCE FEE DETERMINED BY CATEGORY**

The licence fee would continue to be set according to the potential risk associated with the category of licence, the trading hours and capacity of the premises on the basis of—

**NOMINATED TRADING HOURS**

- Where trade in liquor ceases—
  - by Midnight; or
  - between Midnight and 2.00am; or
  - between 2.00am and 3.00am; or
  - between 3.00am and 4.00am; or
  - between 4.00am and 5.00am; or
  - after 5.00am

**CAPACITY OF PREMISES**

- Where the capacity of the premises—
  - does not exceed 200; or
  - is between 201 and 400; or
  - is between 401 and 800; or
  - is between 801 and 1200; or
  - exceeds 1200

**Plus**

**EXTENDED TRADING EVENT FEE**

A fee (if applicable) where extended event trading has been authorised on a licence in lieu of separate liquor permits.

*(This could be authorised for 6, 10 or 15 events at a discounted rate based on the cost of applying for 4, 8 or 12 liquor permits).*

**Plus**

**COMPLIANCE PENALTY FEE**

A penalty fee *(if applicable)* due to a licensee having a poor compliance history record in the previous annual fee period.

*(Assuming no further incidents of non-compliance in the current fee period, the compliance fee would not apply to future fee periods).*

**Recommendation 36**

**Change the annual licence renewal fee structure to incorporate the concepts of a fee based on the premises capacity, trading hours, extended event authorisation and compliance record (i.e. the later the closing time, the higher the fee) so that it is applicable to all classes of licence.**

## 6.5 Implications by licence class

### General Liquor Licence

6.5.1 In comparison with interstate jurisdictions it is seen that the base fee for hotels and taverns in South Australia at $109.00 ($0.29 per day) is the lowest across all jurisdictions.

6.5.2 In my view the current base fee for a General Liquor Licence, which I have proposed as the new category of licence relevant for these types of businesses, should be increased.

6.5.3 The Government may, having compared the fee structures in other jurisdictions, wish to consider a base fee for this category of licence in the range between $1,000 and $2,000 per licence. Premises which nominate to trade after midnight and/or have a capacity of over 200 should in my view be also subject to a higher annual licence renewal fee.

| Recommendation 37 | That the amount of the annual licence renewal fee applicable to premises which typically trade as hotels or taverns *(i.e. with approval to sell liquor for consumption on or off the premises)* under the proposed General Liquor Licence class be increased. |
|---|---|

### On-Premises Licence

6.5.4 The category of licence to be known as an On-Premises Licence is a new concept focussing on businesses which have been authorised to sell or supply liquor for consumption on the premises (irrespective of whether the sale of liquor is the predominant activity or not). This will typically include bars, nightclubs, karaoke lounges, conveyance services and large accommodation providers who currently trade under a range of licence categories including Special Circumstances Licences and Entertainment Venue Licences.

6.5.5 In my view, the annual licence renewal fee structure for this category of licence should, as currently applies under the existing fee provisions, generally be the same as the structure for the General Liquor Licence category with a base fee in the range between $1,000 and $2,000 per licence. Premises which nominate to trade after midnight and/or have a capacity of over 200 should in my view be also subject to a higher annual licence renewal fee.

6.5.6 This reflects that many venues which will hold this category of licence may trade after 11.00pm and potentially until 5.00am, where the service of liquor will evolve and become the predominant activity.

6.5.7 The Government may also wish to retain the existing exemption from late trading fees in respect to public conveyance services (i.e. bus, limousine, boat providers etc.).

6.5.8 It should be noted, that a number of existing large capacity accommodation providers currently hold a Hotel Licence or a Special Circumstances Licence (which was granted on the surrender of a Hotel Licence under the provisions of previous legislation). In my view these venues should continue to hold their existing trading rights (e.g. eligibility for gaming) under a General Liquor Licence.

| Recommendation 38 | That the fee structure for a General Liquor Licence be also applicable to licences which authorise the sale or supply of liquor for consumption on the premises under an On-Premises Licence *(irrespective of whether the sale of liquor is the predominant activity or not).* |
|---|---|

### Club Licence

6.5.9 As discussed in chapter 4, Clubs SA has submitted that the club industry considers that the concept of a limited club is antiquated and is not in keeping with contemporary standards and supports any transition of Limited Club Licences to full Club Licences.

6.5.10 While this will result in former limited clubs gaining equivalent trading rights to existing full clubs, I am of the view that there should still be a distinction within the fee structure between clubs with or without gaming facilities. This would be comparable to the existing restrictions under a Limited Club licence.

6.5.11 Further, notwithstanding the low level of risk that is generally attributed to clubs, I would be deficient if I did not recognise that a club with a capacity of only 200 or 400 people will trade very differently and be exposed to a lower level of risk than to a club with a capacity of 1000 persons or more.

6.5.12 In addition to an increase in the monetary amount of the annual licence renewal fee, the Government may wish to consider that the fee structure for clubs, replicates the structure under a General Liquor Licence or alternatively introduces the concept of different capacity thresholds, such as less than 200, 201 to 400, 401 to 1000 in addition to the existing 1000 person capacity applied to club licences. This would in my opinion, better reflect the risk elements when comparing small and large club premises.

6.5.13 In my view, the annual licence renewal fee structure for a Club Licence with gaming rights should generally be the same as the structure for the General Liquor Licence category with a base fee of in the range between $500 and $1,250 per licence. Premises which nominate to trade after midnight and/or have a capacity of over 200 should be subject to a higher annual licence renewal fee.

6.5.14 It is my view that a Club Licence that does not have any gaming rights should have a lower base fee, as these clubs may have been under the current Limited Club Licence. The base fee for this type of Club Licence should be in the range between $250 and $1,250 per licence.

| Recommendation 39 | Introduce interim capacity thresholds for the calculation of annual licence renewal fees for Club Licences and imposing a different fee for clubs with or without gaming. |
|---|---|

6.5.15 While a licensed club can avail themselves of the existing limited licence provisions of the Act to sell or supply liquor at events or in places beyond the licensed premises (such as fund raising activities on sporting ovals or football bus trips), I am of the view that this is contrary to red tape reduction objectives and as such, the Government may wish to consider an event endorsement (not dissimilar to the current event endorsement affixed to a Producer's Licence) on Club Licences.

6.5.16 This endorsement would provide the licensee with the flexibility to sell or supply liquor at a number of events per year beyond the licensed premises.

6.5.17 The Government may wish to consider a structure of six, 10 or 15 events being authorised on a licence which could incur an Extended Event Trading Fee applied at a discounted rate based on the equivalent cost of applying for four, eight or 12 individual liquor licences/permits.

6.5.18 Alternatively, a licensee could seek approval for a specific number of events and an Extended Event Trading Fee charged per individual event.

6.5.19 Beyond these additional events, a licensee would still be required to seek a liquor permit. I discuss the issue of Limited Licences and Permits further in chapter 12.

| Recommendation 40 | **The holder of a Club Licence may apply to the Licensing Authority to have their licence endorsed to permit the sale and supply of liquor at a number of events per year subject to the payment of an annual Extended Event Trading Fee.** |
|---|---|

### Packaged Liquor Sales Licence (Bottle Shops)

6.5.20 In comparison with interstate jurisdictions it is seen that the fee for a bottle shop in South Australia at $758.00 ($2.07 per day) is quite low. The fact is, as I have pointed out elsewhere that 80% of alcohol consumed in Australia is sold through off-licence premises[65] such as stand-alone bottle shops and bottle shops attached to hotels.

6.5.21 In my view the current licence fee for a packaged liquor sales licence should be increased.

6.5.22 The Government may wish to consider a fixed licence renewal fee for this category of licence of between $1,500 and $4,000 per licence, with the lower fee only applicable to businesses which trade only by direct sales transaction.

6.5.23 Alternatively, the Government may wish to adopt the multiple venue by single licensee model (as occurs in New South Wales) where the base fee applied per licence is structured according to the number of multiple licences held by the entity.

[65] *Supplementary Submission from The Foundation for Alcohol Research and Education, The Public Health Association of Australia, The South Australian Network of Drug and Alcohol Services, The Royal Australasian College of Surgeons, The National Centre for Education and Training on Addiction, page 13 referring to Euromonitor International (2012) Passport: alcoholic drinks in Australia. London: Euromonitor.*

6.5.24 I am of the view that the fees under this type of model should proximate—

(a) $4,000 where the licensee is associated with no more than three related outlets;

(b) $7,000 where the licensee is associated with more than three but less than 10 associated outlets;

(c) $10,000 where the licensee is associated with 10 or more related outlets.

| Recommendation 41 | Increase the amount of the annual licence renewal fee applicable to the sale of packaged liquor products under the Packaged Liquor Sales Licence and the introduction of an increased fee for holders of multiple package liquor sales licences. |
|---|---|

6.5.25 I have also recommended in chapter 5.7 that the existing 13-hour maximum period for packaged liquor sales be limited to between the hours of 8am and 10pm (other than direct sales). Essentially this would mean that bottle shops not attached to hotels could operate for example between 8.00am and 9.00pm or 9.00am to 10.00pm.

6.5.26 I am not persuaded that there is a necessity for bottle shops not attached to hotels to trade later than 10.00pm. Most will be in or adjacent to shopping centres where other trade will generally cease by 10.00pm.

6.5.27 However, should the Government choose to retain the existing option for this category of licence to trade beyond 10.00pm to midnight, consideration could be given to applying an increase to the licence fee of between $2,500 and $5,000.

6.5.28 Packaged Liquor Sales Licences which were previously held under a Special Circumstances Licence and generally apply to premises with limited or restricted off-premises sales (e.g. provided by Cultural Specialist Grocers), should be subject to the same terms and conditions discussed above.

| Recommendation 42 | Should the Government choose to retain the existing option for this category of licence to trade beyond 10.00pm to midnight, a further increase to the licence fee of between $2,500 and $5,000 should be applied. |
|---|---|

### Liquor Production and Sales Licences

6.5.29 In my view, the annual licence renewal fee structure for this category of licence should range between $375 and $750 per licence depending on the nature of the business conducted under the licence. Premises which nominate to sell and supply liquor for consumption on the premises which after midnight and/or have a capacity of over 200 should also be subject to a higher annual licence renewal fee.

6.5.30 This reflects that the business conducted under this licence after midnight may evolve to beyond that contemplated by the licence (e.g. the hosting of functions and events etc.).

6.5.31 I also note that many wine producers are now actively participating in the promotion of the South Australian wine and tourism industries through their attendance at various functions, trade shows and promotional events across the State and interstate.

6.5.32 While the Act currently contemplates that a wine producer may wish to sell or supply their own product at an event (under the existing producer's event endorsement) this is generally utilised for attendance at specified farmer's markets etc., which occur within the producer's own wine region.

6.5.33 While a producer can avail themselves of the existing Limited Licence provisions of the Act for events beyond those specified under the producer's event endorsement, I am of the view that this is contrary to red tape reduction objectives and as such the event endorsement should be expanded to also provide the licensee with the flexibility to sell or supply their product at a number of additional events per year beyond those prescribed. I note that the South Australian Wine Industry Association in their submission[66] has proposed an additional five events per year, which I accept as being a reasonable compromise.

6.5.34 Alternatively, the Government may wish to consider a structure of six, 10 or 15 events being authorised on a licence which could incur an Extended Event Trading Fee applied at a discounted rate based on the equivalent cost of applying for four, eight or 12 individual liquor licences/permits.

6.5.35 Alternatively, a licensee could seek approval for a specific number of events and an Extended Event Trading Fee charged per individual event.

6.5.36 Beyond these additional events, a licensee would still be required to seek a Liquor Permit. I discuss the issue of Limited Licences and Permits further in chapter 12.

| Recommendation 43 | Licensees holding a Liquor Production and Sales Licence be allowed to have their licence endorsed to permit the sale and supply of liquor at a number of events per year subject to the payment of an annual Extended Event Trading Fee. |
|---|---|

[66] *Submission by the SA Wine Industry Association, page 11*

### Restaurant and Catering Licences

6.5.37 The category of licence to be known as a Restaurant and Catering Licence is a new concept focussing on businesses which have been authorised to sell or supply liquor for consumption on premises (whether their own or not) where the primary activity undertaken by the licensee is—

(a) the provision of meals; or

(b) the provision of food as part of a catered function; or

(c) the provision of bona fide cooking classes.

6.5.38 This will typically include traditional restaurants with or without BYO, cafes, catering providers and bona fide cooking schools who currently trade under a range of licence categories including Special Circumstances Licences, Entertainment Venue Licences and Restaurant Licences.

6.5.39 In my view, the annual licence renewal fee structure for this category of licence should be between $250 and $500 per licence depending on the activity of the business. Premises which are authorised to sell liquor without a meal, nominate to trade after midnight and/or with capacity of over 200 should also be subject to a higher annual licence renewal fee.

6.5.40 This reflects that liquor service could evolve and become the predominant activity in venues which will hold this category of licence and trade after midnight and potentially until 5.00am. In this case, a commensurate increased annual licence renewal fee should apply where a business nominates to trade after 2.00am.

6.5.41 In my view, the Government may also wish to exempt businesses from late trading fees where the predominant activity conducted relates to restaurants, cafes and tourism operators with only a BYO facility, catering providers and bona fide cooking schools.

| Recommendation 44 | Exempt businesses from late trading fees where the predominant activity conducted relates to restaurants, cafes and tourism operators with only a BYO facility, catering providers and bona fide cooking schools. |
|---|---|

### Residential Licence

6.5.42 In my view, the annual licence renewal fee structure for this category of licence should be between $375 and $500 per licence. Premises which nominate to sell liquor after midnight and/or with a capacity of over 200 should also be subject to a higher annual licence renewal fee.

6.5.43 This reflects that liquor service could evolve and become the predominant activity in venues which will hold this category of licence and trade after midnight and potentially until 5.00am.

### Small Venue Licence

6.5.44 In my view, the existing annual licence renewal fee structure for this category of licence should be retained. However, for consistency with other on-premises licence categories, the Government may wish to consider increasing the fee to $250.

## 6.6 Compliance penalty fee

6.6.1 I am of the view that having regard to the objects of the Act and the overall principle of minimising harm, any aligned fee structure should not be based entirely on risk alone, but also incorporate elements of compliance and enforcement.

6.6.2 In this regard, any such fee structure should, in my opinion, incorporate loadings or a fee to reflect venues which have recorded serious incidents of non-compliance in the previous 12 months or fee period, particularly in relation to breaches of licence conditions which are contrary to harm minimisation principles.

6.6.3 I envisage that such venues would be required to pay an increased licence fee in the following year by way of penalty. While any such fee should act as a deterrent, the penalty fee should not absolve the licensee from any other disciplinary action or sanctions contemplated under the licensing regime (i.e. monetary penalty, licence suspension etc.).

6.6.4 Contemporaneously, the legislation should clearly prescribe the offences which would trigger the application of this compliance penalty fee. However, I would suggest the following or a version thereof be considered as a minimum:

(a) when a licensee incurs a penalty notice in respect to a breach of a certain licence condition to be prescribed; or

(b) an offence relating to the supply of liquor to underage or intoxicated persons; or

(c) an offence which relates to permitting underage or drunken/disorderly persons on the licensed premises; or

(d) the licensee was convicted of a supply offence, and the offence was taken to have contributed to the death of a person or a serious assault committed against a person on or near the licensed premises.

6.6.5 To reflect the serious nature of this type of penalty, the Government may wish to consider a Compliance Penalty Fee (where applicable) structure in the order of—

(a) $3,500.00 if a licensee incurs a penalty notice in respect to a breach of a prescribed licence condition; or

(b) $7,000.00 if the licensee incurs a penalty notice for each offence relating to permitting underage or drunken/disorderly persons on the licensed premises; or

(c) $10,500.00 for each offence relating to the supply of alcohol to underage or intoxicated persons; or

(d) $21,000.00 if the licensee was convicted of a supply offence, and the offence was taken to have contributed to the death of a person or a serious assault committed against a person on or near the licensed premises.

| Recommendation 45 | Incorporate a penalty fee in the annual licence renewal fee to reflect serious incidents of non-compliance in the previous 12 months or fee period. |
|---|---|

## 6.7 Licence fee administration

6.7.1 It has been put to me by the Liquor and Gambling Commissioner that the current legislative framework for collecting annual licence fees is too discretionary, lacks robustness and clarity.

6.7.2 I note that currently, while the Commissioner may in accordance with section 50A of the Act impose a penalty and suspend a liquor licence for non-payment of licence fees, the legislation does not mandate these sanctions or include any time frame for their imposition. Sections 50A(3)-(5) provide as follows—

> *(3) If the trading hours or conditions of a licence are varied, or circumstances vary, in respect of trade in liquor during an annual fee period such that the annual fee paid in respect of the period is less than the annual fee that would have been payable had the variations been taken into account in the calculation of the fee, the Commissioner may recalculate the annual fee and, by written notice, require the licensee to pay the difference on or before a date specified in the notice.*
>
> *(4) If a licensee fails to pay the annual fee in accordance with the regulations or to pay an amount in accordance with subsection (3), the Commissioner may, by written notice, require the person to make good the default as specified in the notice and, in addition, pay to the Commissioner the amount prescribed as a penalty for default.*
>
> *(5) If a licensee fails to comply with a notice under subsection (4), the Commissioner may, by further written notice, suspend the licence until the notice has been complied with*

6.7.3 This is contrary to the provisions of section 59A of the Act which apply in respect to the grant of a licence which imposes mandatory licence suspension for failure to pay the licence fee within 28 days. Section 59A(3) provides as follows—

> *(3) In the case of a licence other than a limited licence—*
>
> *(a) the amount of the licence fee is a proportion of the annual fee for the licence, being the proportion that the number of months in the period from the grant of the licence until the end of the current annual fee period bears to 12 months (with part of a month being counted as a full month); and*
>
> *(b) the licence fee is payable within 28 days after the grant of the licence; and*
>
> *(c) if the trading hours or conditions of the licence are varied, or circumstances vary, in respect of trade during the current annual fee period such that the licence fee paid is less than the licence fee that would have been payable had the variations been taken into account in the calculation of the fee, the Commissioner may recalculate the licence fee and, by written notice, require the licensee to pay the difference on or before a date specified in the notice; and*
>
> *(d) if the licensee fails to pay the licence fee, or an amount under paragraph (c), within the period allowed, the licence is suspended until the fee or amount is paid; and*
>
> *(e) the Commissioner must notify the licensee in writing of the suspension of the licence*

6.7.4 As a result, there is a risk that the imposition of such sanctions on an existing licence holder will not be applied consistently and leaves open the opportunity for a licensee to continue to trade unlawfully while either a penalty or suspension is in place.

6.7.5 This seems to be contrary to other licence fee type legislation. For example, the *Building Work Contractors Act 1995 (SA)* contains provisions relating to the non-payment of periodic fees. Specifically, I note that section 11 of that Act provides:

> *(1) A licence remains in force (except for any period for which it is suspended) until—*
>
> *(a) the licence is surrendered or cancelled; or*
>
> *(b) the licensed building work contractor dies or, in the case of a licensed body corporate, is dissolved.*
>
> *(2) A licensed building work contractor must, at intervals fixed by regulation—*
>
> *(a) pay to the Commissioner the fee fixed by regulation; and*
>
> *(b) lodge with the Commissioner a return in the manner and form required by the Commissioner.*
>
> *(3) If a licensed building work contractor fails to pay the fee or lodge the return in accordance with subsection (2), or to comply with a notice under section 10A, the Commissioner may, by notice in writing, require the contractor to make good the default and, in addition, to pay to the Commissioner the amount fixed by regulation as a penalty for default.*
>
> *(4) If the licensed building work contractor fails to comply with the notice within 28 days after service of the notice, the contractor's licence is cancelled.*
>
> *(5) The Commissioner must notify the building work contractor in writing of the cancellation of the contractor's licence."*

6.7.6 To provide the Commissioner and the liquor industry with clarity and to ensure robustness in the licensing system, I would suggest that the Government give consideration to strengthening the provisions of section 50A, particularly to require—

(a) if a licensee fails to pay the annual licence renewal fee by the due date, that a penalty (currently prescribed as 20% of the amount outstanding) be immediately imposed; and

(b) if the licensee fails to pay the amount outstanding including penalty within 28 days of the penalty notice being issued, the liquor licence will be suspended until such time as payment is made; and

(c) if an annual licence renewal fee including penalty remains outstanding as at the commencement date of the next renewal period, the liquor licence shall be revoked unless the licensee can show just cause why it should not.

6.7.7 In my view, the Commissioner should retain the right to waive any of the above sanctions if satisfied that there are exceptional circumstances to do so.

| Recommendation 46 | The provisions of section 50A of the Act be strengthened to mandate sanctions and include time frames following the non-payment of annual licence renewal fees. |
|---|---|

## 6.8 Proposed licence fee table

6.8.1 A proposed fee structure incorporating the lowest range of fees that I have recommended are shown in the following tables by way of example for the Government's consideration.

*Table 10: Example annual licence fee structure*

| LICENCE TYPE | TRADING IN LIQUOR AUTHORISED | PREMISES CAPACITY | | | | | | EXTENDED EVENT FEE *(if applicable)* | COMPLIANCE PENALTY FEE *(if applicable)* |
|---|---|---|---|---|---|---|---|---|---|
| | | 200 or Less | Over 200 | 201 to 400 | 401 to 800 | 801 to 1200 | Over 1200 | | |
| **General Liquor Licence** | Not Past Midnight | $1000 | $1500 | | | | | n/a | If during the 12 months prior to the issue of the annual renewal fee invoice—<br><br>**$3,500** if a licensee incurs a penalty notice in respect to a breach of a prescribed licence condition;<br>or<br>**$7,000** if the licensee incurs a penalty notice for each offence relating to permitting underage or drunken / disorderly persons on the licensed premises; or<br>**$10,500** for each offence relating to the supply of alcohol to underage or intoxicated persons;<br>or<br>**$21,000** if the licensee was convicted of a supply offence, and the offence was taken to have contributed to the death of a person or a serious assault committed against a person on or near the licensed premises. |
| | Past Midnight to 2am | $15000 | $2000 | | | | | | |
| | Past 2am to 3am | $4000 | | $5000 | $6000 | $7000 | $8000 | | |
| | Past 3am to 4am | $6050 | | $8000 | $10000 | $12000 | $14000 | | |
| | Past 4am to 5am | $8000 | | $11000 | $19000 | $22000 | $26000 | | |
| | Past 5am | $10000 | | $14000 | $28000 | $32000 | $38000 | | |
| **Club Licence** *With Gaming* | Not Past Midnight | $500 | $1000 | | | | | Up To 6 Events $320<br>Up To 12 Events $800<br>Up To 15 Events $960 | |
| | Past Midnight to 2am | $750 | $1250 | | | | | | |
| | Past 2am to 3am | $2500 | | $3125 | $3750 | $4375 | $5000 | | |
| | Past 3am to 4am | $3750 | | $5000 | $6250 | $7500 | $8750 | | |
| | Past 4am to 5am | $5000 | | $6875 | $11875 | $13750 | $16250 | | |
| | Past 5am | $6250 | | $8750 | $17500 | $20000 | $23750 | | |
| **Club Licence** *No Gaming* | Not Past Midnight | $250 | $500 | | | | | Up To 6 Events $320<br>Up To 12 Events $800<br>Up To 15 Events $960 | |
| | Past Midnight to 2am | $375 | $625 | | | | | | |
| | Past 2am to 3am | $1250 | | $1562 | $1875 | $2187 | $2500 | | |
| | Past 3am to 4am | $1875 | | $2500 | $3125 | $3750 | $4375 | | |
| | Past 4am to 5am | $2500 | | $3437 | $5937 | $6875 | $8125 | | |
| | Past 5am | $3125 | | $4375 | $8750 | $10000 | $11875 | | |
| **Small Venue Licence** | Not Past 2am | $250 | | | | | | n/a | |

| LICENCE TYPE | TRADING IN LIQUOR AUTHORISED | PREMISES CAPACITY | | | | | | EXTENDED EVENT FEE *(if applicable)* | COMPLIANCE PENALTY FEE *(if applicable)* |
|---|---|---|---|---|---|---|---|---|---|
| | | 200 or Less | Over 200 | 201 to 400 | 401 to 800 | 801 to 1200 | Over 1200 | | |
| **On Premises Licence** | Conveyance | $375 | | | | | | n/a | If during the 12 months prior to the issue of the annual renewal fee invoice—<br><br>**$3,500** if a licensee incurs a penalty notice in respect to a breach of a prescribed licence condition;<br>or<br>**$7,000** if the licensee incurs a penalty notice for each offence relating to permitting underage or drunken / disorderly persons on the licensed premises;<br>or<br>**$10,500** for each offence relating to the supply of alcohol to underage or intoxicated persons;<br>or<br>**$21,000** if the licensee was convicted of a supply offence, and the offence was taken to have contributed to the death of a person or a serious assault committed against a person on or near the licensed premises. |
| | Not Past Midnight | $1000 | $1500 | | | | | | |
| | Past Midnight to 2am | $1500 | $2000 | | | | | | |
| | Past 2am to 3am | $4000 | | $5000 | $6000 | $7000 | $8000 | | |
| | Past 3am to 4am | $6000 | | $8000 | $10000 | $12000 | $14000 | | |
| | Past 4am to 5am | $8000 | | $11000 | $19000 | $22000 | $26000 | | |
| | Past 5am | $10000 | | $14000 | $28000 | $32000 | $38000 | | |
| **Restaurant & Catering Licence** *and* **Residential Licence**<br><br>**If sale of liquor without a meal is authorised* | Caterer or Cooking School or BYO Only | $250 | | | | | | | |
| | Not Past Midnight | $375 / *$750** | | | | | | | |
| | Past Midnight to 2am | $500 / *$1000** | | | | | | | |
| | Past 2am to 3am | $2000 | | $2500 | $3000 | $3500 | $4000 | | |
| | Past 3am to 4am | $3000 | | $4000 | $5000 | $6000 | $7000 | | |
| | Past 4am to 5am | $4000 | | $5500 | $9500 | $11000 | $13000 | | |
| | Past 5am | $5000 | | $7000 | $14000 | $16000 | $19000 | | |
| **Liquor Production & Sales Licence**<br><br>^ Where only sampling is authorised<br><br>* Where *sampling and consumption of liquor on premises is authorised* | LICENSEES WITH WHOLESALE OUTLETS ONLY | | | | | | | | |
| | Wholesale Liquor Outlet Only | $1250 | | | | | | n/a | |
| | LICENSEES WITH PRODUCTION &/OR RETAIL OUTLETS | | | | | | | | |
| | No Consumption On Premises | $375 | | | | | | Up To 6 Events $320<br>Up To 12 Events $800<br>Up To 15 Events $960 | |
| | Not Past Midnight | $375^ / *$500** | | | | | | | |
| | Past Midnight to 2am | $500^ / *$750** | | | | | | | |
| | Past 2am to 3am | $1250 | | $1562 | $1875 | $2187 | $2500 | | |
| | Past 3am to 4am | $1875 | | $2500 | $3125 | $3750 | $4375 | | |
| | Past 4am to 5am | $2500 | | $3437 | $5937 | $6875 | $8125 | | |
| | After 5am | $3125 | | $4375 | $8750 | $10000 | $11875 | | |
| | PLUS Wholesale Outlet *(if applicable)* | $750 | | | | | | | |

| LICENCE TYPE | TRADING IN LIQUOR AUTHORISED | PREMISES CAPACITY | | | | | | EXTENDED EVENT FEE *(if applicable)* | COMPLIANCE PENALTY FEE *(if applicable)* |
|---|---|---|---|---|---|---|---|---|---|
| | | 200 or Less | Over 200 | 201 to 400 | 401 to 800 | 801 to 1200 | Over 1200 | | |
| **Packaged Liquor Sales Licence** | Direct Sales Only | $1500 | | | | | | n/a | As Above |
| | Liquor Store Sales (Option 1 – Per Licence) | $4000 | | | | | | | |
| | Liquor Store Sales (Option 2 – Multiple Outlets) | $4000 (1 to 3)<br>$7000 (3 to 10)<br>$10000 (10 & Over) | | | | | | | |
| **Renewable BYO Permit** | BYO Only | $250 | | | | | | n/a | As Above |

6.8.2 The following table provides a comparison of fee increases by business type using existing premises. For privacy reasons the identity of the licence holder has not been disclosed.

*Table 11: Changes to fee structure by business type*

| Business Type | Trading In Liquor Ceases | Premises Capacity | Current Licence Fee | Suggested Licence Fee | Equivalent Licence Fee Per Day |
|---|---|---|---|---|---|
| Hotel | Midnight | 300 | $758 | $1500 | $4.10 |
| Hotel | 2.00am | 135 | $109 | $1500 | $4.10 |
| Hotel | 2.00am | 967 | $758 | $2000 | $5.47 |
| Hotel | 3.00am | 200 | $1516 | $4000 | $10.95 |
| Hotel | 3.00am | 440 | $3466 | $6000 | $16.43 |
| Hotel | 3.00am | 1296 | $3466 | $8000 | $21.91 |
| Hotel | 4.00am | 1015 | $3466 | $12000 | $32.87 |
| Hotel | 5.00am | 125 | $2274 | $8000 | $21.91 |
| Hotel | 5.00am | 400 | $3792 | $11000 | $30.13 |
| Hotel | 5.00am | 865 | $11590 | $22000 | $60.27 |
| Hotel | 24hr Trading | 400 | $3792 | $14000 | $38.35 |
| Hotel | 24hr Trading | 1156 | $11590 | $32000 | $87.67 |
| Nightclub | 5.00am | 450 | $11590 | $19000 | $52.05 |
| Nightclub | 5.00am | 822 | $11590 | $22000 | $60.27 |
| Nightclub | 7.00am | 850 | $11590 | $32000 | $87.67 |
| Karaoke Lounge | 3.00am | 182 | $1516 | $4000 | $10.95 |
| Karaoke Lounge | 5.00am | 220 | $3792 | $11000 | $30.13 |
| Small Venue | Midnight | 120 | $109 | $250 | $0.68 |
| Small Venue | 2.00am | 120 | $109 | $250 | $0.68 |
| Club With Gaming | 2.00am | 1185 | $758 | $1250 | $3.42 |
| Club With Gaming | 3.00am | 100 | $1516 | $2500 | $6.84 |
| Club No Gaming | Midnight | 140 | $109 | $250 | $0.68 |
| Club No Gaming | 2.00am | 430 | $109 | $625 | $1.71 |
| Club No Gaming | 2.00am | 600 | $109 | $625 | $1.71 |
| Former Limited Club | Midnight | 100 | Nil | $250 | $0.68 |
| Former Limited Club | Midnight | 220 | Nil | $500 | $1.36 |
| Restaurant | 11.00pm | 100 | $109 | $375 | $0.68 |
| Restaurant | 11.00pm | 230 | $109 | $375 | $0.68 |
| Restaurant | 2.00am | n/a | $109 | $500 | $1.36 |
| Restaurant – Liquor Without Meal Authorised | 10.00pm | 50 | $109 | $750 | $2.05 |
| Restaurant – Liquor Without Meal Authorised | 2.00am | 480 | $109 | $1000 | $2.73 |
| Bottle Shop | 9.00pm | n/a | $758 | $4000 | $10.95 |
| Wine Producer – No Consumption On Premises | 2.00am | n/a | $109 | $375 | $0.68 |
| Wine Producer – Consumption By Sample Only | 2.00am | 100 | $109 | $500 | $2.05 |
| Wine Producer – Consumption By Sample & On Premises | Midnight | 200 | $109 | $500 | $2.05 |
| Wine Producer – Consumption By Sample, On Premises & Wholesale Outlet | Midnight | 200 | $867 *($109+$758)* | $1250 *($500 + $750)* | $3.42 |
| Wholesaler Only | Any Time | n/a | $758 | $1250 | $3.42 |

## 6.9 General comments

### Imposition on liquor industry

6.9.1 I am cognisant of the fact that the fee structure that I have proposed above will be viewed by some as an unfair imposition on the liquor industry. However, I am not persuaded by this view.

6.9.2 In comparison with other States, annual licence fees in South Australia are low and do not equate to licensees making a fair and reasonable contribution to the cost of managing and regulating the liquor industry.

6.9.3 The fee structure also needs to reflect that the sale of packaged liquor is not less risky, as some would have us believe, and is a contributory factor to social harms and impacts on the health and wellbeing of the community (i.e. domestic violence, road traffic accidents and chronic diseases).

6.9.4 I also note from my review of a number of liquor licences that many licensees while paying the relevant licence fee, are not taking full advantage of their present trading authorisations or alternatively have authorisations which are not utilised. Therefore, this may be an opportune time for licensees to review their trading authorisations and make appropriate changes to reflect their actual business model.

Examples

- a wine producer with a capacity of less than 200 would pay an annual licence renewal fee of $3,125 instead of $375 as the licence authorises 24hr sampling of its product;
- a restaurant with a capacity of 290 people which chooses to close at 2.00am would pay an annual licence renewal fee of $7,000 instead of $500 as the licence authorises 24hr trading;
- a club without gaming which closes at 2am with a capacity of 965 people would pay an annual licence renewal fee of $10,000 instead of $625 as the licence authorises 24hr trading.

### Appropriation of increased licence fees

6.9.5 In chapter 1, I suggested that the increased fees should be used for certain specific purposes to address both enforcement and welfare issues related to the supply of liquor in the community, namely—

(a) more police officers and CBS inspectors dedicated to liquor licensing matters;

(b) victim support service funding;

(c) health and safety education campaigns particularly targeted at minors; and

(d) rehabilitation facilities for intoxicated persons who need assistance (e.g. sobering up centres).

6.9.6 I am advised that there is only one sobering up centre in the CBD which is operated by the Salvation Army at Whitmore Square.

6.9.7 With a facility of only 30 beds, I am advised that it operates at very high capacity. Whilst I am aware that there is another centre at Stepney, consideration should be given to at least one further unit within the CBD in response to the increasing accessibility of liquor over longer hours and in more venues.

# CHAPTER 7 – RED TAPE REDUCTION

## 7.1 Submissions to the Review

7.1.1 I have been asked to review and report on ways of reducing unnecessary red tape so that there can be a saving for applicants and a reduction in the costs of administration.

7.1.2 The only common theme emerging from the 89 submissions I received was a universal agreement that red tape should be reduced.

7.1.3 There were, however, some caveats attached to the submissions. It is suggested that red tape should not be reduced without first ensuring that the consequences do not create an unwieldy and unfair system of licensing.

## 7.2 Application process

### Application form

7.2.1 Currently there are different application forms depending on the category of licence sought by the applicant. It is my view that there should be one application form for all categories of licence. The applicant would then indicate on the form the category of licence being sought.

7.2.2 In chapter 4 of this report I recommend a reduction in the categories of licence. Following on from that recommendation, an applicant would have to indicate not only the category of licence being sought but also the type of business they wish to operate under the licence.

7.2.3 Currently section 51 of the Act provides that an application to the Licensing Authority must be made in a manner and form approved by the Commissioner. It is my view that this should be retained so that the Licensing Authority can retain flexibility in determining the detail required to assess the application.

| Recommendation 47 | The provisions of section 51 of the Act (form of application) be retained. |
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7.2.4 In chapter 3 of this report I recommend that the Licensing Authority shall not grant an application for a liquor licence or removal of a liquor licence unless it is consistent with the objects of the Act. It is my view that an applicant should provide information on the application form as to how the application is consistent with the objects of the Act.

7.2.5 In chapter 9 of this report I recommend that an applicant for the proposed new categories of a General Liquor Licence, Packaged Liquor Sales Licence (not being direct sales), Club Licence selling off premises sales, On-Premises Licence seeking to trade later than 2am, and the removal of any of those licences, must satisfy the Licensing Authority that the grant or removal of such licence is consistent with a test based on the concept of community impact and public interest. Information satisfying this new test should be included as part of the application as discussed further in chapter 9.

7.2.6 Information to be provided to the Licensing Authority will be left largely in the hands of the applicant to determine. It will be in the applicant's best interests to provide as much information as possible to the Licensing Authority to aid in their application. If inadequate or insufficient information is provided, it will risk the likely success of the application. I note that section 51(5) of the Act allows the Licensing Authority to request the applicant to produce documents or other material the Licensing Authority considers relevant to the application.

| Recommendation 48 | There should be one application form for all categories of licence. |
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### On-line processing

7.2.7 I understand that the existing liquor licensing application process administered by CBS is paper-based. This paper-based system may be inefficient as it requires the applicant to prepare the paper application and then CBS staff to then process and input the information into the relevant electronic system. If there was an on-line system, these processing inefficiencies would be reduced.

7.2.8 Given the improvements in technology, it seems appropriate that the application process move to an on-line system. I also note the Digital by Default Declaration by the Hon Jay Weatherill MP in November 2014, which commits the Government to proactively transforming its services, using digital technology.

7.2.9 I understand that work is underway within CBS to develop and implement an on-line application system.

| Recommendation 49 | In keeping with the Premier's Digital by Default Declaration, the process for submitting liquor applications and ongoing administration of the liquor licensing regime should be through a web-based digital portal. |
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### Separate consents and authorisations

7.2.10 Section 105 of the Act allows a licensee to provide entertainment on licensed premises between 11.00am and midnight without the consent of the Licensing Authority, unless it is 'prescribed entertainment'. The current fee for an application to provide entertainment is $530, which is in addition to the licence application fee.

7.2.11 As discussed in chapter 5.5, I recommend that the requirement for consent be removed entirely. Therefore, a licensee will not be required to apply separately for entertainment consent.

7.2.12 An applicant is also required to obtain the approval of the Licensing Authority in respect to extended hours (known as an extended trading authorisation). The current application fee for an extended trading authorisation is $530.

7.2.13 In my view, an applicant for a licence should not have to seek a separate consent for extended hours. The topic of trading hours is discussed in chapter 5.6, where I recommend that an applicant nominate the actual trading hours (that are within the authorised hours) which best meets the needs of their business model. This will remove the need for separate consents.

### Advertising

7.2.14 Section 52 of the Act sets out the requirements for the notification and advertisement of certain applications. In particular—

7.2.14.1 Section 52(2)(a) requires an applicant to give written notice to the council and occupiers of land or premises or proposed premises;

7.2.14.2 Section 52(2)(b) requires the publication of the notice of the application in a newspaper circulating generally throughout the State, a newspaper circulating in the local area and in the Gazette;

7.2.14.3 Section 52(2)(c) of the Act requires an applicant to post the notice of the application on the premises or on the land on which it is proposed to construct the premises; and

7.2.14.4 Section 52(3) of the Act gives the Licensing Authority a discretion in relation to the advertising and notification requirements including to dispense with or modify the advertising or notification requirements.

7.2.15 In chapter 8, I recommend that all applications for—

(a) a new liquor licence;

(b) a removal of a liquor licence;

(c) alteration or redefinition of licensed premises;

(d) extension of trading area; and

(e) a change of condition on a liquor licence;

should be submitted to the council first to obtain either their approval or confirmation that approval is not required before it is lodged with CBS.

7.2.16 Pursuant to my recommendation an application for a liquor licence may only be lodged with CBS if the applicant has first obtained the requisite approvals under the current *Development Act 1993* or the *Planning, Development and Infrastructure Act 2016* (when that commences). At this stage in the process, the council will have the opportunity to attach any relevant conditions to the approval.

7.2.17 By adopting this recommendation, there would be no requirement for an applicant to then again notify the council of the liquor licence application under section 52(2)(a)(i) of Act. Furthermore, it is my view that notification to adjacent occupiers should be determined by the council in accordance with the current *Development Act 1993* or *Planning, Development and Infrastructure Act 2016* (when that commences) and occur at the council level. There should not be any further requirement under section 52(2)(ii) of the Act for an applicant to notify adjacent occupiers of the application.

7.2.18 Section 52(2)(c) requires that notice of the application be posted on the premises or land where the premises are to be constructed. It is my view that notification at the planning level should be sufficient, however I do acknowledge that some categories of development may not require notification and that having such a notice may be beneficial to residents.

7.2.19 I note that the Licensing Authority may currently use its discretion to modify and dispense with the advertising and notification requirements, in particular the Gazette notice is usually waived. The CBS website currently includes information about liquor licence applications and directs members of the public to inspect the application and any further documents at CBS.

7.2.20 Given that applications are currently published on the CBS website and the Gazette notice is usually waived, I recommend removal of the requirement to advertise the notice of an application in the state-wide and local newspapers and Gazette.

7.2.21 I am also of the view that there be no separate notification to council and adjacent occupiers, as that will occur at the planning level.

7.2.22 I recommend that there should be no requirement to place a notice on the proposed licensed premises, however I acknowledge that the Government may wish to retain this as a measure for ensuring residents are notified.

7.2.23 In my view, each application should be advertised on the CBS website as at present. However, the Commissioner should have an overall discretion to require such further advertising or notification, that is, beyond the CBS website, when it is considered necessary in the public interest.

| Recommendation 50 | **Amend section 52(2) of the Act so that notice of the application is required to be published on the CBS website and all other notification or advertising requirements are removed. The Licensing Authority should retain the discretion to require any further advertising or notification.** |
|---|---|

## 7.3 Objection and intervention

### Objection

7.3.1 Section 77 of the Act allows any person to object to an application that has been advertised. Further, section 77(5) outlines the grounds for which an objection may be made. When an objection is made, it is considered a contested application and the Commissioner must conciliate the matter. If the matter is not resolved, it may be determined by either the Commissioner (if requested by the parties) or the Licensing Court.

7.3.2 The Discussion Paper reports that in 2014-15, approximately 600 objections or interventions were received by the Commissioner which resulted in 80 conciliation conferences.[67]

7.3.3 I am aware that the objection process can be used by existing competitors to delay or even prevent a new applicant from entering the market. Significant delays for an applicant often cause great financial burden as a result of lease costs, interest costs and legal costs.

7.3.4 I note that the objection process does not apply to a Small Venue Licence. Under section 77A of the Act, any person may make a submission in relation to a Small Venue Licence that has been advertised. The Commissioner then determines the application on the information that has been submitted (i.e. known as *'on the papers'*).

7.3.5 The submission process applicable to the Small Venue Licence appears to be working well, as there have not been any major concerns raised about the process. For this reason and due to the delays resulting from the objection process, I recommend that the current objection process be replaced with a written submissions process as is common in many jurisdictions across Australia.

7.3.6 It is my view that submissions should be lodged at least seven days before the day appointed for the hearing or determination of the application. This is consistent with the current requirement for an objection.

7.3.7 It is my view that the Act should specify the grounds for the making of submissions. These grounds should be similar to the grounds currently prescribed under section 77(5) but should be limited to—

(a) whether the grant of the application would be contrary to the objects of the Act;

(b) in the case of an application for the grant or removal of a proposed new category of a General Liquor Licence, a Packaged Liquor Sales Licence, a Club Licence (for packaged liquor sales) and On-Premises Licence (trading later than 2am) – whether the application satisfies the new Community Impact and Public Interest Test, which is discussed in chapter 9;

(c) in the case of an application by a natural person for the grant or transfer of a licence or for the conversion or a temporary licence into an ordinary licence –whether the applicant is of bad reputation or character or is in other respects not a fit and proper person to be licensed;

[67] *Discussion Paper, page 12*

(d) in the case of an application by a trust or corporate entity for the grant or transfer of a licence, or the conversion of a temporary licence into an ordinary licence – whether the applicant is not a fit and proper person to be licensed or that a person who occupies a position of authority in the entity is of bad reputation or character or is in other respects not a fit and proper person to hold such a position in an entity that holds a licence.

7.3.8 I have decided not to include grounds that are similar to the current grounds for objections under section 77(5)(f) and 77(5)(g) as I am of the view that these grounds relate to matters that should be considered as part of the approval process under the *Development Act 1993* or the *Planning, Development and Infrastructure Act 2016* (when that commences).

7.3.9 The reasoning behind my recommendation to list the grounds for the making of submissions is to—

(a) exclude any matters that are planning related; and

(b) exclude submissions based on competition grounds or economic grounds.

Any concerns relating to potential noise, disturbance and adverse impacts on amenity should be considered as part of the approval process under the *Development Act 1993* or the *Planning, Development and Infrastructure Act 2016* (when that commences). In the event that residents do have complaints regarding noise or behaviour of patrons of a licensed venue, the complaints process under section 106 of the Act will remain.

7.3.10 I recommend that the Commissioner should have an absolute discretion to invite written submissions from particular bodies or persons in relation to a particular application. Under this discretion, submissions should be based on any grounds the Commissioner believes are appropriate and should not be limited to the grounds stated above.

7.3.11 It is my view that the Commissioner should also retain discretion to attempt conciliation of the application, if it is appropriate in the circumstances.

7.3.12 The determination of the application should be by the Commissioner on the papers (i.e. on the basis of the information that has been submitted), with a discretion by the Commissioner to undertake a full hearing, including the presentation of evidence in person, if it is considered necessary in the circumstances.

7.3.13 I note that the Commissioner currently has the power to refer matters to the Licencing Court under section 21 of the Act. It is my view that this power should be retained, particularly if it is considered to be in the public interest or in the interests of a party to the proceedings.

### Review of the Commissioner's decision

7.3.14 The right to seek a review of the Commissioner's decision is provided for under section 22 of the Act. Relevantly, section 22(1) allows a party to proceedings who is dissatisfied with a decision of the Commissioner to apply to the Licensing Court for a review. A party is defined in sub-section 4 of this provision and includes an intervener or an objector, or in relation to an application for the transfer of a licence, the transferor.

7.3.15 I recommend that only applicants or the Commissioner of Police (if the Commissioner of Police has intervened) may apply to the Licensing Court for a review of the Commissioner's decision. The exception being in relation to applications for the grant or removal of a—

(a) General Liquor Licence;

(b) On-Premises Licence (which intends to trade later than 2am);

(c) Packaged Liquor Sales Licence (not being direct sales); or

(d) Club Licence (requiring authorisation for off premises sales to members and guests);

7.3.16 As these higher risk categories of licence will be subject to the proposed **Community Impact and Public Interest Test**, any person making a submission opposing the application and who are a party to a hearing before the Commissioner, should have a right to apply to the Licensing Court for a review of the Commissioner's decision if dissatisfied with the decision.

7.3.17 In addition, if the Commissioner decides to exercise his or her discretion to hold a hearing of the matter, a person who has made a submission opposing the application should have a right to apply to the Licensing Court for a review of the Commissioner's decision if dissatisfied with the decision.

7.3.18 Any review initiated by application of a person that has made a submission should be limited to the grounds outlined in their submission. I have previously recommended in this chapter that the grounds for making of a submission be limited, and should not include competition or economic grounds.

### Commissioner of Police

7.3.19 SA Police play an important role in assessing applications for a liquor licence, particularly in terms of public order and safety. For these reasons, I recommend that submissions from the Commissioner of Police should not be limited by those grounds discussed above and may be made on any particular issue the Commissioner of Police thinks is relevant.

7.3.20 Section 75A of the Act also provides that the Commissioner of Police may intervene in proceedings before the Licensing Authority. It is my view that this power should be retained as it may be appropriate in disciplinary matters before the Court. However, the Government should consider amending this section to insert a time limit, requiring any intervention to be lodged at least 7 days before the day appointed for the hearing or determination of the application. This is consistent with my recommendation in relation to submissions.

7.3.21 The power to intervene by the Commissioner of Police should only be utilised for the most serious matters for determination by the Commissioner (where it is necessary to introduce evidence) otherwise submissions should be appropriate. If an intervention is lodged in respect of a matter to be determined by the Commissioner, there should be a full hearing of the matter before the Commissioner.

### Councils and other bodies

7.3.22 Section 76 of the Act allows councils and particular bodies or persons to intervene in proceedings before the Licensing Authority. I am of the view that this provision should also be removed given my recommendation that the Commissioner have discretion to invite submissions and call a hearing if he or she considers that it is warranted.

7.3.23 As discussed in chapter 8, given my recommendation that certain applications must gain approval under the *Development Act 1993* or *Planning, Development and Infrastructure Act 2016* (when that commences) before being lodged with CBS, it does not seem appropriate to allow councils to then subsequently intervene.

7.3.24 Section 76(4) allows the Commissioner to intervene in proceedings before the Court. It is my view this should be retained as an intervention by the Commissioner may be relevant for the purpose of disciplinary matters.

| Recommendation 51 | General objections should be replaced with written submissions and the rights of review of the Commissioner's decision should apply only in limited situations. |
|---|---|

## 7.4 Approvals of persons by the Licensing Authority

### Approved nominee

7.4.1 In chapter 5.7.4, I have recommended that a licence should clearly specify, amongst other things, the name and contact details of the approved nominee/manager/supervisor for the licensed premises.

7.4.2 Essentially, this should be viewed as the person who is ultimately accountable for the management and supervision of the business and will aid in addressing compliance and enforcement issues, particularly when an incident requires a response by a person in a position of authority.

7.4.3 I note that sections 71 and 97 of the Act presently contemplate that a person must be approved to supervise and manage or be actively involved in the supervision or management of, the business conducted under a licence, referred to in sub-section 97(1)(a) as a ***responsible person***.

7.4.4 It is important for enforcement purposes that there be a natural person recorded on the licence who has overall responsibility for the management and supervision of the business conducted under the licence. This person may well be a responsible person under section 97(1) of the Act, or a person who is nominated by the licensee, but ultimately they must have the authority to deal with enforcement issues.

7.4.5 Accordingly, in light of my recommendation in chapter 5.7.4, sections 71 and 97 of the Act may have to be amended to provide this level of clarity.

7.4.6 Section 66 of the *Liquor Act 2007 (NSW)* and the relevant definition of *'manager'* under this legislation may provide guidance in this matter—

> *(1) A licensee (other than a registered club):*
>
> *(a) must appoint a manager approved by the Authority under this Division for the licensed premises, and*
>
> *(b) must not cause or permit the conduct of business under the licence for a period of more than 28 days except under the personal supervision and management of a person so approved.*
>
> *Maximum penalty: 50 penalty units.*
>
> *(2) A registered club that has more than one set of premises:*
>
> *(a) must appoint a different manager, approved by the Authority under this Division, for each set of premises of the club at which the secretary of the club is not in attendance, and*
>
> *(b) must not cause or permit the conduct of business on any such premises for a period of more than 2 months except under the management of a person so approved.*
>
> *Maximum penalty: 50 penalty units.*
>
> *(3) Subsection (2) does not apply to a registered club:*
>
> *(a) that has no more than 2 sets of premises and the premises concerned:*
>
> *(i) are, in the case where the main premises of the club are situated in a metropolitan area, within 10 kilometres of the other premises of the club or are, in the case where the main premises of the club are not situated in a metropolitan area, within 50 kilometres of the other premises of the club, or*
>
> *(ii) are staffed by less than 5 full-time employees, or*
>
> *(b) in such other circumstances as are prescribed by the regulations.*

*(4) Despite subsection (2), a registered club may appoint a person to act as a manager of any of the club's premises for the purposes of that subsection even though the person has not been approved by the Authority, but only if an application for the approval of the person to manage licensed premises has been made under section 68.*

*(5) A person's authorisation to be appointed under subsection (4) to act as manager of club premises expires on the determination by the Authority of the relevant application for approval.*

*(6) In this section:*

*"metropolitan area" means an area described by the regulations as a metropolitan area.*

*"manager" of licensed premises means any of the following:*

*(a) a person appointed by the licensee under section 66 to manage the licensed premises,*

*(b) in the case of a registered club that has only one set of premises or is a registered club referred to in section 66 (3)-the secretary of the registered club,*

*(c) in the case of a high risk venue within the meaning of section 116AA or 116B-a person appointed by the licensee, in accordance with licence conditions imposed by the regulations under section 116A or 116I, respectively, to be present in the venue in accordance with those conditions.*

| Recommendation 52 | Amend sections 71 and 97 of the Act to provide clarity and a distinction between persons who manage the business under the licence and persons exercising responsibilities on a day to day basis as responsible persons. |
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### Responsible persons

7.4.7 Section 71 of the Act outlines the pre-requisites for the approval of a responsible person. The Licensing Authority must be satisfied that the applicant is a fit and proper person.

7.4.8 There have been a number of submissions that highlight concerns about the time taken to process the approval of responsible persons and that the delay can have an impact on the rostering of staff. It is my understanding that some of that delay is attributable to the probity checks undertaken by SA Police.

7.4.9 It is my view that the propriety of a responsible person should still be assessed by the Licensing Authority (including probity checks by SA Police), as responsible persons have the essential role of supervising and managing the licensed premises and hence responsible service practices.

7.4.10 I understand that the Licensing Authority does, on occasion, issue applicants seeking approval as responsible persons with an interim approval by order of the Commissioner, which usually becomes ongoing after a certain amount of time, provided there is no order to the contrary.

7.4.11 It is my view that the practice of issuing interim approvals of responsible persons be retained, however it should be expressly provided for in the Act. The Licensing Authority could be given a discretion to issue a temporary approval on the conditions it deems necessary and in the circumstances it deems appropriate.

7.4.12 In my view a temporary approval should not be issued for a period longer than 6 months. The Licensing Authority would then either have to approve the application (which may be deemed by the expiration of the temporary licence) or refuse the application (and revoke the temporary approval) before the expiration of the temporary approval.

7.4.13 In other words, the temporary approval would apply until either—

(a) the period of the temporary approval has expired (in which case it would become a full approval); or

(b) the application is refused (and the temporary approval is revoked).

A person that is subject to a temporary approval should be issued with identification that clearly highlights the temporary nature of the approval. If an approval is refused, the temporary identification should be surrendered to CBS. If ongoing approval is granted, CBS should issue the appropriate identification.

| Recommendation 53 | Amend the Act to expressly allow the Licensing Authority to issue a temporary approval of responsible persons in its absolute discretion. |
|---|---|

7.4.14 It has also come to my attention that there is no general discretion for the Commissioner to revoke the approval of a responsible person. Relevantly, I note that section 71C of the Act provides the Commissioner with an unqualified discretion to revoke any approval for a crowd controller on such ground or such reason as he or she thinks fit. Section 71C also prescribes the procedure for the execution of this power, including the requirement to give written notice and an opportunity for the crowd controller to respond.

7.4.15 I recommend that the Act should be amended to provide the Commissioner with a general discretion to revoke the approval of a responsible person.

| Recommendation 54 | Amend the Act to give the Commissioner a general discretion to revoke an approval of a responsible person. |
|---|---|

### Approval of crowd controllers

7.4.16 Crowd controllers are licensed under the *Security and Investigation Industry Act 1995*. An applicant for a licence under the *Security and Investigation Industry Act 1995* must satisfy the Commissioner of certain matters, including that the applicant has the necessary qualifications and experience and is a fit and proper person.

7.4.17 Under section 71A of the Act a crowd controller for a licensed premises must also be approved by the Commissioner. There is a fee attached to an application for approval to act as a crowed controller in licensed premises, which is currently $114. The Commissioner cannot approve a person to act as a crowd controller unless the person has the appropriate knowledge, experience and skills for the purpose. I understand that a pre-requisite of this approval is that the crowd controller must have the appropriate licence under the *Security and Investigation Industry Act 1995*. Usually an applicant is also required to complete a nationally accredited training course in responsible service of alcohol.

7.4.18 It seems unnecessary to require a crowd controller who is licensed under the *Security and Investigation Industry Act 1995* to apply for separate approval under the Act to work in licensed premises.

7.4.19 If any other further training or experience is considered to be necessary for the purpose of working in licensed premises, this should be incorporated into the approval requirements and licensing regime under the *Security and Investigation Industry Act 1995*.

| Recommendation 55 | **Approval of crowd controllers to work in licensed premises should only be administered under the *Security and Investigation Industry Act 1995*.** |
|---|---|

7.4.20 The AHA SA have submitted that the definition of controlling crowds in section 3 of the *Security and Investigation Industry Act 1995* needs to be reviewed. Section 3(1) of the *Security and Investigation Industry Act 1995* states—

> ***controlling crowds****—the function of controlling crowds includes screening persons seeking to enter a place and managing persons who behave in a disorderly manner or create a nuisance;*

7.4.21 The AHA SA have put to me—

> *"The concern centres on general staff who might be inadvertently caught performing 'crowd controlling' duties when they move around the venue and specifically when the venue is busy and they are looking out for patrons who may be showing signs of intoxication, drug taking or generally getting louder etc."*[68]

[68] *Submission by AHA SA, page 16*

7.4.22 Further, the AHA SA have suggested that—

> *"…any employee who is monitoring patrons and/or any employee who is an 'authorised person' as defined in Section 4(a) and (b) of the Act should also be exempt from holding a licence pursuant to the Security and Investigation Industry Act 1995 while performing the role of a responsible person."*[69]

7.4.23 The AHA SA have also referred to section 11A(7) of the Act which exempts the role of a drink marshal under the Late Night Code from the operation of the *Security and Investigation Industry Act 1995*.

7.4.24 It is my view that staff that monitor patrons as a role that is ancillary to their primary role would not be undertaking the function of crowd controlling and hence should not be required to be licensed under the *Security and Investigation Industry Act 1995*. However, section 124 of the Act provides that authorised officers may use reasonable force to remove a person from or prevent the entry of persons onto licensed premises in certain circumstances. An authorised person is defined by Section 4 of the Act as—

> ***authorised person**, in relation to licensed premises, means—*
>
> *(a) the licensee; or*
>
> *(b) a responsible person for the licensed premises; or*
>
> *(c) a police officer; or*
>
> *(d) an approved crowd controller;*

7.4.25 Despite the power in section 124, I believe that the intention of the Act is that the role of a responsible person does not extend to controlling crowds generally but to the wider role of managing and supervising the licensed premises.

7.4.26 In order to provide greater clarity, I recommend that the definition of '*controlling crowds'* in section 3(1) of the *Security and Investigation Industry Act 1995* be amended to expressly exclude the functions of a responsible person and licensees under the *Liquor Licensing Act 1997*.

| Recommendation 56 | **Amend the definition of 'controlling crowds' in section 3(1) of the *Security and Investigation Industry Act 1995* to exclude the functions of responsible persons and licensees.** |
|---|---|

[69] *Submission by AHA SA, page 15*

### Members of the committee of management of clubs

7.4.27 Section 56 of the Act outlines the fit and proper requirements in respect to applicants for a licence, namely—

> *(1) An applicant for a licence must satisfy the licensing authority—*
>
> *(a) that the applicant is a fit and proper person to hold the licence; and*
>
> *(b) if the applicant is a trust or corporate entity—that each person who occupies a position of authority in the entity is a fit and proper person to occupy such a position in an entity holding a licence of the class sought in the application.*

7.4.28 Further, section 98 provides that the Licensing Authority must approve the assumption of positions of authority in a trust or corporate entity (other than a limited licence or a limited club licence).[70] The current fee for this application is $114.[71]

7.4.29 Clubs with a full Club Licence must have all members of the committee of management approved as fit and proper and must apply for the approval of any new committee members before they assume that position. However, under section 36(3)(d) and (e) there is an exemption for the approval of changes to the committee of management in respect to a club with a Limited Club Licence.

7.4.30 Hence, rather than having to seek approval of any changes to the committee of management, a Limited Club is only required to notify the Commissioner of the change. Sections 36(3)(d) and (e) state—

> *(3) A **limited club licence** is a club licence that is, by agreement between the club and the licensing authority, granted on the following conditions:*
>
> *(d) the club will keep the Commissioner informed of any changes to the composition of the committee of management of the club and will provide the information required by the Commissioner (in the form required by the Commissioner) about the members of the committee of management;*
>
> *(e) if the licensing authority notifies the club that it considers that any member of the committee of management of the club is not a fit and proper person to be in a position of authority in the club, the club will immediately take action to have that person removed from the committee of management.*

7.4.31 Clubs SA have put to me that clubs present a low risk as they *"exist to support their communities, run sporting teams and provide facilities and services."*[72] As such, Clubs SA are seeking a notification process for all clubs, where the details of the members of the committee of management and of any changes would just be required to be notified to the Commissioner.

7.4.32 However, if the Commissioner is of the view that a committee member is not fit and proper, the club would have to take action to remove that committee member. Clubs SA also submit that to reduce the financial and administrative burden on clubs, the notification process should not attract any fee.

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[70] *Section 6 of the Liquor Licensing Act 1997 defines position of authority, which includes a director of a body corporate. Section 4 defines director of a body corporate as a member of a board or committee of management of the body corporate.*
[71] *If the person is subject of an approval of the Commissioner in force under section 38 of the Gaming Machines Act 1992 – no fee is payable.*
[72] *Submission by Clubs SA, page 18*

7.4.33 I am persuaded that clubs generally provide low risk licensed premises, as the supply of alcohol is an adjunct to their primary purpose.

7.4.34 Furthermore, section 30 of the *Associations Incorporation Act 1985* does provide for safeguards in terms of the eligibility of committee members, these relate to insolvent persons and persons convicted of certain offences.

7.4.35 For these reasons, it would seem adequate that members of the committee of management and any changes should only be notified to the Commissioner. If the Commissioner is of the view that any committee member is not a fit and proper person, then it should be a condition that the Club will have to take action to remove that committee member, as is the case in respect of Limited Club Licenses.

7.4.36 However, I am not persuaded that there should be no fee attached with such a notification as CBS will still be required to deal with the notification accordingly.

| Recommendation 57 | Amend the Act so that clubs are only required to notify the Commissioner of the members of the committee of management and any changes to the composition of that committee. |
|---|---|

## 7.5 Trading authorisations and conditions

### Designated dining areas and capacity

7.5.1 The Act currently requires that for the purposes of a number of licence categories, that areas on the licensed premises be designated for dining, reception, sampling and consumption. Capacities in designated areas are also set out in licences.

7.5.2 As I discussed in chapter 5.4, there should be no such designated areas or capacities for those areas. It is quite apparent that people like to be able to drink in different circumstances and not always to be seated at a table, even when consuming food. People like to both eat and drink standing up and therefore the capacity of licensed premises as a whole should be the important criteria and not specific areas. Furthermore, the capacity of the venue and individual areas is a matter that would be considered by council and attached as a condition on the approvals under the *Development Act 1993*.

7.5.3 The removal of designated areas and capacities for such areas will reduce the amount of information that is currently included on a licence. This will make a licence simpler to read. There will also be no requirement to enforce such matters, which will enable CBS inspectors and SA Police to focus on other more important issues of compliance.

### Trading Hours and Days

7.5.4 The Act currently provides for hours of trading depending on the particular category of licence. As discussed in chapter 5.6, a licensee should be able to nominate the actual trading hours (that are within the authorised hours) which best meets the needs of their business model. In chapter 5.2, I also propose that liquor trading under all types of licence should be authorised for seven days a week with no differentiation between any given day.

7.5.5 I have also recommended that the Nominated Trading Hours and days should be included on the licence. This will assist enforcement and make the licence easier to read. Currently some licences just simply refer to the particular section of the Act in respect of its authorisation. Enforcement officers would have to refer back to the section of the Act to determine the hours of trade. By displaying these Nominated Trading Hours and days on the licence there is no confusion to the public and those seeking to enforce compliance.

## 7.6 Administration of clubs

### Eligibility requirements for clubs

7.6.1 Clubs SA have submitted that section 49 of the Act, which details the eligibility requirements for clubs requires review, in particular the requirements in relation to membership.

7.6.2 It has been put to me that section 49(3)(b)(i) is an out-dated concept, with clubs generally accepting membership without the requirement to nominate and give notice to existing members. Further the reference in section 49(3)(b)(ii) to *"classes of persons entitled to membership are not unduly large"* is superfluous as the rules of each club stipulate the membership and access requirements. Sections 49(3)(a) and (b) state—

> *(3) A club is not eligible to hold a club licence unless the licensing authority is satisfied that—*
>
> *(a) the club will be entitled to exclusive possession of the licensed premises at times when the sale of liquor is authorised by the licence; and*
>
> *(b) the rules of the club make appropriate provision for admission to membership of the club and, in particular, provision to the following effect:*
>
> *(i) a person may not become an ordinary member of the club unless duly nominated after proper notice of the nomination is given to the ordinary members of the club; and*
>
> *(ii) if the rules provide for honorary or temporary membership—the classes of person entitled to such membership are not unduly large, having regard to the nature and objects of the club;*

7.6.3 Given that it appears that the requirements in section 49(3)(b) do not appear to reflect the general practice of clubs, it is my view that it be replaced with the requirement that the rules of the club must make provision for the criteria for admission to membership of the club. This is also discussed in chapter 5.7.

| Recommendation 58 | Replace the eligibility requirements for membership of clubs in section 49(3)(b) of the Act with the requirement that the rules of the club must make provision for the criteria for admission to membership of the club. |
|---|---|

### Amalgamation of clubs

7.6.4 Clubs SA have raised concerns about the amalgamation of clubs that hold liquor licences. Clubs SA are seeking a more simplified process as currently the amalgamated clubs would have to relinquish their current licences and apply for new licence.

7.6.5 I note that clubs wishing to amalgamate would also have to follow the requirements under the *Associations Incorporation Act 1985* to become a new club.

7.6.6 In its submission Clubs SA provided the following example—

*"For example, Club A and Club B both hold liquor licences over different premises. They decide to amalgamate and incorporate a new association, Club AB, and conduct their liquor operations in what were the licensed premises of Club A with the trading rights as applicable to the original Club A licence".*[73]

7.6.7 It seems to me that if the liquor operations of the new club (for example Club AB) are proposed to be in premises that were the subject of a liquor licence belonging to the old club (Club A) and the proposed trading rights are the same as the liquor licence belonging to the old club (Club A) then a new application is unnecessary. In my view it would be sufficient for the new Club to notify the Commissioner of the amalgamation, and the Commissioner would then issue a new licence and revoke the existing licences. There should still be a fee attached to the notification.

7.6.8 This is also consistent with my previous recommendation that clubs simply notify the Commissioner of the members of the committee of management a club.

7.6.9 However, if the amalgamated club proposes to use new premises or if it proposes to have different trading rights, then a new application would have to be lodged. Also, if any of the clubs to be amalgamated have a gaming machine licence, then the provisions of the *Gaming Machines Act 1992* will also apply.

| Recommendation 59 | **Amalgamating club should only be required to notify the Commissioner of the amalgamation, provided that there are no changes to the trading rights attached to the host premises, which was the subject of a liquor licence.** |
|---|---|

### Clubs sharing premises

7.6.10 The Act allows for licensed premises to be the subject of more than one liquor licence. Clubs SA have advised that some clubs "share premises with detailed conditions on their licences about when they can and cannot use the licensed premises."[74]

7.6.11 Section 48(3)(b) of the Act provides that *"two or more club licences may be granted for the same premises provided that the trading hours authorised under the licences do not coincide or overlap"*.

7.6.12 Further, section 49(3)(a) as discussed previously also, requires a club to have *"exclusive possession of the licensed premises at times when the sale of liquor is authorised by the license"*.

7.6.13 Clubs SA have expressed on behalf of its members a desire to have more flexibility in the use of shared licensed premises.

[73] *Submission by Clubs SA, page 12*
[74] *Submission by Clubs SA, page 12*

7.6.14 Clubs SA gives the example of a cricket and football club sharing licensed premises. As I understand the cricket club would have trading rights in the summer and the football club would have trading rights in the winter. The cricket club may wish to use the licensed premises to conduct functions in the winter and the football club may wish to conduct functions in the summer.

7.6.15 It would seem unnecessary to restrict a club from holding a function just because it is not within the season of the game. As long as there is a mechanism in place to record which club is using the licensed premises on a particular day and time, then clubs sharing a licensed premises should be given the flexibility to conduct operations on any day (subject to their own agreement).

7.6.16 Clubs SA have put to me that the clubs sharing the premises could maintain a register which would include details of the date, time, club in charge and name of the person in charge.

7.6.17 I am of the view that the maintenance of a register by both clubs which details the date, time, club in charge and the name of the responsible person would be sufficient to identify the club in charge of the venue at a particular time. However, if such register is not maintained sufficiently and there are issues in determining the club in charge for enforcement purposes, then I am of the view that both clubs should be responsible. This view is also shared by Clubs SA.

7.6.18 It should be noted that where a club has a gaming machine licence, then the provisions of the *Gaming Machine Act 1992* will apply.[75]

7.6.19 It is likely that both sections 49(3)(a) and 48(3)(b) of the Act will require amendment to enable greater flexibility for clubs sharing licensed premises for functions.

| Recommendation 60 | The trading conditions applicable to clubs that share licensed premises should be more flexible to allow either club to conduct operations on any day subject to both clubs maintaining a joint register. |
|---|---|

### Endorsement of events

7.6.20 It has been put to me that clubs incur significant administrative burden when wishing to undertake additional events. Clubs SA have advised that in order to partner with a holder of a liquor licence to sell bottles of liquor for the purposes of fundraising either a Limited Licence or approval of the Commissioner under section 99 of the Act is required. Further, I am advised that sporting clubs that supply alcohol to players travelling home from an away game on a hired vehicle are also required to obtain a Limited Licence.

7.6.21 Clearly, the administrative burden associated with undertaking these functions could be alleviated through a system of event endorsement on relevant club licences. In chapter 5 I recommend that a Club Licence should have the capacity to be endorsed with additional events to supply liquor subject to the payment of an annual extended event fee. This endorsement would provide the licensee with the flexibility to sell or supply liquor at a number of events per year beyond the licensed premises.

[75] *See in particular section 17 of the Gaming Machines Act 1992*

7.6.22 Similarly, wine producers incur administrative burden if they want to attend functions, trade shows or promotional events across the State that are not within their own wine region.

7.6.23 The Producer's Licence under the current Act allows a wine producer to sell or supply their own product at an event specified under an endorsement on the licence. The event must be in the producer's own wine region.

7.6.24 To attend any additional events, a producer would have to apply for a Limited Licence for each event. As recommended in chapter 5, I am of the view that the event endorsement on the proposed Liquor Production and Sales Licence be expanded to allow the licensee to sell or supply their product at a number of additional events per year.

7.6.25 These additional endorsements on the proposed Club Licence and proposed Liquor Production and Sales Licence will not only reduce the number of Limited Licences that have to be processed by CBS, but also reduce the administrative burden on licensees.

## 7.7 Exemptions from the Act

### Cruise Ships

7.7.1 I understand that cruise ships are required to hold a Liquor Licence under the Act while in South Australian waters and must obtain a Limited Licence for this purpose.

7.7.2 Cruise ships are in a unique position. Cruise ships constantly move into different jurisdictional waters and may only be in South Australian waters for a limited amount of time. I am also aware that cruise ships have internal procedures and policies for staff directed at the responsible service of alcohol.

7.7.3 Victoria[76], Western Australia[77], Tasmania[78], Northern Territory[79] and New South Wales[80] do provide for an exemption in their respective liquor licensing legislation for cruise ships based on certain conditions.

7.7.4 I note that section 6(1)(f) of the *Liquor Act 2007 (NSW)* provides that the Act does not apply to or in respect of:

> *(f) the sale of liquor to an adult on board a vessel engaged in interstate or overseas voyages, but only if such requirements (if any) as are prescribed by the regulations are complied with;*

7.7.5 Regulation 70A of the *Liquor Regulations 2008 (NSW)* provides:

> *The provisions of the Act relating to the sale or supply of liquor do not apply to the sale or supply of liquor on board a vessel engaged in voyages that operate wholly or partly within the coastal waters of the State (within the meaning of Part 10 of the Interpretation Act 1987) if the following requirements are complied with:*
>
> *(a) the vessel has sleeping facilities for at least 100 passengers;*
>
> *(b) liquor is sold or supplied only to registered fee-paying passengers or crew members;*
>
> *(c) liquor is sold or supplied only for consumption on board the vessel;*
>
> *(d) liquor is not sold or supplied to minors; and*
>
> *(e) liquor is not sold or supplied to a person who is intoxicated.*

7.7.6 I consider that an exemption and conditions similar to the New South Wales provisions should be inserted in the Act for the sale and supply of liquor on cruise ships within the waters of South Australia in the course of undertaking interstate and overseas voyages. These conditions are that:

(a) the vessel has sleeping facilities for at least 100 passengers (not including crew members);

(b) liquor is sold or supplied only to fee-paying passengers or crew members;

(c) liquor is sold or supplied only for consumption on board the vessel;

(d) liquor is not sold or supplied to minors; and

(e) liquor is not sold or supplied to a person who is intoxicated.

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[76] *Section 6H of the Liquor Control Reform Act 1998 (Vic).*
[77] *Regulation 8(1)(ja) of the Liquor Control Regulations 1989 (WA)*
[78] *Section 16(1) of the Liquor Licensing Act 1990 (Tas), General Liquor Exemption (No.2) 2012*
[79] *Section 5(1)(d) of the Liquor Act (NT)*
[80] *Section 6(1)(f) of the Liquor Act 2007 and Regulation 70A of the Liquor Regulation 2008 (NSW)*

7.7.7 I consider the requirement that the vessel has sleeping facilities for at least 100 passengers (not including crew members) is adequate in distinguishing cruise ships from other vessels that may operate. It is also consistent with the requirements in Victoria.[81]

| Recommendation 61 | The Act be amended to include an exemption for cruise ships operating in South Australian waters, provided certain conditions are met. |
|---|---|

### Retirement Villages

7.7.8 I understand that retirement villages often hold a Special Circumstances Licence or Limited Club Licence to sell or supply liquor to residents and guests. Retirement villages are administered under the *Retirement Villages Act 1987* which outlines the functions of the residents' committee and administering authority.[82]

7.7.9 It has been put to me that there is significant administrative burden on retirement villages in having to comply with the Act. Retirement villages by nature would not appear to represent high risks in the sale or supply of liquor. Retirement villages would not be frequented by members of the general public, but rather visitors or guests would usually be invited by the residents.

7.7.10 Victoria[83], Tasmania[84], New South Wales[85] and Queensland[86] do provide differing exemptions for retirement villages subject to conditions. For example—

- in Queensland an exemption applies to the sale of liquor in a retirement village;
- in New South Wales the exemption does not apply to events conducted by the operator;
- in Victoria the exemption applies to owners or operators of retirement villages; and
- in Tasmania the exemption requires the business operator to maintain effective control over the sale and any consumption of liquor on the premises.

7.7.11 I consider that an exemption should apply to the sale, supply and consumption of liquor on the premises of the retirement village regardless of whether it is the resident's committee or the administering authority of the retirement village that organises the function. It should also apply to the sale, supply and consumption of liquor to an adult resident of the retirement village and an adult guest of a resident.

| Recommendation 62 | The Act be amended to include an exemption for retirement villages provided certain conditions are met. |
|---|---|

[81] *Section 3(1) of the Liquor Control Reform Act 1998 (Vic).*
[82] *I note that the Retirement Villages Bill 2016 is currently before Parliament. Among other things, the bill proposes changes to terms, including administering authority.*
[83] *Section 6G of the Liquor Control Reform Act 1998 (Vic)*
[84] *Section 16(1) of the Liquor Licensing Act 1990 (Tas) and General Liquor Exemption (No.3) 2013*
[85] *Section 6(3) of the Liquor Act 2007 (NSW)*
[86] *Section 14B(1)(h) of the Liquor Act 1992 (Qld)*

### Florist or gift makers

7.7.12 Regulation 7(2)(d) of the *Liquor Licensing (General) Regulations 2012* exempts the sale of liquor from the application of the Act where—

> *(d) "the sale of liquor in the course of the business of selling flowers or confectionary or other food to be delivered as a gift to a person other than the purchaser if—*
>
> *(i) the liquor is delivered by the vendor, together with the flowers or confectionary or other food, directly to the donee of the gift (or to another person of or above the age of 18 years) at a place other than the premises at which the business is conducted; and*
>
> *(ii) the liquor has been purchased by the person conducting the business from holder of a hotel licence, retail liquor merchant's licence, producer's licence or special circumstances licence; and*
>
> *(iii) the volume of liquor supplied in respect of each sale does not exceed 2 litres; and*
>
> *(iv) both the purchaser and the donee of the gift are of or above the age of 18 years;"*

7.7.13 It has been put to me that unlike interstate practice (e.g. section 6B of the *Liquor Control Reform Act 1998 (VIC)*) the current exemption only relates to flowers, food and confectionary but not other ancillary gifts such as soaps, cosmetics and candles etc. As a consequence, such business operators must apply currently for a Special Circumstances Licence for what are for all intents purposes only minimal liquor sales.

7.7.14 I am of the view that this was not the intended consequence and as a result, I consider that an exemption similar to the Victorian provisions should be inserted in the Act for the sale of liquor with other ancillary gifts. I suggest that this could be simply achieved through an amendment to regulation 7(d) to state—

> *(d) "the sale of liquor in the course of the business of selling flowers, confectionary, food or other gifts to be delivered as a gift to a person other than the purchaser if-"*

7.7.15 Further, having considered interstate practice and my previous recommendations, I recommend the following consequential amendments to the conditions relating to the sale of liquor in such circumstances—

> *(ii) the liquor has been purchased on a retail basis by the person conducting the business from the holder of a general liquor licence, packaged liquor sales licence or liquor production and sales licence; and*
>
> *(iii) the volume of liquor supplied in respect of each sale does not exceed 2.25 litres (i.e. the equivalent of three standard bottles); and*
>
> *(iv) both the purchaser and the donee of the gift are of or above the age of 18 years; and*
>
> *(v) the value of the liquor and its container is not more than 50 per cent of the total sale price of the supplied gift.*

| Recommendation 63 | The Act be amended to include an exemption for businesses selling gifts including alcohol, provided certain conditions are met. |
|---|---|

### Bed & Breakfast style businesses

7.7.16 Regulation 7(2)(c) of the *Liquor Licensing (General) Regulations 2012* exempts the sale of liquor from the application of the Act where—

> *(c) "the sale of liquor at cottage or bed and breakfast style accommodation premises with accommodation for a maximum of 8 persons—*
>
> *(i) the supply of liquor is complimentary; and*
>
> *(ii) the liquor is supplied to a person of or above the age of 18 years accommodated at the premises; and*
>
> *(iii) the liquor has been purchased from the holder of a producer's licence at the producer's premises in the vicinity of the premises; and*
>
> *(iv) –*
>
> *(A) the supply of liquor is ancillary to the provision of the accommodation, the liquor is delivered to the person at that part of the premises where the person is accommodated and the volume of liquor supplied does not exceed 2 litres per accommodation booking; or*
>
> *(B) the supply of liquor is ancillary to a meal hosted by the operator of the premises and the volume of liquor supplied does not exceed 1 litre per person; or*
>
> *(C) the supply of liquor is ancillary to the supply of a picnic basket and the volume of liquor supplied does not exceed 1 litre per person who may reasonably be expected to consume the contents of the picnic basket;"*

7.7.17 I note that Victoria[87], New South Wales[88], Queensland[89] and Western Australia[90] have similar provisions except that Queensland restricts the exemption to premises with accommodation not exceeding six persons, while the other States and South Australia impose an eight person maximum. All jurisdictions also prescribe different limits on the volume of alcohol that may be provided gratuitously.

7.7.18 Recognising that an object of the Act is to further the interests of the liquor industry and industries with which it is closely associated, including the tourism and hospitality industries, I recommend that the maximum number of persons able to be hosted be increased to 16 persons.

7.7.19 It should be noted that accommodation providers wishing to provide restaurant services to a guest would still be required to hold a Residential Licence.

7.7.20 Having considered interstate practice and my previous recommendations, I recommend the following consequential amendments to the conditions relating to the sale of liquor in such circumstances—

> *(c) "the sale of liquor by a provider of cottage, bed and breakfast or host farm accommodation to a registered guest of the provider if—*
>
> *(i) the supply of liquor is complimentary; and*
>
> *(ii) the liquor is supplied to a person of or above the age of 18 years accommodated at the premises; and*

[87] *Section 6A, Liquor Control Act 1998 (VIC)*
[88] *Section 6(2), Liquor Act 2007 (NSW)*
[89] *Section 14B(h), Liquor Act 1992 (QLD)*
[90] *Regulation 8(j), Liquor Control Regulations 1989 (WA)*

*(iii) the liquor has been purchased on a retail basis by the person conducting the business from the holder of a general liquor licence, packaged liquor sales licence or liquor production and sales licence; and*

*(A) –*

*(B) the supply of liquor is ancillary to the provision of the accommodation, the liquor is delivered to the person at that part of the premises where the person is accommodated and the volume of liquor supplied does not exceed 2.25 litres per accommodation booking; or*

*(C) the supply of liquor is ancillary to a meal hosted by the operator of the premises and the volume of liquor supplied does not exceed 750ml per person; and*

*(D) the supply of liquor is ancillary to the supply of a picnic basket and the volume of liquor supplied does not exceed 750ml per person who may reasonably be expected to consume the contents of the picnic basket;"*

7.7.21 Further, I recommend that the definition of 'cottage accommodation', 'bed and breakfast accommodation' and 'host farm accommodation' be included in section 4 of the Act—

***bed and breakfast accommodation*** *means accommodation that—*

*(a) includes the provision of temporary accommodation and breakfast for guests; and*

*(b) is conducted on the premises (other than a caravan, caretaker's or manager's residence, flat, home unit, hostel, hotel, lodging house, motel, relocatable home or dormitory style accommodation) by a person who lives on the premises; and*

*(c) caters for a maximum of 16 adult guests at the same time.*

***cottage accommodation*** *has the same meaning as bed and breakfast accommodation*

***host farm accommodation*** *means accommodation that—*

*(a) includes the provision of temporary accommodation and meals, or food for preparing meals, for guests; and*

*(b) is conducted on a farm involved in primary production by a person who manages, and lives on, the farm; and*

*(c) caters for a maximum of 16 adult guests at the same time.*

| Recommendation 64 | The Act be amended to extend the exemption relevant to the provision of bed and breakfast facilities. |
|---|---|

## 7.8 Liquor permits by notification only

7.8.1 In chapter 12, I recommend that the concept of a Limited Licence should be abolished and replaced with a permit-based system comprising of three types of permit, consisting of:

(a) a Permit for a single low-risk event;

(b) an Extended Event Permit for a low-risk event held over multiple days;

(c) a Special Event Permit for high-risk events.

7.8.2 For low-risk single occasion permits, such as birthday parties, engagement parties and quiz nights etc., I recommend that there should only be a requirement to notify the Commissioner of the event.

7.8.3 These low-risk single occasion permits comprise of around 50% of Limited Licence applications.[91] The Discussion Paper also reports that approximately 8,000 Limited Licence applications were granted in 2014-15.[92]

7.8.4 Therefore, amending the requirements in respect to low-risk single occasion events so that only a notification to the Commissioner is required, will reduce administrative burden on CBS and on applicants alike.

[91] *Information provided by CBS*
[92] *Discussion Paper, page 5*

## 7.9 BYO Permit

7.9.1 The concept of a BYO operation is a part of existing restaurant operations and is permitted by section 34(1)(a) of the Act—

> *Subject to this Act, a restaurant licence—*
>
> *(a) authorises the consumption of liquor on the licensed premises at any time with or ancillary to a meal provided by the licensee; and*

7.9.2 I have received submissions from respondents who wish to provide a BYO facility but without the full authorisation and trading rights applicable to a Restaurant Licence.

7.9.3 The submissions raise the following types of business operations as examples—

(a) functions held at galleries and studios where music is played and patrons are prohibited in the absence of a licence or permit to bring and consume their own liquor;

(b) tourism operators wishing to provide food but allowing patrons to bring their own liquor for consumption.

7.9.4 At the present time, a limited licence is required for each such occasion. This seems to be contrary to the aims expressed in the Discussion Paper, namely—

> *"Greater flexibility and simplicity will make it easier and more efficient for entrepreneurs to establish small licensed businesses such as small bars or food-focussed venues like tapas bars, strengthening the State's economy and enabling South Australia to nurture its diverse food and wine industry."*[93]

7.9.5 It is also contrary to the objects of both the present Act and the proposed objects which set out to facilitate the development of the liquor industry and industries with which it is closely associated such as the live music industry, tourism and the hospitality industry.

7.9.6 I recommend that a BYO Permit be introduced to cover these types of business situations. Such a permit would be granted for a three-year period after notification to the Licensing Authority and be subject to both an application fee and annual renewal fee.

7.9.7 I suggest an annual renewal fee of $250 per annum.

7.9.8 If however, such a permit is only required for a single occasion it should be by way of notification only and subject to a one-off fee.

[93] *Discussion Paper, page 1*

# CHAPTER 8 – PLANNING AND LIQUOR LICENSING OVERLAP

## 8.1 Overview

8.1.1 One of the common themes to come out of the written submissions is the confusion and overlap between the planning approval framework and the liquor licensing regime.

8.1.2 Applicants must obtain the relevant approvals under the *Development Act 1993* before being granted a liquor licence under the Act. Section 57(2) of the Act currently provides—

> *(2) An application for a licence for premises or proposed premises must not be granted unless the licensing authority is satisfied—*
>
> *(a) that any approvals, consents or exemptions that are required under the law relating to planning to permit the use of the premises or proposed premises for the sale of liquor have been obtained; and*
>
> *(b) that any approvals, consents or exemptions that are required by law for the carrying out of building work before the licence takes effect have been obtained; and*
>
> *(c) that any other relevant approvals, consents and exemptions required for carrying on the proposed business from the premises have been obtained.*

## 8.2 Legislation

### Development Act 1993

8.2.1 Whether an application involving a liquor licence requires approval under the *Development Act 1993*, will depend on whether the nature of the application fits within the definition of 'development'.

8.2.2 The current definition of 'development' under section 4(1) of the *Development Act 1993* includes (amongst other things) the change in the use of land and *"an act or activity in relation to land (other than an act or activity that constitutes the continuation of an existing use of land) declared by regulation to constitute development"*.

8.2.3 This development approval process requires the lodgement of an application (along with the required information) and public notification or referrals depending on the type of category of the development.[94]

8.2.4 As part of the public notification process, representations may be made by interested parties which are then forwarded to the applicant for a response.[95] Applications for Development Plan Consent are assessed against the relevant Development Plan.[96] Each council has its own Development Plan containing the policies that apply to that specific local government area.[97] Each Development Plan also prescribes zones outlining what development may occur in that area.[98]

### Planning, Development and Infrastructure Act 2016

8.2.5 The *Planning, Development and Infrastructure Act 2016* was passed by Parliament on 12 April 2016 and received Royal Assent on 21 April 2016. That Act has not yet commenced. The *Planning, Development and Infrastructure Act 2016* will replace the *Development Act 1993*.

8.2.6 The second reading speech explains that the *Planning, Development and Infrastructure Act 2016 "lays down the building blocks for the new planning system".*[99] The second reading also makes it clear that there will be another Bill that deals with the consequential amendments, transitional arrangements and implementation and that the entire reform package will need several years to be implemented.[100]

8.2.7 Under the *Planning, Development and Infrastructure Act 2016* the existing individual council development plans will be replaced with a Planning and Design Code and Design Standards.[101] The Planning and Design Code will incorporate a scheme that includes the use of zones, subzones and overlays.[102] Applications in relation to planning consent may still require public notification but this will depend on how it is classified according to the Planning and Design Code.[103]

[94] See sections 37, 38 and 39 of the Development Act 1993 (SA)
[95] See section 38 of the Development Act 1993 (SA)
[96] Section 33 of the Development Act 1993 (SA)
[97] LGA and Planning Institute Australia (SA Division) Fact Sheet 11 http://www.sa.gov.au/topics/property-and-land/land-and-property-development/building-and-property-development-applications/assessment
[98] LGA and Planning Institute Australia (SA Division) Fact Sheet 16 http://www.sa.gov.au/topics/property-and-land/land-and-property-development/building-and-property-development-applications/assessment
[99] Legislative Council Hansard, Wednesday 18 November 2015 at page 2169
[100] Legislative Council Hansard, Wednesday 18 November 2015 at page 2169
[101] See section 66 and 69 of the Planning, Development and Infrastructure Act 2016
[102] See section 66 of the Planning, Development and Infrastructure Act 2016
[103] Part 7, Division 2 of the Planning, Development and Infrastructure Act 2016

8.2.8 I note that the Adelaide City Council has suggested in its submission that the Planning and Design Code could be used *"…as a basis for clearly articulating the desired character of different areas of the City, in particular appropriate liquor licensed businesses (e.g. venue types), activity (e.g. trading hours), and conditions."*[104]

8.2.9 It seems to me that the Planning and Design Code may be a good vehicle to indicate in what areas different types of licensed venues are an acceptable use of land and contain general land use conditions relating to those licensed venues. If this type of information is outlined in the Planning and Design Code, then it will enable the general public and potential applicants to be aware of the areas where licensed premises are an acceptable land use and any standard conditions for those premises.

| Recommendation 65 | **The Planning and Design Code under the *Planning, Development and Infrastructure Act 2016* to prescribe in which areas different types of licensed venues are an acceptable use of land and contain general land use conditions relating to those licensed venues.** |
|---|---|

### Liquor Licensing Act 1997

8.2.10 Under section 52 of the Act, applications for a liquor licence are required to be advertised (although the requirements may be at the discretion of the Licensing Authority and will depend on the liquor licence sought).

8.2.11 Councils at the present time are given the opportunity to intervene or object to liquor licence applications even though council has provided the relevant approval under the *Development Act 1993.*[105]

[104] *Submission by Adelaide City Council, page 9*
[105] *See section 76 and 77 of the Liquor Licensing Act 1997*

## 8.3 Delineation of responsibility

8.3.1 Much of the present confusion would be resolved with a clear delineation of responsibility between local councils[106] and the Licensing Authority. I recommend the following delineation—

8.3.1.1 Local councils should be responsible for matters pertaining to the venue and land use such as—

(a) capacity;

(b) car parking;

(c) traffic management;

(d) trading hours;

(e) queuing; and

(f) noise attenuation (relating to sound proofing measures to the building).

8.3.1.2 All such matters should be dealt with at the planning stage and any conditions relating to those matters should be on the relevant approvals.

8.3.1.3 The Licensing Authority should be responsible for matters pertaining to the supply and consumption of liquor including—

(a) probity of the applicant and persons responsible for managing the premises;

(b) harm minimisation;

(c) responsible service of liquor;

(d) whether the grant or removal of the particular licence is in accordance with the objects of the Act; and

(e) whether a particular application meets the relevant tests in the Act.

8.3.2 The *Planning, Development and Infrastructure Act 2016* does attempt to address the conflict between the planning and liquor licensing regime in a consequential amendment to the Act in Schedule 6, Part 6 and provides:

> ***19—Insertion of section 11C***
>
> *After section 11B insert:*
>
> ***11C—Steps to avoid conflict with planning system***
>
> *The Commissioner should—*
>
> *(a) in the development and implementation of a code of practice; or*
>
> *(b) in the assessment of an application for a licence under this Act; or*
>
> *(c) in the imposition of conditions under this Act,*
>
> *take reasonable steps to avoid any inconsistency with, or the duplication of, matters that are dealt with or addressed under the Planning, Development and Infrastructure Act 2016.*

[106] *Note the term used in the Development Act 1993 (SA) is relevant authority, which includes councils. For the purposes of this report, the term council will be used for ease of reference.*

***20—Amendment of section 76—Other rights of intervention***

*Section 76—after subsection (2) insert:*

*(2a) A representation under subsection (2) is not to extend to a matter that is dealt with or addressed under the Planning, Development and Infrastructure Act 2016.*

8.3.3 It is my view that the consequential amendment to the Act provided in the *Planning, Development and Infrastructure Act 2016* needs to be supported by a clear delineation of responsibilities between the local council and the Licensing Authority. It may be that this can be done through administrative arrangements between CBS and the councils, such as through guidelines or practice directions.

| Recommendation 66 | Implement a clear delineation of responsibilities between relevant planning authorities and the Licensing Authority. |
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## 8.4 Application process

### Council approval of liquor licence applications

8.4.1 A number of respondents have advised that there are some instances where an applicant for a liquor licence does not have to go through the planning level.

8.4.2 I recommend that all applications for—

(a) a new liquor licence;

(b) the removal of a liquor licence;

(c) the alteration or redefinition of licensed premises;

(d) the extension of trading area; and

(e) a change of condition on a liquor licence;

should go through the relevant local council first to obtain the council's approval or confirmation that approval is not required, before it is lodged with CBS.

8.4.3 These licence applications should trigger the need for development approval under the *Development Act 1993* (or the *Planning, Development and Infrastructure Act 2016* when that commences). In this instance, the council should have discretion about whether it needs to consider an application for a change of a condition, as some of these may be for minor matters. This recommendation will also enable local councils to be adequately notified of the application, rather than seeing the application at a later stage in the process. This especially applies in matters of redefinition or extensions to licensed premises.

8.4.4 One option that the Government may wish to consider is to amend the current *Development Act 1993* to make it clear that a proposed application for—

(a) a new liquor licence;

(b) the removal of a liquor licence;

(c) the alteration or redefinition of licensed premises;

(d) the extension of trading area; and

(e) a change of condition on a liquor licence;

is considered to always constitute a change in use of land.

8.4.5 I note that although the *Development Act 1993* does enable regulations to be made to declare an act or activity in relation to land to constitute 'development', there is a proviso that the act or activity must not constitute the continuation of an existing use of land.[107] Therefore, prescribing liquor licence applications in the regulations to be declared to constitute 'development' (rather than being considered a change in use of land) may require additional amendments to the definitions.

[107] *Section 4(1) of the Development Act 1993 (SA)*

8.4.6 A similar amendment could be applied to the *Planning, Development and Infrastructure Act 2016* so that these particular applications are considered a change in use of land. I note that the definition of 'development' in section 3(1) of the *Planning, Development and Infrastructure Act 2016* does include *"an act or activity in relation to land declared by or under the regulations to constitute development"*.

8.4.7 Therefore, rather than amending that Act, regulations may be made incorporating those liquor licensing applications identified above. However, there may still be a need to amend the definition of *"change in use of land"* in the *Planning, Development and Infrastructure Act 2016* to exclude such applications.

8.4.8 I note that these applications will also have to be assigned to a category of development for the purposes of assessment under the *Development Act 1993* or the *Planning, Development and Infrastructure Act 2016*.

8.4.9 Hence, applications to the local council should also disclose information relevant to the liquor licence, including the type of liquor licence, the nature of the business, the nature of any entertainment and the proposed trading hours.

| Recommendation 67 | Certain applications under the Act should trigger the need for development approval under the *Development Act 1993* or the *Planning, Development and Infrastructure Act 2016* (when that comes into operation). |
|---|---|

### Lodgement of the liquor licence application with CBS

8.4.10 According to the Commissioner's practice direction entitled *"Application requirements and lodgement of documents"* dated March 2016 ('Practice Direction'), an applicant does not have to provide an approval from the relevant local council at the time of lodgement of the application, but rather at a later date (being no later than seven days before the scheduled determination date).

8.4.11 It is my view that it should be mandatory that the necessary approvals and consents under the *Development Act 1993* (or the *Planning, Development and Infrastructure Act 2016* when it commences) have been obtained and evidence provided at the time of lodging the application for—

(a) a new liquor licence;

(b) the removal of a liquor licence;

(c) the alteration or redefinition of licensed premises;

(d) the extension of trading area; and

(e) a change of condition on a liquor licence.

8.4.12 This will provide the Licensing Authority with evidence at the time of lodgement that the council has considered the application and has had the opportunity to impose conditions on the approval. It also enables the Licensing Authority to know what conditions have been imposed by the council in advance, especially in relation to trading hours and the capacity of the premises.

8.4.13 I recommend that the Act be amended so that an application for—

(a) a new liquor licence;

(b) the removal of a liquor licence;

(c) the alteration or redefinition of licensed premises;

(d) the extension of trading area; and

(e) a change of condition on a liquor licence;

may not be lodged with the Licensing Authority unless the applicant has provided evidence of the approval under the *Development Act 1993* (or the *Planning, Development and Infrastructure Act 2016*) at the time of lodgement.

8.4.14 Further, an amendment to section 57(2) of the Act could be made to expressly prohibit applicants from making or lodging such applications unless they have obtained the approvals under the planning legislation and those other approvals, consents and exemptions listed in that section.

8.4.15 I understand that an amendment to the Practice Direction may also achieve a similar result, however a practice direction does not hold the same legal certainty as including the requirement expressly in the Act. In my view it is important that the requirement should be strictly adhered to and if such evidence is not provided at the time of lodgement the applicant should have to go back to the council for rectification.

| Recommendation 68 | **The necessary approvals under the *Development Act 1993* or the *Planning, Development and Infrastructure Act 2016* (when that comes into operation) must be obtained before lodgement of the application with CBS.** |
|---|---|

### Intervention and objection by local council

8.4.16 Applicants before the Licensing Authority may be required to re-visit the same issues that were previously considered at the planning level due to the ability of councils to presently intervene or object under the Act.

8.4.17 I have also become aware that some of the conditions on liquor licences are in fact conditions which replicate those already imposed as part of the approval by the relevant local council under the *Development Act 1993*. A condition such as the placement of garbage or refuse bins or times for the collection of bins or refuse seems on the face of it is unrelated to the sale, supply and consumption of liquor.

8.4.18 If the council has already granted the necessary approvals under the *Development Act 1993* (or the *Planning, Development and Infrastructure Act 2016*) as I recommend in this chapter, then there should be no further objection, submission or intervention by the council at the liquor licensing stage of the process.

8.4.19 The consequential amendment to the Act provided for in Schedule 6, Part 6 of the *Planning, Development and Infrastructure Act 2016* removes the ability of a local council to intervene by making representations in a matter that is dealt with or addressed at the planning level under the new Act, however the council would still have the ability to intervene by introducing evidence.

8.4.20 I recommend that the legislation should go further than the *Planning, Development and Infrastructure Act 2016* and remove the ability of a council to intervene in the liquor licensing process entirely.

8.4.21 Pursuant to my recommendation in chapter 7.3, any person may make a submission to the Commissioner in respect of certain applications but this is limited to specific grounds, which are not related to planning type matters.

8.4.22 However, I have recommended that the Commissioner should have discretion to invite submissions from particular groups or persons on any matters the Commissioner considers appropriate. For example, the Commissioner may exercise his or her discretion and invite a particular local council to make a submission. I discuss this further in chapter 7.

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|---|---|
| **Recommendation 69** | **Remove the ability of council to object or make a submission on matters that are dealt with or addressed at the planning level and remove the ability of council to intervene in the liquor licensing process.** |

## 8.5 Conditions imposed on licences

8.5.1 I have studied a number of licences as part of this review process, including some of the conditions which have been imposed. In some cases, the conditions can comprise of up to four pages of the licence. Some of the licence conditions do not seem relevant to the matter of regulating the sale, supply and consumption of liquor.

8.5.2 It appears to me that liquor licences have become a vehicle to include both liquor related conditions as well as planning type matters. I provide some examples of conditions currently imposed on licences—

(a) *The Licensee shall give notice to lodgers that laundry shall not be hung on or in Area 6 and the Licensee shall use its best endeavours to ensure that laundry is not left on or in Area 6.*

(b) *No garbage or refuse (including empty bottles and cans) shall be:*

(i) *placed in outside storage bins between the hours of 11pm & 8am the following day; and*

(ii) *available for collection by waste disposal or similar operators (other than operators employed by or organised by the Corporation of the City of Adelaide) between the hours of 11pm and 8am the following day.*

(c) *The live entertainment shall take the form of a one or two instrument bands playing essentially country and western/ballad style music. No rock and roll, discotheque or like entertainment is permitted.*

(d) *The Licensee will ensure that its steel rubbish dump bins are emptied/replaced no less than twice per week and that all such bins have their lids fully closed at all times.*

(e) *The licensee must install window coverings (such as curtains or blinds) on the first floor windows. The window coverings must be closed by 6.00pm each day and remain closed until 9.00am the next day.*

(f) *The first floor windows must be closed at 6.00pm each day and remain closed until 9.00am the next day.*

(g) *No loud speakers shall be placed closer than 4 metres from any entrance or exit from the premises and at all times any such loudspeaker is to be directed away from the entrance to or exit from the premises and into the premises proper.*

(h) *Noise from the premises (including live or recorded entertainment, singing, patron noise or similar) when assessed at the nearest noise sensitive location shall be less than 8dB(A) above the level of background noise in any octave band of the sound spectrum.*

(i) *The licensee, its employees or entertainers, shall not advertise or promote the premises the subject of this licence, or the entertainment to take place within the licensed premises, by way of posters or other advertising materiel fixed, attached or marked, on any Council property without the prior written permission of the Corporation of the City of Adelaide or authorisation of the landlord of any private property.*

8.5.3 It is apparent that some conditions have been placed on licences through the process of conciliation or by the consent of the parties. For example, a condition requiring regular meetings with the licensee and residents to discuss the general operation of the hotel.

8.5.4 The Discussion Paper also provides examples of conditions imposed as a result of conciliations, including requiring a licensee to refrain from placing carpet in the near vicinity of the licensed premises and requiring the licensee to ensure that cleaners do not park on certain streets.[108] While these examples of conditions seem inappropriate to have on a liquor licence, I do acknowledge that some conditions imposed through conciliation may still remain important. However, it is not known when these conditions were placed on the licence and whether they are still required.

8.5.5 The Discussion Paper also raises the issue of whether *"standard liquor licence conditions be developed and implemented where disagreements arise?".*[109] My recommendation in chapter 7 to replace the process of objections with submissions and give the Commissioner discretion to conciliate will mean that there will be more determinations by the Commissioner, resulting in more consistency in the conditions placed on a licence.

8.5.6 Contemporaneously, it is my view that the licence should be in a form that is simple to read, and that the conditions placed on the licence are relevant to the sale, supply and consumption of liquor. For these purposes, I recommend that the Commissioner have power in the Commissioner's absolute discretion to remove or vary any existing conditions that are planning in nature or unnecessary given any other recommendations I have made in this report.

8.5.7 Given the discussion in chapter 21, the Commissioner should also have the power to add and substitute conditions given the extensive nature of the reforms I recommend in this report.

| Recommendation 70 | **The Commissioner should have an absolute discretion to add, substitute, vary or revoke any existing conditions as a result of any proposed reforms and because it is a matter that is dealt with or addressed under the *Development Act 1993* or the *Planning, Development and Infrastructure Act 2016*. Please see chapter 21 for further discussion.** |
|---|---|

[108] *Discussion Paper, page 12*
[109] *Discussion Paper, page 17*

## 8.6 Noise and entertainment

8.6.1 Another area of confusion is in relation to noise and entertainment. Local councils assess potential noise from the venue as part of the approval process under the *Development Act 1993*.

8.6.2 The liquor licensing regime regulates the provision of entertainment through section 105 of the Act and also provides a noise or behaviour complaints process through section 106. I note that section 105 was recently amended *(commencing in December 2015)* to allow a licensee to provide entertainment without the approval of the Licensing Authority from 11am to midnight unless it is 'prescribed entertainment'[110].

8.6.3 Section 106 provides a mechanism for complaints relating to noise or behaviour from licensed venues to be lodged with the Commissioner. A complaint may be lodged under this section if an activity on, or noise emanating from, licensed premises or the behaviour of persons making their way to or from licensed premises, is unduly offensive, annoying, disturbing or inconvenient to a person who resides, works or worships in the vicinity of the licensed premises.

8.6.4 I understand that in most instances the Commissioner attempts to resolve complaints by conciliation. If the matter of the complaint is not to be conciliated or is not resolved by conciliation, the matter is determined by either the Commissioner or the Licensing Court. The parties may nominate the forum in which the matter is heard/resolved. The Commissioner or the Licensing Court may make an order that adds to or varies the conditions of the licence.

8.6.5 I recommend that, as above, the relevant local council should be responsible for imposing conditions relating to the sound proofing of the venue (for example, including double glazing, insulation).

8.6.6 In relation to section 105 of the Act, I have recommended that the requirement for entertainment consent be removed entirely. Entertainment other than 'prescribed entertainment' should be authorised for all types of licences as a matter or right. I discuss this further in chapter 5.5.

8.6.7 I recommend that section 106 be retained as it provides interested parties with an avenue to complain and seek resolution. Section 106 may also be used to add appropriate conditions to the licence to resolve the dispute, including for example the hours of live music but should not include prescribing the specific genre or categories of music.

8.6.8 It has also been brought to my attention that often the requirement in section 106(3)(a) requiring a complaint to be authorised by at least 10 other people that reside, work or worship in the vicinity does not always apply because of the Commissioner's discretion in section 106(3)(b). It is my view that the requirement to have the authorisation of at least 10 other people should be adhered to and the discretion only exercised by the Commissioner in exceptional circumstances.

| Recommendation 71 | Section 106 of the Act relating to complaints about noise etc. emanating from licensed premises should be retained. |
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[110] See section 105(6) and Appendix 1

## 8.7 Local Nuisance and Litter Control Act 2016

8.7.1 The *Local Nuisance and Litter Control Act 2016* ('Local Nuisance Act') passed Parliament on 18 May 2016 and received Royal Assent on 26 May 2016. The Local Nuisance Act makes local councils the principal authority for dealing with local nuisance (which includes noise) and littering in its area. Schedule 1 declares noise from licensed premises to be excluded from the definition of local nuisance.

8.7.2 Schedule 1, clauses 1 (k) and (l) provides—

> *The following are declared not to constitute local nuisance for the purposes of section 17(1):*
>
> *(k) an activity on, or noise emanating from, licensed premises within the meaning of the Liquor Licensing Act 1997 in respect of which a complaint may be lodged with the Liquor Licensing Commissioner under section 106 of that Act;*
>
> *(l) behaviour in respect of which a complaint may be lodged with the Liquor Licensing Commissioner under section 106 of the Liquor Licensing Act 1997;*

8.7.3 Further, I note that Section 18 of the Local Nuisance Act contains the offences for causing a local nuisance. There are maximum penalties and expiation fees associated with these offences.

8.7.4 I have considered whether the management of noise should be removed entirely from the Act and whether noise emanating from licensed premises should be dealt with under the Local Nuisance Act by councils. I consider that imposing a penalty or expiation fee for noise is probably not the right solution for licensed premises and that the current conciliation process under section 106 of the Act is probably a better way to resolve complaints.

8.7.5 The Licensing Authority must be given the power to enforce the ultimate sanctions against an offending licensee. That could mean a suspension or cancellation of a licence for continued breaches of conditions. For these reasons, I would not alter the current powers in this respect and recommend that the resolution of noise complaints remain with the Commissioner under section 106 of the Act.

## 8.8 Appeals

8.8.1 One of the issues raised in the Discussion paper was *"Should appeals against decisions where there are both elements of liquor and planning be heard together?".*[111]

8.8.2 There are submissions that both support and oppose appeals against decisions where there are both elements of liquor and planning being heard together. Given my view that there should be a clear delineation of responsibility about the role of council and the role of the Licensing Authority, I believe that appeals should be heard separately as is the case now.

[111] *Discussion Paper, page 17.*

# CHAPTER 9 – THE NEEDS TEST

## 9.1 Liquor Licensing Act 1997

9.1.1 Sections 58 and 61 of the Act contain requirements for applicants seeking a new Hotel Licence and a new Retail Liquor Merchant's Licence or for the removal of either a Hotel Licence or a Retail Liquor Merchant's Licence to other premises. The requirements have become known as the 'needs test'.

9.1.2 The 'needs test' has been part of South Australian liquor licensing history since 1967. It has been applied in different forms since that time and has been the subject of many appeals and interpretations by the Supreme Court.

9.1.3 Section 58 of the Act states—

> *(1) An applicant for a hotel licence must satisfy the licensing authority by such evidence as it may require that, having regard to the licensed premises already existing in the locality in which the premises or proposed premises to which the application relates are or are to be situated, the licence is necessary in order to provide for the needs of the public in that locality.*
>
> *(2) An applicant for a retail liquor merchant's licence must satisfy the licensing authority that the licensed premises already existing in the locality in which the premises or proposed premises to which the application relates are, or are proposed to be, situated, do not adequately cater for the public demand for liquor for consumption off licensed premises and the licence is necessary to satisfy that demand.*
>
> *(3) A reference to licensed premises already existing in a locality extends to premises in that locality, or premises proposed for that locality, in respect of which a licence is to be granted, or to which a licence is to be removed, under a certificate of approval.*

9.1.4 Section 61 of the Act states—

> *(1) An applicant for removal of a hotel licence must satisfy the licensing authority by such evidence as it may require that, having regard to the licensed premises already existing in the locality to which the licence is to be removed, the removal of the licence is necessary in order to provide for the needs of the public in that locality.*
>
> *(2) An applicant for the removal of a retail liquor merchant's licence must satisfy the licensing authority that the licensed premises already existing in the locality to which the licence is to be removed do not adequately cater for the public demand for liquor for consumption off licensed premises and the removal of the licence is necessary to satisfy that demand.*
>
> *(3) A reference to licensed premises already existing in a locality extends to premises in that locality, or premises proposed for that locality, in respect of which a licence is to be granted, or to which a licence is to be removed, under an existing certificate of approval.*

9.1.5 The test for a Retail Liquor Merchant's Licence is slightly harsher, with the applicant being required to establish in addition to the primary 'needs test' that *licensed premises in the locality do not adequately cater for the public demand for liquor for consumption off licensed premises*. It has been referred to as a two-step process, first the need must be established and second whether the existing premises adequately caters for the public demand.

9.1.6 This 'needs test' has proved to be a difficult one for applicants to overcome and may tend to explain why the history of licensing over the past ten years shows that both Hotel Licences and Retail Liquor Merchant's Licences have not increased in number whereas many other categories have seen substantial increases. From 30 June 2005 to 31 May 2016, there was an increase of 0.8% in Hotel Licences and 0.5% in Retail Liquor Merchant's Licence. See table number 2.

9.1.7 I note in the recent decision of *Woolworths Ltd v Fassina Investments Pty Ltd & Ors [2015] SASCFC 72*, by the Full Court of the Supreme Court, the 'needs test' in relation to a Retail Liquor Merchant's Licence has been watered down. This decision arose from an appeal from the Licensing Court where the Licensing Court Judge held that *"inconvenience was not of itself decisive and that the public demand for liquor was being adequately met by thirteen existing licensed premises"*[112] close to the Arndale Shopping Centre where the applicant wished to trade.

9.1.8 The Full Court reversed the decision and ordered that the licence be granted. It was held that the Judge incorrectly applied section 58(2) of the Act.

9.1.9 Parker J (with Kourakis CJ and Vanstone J agreeing) held—

> *"I stress that s58(2) re-focusses the test from a question as to whether the demand in a locality can be 'met' without unreasonable inconvenience by existing local retail facilities to require an assessment by the licensing authority of whether the existing facilities 'adequately cater' for that demand. The term 'adequately cater' has altered the focus of the public demand test to require consideration of the public's expectations as to the accessibility of retail liquor services."*[113]

9.1.10 His Honour went on to say—

> *"The extent to which existing facilities cater for the contemporary shopping habits of the public as a whole, or significant sections of it, is an important element of the 'adequately cater' test. The degree of difficulty and inconvenience that the public, or a significant section of it, will suffer, if an application is refused, is an important element of that test. However, it is not the sole criterion. Contemporary patterns of family, work and social life that rely on the convenience of one-stop shopping are also relevant considerations. In that respect, the current provision has effected a significant relaxation of the former test."*[114]

9.1.11 His Honour was of the opinion that, based on contemporary community expectations, the consideration that Arndale Shopping Centre would include a retail liquor store was of particular importance because of the status of that shopping centre as a regional centre.

9.1.12 In summary his honour found that section 58(2) requires a normative judgement about the adequacy of liquor supply provided by the existing premises, but the standard that is to be applied to the normative judgement is different than it was under section 38(1) of the previous *Liquor Licensing Act 1985*.

9.1.13 Parker J referred to the judgement of Doyle CJ in *Woolies Liquor Stores Pty Ltd v Carleton Investments Pty Ltd (1998) 73 SASR 6*. Doyle CJ dealt with the different language in the two Acts in some detail. Doyle CJ held that—

> *"The court is required to determine not just what the public in the relevant locality want. If, whatever the public may want, there are existing premises that are capable of catering for the public demand for liquor, the court must decide, by reference to contemporary standards, whether, if the public are to satisfy their demand at those premises, it can be said that their demand is adequately catered for."*[115]

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[112] *Woolworths Ltd v Fassina Investments Pty Ltd & Ors [2015] SASCFC (15 May 2015).*
[113] *Woolworths Ltd v Fassina Investments Pty Ltd & Ors [2015] SASCFC (15 May 2015) at paragraph [50].*
[114] *Woolworths Ltd v Fassina Investments Pty Ltd & Ors [2015] SASCFC (15 May 2015) at paragraph [50].*
[115] *Woolworths Ltd v Fassina Investments Pty Ltd & Ors [2015] SASCFC (15 May 2015) at paragraph [46] citing Woolies Liquor Stores Pty Ltd v Carleton Investments Pty Ltd (1998) 73 SASR 6 at 11-12*

9.1.14 His Honour went on to say—

> *"It is tempting to look for synonyms and substitutes for the statutory standard that existing premises do not adequately cater for the public demand. It is better to resist that temptation, because in the end it is the statutory test that must be applied. In practice, I expect that the outcome in a given case will be pretty much the same as the outcome would have been under the previous legislation. In particular, the matters referred to by King CJ in Lovell v New World Supermarket (at 55-56) will continue to be relevant matters for consideration. But, for better or worse Parliament has changed the statutory language, and it is that language that must be applied."*[116]

9.1.15 It can be seen therefore that the Full Court in *Woolworths Ltd v Fassina Investments Pty Ltd & Ors* has taken the 'needs test' further than Doyle CJ in *Woolies Liquor Stores Pty Ltd v Carleton Investments Pty Ltd*. It is a step which moves away from the approach advocated by King CJ and Doyle CJ in the earlier judgements above. It is a step which is placing more weight on contemporary standards and expectations and looks more to the public interest.

9.1.16 The present Supreme Court seems to be moving in the direction which I advocate later in this chapter, namely, a system of licensing which generally takes into account the expectations and aspirations of the public. In addition, I advocate for the introduction of a concept of Community Impact and Public Interest for certain higher risk categories of licence.

[116] *Woolworths Ltd v Fassina Investments Pty Ltd & Ors [2015] SASCFC (15 May 2015) at paragraph [46] citing Woolies Liquor Stores Pty Ltd v Carleton Investments Pty Ltd (1998) 73 SASR 6 at 11-12*

## 9.2 Review of Liquor Licensing Act 1985

9.2.1 When I reviewed the *Liquor Licensing Act in 1996*, I considered whether the 'needs test' should be retained.

9.2.2 I decided, and marginally at that time, that it was for the benefit and stability of the liquor industry as a whole and that the 'needs test' should remain for hotels and bottle shops.

9.2.3 At the time I was also required to consider, as part of my terms of reference, *"issues which arise under National Competition Policy"*.[117]

9.2.4 I decided that, on balance, the 'needs test' should remain at least in the short term and should be the same for both licences. I specifically said that the whole area of 'need' should be reviewed again with the benefit of interstate experience in three or four years' time following my report in 1996.

9.2.5 I note, that this is the first time since then that such a review has been undertaken.

[117] *TR Anderson QC, Review of the South Australian Liquor Licensing Act 1985, (1996), page 13.*

## 9.3 National Competition Policy Review

9.3.1 Following my review in 1996, there was a National Competition Policy Review ('NCP Review') undertaken in April 2003.[118] This review specifically referred to the recommendations that I had made in 1996.

9.3.2 I note that the NCP Review went into considerable detail in relation to comparisons with other jurisdictions and specifically looked at the argument relating to density of outlets and whether the 'needs test' was a means of limiting the number of liquor outlets in a locality.

9.3.3 The NCP Review identified that consumers were highly mobile in and around the metropolitan area and that in addition there was the introduction in 2000 of the Direct Sales Licence, and that both of these developments reduced the relevance of the concept of locality.[119]

9.3.4 The panel conducting the NCP Review concluded that the 'needs test' in fact exercised no real restraint over the access of customers to as much liquor as they wished to purchase.[120]

9.3.5 The panel found that the 'needs test' was a serious restriction of competition because[121]—

(a) *"it excludes some entrants from the market entirely."*

(b) *"the cost imposed on impending entrants by the restrictions are by no means negligible and may be particularly onerous for small business…"*

(c) *"it tends to limit the overall number of liquor businesses."*

9.3.6 The panel held that the 'needs test' did not "*deliver any public benefits that could not be delivered by other, less restrictive means".*[122]

9.3.7 The panel particularly looked at evidence of harm having been created by deregulation in both Victoria and New Zealand. The conclusion was that deregulation did not necessarily mean any increase in alcohol consumption or in liquor related harm to the public, as a result the panel concluded that the 'needs test' should be abolished.[123]

9.3.8 The requirements for packaged liquor sales in dedicated premises were also considered by the panel. This relates to the existing section 37(2) of the Act which states—

*(2) It is a condition of a retail liquor merchant's licence that the licensed premises must be devoted entirely to the business conducted under the licence and must be physically separate from premises used for other commercial purposes.*

***Exceptions-***

*1 Goods may be sold in the same premises if they are of the kind normally associated with, and incidental to, the sale of liquor (eg glasses, decanters, cheeses and pates).*

*2 The licensing authority may grant an exemption from the above condition if satisfied that the demand for liquor in the relevant locality is insufficient to justify the establishment of separate premises or there is some other proper reason for granting the exemption.*

[118] *National Competition Policy Review, Review of Sections 37(2), 58 & 61, draft report (April 2003)*
[119] *National Competition Policy Review, Review of Sections 37(2), 58 & 61, draft report (April 2003), page 34-35*
[120] *National Competition Policy Review, Review of Sections 37(2), 58 & 61, draft report (April 2003), page 35*
[121] *National Competition Policy Review, Review of Sections 37(2), 58 & 61, draft report (April 2003), page 47*
[122] *National Competition Policy Review, Review of Sections 37(2), 58 & 61, draft report (April 2003), page 47*
[123] *National Competition Policy Review, Review of Sections 37(2), 58 & 61, draft report (April 2003), page 47-48*

9.3.9 The panel believed that such a restriction delivered public benefits in that it made enforcement easier and reduced the risk of liquor sales to minors.[124] Further, the panel weighed up the cost associated with providing separate premises as against the benefits and concluded that the benefits outweighed the costs and that that requirement should remain. [125]

[124] *National Competition Policy Review, Review of Sections 37(2), 58 & 61, draft report (April 2003), page 26-27*
[125] *National Competition Policy Review, Review of Sections 37(2), 58 & 61, draft report (April 2003), page 26*

## 9.4 Submissions to the Review

9.4.1 The most vocal of proponents for maintaining the 'needs test' is the AHA SA. The AHA SA state—

> *"A further lessening of the needs test will not be in the interests of the community or existing small and medium enterprises, the family based hotels or the existing retail liquor merchants and will not provide more competition than that already available. It will simply further empower national and multi-national grocers".*[126]

9.4.2 The AHA SA are strongly supported by the existing independent liquor stores. The South Australian Wine Industry Association has also expressed concerns regarding the relaxation of requirements allowing more supermarkets to sell liquor, as they say wine producers are unlikely to benefit. Clubs SA and the Liquor Marketing Group also have concerns with respect to supermarkets selling own or home brand liquor.

9.4.3 Those advocating the removal of the 'needs test' are the supermarket operators who wish to add liquor to their range of products. This group includes—

- ALDI Stores
- Costco Wholesale Australia Pty Ltd;
- Foodworks;
- Master Grocers Australia;
- South Australian Independent Retailers (representing Foodland, Independent Grocers of Australia and Friendly Grocer Groups).

9.4.4 Coles Liquor does advocate for the removal of the 'needs test' but has taken a neutral position in respect of its supermarkets selling liquor.

9.4.5 There was also a submission from the ALH Group who operate licensed venues and retail liquor outlets across Australia under the Woolworths umbrella.[127] However, their submission focussed mainly on their hotel operations and did not provide a response in relation to supermarkets selling liquor.

9.4.6 The groups advocating for the removal of the 'needs test' contend that deregulation in this area will allow the market to find its own level. They contend that all can serve a different part of the market and that as a result there will be a wider choice for customers and more exposure for the smaller wineries who may not have the market power to deal with the larger supermarkets.

9.4.7 There are health and medical groups who strongly oppose the concept of increased outlets and an increase in the availability of alcohol. These groups comprise the—

- Royal Australasian College of Surgeons;
- Public Health Association of Australia;
- Foundation for Alcohol Research and Education (FARE);
- South Australian Network of Drug and Alcohol Services (SANDAS); and
- Australian Medical Association (South Australia) Inc.

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[126] *Australian Hotels Association SA Submission, page 25*
[127] *Woolworths Limited is a 75% shareholder in the ALH Group. The other 25% is owned by the Mathieson Group www.woolworthslimited.com.au/page/A_Trusted_Company/Responsible_Service/Hotels_and_Liqour/*

## 9.5 Relevance of the 'needs test'

9.5.1 While it could be argued that the 'needs test' has served the State well in controlling access to alcohol at a local community level, it has in my view, simply evolved over time as a vehicle for objectors to control competition within a locality. It favours the incumbent licences.

9.5.2 The question now is whether it is time to remove the 'needs test' as it applies to both the current Hotel Licence and current Retail Liquor Merchant's Licence.

9.5.3 Having considered the views put forward by respondents, I have concluded that the 'needs test' should now be removed and replaced with an alternative test. I have also concluded that the restriction on a Retail Liquor Merchant's Licence to sell from a specifically separate licensed area should remain. This is discussed in detail in chapter 10 where I also address the sale of packaged liquor in supermarkets.

9.5.4 My main reason for this conclusion is, as set out above, that the test has been used unscrupulously by objectors to stifle competition either by delay and therefore expense, or by a war of attrition which prejudices the small operator against a large established business. In addition, it is clearly anti-competitive and in my opinion contrary to National Competition Policy.

9.5.5 I accept that the removal of the 'needs test' and treating alcohol like any other commodity has the potential to significantly increase the number of liquor outlets within the community. Further, if left unregulated, the increase in outlets would clearly be contrary to the harm minimisation objectives of the Act and could impact negatively on the local community and the public as a whole.

9.5.6 At the very least, anecdotal evidence shows that the uncontrolled expansion of liquor outlets has the potential to cause disproportionate harm at both a local and broader community level, and especially in relation to anti-social behaviour including domestic violence. However, rather than totally deregulate, I propose a new test to protect the community and public interest.

9.5.7 For the reasons outlined above, I consider the 'needs test' should be replaced. I will now discuss an alternative test which reflects contemporary standards and is consistent with minimising any potential harm from an increase in outlets selling liquor.

## 9.6 Community Impact and Public Interest Test

9.6.1 I have recommended in chapter 3 that the objects of the Act be amended to ensure as far as practicable that the sale and supply of liquor is consistent with the expectations and aspirations of the public. Further, I have recommended that the Licensing Authority should not grant an application for a licence or removal of licence for premises or proposed premises unless it is consistent with the objects of the Act. Therefore, all applicants for a liquor licence must satisfy all the objects including the object related to the expectations and aspirations of the public.

9.6.2 I have reviewed the position interstate with respect to the requirements applicants must satisfy, and note that all jurisdictions have a different approach. For example—

- Western Australia provides for a public interest test, namely that the granting of the application is in the public interest[128]; and
- Tasmania provides for a community interest based test, that in considering an application that the decision is in the best interests of the community.[129]

9.6.3 I recommend that an appropriate replacement test for the 'needs test' should be a test based on the concept of community impact and public interest. In other words, an applicant must satisfy the Licensing Authority that granting the application will not detract from the safety and well-being of the community and is in the public interest (**Community Impact and Public Interest Test**).

9.6.4 This will involve the Licensing Authority balancing any benefits against any detriment. This test will consider matters that are wider than the aspirations and expectations of the public (which must be satisfied as part of the objects of the Act). I discuss the proposed new test later in this chapter.

9.6.5 I also recommend that only certain higher potential risk categories of licence should be subject to this test. It is my view that the new test should apply to an application for the grant or removal of—

(a) a **General Liquor Licence** (formerly a Hotel and certain categories of Special Circumstances Licence);

(b) a **Packaged Liquor Sales Licence** – not being direct sales (formerly a Retail Liquor Merchant's Licence, Direct Sales Licence and certain categories of Special Circumstances Licence);

(c) a **Club Licence** (including former Limited Club Licences) seeking approval for packaged liquor sales to members of the club or the public for consumption off the premises; and

(d) an **On-Premises Licence** (including former Entertainment Venue Licence and certain categories of Special Circumstances Licence) seeking approval to trade later than 2am to the extent that—

(i) it is intended that licences where the primary and predominant business is live entertainment or those businesses ordinarily known as nightclubs, karaoke bars and other bars are captured by this provision; and

[128] *Section 38 of the Liquor Control Act 1988 (WA)*
[129] *Section 24A of the Liquor Licensing Act 1990 (Tas)*

(ii) it is intended that licences where the primary and predominant business is the provision of a conveyance service, accommodation or sporting venues are not captured by this provision.

9.6.6 I also recommend giving the Licensing Authority discretion to include any other application if it thinks there may be community and/or public interest factors that need to be examined. An example—

- where a licensee seeks to amend the condition on a Packaged Liquor Sales Licence (which may have been previously held under a Special Circumstances Licence) to extend its restricted range of off-premises sales; or
- a cultural specialist grocer wishing to sell other lines of liquor.

9.6.7 In my view the proposed new test to replace the 'needs test' is a movement along the lines of the Full Court decision of *Woolworths Ltd v Fassina Investments Pty Ltd & Ors*. However, the proposed new test goes further as it focuses on the public interest and potential impact on the community rather than simply what the public want and say they cannot get without difficulty.

| Recommendation 72 | **The 'needs test' in sections 58 and 61 of the Act be replaced with a Community Impact and Public Interest Test to apply to certain high risk categories of licence, with a discretion for the Licensing Authority to include other applications.** |
|---|---|

## 9.7 Application of the Community Impact and Public Interest Test

9.7.1 I recommend that the Community Impact and Public Interest Test should be a wide test to capture a broad range of matters. Rather than prescribing or entrenching these matters within the legislation, I recommend that the Commissioner issue guidelines about the Community Impact and Public Interest Test and set out what matters will be considered as part of that test. This will allow the Licensing Authority to be unfettered in the matters that it can consider.

9.7.2 From my assessment of the models interstate, I consider the following matters to be relevant to a Community Impact and Public Interest Test—

*Table 12: Community Impact and Public Interest Test*

| Criteria | Matters To Be Considered |
|---|---|
| The potential harm or health impacts that may be caused to people, or any group of people within the local community area, due to the availability and accessibility of an additional liquor outlet | Are there any 'at-risk' groups or sub-communities within the locality? This may include—<br>▪ children and young people;<br>▪ Aboriginal people and communities;<br>▪ people from regional and remote communities, families;<br>▪ migrant groups from non-english speaking countries;<br>▪ people in low socio-economic areas;<br>▪ mining communities; and/or<br>▪ communities that experience high tourist/visitor numbers. |
| | Are there any community buildings, facilities and areas within the locality? Such facilities would include —<br>▪ schools and educational institutions;<br>▪ hospitals, drug and alcohol treatment centres;<br>▪ accommodation or refuges for young or disadvantaged people;<br>▪ child care centres;<br>▪ aboriginal communities;<br>▪ recreational areas<br>▪ dry areas; and<br>▪ any other area where young people may congregate or be attracted to. |
| | What policies and procedures will the applicant implement to minimise any potential harm or health impacts to these 'at-risk' groups or sub-communities? |
| Information about the suburb or council area in which the premises is proposed to be located to assess any social impact on the community. | This may include crimes statistics[130], social profile information[131] and the location of existing licensed premises. |

[130] *The website of the South Australian Office of Crime Statistics & Research (OCSAR) does publish information relating to crime statistics and also refers to population statistics see www.ocsar.sa.gov.au*
[131] *Population, unemployment and average wage in relation to council areas may be found on the Australian Bureau of Statistics website see www.abs.gov.au*

| Criteria | Matters To Be Considered |
|---|---|
| Any cultural, recreational, employment or tourism benefits for the local community area. | Will the proposed licensed premises provide economic benefits or any additional employment opportunities and to what level? |
| Why the grant of a relevant application is in the public interest and how the additional liquor outlet will benefit the local and broader community. | ▪ What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dinning.<br>▪ Will the proposed licensed premises provide additional choices of service or products that are not available in the area?<br>▪ Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts?<br>▪ Will it use existing premises, improve or add to existing premises or is it a new premises? |

9.7.3 In addition to the Community Impact and Public Interest Test, all applicants, irrespective of licence class will need to satisfy the objects of the Act including to ensure as far as practicable that the sale and supply of liquor is consistent with the expectations and aspirations of the public.

9.7.4 The onus should therefore be on the applicant to satisfy the Licensing Authority that the grant of a relevant application satisfies the proposed new test. The applicant should provide relevant information to discharge this onus.

9.7.5 The Licensing Authority would be able, in its discretion, to require the applicant to provide such further information as it may require. It should not be sufficient for applicants to merely demonstrate that the grant of the application will not have any negative impact. Applicants should demonstrate both the positive and negative aspects of their application, that is, the benefit outweighs the detriment.

9.7.6 It is not intended that the red tape requirements be unduly onerous for applicants. The aim however, is to provide the Licensing Authority with as much information to enable a decision to be made. For example, an application for a new Packaged Liquor Sales Licence for a big-box style liquor outlet in a low socio economic area, where there are vulnerable groups in the locality and other existing packaged liquor outlets, would likely require more detail than an application for a club licence, for off premises sales to members only, but again that may depend on the locality.

9.7.7 As I have previously recommended, guidelines should also be issued regarding the Community Impact and Public Interest Test. As the Community Impact and Public Interest Test introduces a new concept within the South Australian licensing framework, it will be important to adequately inform the public about the new test. The Government may wish to consider whether these guidelines should be issued administratively, or whether a specific power be inserted in the Act to allow the Commissioner to issue guidelines to the public generally about matters relevant to the administration of the Act.

**Recommendation 73**

**Guidelines should be issued by the Commissioner about the Community Impact and Public Interest Test to inform the public and applicants about the assessment process.**

# CHAPTER 10 – PACKAGED LIQUOR SALES IN SUPERMARKETS

## 10.1 Retail Liquor Merchant's Licence

10.1.1 Under section 37 of the Act, a Retail Liquor Merchant's licence authorises the licensee to sell liquor for consumption off premises. Provided an applicant satisfies all the requirements set down in the Act including the 'needs test', they are eligible for a licence that permits the sale of liquor for off the premises consumption.

10.1.2 The important aspect which makes it difficult for some retailers to comply with the present legislation is section 37(2) of the Act which makes it a condition that the licensed premises must be devoted entirely to the business conducted under the licence and must be physically separate from premises used for other commercial purposes.

10.1.3 The 'physically separate' condition in section 37(2) of the Act has been said to prevent the sale of liquor in supermarkets. Provided 'physically separate' is adequately defined there seems to be no reason why on this basis at least, that supermarkets in South Australia cannot trade in liquor in specifically designated licensed premises, albeit under the same roof as the supermarket complex.

10.1.4 I note that some supermarkets in South Australia currently operate bottle shops adjacent to the general area where the retail supermarket sales take place and some indeed under the same roof as the supermarket. Just a few examples include—

- Woolworths operates a BWS liquor store within its Rundle Mall supermarket;
- Coles operates a Liquorland store as part of its supermarket operation at Westfield West Lakes;
- Foodland at Findon operates a Cellarbrations liquor store adjacent to, but separate from the supermarket; and
- BWS operates licensed premises as part of the Woolworths supermarket complex in Mount Gambier.

10.1.5 There is also a BWS store operating in the Woolworths Shopping Centre in Walkerville. This BWS store was as a result of a removal by Woolworths of its BWS store in Collinswood to the Shopping Centre in Walkerville.[132]

10.1.6 There is nothing in the Act which distinguishes applicants. In other words, any applicant, the operator of a supermarket business (including Coles, Woolworths and Foodland) are all regarded in the same way when consideration is given to whether a licence for a bottle shop should be granted under the present regime.

[132] *BWS – Beer Wine Spirits [2013] SALC 7*

## 10.2 Interstate Comparison

10.2.1 In Queensland and Tasmania, the sale of packaged liquor products in supermarkets is prohibited by legislation.

10.2.2 In Victoria and New South Wales alcohol sales are permitted under the same roof as the supermarket.

**New South Wales**[133]

- The licensed area must be 'adequately separate' from the rest of the supermarket.
- Sales must be conducted at a separate or dedicated check out.

**Victoria**[134]

- A designated sales area is required and the predominant activity within that designated area must be the sale of liquor.
- Victoria does not require a separate or dedicated check out for liquor purchases.

10.2.3 In Western Australia the position was uncertain until a recent decision in which ALDI was granted a liquor licence for its Butler store.[135] I note that conditions were imposed by the Director of Liquor Licensing to ensure that alcohol sales were segregated from the grocery shelves. The conditions included—

- separating the liquor sales section from the supermarket by a solid fixed and non-transparent structure of at least 2.5 metres high; and
- ensuring that all liquor is paid for before leaving the licensed area.

10.2.4 I note that this application received considerable media coverage in Western Australia, particularly as ALDI was the first supermarket operator to acquire a licence to sell liquor from within a supermarket in the State. Further, it should be noted that ALDI has recently been refused permission to sell liquor under a Liquor Store Licence at a new store located in the suburb of Harrisdale in Western Australia[136] (see 10.8.2).

10.2.5 I also note the comments of the Margaret River Wine Association if ALDI were to apply for a liquor licence in Busselton, Western Australia[137] —

> *"if Aldi were to apply for a liquor licence, it could introduce a 'little healthy competition' and might even be a boon for local winemakers."*
>
> *"Most liquor outlets in regional areas and even the bigger ones tend to stock a reasonable amount of local wine and you can only expect that's what they're going to do, if they do end up applying…"*
>
> *"It wouldn't particularly be a bad thing."*

10.2.6 This is in contrast to the submission made to me by the South Australian Wine Industry Association.

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[133] *Section 30 of the Liquor Act 2007 (NSW)*
[134] *Section 11 of the Liquor Control Reform Act 1998 (Vic)*
[135] *A000186489 Conditional Grant of a Liquor Store Licence, ALDI Butler Liquor Store (21 April 2016)* http://www.rgl.wa.gov.au/liquor/director's-decisions/decision-search
[136] *A000183623 and A000137300 Conditional Grant of a Liquor Store Licence, BWS Harrisdale and ALDI Harrisdale (12 May 2016)* http://www.rgl.wa.gov.au/liquor/director's-decisions/decision-search
[137] *https://au.news.yahoo.com/thewest/regional/south-west/a/31470434/no-current-liquor-license-plans-for-aldi-busselton/*

## 10.3 Proposed sale of wine only in supermarkets

10.3.1 In January 2013 the Attorney-General issued a discussion paper regarding a proposal for a new category of licence. The proposal was to create a licence to enable supermarkets to sell wine.

10.3.2 The proposal suggested—

(a) restricting the sale of liquor to wine in bottles of 750mls or less in supermarkets;

(b) that eligible supermarkets must have a floor area of more than 400m$^2$; and

(c) that the designated part of the supermarket for display of wine to be limited to a maximum of 50m$^2$.

10.3.3 That proposal was eventually abandoned following a period of consultation, highlighted by fierce opposition by the AHA SA in particular.

10.3.4 The Attorney-General stated on the 26 August 2013 that the desired outcome could not be achieved and that was why the proposal did not proceed any further. The desired outcome was to promote South Australian wine producers in the retail setting.

10.3.5 I suspect that the desired outcome of the promotion of South Australian wine could not be achieved because it was not possible constitutionally to sell only South Australian wine. Furthermore, I refer to previous decisions of the Supreme Court[138] which made it clear that a retail liquor outlet should stock a full range of liquor including beer, wine and spirits.

10.3.6 Looked at in that way, the Government was embarking on a very difficult, if not impossible task when it proposed the additional class of licence to allow sales of wine in supermarkets. For these reasons, I have not attached too much significance to anything which was said about the wine in supermarket proposal, either during the consultation period or when it was ultimately abandoned.

10.3.7 Many respondents in their submissions have suggested that the ill-fated attempt to create this licence means that the possibility of raising it again is foreclosed and that therefore there should be no further discussion needed in relation to the general rights of supermarkets to sell liquor. I do not accept that proposition.

[138] *For example see Bottega Rotolo Pty Ltd v Saturno's Colonist Tavern P/L & Anor [2008] SASC 6 at para 49 which summarises the nature and purpose of a Retail Liquor Merchant's Licence.*

## 10.4 Effect of the 'needs test'

10.4.1 I am advised that the proposal in 2013 for a new category of licence to enable the sale of wine in supermarkets would not have been subject to the 'needs test'.

10.4.2 If ultimately my recommendation to abandon the 'needs test' is adopted, I would recommend that any supermarket operator or other applicant for a new Packaged Liquor Sales Licence, should still have to satisfy the replacement test that I discuss in chapter 9.6.

10.4.3 It should not be taken as a matter of course that a new licence will be granted. The replacement test will not simply be a rubber stamp.

10.4.4 It follows from the previous discussion regarding the replacement of the 'needs test' that supermarkets along with any other applicant will be required to prove the matters set out to satisfy the Licensing Authority that the grant of a Packaged Liquor Sales Licence (formerly Retail Liquor Merchant's Licence) will not detract from the safety and well-being of the community and is in the public interest (Community Impact and Public Interest Test). This will involve balancing any benefits against any detriment.

10.4.5 In addition to the Community Impact and Public Interest Test, proof would be required to satisfy the objects of the Act, and in particular to ensure as far as practicable that the sale and supply of liquor is consistent with the expectations and aspirations of the public.

10.4.6 Harm minimisation principles will be relevant as they were in the decision of the Director of Liquor Licensing in Western Australia which I discussed above in paragraph 10.2.4.

## 10.5 What does physically separated mean?

10.5.1 Section 37(2) of the Act has been interpreted as meaning that the premises should be separated from the other retail aspects of the business.

10.5.2 This has been interpreted in a number of ways with several models now operating in South Australia. Just a few examples include—

- Woolworths in Rundle Mall has partitioned off an area entirely inside the supermarket (operating as a BWS liquor store);
- Coles at Westfield West Lakes has a partitioned off area operating as Liquorland (with a separate check out) but allows customers to enter either through the supermarket or through the mall without the need to go into the supermarket;
- Cellarbrations in the Findon Shopping Centre is completely separate from the adjacent Foodland with no entry from the supermarket.

10.5.3 I note that the removal by Woolworths of its BWS store in Collinswood to the Shopping Centre in Walkerville was opposed on grounds including the lack of physical separation as there was access from the Woolworths supermarket into the liquor store.[139] This argument was ultimately rejected by the Licensing Court.[140]

10.5.4 As can be seen from recent decisions in Western Australia[141], the application of a public interest test means that there is no guarantee that a licence will be granted as a matter of course.

10.5.5 Provided the physical separation is real and not just a line drawn on the floor, different operators will come up with different business models. However, the criterion should in all cases be a permanent and substantial physical barrier.

[139] *BWS – Beer Wine Spirits [2013] SALC 7*
[140] *BWS – Beer Wine Spirits [2013] SALC 7*
[141] *A000183623 and A000137300 Conditional Grant of a Liquor Store Licence, BWS Harrisdale and ALDI Harrisdale (12 May 2016)* http://www.rgl.wa.gov.au/liquor/director's-decisions/decision-search

## 10.6 Interstate operating practice

10.6.1 I have had the opportunity to inspect the model used by ALDI at their stores in Leichardt, New South Wales and Abbotsford, Victoria. Both of these stores operate with a very limited range of liquor and I was told that it would be the same in South Australia.

10.6.2 The liquor is displayed in an area designated as the licensed area but not physically separate from the main supermarket. There is minimal separation, achieved by way of folding doors which are generally open. In both stores, the liquor area is adjacent to a checkout lane. In New South Wales liquor can only be purchased from a specific checkout lane, whereas in Victoria it can be purchased through any checkout.

10.6.3 The model used by ALDI in Victoria and New South Wales is probably not in accordance with the present South Australian requirement that the licensed premises be physically separated, but ALDI argue that it is physically separate and that this should suffice. ALDI have suggested that the words "physically separate" be replaced by "sufficiently separate" which would enable them to operate with the model they use interstate.

10.6.4 Costco is also opposed to a requirement that the licensed premises be physically separate from the main area of the supermarket. It operates one store in South Australia, located on Churchill Road at Kilburn. Costco caters predominantly for bulk purchases at discounted prices and only allows purchases to be made by members who pay an annual membership fee.

10.6.5 Costco provided me with a listing of its liquor range stocked in its interstate operations. It is much more extensive than ALDI but still limited by comparison with the expected range in a modern bottle shop. While Costco does not sell much 'home brand' liquor compared to ALDI, it does offers a range of common and more expensive liquor lines. Costco also stocks only a handful of wines under $10, with most considerably more expensive, ranging between $10 and $20 per 750ml bottles. It also has a wide range of expensive imported spirits and liqueurs.

10.6.6 Both ALDI and Costco wish to sell liquor as an adjunct to their main business. They submit that liquor sales will be for convenience only and will only form a very small part of their overall trade. I think it is unlikely that they would have any great impact on most other main stream liquor outlets. Much will depend on how the licensed premises are to be delineated in deciding the future in both those operations.

10.6.7 I note that Costco has attempted to obtain a liquor licence for its only store in South Australia. It chose not to apply for a Retail Liquor Merchant's Licence but rather a Special Circumstances Licence. The application was refused by Judge Gilchrist of the Licensing Court[142] and is currently under appeal to the Supreme Court. The application proposed that there be no physical separation of the licensed premises from other parts of the store and the sale of liquor would be for members only. It had also proposed to supply around 300 lines of liquor. The Court found that Costco could not trade under a Retail Liquor Merchant's Licence and exercised its discretion against the grant of a Special Circumstances Licence. The Court was concerned that "*it may set an undesirable precedent for the grant of further special circumstances licences*".[143]

[142] *Costco Wholesale Australia Pty Ltd [2014] SALC 55.*
[143] *Costco Wholesale Australia Pty Ltd [2014] SALC 55 at para 72.*

## 10.7 Minimisation of potential harm

10.7.1 Statistical evidence indicates that approximately 80% of all alcohol consumed in Australia is packaged liquor purchased from off-licence premises outlets.[144]

10.7.2 Clearly this means that retail outlets have the potential for increased harm and provide ready access for minors to either purchase liquor or to consume liquor purchased by a friend who might be just over the age of 18.

10.7.3 There is also a risk of supply to intoxicated persons and a greater possibility of domestic violence attributed to the tendency to drink more packaged liquor at home.

10.7.4 I am of the view that Australians now drink more alcohol at home essentially because of the introduction of random breath testing and the publicity that has been given to apprehending drink drivers. An added contributor is that it is more economical to drink alcohol at home rather than go out to a licensed venue and pay higher prices.

10.7.5 For these reasons, it is important in my view to maintain a permanent and substantial physical barrier between the liquor store and the supermarket.

10.7.6 If this is not done, it is but a small step to placing alcohol on supermarket shelves with bread, milk and other staples. That in my opinion would be contrary to all principles of harm minimisation.

[144] *Supplementary Submission from The Foundation for Alcohol Research and Education, The Public Health Association of Australia, The South Australian Network of Drug and Alcohol Services, The Royal Australasian College of Surgeons, The National Centre for Education and Training on Addiction at page 13 referring to Euromonitor International (2012) Passport: alcoholic drinks in Australia. London: Euromonitor.*

## 10.8 Conclusion

10.8.1 It is my view that the physical separation restriction should remain. It is inconsistent with principles of harm minimisation to have liquor displayed in the same shelves as ordinary food stuffs.

10.8.2 It may be that the ALDI decision in Western Australia can be regarded as a helpful example. The Director of Liquor Licensing insisted on "segregation" from the general supermarket and imposed conditions to the height of a non-transparent solid fixed structure to ensure "greater segregation".[145] Whether that model should form the 'physical separation' requirement in section 37(2) of the Act is arguable but at least it makes the position clear and provides an applicable definition.

10.8.3 It seems to me that the important message to be captured in any amended legislation is that, although under the same roof of the supermarket, the licensed premises should be separated by a permanent and substantial physical barrier. I am not convinced that it needs to be non-transparent or of a certain height, although 2.5 metres seems practical. All business models will differ but in substance the physical separation requirement should be maintained but under the same roof.

10.8.4 The provision requiring the licensed premises to be devoted entirely to the business under the licence should be retained. I also consider that the exceptions provided in section 37(2) of the Act should remain, in particular exception number 2 which allows a licence to be granted if the *"demand for liquor in the relevant locality is insufficient to justify the establishment of separate premises or there is some other proper reason for granting the exemption"*. This exception from the 'physically separate' requirement may be needed in smaller regional stores or for specialist grocery stores.

10.8.5 A decision needs to be made as to whether the licensed premises should contain a separate entry and not one which is through a supermarket or from an adjacent retail area. The BWS store (within Woolworths) in Rundle Mall does not fit that description whereas the Liquor land at Westfield West Lakes does, by having a separate entrance through the mall.

10.8.6 Consideration should also be given to whether the liquor licensed area should be beyond the supermarket checkouts and not within the area where other retail products and the checkouts are housed. As I have indicated previously, there are several liquor stores already operating under the same roof as a supermarket but under different business models.

10.8.7 It is my view that in accordance with harm minimisation principles, the licensed premises should be equipped with a separate checkout operated only by a person who is 18 years of age or older and has completed responsible service of alcohol training. The licensed premises must at all times be personally supervised and managed by a person approved by the Licensing Authority as a responsible person.

10.8.8 If there is a change from a 'needs test' to a Community Impact and Public Interest Test, as I have recommended, the Licensing Authority clearly would not grant a licence to someone operating the supermarket or indeed to any other applicant as a matter of right.

[145] *A000186489 Conditional Grant of a Liquor Store Licence, ALDI Butler Liquor Store (21 April 2016) http://www.rgl.wa.gov.au/liquor/director's-decisions/decision-search, page 14*

10.8.9 It is not correct to say that this change of test will result in a bottle shop on every corner. That would fly in the face of both the objects of the Act and the specific requirement to prove that the grant of a licence will not detract from the safety and wellbeing of the community and is in the public interest.[146]

10.8.10 I recommend in chapter 8 that objections should be replaced by submissions which may only be made on certain grounds, including whether the application satisfies the Community Impact and Public Interest Test. However, submissions based on competitive or economic grounds should not be permitted under any circumstances.

10.8.11 I am not persuaded that there is any need to define a supermarket under the Act because the application for a new Packaged Liquor Sales Licence is open to all, subject of course to obvious businesses and individuals that should be excluded for public interest reasons. These excluded businesses are set out earlier paragraph 5.7.42 of this report.

10.8.12 I anticipate that any future changes to the existing legislation, will cause a number of new applications, but many may not either satisfy the broad objects of the Act or specifically the Community Impact and Public Interest Test. In these circumstances the Licensing Authority would be compelled to refuse the application in its discretion.

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| **Recommendation 74** | **The requirement in section 37(2) that the licensed premises must be devoted entirely to the business conducted under the licence and must be physically separate from the premises used for other commercial purposes, should be retained. Notwithstanding this, the legislation must make it clear that licensed premises can however exist under the same roof as a supermarket.** |
| **Recommendation 75** | **The licensed premises in respect to a Packaged Liquor Sales Licence should have a separate checkout with an adult operator trained in responsible service of alcohol and supervised/managed by a responsible person at all times.** |
| **Recommendation 76** | **Legislation should expressly prohibit specific types of business from holding a Packaged Liquor Sales Licence (see paragraph 5.7.42 for the complete list).** |

[146] *A000183623 and A000137300 Conditional Grant of a Liquor Store Licence, BWS Harrisdale and ALDI Harrisdale (12 May 2016)* http://www.rgl.wa.gov.au/liquor/director's-decisions/decision-search

# CHAPTER 11 – SMALL VENUE LICENCES

## 11.1 Features of the Small Venue Licence

11.1.1 The Small Venue Licence was introduced by an amendment to the Act which came into operation on the 26 April 2013. It is also referred to by the public and media commentators as a Small Bar Licence.

11.1.2 This class of licence authorises the consumption of liquor on licensed premises between 11:00am and midnight with or without a meal. In addition to these basic hours, the trading hours can on application be extended to allow trade from 8:00am and to continue past midnight to 2:00am. If the applicant wishes to provide entertainment, then a separate entertainment consent authorisation under section 105 of the Act has to be obtained for any trade after midnight. The Small Venue Licence restricts the capacity of the premises to a maximum of 120 persons.

11.1.3 The area in which a Small Venue Licence can be granted is limited in the Act to a 'prescribed area' defined as the Adelaide Central Business District which in turn is delineated by the Parklands to the east, south and west and by the northern bank of the River Torrens and therefore excludes North Adelaide. The prescribed area can also include any other area declared by regulation to be a prescribed area. Currently there are no other areas prescribed in the regulations for the purposes of the Small Venue Licence.

11.1.4 It seems from reading Hansard extracts that the prescribed area for the application of the Small Venue Licence may have been a result of a compromise reached between the Government and other interest groups.[147] In an attempt to find a compromise, it appears from the Hansard, that the Government included the CBD, but excluded North Adelaide.[148]

11.1.5 The Small Venue Licence was introduced to enable people wishing to set up a small bar or venue to do so at a lower cost of entry. The object was to provide an alternative in the night time economy within the city, whilst ensuring harm minimisation through restricted trading hours and capacity. In my view the Small Venue Licence poses a lesser risk of harm than other venues with late night trading.

11.1.6 There is no basis under the present legislation for residents, competitors or anyone else for that matter to object to the grant of such a licence. However, such persons may lodge a submission which is then considered by the Licensing Authority and taken into account in deciding whether to grant or refuse a licence. The submissions process applicable to a Small Venue Licence probably also contributes to the simplified application process for that licence.

[147] *House of Assembly Hansard, Tuesday 5 February 2013 page 4174-4175*
[148] *House of Assembly Hansard, Tuesday 5 February 2013 page 4174-4175*

## 11.2 General observations and red tape reduction opportunities

11.2.1 There are now 73 Small Venue Licences in existence (including 69 actively trading) and a further nine applications under consideration.

11.2.2 The licence has proved to be most successful in both its simplicity and lack of red tape for applicants but also in relation to its popularity with the public within the area in which it has operated in the CBD.

11.2.3 In my view the success of the Small Venue Licence has been because of the process of case management with CBS, Renewal SA and the Adelaide City Council working collaboratively to assist new entrants into the market with an analysis of the regulatory requirements.

11.2.4 The success of the Small Venue Licence and the fact that applications are frequently being made indicate that the market has probably not yet reached a mature level. Obviously the market will find its own level and at some time these applications will plateau.

11.2.5 There seems to be no real need to change the restricted maximum capacity of 120 persons, as the success may, in part, be attributable to the intimacy of the venue.

11.2.6 Consistent with red tape reduction, the applications made in respect of a Small Venue Licence should result in a licence endorsed for all purposes so that it shows clearly what the licensee is entitled to do.

11.2.7 In chapter 5.5, I recommend that there should be no need for a separate application for entertainment or for an authorisation to trade outside the standard hours, in the case of the Small Venue Licence either before 11:00am or after midnight.

11.2.8 In other words, if someone wants to procure such a licence and wishes to operate from 8:00am to 2:00am they should be entitled to do so. It is my view that an applicant should also not have to make a separate application for entertainment consent or for extended trade beyond midnight to 2.00am. As I have recommended previously, an applicant would choose the Nominated Trading Hours within the authorised hours which best meets the needs of their business model.

## 11.3 Extension of Small Venue Licence

11.3.1 As I see it, the options for the Government regarding the prescribed area for the Small Venue Licence are:

(a) no amendment so that it remains confined to the CBD;

(b) include North Adelaide so that the whole of the Adelaide City Council area is within the prescribed area;

(c) include selected areas of metropolitan South Australia, such as Glenelg, Prospect Road, King William Road, Norwood Parade (to name a few);

(d) include tourist precincts such as Glenelg, Kangaroo Island, Port Lincoln and the Barossa Valley; or

(e) apply it to the whole of South Australia.

11.3.2 There is a clear polarisation of views as to whether the licence should be allowed in areas outside that which is presently prescribed.

11.3.3 In its written submission the Adelaide City Council—

> *"…support[s] more detailed consideration of the Small Venue Licence being extended to the commercial areas of North Adelaide".*[149]

11.3.4 In relation to extending the Small Venue Licence to other areas, the Adelaide City Council states that—

> *"…if small venues are to be allowed in further locations, that this be done in a way consistent with the envisaged centres of the 30 Year Plan for Greater Adelaide and in consultation with industry and local government generally."*[150]

11.3.5 The Councils which have made submissions, and in almost every case, have asked for the legislation to be amended so that the prescribed area relating to Small Venue Licence can be extended to enable such a licence to be obtained within their relevant local council area.

11.3.6 The AHA SA and some others oppose the extension of the prescribed area beyond the CBD. In particular, AHA SA point to the potential detriment to hotels, particularly those in regional areas. The argument is basically that the hotel provides a community service and provides benefits to the local community and would suffer at the hands of any new venture which impinges on their trade.

[149] *Adelaide City Council submission, page 19*
[150] *Adelaide City Council Submission page 19-20*

## 11.4 Conclusion

11.4.1 The brand name of the Special Venue Licence has been particularly successful. No doubt in part, because it is related to the CBD of Adelaide.

11.4.2 It involves significant co-operation between the applicant for the licence and the Adelaide City Council in its administration of the early stages, including giving advice and enabling an applicant to consider all the various matters which the Council considers in its decision making process.

11.4.3 There is therefore a consistency in the administration of such a licence application before it is even granted by the Licensing Authority.

11.4.4 If the Small Venue Licence concept was extended beyond the precincts of the Adelaide City Council, it would in my view cause a potential for inconsistency as there would be many disparate views which would prevail in various local councils.

11.4.5 It seems to me that although there is some merit in retaining the existing licence in its existing form and not extending it to the suburbs and the regions of South Australia, it is my view that consideration should be given to extending the prescribed area to include North Adelaide, subject of course to local planning and zoning criteria.

11.4.6 Clearly, both O'Connell and Melbourne Streets in North Adelaide stand out as obvious places in which such a licence should operate. There may well be others in and around the O'Connell and Melbourne Street precincts. However, I envisage that there will be clear areas, where because of the zoning of the Adelaide City Council, operating such a licence would not be appropriate.

11.4.7 On balance, I would favour the extension into North Adelaide to cover the whole of the area administered by the Adelaide City Council. I would also allow the market to develop and evaluate with a review of potential extension in two or three years' time.

| Recommendation 77 | Extend the application of the Small Venue Licence to include the area of North Adelaide. |
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# CHAPTER 12 – LIMITED LICENCES

## 12.1 Overview

12.1.1 Section 41 of the Act outlines the criteria and authorisations associated with a Limited Licence. In my view a Limited Licence is not really a licence. It is in truth a permit which I note was how it was described in earlier legislation. There may be some merit in reverting to such a description.

12.1.2 It should be remembered that a Limited Licence is a temporary permission to sell liquor or to allow for the consumption of liquor on unlicensed premises for specified occasions.

12.1.3 It has also been used under the Act as an adjunct to an existing licence. For instance, the holders of club and producer's licences are currently taking out Limited Licences for functions which in my view should be allowed to be conducted under their existing licence through a licence endorsement. In chapter 5, I recommended that the proposed Club Licence and Liquor Production and Sales Licence be endorsed to permit the sale and supply of liquor at a number of events per year, subject to the payment of an Extended Event Trading Fee.

12.1.4 If this recommendation is adopted by the Government, the role of a Limited Licence will then be reduced. I discuss further the concept of an Extended Event Trading Endorsement and the relevant annual fee in chapter 6.

## 12.2 Types of Permit

12.2.1 The Discussion Paper states that in 2014-15 the Commissioner granted approximately 8,000 applications for limited licences.[151]

12.2.2 The Regulations divide Limited Licences into categories for the purpose of imposing a licence fee on the grant of a licence and are assessed as:

(a) a function catering for one day or less; or

(b) an outdoor function which will operate past 1.00am and with a capacity exceeding 300 people; or

(c) a function which contemplates boxing, wrestling or other entertainment that is regarded as adult entertainment; or

(d) a function which will operate past 1.00am for multiple days where the maximum total capacity over those days exceeds 1000 people; or

(e) a function extending over multiple days where the maximum total capacity over those days exceeds 5000 people.

12.2.3 The first category (a function for one day or less) includes low risk functions such as quiz nights, award ceremonies, birthdays and engagements, school fetes, trade functions, Rotary Club functions and the like.

12.2.4 In comparison, some functions are deemed to be high risk solely because of capacities, typically functions and or events held at racing and sporting clubs or by the local community. Some functions are deemed to be high risk because of late trading and capacity including events such as the Royal Croquet Club, Schutzenfest, Garden of Unearthly Delights, Clipsal 500 and others.

12.2.5 In my view, the concept of a Limited Licence should be abolished and replaced with a permit-based system as discussed in Chapter 4, consisting of:

(a) a Liquor Permit for a single low-risk event;

(b) an Extended Event Permit for a low-risk event held over multiple days; and

(c) a Special Event Permit for high-risk events.

| Recommendation 78 | The existing Limited Licence class of licence be abolished and incorporated under a Liquor Permit, Extended Liquor Permit or Special Event Permit depending on the duration and nature of the event. |
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[151] *Discussion Paper, page 5*

12.2.6 Further, there should be a renewable BYO Permit (for operators who wish to provide a BYO facility but without the full authorisation and trading rights applicable under a Restaurant Licence). This could typically apply to galleries, studios, café's and tourism providers— see chapter 7.9.

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| **Recommendation 79** | **There should be a renewable BYO Permit (for operators who wish to provide a BYO facility but without the full authorisation and trading rights applicable under a Restaurant Licence). This could apply to galleries, studios, café's and tourism providers.** |

## 12.3 Reduction of Red Tape

12.3.1 As I have said above, much of the administration for this category of licence will disappear if licensees who now have to obtain a Limited Licence in addition to their existing licence are able to have the event or a number of events specified as an endorsement on their licence. This would certainly reduce red tape, save expense and save confusion in policing the conditions of such licences.

12.3.2 I note that a number of respondents have indicated that the current process to apply for a Limited Licence is complicated. Further, it is apparent that there is confusion about the steps required to apply for a Limited Licence in respect to a trade or tourism event attended by multiple wine producers.

12.3.3 On 21 November 2014, the former Minister for Business Services and Consumers, Minister Gail Gago, announced changes to the Limited Licence fee structure to enable organisers of an event to lodge only one application for a Limited Licence incorporating all of the applicants (or stall holders). Previously, each stallholder at an event was required to apply separately and be granted an individual Limited Licence.

12.3.4 I am aware that the process of lodging one application on behalf of all stallholders is currently occurring. The 2016 Beachside Food and Wine Festival in Christies Beach and the Clare Valley on Leigh Street events are both recent examples of this successful change.

12.3.5 Half, at least, of the current 8,000 applications processed by CBS each year for a limited licence can be dealt with by a notification process, thus drastically reducing red tape (see chapter 12.4).

## 12.4 Permit by notification only

12.4.1 For low-risk single occasion permits, which currently comprise of 50% of applications[152], I am of the view that there should only be a requirement to notify the Commissioner of the event. The requirement for a separate application which requires processing and an approval to be granted should be dispensed with.

12.4.2 Notwithstanding the above, the Commissioner should retain discretion for either or both the relevant local council and SA Police to be notified of the event.

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| **Recommendation 80** | **The requirement for a separate application for a low-risk single occasion event should be dispensed with and replaced with a system of permits by notification.** |

12.4.3 Where an event is held annually, the Government may wish to give consideration to allowing the Licensing Authority to grant such a permit for a period not exceeding three years. In the event of non-compliance with the permit, the Licensing Authority should have the discretion to revoke the permit and require a fresh application ahead of any subsequent event.

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| **Recommendation 81** | **The Government may wish to give consideration to allowing the Licensing Authority to grant an event permit for a period not exceeding three years (e.g. for low risk events such as Tasting Australia, and the Glendi Festival).** |

[152] *Information provided by CBS.*

# CHAPTER 13 – DRY AREAS

## 13.1 Overview

13.1.1 Section 131 of the Act allows the Minister and Commissioner to prohibit the consumption and/or possession of liquor in a declared public place or public places (commonly known as a dry area).

13.1.2 A person who consumes or has possession of alcohol in a dry area is guilty of an offence, which carries a maximum penalty of $1,250. Offenders may be issued with an expiation notice of $160.

13.1.3 I note that the Commissioner has issued "Dry Area Guidelines" which state that—

> *"The purpose of dry area legislation is to curb alcohol-related problems in public areas such as reserves, main shopping precincts, car parks and foreshores. Reasons for their introduction vary from public nuisance relating to inappropriate use of beaches and other public places, to more complex social issues such as alcohol abuse".*

13.1.4 Further, the Commissioner identifies that there are three main reasons for establishing dry areas—

(a) *One-off major events which are promoted as alcohol free, for example New Year's Eve celebrations.*

(b) *Popular public places where alcohol-related problems negatively affect the amenity of the area, for example, foreshore areas, reserves and car parks.*

(c) *Communities where drinking in public places is an indicator of complex social issues.*

13.1.5 At the present time the Minister can declare a dry area, which may be for any period of time. The Commissioner can do likewise but only for a limited period of 14 days. Dry areas by the Minister or the Commissioner are declared by way of notice in the Gazette.

13.1.6 If a local council wishes to have a dry area for a specific event within its area, it is required to lodge an application with CBS. The CBS "Dry Area Guidelines" outline the requirements for an application by council. In particular, applications must—

(a) be lodged at least four months before the event date;

(b) include a detailed and accurate description and plan of the area;

(c) include a letter of support from the officer in charge of the local police station; and

(d) a letter of support from the local Member of Parliament.

## 13.2 Local Councils

13.2.1 A number of local councils, in their submissions, have generally expressed a desire to have some power themselves to declare areas to be dry areas. The Commissioner supports this but only if the dry area is limited to one or two day events. This would include for example Christmas pageants and family friendly events etc.

13.2.2 I have discussed this matter with SA Police, who have advised me that provided they are notified, they would not oppose councils from having the power to declare dry areas for specific short term events.

13.2.3 The current process for councils to apply for a dry area is somewhat cumbersome. If the council is given power to declare short-term dry areas (limited to not more than 48 hours) to cater for a specific event, it can more efficiently declare the dry area rather than having to spend a significant amount of time and expense in preparing an application for CBS.

13.2.4 The process and requirements for the declaration of a dry area should be left to the individual council to determine. However, there should be a requirement in the legislation that requires the council to—

(a) notify residents of the declared dry area, either through the local messenger newspaper and/or on the council website;

(b) provide residents through this notification with a detailed and accurate description and plan of the area (similar to the current process);

(c) erect adequate signage in accordance with the CBS "Dry Area Guidelines" inform the public of the nature and duration of the prohibition. For example—




13.2.5 I recommend that councils should only have to notify SA Police and the Commissioner of the declared dry area, at least seven days before the commencement of the dry area. In my view it is not necessary to seek a letter of support from the local police station and local Member of Parliament for dry areas of less than 48 hours and for a specific event.

13.2.6 If the Government accepts my recommendation to allow councils to declare dry areas, in limited circumstances, it is my view that the Commissioner should also be given the power to vary or revoke those dry areas if it is in the public interest. This will ensure that councils are not acting beyond the scope of the power intended.

## 13.3 Social impact of dry areas

13.3.1 ALRM and DASSA, share the view that the effect of long-term dry areas is that vulnerable people move further out and are therefore excluded from access to social and welfare services.

13.3.2 There is anecdotal evidence which suggests that dry areas create problems, notably an increase in domestic violence, which has been noted in Coober Pedy since the town area has been declared dry.

13.3.3 While this issue predominantly relates to Aboriginal communities, it also has an effect on other vulnerable people, such as those that are homeless. In this regard, it may therefore be considered a cosmetic solution.

13.3.4 The dry areas provision is not just for the protection of vulnerable communities. It is to enable people, and in particular families, to enjoy a social occasion in a public place without the possibility of being interrupted by intoxicated persons. It is an important part of the liquor licensing legislation.

## 13.4 Conclusion

13.4.1 My conclusion from reading the submissions and speaking with interested groups is that the power to declare dry areas under section 131 of the Act should remain with the Minister without any restriction and with the Commissioner subject to the dry area being limited to a maximum period of 14 days. Further, councils should also have the power to declare short-term dry areas for no longer than 48 hours and for specific events.

13.4.2 The success or otherwise of dry areas should be monitored particularly in the towns of Coober Pedy and Ceduna. The argument against dry areas in town areas such as these, is that it marginalises problem drinkers by forcing them beyond the town limits, hence making them more vulnerable if they need assistance.

13.4.3 It may be that other mechanisms may need to be looked at, for example the use of health interventions. In paragraph 6.9.5, I have recommended that if the Government does accept my recommendation to increase annual licence fees that the increased funds should be used for a number of purposes, including rehabilitation facilities for intoxicated persons who need assistance.

13.4.4 I note that there is no power in section 131 of the Act for the Minister or Commissioner to revoke or vary a dry area. Both the Minister and Commissioner should be given specific power to revoke or vary a dry area. This should also apply equally to councils, if my recommendation is accepted.

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| **Recommendation 82** | **Amend section 131 of the Act to allow local councils, in limited circumstances, to prohibit the consumption and/or possession of liquor in public places within their relevant local government area.** |
| **Recommendation 83** | **Amend section 131 of the Act to allow the Minister and Commissioner to revoke or vary a prohibition order made under that section.** |
| **Recommendation 84** | **The impact of prohibition orders made under section 131 of the Act should be monitored, particularly in regional centres such as Ceduna and Coober Pedy.** |

# CHAPTER 14 – MINORS

## 14.1 Overview

14.1.1 The consumption of liquor by minors on regulated premises is a serious problem faced by all regulators. Anecdotal evidence put to me suggests that licensees are not complying with their obligations to refuse service to minors, particularly in relation to packaged liquor sales.

14.1.2 The occupier or manager of regulated premises or their agent may require someone, whom they suspect on reasonable grounds is under 18 years of age, to produce evidence by way of driver's licence, photographic proof of age card, passport or keypass identification card.[153]

14.1.3 While there should be at least two stages where a minor should come under scrutiny, namely when gaining entry to the licensed premises and the point of service of alcohol, it has been put to me that this is clearly not being strictly enforced at the present time.

14.1.4 I have discussed the concept of a non-compliance penalty as part of the imposition of annual licence renewal fees for licensees who serve minors (see chapter 6.6). This penalty fee should be in addition to any other sanctions such as fines or licence suspension. It is a very serious offence that cannot be overlooked.

[153] *Section 115 of the Liquor Licensing Act 1997 (SA) and regulation 18 of the Liquor Licensing (General) Regulations.*

## 14.2 Sale of liquor to minors on licensed premises

14.2.1 I am advised that there have been reports of the service of liquor to minors, particularly in regard to the sale of packaged liquor.

14.2.2 Section 110 of the Act currently makes it an offence to sell or supply liquor to a minor, namely—

*(1) If liquor is sold or supplied to a minor on licensed premises by or on behalf of the licensee, the licensee, the responsible person for the licensed premises, and the person by whom the liquor is sold or supplied are each guilty of an offence.*

*Maximum penalty:*

*(a) in the case of the licensee or responsible person—*

*(i) for a first offence—$20 000;*

*(ii) for a second or subsequent offence—$40 000;*

*(b) in any other case—$5 000.*

*(1a) If a licensee sells or supplies liquor to a minor otherwise than on licensed premises, the licensee is guilty of an offence.*

*Maximum penalty:*

*(a) for a first offence—$20 000;*

*(b) for a second or subsequent offence—$40 000.*

*(2) A licensee who permits a minor to consume liquor on the licensed premises is guilty of an offence.*

*Maximum penalty:*

*(a) for a first offence—$20 000;*

*(b) for a second or subsequent offence—$40 000.*

*(3) It is a defence to a charge of an offence against subsection (1), (1a) or (2) to prove that—*

*(a) the licensee or some person acting on behalf of the licensee required the minor to produce evidence of age that complies with the requirements of the regulations; and*

*(b) the minor made a false statement, or produced false evidence, in response to that requirement; and*

*(c) in consequence the person who served the minor reasonably assumed that the minor was of or above the age of 18 years.*

*(4) If a person, acting at the request of a minor, purchases liquor on behalf of the minor on licensed premises, that person and the minor are each guilty of an offence.*

*Maximum penalty: $5 000.*

*(5) This section does not apply to the gratuitous supply of liquor to, or the consumption of liquor by, a minor if—*

*(a) —*

*(i) the liquor is supplied by a parent or guardian of the minor; and*

*(ii) the minor is a child of—*

*(A) the licensee; or*

*(B) a responsible person for the licensed premises; or*

*(C) an employee of the licensee,*

*and is resident on the licensed premises; or*

*(b) the minor is enrolled in a tertiary educational course declared by the regulations to be an approved course for the purposes of section 30 and the liquor is supplied to the minor as part of that course.*

14.2.3 I am of the view that the Government should consider making such offences a strict liability offence and that the details of the licensee recorded on the Minors Non-Compliance Register (discussed later in chapter 14.7).

| Recommendation 85 | Offences which relate to the sale of liquor to minors on licensed premises should be strict liability offences and be recorded on the Minors Non-Compliance Register. |
|---|---|

14.2.4 Further, the Government should in this regard also enable CBS inspectors and SA Police on the occasion of the first offence to expiate such offences under the Act in respect to—

(a) the person who permitted entry; and

(b) the person responsible for the supervision and management of the licensed premises at the time of the offence; and

(c) the licensee.

14.2.5 A second or subsequent offence should trigger mandated disciplinary action before the Licensing Authority in respect to—

(a) the person who permitted entry; and

(b) the person responsible for the supervision and management of the licensed premises; and

(c) the licensee; and

(d) persons who occupy a position of authority in regard to the licence.

14.2.6 Sanctions imposed by disciplinary action could include monetary penalty, licence suspension or in extreme cases, revocation of a licence.

| Recommendation 86 | Enable CBS inspectors and police officers on the occasion of the first offence to expiate offences relating to the supply of liquor to minors on licensed premises, while a second or subsequent offence should trigger mandated disciplinary action before the Licensing Authority. |
|---|---|

14.2.7 Such disciplinary action should also be prescribed for the purposes of imposing a Compliance Penalty Fee for the next annual licence renewal fee period, as discussed in chapter 6.6.

| Recommendation 87 | Disciplinary action in relation to the supply of liquor to minors should be prescribed for the purposes of imposing a Compliance Penalty Fee for the next annual licence renewal fee period. |
|---|---|

## 14.3 Evidence of age

14.3.1 Licensees should be particularly vigilant and employ strict workplace policies and practices which should be applied when a person, suspected of being a minor, enters the premises.

14.3.2 One practical solution may be to require all persons who appear to be under the age of 25 years to produce evidence of age. I note that this is the case with the current casino operator where the practice of requesting evidence of age from anyone who appears to be under the age of 25 years is enforced by casino management at the point of entry without any legislative requirement.

14.3.3 In that way, if it were to be legislated as such, young people would become aware that they are under increased scrutiny and would as a matter of course be required to always produce valid identification. There should also be mandated plain language or symbolic signage to aid in this enforcement. I discuss signage requirements further in chapter 18.6.

| Recommendation 88 | Legislate to require persons who appear to be under the age of 25 years to produce evidence of age. |
|---|---|

14.3.4 I am informed that fake identification or identification belonging to another person cannot be lawfully confiscated by a licensee or responsible person and given to SA Police as they are the property of the issuing authority (e.g. a driver's licence belongs to the Department of Planning, Transport and Infrastructure). I am of the view that this should be remedied as the confiscation of fake or fraudulently used identification would enable enquiries and potential prosecutions to follow.

14.3.5 I note that the power to seize evidence of age documents has been legislated in Victoria, Australian Capital Territory, Queensland and Northern Territory.

14.3.6 Having considered the seizure of evidence provisions under section 127 of the *Liquor Control Reform Act 1998 (VIC)* and section 124 of the *Liquor Act 2010 (ACT)*, I am persuaded that the Act should be amended to include powers for the seizure of evidence of age documents, namely:

> *(1) A document, that is represented to be an evidence of age document, may be seized by the person to whom it has been produced if that person is—*
>
> *(a) a member of the police force; or*
>
> *(b) an inspector for the purposes of this Act; or*
>
> *(c) the licensee, an employee of the licensee of the licensed premises or crowd controller of the licensed premises, in or in the vicinity of which the document has been produced.*
>
> *(2) However, a licensee, an employee of the licensee of the licensed premises, crowd controller of the licensed premises or inspector must not seize a document that purports to be a passport.*

*(3) A person must not seize a document under subsection (1) unless that person reasonably believes that—*

*(a) the person who produced the document is not the person to whom the document was issued; or*

*(b) the document contains false or misleading information about the name or age of the person who produced the document; or*

*(c) the document has been forged or fraudulently altered; or*

*(d) the document is being used in contravention of this Act.*

*(4) If a document has been seized under subsection (1) by a person other than a member of the police force, that person must give the document to a member of the police force within 7 days after the document has been seized.*

*(5) A person commits an offence if the person—*

*(a) is a licensee, an employee of the licensee of the licensed premises or crowd controller of the licensed premises; and*

*(b) seizes a document under subsection (1); and*

*(c) does not give the document to a member of the police force within 7 days after the document has been seized.*

*(6) A member of the police force who has seized a document under subsection (1) or a member of the police force to whom a document has been given under subsection (3) must return the document within 28 days to the person who produced it unless—*

*(a) the person who produced the document is not the person to whom the document was issued; or*

*(b) the document contains false or misleading information about the name or age of the person who produced the document; or*

*(c) the document has been forged or fraudulently altered; or*

*(d) the document is being used in contravention of this Act.*

14.3.7 I note that consequential amendments to the *Motor Vehicles Act 1959* may also be required to enact these provisions.

| Recommendation 89 | Legislate to entrench powers to seize false or fraudulently used evidence of age identification documents. |
|---|---|

## 14.4 On licensed premises

14.4.1 I have recommended in chapter 5.4, that areas designated on licensed premises such as designated dining be abolished as a matter of course across all licensed premises.

14.4.2 At the present time under section 112(1)(b) of the Act, minors can only remain on licensed premises after midnight if they are in a dining room, bedroom or some other area on the licensed premises approved by the Licensing Authority.

> *(1) A minor—*
>
> *(a) may not enter, or remain in, licensed premises subject to an entertainment venue licence (other than a part of the licensed premises approved by the licensing authority) between the hours of 9 pm on one day and 5 am of the next; and*
>
> *(b) may not enter, or remain in, an area in licensed premises subject to a licence of some other class (other than a dining room, a bedroom or some other area of the licensed premises approved by the licensing authority) between the hours of midnight and 5 am if liquor may be sold in the area at that time.*

14.4.3 If the Government adopts my recommendation and abolishes the designation of such areas, in addition to that, I recommend that section 112(1) of the Act be amended to provide that for—

- **On-Premises Licence** (where the predominant business is live entertainment or those businesses ordinarily known as nightclubs, karaoke bars and other bars) – minors may not enter, or remain, in the licensed premises between the hours of 9.00pm on one day and 5.00am of the next;
- **Packaged Liquor Sales Licence** – minors may not enter, or remain, in the licensed premises at any time unless accompanied by a responsible adult; and
- **All other licences** *(including **On-Premises Licence** where the predominant business is <u>not</u> live entertainment or those businesses ordinarily known as nightclubs, karaoke bars or other bars)* – minors may not enter, or remain, in the licensed premises (other than a bedroom or some other area of the licensed premises approved by the Licensing Authority) between the hours of 9.00pm and 2.00am unless accompanied by a responsible adult, if liquor may be sold in the area at that time.
- In this section— responsible adult in relation to a minor, should be taken to mean a parent (including a step-parent), legal guardian of the minor or spouse of the minor.

14.4.4 The reference to dining room within section 112(1) is not defined within the Act, but probably encompasses designated dining areas, which is defined in the Act. It is my view that the reference to dining room should be removed from the Act, as it is not consistent with contemporary concepts. Also removal of the reference to dining room in section 112(1) will compliment my recommendation to abolish the concept of designated areas.

14.4.5 Between the hours of 2.00am and 5.00am, it is my view that the responsible adult exemption should not apply, and therefore minors should not enter or remain on the licensed premises of any class of licence (other than a bedroom or some other area of the licensed premises approved by the Licensing Authority).

14.4.6 Enacting these provisions would allow for example, large family functions on licensed premises where at the moment minors must be off the licensed premises by midnight if the premises does not have a dining room or an area of the licensed premises approved by the Licensing Authority. This may also open up more opportunities for young musicians to perform at licensed premises.

14.4.7 The existing restrictions on minors not being permitted on premises which currently trade under an Entertainment Venue Licence after 9.00pm should be retained (i.e. night club, karaoke lounge etc), albeit in the form of an On-Premises Licence.

| | |
|---|---|
| **Recommendation 90** | **Minors should not be allowed—**<br>**(a) on licensed premises where the primary and predominant business conducted under the licence is that of a nightclub, karaoke bar or other type of bar between 9.00pm and 5.00am; or**<br>**(b) on licensed premises where the primary and predominant business conducted under the licence is the sale of packaged liquor products (i.e. bottle shops) unless accompanied by a responsible adult at all times; or**<br>**(c) on any other licensed premises between 9.00pm and 2.00am unless accompanied by a responsible adult; or**<br>**(d) on any other licensed premises between 2.00am and 5.00am.** |

14.4.8 Having also considered the provisions of section 120 of the *Liquor Control Reform Act 1998 (VIC)*, I am also persuaded that the Act should also clearly specify exemptions for minors on licensed premises to the extent that section 112(1) does not apply—

*(a) to the presence on any part of the licensed premises of a person under the age of 18 years which is a bedroom or some other area of the licensed premises approved by the Licensing Authority; or*

*(b) to the presence on any part of the licensed premises of a person under the age of 18 years at any time at which—*

*i. entertainment for or mainly for people under the age of 18 years is provided on that part of the premises in accordance with the approval of the licensing authority and any conditions to which that approval is subject; and*

*ii. liquor is not supplied, consumed or made available on that part of the premises; or*

*(c) to the presence on licensed premises of a person who is engaged in a training program in hospitality or in training for the purposes of employment or work experience, if the person is so present in accordance with any conditions to which that program or training is subject; or*

*(d) to the presence on licensed premises of persons employed on the premises otherwise than in the supply of liquor; or*

*(e) to the presence on licensed premises of a person under the age of 18 years in accordance with the approval of the licensing authority and any conditions to which that approval is subject.*

14.4.9 Further, the class of minors currently exempted from section 112 of the Act by regulation 17 should be retained either in its present form or entrenched within the provisions of section 112 as discussed above.

| Recommendation 91 | Legislate to exempt certain categories of minors from the prohibition from licensed premises. |
|---|---|

## 14.5 Secondary Supply

14.5.1 At present there is no legislation in South Australia which covers the secondary supply of liquor to minors. The fact that secondary supply does take place has been expressed to me by several respondents and organisations including SA Police. It is a well-known fact that parents are often involved in supplying liquor to minors other than their own children.

14.5.2 Secondary supply can occur in many ways. Anyone over the age of 18 producing identification can purchase liquor on behalf of minors. This clearly happens for consumption off-premises in private homes or in public places.

14.5.3 There is also a supply of liquor in private homes or in hired premises where parents provide liquor to minors attending functions, for instance, as part of end of school celebrations. Some of these are large functions held in warehouses and vacant industrial sites. As a result, there is little opportunity for the police to be involved in such functions unless and until trouble is caused with minors coming out of the function into public areas.

14.5.4 All other interstate jurisdictions have enacted legislation to cover these situations. The penalties for secondary supply typically range from $3,000.00 to $18,000.00 with New South Wales and Tasmania also including a 12-month jail term as an alternative penalty.

**Table 13: Secondary supply penalties in Australia[154]**

| Jurisdiction | Monetary Penalty | Imprisonment Penalty |
|---|---|---|
| **Australian Capital Territory** | $3000 | n/a |
| **New South Wales** | Max $11,000<br>*(Per Underage Drinker)* | 12 Months |
| **Northern Territory** | Max $13,300 | n/a |
| **Queensland** | Max $8,000 | n/a |
| **South Australia** | n/a | n/a |
| **Tasmania** | Max $12,000 | 12 Months |
| **Victoria** | $18,200 | n/a |
| **Western Australia** | Max $10,000<br>*(Per Underage Drinker)* | n/a |

14.5.5 The general thrust of interstate legislation is that it is illegal to supply alcohol to minors in the private home unless the alcohol is supplied by a parent or guardian with the approval of the parent or guardian whose child is to consume the alcohol. The supply of alcohol in those circumstances must be consistent with the responsible supervision of the child.

[154] *http://www.druginfo.adf.org.au/images/secondary-supply-16mar16v2.pdf*

14.5.6 Having considered the secondary supply provisions of interstate jurisdictions, particularly the provisions of section 117(4) to (10) of the *Liquor Act 2007 (NSW)* and section 122A of the *Liquor Control Act 1988 (WA)*, I am persuaded that the Act should be amended to include specific provisions relating to supply and consumption of liquor to minors in the residential home and provide for appropriate penalties.

14.5.7 The Government may wish to consider introducing a separate section relating to the supply and consumption of liquor on residential premises. I provide the following examples of provisions that may be included in such a section:

*(1) A minor who obtains or consumes liquor on residential premises is guilty of an offence.*

*(2) A person who supplies liquor to a minor on residential premises is guilty of an offence.*

*(3) This section does not apply to the gratuitous supply of liquor to, or the consumption of liquor by, a minor on residential premises if—*

*(a) the liquor is supplied to the minor by a responsible adult; or*

*(b) subject to subsection (4), has obtained the written consent of a responsible adult, to supply liquor to the minor on those premises.*

*(4) Where under subsection (3)(b) a person has obtained the written consent of a responsible adult, to supply liquor to a minor on residential premises, the person must not supply the liquor —*

*(a) if, at the time that the responsible adult gives consent, the responsible adult is intoxicated; or*

*(b) if the person is intoxicated; or*

*(c) if the minor is intoxicated; or*

*(d) if the person is unable to supervise the consumption of the liquor by the minor; or*

*(e) in circumstances prescribed by the regulations.*

*(5) A person who fails to comply with subsection (4) is guilty of an offence.*

*(6) In this section—*

***responsible adult** in relation to a minor, means a parent (including a step-parent), legal guardian of the minor or spouse of the minor.*

***residential premises**—has the same meaning as under section 3 of the Residential Tenancies Act 1995*

14.5.8 It has been put to me by SA Police that further regulation is necessary given the current trend of school after-formal parties being held on private premises (not being residential premises) usually for a fee or other consideration, where excessive levels of liquor are being consumed.

14.5.9 I am advised that while SA Police have observed at some events high levels of intoxication, including one instance where a sick room was provided by the organiser to allow attendees to vomit due to excessive intoxication, they have very few powers at their disposal to assist with policing these events.

14.5.10 I have been referred to the matter of ***Certain Premises [2012] SALC 113*** (11 December 2012). This matter arose through an application for disciplinary action issued by SA Police in respect to an organiser of a school after-party event at which alcohol was consumed on buses which were hired to provide transport to the after-party event and at the after-party event. The details of the case are as follows:

14.5.10.1 Invitees of the after-party event paid the respondent a $50 entrance fee (which covered transportation and other function expenses) and were permitted to bring four cans of alcoholic beverages. As part of the arrangements, invitees handed the cans of alcoholic beverages to organisers (prior to boarding the buses) and invitees were given a wrist band which recorded the number of alcoholic beverages handed over.[155]

14.5.10.2 The alcohol was subsequently stored on the premises. The attendees could then present their wrist band to one of the assistants and could receive the number of cans they had handed over.

14.5.10.3 The disciplinary action was unsuccessful because it could not be established that the respondent sold liquor to the minors for the purposes of section 118(1)(b) of the Act.

14.5.10.4 In its judgement, the Licensing Court refers to the authority of *Symes v Stewart (1920)* CLR 386 where:

> *"There is authority (Symes v Stewart) that the word 'supply' in the context of liquor regulation can be construed broadly enough to cover a situation where a person hands over liquor to a person who already owns the liquor".*[156]

14.5.10.5 The Licensing Court further states:

> *"It is one thing to give the word 'supply' a broad and perhaps unnatural meaning in connection with provisions designed to protect minors and intoxicated persons or to prevent consumption of liquor in regulated by unlicensed premises. It is another thing altogether to turn the concept of sale on its head and say that it can apply to circumstances where the goods that are the subject of the sale do not belong to the seller and are already owned by the purchaser".*[157]

[155] *It was agreed that some alcohol was smuggled onto the buses and consumed.*
[156] *Certain Premises [2012] SALC 113 (11 December 2012) at paragraph 34*
[157] *Certain Premises[2012] SALC 113 (11 December 2012) at paragraph 36*

14.5.11 I support any regulation which mitigates the potential risk of harm to minors arising from the irresponsible supply and excessive consumption of alcohol. For this reason, I would suggest consideration of the following amendments to the Act—

(a) Under section 114 it is an offence for a minor to obtain or consume liquor in regulated premises and for a person to supply liquor to a minor in regulated premises. The definition of regulated premises in section 3 of the Act should expressly capture premises and circumstances where these large after-parties or gatherings usually occur.

Premises where these parties may occur include large warehouses or commercial premises which are hired or leased. These parties or gatherings are usually invitation only and/or require the payment of a fee to organisers.

(b) I have turned my mind to the issue about whether the definition of sell should be extended to cover the circumstances of these school after-parties. In view of the reasons given by the Licensing Court in *Certain Premises [2012] SALC 113* (11 December 2012), this may not be the best solution. However, I do see merit in the broad interpretation of supply for the purposes of supply to minors as referred to in the same decision.

I would therefore support the interpretation of supply to minors to include a situation where an adult hands over liquor to a minor irrespective of whether or not the minor already owns or bought the liquor. The Government may consider therefore to provide clarity in the provisions relating to the supply of liquor to minors.

(c) The Government may also wish to consider amending section 118 of the Act, which outlines the circumstances where disciplinary action may be taken. I am of the view that this provision could be amended to include a person who has supplied liquor to a minor in regulated premises.

14.5.12 For completeness, if the Government enacts my recommendations in this chapter, section 123 of the Act (Power to enter and search premises and confiscate liquor) should contain sufficient powers to allow police officers to enter and search any premises (including residential premises), where on reasonable grounds it is suspected that an offence against the Act is being committed.

| Recommendation 92 | **Adopt legislation for the secondary supply of liquor to minors, particularly in relation to residential premises and strengthen the regulation of minors consuming liquor and adults supplying liquor at high risk after-parties or events.** |
|---|---|

14.5.13 Enacting a legislative approach to secondary supply of liquor to minors will also be consistent with Priority Action 2.12 of the South Australian Alcohol & Drug Strategy 2011-2016.[158]

14.5.14 I am in no doubt that despite similar legislation elsewhere, there will be arguments put forward that the enforcement of such legislation will be difficult to police. Nevertheless, the penalties should act as a deterrent with police officers having the power to come onto regulated and residential premises to ensure that alcohol is being supplied responsibly and not contrary to the provisions of the Act.

14.5.15 I note that a private members Bill entitled the *Liquor Licensing (Supply to Minors) Amendment Bill 2012* was laid on the table of Parliament and read for the first time on 20 September 2012. The Bill proposed a maximum penalty of $2,500.00 with an expiation fee of $210.00. This Bill subsequently lapsed when Parliament was prorogued.

14.5.16 It is my view that the Government should as discussed above legislate for the secondary supply of liquor to minors. There should be regulation of secondary supply in private homes. The current provisions regarding the supply of liquor on regulated premises should be strengthen to expressly capture high risk functions attended by minors.

14.5.17 Relevantly, the monetary penalties should in my opinion be at least double that proposed in the lapsed Bill namely, at least $5,000.00 with an expiation fee of $500.00. However, the New South Wales penalties of up to $11,000 or 12 months' imprisonment is not unreasonable for flagrant breaches involving the supply of liquor to minors without parental consent.[159]

| Recommendation 93 | Consider penalties for the supply of liquor to minors equivalent to the monetary amounts and term of imprisonment prescribed under New South Wales legislation. |
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[158] *http://www.sahealth.sa.gov.au*
[159] *Part 7, Division 1 of the Liquor Act 2007 (NSW)*

## 14.6 On-line sales and delivery of liquor

14.6.1 Another problem with sales of liquor to minors arises from the accessibility of liquor through direct sales (i.e. the ability to purchase liquor through the internet, mail order or by telephone etc.). At present, anyone can place an order and request delivery to an address where there may only be minors present.

14.6.2 Further, the Act currently only requires that if liquor is to be delivered to an address in South Australia, the liquor must be despatched and delivered only between the hours of 8am and 9pm and not on Good Friday or Christmas Day. There are no restrictions or controls on who may place the order or take delivery of the liquor purchased.

14.6.3 I note that New South Wales has legislated pursuant to section 114 of the *Liquor Act 2007 (NSW)* to cover sales by internet or other communications and requires—

> *(1) A licensee who sells liquor by taking orders over the telephone or by facsimile or by mail order must cause the licence number to be displayed in any advertisement or information published in writing or electronically in connection with such sales.*
> *Maximum penalty: 20 penalty units.*
>
> *(2) A licensee who sells liquor through an internet site must ensure that the licence number is prominently displayed on the site and in any advertisement or information published in writing or electronically in connection with such sales.*
> *Maximum penalty: 20 penalty units.*
>
> *(3) A licensee who sells liquor by taking orders over the telephone or by facsimile or by mail order, or who sells liquor through an internet site:*
> *(a) must, at the time at which an agreement for sale is made, require the prospective purchaser to supply the purchaser's date of birth so as to confirm that the prospective purchaser is of or above the age of 18 years, unless the prospective purchaser has previously supplied the purchaser's date of birth to the licensee, and*
> *(b) must give written instructions to the person responsible for delivery of the liquor, requiring that the liquor be delivered:*
> *(i) to the adult person who placed the order, or*
> *(ii) to another adult person at those premises who undertakes to accept it on behalf of the person who placed the order, or*
> *(iii) if the delivery is made on a day after the day the order is taken, or the sale made through an internet site, in accordance with the customer's instructions.*
> *Maximum penalty: 20 penalty units.*
>
> *(4) If delivery of any liquor sold in a manner described in this section is taken by a minor:*
> *(a) the delivery is taken to constitute a supply to which section 117 (2) applies, and*
> *(b) the licensee, and any person by whom the liquor was delivered on the licensee's behalf, are each taken to have supplied the liquor contrary to section 117 (2).*
>
> *(5) A licensee who, in accordance with subsection (4), is prosecuted for an offence under section 117 (2) has a defence under this subsection if it is proved that the licensee:*
> *(a) complied with the requirements of subsection (3) in relation to the supply concerned, and*
> *(b) at the time of the alleged offence did not know, and could not reasonably be expected to have known, that the alleged offence was committed.*
>
> *(6) A person (not being a licensee) who, in accordance with subsection (4), is prosecuted for an offence under section 117 (2) has a defence under this subsection if it is proved that:*
> *(a) the person to whom the liquor was delivered was of or above the age of 14 years and, before the liquor was delivered, there was produced to the defendant an evidence of age document that may reasonably be accepted as applying to the person and as proving that the person was of or above the age of 18 years, and*

*(b) at the time of the alleged offence the defendant did not know, and could not reasonably be expected to have known, that the alleged offence was committed.*

*(7) A minor must not take delivery of any liquor sold in a manner described in this section unless the minor was ordered or requested by his or her parent or guardian to take delivery of the liquor.*
*Maximum penalty: 20 penalty units.*

*(8) A person must not order or request a minor to take delivery of liquor sold in a manner described in this section.*
*Maximum penalty: 30 penalty units.*

*(9) This section does not apply to or in respect of the sale of liquor to persons authorised to sell liquor.*

14.6.4 While this approach is to be applauded, I do not agree however with the above provisions which allow a minor to take delivery of liquor purchased through the internet or by other communication media. I also note that the New South Wales legislation does not have a requirement for the person delivering the liquor to confirm and record the identity of the person who takes delivery of the liquor purchased. These issues appear to me to be an anomaly with this legislation.

14.6.5 Liquor is a regulated product and accordingly should be governed by strict supply controls whether on or off licensed premises. In my opinion the person responsible for the delivery of liquor purchased by way of direct sales should from a harm minimisation perspective, be required to demand evidence of age by viewing a driver's licence or similar photographic identification from the person taking delivery.

14.6.6 These details should be recorded with the person conducting the delivery guilty of an offence if the details of the person who received the delivery is not recorded.

14.6.7 I note that section 107 of the Act makes it an offence for a minor to be employed to sell, supply or serve liquor on licensed premises, unless certain exemptions apply. Further, section 117 makes it an offence for a minor to consume or have possession of liquor in a public place. It is therefore not expressly clear what the rules are with respect to minors that deliver liquor off licensed premises, but considering section 117, it is in my view that they are prohibited.

14.6.8 I suggest that section 107 be amended to make the prohibition clearer in respect to minors employed to deliver liquor off licensed premises. This is consistent with my view of harm minimisation and my recommendation regarding strengthening the delivery requirements of direct sales.

| Recommendation 94 | Legislate to prohibit the sale and delivery of liquor to minors through direct sales transaction. |
|---|---|

## 14.7 Minors non-compliance register

14.7.1 I note that in New South Wales, an escalatory sanction regime operates and applies significant penalties for selling alcohol to minors. The sanctions include licence suspension and cancellation, and may be triggered if any person is convicted of an offence of selling liquor to a minor on licensed premises.[160]

14.7.2 Under the scheme—

(a) when a first offence occurs the New South Wales licensing authority may suspend a liquor licence for up to 28 days. When making this decision, the authority may take into consideration the venue's compliance history and any other relevant factors, including submissions made by NSW Police and an affected licensee;

(b) if a second offence occurs at a venue within 12 months of (but at least 28 days after) the first offence, the venue's liquor licence is automatically suspended for a period of 28 days;

(c) if a third offence occurs within 12 months of (but at least 28 days after) the second offence, the venue's liquor licence is automatically cancelled and the license holder is disqualified from holding a licence for a period of 12 months.

14.7.3 Licensed premises that incur a suspension under the scheme are recorded on a Minors Sanctions Register[161] which is published on the NSW Liquor and Gaming website.

14.7.4 I note that in New South Wales, most offence penalties resulted in a suspension of the licence of between 3 and 28 days.

14.7.5 I am of the view that there is considerable merit in a 'name and shame' register. As occurs in New South Wales, such a register should be published on the CBS website and include details of the—

(a) name and address of the licensed premises;

(b) name of the licensee;

(c) date of the offence;

(d) details of the offence; and

(e) penalty imposed by the licensing authority.

14.7.6 Where a licence has been suspended, a notice to this affect including the details of the duration and the reason for the suspension should be posted at the entrance to the licensed premises. Failure to do so should be an offence under the Act.

| Recommendation 95 | Legislate to require that offences relating to the sale of liquor to minors are strict liability offences with offending licensees recorded in a register and the details published on the CBS website. |
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[160] *Part 7, Division 3 of the Liquor Act 2007 (NSW)*
[161] *https://www.liquorandgaming.justice.nsw.gov.au/Pages/liquor/underage-drinking/minors-sanctions-scheme.aspx*

# CHAPTER 15 – COMPLIANCE AND ENFORCEMENT

## 15.1 Enforcement practices in South Australia

15.1.1 CBS and SA Police are the key agencies responsible for the assessment of compliance and enforcement of the liquor licensing regime in South Australia.

### Consumer and Business Services

15.1.2 CBS is comprised of the former Office of Consumer and Business Affairs (OCBA) and the Office of the Liquor and Gambling Commissioner (OLGC). CBS is a division of the South Australian Government's Attorney-General's Department.

15.1.3 CBS administers or has responsibilities across 38 Acts of Parliament and employs an integrated licensing, compliance and business services framework to fulfil its regulatory obligations.

15.1.4 There is a multi-faceted compliance and enforcement team of 30 officers who are responsible for assessing regulatory compliance and prosecuting matters under these Acts of Parliament including—

(a) liquor, gambling, casino, wagering and charity legislation, involving—

- the inspection of approximately 6400 licensed premises across the State (of which, 530 hold operational gaming machine licences);
- the scrutiny of 21 licensed bookmakers, 370 UBet SA agencies and 38 active racing clubs;
- the scrutiny of the operations of the licensed Casino; and
- the scrutiny of charitable organisations;

(b) product safety legislation;

(c) occupational licensing including—

- builders, plumbers, gas fitters and electricians;
- real estate agents; and
- second-hand motor vehicle dealers;

(d) fair trading legislation; and

(e) Australian Consumer Law.

15.1.5 I note that in his Annual Report[162] to the Independent Gambling Authority (IGA Annual Report 2014-15 Volume 2) dated 31 August 2015, the Commissioner states:

> *"By its nature, the liquor and gambling environments contain a number of vulnerabilities such as problem gambling and the threat of irresponsible service of alcohol. Risk controls are integral to adopting a compliance approach to meet all legislative requirements. These risk controls incorporate active monitoring, auditing and investigation.*
>
> *The compliance model adopted by CBS is risk based, and consists of five complementary approaches—*
>
> - *complaint based investigations;*
> - *risk based inspections;*
> - *taskforce operations;*
> - *thematic inspections; and*
> - *formal investigation.*
>
> *These are summarised as follows—*
>
> ***Complaint Based Inspections***
>
> - *Complaints are received by my office from members of the public, other government agencies and Members of Parliament via telephone, email and mail.*
> - *Information gathered from complainants forms an important part of the inspection process. It provides intelligence that can be gathered and collated to allow the authorised officers to concentrate their efforts in certain compliance areas or on specific areas of legislation.*
>
> ***Risk Based Inspections***
>
> - *Risk based inspections are the physical attendance by authorised officers at licensed premises to ensure compliance with a predetermined list of applicable liquor, gaming and wagering criteria.*
> - *The frequency of inspections is dependent on the perceived risk level of non-compliance with the legislation by the licensee, while the comprehensiveness of the inspection is influenced by whether the self-assessment checklist has been satisfactorily completed.*
> - *There are three risk levels—*
>   - *High Risk - inspection undertaken annually;*
>   - *Medium Risk - inspection undertaken every two years (biennially); and*
>   - *Low Risk - desk/phone audits undertaken or inspections conducted when a complaint is lodged.*
> - *This risk analysis assists me in determining the CBS inspection regime. Factors that may influence the determined risk level of a licensee include—*
>   - *trading hours;*
>   - *venue capacity;*
>   - *entertainment type;*
>   - *entertainment hours; and*
>   - *intelligence relating to the history of the licensee, including complaint data and prior conduct.*
> - *All gaming venues are considered high risk, and as such will be routinely inspected at least once each financial year.*

[162] *http://www.iga.sa.gov.au*

***Taskforce Operations***

- *Taskforce operations involve the covert surveillance of specifically targeted licensed premises.*
- *Some taskforce operations are conducted in conjunction with the Licensing Enforcement Branch of SAPOL (LEB), Metropolitan Fire Service (MFS) and local councils, to ensure compliance with the legislation and public safety issues.*
- *Taskforce operations have also been combined with overt thematic inspections on the same licensed premises.*
- *Such activities have also been scheduled having regard for peak trading periods.*

***Thematic Inspections***

- *A thematic inspection regime has been initiated for assessing compliance in relation to particular areas of harm. This involves authorised officers entering selected licensed premises, assessing compliance or otherwise against a select number of items that relate to a common theme, generally allowing no more than 15 minutes per venue. Relevant themes are often decided through an analysis of data or complaints from the public and/or LEB.*
- *Authorised officers are divided into teams and are allocated a specific region/area to target, with inspections being conducted simultaneously across each region/area.*

***Formal Investigation***

- *Inspections may result in the detection of serious non-compliance warranting formal investigation, which may result in enforcement action, including prosecution or disciplinary action against the licensee or other parties."*

15.1.6 I am advised that high risk venues typically include hotels, nightclubs, karaoke bars and special events which attract large crowds (e.g. Schützenfest, Big Day Out, Soundwave, Royal Croquet Club, Garden of Unearthly Delights and the Clipsal 500). Medium risk venues include licensed clubs, restaurants and some wine producers (e.g. where the producer caters for functions or provides meals).

15.1.7 CBS has provided me with data about its compliance and enforcement activities which includes the detection of over 6000 breaches of the Act in the last two years. These breaches include:

- Failure of staff involved in the service or supply of liquor to complete nationally accredited responsible service of alcohol training within prescribed timeframes contrary to General Code clause 7(1)—**943**;
- Failure to display current liquor licence at or near the front entrance of the premises contrary to section 109(1) of the Act—**298**;
- Failure to produce a copy of the current plan at the time of inspection contrary to section 119(1)(d) of the Act—**421**;
- Alterations made to the licensed premises without approval contrary to section 68 of the Act—**93**;
- Failure to ensure that the business conducted under the licence is being personally supervised or managed when open to the public contrary to section 97(1)(a) of the Act—**139**

- Failure of a responsible person to wear an identification badge when the venue is trading contrary to section 97(5) of the Act—**426**;
- Failure to display a warning notice to minors contrary to section 113 of the Act—**814**;
- Failure of licensee to have a management plan which includes a risk assessment and the measures that will be taken to comply with the code pursuant to clause 13 of the General Code —**1052**.

15.1.8 Many of these breaches are dealt with through an escalatory compliance model by way of warning and undertaking, expiation (if legislated for) and then formal disciplinary action.

### South Australia Police

15.1.9 The Commissioner of Police also enforces aspects of the Act, *Gaming Machines Act 1992*, *Casino Act 1997* and *Authorised Betting Operations Act 2000* with all police officers having the powers ascribed to authorised officers under those Acts.

15.1.10 Police officers regularly inspect licensed premises in the course of their duties both as a matter of routine and through their attendance at incidents.

15.1.11 Further, the primary role of the Licensing Enforcement Branch ('LEB') of SA Police, is to ensure compliance of regulated industries and other activities in which SAPOL is required to intervene by law, on a state-wide basis. Compliance is achieved through—

(a) consistent and coordinated policing of regulated industries;

(b) probity examination of applicants for regulated industries; and

(c) training and education of SA Police members, external agencies and the industries themselves.

15.1.12 I am advised that the LEB is responsible for the following areas of enforcement—

**(a) Liquor Licensing**

- LEB investigates offences against the Act and breaches of the General Code and Late Night Code and also provides liaison officers to each local service area to provide advice and guidance regarding liquor licensing matters.
- LEB provides a quality assurance role for licensed premises barring orders; a planning role in significant licensed events; and conducts probity assessments on liquor licensing applications.
- The LEB Criminal Justice Section assesses applications relating to liquor licensing and lodges interventions with the Licensing Authority as required.

**(b) Security Industry**

- LEB undertakes drug and alcohol testing of security agents and crowd controllers under the *Security and Investigation Industry Act 1995* and undertakes probity assessments of applicants seeking to be licensed.

**(c) Gaming**

- LEB investigates lawful and unlawful gaming practices including offences against the *Casino Act 1997*, *Gaming Machines Act 1992* and the *Lottery and Gaming Act 1936*. Further, LEB assesses, compiles and submits Independent Gambling Authority ('IGA') barring order applications and applications for Commissioner barring orders. LEB also conducts probity assessments on applicants.

**(d) Sex Industry**

- LEB investigates complaints of suspected brothel activity under the *Criminal Law Consolidation Act 1935* including any sexual servitude and the presence of minors. LEB also investigates offences in which sex workers are victims of crime.

**(e) Hydroponics Industry**

- LEB investigates compliance with the *Hydroponics Industry Control Act 2007* and conducts probity assessments on applicants.

**(f) Second Hand Dealers and Pawnbrokers**

- The Officer in Charge LEB, has the delegated authority for administering the *Second-hand Dealers and Pawnbrokers Act 1996*. LEB conducts probity assessments on prospective second-hand dealers and disqualifies unfit persons. LEB conducts and co-ordinates audits of second-hand dealers and administers the Transaction Management System (i.e. second-hand dealer's records).

**(g) Classification of Film and Literature**

- LEB investigates compliance with the *Classification (Publications, Films and Computer Games) Act 1995*.

**(h) Tattoo Industry**

- Commencing 1 July 2016, LEB will conduct probity assessments on persons employed in providing tattoo services and will attend tattoo premises to ascertain compliance with the *Tattoo Industry Control Act 2015*.

15.1.13 LEB Officers meet on a daily basis and are briefed about any police attended incidents occurring across the State in relation to licensed premises and the above regulated industries in the previous 24 hours. I attended one of these briefings and was impressed in particular with the depth of knowledge and understanding of the relevant provisions of the Act by the LEB members.

## 15.2 Declared Public Precincts Bill

15.2.1 On 22 June 2016 the Government introduced the *Summary Offences (Declared Public Precincts) Amendment Bill 2016* ('Declared Public Precincts Bill') into Parliament which aims to manage anti-social and disorderly behaviour in public areas.

15.2.2 This Bill proposes to amend the *Summary Offences Act 1953* to provide police officers with wider powers in relation to declared public precincts. Within these declared public precincts, police will have similar powers to those used to bar a person from licensed premises.

15.2.3 Amongst other additional powers, police officers will have the power to order a person or a group of persons to leave a declared public precinct if certain criteria are satisfied. These criteria are that the police officer believes or apprehends on reasonable grounds that—

(a) an offence of a kind that may pose a risk to public order and safety has been, or is about to be, committed by that person or by one or more of the persons in the group; or

(b) the presence of that person, or of the group of persons, poses a risk to public order and safety.

15.2.4 If the Declared Public Precincts Bill is enacted, it will be an offence for a person to remain or re-enter a declared public precinct after having been ordered to leave and a police officer may use necessary and reasonable force to remove that person from the declared public precinct.

15.2.5 The Declared Public Precincts Bill will also address a concern raised during this review about anti-social behaviour of persons outside of licensed premises and the right for licensees to move such persons away from the vicinity of the premises.

15.2.6 Although the Declared Public Precincts Bill does not give any further powers to licensees in this respect, it will enable licensees to work with SA Police if there are instances of anti-social and disorderly behaviour in the vicinity of licensed venues within such precincts.

15.2.7 In my view there is no reason why these increased powers, assuming the Bill is enacted, cannot be applied concurrently with the provisions of the Act.

| Recommendation 96 | **The provisions of the Declared Public Precincts Bill, if enacted, should be applied concurrently with the provisions of the *Liquor Licensing Act 1997*.** |
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## 15.3 General comments

15.3.1 Penalties where possible should be expiable (through on-the-spot fines) and be readily enforceable. At the time of issuing the penalty, details of the non-compliance constituting the offence should be explained to the person committing the unlawful act.

15.3.2 Clearly, enforcement practices should be capable of being initiated by a CBS inspector or SA Police Officer at the time of non-compliance.

15.3.3 Serious or repeated incidents of non-compliance should be brought before the Licensing Authority with the licensee and persons who occupy positions of authority subject to sanctions which could include monetary penalty, licence suspension or in extreme cases, revocation of a licence.

15.3.4 In my view, the enforced temporary closure of licensed premises through licence suspension for major breaches of the Act should be the rule rather than the exception.

15.3.5 Where a licence has been suspended, a notice to this affect including the details of the duration and the reason for the suspension should be posted at the entrance to the licensed premises. Failure to do so should be an offence under the Act.

15.3.6 Licensees not complying with the 'Lockout' provisions of the Late Night Code could also face an extended lockout imposition from 1.00am for example.

15.3.7 At the present time, licensed premises are regularly serving intoxicated persons. Quite simply, these persons are either intoxicated when entering the premises or become intoxicated by being sold liquor. This must be policed either by SA Police or CBS with more resources made available for this purpose.

15.3.8 There should also be more rigorous regulatory competency testing of persons to attain and maintain responsible service of alcohol accreditation. Clearly, on-line training has made it too easy, especially by persons seeking to be approved as responsible persons, to attain this level of accreditation. Essentially, once a person has registered with an on-line provider, anyone can fill in the on-line information on their behalf.

15.3.9 Further, unlike the provisions of the *Gambling Code of Practice Notice 2013* issued by the IGA in respect to the State's gambling sector, there is no ongoing competency or refresher training requirement. I deal with this matter and on-line training in greater detail in chapter 18.

## 15.4 Improvements to enforcement practices

### SA Police

15.4.1 The Australian Institute of Criminology Technical and Background Paper on 'Policing licensed premises in the Australian Capital Territory' states—

> *"Studies in Australia have demonstrated that a persistent and visible police presence in and around licensed premises has the capacity to reduce the level of alcohol-related crime and disorder in an area (Doherty & Roche 2003; McIlwain & Homel 2009). This has been supported by research in New Zealand (Sim, Morgan & Batchelor 2005), Sweden (Wallin & Andreasson 2005) and the United Kingdom (Jeffs & Saunders 1983; Maguire & Nettleton 2003)".*[163]

15.4.2 The paper further states—

> *"Drawing upon the available evidence base, Doherty and Roche (2003) have identified the following five key elements of a best practice approach to policing licensed premises:*
>
> *(a) a clear strategic direction for policing licensed premises and alcohol-related harms;*
>
> *(b) proactive policing of licensed venues, events and harms;*
>
> *(c) establishing intelligence gathering and analysis practices and systems that identify problematic licensed premises and assist with the evaluation of police responses;*
>
> *(d) collaboration with key local stakeholders to develop integrated responses to reduce alcohol-related incidents and harms; and*
>
> *(e) enforcing liquor and other legislation impacting on the management of licensed premises and behaviour of staff and patrons."*[164]

15.4.3 I am of the view, having regard in particular to the late night economy within the Adelaide CBD, that there should be a greater visible police presence in and around licensed premises and proactive policing of licensed venues and events to prevent alcohol related harms.

| Recommendation 97 | There should be a greater visible police presence in and around licensed premises and proactive policing of licensed venues and events to prevent alcohol related harms. |
|---|---|

### Consumer and Business Services

15.4.4 Contemporaneously, the compliance and enforcement activities of CBS should in my opinion have a greater focus on assessing compliance with the objects of the Act that I have recommended in chapter 3, particularly—

> *(a) ensuring that the sale and supply of liquor occurs in such a manner as to minimise the harm, and the potential for harm associated with the excessive or inappropriate consumption of liquor; and*
>
> *(b) ensuring that the sale, supply and consumption of liquor is undertaken safely and responsibly in a manner consistent with responsible service and consumption principles.*

[163] *Australian Institute of Criminology, Lance Smith, Anthony Morgan and Amanda McAtamney Technical and Background paper 48 'Policing licensed premises in the Australian Capital Territory', page 6 http://www.aic.gov.au/publications/current%20series/tbp/41-60/tbp048/consumption.html*
[164] *Australian Institute of Criminology, Lance Smith, Anthony Morgan and Amanda McAtamney Technical and Background paper 48 'Policing licensed premises in the Australian Capital Territory', page 6 http://www.aic.gov.au/publications/current%20series/tbp/41-60/tbp048/consumption.html*

15.4.5 Relevantly, while CBS inspection efforts have in the past been deployed to licensed premises to a greater extent in relation to the operation of gaming machines, I note that following recent changes in the CBS executive team, there has been a reappraisal of the compliance and enforcement philosophy. This has led to a gradual transition in priorities to better reflect harm minimisation, responsible service and industry compliance as a whole.

15.4.6 The Commissioner and his executive team should be commended for their actions in this regard.

| Recommendation 98 | The compliance and enforcement activities of CBS should have a greater focus on assessing compliance with the objects of the Act, particularly licensee's obligations to minimising harm or the potential for harm associated with excessive or inappropriate consumption of liquor. |
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### Responsible Service

15.4.7 The Government should, noting the objects of the Act, consider imposing harsher penalties for those licensees not adhering to responsible service and consumption principles.

15.4.8 In my view, it is irrefutable that persons identified as being intoxicated on licensed premises are either—

(a) being granted entry to licensed premises when intoxicated; or

(b) being served liquor while intoxicated.

15.4.9 Anecdotal evidence put to me would appear to confirm my observations.

15.4.10 Section 108 of the Act currently makes it an offence to sell or supply liquor to an intoxicated person on licensed premises. Section 108 states—

*(1) If liquor is sold or supplied on licensed premises to an intoxicated person, the licensee, the responsible person for the licensed premises and the person by whom the liquor is sold or supplied are each guilty of an offence.*

*Maximum penalty:*

*(a) for a first offence—$20 000;*

*(b) for a second or subsequent offence—$40 000.*

*(2) It is a defence to a charge of an offence against subsection (1) for the defendant to prove—*

*(a) if the defendant is the person by whom the liquor was sold or supplied—*

*(i) in the case of contravention of subsection (1)—that the defendant believed on reasonable grounds that the person to whom it was sold or supplied was not intoxicated; or*

*(b) if the defendant is the licensee or responsible person for the licensed premises and did not personally sell or supply the liquor—that the defendant exercised proper care to prevent the sale or supply of liquor in contravention of subsection (1).*

15.4.11 Further, clause 11 of the General Code states—

*(1) A licensee must take reasonable steps -*

*(a) to prevent the sale or supply of liquor to persons in circumstances where their speech, balance, coordination or behaviour is noticeably affected and it is reasonable to believe that the affected speech, balance, co-ordination or behaviour is the result of the consumption of liquor or some other substance;*

*(b) to reduce the likelihood of incidents of intoxication and/or disorderly, offensive, abusive or violent behaviour on licensed premises; and*

*(c) to manage incidents related to intoxication and/or disorderly, offensive, abusive or violent behaviour that may occur on licensed premises.*

15.4.12 While a licensee taking his or her responsibilities seriously will obviously not permit entry to an intoxicated person, the Act would appear to be deficient in this regard.

15.4.13 I recommend that section 108 of the Act should be amended to expand the scope of this provision to make it an offence for a licensee, employee of the licensee or other persons engaged by the licensee to:

(a) grant entry to the licensed premises to a person in a state of intoxication; or

(b) sell or supply liquor on licensed premises to a person in a state of intoxication; or

(c) allow a person who is in a state of intoxication to be on the licensed premises.

| Recommendation 99 | Make it a strict liability offence for a licensee, employee of the licensee or other person engaged by the licensee to grant entry, sell or supply or allow an intoxicated person to be on licensed premises. |
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15.4.14 Further, the imposition of the current penalties in section 108 requires a successful and potentially protracted prosecution of the offence given the defence that can be raised against this offence under section 108(2) of the Act.

15.4.15 I am of the view that this defence clause is antiquated and out of step with the responsible service of alcohol and harm minimisation requirements mandated by the General Code and Late Night Code. If the responsible service of alcohol training is judged as sufficient at a national level to identify a person who is in a state of intoxication while on the licensed premises, the same judgment call should be able to be made at the point of entry or whilst the person remains on licensed premises.

15.4.16 Notwithstanding the above, the question has been raised as to the situation where a person enters licensed premises apparently not intoxicated, consumes liquor but unknown to the licensee and staff takes or has taken an illicit substance. The person is then subsequently observed by a police officer who forms the opinion that the person is clearly intoxicated by a combination of drugs and alcohol.

15.4.17 I am of the view that in such circumstances, provided that either the licensee or staff member removes the person as they become aware of the persons deteriorated state, it could be relevant as a mitigating circumstance in relation to the imposition of a penalty.

15.4.18 I note that other states have moved to strict liability for the offence of allowing an intoxicated person to be on licensed premises, namely—

- Australian Capital Territory—section 106 of the *Liquor Act 2010 (ACT);*
- Northern Territory—section 102 of the *Liquor Act (NT);*
- Queensland—section 156 of the *Liquor Act 1992 (QLD); and*
- Western Australia—section 115 of the *Liquor Control Act 1988 (WA)*

15.4.19 Accordingly, the Government should consider removing the existing defence clause provisions and as is now in place or being contemplated by a number of other jurisdictions make such offences strict liability offences.

15.4.20 It is my view that the Government should in this regard enable CBS inspectors and SA Police on the occasion of the first offence to expiate such offences under the Act in respect to—

(d) the person who permitted entry; and

(e) the person responsible for the supervision and management of the licensed premises at the time of the offence; and

(f) the licensee.

15.4.21 A second or subsequent offence should trigger mandated disciplinary action before the Licensing Authority in respect to—

(e) the person who permitted entry; and

(f) the person responsible for the supervision and management of the licensed premises; and

(g) the licensee; and

(h) persons who occupy a position of authority in regard to the licence.

15.4.22 Sanctions could include monetary penalty, licence suspension or in extreme cases, revocation of a licence.

15.4.23 Such disciplinary action should also be prescribed for the purposes of imposing a Compliance Penalty Fee for the next annual licence renewal fee period, as discussed in chapter 6.6.

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| **Recommendation 100** | **Enable CBS inspectors and police officers on the occasion of the first offence to expiate offences relating to intoxicated persons on licensed premises, while a second or subsequent offence should trigger mandated disciplinary action before the Licensing Authority.** |

### Minors

15.4.24 The issues relating to minors and the enforcement of offences relating to minors is discussed in chapter 14.

### Licence Suspension

15.4.25 Suspension of a licence is the ultimate sanction for a licensee and should be applied more rigorously, particularly where offences are of a serious nature or occur for a second or subsequent time. In my view, the enforced temporary closure of licensed premises for these types of serious breaches of the Act should be the rule rather than the exception.

15.4.26 However, unlike the provisions of the *Gaming Machines Act 1992*[165] the power to suspend a liquor licence is currently the province of the Licensing Court in disciplinary matters with the Commissioner having limited powers. The Commissioner may only exercise the power to suspend if the person liable consents to the Commissioner dealing with the disciplinary matter. In my view there is no reason why the Commissioner should not have wider power to suspend a licence for repeat breaches or for a serious first offence. A suspended or cancelled licence is the ultimate sanction against a licensee who is not complying with the legislation.

| Recommendation 101 | The Liquor and Gambling Commissioner should have wider power to suspend a licence for repeat breaches of the Act or for a serious or prescribed first offence. |
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### Barring from Licensed Premises

15.4.27 Under section 125 of the Act a licensee or responsible person may bar a person from entering or remaining on the licensed premises for a specified period (known as a licensee barring order).

15.4.28 Section 125A and section 125B of the Act enables the Commissioner of Police and police officers to also bar persons from licensed premises or multiple licensed premises for specified periods.

15.4.29 The barring from the relevant licensed premises becomes effective once a copy of the barring order has been served on the patron to be barred. A copy of this order must also be kept on the licensed premises to which the order relates.

15.4.30 Under section 125 of the Act a licensee or a responsible person for the relevant licensed premises can bar a person from entering or remaining on the licensed premises—

(a) if the licensee or responsible person is satisfied that the welfare of the person, or the welfare of persons residing with that person, is seriously at risk as a result of the consumption of alcohol (known as welfare barring orders); or

[165] *Section 36B of the Gaming Machines Act 1992*

(b) if the person commits an offence, or behaves in an offensive or disorderly manner, on, or in an area adjacent to, the licensed premises; or

(c) on any other reasonable ground.

15.4.31 Licensee barring order periods may range from:

(a) a period of up to three months for a first barring, or a longer period as approved by Commissioner; or

(b) up to six months for a second barring, or a longer period as approved by Commissioner; or

(c) indefinitely for a third barring.

15.4.32 In addition, a person may be barred indefinitely (or for a specified period) in the case of 'welfare barring orders'.

15.4.33 A barring order issued under section 125B of the Act by a police officer has similar requirements to that of the 'licensee barring orders' regime.

15.4.34 It has been put to me that while licensees and responsible persons do avail themselves of the barring provisions under the Act, the lack of formality and record keeping, particularly in relation to the service of such orders, makes it difficult for police to subsequently enforce such orders and brings into question the clarity and robustness of the barring provisions.

15.4.35 As a result, I am advised that police are often unable to impose a subsequent six month barring on a repeat offender as they are unable to determine if the original barring order was imposed and served lawfully.

15.4.36 Relevantly, I note that consistent welfare barring arrangements now apply across all gambling sectors in South Australia, including hotels, clubs and the licensed Casino. Welfare barring arrangements are administered under the *Independent Gambling Authority Act 1995* with the IGA as the central gambling barring agency.

15.4.37 Licensees advise the IGA of the details of a barring or request for barring from a gaming area by using an online notification system (known as the 'BOEN' system). Access to the system is restricted only to persons who have been notified as gaming managers or gaming employees, CBS, IGA and SA Police.

15.4.38 Such barring orders may be made by a licensee (or an employee if the licensee has delegated the power in writing to the employee) or the IGA in relation to a person –

(a) at the request of that person (voluntary); or

(b) being satisfied that a barring order is appropriate due to a reasonable apprehension that the person may suffer harm, or may cause serious harm to family members, because of problem gambling (in-voluntary).[166]

[166] *Section 15C of the Independent Gambling Authority Act 1995*

15.4.39 While I am certainly not advocating or recommending the transfer of liquor licensing barring administration to the IGA, I am persuaded that there is merit to formalising both the licensee and police barring provisions under the Act by either extending the online notification capabilities of the BOEN system or introducing a CBS/SA Police administered web-based notification system to manage barrings under the liquor licensing regime and if enacted should extend to the provisions of the Declared Public Precincts Bill.

15.4.40 The move to a web based notification system in lieu of the current paper based system would also be consistent with the Premier's Digital by Default Strategy.

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| **Recommendation 102** | **Introduce a web based notification system or portal for licensees, SA Police and CBS to manage collectively the barring of persons from licensed premises.** |

15.4.41 I am of the view that the current reasons for a barring order being imposed by a licensee or a police officer should also be reviewed in light of the changes to the objects of the Act that I recommend in chapter 3.

15.4.42 In particular, the provisions relating to 'welfare barring orders' under sections 125(1)(aa) and 125B(1)(e) should reflect that the excessive or inappropriate consumption of liquor may lead to—

(a) the risk of harm to children, vulnerable peoples and vulnerable communities; or

(b) adverse effects on the person's health; or

(c) further alcohol abuse or misuse; or

(d) domestic violence or anti-social behaviour causing personal injury, death or property damage.

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| **Recommendation 103** | **Provisions relating to 'welfare barring orders' under sections 125(1)(aa) and 125B(1)(e) of the Act should be amended to reflect the revised objects of the Act if enacted.** |

### Expiable Offences

15.4.43 Both the SA Police and CBS have suggested to me that a greater range of offences under the Act should be expiable. These offences are wide ranging and typically include penalties of between $2,500 and $20,000 for a first offence.

15.4.44 I have detailed the existing provisions of the Act which are currently not, but in my opinion could be subject to an expiable offence (while not exhaustive) in Appendix 5.

15.4.45 Consistent with my suggestion in 15.3.1 that penalties should be capable of being initiated at the time of non-compliance with the nature of the offence easily explained to anyone minded to act unlawfully, the Government may also wish to take the opportunity to conduct a complete reappraisal of all offences under the Act with the view of making the majority of offences expiable, particularly for a first offence.

15.4.46 However, I would urge the Government to consider that—

(a) a second or subsequent offence relating to the supply of alcohol to underage or intoxicated persons; or

(b) a second or subsequent offence which relates to permitting underage or drunken/disorderly persons on the licensed premises; or

(c) where the licensee was convicted of a supply offence, and the offence was taken to have contributed to the death of a person or a serious assault committed against a person on or near the licensed premises;

should be retained as a disciplinary matter before the Licensing Authority.

| Recommendation 104 | Consider a complete reappraisal of all offences under the Act with the view of making the majority of offences expiable, particularly for a first offence. |
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15.4.47 For ease of administration, it is my view that all offences and relevant penalties, whether be by expiation or disciplinary action are also contained under a specific part of the Act.

| Recommendation 105 | All offences and relevant penalties, whether by expiation or through disciplinary action, should be contained under a specific part of the Act. |
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### Codes of Practice

15.4.48 For the purposes of section 11A of the Act, the Commissioner has by notice in the Government Gazette published a—

15.4.48.1 **General Code of Practice** which includes measures relating to:

- minors;
- promoting a responsible attitude towards the consumption of liquor;
- drink spiking;
- intoxication;
- disorderly or offensive behaviour;
- disturbances;
- risk assessment; and
- staff training;

15.4.48.2 **Late Night Code of Practice** which includes measures relating to the trade in liquor after midnight, particularly:

- queue management;
- drink marshals;
- restrictions of the sale and supply of beverages that promote rapid/excessive consumption;
- restrictions on the use of glassware;
- use of CCTV; and
- use of metal detectors.

15.4.49 While section 42 of the Act requires that a licensee must comply with these codes of practice, non-compliance may only be dealt with by the Licensing Authority through disciplinary action.

15.4.50 In my opinion, this is counter-productive, evokes the potential for unnecessary protracted prosecutions and is not representative of a modern and deterrent enabled compliance and enforcement regime.

15.4.51 I note that mandatory codes of practice also exist within the State's gambling legislation whereby the Authority, in this case the IGA, has published a code of practice in regard to the advertising of gambling products and responsible gambling practices. For the purposes of the *Gaming Machines Act 1992,* the IGA may:

(a) designate a provision of the code as a mandatory provision;

(b) declare whether contravention or failure to comply with the mandatory provision is a category A, B, C or D offence for the purposes of that section; and

(c) if the offence is to be expiable—declare whether the offence is a category A, B, C or D expiable offence for the purposes of that section.[167]

15.4.52 Similar provisions have also been introduced into the *Casino Act 1997, Authorised Betting Operations Act 2000* and the *State Lotteries Act 1966*.

15.4.53 This model allows the offence and expiation fee to be prescribed having regard to the level of potential risk and significance.

15.4.54 In my opinion the Government may wish to consider amending section 11A of the Act to provide for a penalty enforcement model not dissimilar to the above for any codes of practice issued under the Act. While this would provide consistency with the State's gambling legislation, I see no reason why it could not also be expanded to encapsulate all other offences under the Act.

| Recommendation 106 | **Amend section 11A of the Act to allow for the expiation of offences relating to codes of practice consistent with the State's gambling legislation.** |
|---|---|

### Drug & Alcohol Testing

15.4.55 The Discussion Paper asked respondents to consider whether responsible persons should be tested for being under the influence of drugs and alcohol while on duty.[168]

15.4.56 In response it has been put to me that licensees already have adequate obligations to manage their staff noting that any licensee that allows an employee to perform work while under the influence of alcohol or drugs runs the risk of disciplinary action or sanction pursuant to the *Work Health and Safety Act 2012*.

15.4.57 I am not persuaded by this view. It should be remembered that liquor is a regulated product and that under the Act, a responsible person in addition to personally supervising and managing the licensed premises also has significant obligations (in conjunction with the licensee) to —

(a) prevent minors consuming or being supplied with liquor on the licensed premises;

(b) prevent the sale or supply of liquor to persons in circumstances where their speech, balance, coordination or behaviour is noticeably affected and it is reasonable to believe that the affected speech, balance coordination or behaviour is the result of the consumption of liquor or some other substance;

(c) reduce the likelihood of incidents of intoxication and/or disorderly, offensive, abusive or violent behaviour on licensed premises; and

(d) manage incidents related to intoxication and/or disorderly, offensive, abusive or violent behaviour that may occur on licensed premises.

[167] *See section 10A(3) of the Gaming Machines Act 1992 (SA)*
[168] *Discussion Paper, page 18*

15.4.58 While I appreciate that employers and employees alike have a legal duty of care to ensure a safe and healthy workplace, the use of alcohol or drugs becomes an occupational health and safety issue if a person's ability to exercise judgment, coordination, motor control and alertness is affected. The alcohol or drug-affected person may not be able to make an accurate assessment of their fitness for work or to perform their responsibilities unimpaired.

15.4.59 Further workers 'under the influence' not only present an injury hazard to themselves, they may also place their workmates in danger or in the difficult position of being expected to cover for unsafe work practices or having to report a fellow worker. There are also the issues of potential damage to property or equipment, negative publicity for a business, and loss of productivity.

15.4.60 Almost one in 10 workers say they have experienced the negative effects of a co-worker's misuse of alcohol, while alcohol and other drugs are estimated to cost Australian workplaces $6 billion per year in lost productivity.[169]

A number of industries are subject to legislation which prohibit employees from working while under the influence of alcohol or drugs. Examples are provided in the following table. Where there is no legislative requirement, I note that Safework Australia also encourages workplaces to develop a drug and alcohol policy that reflects the health and safety needs of the specific workplace.

**Table 14: Legislation requiring workers to have a zero alcohol limit**

| Industry | Legislation | Prohibition |
|---|---|---|
| Public passenger vehicle driver | *s85(2)(a) and (b)—Passenger Transport Regulations 2009 (SA)* | The driver of a public passenger vehicle must not—<br>(a) drive the vehicle, or attempt to put the vehicle in motion, while there is present in his or her blood any concentration of alcohol; or<br>(b) consume or use alcohol or a drug or substance the consumption or use of which is prohibited by law between the time of commencing work and of ceasing work on any day;<br>Maximum penalty: $750<br>Expiation fee: $105 |
| Taxi driver | *cl 4—Code of Practice under Passenger Transport Regulations 2009 (SA)* | A taxi driver must—<br>(d) not take drugs as a means of overcoming fatigue, ensure that he or she does not have any concentration of alcohol in his or her blood while driving, and observe the laws that relate to driving under the influence of drugs; |
| Rail safety worker | s128(1)—Rail Safety National Law (South Australia) Act 2012 | (1) A rail safety worker must not carry out, or attempt to carry out, rail safety work—<br>(a) while there is present in his or her blood the prescribed concentration of alcohol; or<br>(b) while a prescribed drug is present in his or her oral fluid or blood; or<br>(c) while so much under the influence of alcohol or a drug as to be incapable of effectively discharging a function or duty of a rail safety worker.<br>Maximum penalty: $10 000. |

[169] *http://www.safework.sa.gov.au/show_page.jsp?id=115268#.V1d96ppf06b*

15.4.61 Relevantly, persons who are approved as crowd controllers under both the *Security and Investigation Industry Act 1995* and the Act are subject to random alcohol and drug testing and must have a zero tolerance. Sections 23J(1), 23K(1)-(3), 23L, 23M(1)-(3) and 23O of the *Security and Investigation Industry Act 1995* state—

*"23J—Security agent authorised to control crowds may be required to undertake drug testing*

*(1) A police officer or an authorised officer may, by notice in writing, direct a licensee to attend at a specified time and place for the purpose of undertaking a drug testing procedure to determine the level of any prescribed drug in any form in the blood or urine of the agent."*

*"23K—Security agent authorised to control crowds may be required to undertake alcohol testing*

*(1) A police officer may require a licensee, while performing the function of controlling crowds, to submit to an alcotest.*

*(2) If an alcotest conducted under subsection (1) indicates that the prescribed concentration of alcohol may be present in the blood of the licensee, a police officer may require the licensee to submit to a breath analysis.*

*(3) Performance of a breath analysis required under subsection (2) must be commenced within 2 hours of the licensee having submitted to the alcotest indicating that the prescribed concentration of alcohol may be present in the blood of the licensee."*

*"23L—Concentration of alcohol in breath taken to indicate concentration of alcohol in blood*

*If a licensee submits to an alcotest or a breath analysis and the alcotest apparatus or the breath analysing instrument produces a reading in terms of a number of grams of alcohol in 210 litres of the person's breath, the reading will, for the purposes of this Act, be taken to be that number of grams of alcohol in 100 millilitres of the person's blood."*

*"23M—Evidence etc*

*(1) If the requirements and procedures in relation to breath analysing instruments and breath analysis under this Act, including subsections (4) and (5) , have been complied with, it must be presumed, in the absence of proof to the contrary, that the concentration of alcohol so indicated was present in the blood of the licensee at the time of the analysis.*

*(2) No evidence can be adduced in rebuttal of the presumption created by subsection (1) except—*

*(a) evidence of the concentration of alcohol in the blood of the licensee as indicated by analysis of a sample of blood taken and dealt with in accordance with the procedures prescribed by regulation; and*

*(b) evidence as to whether the results of analysis of the sample of blood demonstrate that the breath analysing instrument gave a false reading of the concentration of alcohol present in the blood of the licensee.*

*(3) If it is proved in proceedings that a concentration of alcohol was present in the licensee's blood at the time of a breath analysis, it must be conclusively presumed that that concentration of alcohol was present in the licensee's blood throughout the period of two hours immediately preceding the analysis.*

*23O—Cancellation of licence*

*(1) The Commissioner may, subject to this section, cancel a security agents licence if—*

*(a) the licensee fails, without reasonable excuse, to comply with—*

*(i) a notice or direction under section 23J; or*

*(ii) a requirement or direction under section 23K; or*

> *(b) a sample of the blood or urine of the licensee taken in accordance with section 23J is found on analysis to be a non-complying sample (within the meaning of the regulations); or*
>
> *(c) the results of a breath analysis undertaken in accordance with this Division demonstrate that the prescribed concentration of alcohol was present in the licensee's blood at a time when the licensee was performing the function of controlling crowds.*

15.4.62 Hence paradoxically, while a person who is controlling entry to licensed premises can be tested by police and must have a zero drug and alcohol level, a person responsible for actually managing and supervising the sale and supply of liquor is not subject to such scrutiny.

15.4.63 Notwithstanding the above, in addition to formal prosecution action, I am advised that SA Police provide intelligence to the Commissioner to ensure that both new applicants and existing approved persons are held to account.

15.4.64 The Commissioner will, at his discretion, require responsible persons to agree to a condition requiring them to be subject to random police testing for drugs and alcohol if there is any history of non-compliance with their responsibilities.

15.4.65 In my view the Government should consider providing SA Police with the power to test responsible persons who are on duty for both consumption of alcohol and the influence of drugs. A penalty framework consistent with the existing road traffic legislation could be enforced with monetary penalties being applied to the licensee and responsible person alike.

15.4.66 However, as discussed above, one difficulty with such a requirement is that at present crowd controllers are subject to a zero drug and alcohol tolerance. It is therefore difficult to logically differentiate between the respective responsibilities and in some respects it is possible to argue that responsible persons are in an even more important position.

15.4.67 Information provided to me by SA Police and CBS show that there is a problem in South Australia. I have seen details of many incidents in the last three years where responsible persons have tested positive to drugs or alcohol. This is itself a concern, especially where some of these incidents have resulted in death or serious injury to patrons who were allegedly supplied liquor by responsible persons or staff under their supervision who are themselves affected by alcohol or drugs.

15.4.68 The most glaring example of a responsible person drinking on the job comes from the recent prosecution of the Penneshaw Hotel and the responsible person on duty, a Mr Richard Purvis. The prosecution was instigated pursuant to section 108(1) of the Act which states—

> *(1) "If liquor is sold or supplied on licensed premises to an intoxicated person, the licensee, the responsible person for the licensed premises and the person by whom the liquor is sold or supplied are each guilty of an offence."*

The matter was heard in the Christies Beach Magistrates Court, with the magistrates decision handed down on 21 September 2015 as *MCCBHB-14-5174*.

15.4.69 I note that both Mr Purvis and the licensee pleaded guilty to the allegation that a customer was continuously being served liquor to the extent that he subsequently crashed his car on leaving the hotel with a blood alcohol reading of 0.292. The customer died from injuries sustained in the crash.

15.4.70 It was alleged that Mr Purvis continued to serve the customer liquor when he was clearly intoxicated and also was drinking alcohol himself whilst performing the duties of responsible person. He was in fact fraternising with the deceased and drinking at the same time.

15.4.71 Another example involves a responsible person sniffing cocaine whilst on duty. There are several other incidents of varying degrees of irresponsibility involving both alcohol and drugs.

15.4.72 I recommend that the only answer is a zero tolerance for both alcohol and drugs. After all, a responsible person should mean exactly that, and, consistent with responsibility, is the ability to have unimpaired judgement in making the necessary observations and taking appropriate action where there appears to be a breach of the law.

| Recommendation 107 | Enact legislation to provide police with the power to conduct alcohol and drug testing of licensees and responsible persons who are on duty and that it should be an offence for failing to comply. |
|---|---|

### ID Scanners

15.4.73 It has been put to me that there are considerable benefits for both industry and the regulator alike, if the use of ID Scanner technology was mandated for late night trading venues.

15.4.74 Liquor and Gaming NSW, which regulates the use of this technology in the Sydney Kings Cross Precinct and at other high risk venues pursuant to sections 116AB and 116AC of the *Liquor Act 2007 (NSW)*, have advised me that scanners provide considerable advantages including—

(a) the detection of fake forms of identification;

(b) enabling a more efficient method of identifying persons attempting to breach barring orders; and

(c) a valuable resource in enabling better enforcement procedures in licensed premises.

15.4.75 I support this view and recommend that the Government consider mandating the introduction of ID Scanners for late night trading venues in South Australia along the lines of the existing CCTV and metal detector requirements, albeit it would seem more appropriate to require the operation of such scanners to apply for venues which trade after 1.00am.

15.4.76 That is, if a venue trades for example after 1.00am it should be a requirement for the licensee to ensure that each person seeking entry to the premises from 12 midnight must produce a form of identification which is scanned.

15.4.77 I note that a number of late night trading venues have already initiated the use of ID scanners voluntarily. It would be appropriate for such requirements to be incorporated within the Late Night Code concurrently with the use of CCTV and metal detectors.

| Recommendation 108 | Enact legislation or incorporate within the Late Night Code of Practice requirements to mandate the use of ID Scanners concurrently with the use of CCTV and metal detectors. |
|---|---|

# CHAPTER 16 – LICENSING AUTHORITY

## 16.1 Overview

16.1.1 Under the Act the Licensing Authority means the Licensing Court or the Commissioner. Part 2, Division 3 of the Act outlines the division of responsibilities between the Commissioner and the Licensing Court.

16.1.2 The responsibilities of the Commissioner include—

(a) determining all non-contested matters (except those to be determined by the Licensing Court under other provisions);

(b) determining all contested applications for a Limited Licence;

(c) determining applications relating to a Small Venue Licence (to which section 52 of the Act applies);

(d) making reasonable attempts to conciliate contested applications; and

(e) determining disciplinary matters by consent under section 119A of the Act.

16.1.3 The Licensing Court has responsibility for hearing and determining matters not resolved at conciliation where the parties do not wish it to be determined by the Commissioner. The Licensing Court must determine all other matters as specified by the Act including—

(a) the review of a decision of the Commissioner under section 22 of the Act;

(b) any matters referred for hearing and determination by the Commissioner under section 21 of the Act; and

(c) disciplinary matters under section 120 of the Act.

16.1.4 As part of the review of the *Liquor Licensing Act 1985* in 1996, I endorsed the two tiered system of a Commissioner and a Court.[170]

16.1.5 I have spoken with Judge Gilchrist of the Licensing Court who for the last few years has been the principal judge exercising the jurisdiction of the Licensing Court. He considers that the present two tiered system, is working well. Likewise, the Commissioner considers the system works administratively well as does the legal profession who are supportive of the present system.

16.1.6 I am of the view that the two tiered system has not caused any problems and for that reason I would recommend that the Commissioner and Licensing Court continue to determine various aspects of the Act. I note that in chapter 7 of this report I have recommended changes to the responsibilities of the Commissioner, particularly in relation to replacing the general right of objection process in section 77 of the Act. I discuss this further below.

| Recommendation 109 | The Commissioner and Licensing Court two tier structure should be retained. |
|---|---|

[170] *T.R Anderson, Review of South Australian Liquor Licensing Act, 1985 (October 1996)*

## 16.2 Role of the Licensing Authority

### Liquor and Gambling Commissioner

16.2.1 Presently under section 22 of the Act, a party to proceedings before the Commissioner may in certain circumstances apply to the Licensing Court for a review of the Commissioner's decision.

> *(1) A party to proceedings before the Commissioner who is dissatisfied with a decision made by the Commissioner in the proceedings may apply to the Court for a review of the Commissioner's decision.*
>
> *(2) However, if the Commissioner's decision relates to a subject on which the Commissioner has an absolute discretion, the decision, insofar as it was made in the exercise of that discretion, is not reviewable by the Court.*
>
> *(2a) Despite subsection (2), an applicant for, or in relation to, a small venue licence who is dissatisfied with a decision of the Commissioner in relation to his or her application may apply to the Court for a review of the decision.*
>
> *(2b) Despite subsection (2), the Commissioner of Police may apply to the Court for a review of the Commissioner's decision to grant an application for, or in relation to, a small venue licence (however a review contemplated by this subsection is limited to whether a particular person is a fit and proper person, or whether the Commissioner's decision is contrary to the public interest).*
>
> *(3) An application for review of a decision of the Commissioner must be made within month after the party receives notice of the decision or a longer period allowed by the Court.*
>
> *(4) A review is in the nature of a rehearing.*
>
> *(5) On a review, the Court may exercise any one or more of the following powers:*
>
> > *(a) affirm, vary or quash the decision subject to the review;*
> >
> > *(b) make any decision that should, in the opinion of the Court, have been made in the first instance;*
> >
> > *(c) refer a matter back to the Commissioner for rehearing or reconsideration;*
> >
> > *(d) make any incidental or ancillary order.*

16.2.2 In chapter 7, I recommend that the general right of objection process in section 77 of the Act be replaced with submissions made to the Commissioner and that determination of the matter be by the Commissioner.

16.2.3 I also recommend in that chapter that only certain matters determined by the Commissioner may be subject to review by the Licensing Court.

### Licensing Court

16.2.4 The Licensing Court is a specialist tribunal and much weight is placed on that fact when appeals proceed from the Licensing Court to the Supreme Court. The Supreme Court as a matter of law does not lightly interfere with a discretionary judgement of a specialist tribunal.

16.2.5 Previously judges were taken from a pool of the District Court and as a result judges may only have heard liquor licensing matters on rare occasions and sometimes many months or years apart. I note that currently Judge Gilchrist and the Hon WD Jennings, the former senior judge of the Industrial Relations Court of South Australia, hear matters before the Licensing Court.

16.2.6 The industry is entitled to some consistency and for that reason, I recommend that two or perhaps three judges from the existing pool of judges be designated as Licensing Court judges so that there is a consistency and efficiency in the decision making process.

| Recommendation 110 | A maximum of three judges from the existing pool of judges be designated as Licensing Court judges so that there is a consistency and efficiency in the decision making process. |
|---|---|

16.2.7 Judge Gilchrist has suggested in his written submission that the Licensing Court's power to award costs under section 26 of the Act should be considered as part of this review.

16.2.8 At the present time, the Act allows costs to be awarded against a person if the Court is of the opinion that the person has brought proceedings, or has exercised the right to object to an application, frivolously or vexatiously. Judge Gilchrist point out that it is not only the bringing of the proceedings or the making of an objection, but it is also the conduct of the proceedings which sometimes involves frivolity or vexatiousness.

16.2.9 He suggests an amendment much like the provision in the now repealed *Workers Rehabilitation and Compensation Act 1986* which provided in section 95(3)—

> *(3) If the Tribunal is of the opinion that a party acted unreasonably, frivolously or vexatiously in bringing or in relation to the conduct of proceedings, the Tribunal may—*
>
> *(a) decline to make an award of costs in favour of the party and may further (if it thinks fit) make an award of costs against the party; or*
>
> *(b) reduce the amount of the award to which the party would otherwise have been entitled.*

16.2.10 I am persuaded that there is considerable merit in this suggestion to include the conduct of proceedings, although if other recommendations in this report are accepted there will not be objections from competitors or the general public.

| Recommendation 111 | Amend section 26 of the Act to include a power to award costs where the conduct of proceedings is frivolous or vexatious. |
|---|---|

16.2.11 Judge Gilchrist has also suggested including an injunctive power in connection with disciplinary matters to prevent events taking place which offend against the harm minimisation object of the Act. He has suggested a provision similar to that contained in section 15(2) of the *Fair Work Act 1994* which states—

> *(2) If there are reasonable grounds to believe that a person is about to contravene or to fail to comply with a provision of this Act, an award or enterprise agreement, the Court has jurisdiction to order the person to refrain from the contravention or non-compliance.*

16.2.12 Judge Gilchrist suggests that an appropriate provision to be inserted into the Act would be as follows—

> *"If there are reasonable grounds to believe that a person is about to contravene or to fail to comply with a provision of this Act or a condition of the licence, the Court has jurisdiction to order the person to refrain from the contravention or non-compliance."*[171]

16.2.13 Such a provision would enable the Commissioner of Police or the Commissioner to prevent any obvious non-compliance when a function or event is advertised in a way which offends the objects of the Act or the General Code or Late Night Code.

16.2.14 I endorse this view especially where minors are likely to be involved, and where a licensee has signalled an intention to promote drinking which is a breach of the General Code or Late Night Code and contrary to all principles of harm minimisation.

| Recommendation 112 | Include a power for the Licensing Court to impose an injunction to prevent a breach of the Act or the codes of practice. |
|---|---|

### Appeals to the Supreme Court

16.2.15 Currently section 27 of the Act provides that an appeal from a decision of the Licensing Court may be made with the leave of the Supreme Court. If leave is granted, the appeal will be heard by the Full Court.

16.2.16 I recommend that the right of appeal to the Supreme Court should remain.

| Recommendation 113 | The right of appeal from the Licensing Court to the Supreme Court should be retained. |
|---|---|

[171] *Submission by Judge Gilchrist of the Licensing Court (2 December 2015)*

# CHAPTER 17 – LIQUOR AND GAMBLING OVERLAP

## 17.1 Overview

17.1.1 In common with most jurisdictions across Australia, liquor and gambling licensing are inextricably linked in South Australia and share many commonalities in their licensing and enforcement regimes. Central to this theme is that the Commissioner as a statutory office holder is responsible for administering the—

(a) ***Liquor Licensing Act 1997*** which regulates and controls the sale, supply and consumption of liquor; and

(b) ***Gaming Machines Act 1992*** which regulates the supply and operation of gaming machines; and

(c) ***Authorised Betting Operations Act 2000*** which regulates the licensing and scrutiny of wagering operations conducted by UBET SA (formerly SATAB), racing clubs, bookmakers and agents; and

(d) ***Casino Act 1997*** which regulates the licensing and control of the licensed casino (currently SKYCITY Adelaide Casino).

17.1.2 Inter-relationships between the functions of these Acts include—

*(a) the same licensee must hold both the liquor and gaming machine licence;*

*(b) the agent for UBET may be co-located on licensed premises;*

*(c) only the holders of hotel, club and certain special circumstances licences are eligible to hold a gaming machine licence;*

*(d) individuals approved as responsible persons under the Act may also be notified as being gaming managers or gaming employees for the purposes of the Gaming Machines Act 1992;*

*(e) the holder of the Casino Licence also holds a Special Circumstances Licence to sell and supply liquor for consumption on the casino premises and is an agent for UBET; and*

*(f) CBS inspectors are authorised under each of these Acts and are able to assess a licensee's compliance across the scope of each Act during a single inspection.*

17.1.3 The relationship between these Acts has also led in my opinion to a disconnect between certain matters.

## 17.2 Lockout provisions

17.2.1 Clause 16 of the Late Night Code states—

> *(1)* ***Between 3.01am and 7.00am or closing time (whichever is earlier)****, the licensee must not permit a customer to enter the licensed premises.*

17.2.2 This requirement applies to all licensees (other than the licensed casino or the holder of a Restaurant Licence) who are authorised to sell or supply liquor for consumption on licensed premises and who trade at any time between the hours of 3.00am and 7.00am on any day.

17.2.3 I note that licensees who also operate a gaming venue on the same premises have secured exemptions from the 'Lockout' to allow gaming rooms to continue to allow entry after 3am provided the purpose of entry is to gamble not to consume liquor.

17.2.4 I question whether this practice is contrary to the intention of the 'Lockout' and whether there is adequate surveillance to monitor premises with this type of exemption.

## 17.3 Assessment of community and social impact

17.3.1 The Act currently requires that an applicant for a Hotel Licence must satisfy the Licensing Authority that the licence is necessary to provide for the needs of the public in that locality (see chapter 9 where I discuss the replacement of this needs based test).

17.3.2 In order to be granted a gaming machine licence, the applicant must first apply for and be granted a Social Effect Certificate from the Commissioner pursuant to section 17B of the *Gaming Machines Act 1992*. An applicant for a Social Effect Certificate must satisfy the Commissioner that—

> *"the grant of a gaming machine licence in respect of the premises on the site would not be contrary to the public interest on the ground of the likely social effect on the local community and, in particular, the likely effect on problem gambling within the local community".*[172]

17.3.3 When assessing the social effect of the grant of a gaming machine licence, amongst other things the Commissioner must—

> *(a) apply the social effect principles*[173] *prescribed by the IGA*[174]*; and*
>
> *(b) not have regard to the economic effect that the granting of the licence might have on the business of other licensed premises in the relevant locality (except insofar as that economic effect may be relevant to an assessment of the likely social effect of the grant of the licence on the local community).*[175]

17.3.4 I note that the social effect principles prescribed by the IGA requires the applicant to undertake significant engagement with the local community and the preparation of a statistical compendium including Socio-Economic Indexes for the relevant area as published by the Australian Bureau of Statistics, census data and gambling revenue information for the locality.

17.3.5 Hence, as the assessment of a liquor licence and gaming licence is generally conducted separately and distinct from one another, there is a risk that the test which determines the social impacts for gaming could duplicate to some extent the community impacts taken into account for the original liquor licence.

[172] *Section 17B(3) of the Gaming Machines Act 1992*
[173] *http://www.iga.sa.gov.au/*
[174] *Section 17B(4)(a) of the Gaming Machines Act 1992*
[175] *Section 17B(4)(b) of the Gaming Machines Act 1992*

## 17.4 Mandatory break in trade

17.4.1 Operating hours for gaming machines must fall within the trading hours authorised for the sale of liquor under the Act[176], for example the general bar trading hours of the premises. If the liquor licence ceases trading at midnight, gaming trading must also cease at midnight.

17.4.2 The Licensing Authority when approving gaming trading hours must also ensure that gaming operations cease for six hours in any 24 hour period. This can be one single period of six hours, two periods of three hours or three periods of two hours.

17.4.3 Section 27(7) of the Gaming Machines Act 1992 states—

> *(7) In fixing (or varying) the hours during which gaming operations may be conducted pursuant to a gaming machine licence, the Commissioner—*
>
> *(a) cannot fix hours that are outside the hours during which the licensed premises are authorised to be open for the sale of liquor; and*
>
> *(b) must ensure—*
>
> *(i) that gaming operations cannot be conducted on the premises on Christmas Day or Good Friday; and*
>
> *(ii) that at other times—*
>
> *(A) if the licensee has entered into a responsible gambling agreement and has provided a copy of the agreement to the Commissioner—there are at least 6 hours in each 24 hour period (which may be a continuous period of 6 hours, or 2 separate periods of 3 hours or 3 separate periods of 2 hours) during which gaming operations cannot be conducted on the premises; and*
>
> *(B) in any other case—gaming operations cannot be conducted on the premises before 10 am on Monday to Friday and between 2 am and 10 am on Saturday and Sunday.*

17.4.4 There is presently, no such equivalent break of trade under the liquor licensing regime. In chapter 5, I recommend that it be a mandatory condition of a liquor licence that the premises must be closed for a minimum of three consecutive hours between 3am and 9am or alternatively the premises may remain open but not sell liquor.

[176] *Section 27 of the Gaming Machines Act 1992*

## 17.5 Approval of persons

17.5.1 As a red tape reduction measure of the 2013 gambling reforms, gaming managers and gaming employees no longer require the approval of the Commissioner to work at a gaming machine venue.

17.5.2 Instead, licensees now notify the Commissioner of the appointment of gaming managers and gaming employees using a web-based notification system known as the Barring and Online Employee Notification (BOEN) system.

17.5.3 The Commissioner of Police reviews notifications of persons appointed as a gaming manager or gaming employee to attest whether they are fit and proper. I note that a subsequent amendment to the *Gaming Machines Act 1992* has also allowed for the sharing of information between the Liquor and Gambling Commissioner and the Commissioner for Police.[177]

17.5.4 Subject to any adverse information about a person, the Commissioner has the power to prohibit that person from carrying out the duties of a gaming manager or gaming employee, either permanently or for a specified period.[178]

17.5.5 This process is contrary to that applied to persons who seek approval under the Act to be responsible persons as they are still subject to full probity assessment by SA Police and must be approved by the Commissioner.

17.5.6 Further, while the system to notify gaming employees and gaming managers is hosted by the IGA as an extension to its welfare barring administration system, responsible person approvals are managed by CBS.

17.5.7 The approval of persons to work at the licensed casino is further complicated as the IGA has in accordance with section 28 of the *Casino Act 1997* prescribed positions at the casino as either—

(a) Sensitive Positions; or

(b) Non-Sensitive Positions; or

(c) Positions of Responsibility;

and has prescribed different approval processes for application by the Commissioner accordingly.

17.5.8 Further, the IGA may approve—

(a) a director of the licensee; or

(b) an executive officer of the licensee; or

(c) a person, or a person of a class, designated by the IGA for the purpose;

as a designated person for the purposes of section 14B of the *Casino Act 1997.*

[177] *Section 44AAA of the Gaming Machines Act 1992*
[178] *Section 44AA of the Gaming Machines Act 1992*

## 17.6 Compliance and enforcement

17.6.1 While the Commissioner may grant an approval under the various provisions of each Act, disciplinary matters under casino and wagering legislation can only be heard by the IGA (i.e. the Commissioner cannot discipline the Casino or a wagering operator for non-compliance).

17.6.2 Further, non-compliance under the Act and G*aming Machines Act 1992*, including breaches of the respective codes of practice, may be dealt with through the expiation of certain offences by CBS inspectors.

17.6.3 However, any matter relating to non-compliance by the Casino or wagering operator, while subject to the same responsible gambling code of practice cannot be expiated by an authorised officer or dealt with by the Commissioner.

17.6.4 In these circumstances, while the offence is subject to investigation by CBS, if proven it can only be adjudicated and a penalty issued by the IGA not the Commissioner.[179]

17.6.5 It should be noted that the Licensing Court also has no jurisdiction over the administration of the *Casino Act 1997* or *Authorised Betting Operations Act 2000*.

[179] *Section 59 of the Casino Act 1997 (SA)*

## 17.7 Barring from licensed premises

### All Licensees (excluding Casino)

17.7.1 As I discussed in chapter 15, a licensee or responsible person, under section 125 of the Act, may bar a person from entering or remaining on the licensed premises for a specified period—

(a) if the licensee or responsible person is satisfied that the welfare of the person, or the welfare of persons residing with that person, is seriously at risk as a result of the consumption of alcohol (known as a welfare barring order); or

(b) if the person commits an offence, or behaves in an offensive or disorderly manner, on, or in an area adjacent to, the licensed premises; or

(c) on any other reasonable ground (other than on the ground that the person is placing his or her own welfare, or the welfare of dependants, at risk through gambling—see below).

17.7.2 Barring periods may range from—

(a) a period of up to three months for a first barring, or a longer period as approved by the Commissioner; or

(b) up to six months for a second barring, or a longer period as approved by the Commissioner; or

(c) indefinitely for a third barring.

17.7.3 In addition, a person may be barred indefinitely (or for a specified period) in the case of a 'welfare barring order'.

17.7.4 The Commissioner of Police or a police officer, under sections 125A and 125B of the Act, may bar a person from entering or remaining on licensed premises.

17.7.5 A person may apply to the Licensing Authority for a review of an order barring their entry or right to remain on licensed premises.[180]

### Casino Licensee

17.7.6 Under section 44 of the *Casino Act 1997* the casino licensee may bar a person from the gaming area of the casino premises on any reasonable ground *(other than on the ground that the person is placing his or her own welfare, or the welfare of dependants, at risk through gambling—see below)* for a period of up to three months.

17.7.7 Barring orders (other than on the ground that the person is placing his or her own welfare, or the welfare of dependants, at risk through gambling) are subject to review by the Commissioner who may confirm, vary or revoke the order.

17.7.8 The Commissioner may bar a person from the gaming area for a period specified in the order or for an unlimited period.[181]

[180] *Section 128 of the Liquor Licensing Act 1997*

17.7.9 The Commissioner of Police may also bar a person from the gaming areas of the Casino for a period specified in the order or for an unlimited period on any reasonable ground.[182]

17.7.10 A person aggrieved by a decision of the Commissioner or the Commissioner of Police to bar a person under the *Casino Act 1997* may apply to the IGA for a review of the decision.[183] The IGA may confirm, vary, revoke or reverse the decision under review.

17.7.11 Sections 65(1)-(3) of the *Casino Act 1997* state—

> *(1) A person aggrieved by a decision of the Commissioner under this Act may, within 30 days after receiving notice of the decision, apply to the Authority for a review of the decision.*
>
> *(2) A person aggrieved by a decision of the Commissioner of Police to bar the person from the gaming areas by order under section 45A may, within 14 days after being given a copy of the order, apply to the Authority for a review of the decision.*
>
> *(3) On an application under this section, the Authority may confirm, vary, revoke or reverse the decision under review.*

17.7.12 Further, sections 66 of the *Casino Act 1997* states—

> *(1) A decision of the Authority under this Act is final and without appeal subject however to the following qualifications:*
>
> *(a) an appeal lies to the Supreme Court against a decision to take disciplinary action against a licensee; and*
> *(b) an appeal lies, with the permission of the Supreme Court, against a decision of the Authority on a question of law.*
>
> *(2) An appeal must be commenced, or the application for permission to appeal made, within 1 month after the decision to which the appeal relates.*

17.7.13 I note that the current barring provision under the casino legislation does not extend to the entire casino premises, but rather limits the powers to the gaming areas.

17.7.14 While, I suspect that the barring provisions under sections 125, 125A and 125B of the Act would prevail, this would appear to be an anomaly and that it was not contemplated at the time that the casino legislation was enacted that part of the casino premises may be outside the casino gaming area. This should be a matter to be considered as part of any consequential amendments to the casino legislation which arise from this review.

### Welfare Barring

17.7.15 As a result of the 2013 gambling reforms the IGA has assumed total responsibility for all gambling related welfare barring arrangements applicable to gaming, casino and wagering legislation under Part 4 of the *Independent Gambling Authority Act 1995*.

17.7.16 Different barring regimes are now applicable to a single licensee depending on whether the incident is related to alcohol consumption, gambling, welfare or behaviour. Further, different review mechanisms are now in play.

[181] *Section 45 of the Casino Act 1997 (SA)*
[182] *Section 45A of the Casino Act 1997 (SA)*
[183] *Section 65 of the Casino Act 1997 (SA)*

## 17.8 Conclusion

17.8.1 As can be appreciated, this is a broad issue and only indirectly related to the terms of reference of this review and is not further discussed here. This chapter is provided to simply illustrate the difficulties which are readily apparent in the administration of the current legislation and not an attempt to solve any of the issues raised.

17.8.2 It is not possible in this review to cover the broad field of gaming legislation. Due to the area of overlap illustrated in this brief summary, it may be appropriate to review the sphere of gaming legislation if the Government wishes to reduce red tape, because of the dual regimes, which on the face of it are not always complimentary of each other.

17.8.3 Given the inter-relationship that exists between liquor and gambling legislation, a more in-depth review of the overlap with the view of identifying red tape barriers, digital strategy potential and opportunities for legislative and regulatory improvement may be required.

| Recommendation 114 | **The Government may wish to consider a more in-depth review of the overlap between liquor and gambling legislation with the view of identifying red tape barriers, digital strategy potential and opportunities for legislative and regulatory improvement and to remove inconsistencies.** |
|---|---|

# CHAPTER 18 – RSA TRAINING STANDARDS AND COMPETENCY

## 18.1 Training requirements

18.1.1 The Discussion Paper asks respondents to consider whether further improvements to ease the administrative burden in relation to responsible person approvals are required. In particular, page 18 of the Discussion Paper asks—

> *(a) Would the removal of the requirement for the Commissioner to approve the responsible person reduce administrative burden?; and*
>
> *(b) Should other mechanisms be introduced to ensure appropriate responsible persons are in the industry?*

18.1.2 The responsible service of alcohol plays a pivotal role in minimising harms and risks caused by excessive consumption and misuse of alcohol. Responsible service of alcohol training is required in South Australia for persons that are involved in the service or supply of liquor on licensed premises. Clauses 7(1), 7(2), 7(5) and 7(6) of the General Code state—

> *(1) A licensee must ensure that all staff involved in the service or supply of liquor on the licensed premises complete nationally accredited responsible service of alcohol training.*
>
> *(2) The training must be completed within three months.*
>
> *(5) The licensee must produce evidence of the completion of responsible service of alcohol training by persons as required by this clause or by licence conditions, within 7 days of being requested to do so by an authorised officer (within the meaning of section 122 of the Liquor Licensing Act 1997).*
>
> *(6) In this clause – **responsible service of alcohol training** means a vocational education and training course in responsible service of alcohol accredited under the National Vocational Education and Training Regulator Act 2011 of the Commonwealth.*

18.1.3 I understand that a responsible person is required to complete responsible service of alcohol training as part of the fit and proper test under section 97 of the Act.

18.1.4 There is a lack in consistency between jurisdictions regarding training accreditation requirements.

18.1.4.1 Australian Capital Territory, Northern Territory, Queensland, South Australia, Tasmania and Western Australia recognise nationally accredited online training.

18.1.4.2 Victoria requires face to face initial training and online refresher training every three years.

18.1.4.3 New South Wales has introduced the option of both face to face and online training, but requires applicants to apply for and be granted a competency card in addition to the training qualification. Competency cards must be renewed every five years at a current cost of $35 and are subject to a person completing an online training refresher course.

18.1.5 The current nationally accredited course is entitled *"Provide responsible service of alcohol – SITHFAB002"*.[184] The providers of this course are registered by the Australian Government Department of Education and Training.

[184] *Australian Government, Department of Education and Training*
*http://www.myskills.gov.au/Courses/Search?keywords=responsible+service+of+alcohol&distance=25*

18.1.6 This nationally accredited course covers the responsible service of alcohol skills and knowledge requirements common to all States and Territories. In particular the course outline states—

> *"This unit covers the RSA skill and knowledge requirements common to all States and Territories. Some legislative requirements and knowledge will differ across borders. In some cases after completion of this unit, state and territory liquor authorities require candidates to complete a bridging course to address these specific differences."* [185]

18.1.7 The description of the course outlines that the duration of the course is approximately one day at an approximate cost of $90. However one training provider offers on-line courses at a cost of $39, which may be accessed on a phone or tablet. I am informed that this course can actually be completed in as little as half an hour.

18.1.8 Some respondents have questioned the quality of some of the responsible service of alcohol training that has been delivered.

18.1.9 In an ideal world, I would like to see the training incorporate an element of practical training, rather than having an entire course completed on-line. However, I do acknowledge that this may be impractical, especially for those living in regional areas.

18.1.10 It is my view that responsible service of alcohol training needs a greater focus in the current liquor licensing regime. This greater focus may be achieved through the following mechanisms—

(a) adopting the Victorian approach with face to face initial training; and

(b) refresher courses— requiring staff to complete re-fresher training courses every two or three years. I note that the Gambling Code of Practice requires gaming employees and gaming managers to undertake refresher training[186]; and

(c) enforcement— empowering CBS inspectors to test staff to determine if their level of knowledge and training is competent. This may involve a written test or a practical test to ascertain the knowledge and training of the staff member. This is consistent with the new compliance and enforcement approach of CBS which is discussed in Chapter 15; and

(d) industry courses— held on a regular basis. Licensees should also take on an active role in this regard.

18.1.11 Responsible persons have a higher level of responsibility in supervising and managing the licensed premises. The South Australian Network of Drug & Alcohol Services discusses the role of a responsible person and states—

> *"A system is required that ensures that any person deemed by the system as eligible to undertake such a role has clearly defined roles and responsibilities, brings appropriate skills and knowledge to their decision making and is aware of both their and their company's duty of care and the ramifications for failing to act appropriately".*

[185] *Australian Government, Department of Education and Training http://www.myskills.gov.au/courses/unit?Code=SITHFAB002*
[186] *Gambling Codes of Practice Notice 2013, GR Notice No.8 or 2013, clause 70*

*A systemic approach may be achieved by the Commissioner or the Act recognising an appropriate nationally recognised qualification or skills set as meeting the requirements for designation as a responsible person. However, in undertaking such a process there is a need to consider the rigour required in delivering such a qualification given the issue with the quality of some of the responsible service of alcohol training that has been delivered*".[187]

18.1.12 I agree with the view that a responsible person should be aware of their duties and responsibilities and the consequences for failing to act appropriately. I therefore recommend, especially in light of the information discussed in chapter 15.4, that the Government and the Commissioner review the current fitness and proprietary standards for a responsible person with a view to assessing whether further specific training and competency assessment should be required for responsible persons.

18.1.13 Although it would be desirable to reduce the administrative burden on CBS, this should not be at the expense of poorly qualified persons holding responsible service or alcohol qualifications and accreditation.

| Recommendation 115 | There should be greater focus on responsible service of alcohol training through mechanisms such as refresher courses, enforcement and specific training for responsible persons. |
|---|---|

[187] *Submission by the South Australian Network of Drug & Alcohol Services (January 2016)*

## 18.2 RSA competency

18.2.1 The Industry should be concerned that at present, qualifications in respect to the responsible service of alcohol (RSA) are too easy to obtain.

18.2.2 This may render the licensee liable for breaches of the Act by a person holding such a qualification but not properly understanding his or her responsibilities.

18.2.3 Industry courses to update and deal with competency should be the norm and held regularly. Individual licensees should also, as a responsibility of holding a liquor licence, ensure that all relevant staff are checked for competency on a regular basis.

18.2.4 In addition to checks on competency by CBS inspectors, these extra measures may compensate for the low threshold for delivering this qualification.

| Recommendation 116 | Licensees to ensure as part of their responsibilities for holding a liquor licence, that all relevant staff are checked for responsible service of alcohol competency on a regular basis. |
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## 18.3 Mutual jurisdictional recognition

18.3.1 It has been put to me that while South Australian liquor businesses which conduct tastings, promotional events and sales events interstate (predominantly wine producers) are cognisant of their responsible service of alcohol requirements, beyond the basic requirements of the nationally accredited responsible service of alcohol qualification, there is a lack of consistency between certification requirements and no mutual recognition of qualifications between jurisdictions.

18.3.2 The mutual recognition of responsible service of alcohol training qualifications is a matter which can only be successfully dealt with at a national level with full co-operation between the Federal, State and Territory governments. This is a matter which should be placed on the agenda of the appropriate national inter-governmental forum.

| | |
|---|---|
| **Recommendation 117** | **Mutual recognition of responsible service of alcohol training qualifications should be discussed at the appropriate national inter-governmental meeting.** |

# CHAPTER 19 – MISCELLANEOUS MATTERS

## 19.1 Eligibility to hold a licence

19.1.1 SA Police has expressed concern about the ability to enforce sanctions against some companies which are held in foreign ownership.

19.1.2 This raises the question of whether the eligibility requirements to hold a licence, particularly in relation to companies are adequate.

19.1.3 I note that under the *Corporations Act 2001 (Cwlth)* an Australian registered company must have at least one resident director, hence the ability for the Commissioner or police to exercise sanctions against a company holding a licence should not be a problem.

19.1.4 Further, while the term *'related body corporate'* is defined in section 4 of the Act, 'body corporate' is not. For clarity, I am of the view that perhaps it should be made clear by definition that a *'body corporate'* if it holds a licence under the Act, must be a *'body corporate'* within the meaning of the *Corporations Act 2001 (Cwlth).* To that extent, sanctions against the resident director should not be a problem.

19.1.5 SA Police have also raised a number of difficulties in obtaining information for probity checks in respect to persons who are migrants and are subsequently nominated by a licensee to be a responsible person. A search of Australian criminal history records may reveal nothing of concern whereas there may be relevant convictions recorded in the persons' country of origin.

19.1.6 Consideration should be given as to how this is to be handled because there is no obvious solution. Records for some overseas countries are notorious for their low level of information and detail and may not even be accurate if provided.

19.1.7 However, as such persons would have been granted a visa to work in Australia, I would have thought that the relevant Australian Government authority will have looked at the persons' background. This may provide some answers to the problem.

19.1.8 It may be that a greater level of vigilance should be exercised by the Licensing Authority when approving persons as responsible persons, especially if the persons' command of the English language and understanding of the responsibilities is limited. A competency assessment may assist in this regard.

19.1.9 In summary, this is a vexed issue which may be made more administratively efficient through specific provisions in the Act which provide the eligibility and competency requirements which are necessary to hold a licence or accreditation to act as a responsible person.

| Recommendation 118 | Amend the Act to define 'body corporate' and insert eligibility provisions to hold a licence and an accreditation to act as a responsible person. |
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## 19.2 Advertising

### Overview

19.2.1 Ms Frances Bedford MP, Member for Florey, provided a submission relating to alcohol advertising. The submission referred to research showing that the exposure of young people to alcohol advertising increases their consumption.[188]

19.2.2 It is also apparent that:

> *"Exposure to alcohol advertising influences young people's beliefs and attitudes about drinking, and increases the likelihood that adolescents will start to use alcohol and will drink for if they are already using alcohol".*[189]

19.2.3 Relevantly, I note that the advertising of gambling products is currently subject to mandatory provisions of a code of practice[190] prescribed by the IGA in accordance with—

(a) section 6A of the *Authorised Betting Operations Act 2000*, in particular section 6A(9);

(b) section 41A of the *Casino Act 1997*, in particular section 41A(9);

(c) section 10A of the *Gaming Machines Act 1992*, in particular section 10A(10); and

(d) section 13B of the *State Lotteries Act 1966*, in particular section 13B(8).

19.2.4 The regulation of alcohol advertising and marketing is complex involving both State and Commonwealth legislation and both co-regulatory and self-regulatory frameworks.

### Television advertisements

19.2.5 The Australian Communications and Media Authority ('ACMA') is the independent statutory authority with responsibilities under the *Broadcasting Services Act 1992 (Cwlth)*, the *Telecommunications Act 1997 (Cwlth)*, *Radiocommunications Act 1992 (Cwlth)* and *Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cwlth)*.

19.2.6 The Commercial Television Industry Code of Practice ('the Television Code') has been established under section 123 of the *Broadcasting Services Act 1992 (Cwlth)*. Under this provision, codes of practice are required to be developed by radio and television industry groups in consultation with ACMA. The Television Code is intended to operate in-conjunction with standards prescribed by ACMA.[191]

19.2.7 The matters covered by the Television Code include—

(a) program, commercials and program promotion classification;

(b) advertising time; and

(c) complaint handling.

[188] *Submission by Ms Frances Bedford MP, referring to Regulation of alcohol advertising: Policy options for Australia, 2013, page 2*
[189] *Alcohol Advertising Review Board, 'No way to ignore it: The case for removing alcohol ads from public transport', page 1*
[190] *http://iga.sa.gov.au/gambling-codes-practice-notice-2013*
[191] *http://www.acma.gov.au/Industry/Broadcast/Television/TV-content-regulation/commercial-television-code-of-practice-tv-content-regulation-i-acma*

19.2.8 Under the Television Code, alcohol advertisements on commercial television are only permitted during certain periods of M and MA15+ classification. There are exceptions relating to sports programs on weekend or public holidays and live sporting event broadcasts.

19.2.9 Ms Bedford highlights a concern with these exceptions as live sports broadcasts are watched by many young people and this form of alcohol advertising highly influences children.

19.2.10 Further, Ms Bedford refers to the national prohibition of tobacco advertising on television and radio and the prohibition of live betting odds on broadcast media in South Australia.

19.2.11 Ms Bedford is seeking further controls in regard to the advertising of alcohol with a view to banning alcohol advertising during live television sporting broadcasts.

### Advertisements on public transport

19.2.12 I am aware that the Alcohol Advertising Review Board ('AARB') wrote to the Premier in March this year enclosing a report by the AARB entitled *'No way to ignore it: The case for removing alcohol ads from public transport'*[192]. I was provided with a copy of that letter and report for consideration as part of the Review.

19.2.13 The role of the AARB amongst other things is to review complaints made by the public concerning alcohol advertising. The AARB was developed by the McCusker Centre for Action on Alcohol and Youth and Cancer Council WA, because of the perceived weakness in the self-regulating industry controlled system which exists.

19.2.14 I quote from the AARB letter to the Premier—

> *"There is compelling evidence that exposure to alcohol advertising impacts on the drinking behaviours and attitudes of young people. We encourage you to note that concerns outlined in the report, including:*
>
> - *Alcohol advertising on public transport sites is widespread and has high exposure to young people.*
> - *The AARB is aware of several instances where alcohol advertisements have been placed on bus stops directly outside primary schools, despite industry guidelines on inappropriate placement.*
> - *There is substantial community concern about young people's exposure to alcohol advertising; a recent survey shows that 72% of WA adults support removing alcohol ads from buses and bus stops to reduce young people's exposure, with only 10% opposed.*
> - *There is international precedent for effective government regulation on this issue."*

19.2.15 The AARB report outlines that the regulation of outdoor advertising placement in Australia is part of a self-regulatory system. As part of that self-regulatory system, the Outdoor Media Association, an industry body, has developed Alcohol Advertising Guidelines.

[192] A copy of this report is available at http://www.alcoholadreview.com.au/

19.2.16 The AARB states that these guidelines are "narrow and inadequate" and that the Outdoor Media Association is *"ineffective [in] monitoring and enforcement processes"*.[193] Further, that there is *"urgent need for much stronger regulation to reduce young people's exposure to alcohol advertising, including ads on public transport and transit stops"*.[194]

19.2.17 The AARB refers to the Australian Capital Territory which has acted to prohibit alcohol advertising on buses.

### Advertisements on other media

19.2.18 Newspapers and other periodicals regularly include advertisements (and sometimes catalogues) of alcohol specials and brand advertising. It is apparent that people do seek out these specials and most sectors of the liquor industry would probably oppose a complete ban on alcohol advertising.

### Conclusion

19.2.19 In my view, there is merit in considering a ban on advertising on public transport and for live sporting television broadcasts. This should be on the agenda of a government looking to minimise harm through excessive consumption or misuse of liquor, and the prevention of influential material by publication to minors.

19.2.20 The importance of this issue is highlighted by the statistics provided to me by Ms Bedford. I note that for 2004/05 the total social costs of drug abuse is calculated at $55.2 billion[195], with 56.2% attributable to tobacco and 27.3% attributable to alcohol.[196]

19.2.21 Information provided to me shows that there has also been considerable improvement in underage drinking statistics over a period of seven years from 2007-2013. It is reported that in 2013 72.3% of 12-17 year olds year olds were abstaining from alcohol compared with 56.5% in 2007.[197]

19.2.22 Further, the average age at which a young person consumes their first alcoholic drink has gone up from 15 to 15.7 over the seven year period 2007-2013.[198] Therefore, there are already significant movements in the right direction.

19.2.23 It would be a pity if this momentum was lost by a failure to curb alcohol advertising. Alcohol advertising influences young people who watch sporting events on television or attend sporting arenas.

19.2.24 I note that many sporting teams (both professional and amateur) and events are also sponsored by alcohol producers resulting in product advertisement during live telecasts and fixtures. In addition the players and coaching staff across many different sporting codes wear attire carrying an alcohol producer's logo.

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[193] Alcohol Advertising Review Board, 'No way to ignore it: The case for removing alcohol ads from public transport', page 5
[194] Alcohol Advertising Review Board, 'No way to ignore it: The case for removing alcohol ads from public transport', page 5
[195] *Adjusted for health interaction.*
[196] *Additional information provided by Ms Frances Bedford referenced from Collins, D.J and Lapsley, H.M., 'The costs of tobacco, alcohol and illicit drug abuse to Australian society in 2004/05', Commonwealth of Australia, 2008.*
[197] *Australian Institute of Health and Welfare, 2013 National Drug Strategy Household Survey Report – table 4.8*
[198] *Australian Institute of Health and Welfare, 2013 National Drug Strategy Household Survey Report – table 4.10*

19.2.25 In my view, serious consideration should be given to a joint State, Territory and Federal effort to reduce the impact of alcohol advertising during televised sporting events and at sporting arenas.

| Recommendation 119 | That the issue of alcohol advertising during telecasts of live sporting events be considered at a national level. |
|---|---|

19.2.26 I also recommend that legislation should be enacted to prohibit the advertising of alcohol on public transport and public transport infrastructure (including bus stops, shelters and at interchanges) in South Australia.

| Recommendation 120 | Legislation should be considered to ban alcohol advertisements on public transport and public transport infrastructure in South Australia. |
|---|---|

## 19.3 Minimum price of alcohol

19.3.1 The World Health Organisation ('WHO') in its report *'Global Status Report on Alcohol and Health 2014'*, refers to a voluntary target reached at the 66th World Health Assembly. The voluntary target agreed to was a 10% reduction in the harmful use of alcohol by 2025 measured against a 2010 baseline.[199]

19.3.2 My review of the Act has largely concentrated on the availability of liquor in relation to trading hours and the number of outlets.

19.3.3 There are however, really three relevant factors in the prevention of harm caused by excessive consumption of alcohol—

(a) availability;

(b) price; and

(c) advertising and promotion.

19.3.4 I have dealt with advertising in chapter 19.2 of this report.

19.3.5 It is common practice in the liquor industry for retailers, especially packaged liquor retailers, to advertise heavily discounted or cheap liquor. These advertisements may be through catalogues, newspapers, television, shopper dockets or even at the point of sale.

19.3.6 The Foundation for Alcohol Research and Education ('FARE'), the Public Health Association of Australia ('PHAA'), the South Australian Network of Drug and Alcohol Services (SANDAS), the Royal Australasian College of Surgeons and the National Centre for Education and Training ('NCETA') state collaboratively that—

> *"these promotions can be regulated through the introduction of a minimum price for alcohol that specifies the lowest price at which alcohol can be purchased"*[200].

19.3.7 In other words imposing a minimum unit price for liquor. This group also say that through discounting—

> *"alcohol can be purchased for as cheap as 18 cents per standard drink"*.[201]

19.3.8 It is also reported that—

> *"[t]he availability of large quantities of cheap alcohol through takeaway sales (such as cheap cask wine) contributes to harmful short and long-term consumption"*.[202]

19.3.9 I am also advised that minimum unit pricing has been effective in the Canadian provinces of British Columbia and Saskatchewan, where an increase in the minimum unit price was shown to result in a decrease in consumption.[203]

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[199] *World Health Organisation (WHO) 'Global Status Report on Alcohol and Health 2014' http://www.who.int/substance_abuse/publications/global_alcohol_report/en/*

[200] *Supplementary submission by The Foundation for Alcohol Research and Education, The public Health Association of Australia, The South Australian Network of Drug and Alcohol Services, The Royal Australasian College of Surgeons and The National Centre for Education, page 16*

[201] *Supplementary submission by The Foundation for Alcohol Research and Education, The public Health Association of Australia, The South Australian Network of Drug and Alcohol Services, The Royal Australasian College of Surgeons and The National Centre for Education, page 16*

[202] *Supplementary submission by The Foundation for Alcohol Research and Education, The public Health Association of Australia, The South Australian Network of Drug and Alcohol Services, The Royal Australasian College of Surgeons and The National Centre for Education, page 16-17*

19.3.10 England and Wales have minimum prices which ban the sale of alcohol below the cost of duty plus the value-added tax (VAT).[204]

19.3.11 Further, I note that in 2012, Scotland legislated for a minimum price of 50p per unit of alcohol. Following a legal challenge before the European Court of Justice the matter has now been referred back to the Court of Session in Edinburgh and is not yet resolved.[205]

19.3.12 Some respondents have advocated an opposing view, stating that a minimum unit price is ineffective at targeting harmful consumption of alcohol.

19.3.13 In my view, the question to be considered is whether a minimum unit price for alcohol would be effective in reducing alcohol based harm. Whilst this could be introduced at State level, it would seem to me to be much more appropriate and effective to be dealt with at a national level for consistency purposes.

19.3.14 Certainly, a minimum unit price would make the purchase of cheap alcohol, in particular wine, more difficult. According to Australian research published in April 2016, a higher proportion of adult Australians drink wine than beer in an average four week period.[206]

19.3.15 Both price and promotion are matters which can only be successfully dealt with at a national level with full co-operation between the Federal, State and Territory governments. These are matters which should be placed on agendas for continuing discussion at the appropriate inter-governmental forum.

19.3.16 Minimum unit pricing should be considered by the Government especially to minimise the harm caused to young people, people in remote communities and those who are alcohol dependent.

| Recommendation 121 | Minimum alcohol pricing should be considered at a national level to ensure consistency across Australia. |
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[203] *Supplementary submission by The Foundation for Alcohol Research and Education, The public Health Association of Australia, The South Australian Network of Drug and Alcohol Services, The Royal Australasian College of Surgeons and The National Centre for Education, page 17*
[204] *https://www.gov.uk/guidance/alcohol-licensing*
[205] *http://www.gov.scot/Topics/Health/Services/Alcohol/minimum-pricing*
[206] *Roy Morgan, 'Australians' drinking habits distilled into 100 glasses' (5 April 2016) http://www.roymorgan.com/findings/6742-australians-drinking-habits-distilled-into-100-glasses-201604042319*

## 19.4 Wholesale sales data collection

19.4.1 The Foundation for Alcohol Research and Education ('FARE') has made a detailed submission addressing many aspects of this review, including the collection of wholesale alcohol sales data. FARE is an "independent not-for-profit organisation working to reduce harm caused by alcohol."[207]

19.4.2 The Commonwealth Government, in 2007, provided funding to the Western Australian Drug and Alcohol Office and the National Drug Research Institute to develop the National Alcohol Sales Data Project.[208] This was at the time in response to the then Ministerial Council on Drug Strategy highlighting the absence of Australian wide alcohol sales data collection.[209] I understand that the National Alcohol Sales Data Project has released four reports to date.

19.4.3 FARE submits that South Australia should collect wholesale alcohol sales data and points out that South Australia is now the only state which does not collect such data.[210] Tasmania is now moving towards the collection of wholesale sales data, having released a consultation paper in February this year.[211]

19.4.4 It is also apparent that the collection of alcohol sales data varies between each jurisdiction.[212]

19.4.5 The Social Development Committee of the Parliament of South Australia recommended the collection of wholesale alcohol sales data in August 2014[213], pointing out "there is provision in the Liquor Licensing Act 1997 to require the collection of alcohol sales data."[214]

19.4.6 The Social Development Committee recommended that there be a nationally consistent approach to the collection of such data and stated that—

> *"Such an approach would assist in developing a greater understanding of the patterns of alcohol consumption across jurisdictions. Additionally, it will assist in the ongoing development of the evidence base to inform public policy and the development of innovative strategies to address emerging issues."*[215]

19.4.7 FARE submits—

> *"[r]eliable estimates of alcohol consumption at sub-national geographical levels are critical for monitoring, policy evaluation and programme development and targeting."*[216]

19.4.8 It is my view that the collection of wholesale alcohol sales data should be prioritised in order to bring South Australia in to line with other jurisdictions and to assist at a national level with relevant data.

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[207] *Submission by Foundation for Alcohol Research and Education (January 2016), page 2*
[208] *Submission by Foundation for Alcohol Research and Education (January 2016), page 2*
[209] *https://ndri.curtin.edu.au/research/nasdp.cfm*
[210] *New South Wales collects detailed sales data from licensees in the Kings Cross precinct, but does not collect any state-level data see http://fare.org.au/2016/02/understanding-alcohol-sales-data-in-australia/*
[211] *Department of Treasury and Finance, Amendments to the Liquor Licensing Act 1990 and Regulations – Wholesale-Sales Data – Consultation Paper (February 2016)*
[212] *http://fare.org.au/2016/02/understanding-alcohol-sales-data-in-australia/*
[213] *http://www.parliament.sa.gov.au/Committees/Pages/Committees.aspx?CTId=5&CId=182 - Recommendation 3, Social Development Committee, Inquiry into the sale and consumption of alcohol (36th Report) at page 8*
[214] *Social Development Committee, Inquiry into the sale and consumption of alcohol (36th Report), page 60*
[215] *Social Development Committee, Inquiry into the sale and consumption of alcohol (36th Report), page 8*
[216] *Submission by Foundation for Alcohol Research and Education (January 2016), page 26*

19.4.9 Wholesale alcohol sales data is obviously much easier to collect than retail sales data, although retail sales data can be, and has been from time to time, requested by the Commissioner pursuant to section 109B(1) of the Act which states—

> *(1) A licensee must, if so required by the Commissioner, lodge returns with the Commissioner containing information the Commissioner requires relating to transactions involving the sale or purchase of liquor or other matters specified by the Commissioner for the purposes of this Act.*

19.4.10 FARE suggests a system whereby beverages are detailed so that—

(a) beer is divided into low, mid and full strength; and

(b) wine is distinguished by volume (bottles as against bulk) and strength (table versus fortified); and

(c) spirits are distinguished between standard spirits and pre-mixed (ready to drink spirits).

19.4.11 It is my view that the recommendation of the Social Development Committee should be adopted so that South Australia is not the only jurisdiction which now fails to collect such data.

19.4.12 If South Australia were to start collecting wholesales sales data, that information could be widely used and would assist in the assessment of risk based on consumption levels and pattern of drinking in the community. It is also a means of relating risk in an objective way with the availability of alcohol in a community.

| Recommendation 122 | **Wholesale alcohol sales data be collected in South Australia, with a view to implementing a nationally consistent approach.** |
|---|---|

## 19.5 Late night public transport

19.5.1 Through my discussions with a number of interested parties, the lack of public transport options at night beyond the use of taxi services was raised as a potential issue for consideration as part of my review.

19.5.2 Anecdotally it was suggested to me that a significant barrier to harm minimisation practices within the late night economy and thus a contributing factor to the potential for anti-social behaviour was that public transport options within the greater Adelaide area, other than on Saturday nights were non-existent, resulting in persons having to await the recommencement of daytime transport services to get home, potentially up to three or four hours after the 3am 'Lockout'.

19.5.3 A review of the Late Night Code and General Code[217] presented to the Minister for Planning in April 2015 identified from a survey of the community that while there was *"frustration about a lack of night-night transport options"*[218], many patrons were *"unaware of the availability of an 'After Midnight' bus service"*[219]. Further, when questioned about access to taxi's, a number of respondents stated that they had *"observed more aggression and violence due to the over-demand for taxis around the lock-out time, or generally feeling less safe around this time"*.[220]

19.5.4 Suggestions put forward by respondents to the survey also included that:

- better public transport information should be provided in outside areas around night-time precincts (e.g. Hindley Street and Rundle Street) to direct people to the *'After Midnight'* services[221]; and
- the scheduling of *'After Midnight'* services should align with the 3.00am 'Lockout'.[222]

19.5.5 I note that in response to this review of the Codes, clause 8 of the Late Night Code which discusses public transport information was amended in December 2015 to state—

> "*Between 9.00pm and 7.00am, the licensee must ensure that information about taxi ranks and any special late operating public transport services in the vicinity of the licensed premises is prominently displayed and readily available to customers.*"

19.5.6 In response to my discussions with a number of interested parties, I have examined the transport options available to late night consumers in Adelaide, Brisbane, Sydney, Melbourne and Perth and found:

- Sydney was the only city which, obviously due to its population and high levels of visitor numbers, provided public transport every night of the week between midnight and 5.00am;
- Melbourne, Brisbane and Perth (albeit to a limited extent) provide public transport on Friday and Saturday nights only (i.e. Saturday and Sunday mornings); while
- Adelaide provides public transport services between midnight and 5.00am on Saturday nights only (i.e. Sunday mornings).

[217] *Prepared by Internal Consultancy Services Group pursuant to section 11B of the Liquor Licencing Act 1997*
[218] *Internal Consultancy Services Group, Review of Codes Established under the Liquor Licensing Act 1997, April 2015, p95*
[219] *Internal Consultancy Services Group, Review of Codes Established under the Liquor Licensing Act 1997, April 2015, p45*
[220] *Internal Consultancy Services Group, Review of Codes Established under the Liquor Licensing Act 1997, April 2015, p45*
[221] *Internal Consultancy Services Group, Review of Codes Established under the Liquor Licensing Act 1997, April 2015, p45*
[222] *Internal Consultancy Services Group, Review of Codes Established under the Liquor Licensing Act 1997, April 2015, p45*

19.5.7 Notwithstanding the days on which late night services operate, the frequency and availability of services which travel along major transport corridors in these cities would appear to be consistent (being either a half hourly or hourly frequency). The only exception would appear to be Perth where late night transport services are restricted to two services on each of its five railway lines between 12.30am and 3.00am only.

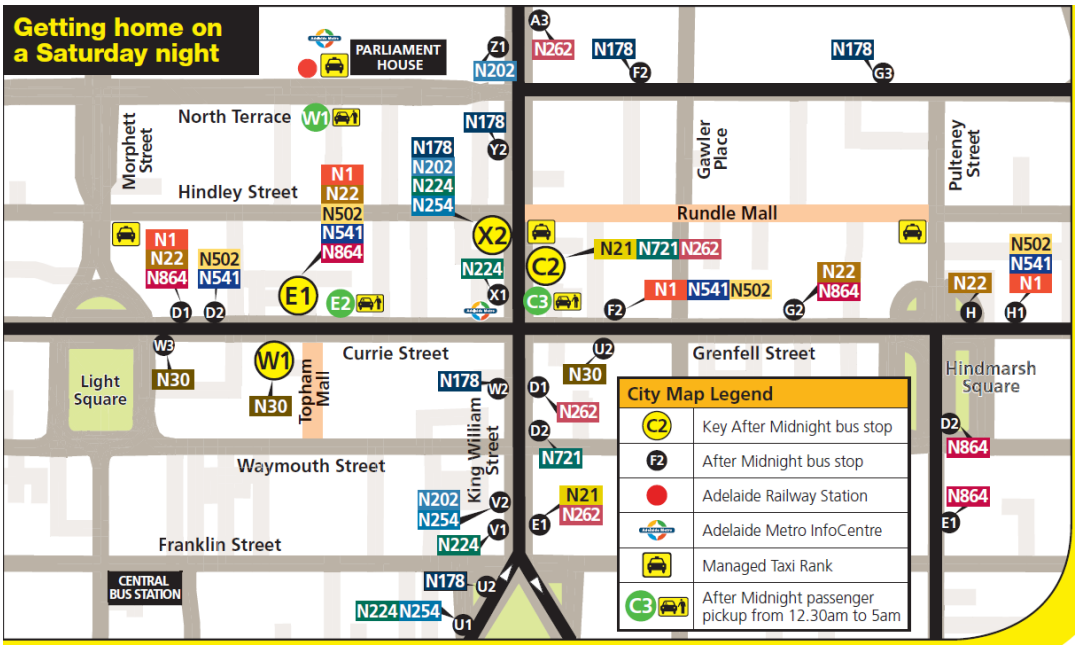
19.5.8 A summary of public transport services in each of these cities follows—

19.5.8.1 **Adelaide**[223]

19.5.8.2 Late night bus services currently operate on 14 dedicated routes radiating from the Adelaide CBD and service major transport corridors on Saturday nights only (i.e. Sunday mornings) between midnight and 5am.

19.5.8.3 These services generally operate hourly from four premium city central bus stops located on Currie Street (E1 and W1) and King William Street (X2 and C2) with upgraded lighting, CCTV and a regular police presence.

*Figure 5: Adelaide CBD 'After Midnight' departure points*




19.5.8.4 These services comprise of routes operating before and after the 3.00am 'Lockout' as detailed in the following table—

[223] *Source: https://www.adelaidemetro.com.au/*

Table 15: Description of 'After-Midnight' public transport services in Adelaide

| Route | Description | No. Of Services Before The 3.00am Lockout | No. Of Services After The 3.00am Lockout |
|---|---|---|---|
| N1 | **Golden Grove** via O-Bahn to Modbury | 3 | 2 |
| N10 | **Marion** via Goodwood Road | 3 | 2 |
| N21 | **Aberfoyle Hub** via Goodwood Road and Flagstaff Hill | 2 | 2 |
| N22 | **Wattle Park** via Norwood Parade | 3 | 2 |
| N30 | **West Lakes** via Henley Beach Road and Grange | 3 | 2 |
| N178 | **Newton** via Payneham and Lower North East Road | 3 | 2 |
| N202 | **Ingle Farm** via Hampstead Road | 2 | 2 |
| N224 | **Gawler** via Main North Road and Elizabeth | 2 | 2 |
| N254 | **Semaphore** via Arndale and Port Adelaide | 2 | 2 |
| N262 | **Marion** via Anzac Highway and Brighton Road | 3 | 2 |
| N502 | **Salisbury** via O-Bahn to Paradise and Para Hills | 2 | 2 |
| N541 | **Fairview Park** via O-Bahn to Modbury | 2 | 2 |
| N864 | **Mount Barker** via Stirling, Bridgwater and Hahndorf | 2 | 2 |
| N721 | **Seaford** via Main South Road and Noarlunga | 2 | 2 |

19.5.8.5 **Sydney**[224]

19.5.8.6 Nightrider bus services replace trains between midnight and 5.00am every night. There are 12 routes which originate from the Sydney CBD of which all but three operate daily.

19.5.8.7 Within the Sydney greater suburban area, an additional 11 bus routes operate each night generally on a hourly schedule plus a further seven bus routes operate on early Saturday and Sunday mornings.

19.5.8.8 **Melbourne**[225]

19.5.8.9 From 1 January 2016, a 12 month trial of all night public transport on weekends has been introduced including all night metropolitan trains and trams, late night buses, and a 2am coach service to key Victorian regional centres.

19.5.8.10 The trial operates on Friday and Saturday nights only and comprises of:

- **Night Train**: trains operate hourly services in and out of the Melbourne CBD on 13 lines;
- **Night Tram**: trams on six key corridor routes operate every 30 minutes providing wide coverage across Melbourne as well as key night-time precincts and key streets in the CBD;
- **Night Bus**: comprises of 21 night bus routes, with half of these routes departing from the CBD, and the other half departing from suburban train stations, connecting with trains from the city. Most bus services departing from the CBD run every 30 minutes;
- **Night Coach**: coaches depart between 2am and 2.15am from Southern Cross coach terminal on Friday and Saturday nights replacing V/Line train services to the major regional centres of Ballarat, Bendigo, Traralgon and Geelong.

[224] *Source: http://www.transportnsw.info/*
[225] *Source: http://ptv.vic.gov.au/*

19.5.8.11 **Brisbane**[226]

19.5.8.12 Dedicated nightlink services operate between midnight and 5.00am on Friday and Saturday nights. Nightlink services consist of:

- **Train**: regular scheduled train services start around 5.00am. However, an early morning service, departing the Brisbane CBD at around 3.45am operates on Saturday and Sunday mornings on some lines;
- **Bus**: a network of 19 night bus routes depart from the CBD. While most night bus services departing from the CBD run hourly, two pre-paid services operating within the central Brisbane entertainment precinct operate every 15 and 30 minutes respectively;
- **Taxi**: Flat-Fare taxis operate late Friday and Saturday nights from specified taxi ranks in Brisbane and the Gold Coast. Passengers can pay a flat fare rate to share the ride home with people going in the same direction.

19.5.8.13 Flat-Fare taxis are cheaper than a standard taxi service and cannot be pre-booked. To minimise delays, passengers are required to pay at the beginning of the journey. Credit card and EFTPOS payments are not accepted.

19.5.8.14 **Perth**[227]

19.5.8.15 Free late-night trains run on all train lines on Friday and Saturday nights (i.e. Saturday and Sunday mornings) between 12.30am and 3am.

19.5.9 The recent introduction of late night transport trials in both Brisbane and Melbourne on Friday and Saturday nights and the provision of 24hour transport in Sydney would appear to confirm that the provision of safe, reliable and regular transport alternatives are being used as a tool by Governments to encourage responsible behaviour and reducing alcohol and drug related violence around night precincts.

19.5.10 The Department for Planning, Transport and Infrastructure (DPTI) has provided me with patronage data for the Adelaide 'After Midnight' services since 1 July 2011.

**Table 16: Number of 'After Midnight' ticket validations, 2011-2016**

| | 2011/2012 | 2012/2013 | 2013/2014 | 2014/2015 | 1 July 2015 to 30 April 2016 |
|---|---|---|---|---|---|
| Total Validations[228] | 35,111 | 31,736 | 35,459 | 36,074 | 31,989 |
| Monthly Average | 2,925 | 2,644 | 2,954 | 3,006 | 3,198 |

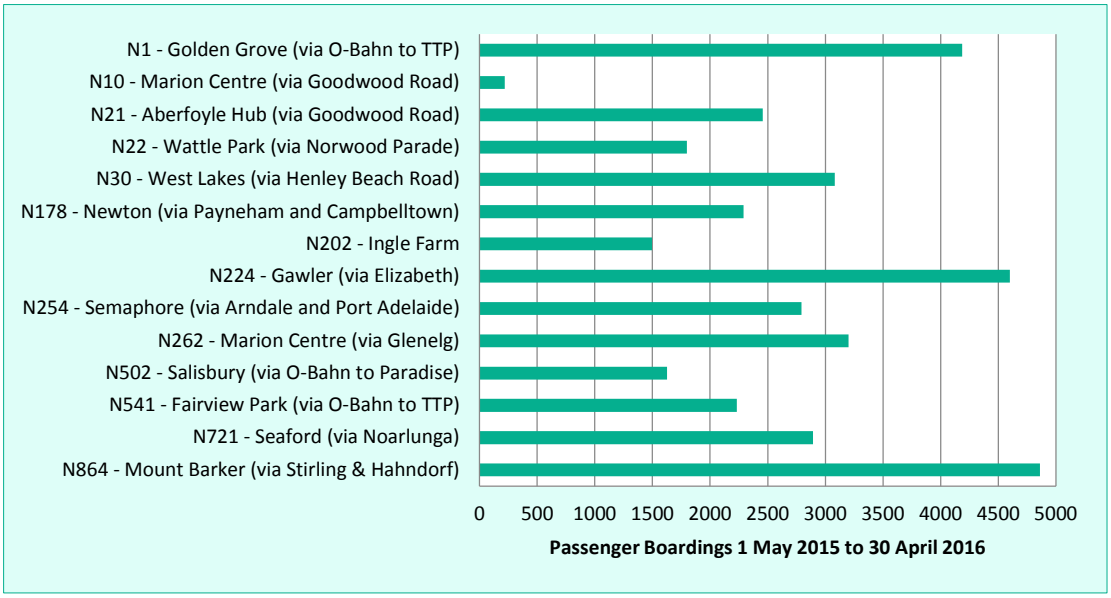
19.5.11 While the monthly average in 2012/13 reduced by 9.60% compared to 2011/12, which I note was predominantly attributable to no recorded passenger validations on the N21 City to Aberfoyle Hub service between 1 August 2012 to 31 October 2012, these patronage figures do indicate that since the Lockout was introduced in October 2013, the average number of passenger boardings (i.e. tickets validated) per month across the after midnight network has increased since this date by 8.25%.

[226] *Source: http://translink.com.au/plan-your-journey/late-night-services*
[227] *Source: http://www.transperth.wa.gov.au/*
[228] *Source: Department of Planning, Transport and Infrastructure*

19.5.12 Further, looking at the patronage figures for the most recent reporting period (i.e. 1 May 2015 to 30 April 2016) there were a total of 37,734 passenger boardings across the 'After Midnight' network, with services operating on the O-Bahn, Freeway (via Stirling and Hahndorf to Mount Barker) and Main North Road (via Elizabeth to Gawler) corridors having the highest demand of 21.32%, 12.89% and 12.19% respectively.

19.5.13 While a passenger's final destination cannot be quantified (i.e. whether the full service is patronised), the following chart provides a comparison of ticket validations across all services between 1 May 2015 and 30 April 2016.

**Figure 6: Number of 'After Midnight' ticket validations by service, 2015-2016**[229]




19.5.14 I have also given consideration to the potential risk of harm to the operators and other passengers who patronise these late night services. Paradoxically, while we legislate to prohibit intoxicated persons on licensed premises, there is a community expectation that intoxicated persons should be able to avail themselves of public transport services to get home, thus possibly exposing other passengers and the operators of these services to violence and anti-social behaviour.

19.5.15 I note that the *Criminal Law Consolidation Act 1935* has recently been amended to extend the aggravation of an offence against a public transport worker in the same way that such penalties apply to offences against police, health and emergency service workers.

19.5.16 Other protections including extra security guards and more screens for bus drivers are also being introduced as part of the measures to improve safety. Any form of violence or anti-social behaviour on our public transport system should be deplored with any potential for risks mitigated.

19.5.17 The introduction of new business models has clearly led to a diversity of licensed premises now operating within Adelaide entertainment precincts, causing an expansion of the late night economy to include Friday nights and to a lesser degree Sunday nights prior to a public holiday.

[229] *Source: Department of Planning, Transport and Infrastructure*

19.5.18 In my view, certainly from a harm minimisation perspective, there is merit to considering an expansion of the 'After Midnight' transport services in Adelaide to better closely align with the 3.00am 'Lockout' to tackle the side effects of persons having to await the recommencement of daytime transport services to get home. The introduction of 'After Midnight' train and tram services may also be worthy of consideration to provide greater alternatives for the late night travelling public.

19.5.19 I am also of the opinion that to supplement current in-venue signage requirements in the Late Night Code, street signage in and around entertainment precincts should also be improved to direct the public to the nearest after midnight transport service.

| Recommendation 123 | To supplement current in-venue signage requirements, street signage in and around entertainment precincts should be improved to direct the public to the nearest after midnight transport service. |
|---|---|

19.5.20 This however, is a broad issue indirectly related to the terms of reference of this review and is not further discussed here. The Government therefore, may wish to conduct a feasibility study to ascertain the merits of initially extending late night services on key public transport routes possibly between 11.00pm and 2.00am on weeknights with expanded 'After Midnight' services incorporating bus, train and tram services on Friday and Saturday nights and on Sundays prior to a public holiday, to address the issues discussed above.

19.5.21 The re-introduction of 'Roam Zone' bus and taxi services which provide a to-the-door or nearest main street drop off services from key suburban transport interchanges may also be worthy of consideration.

| Recommendation 124 | Conduct a feasibility study to determine the merits of an expanded 'After Midnight' public transport service as part of harm minimisation practices connected to the late night economy. |
|---|---|

19.5.22 A summary of after midnight public transport services in Adelaide, collated from the Adelaide Metro website[230] is provided in the following tables—

[230] *http://www.adelaidemetro.com.au/*

Figure 7: Late night bus services on major road corridors

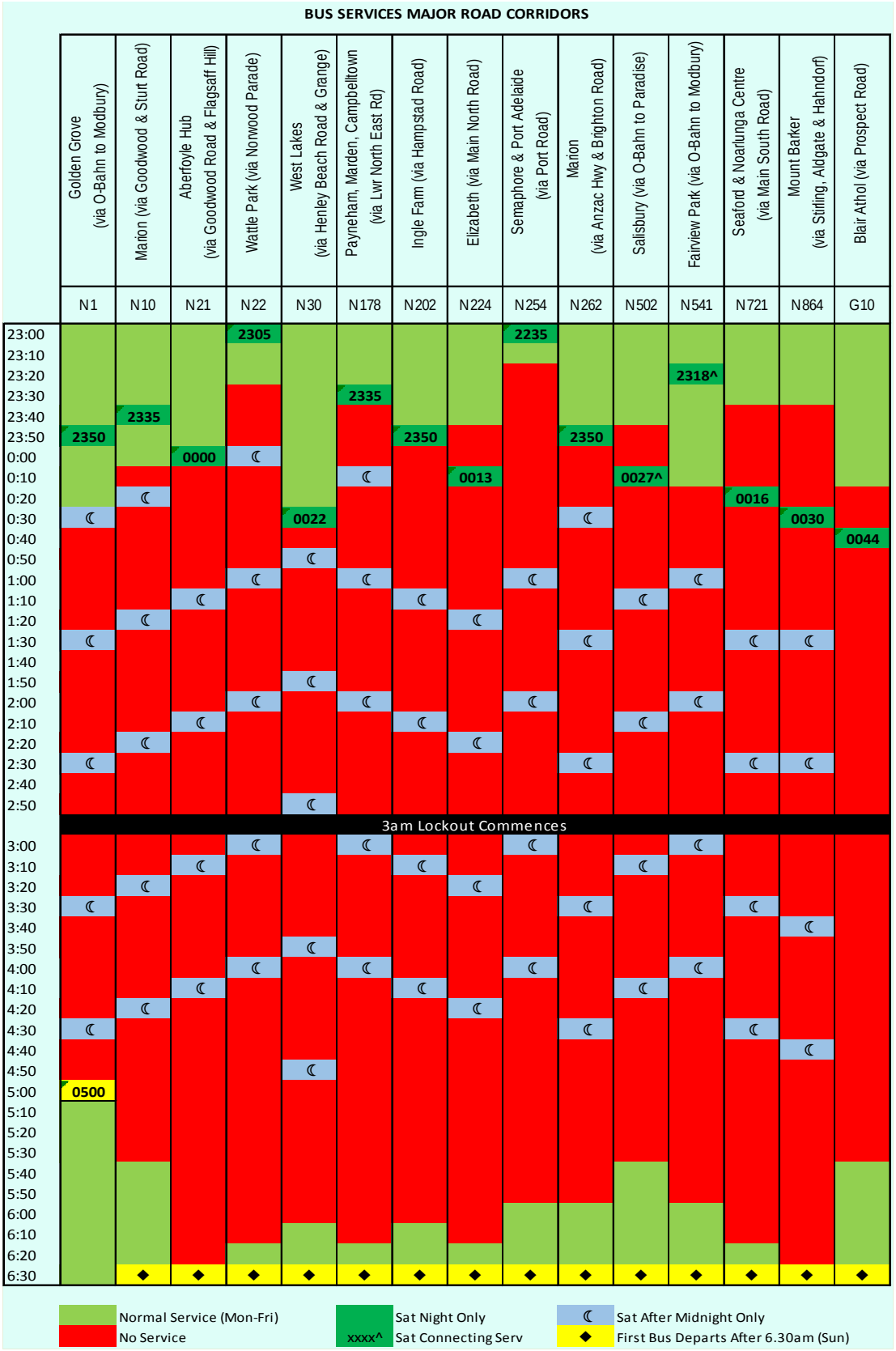
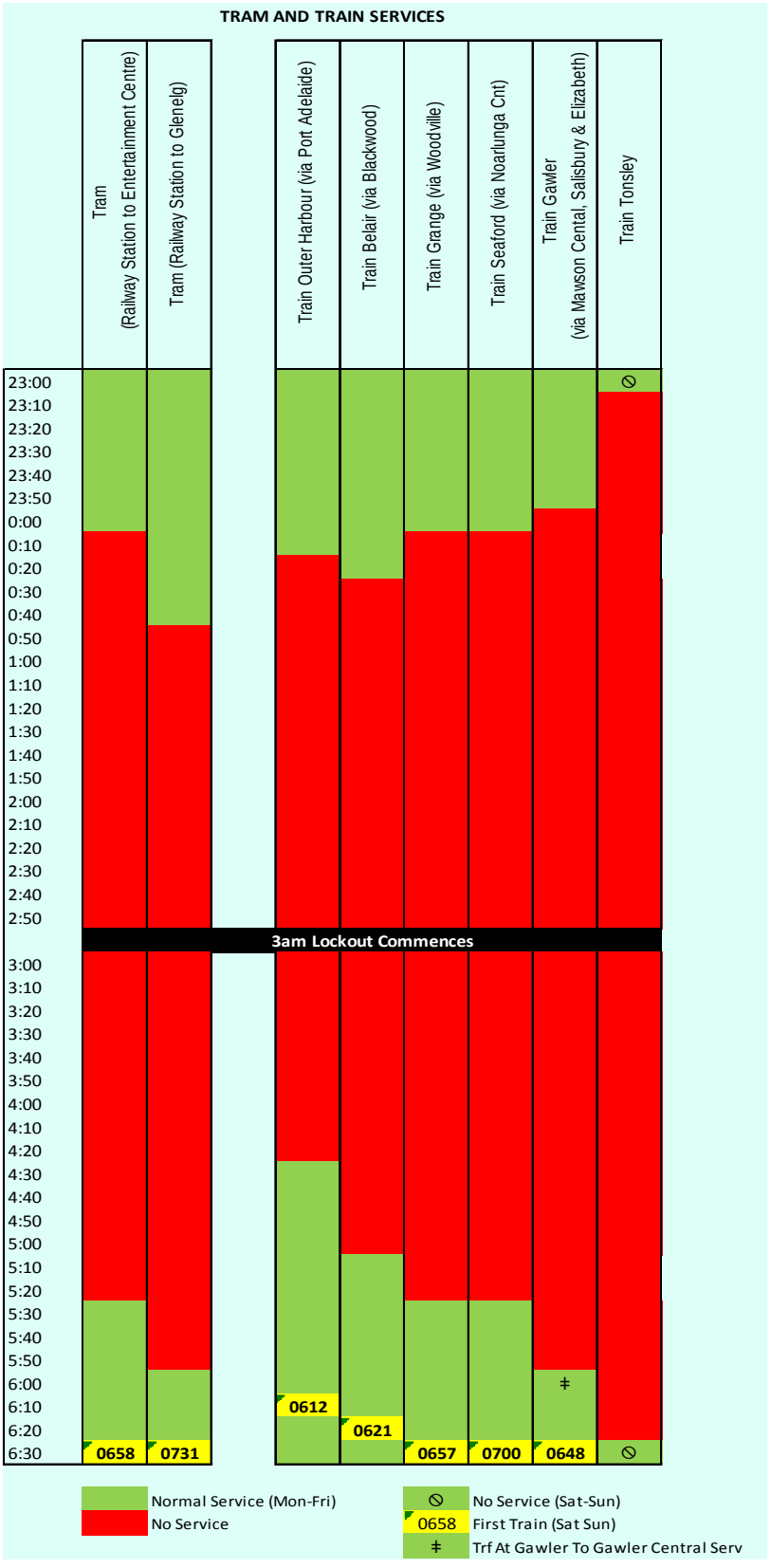


Figure 8: Late night train and tram services



## 19.6 Premises signage

### Legislative requirements

19.6.1 Signage is a very important part of operating licensed premises and relates particularly to the presence of minors on the premises. It is also important to be able to point to clear notices when enforcement measures are necessary.

19.6.2 Sections 111, 112 and 113 of the Act prescribe the signage requirements in relation to minors.

19.6.3 Further, regulation 16 of the *Liquor Licensing (General) Regulations 2012* prescribes the form and manner in which such signage must be displayed including that notices—

> *(a) must be, respectively, in the form of Form 3, 4 and 5 set out in Schedule 2; and*
>
> *(b) must be printed—*
>
> *(i) in bold faced letters of a height of at least 10 millimetres; and*
>
> *(ii) in a colour or colours contrasting with the background; and*
>
> *(iii) on paper of dimensions not smaller than international size A3 paper.*

19.6.4 Section 111(2) relates to signage in areas of licensed premises that are declared by the Licensing Authority to be out of bounds to minors. Section 111(2) states—

> *(2) If an area of licensed premises is declared out of bounds to minors, a notice of that fact, in the prescribed form, must be erected at each entrance to that area of the licensed premises.*

19.6.5 The notice currently prescribed for the purposes of section 111(2) is as follows—




19.6.6 Currently, section 112(1) of the Act outlines the times that a minor may enter or remain on licensed premises, namely—

> *(1) A minor—*
>
> *(a) may not enter, or remain in, licensed premises subject to an entertainment venue licence (other than a part of the licensed premises approved by the licensing authority) between the hours of 9 pm on one day and 5 am of the next; and*
>
> *(b) may not enter, or remain in, an area in licensed premises subject to a licence of some other class (other than a dining room, a bedroom or some other area of the licensed premises approved by the licensing authority) between the hours of midnight and 5 am if liquor may be sold in the area at that time.*

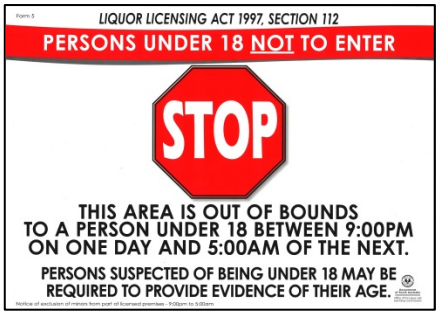
19.6.7 I have discussed proposed amendment to this section in chapter 14.4.

19.6.8 Further section 112(5) of the Act states—

> *(5) A licensee must ensure that a notice in the prescribed form is displayed at either—*
>
> *(a) each entrance to the licensed premises; or*
>
> *(b) each entrance to an area within the licensed premises,*
>
> *during any time that access to the licensed premises or area is prohibited to minors under this section or under a condition of the licence.*

19.6.9 The notices currently prescribed for the purposes of section 112(5) are as follows—

**Entertainment Venue Licences**



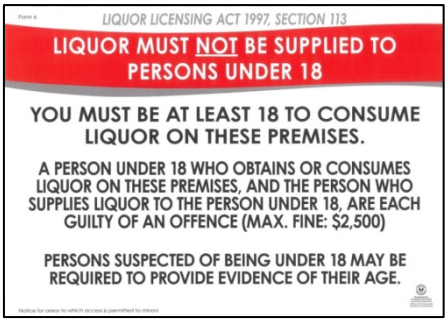

**All Other Licences**




19.6.10 Section 113(1) also requires a notice to be displayed where minors are permitted access to areas of the licensed premises, namely—

> *(1) A licensee must ensure that a notice in the prescribed form is displayed in a prominent position in each area of the licensed premises to which access is permitted to minors by the licensee—*
>
> *(a) stating—*
>
> *(i) the minimum age at which liquor may be consumed in the licensed premises; and*
>
> *(ii) that persons suspected of being under the minimum age may be required to provide evidence of their age; and*
>
> *(iii) that minors are prohibited from obtaining or consuming liquor on the licensed premises; and*
>
> *(iv) the penalties for the unlawful obtaining or consumption of liquor on licensed premises by a minor; and*
>
> *(b) including any other information required under the regulations.*

19.6.11 The notice currently prescribed for the purposes of section 113(1) is as follows—



### General observations

19.6.12 In my view the signs currently prescribed are complicated and contain too much information. Signs should contain short and concise messaging to attract awareness of the purpose of the sign.

19.6.13 Signs should also be strategically placed to inform patrons what they are not permitted to do.

19.6.14 I have looked at the form of signs used by other States and have noted that the signs used in New South Wales appear to be particularly effective as they include a coloured graphic with one sentence of information.[231]




### Generic signs for minors

19.6.15 In my view signs relating to minors should have a coloured graphic, ideally with reference to minors or under 18) with simple easy to understand information.

19.6.16 Further, if the Government accepts my recommendation in chapter 14.3 to require persons under the age of 25 years to produce evidence of age, signage to this affect would aid compliance by licensees.

19.6.17 In addition to an 'Under 25' graphical image, the Government may wish to consider the following information in a sign—

**Persons under the age of 25 must be prepared to show proof age**
**to enter these premises or purchase alcohol**

[231] *Liquor & Gaming NSW, Liquor law signs factsheet (February 2016) https://www.liquorandgaming.justice.nsw.gov.au/Pages/liquor/factsheets-checklists-guidelines.aspx*

### Signs for areas out of bounds to minors

19.6.18 It is my view that the information currently prescribed for signs declaring areas as out of bounds to minors can be simplified. The Government may consider including the following information in a sign—

**Persons under the age of 18 years are not permitted in this area**

19.6.19 I would also suggest that the Government consider amending section 111 of the Act to allow the Licensing Authority (at its discretion) to declare any area out of bounds to minors.

| Recommendation 125 | Amend section 111 of the Act to allow the Licensing Authority at its discretion to declare any area as out of bounds to minors. |
|---|---|

### Signs for minors on premises

19.6.20 If the Government accepts the recommendations I have made in chapter 14 regarding minors entering or remaining on licensed premises, the prescribed signs will have to be changed to reflect the proposed new licence categories.

19.6.21 In addition to a graphical 'Under 18' image, the Government may wish to consider the following information in a sign—

19.6.21.1 For an **On-Premises Licence** (where the primary and predominant business is live entertainment or those businesses ordinarily known as nightclubs, karaoke bars and other bars), there should be a sign placed prominently at the entrance of the premises and include—

**Persons under the age of 18 years are not permitted on these premises between 9pm and 5am**

19.6.21.2 For a **Packaged Liquor Sales Licence**, there should be a sign placed at the entry of the premises and include—

**Persons under the age of 18 years are not permitted on these premises unless accompanied by a responsible adult.**

19.6.21.3 For all other classes of licence, there should be a sign placed at the entry of the premises or in an area where liquor is sold (other than in the area where minors are allowed) and include—

**Persons under the age of 18 years are not permitted in this area between 9pm and 2am unless accompanied by a responsible adult.**
**No minors are permitted in this area after 2am**

### Signs prohibiting supply to minors

19.6.22 In my view the required information to be included on a sign under section 113 is too lengthy, which makes the sign less effective.

19.6.23 In addition to a graphical 'Under 18' image, the Government may wish to consider the following wording for signage at all licensed premises—

**It is against the law to obtain or consume alcohol by,**
**or to obtain alcohol on behalf of, a person under the age of 18 years.**

19.6.24 The sign should be displayed prominently in an area where liquor is sold.

| | |
|---|---|
| **Recommendation 126** | **Amend schedule 2 of the *Liquor Licensing (General) Regulations 2012* to prescribe graphical and simplified premises signage directed to minors.** |

### Signage Transition

19.6.25 In my view it is important that consistent signage applies across the industry. Accordingly, if this recommendation is enacted, it should be a requirement that only the new form of signage should be displayed from a prescribed date.

19.6.26 A transitional period may also allow licensees to adopt any new signage measures. However, failure to adopt revised signage requirements by the prescribed date could subject the licensee to penalty.

## 19.7 Application fees

19.7.1 Section 51(1)(d) of the Act requires that an application to the Licensing Authority must be accompanied by the fee required under the regulations.

19.7.2 Schedule 3 of the *Liquor Licensing (General) Regulations 2012* currently prescribes—

(a) a fee of $530 for the grant of a licence other than a limited licence;

(b) a fee of $530 in respect to an application requiring an extended trading authorisation;

(c) a fee of $530 for consent to use part of the licensed premises for entertainment; and

(d) a fee of $114 to designate a part of the licensed premises as a dining area or reception area.

19.7.3 For comparison, the application fees applicable across Australian jurisdictions are shown in the following tables based on similar business types—

**Table 17: Comparison of application fees across Australian jurisdictions**

| Business | SA[232] | ACT | NSW[233] | NT | QLD[234] | TAS | VIC | WA[235] |
|---|---|---|---|---|---|---|---|---|
| Hotel/Tavern *(With On/Off)* | Hotel Licence | General Licence | Hotel Licence | Liquor Licence | Commercial Hotel Licence | General Liquor Licence | General or Late Night General Licence | Hotel or Tavern Licence |
| | $530 | $2680 | $2500 | $200 | $6270 | $1208 + $302 On Grant | $441.20 | $3334 + $1128 (ETP) |
| Small Bar/ Venue *SA – 120 NSW – 60 VIC - <200* | Small Venue Licence | n/a | Small Bar Licence | Liquor Licence | Bar Licence | n/a | On Premises or Late Night On Premises Licence | Small Bar Licence |
| | $530 | | $350 to $1600 | $200 | $1253 | | $441.20 | $3334 + $1128 (ETP) |
| Club | Club Licence | Club Licence | Club Licence | Liquor Licence | Community Club Licence | Club Liquor Licence | Full Club Licence | Club Licence |
| | $530 | $2175 | $500 | $200 | $2760 | $1208 + $302 On Grant | $441.20 | $856 + $1128 (ETP) |
| Restaurant | Restaurant Licence | On Licence | On Licence | Liquor Licence | Subsidiary On-Premises Licence | On Licence | Restaurant & Café Licence | On Licence |
| | $530 | $2175 | $700 | $200 | $1253 | $1208 + $302 On Grant | $441.20 | $856 |
| Bottle Shop | Retail Liquor Merchant Licence | Off Licence | Packaged Liquor Licence | Liquor Licence | As per Commercial Hotel Licence | Off Licence | Packaged or Late Night Packaged Liquor Licence | Liquor Store Licence |
| | $530 | $2175 | $2000 | $200 | | $1208 + $302 On Grant | $441.20 | $3334 + $1128 (ETP) |

[232] *An additional fee of $530 is imposed for extended trading authorisation and $114 for any designated area (e.g. designated dining)*
[233] *An additional fee of between $300 and $3500 is imposed for extended trading authorisation*
[234] *Where a hotel wishes to operate a detached bottle shop an additional fee of $924..40 per bottle shop is imposed*
[235] *An additional fee of $1128 applies for each extended trading permits (ETP) (e.g. extended trading hours, alfresco, liquor without a meal etc.) Example assumes one ETP in force if trading after Midnight*

| Business | SA[232] | ACT | NSW[233] | NT | QLD[234] | TAS | VIC | WA[235] |
|---|---|---|---|---|---|---|---|---|
| Nightclub | Entertainment Venue Licence | On Licence | On Licence | Liquor Licence | Subsidiary On-Premises Licence | On Licence | On Premises or Late Night On Premises Licence | Nightclub Licence |
| | $530 | $2175 | $700 | $200 | $1253 | $1208 + $302 On Grant | $441.20 | $3334 |
| Accommodation Provider | Residential Licence | On Licence | On Licence | Liquor Licence | Subsidiary On-Premises Licence | Special Licence | On Premises or Late Night On Premises Licence | Hotel or Special Facility Licence |
| | $530 | $2175 | $700 | $200 | $1253 | $302 + $302 On Grant | $441.20 | $3334 |
| Cellar Door | Producer's Licence | Off Licence | Producer / Wholesaler Licence | Liquor Licence | Producer / Wholesaler Licence | Special Licence | Wine & Beer Producers Licence | Producer's Licence |
| | $530 | $2175 | $700 | $200 | $1253 | $302 + $302 On Grant | $441.20 | $856 |
| Wholesale Liquor Sales Merchant | Wholesale Liquor Merchant Licence | Off Licence | Producer / Wholesaler Licence | Liquor Licence | Producer / Wholesaler Licence | Off Licence | Pre-Retail Licence | Wholesaler's Licence |
| | $530 | $2175 | $700 | $200 | $1253 | $1208 + $302 On Grant | $441.20 | $856 |
| Supermarkets | Special Circumstances Licence | Off Licence | Packaged Liquor Licence | Liquor Licence | n/a | n/a | Packaged or Late Night Packaged Liquor Licence | Liquor Store Licence |
| | $530 | $2175 | $2000 | $200 | | | $441.20 | $3334 + $1128 (ETP) |
| Cinema | Special Circumstances Licence | On Licence | On Licence | Liquor Licence | Subsidiary On-Premises Licence | Special Licence | On Premises or Late Night On Premises Licence | On Licence |
| | $530 | $2175 | $700 | $200 | $1253 | $302 + $302 On Grant | $441.20 | $856 |
| One-Off Event | Limited Licence | Commercial Permit | Limited Licence | Special Licence | Community Liquor Permit | Special Permit | Temporary Limited LIcence | Occasional Licence |
| | Standard Fee - $79 per day Vary an existing licence - $41<br><br>Multiple Applicant Fees Up To 3 Applicants $154 4 to 6 Applicants $107 7 to 10 Applicants $538 11 to 15 Applicants $819 16 to 20 Applicants $1178 21 or More Applicants $1536 | Based on retail value of all liquor sales Less Than $2000 - $114 $2001 to $5000 - $460 $5001 to $10K - $690 $10001 to $50K - $921 $50K to $100K - $1152 $100K to $500K - $3458 500K to $1M - $5764 $1M to $3M - $10376 Over $3M - $19599 | $150 (Single) or $80 (on-line)<br><br>$500 (Multi-Events)<br><br>$150 (Special Event)<br><br>$150 (Trade Fair) | $20 | $626.50 + $63.20 per additional day | Less Than 4 Days - $60.40<br><br>4 to 30 Days $166.10<br><br>6 Months $196.30<br><br>Annual $392.60 | $105.30 (Existing Licence Holder)<br><br>$56.80 (Non-Licence Holder) | Up To 250 people $52<br><br>251 to 500 - $107<br><br>501 to 1000 - $219<br><br>1001 to 5000 - $1082<br><br>5001 to 10000 - $2197<br><br>Over 10000 - $4401 |

| Business | SA[232] | ACT | NSW[233] | NT | QLD[234] | TAS | VIC | WA[235] |
|---|---|---|---|---|---|---|---|---|
| | An additional fee of $758 applies for certain types of entertainment, late trading and high capacities | Non-Commercial Permit<br>Based on retail value of all liquor sales<br>$2070 or less - $45<br>More Than $2070 - $159 | | | | | | |

19.7.4 Throughout this report and in particular in chapters 4 and 5, I have made a number of recommendations which if accepted will result in significant changes to the categories of liquor licence and the trading conditions which apply under such licences including—

(a) the liberalisation of trading hours including the removal of the extended trading authorisation concept;

(b) the removal of entertainment consent and designated areas on licensed premises;

(c) changes to the objection and intervention process; and

(d) red tape reduction opportunities through the use of a single application form.

19.7.5 Accordingly, the fees associated with the administration of the Act may need to be restructured to ensure sufficient resources to cover the cost of processing applications relating to liquor licences in a timely manner.

19.7.6 In my opinion, the prescribed fees should accurately reflect the costs borne by respective agencies (i.e. CBS and SA Police) to process such applications and be consistent with any Government cost recovery guidelines.

19.7.7 As can be appreciated, the fees charged in respect to the administration of the Act and in particular for the grant, removal or transfer of a liquor licence are a broad issue and only indirectly related to the terms of reference of this review and is not further discussed here. This chapter is provided to simply illustrate by way of comparison of the application fees charged in South Australia compared with other jurisdiction and not an attempt to recommend the degree of any monetary changes to the current fee structure.

# CHAPTER 20 – TECHNICAL AMENDMENTS

## 20.1 Consequential amendments

20.1.1 In chapter 4, I discussed a number of proposed changes to the categories of licences including the abolition of the Special Circumstances Licence and creation of a General Liquor and On-Premises category of licence.

20.1.2 If my recommendations arising from chapter 4 are enacted, consequential amendments will also be required to section 15 of the *Gaming Machines Act 1992* to maintain the eligibility of relevant licensees to hold a gaming machine licence. I provide the following as an example of possible wording the Government may wish to consider to amend sections 15(1) and 15(1a) of the Act—

*(1) The following persons only are eligible to hold a gaming machine licence—*

*(a) the holder of a general liquor licence (whether temporary or otherwise); or*

*(b) the holder of a club licence, or two or more holders of separate club licences, jointly; or*

*(c) the holder of an on-premises licence (whether temporary or otherwise) if—*

*(i) the licensee previously held a special circumstances licence which was granted on the surrender of a hotel licence or a club licence; and*

*(ii) the nature of the undertaking carried out under the licence is substantially similar to that of a licensed hotel or club; or*

*(iii) the premises to which the on-premises licence relates constitute—*

*(A) a major sporting venue; or*

*(B) the headquarters in this State for any particular sporting code;*

*and the nature of the undertaking carried out under the licence is substantially similar to that of a licensed club.*

*(1a) Club One is eligible to hold a gaming machine licence for particular premises if it holds a licence under the Liquor Licensing Act 1997 in respect of the premises as required by subsection (1).*

| Recommendation 127 | Subject to the recommendations in this report being enacted, appropriate consequential amendments to the ***Gaming Machines Act 1992*** will need to be provided for in the amending Act. |
|---|---|

## 20.2 Administrative amendments

20.2.1 Both SA Police and CBS have provided me with the details of a number of suggested administrative amendments to the existing legislation.

20.2.2 While I am in no doubt that there will be further consultation with these agencies, the following table details the amendments to the existing legislation which, the Government may wish to consider in addition to the concepts discussed in this report.

**Table 18: Suggested administrative amendments to the legislation**

| Section | Provision |
|---|---|
| 4 | **Interpretation**<br>Amend the definition of "public conveyance" to exclude *"a hired conveyance where the owner of the vehicle consents in writing to the consumption of BYO liquor".*<br><br>Amend the definition of *"record"* to include CCTV recordings, electronic transaction data, scanned images and any technologies developed since this section commenced.<br><br>Insert a reference to *"position of authority"* and refer to the definition in section 6 of the Act. |
| 7 | **Close Associate**<br>Amendment proposed to assist with the assessment of a person to be "fit and proper" and that all classes of undesirable person are excluded from having influence over the operation of licensed premises.<br><br>Amend the definition of *"close associates"* to include where "*one person is the landlord of the premises to which the licence does/is to relate"* |
| 24(3) | **Powers with respect to witnesses and evidence**<br>Amend this section to remove the power for the Commissioner to issue a summons on behalf of the Court. |
| 51(5) | ***Form of application***<br>*Amend this section to include a reference to the provision of information generally.*<br><br>*(5) An applicant must, at the request of the licensing authority, produce documents, materials and any other such information that the authority considers relevant to the application.* |
| 55 | **Factors to be taken into account in deciding whether a person is fit and proper**<br>While section 74 of the Act provides for a licensee becomes bankrupt or insolvent, the assessment of a person under section 55 as "fit and proper" does not give bankruptcy or insolvency consideration.<br><br>Amend section 55 to exclude a person who is or has been declared bankrupt or insolvent from being declared *"fit and proper".*<br><br>For consistency with other legislation, consider amending the assessment requirements for determining if a person is "fit and proper" by also importing the conditions currently proposed in the *Tattooing Industry Control Act 2015* or the *Security and Investigation Industry Regulations 2011.*<br><br>***Security and Investigation Industry Act 1995 (SA)***<br><br>*3(2) For the purposes of this Act, the following provisions govern whether a person is a **fit and proper person** to hold a licence or to be the director of a body corporate that holds a licence:*<br><br>*(a) a person is not a fit and proper person to hold a licence or to be the director of a body corporate that holds a licence if—*<br><br>*(i) the person has been found guilty or convicted of an offence as prescribed by the regulations; or…* |

| Section | Provision |
|---|---|
| | ***Security and Investigation Industry Regulations 2011***<br><br>*6(1) For the purposes of sections 3(2)(a)(i) and 23 of the Act, the following is prescribed:*<br><br>*(a) the person has been convicted of a category A offence, or a category B offence, and the penalty imposed for the offence included detention or imprisonment of more than 30 months;*<br><br>*(b) the person has been convicted of a category A offence within the preceding 10 years;*<br><br>*(c) the person has been found guilty but not convicted of a category A offence within the preceding 5 years;*<br><br>*(d) the person has been found guilty but not convicted of a category B offence within the preceding 5 years and the penalty imposed for the offence included a fine of or greater than $500;*<br><br>*(e) (e) the person has been convicted of a category B offence within the preceding 10 years and the penalty imposed for the offence included a fine of or greater than $500, detention or imprisonment.*<br><br>*6(6) In this regulation—*<br><br>***category A offence** means—*<br><br>*(a) an indictable offence; or*<br><br>*(b) an offence against the Controlled Substances Act 1984 in respect of a controlled drug, controlled precursor or controlled plant, other than an offence constituted of possession of a controlled drug, controlled precursor or controlled plant; or*<br><br>*(c) an offence against the Police Act 1998; or*<br><br>*(d) an offence against Part 5.3 of the Criminal Code set out in the Schedule to the Criminal Code Act 1995 of the Commonwealth; or*<br><br>*(e) except in relation to a security agent authorised to perform only the function of controlling crowds—*<br><br>*i. an offence against the Listening and Surveillance Devices Act 1972; or*<br><br>*ii. an offence against the Telecommunications (Interception and Access) Act 1979 of the Commonwealth; or*<br><br>*(f) an offence substantially similar to any of the above offences against the law of the Commonwealth, another State or a Territory, or a place outside Australia;*<br><br>***category B offence** means—*<br><br>*(a) an offence against the Act or regulations made under the Act or the repealed Commercial and Private Agents Act 1986 or regulations made under that Act; or*<br><br>*(b) an offence of dishonesty; or*<br><br>*(c) common assault or an offence of violence; or*<br><br>*(d) an offence against the Firearms Act 1977, other than an offence against section 15C, 18, 21A, 21AB or 26 of that Act; or*<br><br>*(e) an offence against Part 3A of the Summary Offences Act 1953; or*<br><br>*(f) an offence against the Controlled Substances Act 1984 constituted of possession of a controlled drug, controlled precursor or controlled plant; or*<br><br>*(g) an offence substantially similar to any of the above offences against the law of the Commonwealth, another State or a Territory, or a place outside Australia,*<br><br>*but does not include a category A offence.*<br><br>***Tattooing Industry Control Act 2015 (SA)***<br><br>*(7)(2)A natural person is disqualified from providing tattooing services if he or she—*<br><br>*(a) is a member of a prescribed organisation; or*<br><br>*(b) is a close associate of a person who is a member of a prescribed organisation or is subject to a control order under the Serious and Organised Crime (Control) Act 2008; or*<br><br>*(c) is disqualified from providing tattooing services (however described) under a law of the Commonwealth or another State or Territory; or*<br><br>*(d) is a person, or is a person of a class, prescribed by the regulations for the purposes of this subsection.*<br><br>*(7)(3)A body corporate is disqualified from providing tattooing services if—* |

| Section | Provision |
|---|---|
| | *(a) the body corporate—*<br>*i. is a prescribed organisation; or*<br>*ii. is disqualified from providing tattooing services (however described) under a law of the Commonwealth or another State or Territory; or*<br>*(b) a director of the body corporate is disqualified from providing tattooing services under subsection (2); or*<br>*(c) is a body corporate, or is a body corporate of a class, prescribed by the regulations for the purposes of this subsection.* |
| 59A(2) | **Licence fee payable on grant of licence – Limited Licence**<br>Amend this section to clarify that the charging of a limited licence fee is imposed for each day (or part of a day) that the licence is to operate. |
| 63 | **Applicant for transfer must be fit and proper**<br>Consider amending the assessment requirements for determining if a person is "fit and proper" to replicate the provisions of section 55.<br>Importing the conditions currently proposed in the *Tattooing Industry Control Act 2015 (SA)* or the *Security and Investigation Industry Regulations 2011* and exclude a person who is or has been declared bankrupt or insolvent from being declared *"fit and proper".* |
| 97(4) | **Supervision and management**<br>Amend section 97(4) to allow a first offence to be expiated.<br>*If at any time the business conducted under a licence is not supervised and managed by a responsible person as required under subsection (1), the licensee and persons occupying a position of authority are guilty of an offence.* |
| 108 | **Liquor not to be sold or supplied to intoxicated persons**<br>Extend responsibility to *"persons who occupy a position of authority".* |
| 109 | **Copy of licence to be kept on licensed premises**<br>Amend to state *"A licensee must keep a copy of the licence, showing all conditions of, and endorsements on, the licence displayed at or near the front entrance to the licensed premises at all times so that it can be read by the public, an Inspector or police officer with an unimpeded view".*<br>Insert *" A copy of the current plan as approved by the licensing authority must be kept on the premises and made available to an Inspector or police officer on request".*<br>Insert *" A copy of the Development Approval issued by the relevant local government authority must be kept on the premises and made available to an Inspector or police officer on request".* |
| 109A | **Record of Liquor Transactions**<br>Include that *"a record of liquor transactions shall include the CCTV recording of transactions"*. This may be captured by an amendment to the definition of "record" in section 4. |
| 118 | **Disciplinary Action**<br>Include the owner of premises or a person who holds an equity interest in the premises. |
| 119 | **Cause for disciplinary action**<br>Subsection (1) should be amended to allow disciplinary action to be taken if the licensee acts contrary to the Act or unlawfully or negligently. An existing precedent applies under section 21(1)(c) of the *Building Work Contractors Act 1995.*<br>Amend subsection (1) to include—<br>*There is proper cause for disciplinary action against a licensee and a person in a position of authority if—*<br>*the licensee has acted contrary to this Act or otherwise unlawfully, or improperly, negligently or unfairly, in the course of conducting the business authorised by a licence.* |

| Section | Provision |
|---|---|
| 122(1)(f) | **Powers of Authorised Officers**<br>Amend subsection (1) to allow an authorised officer to require a person to produce evidence of the person's age, name and address. For example:<br>(f) *require a person to state particulars, and/or produce evidence of the person's age, name and address.*<br>Insert subsection (1a) and (1b) to state—<br>*(1a) A person who pursuant to a request under subsection (1)(f)—*<br>*(a) fails or refuses, without reasonable excuse, to comply with the request; or*<br>*(b) makes a false statement, or produces false evidence*<br>*is guilty of an offence.*<br>I note that section 125E provides a police officer with powers in relation to requesting personal details.<br>Alternatively, it may be that a similar provision to that of section 125E also apply to Authorised Officers.<br>Section 125E requires a police officer to first require a person to state his/her personal details. If a police officer then has cause to suspect that the personal details are false, then the police officer may require the persons to produce evidence. A police officer must also identify themselves. |
| 125 | **Licensee barring orders**<br>Subsection 1(aa) does not include situations of domestic violence or where an offender does not reside with a person at risk. Consideration should be given to amending this subsection to include domestic violence and in particular the harm minimisation objects of the Act.<br>Subsection 125(1)(aa) should reflect that the excessive or inappropriate consumption of liquor may lead to—<br>*(a) the risk of harm to children, vulnerable peoples and vulnerable communities; or*<br>*(b) adverse effects on the person's health; or*<br>*(c) further alcohol abuse or misuse; or*<br>*(d) domestic violence or anti-social behaviour causing personal injury, death or property damage.* |
| 125B | **Police officer barring order**<br>Allow a police officer of the rank of Sergeant or above to bar a person for up to 72 hours and to issue one to three month multi-premises barring orders.<br>Amend subsections (3)(b)(i), (ii) and (iii) to read as *"been barred under this subdivision".*<br>Amend to allow the electronic service of barring orders (i.e. by email).<br>Subsection 1(e) does not include situations of domestic violence or where an offender does not reside with a person at risk. Consideration should be given to amending this subsection to include domestic violence and in particular the harm minimisation objects of the Act.<br>Subsection 125(1)(e) should reflect that the excessive or inappropriate consumption of liquor may lead to—<br>*(a) the risk of harm to children, vulnerable peoples and vulnerable communities; or*<br>*(b) adverse effects on the person's health; or*<br>*(c) further alcohol abuse or misuse; or*<br>*(d) domestic violence or anti-social behaviour causing personal injury, death or property damage.* |

| Section | Provision |
|---|---|
| 128A(1)(b) | **Report to Minister on barring orders**<br>Amend subsection (1)(b) to require that orders made under Subdivision 3 because of information classified by the Commissioner of Police as criminal intelligence should be reported by the Commissioner of Police in his or her annual report to the Minister to whom the administration of the Police Act 1998 is for the time being committed. |
| 130(4) | **Unlawful consumption of liquor**<br>For the purposes of defining *"prescribed entertainment"* for this section, replace the word "dance" with *"events described as a dance, rave, recovery event, warehouse party, school formal/graduation/party"* and equivalent social media trends and terms. |
| 134 | **Vicarious Liability**<br>Include the owner of premises or a person who holds an equity interest in the premises. |
| New | **Accords**<br>Insert a new section dealing with liquor accords, and specifically exempt liquor accords from the application of the *Competition and Consumer Act 2010* (Cwlth).<br>Other jurisdictions in Australia have legislated for this, see for example Part XA of the *Liquor Act* (NT), Part 8 of the *Liquor Act 2007* (NSW) and Part 8, Division 6 *Liquor Control Reform Act 1998* (Vic). |
| New | **Name of licensed premises**<br>To aid in compliance and enforcement and the maintenance of accurate licensee records insert a new provision which make it an offence for a licensee to not notify the Commissioner of any change to the name of the licensed premises. For example:<br>*1) A licensee must not alter the name of the licensed premises unless the licensing authority has:*<br>*(a) approved in writing the proposed new name, and*<br>*(b) endorsed the change of name on the licence.*<br>2) *A licensee who fails to notify the licensing authority of a change in name of the licensed premises is guilty of an offence.* |

**Recommendation 128**

**Subject to the recommendations in this report being enacted, appropriate administrative amendments will need to be provided for in the amending Act.**

# CHAPTER 21 – TRANSITIONAL PROVISIONS

## 21.1 Overview

21.1.1 If the Government was to implement the recommendations in this report it would be necessary to provide for transitional arrangements.

21.1.2 I have highlighted below the areas that would require transitional provisions and the nature of the transitional provisions that the Government may consider applying.

21.1.3 This is not intended to be an exhaustive list, as there will be other matters identified during the drafting process. There will also be additional transitional matters to consider if the Government decides to replace the current Act, rather than amend it.

## 21.2 Commencement

21.2.1 Given the raft of changes that I have recommended in this report, it is my view that the industry and the public should be given a sufficient period of education before the changes commence.

21.2.2 Some of the recommendations will require significant system and process changes within CBS, in particular to reflect changes to licence categories and the annual fee structure.

21.2.3 Some process changes may also be required at the local council level, as they will be required to consider more development applications.

## 21.3 Categories of licence

21.3.1 In chapter 4, I have recommended a revision of the existing licence categories.

21.3.2 There should be provisions developed to ensure that the existing licences are transitioned into the appropriate new licence categories, whilst as far as practicable, not losing any existing trading rights.

21.3.3 This will obviously require significant work by CBS to adopt a new licence format having regard to my recommendations in paragraph 5.7.4 and updating licences accordingly. As at 31 May 2016, there were 6,518 licences, but most would seem to fall reasonably clearly into one of the proposed categories.

21.3.4 To achieve such a transition, it is my view that the transitional provisions should outline which existing categories will transition into which new categories, essentially as depicted in Figure 3 in chapter 4. For example, an existing Hotel Licence will become a General Liquor Licence.

21.3.5 Given the variety of business models covered by the present Special Circumstances Licences, assigning a current licence into a new licence category may not be as straight forward. In this respect, I recommend that the Commissioner be provided with such powers to transition Special Circumstances Licences to a new licence category that the Commissioner considers appropriate having regard to Figure 3 in chapter 4 and the business conducted under the licence.

21.3.6 If the licensee of a former Special Circumstances Licence, does not agree with the new licence category that has been assigned, the licensee should have the opportunity to apply to the Commissioner to have it converted to another category. In this regard, the Commissioner should have the power in his sole discretion to require the licensee to satisfy any requirements (for example the Community Impact and Public Interest Test) as the Commissioner deems appropriate.

21.3.7 Given the short-term nature of Limited Licences, it is my view that Limited Licences (existing before the commencement of the reforms) continue until they expire. The administrative burden in converting these licences would outweigh any benefit because of the short-term nature of these licences.

21.3.8 It should be noted that most existing licences will transition with their existing conditions, with no significant loss in any rights.

21.3.9 Contemporaneously, the Government may wish to consider a transitional provision deeming conditions that are not inconsistent with the new category of licence continue to apply.[236] This would however mean, that inconsistent conditions would not apply. For example, conditions relating to the provision of meals and designated dining areas under a current Hotel Licence would not apply if my recommendation is accepted and those requirements are removed from the Act.

[236] *See a similar provision in Schedule 1, clause 5 of the Liquor Control Act 1988 (WA).*

21.3.10 It is my view that licensees should not gain any additional rights through this transition process to those already authorised under their existing licence. For example, the holder of a Special Circumstances Licence (with limited off premises sales) will not be able to extend the range of liquor without applying to the Commissioner. It may be that the Commissioner may require such an application, to extend the range of liquor product, to pass the Community Impact and Public Interest Test as discussed in chapter 9.6.

## 21.4 Trading hours

21.4.1 In chapter 5, I recommend a new structure for authorised trading hours and have recommended authorised trading hours in respect of each new category of licence. A licensee may then nominate their actual trading hours within those authorised hours.

21.4.2 Trading hours for existing licences will have to conform within the new authorised trading hours.

21.4.3 For example, there may be a Retail Liquor Merchant's Licence with a trading authorisation that allows the business conducted under the licence to continue until midnight. However, under the recommended authorised trading hours, a Package Liquor Sales Licence may not operate beyond 10pm. While the existing licence will transition to a new Packaged Liquor Sales Licence the trading hours will have to conform within the authorised trading hours.

21.4.4 I recommend that the amending legislation deems any extended trading authorisation to be revoked.

## 21.5 Licence conditions

21.5.1 In chapter 8, I recommend that any conditions that are planning in nature or are unnecessary given any other recommendations I have made in this report, should be removed to simplify the details on a licence. This will enable a licence to be easier to read, which is important for both the licensee and for the purposes of enforcement.

21.5.2 Due to the recommended changes to the categories of licence and trading conditions, there may also be a need for the Commissioner to add, substitute, vary or revoke conditions on a licence.

21.5.3 For these reasons, I recommend that the Commissioner should have discretionary powers to be able to add, substitute, vary or revoke conditions on a licence. A power that is similar to section 5 of the *Liquor Licensing (Entertainment on Licensed Premises) Amendment Act 2015* could be included in the amending Act for this purpose which states—

> ***5—Commissioner may revoke or vary conditions of licences etc for transitional purposes***
>
> *(1) The Commissioner may, on application or on his or her own motion, add, substitute, vary or revoke a condition of a licence or a consent if, in the opinion of the Commissioner, it is necessary or desirable to do so as a consequence of the enactment of this Act.*
>
> *(2) An application under this clause must be made in a manner and form determined by the Commissioner.*
>
> *(3) To avoid doubt, the following provisions of the Liquor Licensing Act 1997 do not apply in respect of the operation of this clause:*
>
> *a. section 22;*
>
> *b. section 43;*
>
> *c. Part 4;*
>
> *d. section 105(3) (as enacted by this Act).*

21.5.4 This power should also be extended to apply where in the opinion of the Commissioner, it is necessary or desirable to do so as a consequence of the reforms or because the condition is not necessary as it is a matter that is dealt with under the *Development Act 1993* or the *Planning, Development and Infrastructure Act 2016* (when that commences).

## 21.6 Miscellaneous matters

### Annual fees

21.6.1 In chapter 6, I have recommended changes to the annual licence fees imposed under section 50A of the Act.

21.6.2 Annual licence fees should be charged based on the existing trading hours and capacity of the premises provided they fit within the recommended authorised trading hours. However, licensees should be given the opportunity to apply to have their trading hours or capacity reduced in light of the new fee structure.

### Crown Immunity

21.6.3 I recommend that the transitional provisions should include an express provision providing immunity to the Commissioner and/or the Crown in respect of civil liability resulting from the assignment of a licence categories, licence conditions or hours of trading as a result of the reforms.[237]

### Existing applications

21.6.4 If the Government decides to implement my recommendations, in particular the changes to licence categories and the 'needs test', there will have to be clarity around applications that have been lodged (but not determined by the Commissioner or Court) before the amendments commence.

21.6.5 That is to say, the Government will have to make it clear what requirements apply to the determination of such applications. This should be expressly provided for in the amending Act.

### Signage Transition

21.6.6 In my view it is important that consistent signage applies across the industry. Accordingly, if this recommendation is enacted, it should be a requirement that only the new form of signage should be displayed from a prescribed date.

21.6.7 A transitional period may also allow licensees to adopt any new signage measures. However, failure to adopt revised signage requirements by the prescribed date could subject the licensee to penalty.

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| **Recommendation 129** | **Subject to the recommendations in this report being enacted, appropriate transitional arrangements should be provided for in the amending Act.** |

[237] *Section 281 of the Liquor Act 1992 (QLD) provides the State with immunity in respect of certain decisions of the Chief Executive.*

# CHAPTER 22 – SUMMARY OF RECOMMENDATIONS

## 22.1 Objects of the Act

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| **Recommendation 1** *Page 42* | Section 3(1) of the Act be amended to reflect the significance of the objects, contemporary standards and provide greater clarity particularly in respect to harm. |
| **Recommendation 2** *Page 43* | Section 3(2) of the Act be amended so that the Licensing Authority shall not grant an application for a licence or removal of a licence for premises or proposed premises unless it is consistent with the objects of the Act. This section should also provide the Licensing Authority with discretion to have regard to the objects when determining conditions of a licence or an application to vary the conditions of a licence. |
| **Recommendation 3** *Page 45* | The form of application to require the applicant to make a submission addressing each of the objects of the Act to allow the Licensing Authority to make an informed decision. |
| **Recommendation 4** *Page 46* | Section 53(1a) of the Act be amended to require that an application for the grant or removal of a licence must be refused if the Licensing Authority is satisfied that to grant the application would be contrary to the public interest or is not consistent with the objects of the Act. |

## 22.2 Categories of licence

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|---|---|
| **Recommendation 5** *Page 54* | The special circumstances category of licence be abolished. |
| **Recommendation 6** *Page 55* | The existing Hotel Licence and relevant sub-category of Special Circumstances Licence including trading conditions be abolished and incorporated under a General Liquor Licence with common trading conditions. |
| **Recommendation 7** *Page 56* | The existing Entertainment Venue Licence and relevant sub-category of Special Circumstances Licence be abolished and incorporated under an On-Premises Licence with common trading conditions. |

| | |
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| **Recommendation 8** *Page 57* | The existing Residential Licence be retained. |
| **Recommendation 9** *Page 58* | The trading conditions of the existing Restaurant Licence be expanded to reflect catering services and be renamed as a Restaurant and Catering Licence. This licence will also be simplified to allow consumption of liquor without a meal if the provision of meals is the primary activity, without the need for an authorisation as presently required. |
| **Recommendation 10** *Page 59* | The existing Limited Club Licence and relevant trading conditions be abolished. All licensed clubs to be incorporated under a single category of Club Licence with common trading conditions. |
| **Recommendation 11** *Page 60* | The existing Small Venue Licence be retained but extended to include North Adelaide. |
| **Recommendation 12** *Page 61* | The existing Retail Liquor Merchant's Licence, Direct Sales Licence and relevant sub-category of Special Circumstances Licence including relevant trading conditions be abolished and incorporated under a Packaged Liquor Sales Licence with common trading conditions. |
| **Recommendation 13** *Page 62* | The existing Producer's Licence and Wholesale Liquor Merchant's Licence including relevant trading conditions be abolished and incorporated under a Liquor Production and Sales Licence. |

## 22.3 Trading conditions

| | |
|---|---|
| **Recommendation 14** *Page 67* | The current 'Lockout' provisions be retained for a further two or three years to allow for their effect to be assessed over a longer term. |
| **Recommendation 15** *Page 68* | It is a mandatory condition of a licence that licensed premises must be closed for a minimum of three continuous hours between 3.00am and 9.00am. Alternatively, the premises could remain open for those three hours but not sell liquor. |

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| **Recommendation 16** *Page 69* | All restrictions relating to the sale of liquor on Sundays, Christmas Day, Good Friday and New Year's Eve should be abolished. Trading under all types of licence should be able to be authorised on any day of the week without differentiation. |
| **Recommendation 17** *Page 70* | The compulsory hours of trading for hotels and any obligation to provide meals during certain hours be abolished. |
| **Recommendation 18** *Page 71* | The designation of areas within licensed premises (including designated dining) be abolished. |
| **Recommendation 19** *Page 71* | The imposition of capacities for individual areas within licensed premises be abolished and a total capacity for the premises imposed. |
| **Recommendation 20** *Page 72* | Entertainment other than 'prescribed entertainment', for all types of licences requiring such a facility should be permitted as a matter of right at any time during nominated trading hours. |
| **Recommendation 21** *Page 73* | Legislate for the authorised trading hours applicable to each category of licence as set out in table 5. |
| **Recommendation 22** *Page 74* | Subject to the terms and conditions of the licence, the Licensing Authority shall fix and prescribe on the licence the actual trading hours as nominated by the licensee *(to be known as the Nominated Trading Hours)*. |
| **Recommendation 23** *Page 74* | It is a mandatory condition of a licence that a licensee must not conduct trade in liquor outside the Nominated Trading Hours specified in the licence. |
| **Recommendation 24** *Page 74* | A standard automatic extension of Nominated Trading Hours until 2.00am on New Year's Day shall apply to licences authorising the consumption of liquor on the licensed premises. |

## Review of the South Australian Liquor Licensing Act 1997

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| **Recommendation 25** *Page 76* | **A licence should state the specific terms and conditions including the Nominated Trading Hours fixed by the Licensing Authority.** |
| **Recommendation 26** *Page 76* | **Statutory licence conditions should continue to be retained within the legislation rather than captured within a code.** |
| **Recommendation 27** *Page 77* | **A General Liquor Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption on or off the licensed premises.** |
| **Recommendation 28** *Page 78* | **An On-Premises Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption on the licensed premises where the provision of meals is not the primary and predominant business of the licensee.** |
| **Recommendation 29** *Page 79* | **A Residential Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption on the licensed premises where the provision of accommodation is the primary and predominant business of the licensee.** |
| **Recommendation 30** *Page 81* | **A Restaurant and Catering Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption on the licensed premises or at a place other than the licensed premises where the provision of meals is the primary and predominant business of the licensee.** |
| **Recommendation 31** *Page 82* | **A Club Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption on or off the licensed premises.** |
| **Recommendation 32** *Page 84* | **A Small Venue Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption on the licensed premises between 8am and 2am on any day.** |
| **Recommendation 33** *Page 86* | **A Packaged Liquor Sales Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption off the licensed premises for a maximum of 13 hours in any one day.** |

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| **Recommendation 34**<br>*Page 88* | A Liquor Production and Sales Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor or the licensee's own product for consumption on or off the licensed premises. |

## 22.4 Annual licence fees

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| **Recommendation 35**<br>*Page 101* | Describe the annual fee within the legislation as an 'annual licence renewal fee'. |
| **Recommendation 36**<br>*Page 104* | Change the annual licence renewal fee structure to incorporate the concepts of a fee based on the premises capacity, trading hours, extended event authorisation and compliance record (i.e. the later the closing time, the higher the fee) so that it is applicable to all classes of licence. |
| **Recommendation 37**<br>*Page 105* | That the amount of the annual licence renewal fee applicable to premises which typically trade as hotels or taverns *(i.e. with approval to sell liquor for consumption on or off the premises)* under the proposed General Liquor Licence class be increased. |
| **Recommendation 38**<br>*Page 106* | That the fee structure for a General Liquor Licence be also applicable to licences which authorise the sale or supply of liquor for consumption on the premises under an On-Premises Licence *(irrespective of whether the sale of liquor is the predominant activity or not).* |
| **Recommendation 39**<br>*Page 106* | Introduce interim capacity thresholds for the calculation of annual licence renewal fees for Club Licences and imposing a different fee for clubs with or without gaming. |
| **Recommendation 40**<br>*Page 107* | The holder of a Club Licence may apply to the Licensing Authority to have their licence endorsed to permit the sale and supply of liquor at a number of events per year subject to the payment of an annual Extended Event Trading Fee. |
| **Recommendation 41**<br>*Page 108* | Increase the amount of the annual licence renewal fee applicable to the sale of packaged liquor products under the Packaged Liquor Sales Licence and the introduction of an increased fee for holders of multiple package liquor sales licences. |
| **Recommendation 42**<br>*Page 108* | Should the Government choose to retain the existing option for this category of licence to trade beyond 10.00pm to midnight, a further increase to the licence fee of between $2,500 and $5,000 should be applied. |

## Review of the South Australian Liquor Licensing Act 1997

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| **Recommendation 43** *Page 109* | Licensees holding a Liquor Production and Sales Licence be allowed to have their licence endorsed to permit the sale and supply of liquor at a number of events per year subject to the payment of an annual Extended Event Trading Fee. |
| **Recommendation 44** *Page 110* | Exempt businesses from late trading fees where the predominant activity conducted relates to restaurants, cafes and tourism operators with only a BYO facility, catering providers and bona fide cooking schools. |
| **Recommendation 45** *Page 112* | Incorporate a penalty fee in the annual licence renewal fee to reflect serious incidents of non-compliance in the previous 12 months or fee period. |
| **Recommendation 46** *Page 114* | The provisions of section 50A of the Act be strengthened to mandate sanctions and include time frames following the non-payment of annual licence renewal fees. |

## 22.5 Red tape

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| **Recommendation 47** *Page 121* | The provisions of section 51 of the Act (form of application) be retained. |
| **Recommendation 48** *Page 121* | There should be one application form for all categories of licence. |
| **Recommendation 49** *Page 122* | In keeping with the Premier's Digital by Default Declaration, the process for submitting liquor applications and ongoing administration of the liquor licensing regime should be through a web-based digital portal. |
| **Recommendation 50** *Page 124* | Amend section 52(2) of the Act so that notice of the application is required to be published on the CBS website and all other notification or advertising requirements are removed. The Licensing Authority should retain the discretion to require any further advertising or notification. |
| **Recommendation 51** *Page 128* | General objections should be replaced with written submissions and the rights of review of the Commissioner's decision should apply only in limited situations. |

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| **Recommendation 52** *Page 130* | Amend sections 71 and 97 of the Act to provide clarity and a distinction between persons who manage the business under the licence and persons exercising responsibilities on a day to day basis as responsible persons. |
| **Recommendation 53** *Page 131* | Amend the Act to expressly allow the Licensing Authority to issue a temporary approval of responsible persons in its absolute discretion. |
| **Recommendation 54** *Page 131* | Amend the Act to give the Commissioner a general discretion to revoke an approval of a responsible person. |
| **Recommendation 55** *Page 132* | Approval of crowd controllers to work in licensed premises should only be administered under the *Security and Investigation Industry Act 1995*. |
| **Recommendation 56** *Page 133* | Amend the definition of 'controlling crowds' in section 3(1) of the *Security and Investigation Industry Act 1995* to exclude the functions of responsible persons and licensees. |
| **Recommendation 57** *Page 135* | Amend the Act so that clubs are only required to notify the Commissioner of the members of the committee of management and any changes to the composition of that committee. |
| **Recommendation 58** *Page 137* | Replace the eligibility requirements for membership of clubs in section 49(3)(b) of the Act with the requirement that the rules of the club must make provision for the criteria for admission to membership of the club. |
| **Recommendation 59** *Page 138* | Amalgamating clubs should only be required to notify the Commissioner of the amalgamation, provided that there are no changes to the trading rights attached to the host premises, which was the subject of a liquor licence. |
| **Recommendation 60** *Page 139* | The trading conditions applicable to clubs that share licensed premises should be more flexible to allow either club to conduct operations on any day subject to both clubs maintaining a joint register. |
| **Recommendation 61** *Page 142* | The Act be amended to include an exemption for cruise ships operating in South Australian waters, provided certain conditions are met. |

## Review of the South Australian Liquor Licensing Act 1997

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| **Recommendation 62** *Page 142* | **The Act be amended to include an exemption for retirement villages provided certain conditions are met.** |
| **Recommendation 63** *Page 143* | **The Act be amended to include an exemption for businesses selling gifts which include alcohol, provided certain conditions are met.** |
| **Recommendation 64** *Page 145* | **The Act be amended to extend the exemption relevant to the provision of bed and breakfast facilities.** |

## 22.6 Planning and liquor licensing regime overlap

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| **Recommendation 65** *Page 150* | **The Planning and Design Code under the *Planning, Development and Infrastructure Act 2016* to prescribe in which areas different types of licensed venues are an acceptable use of land and contain general land use conditions relating to those licensed venues.** |
| **Recommendation 66** *Page 152* | **Implement a clear delineation of responsibilities between relevant planning authorities and the Licensing Authority.** |
| **Recommendation 67** *Page 154* | **Certain applications under the Act should trigger the need for development approval under the *Development Act 1993* or the *Planning, Development and Infrastructure Act 2016* (when that comes into operation).** |
| **Recommendation 68** *Page 155* | **The necessary approvals under the *Development Act 1993* or the *Planning, Development and Infrastructure Act 2016* (when that comes into operation) must be obtained before lodgement of the application with CBS.** |
| **Recommendation 69** *Page 156* | **Remove the ability of council to object or make a submission on matters that are dealt with or addressed at the planning level and remove the ability of council to intervene in the liquor licensing process.** |
| **Recommendation 70** *Page 158* | **The Commissioner should have an absolute discretion to add, substitute, vary or revoke any existing conditions as a result of any proposed reforms and because it is a matter that is dealt with or addressed under the *Development Act 1993* or the *Planning, Development and Infrastructure Act 2016* (when that comes into operation). Please see chapter 21 for further discussion.** |

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| **Recommendation 71** *Page 159* | Section 106 of the Act relating to complaints about noise etc. emanating from licensed premises should be retained. |

## 22.7 Needs test

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| **Recommendation 72** *Page 171* | The 'needs test' in sections 58 and 61 of the Act be replaced with a Community Impact and Public Interest Test to apply to certain high risk categories of licence, with a discretion for the Licensing Authority to include other applications. |
| **Recommendation 73** *Page 173* | Guidelines should be issued by the Commissioner about the Community Impact and Public Interest Test to inform the public and applicants about the assessment process. |

## 22.8 Packaged liquor sales in supermarkets

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| **Recommendation 74** *Page 182* | The requirement in section 37(2) that the licensed premises must be devoted entirely to the business conducted under the licence and must be physically separate from the premises used for other commercial purposes, should be retained. Notwithstanding this, the legislation must make it clear that licensed premises can however exist under the same roof as a supermarket. |
| **Recommendation 75** *Page 182* | The licensed premises in respect to a Packaged Liquor Sales Licence should have a separate checkout with an adult operator trained in responsible service of alcohol and supervised/managed by a responsible person at all times. |
| **Recommendation 76** *Page 182* | Legislation should expressly prohibit specific types of business from holding a Packaged Liquor Sales Licence (see paragraph 5.7.42 for the complete list). |

## 22.9 Small Venue Licences

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| **Recommendation 77** *Page 186* | Extend the application of the Small Venue Licence to include the area of North Adelaide. |

## 22.10 Limited Licences

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| **Recommendation 78** *Page 188* | The existing Limited Licence class of licence be abolished and incorporated under a Liquor Permit, Extended Liquor Permit or Special Event Permit depending on the duration and nature of the event. |

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| **Recommendation 79**<br>*Page 189* | There should be a renewable BYO Permit (for operators who wish to provide a BYO facility but without the full authorisation and trading rights applicable under a Restaurant Licence). This could apply to galleries, studios, café's and tourism providers. |
| **Recommendation 80**<br>*Page 191* | The requirement for a separate application for a low-risk single occasion event should be dispensed with and replaced with a system of permits by notification. |
| **Recommendation 81**<br>*Page 191* | The Government may wish to give consideration to allowing the Licensing Authority to grant an event permit for a period not exceeding three years (e.g. for low risk events such as Tasting Australia, and the Glendi Festival). |

## 22.11 Dry areas

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| **Recommendation 82**<br>*Page 195* | Amend section 131 of the Act to allow local councils, in limited circumstances, to prohibit the consumption and/or possession of liquor in public places within their relevant local government area. |
| **Recommendation 83**<br>*Page 195* | Amend section 131 of the Act to allow the Minister and Commissioner to revoke or vary a prohibition order made under that section. |
| **Recommendation 84**<br>*Page 195* | The impact of prohibition orders made under section 131 of the Act should be monitored, particularly in regional centres such as Ceduna and Coober Pedy. |

## 22.12 Minors

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| **Recommendation 85**<br>*Page 198* | Offences which relate to the sale of liquor to minors on licensed premises should be a strict liability offence and be recorded on the Minors Non-Compliance Register. |
| **Recommendation 86**<br>*Page 198* | Enable CBS inspectors and police officers on the occasion of the first offence to expiate offences relating to the supply of liquor to minors on licensed premises, while a second or subsequent offence should trigger mandated disciplinary action before the Licensing Authority. |

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| **Recommendation 87**<br>*Page 198* | Disciplinary action in relation to the supply of liquor to minors should be prescribed for the purposes of imposing a Compliance Penalty Fee for the next annual licence renewal fee period. |
| **Recommendation 88**<br>*Page 199* | Legislate to require persons who appear to be under the age of 25 years to produce evidence of age. |
| **Recommendation 89**<br>*Page 200* | Legislate to entrench powers to seize false or fraudulently used evidence of age identification documents. |
| **Recommendation 90**<br>*Page 202* | Minors should not be allowed—<br>(a) on licensed premises where the primary and predominant business conducted under the licence is that of a nightclub, karaoke bar or other type of bar between 9.00pm and 5.00am; or<br>(b) on licensed premises where the primary and predominant business conducted under the licence is the sale of packaged liquor products (i.e. bottle shops) unless accompanied by a responsible adult at all times; or<br>(c) on any other licensed premises between 9.00pm and 2.00am unless accompanied by a responsible adult; or<br>(d) on any other licensed premises between 2.00am and 5.00am. |
| **Recommendation 91**<br>*Page 203* | Legislate to exempt certain categories of minors from the prohibition from licensed premises. |
| **Recommendation 92**<br>*Page 207* | Adopt legislation for the secondary supply of liquor to minors, particularly in relation to residential premises and strengthen the regulation of minors consuming liquor and adults supplying liquor at high risk after-parties or events. |
| **Recommendation 93**<br>*Page 208* | Consider penalties for the supply of liquor to minors equivalent to the monetary amounts and term of imprisonment prescribed under New South Wales legislation. |
| **Recommendation 94**<br>*Page 210* | Legislate to prohibit the sale and delivery of liquor to minors through direct sales transaction. |
| **Recommendation 95**<br>*Page 211* | Legislate to require that offences relating to the sale of liquor to minors are strict liability offences with offending licensees recorded in a register and the details published on the CBS website. |

## 22.13 Compliance and enforcement

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| **Recommendation 96** *Page 217* | The provisions of the Declared Public Precincts Bill, if enacted, should be applied concurrently with the provisions of the ***Liquor Licensing Act 1997***. |
| **Recommendation 97** *Page 219* | There should be a greater visible police presence in and around licensed premises and proactive policing of licensed venues and events to prevent alcohol related harms. |
| **Recommendation 98** *Page 220* | The compliance and enforcement activities of CBS should have a greater focus on assessing compliance with the objects of the Act, particularly licensee's obligations to minimising harm or the potential for harm associated with excessive or inappropriate consumption of liquor. |
| **Recommendation 99** *Page 221* | Make it a strict liability offence for a licensee, employee of the licensee or other person engaged by the licensee to grant entry, sell or supply or allow an intoxicated person to be on licensed premises. |
| **Recommendation 100** *Page 222* | Enable CBS inspectors and police officers on the occasion of the first offence to expiate offences relating to intoxicated persons on licensed premises, while a second or subsequent offence should trigger mandated disciplinary action before the Licensing Authority. |
| **Recommendation 101** *Page 223* | The Liquor and Gambling Commissioner should have wider power to suspend a licence for repeat breaches of the Act or for a serious or prescribed first offence. |
| **Recommendation 102** *Page 225* | Introduce a web based notification system or portal for licensees, SA Police and CBS to manage collectively the barring of persons from licensed premises |
| **Recommendation 103** *Page 225* | Provisions relating to 'welfare barring orders' under sections 125(1)(aa) and 125B(1)(e) of the Act should be amended to reflect the revised objects of the Act if enacted. |
| **Recommendation 104** *Page 226* | Consider a complete reappraisal of all offences under the Act with the view of making the majority of offences expiable, particularly for a first offence. |

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| **Recommendation 105** *Page 226* | All offences and relevant penalties, whether by expiation or through disciplinary action, should be contained under a specific part of the Act. |
| **Recommendation 106** *Page 228* | Amend section 11A of the Act to allow for the expiation of offences relating to codes of practice consistent with the State's gambling legislation. |
| **Recommendation 107** *Page 232* | Enact legislation to provide police with the power to conduct alcohol and drug testing of licensees and responsible persons who are on duty and that it should be an offence for failing to comply. |
| **Recommendation 108** *Page 232* | Enact legislation or incorporate within the Late Night Code of Practice requirements to mandate the use of ID Scanners concurrently with the use of CCTV and metal detectors. |

## 22.14 Licensing Authority

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| **Recommendation 109** *Page 233* | The Commissioner and Licensing Court two tier structure should be retained. |
| **Recommendation 110** *Page 235* | A maximum of three judges from the existing pool of judges be designated as Licensing Court judges so that there is a consistency and efficiency in the decision making process. |
| **Recommendation 111** *Page 235* | Amend section 26 of the Act to include a power to award costs where the conduct of proceedings is frivolous or vexatious. |
| **Recommendation 112** *Page 236* | Include a power for the Licensing Court to impose an injunction to prevent a breach of the Act or the codes of practice. |
| **Recommendation 113** *Page 236* | The right of appeal from the Licensing Court to the Supreme Court should be retained. |

## 22.15 Liquor licensing and gambling regime overlap

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| **Recommendation 114** *Page 245* | The Government may wish to consider a more in-depth review of the overlap between liquor and gambling legislation with the view of identifying red tape barriers, digital strategy potential and opportunities for legislative and regulatory improvement and to remove inconsistencies. |

## 22.16 RSA standards and competency

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| **Recommendation 115** *Page 248* | There should be greater focus on responsible service of alcohol training through mechanisms such as refresher courses, enforcement and specific training for responsible persons. |
| **Recommendation 116** *Page 249* | Licensees to ensure as part of their responsibilities for holding a liquor licence, that all relevant staff are checked for responsible service of alcohol competency on a regular basis. |
| **Recommendation 117** *Page 250* | Mutual recognition of responsible service of alcohol training qualifications should be discussed at the appropriate national inter-governmental meeting. |

## 22.17 Miscellaneous matters

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| **Recommendation 118** *Page 251* | Amend the Act to define 'body corporate' and insert eligibility provisions to hold a licence and an accreditation to act as a responsible person. |
| **Recommendation 119** *Page 255* | That the issue of alcohol advertising during telecasts of live sporting events be considered at a national level. |
| **Recommendation 120** *Page 255* | Legislation should be considered to ban alcohol advertisements on public transport and public transport infrastructure in South Australia. |
| **Recommendation 121** *Page 257* | Minimum alcohol pricing should be considered at a national level to ensure consistency across Australia. |

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| **Recommendation 122** *Page 259* | Wholesale alcohol sales data be collected in South Australia., with a view to implementing a nationally consistent approach. |
| **Recommendation 123** *Page 265* | To supplement current in-venue signage requirements, street signage in and around entertainment precincts should be improved to direct the public to the nearest after midnight transport service. |
| **Recommendation 124** *Page 265* | Conduct a feasibility study to determine the merits of an expanded 'After Midnight' public transport service as part of harm minimisation practices connected to the late night economy. |
| **Recommendation 125** *Page 271* | Amend section 111 of the Act to allow the Licensing Authority at its discretion to declare any area on licensed premises as out of bounds to minors. |
| **Recommendation 126** *Page 272* | Amend schedule 2 of the *Liquor Licensing (General) Regulations 2012* to prescribe graphical and simplified premises signage directed to minors. |

## 22.18 Technical amendments

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| **Recommendation 127** *Page 276* | Subject to the recommendations in this report being enacted, appropriate consequential amendments to the *Gaming Machines Act 1992* will need to be provided for in the amending Act. |
| **Recommendation 128** *Page 281* | Subject to the recommendations in this report being enacted, appropriate administrative amendments will need to be provided for in the amending Act. |

## 22.19 Transitional provisions

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| **Recommendation 129** *Page 288* | Subject to the recommendations in this report being enacted, appropriate transitional arrangements should be provided for in the amending Act. |

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## Appendix 1 – Glossary of terms and acronyms

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| **AARB** | Alcohol Advertising Review Board an initiative of the McCusker Centre for Action on Alcohol and Youth and Cancer Council WA |
| **Act** | *Liquor Licensing Act 1997* |
| **AGD** | Attorney-General's Department |
| **AHA SA** | Australian Hotels Association (SA) |
| **ALRM** | Aboriginal Legal Rights Movement |
| **AMCOS** | Australasian Mechanical Copyright Owners Association |
| **APRA** | Australasian Performing Right Association |
| **BOEN System** | Barring and Online Employee Notification System which is administered by the Independent Gambling Authority for administering persons barred from gaming venues and the notification of gaming employees pursuant to the *Gaming Machines Act 1992* |
| **CBS** | Consumer and Business Services, which is the government agency supporting the Commissioner in the administration of the *Liquor Licensing Act 1997* |
| **CBD** | Adelaide Central Business District |
| **Clubs SA** | Licensed Clubs Association of South Australia |
| **Commissioner** | Liquor and Gambling Commissioner |
| **Declared Public Precincts Bill** | The *Summary Offences (Declared Public Precincts) Amendment Bill 2016* introduced into Parliament by the Government |
| **DPTI** | Department for Planning, Transport and Infrastructure |
| **Discussion Paper** | Liquor Licensing Discussion Paper published by the South Australian Government on 2 October 2015 |
| **FARE** | Foundation for Alcohol Research and Education |
| **General Code** | General Code of Practice issued by the Commissioner pursuant to section 11A of the *Liquor Licensing Act 1997* |
| **ICSG** | Internal Consultancy Services Group which was commissioned by the former Minister for Business Services & Consumers to review the General Code and Late Night Code of Practice |
| **IGA** | Independent Gambling Authority |
| **Licensing Authority** | Has the same meaning as in the *Liquor Licensing Act 1997* |
| **Late Night Code** | Late Night Trading Code of Practice issued by the Commissioner pursuant to section 11A of the *Liquor Licensing Act 1997* |
| **LEB** | SA Police Licensing Enforcement Branch |
| **LNVA** | Late Night Venue Association Inc |
| **NCETA** | National Centre for Education and Training (Flinders University) |
| **Needs Test** | See section 58 and 61 of the Act |

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| **PHAA** | Public Health Association of Australia |
| **Planning Act** | *Planning, Development and Infrastructure Act 2016* |
| **Prescribed Entertainment** | Prescribed entertainment in relation to section 105 of the Act means entertainment of a sexually explicit nature; or a professional or public boxing or martial art event within the meaning of the *Boxing and Martial Arts Act 2000*; or any other entertainment of a kind prescribed by the regulations for the purposes of this definition, but does not include entertainment of a kind excluded by the regulations from the ambit of this definition. |
| **Regulation/s** | *Liquor Licensing (General) Regulations 2012* |
| **RSA** | Responsible Service of Alcohol |
| **SANDAS** | South Australian Network of Drug and Alcohol Services |
| **SII Act** | *Security and Investigation Industry Act 1995* |
| **TCSA** | Taxi Council of South Australia |
| **Television Code** | The Commercial Television Industry Code of Practice established under the *Broadcasting Services Act 1992 (Cwlth)* |

## Appendix 2 – Terms of reference

**REVIEW OF THE LIQUOR LICENSING ACT 1997**

**TERMS OF REFERENCE**

***Background***

In October 2015, the South Australian Government released a discussion paper for public consultation to ascertain what improvements can be made to the Liquor Licensing Act 1997 ('the Act') in South Australia to reduce red tape, promote a safer drinking culture and create vibrancy.

***Scope of the review***

1. This review will assess the adequacy, effectiveness and relevance of the State's present liquor licensing regime and recommend what improvements can be made to the existing liquor licensing framework and the Act to:

    - modernise the regulation of liquor in South Australia;
    - reflect current day community attitudes and standards relating to the accessibility of liquor and related services;
    - promote greater business flexibility;
    - reduce administrative burden to business and Government alike; • foster compliance transparency; and
    - encourage new bold and dynamic business models.

2. The review will consider the issues raised in the Liquor Licensing Discussion Paper published by the South Australian Government on 2 October 2015 and any additional issues raised through the consultation process, including:

    **Reducing Red Tape**

    - opportunities to reduce red tape surrounding the State's liquor licensing system to enable business owners to easily navigate the liquor licence application process;
    - barriers associated with a linear liquor licensing approval process and inconsistencies between liquor licensing and planning frameworks;
    - improving the reliability and predictability of the planning and liquor licensing systems;
    - the practicalities and effectiveness of imposing individual licence conditions;
    - streamlining of appeal processes to reduce processing times and business costs; and
    - exploring alternatives that ease the administrative burden on business owners in regard to the approval and ongoing compliance of responsible persons.

**Promoting A Safer Drinking Culture**

- considering that our liquor licensing system must place a high value on health and safety for the community, are the current measures to reduce alcohol-related harm effective and can they be improved;
- whether the 'needs test' remains an appropriate mechanism in order to balance competition and alcohol-related harm;
- enhancing community protection and whether the South Australian Government should play a role in the relationship between minors and alcohol; and
- the classification of dry areas that are responsive to community needs.

**Vibrancy**

- how the State's liquor licensing framework can be modernised to promote greater flexibility and encourage entrepreneurs to emerge with new and dynamic business models; and
- whether statutory liquor licence conditions and mandatory trading hours still reflect community expectations or is there an opportunity to reduce the administrative burden of applying for extended trading hours within each licence category.

3. Based on the assessment of the present liquor licensing framework, the review will make recommendations to the Minister to support:

- a modern liquor licensing system that encourages a competitive market, reduces red tape, promotes vibrancy and safety and addresses any additional issues raised through the consultation process; and
- the relevance, efficiency and effectiveness of liquor licensing in South Australia.

***Conduct of the review***

The review will be conducted by the Honourable Timothy Anderson QC. In conducting the review, the Honourable Timothy Anderson QC will:

- invite submissions from all sectors of the liquor industry and members of the public with an interest in liquor licensing;
- review all submissions received in response to the Liquor Licensing Discussion Paper;
- undertake a public consultation process, including with government organisations, businesses involved in the sale, supply and regulation of liquor and the community, to seek their views and experiences of the present liquor licensing system; and
- review and consider relevant developments and practices in liquor licensing policy interstate and overseas.

The Honourable Timothy Anderson QC will provide a report to the Minister by 30 June 2016. The report will identify options to improve the efficiency, relevance and effectiveness of the South Australian liquor licensing system.

## Appendix 3 – Submissions to the Review

On 2 October 2015 the Government announced the first full scale review of South Australia's liquor licensing laws in almost 20 years. A discussion paper was released and the public invited to make submissions about reforming the *Liquor Licensing Act 1997.*

Submissions closed on 29 January 2016. However, some respondents were granted an extension until 5 February 2016 to allow for the collation and inclusion of critical research data in their submissions.

Submissions received from respondents who did not object to the publication of their submission were made available to be viewed on the Attorney-General's Department website at www.agd.sa.gov.au/initiatives/review-of-sa-liquor-laws. Personal information and references to third parties in some of the submissions were not published. Submissions marked as "Confidential", while included in the list below for completeness, were not published.

- Aboriginal Legal Rights Movement
- Adelaide City Council
- Adelaide Fringe
- Aldi Stores
- Alexandrina Council
- ALH Group
- Association of Independent Schools SA
- Confidential
- Australian Liquor Stores Association
- Australian Medical Association (SA) Inc
- Australian Hotels Association (SA)
- Australian United Retailers Ltd (AURL) t/a Foodworks
- Barossa Council
- Beck Brothers Pty Ltd
- Belair Fine Wines (Submission 1)
- Belair Fine Wines (submission 2)
- Brewers Association of Australia and New Zealand Inc
- Business SA
- Confidential

- Confidential
- City of Burnside
- City of Charles Sturt
- City of Holdfast Bay
- City of Marion
- City of Mitcham
- City of Onkaparinga
- City of Playford
- City of Port Adelaide Enfield
- City of Prospect
- City of Salisbury
- City of West Torrens
- Clare and Gilbert Valleys Council
- Clubs SA—Licensed Clubs Association of SA
- Coles Liquor
- Costco Wholesale Australia Pty Ltd
- Department for Education and Child Development
- Diageo Australia
- District Council of Ceduna
- Encounter Youth Inc
- Environment Protection Authority
- Fassina SA Family Liquor Merchants
- Foundation for Alcohol Research and Education (FARE)
- Independent Gambling Authority
- Late Night Venue Association of SA Inc
- Legal Services Commission
- Confidential

- Licensing Court of SA
- Confidential
- Liquor Marketing Group
- Live Performance Australia
- Local Government Association of SA
- Mainglen Holdings Pty Ltd
- Master Grocers Association
- Mount Barker District Council
- Mr Craig Otterspoor
- Mr John Meek
- Mr Justin Cobbett
- Mr Luke Todd
- Confidential
- Mr Paul Kitteringham
- Mr Peter Butler
- Mr Troy Nelles
- Ms Angela Vaughan
- Ms Frances Bedford MP
- Music SA / Musitec Ltd / Live Music Office
- Confidential
- Peter Seppelt Wines
- Port Augusta City Council
- Public Health Association of Australia
- Regional Development Australia Barossa
- Renewal SA
- Restaurant & Catering Australia
- Royal Australasian College of Surgeons

- Rural City of Murray Bridge
- SA Micro Brewers Association
- SA Network of Drug and Alcohol Services (Submission 1)
- SA Network of Drug and Alcohol Services (Submission 2)
- South Australian Independent Retailers Inc
- South Australian Music Industry Council
- South Australian Retirement Villages Residents' Association
- South Australian Wine Industry Association Inc
- Southern Flinders Tourism & Tastes Inc
- The Law Society of South Australia
- The Royal Australasian College of Physicians
- Town of Walkerville
- Victim Support Service SA
- William Close Pty Ltd
- Confidential
- Confidential

## Appendix 4 – Consultation with respondents

Having considered the submissions made in response to the Discussion Paper, the following respondents and other relevant parties were consulted and provided further information concerning specific liquor licensing issues.

- **Aboriginal Legal Rights Movement**
  Mr Christopher Charles, Legal Services Director

- **Adelaide Casino**
  Mr Tony McNamara, Acting General Manager
  Mr Tim White, General Manager Finance
  Mr Richard Krawczyk. Support Operations Manager
  Mr Tony Morgan, Manager Host Responsibility
  Ms Juliet Fletcher, Legal, Compliance and Regulatory Affairs Manager
  Mr Michael Thomas, Beverage Manager

- **Adelaide City Council**
  Ms Madeline Raynes
  Ms Lisa Kemp

- **Adelaide Fringe**
  Ms Heather Croall, Director

- **Adelaide Licensing Accord**

- **Australian Hotels Association (SA)**
  Mr Peter Hurley, President
  Mr Ian Horne, General Manager/Chief Executive Officer
  Mr Wally Woehlert, General Manger Gaming Care
  Ms Wendy Bevan, Government Relations & Policy Manager

- **Aldi Stores**
  Mr Victor Jakupec, Managing Director
  Mr James Buonopane, Store Operations Director

- **APRA / AMCOS**
  Mr Matt Swayne, Writer Services

- **Auatralian Liquor Stores Association**
  Mr Terry Mott, Chief Executive Officer

- **Barossa Council**
  Mr Louis Monteduru, Senior Manager Planning Services

- **Beck Brothers Pty Ltd**
  Mr Ian Beck
  Mr Paul Beck

- **Belair Fine Wines**
  Mr Boyd McGowan, Managing Director

- **Consumer & Business Services Practitioners Forum**

- **Consumer & Business Services**
  Mr Dini Soulio, Liquor and Gambling Commissioner
  Mr George Kamencak, Deputy Commissioner
  Ms Corrinna Uili, General Manager Compliance and Enforcement

- **City of Charles Sturt**
  Ms Sue Hemmingway, Team Leader Major Planning Assessment

- **City of Mount Barker**
  Mr Rob Gaetan, Development Officer

- **City of Onkaparinga**
  Ms Belinda Marsh, Development Policy Planner
  Mr Ben Victory, Senior Planning Officer
  Ms Lorraine Pitman
  Ms Renee Mitchell

- **City of Prospect**
  Mr Chris Newby, Acting Director Community, Planning and Communications

- **Clubs SA – Licensed Clubs Association of SA**
  Mr Mike Penfold, Chief Executive Officer

- **Coles Liquor**
  Mr Tim O'Meara, Legal Counsel, National Licensing Manager
  Ms Heshika Taylor, Head of Operations, Commercial & Regulatory

- **Costco Wholesale Australia Pty Ltd**
  Mr Patrick Noone, Managing Director
  Mr Nish Vithlani, Chief Financial Officer & Company Secretary

- **Diageo Australia**
  Ms Kylie Mcpherson. Legal and Corporate Relations Director

- **Department for Planning, Transport & Infrastructure**
  Mr Matt Loader, General Manger Government Administration
  Mr Andrew Every, A/Manager, Public Transport Operations and Planning

- **Department of Premier and Cabinet**
  Ms Madeline Richardson, Executive Director Implementation and Public Value
  Mr Cane Goldsworthy, Senior Policy Officer, Simpler Regulation Unit

- **Drug and Alcohol Services SA, SA Health**
  Ms Simone Cormack, State Director
  Ms Marina Bowshall, Deputy State Director

- **Encounter Youth**
  Ms Deana Brine, Project and Volunteer Manager
  Mr Andrew Scholefield

- **Foundation for Alcohol Research and Education (FARE)**
  Mr Michael Thorn, Chief Executive

- **Fassina SA Family Liquor Merchants**
  Mr Ross Fassina, Managing Director
  Ms Elise Fassina, Sales & Marketing Manager

- **Foodland SA**
  Mr Con Sciacca, Chief Executive Officer

- **Foodworks**
  Mr Tim Heath, Business Development Manager

- **Independent Grocers of Australia/Metcash**
  Mr Justin Walls
  Mr Stephen Xenikoudis

- **Late Night Venue Association of SA Inc**
  Mr Tim Swaine, President

- **Licensing Court of South Australia**
  Hon. Judge Brian Gilchrist

- **Liquor and Gaming New South Wales**
  Ms Samantha Torres, A/Executive Director
  Mr Peter Cox

- **Liquor and Gaming Independent Review (New South Wales)**
  Hon Ian Callinan QC AC
  Mr Jonathan Horton QC

- **Master Grocers Association**
  Mr Jos de Bruin, Chief Executive Officer
  Mr Rod Allen, MGA Board President
  Mr Chris dos Santos, MGA SA Board Director

- **Mr Rob Lucas MP**

- **Ms Frances Bedford MP**
  Mr Josh Weidenbach

- **Music SA**
  Ms Lisa Bishop, General Manager

- **Musitec Ltd**
  Mr David Grice, Managing Director

- **National Live Music Office**
  Mr John Wardle, Policy Director

- **National Centre for Education and Training on Addiction (NCETA)**
  Mr Roger Nicholas

- **Public Health Association of Australia**
  Ms Julia Stafford, Co-convenor Alcohol Special Interest Group

- **Primary Industries and Resources SA**
  Mr Scott Ashby, Chief Executive
  Professor Mehdi Doroudi, Deputy Chief Executive

- **Queensland Office of Liquor and Gaming Regulations**
  Mr David Ford, Commissioner

- **Royal Australasian College of Surgeons**
  Dr Sonja Latzel
  Mr Mark Morgan

- **Restaurant & Catering Australia**
  Ms Carlita Warren, Policy & Public Affairs Director
  Ms Sally Neville, Deputy Chief Executive Officer

- **SA Independent Retailers**
  Mr Colin Shearing, Executive Spokesman
  Mr Graham Ingerson

- **SA Music Industry Council**
  Mr Troy Sincock, Chairperson

- **SA Police**
  Assistant Commissioner Bronwyn Killmier
  Chief Inspector Denise Gray

- **SA Taxi Council**
  Mr Johan Revalk, Chief Executive Officer
  Ms Cheryle Conduit, Executive Officer
  Mr Con Vokolos

- **SA Tourism Commission**
  Mr David Lake, Manager Planning and Special Projects
  Mr Garry Beelitz, Operations Manager

- **SA Wine Industry Association Inc**
  Mr Brian Smedley, Chief Executive Officer

- **SA Network of Drug and Alcohol Services (SANDAS)**
  Mr Michael White, Executive Officer

- **Southern Flinders Tourism & Tastes Inc**
  Ms Jackie O'Reilly, Chairperson

- **The Law Society of South Australia**
  Mr David Caruso, President

- **Victorian Commission for Gambling and Liquor Regulation**
  Ms Alex Fitzpatrick, Director Licensing
  Mr Stephen Berriman, Director Compliance

- **Victoria Police**
  Senior Sergeant Phil Eager

## Appendix 5 – Legislative provisions to be expiated

As discussed in chapter 15, the following table details the existing provisions of the Act (while not exhaustive) which could be subject to an expiable penalty in lieu of formal disciplinary proceedings for a first offence *(consequential or additional amendments are italicised)*.

| Section | Provision |
|---|---|
| 29 | A person who sells liquor without being licensed under this Act to do so is guilty of an offence. |
| 42 | It is a condition of every licence that the licensee must comply with the Commissioner's codes of practice.<br><br>*{In Chapter 15 I recommend an amendment regarding the non-compliance with the Commissioner's Codes of Practice in line with the gambling legislation, where non-compliance of certain provisions may be an offence and expiable}.* |
| 45 | If a condition of a licence is not complied with, the licensee is guilty of an offence. |
| 51(2) | An applicant or other person who makes a false or deliberately misleading statement in, or in support of, an application is guilty of an offence. |
| 97(4) | If at any time the business conducted under a licence is not supervised and managed *by a responsible person* as required under subsection (1), the licensee *and persons occupying a position of authority* are guilty of an offence. |
| 103 | A licensee who allows a person to be on licensed premises for the purpose of purchasing or consuming liquor at a time when the person is not entitled to, is guilty of an offence. |
| 108(1)[238] | If liquor is sold or supplied on licensed premises to an intoxicated person, the licensee, the responsible person for the licensed premises, the person by whom the liquor is sold or supplied *and persons who occupy a position of authority* are each guilty of an offence.<br><br>*If a person in a state of intoxication is allowed to enter and remain on licensed premises, the licensee, the responsible person for the licensed premises, the person who allowed entry and persons who occupy a position of authority are each guilty of an offence.* |
| 109 | A licensee must keep a copy of the licence, showing all conditions of, and endorsements on, the licence displayed at or near the front entrance to the licensed premises at all times *so that it can be read by the public, an Inspector or Police officer with an unimpeded view*.<br><br>*If the licensee or responsible person for the licensed premises on the request of an Inspector or Police officer, is unable to produce a copy of the current plan approved by the licensing authority each are guilty of an offence.*<br><br>*If the licensee or responsible person for the licensed premises is unable to produce a copy of the Development Approval issued by the relevant local government authority on the request of an Inspector or Police officer, each are guilty of an offence.* |

[238] *Strict Liability Offence*

| Section | Provision |
|---|---|
| 110(1)‡ | If liquor is sold or supplied to a minor on licensed premises by or on behalf of the licensee, the licensee, the responsible person for the licensed premises, the person by whom the liquor is sold or supplied *and persons who occupy a position of authority* are each guilty of an offence. |
| 110(1a)‡ | If a licensee sells or supplies liquor to a minor otherwise than on licensed premises, the licensee is guilty of an offence. |
| 110(2)‡ | A licensee who permits a minor to consume liquor on the licensed premises is guilty of an offence. |
| 110(4)‡ | If a person, acting at the request of a minor, purchases liquor on behalf of the minor on licensed premises, that person and the minor are each guilty of an offence. |
| 112(3) ‡ | If a minor enters or remains on licensed premises or in an area contrary to the provisions of the Act, the minor and licensee are each guilty of an offence.<br>*{Provision to be amended to reflect the recommended new licence categories, proposed hours that minors are allowed on licensed premises and offence of using false/fraudulent identification to gain entry}* |
| 114(1) ‡ | A minor who obtains or consumes liquor in regulated premises is guilty of an offence.<br>*{Provision to be expanded to include obtaining liquor using false identification}* |
| 114(2) ‡ | A person who supplies liquor to a minor in regulated premises is guilty of an offence. |
| 115(2) | A person who fails, without reasonable excuse, to produce evidence or makes a false statement or produces false evidence when requested is guilty of an offence.<br>*{Provision to be expanded to cover all persons not just minors}* |
| 117(1) | A minor who consumes or has possession of liquor in a public place is guilty of an offence. |
| 117(2) | A person who supplies liquor to a minor in a public place is guilty of an offence. |
| 124 | (3) A person removed from licensed premises under this section who re-enters the licensed premises within 24 hours of being removed from them is guilty of an offence.<br>(4) A person who—<br>(a) is removed from licensed premises, or refused entry to, or prevented from entering, licensed premises under this section; and<br>(b) enters or attempts to enter the licensed premises within the following 24 hours,<br>is guilty of an offence. |
| 125(2) | A person who enters or remains on licensed premises from which he or she has been barred under this section is guilty of an offence. |
| 125(4) | A licensee, a responsible person or employee of the licensee who allows a person to enter or remain on licensed premises from which he or she has been barred is guilty of an offence. |
| 125C | A person who enters or remains on licensed premises from which he or she is barred by the Commissioner of Police or a Police Officer under this Subdivision is guilty of an offence. |
| 128C(2) | If a person given an order under this section refuses or fails to obey the order, the person is guilty of an offence. |
| 129(1) | If regulated premises are unlicensed, a person who consumes liquor on the premises is guilty of an offence. |
| 129(2) | If regulated premises are unlicensed, a person who supplies liquor on or in the vicinity of the premises for consumption on the premises is guilty of an offence. |

| Section | Provision |
|---|---|
| 130 | A person who consumes liquor on or adjacent to unlicensed premises with prescribed entertainment is guilty of an offence. |
| 131A | A person who fails, without reasonable excuse, to leave licensed premises immediately on being requested to do so by an authorised person is guilty of an offence. |
| General Code-11 | Outlines the practices relating to intoxication and disorderly, offensive, abusive or violent behaviour. The obligations should extend to a licensee, *a responsible person or employee of the licensee*. |
| General Code-13(3) | A licensee *or responsible person* who fails to produce a risk assessment/management plan on request is guilty of an offence. |
| General Code-14(3) | A licensee who fails to produce evidence of the completion of prescribed training is guilty of an offence. |
| Late Night Code-17(6) | A licensee who fails to keep CCTV of an incident for 28 days is guilty of an offence (applicable to a first offence only, subsequent offences subject to disciplinary action). |
| Late Night Code-17(8) | A licensee who fails to provide an authorised officer with CCTV coverage on request is guilty of an offence. |

## Appendix 6 – Specimen Licences

### General Liquor Licence

Liquor Licensing Act 1997

# General Liquor Licence 123456789

Subject to the provisions of the *Liquor Licensing Act 1997* and any conditions specified in this licence, the licensee is authorised to sell liquor for consumption on or off the licensed premises

| | | | |
|---|---|---|---|
| PREMISES NAME | XYZ TAVERN | | |
| LICENSEE | ABDD PTY LIMITED | | |
| PREMISES ADDRESS | 12345 ANY STREET<br>SUBURB SA 5999 | ADDRESS FOR SERVICE OF NOTICES | PO BOX 789<br>SUBURB SA 5999 |
| BUSINESS TYPE | TAVERN | | |
| NOMINEE | JOHN SMITH ID 12345 | CONTACT DETAILS | (08) 8123 4567 |

| NOMINATED TRADING HOURS FOR CONSUMPTION | ON THE LICENSED PREMISES BETWEEN | | | OFF THE LICENSED PREMISES BETWEEN | | |
|---|---|---|---|---|---|---|
| MONDAY | 9.00AM | TO | 1.00AM THE FOLLOWING DAY | 9.00AM | TO | MIDNIGHT |
| TUESDAY | 9.00AM | TO | 1.00AM THE FOLLOWING DAY | 9.00AM | TO | MIDNIGHT |
| WEDNESDAY | 9.00AM | TO | 1.00AM THE FOLLOWING DAY | 9.00AM | TO | MIDNIGHT |
| THURSDAY | 9.00AM | TO | 3.00AM THE FOLLOWING DAY | 9.00AM | TO | MIDNIGHT |
| FRIDAY | 9.00AM | TO | 3.00AM THE FOLLOWING DAY | 9.00AM | TO | MIDNIGHT |
| SATURDAY | 9.00AM | TO | 3.00AM THE FOLLOWING DAY | 9.00AM | TO | MIDNIGHT |
| SUNDAY | 9.00AM | TO | MIDNIGHT | 11.00AM | TO | 9.00PM |

| | | | |
|---|---|---|---|
| MAXIMUM CAPACITIES | TOTAL 450 PERSONS<br>EXTENDED AREA 30 PERSONS | BALCONY | 20 PERSONS |

| SPECIFIC TRADING AUTHORISATIONS | | | |
|---|---|---|---|
| ENTERTAINMENT | ☑ | PRESCRIBED ENTERTAINMENT | ☒ |
| DIRECT SALES | ☑ | TYPE OF PRESCRIBED ENTERTAINMENT | N/A |

| | | |
|---|---|---|
| OTHER LICENSING AUTHORITY CONDITIONS APPLY | ☑ | *See Attachment A* |
| OTHER PLANNING AUTHORITY CONDITIONS APPLY | ☑ | *To Be Presented On Request* |

LIQUOR AND GAMBLING COMMISSIONER
DATE OF ISSUE 30 JUNE 2016

BY ORDER B99999

Government of South Australia
Attorney-General's Department

SPECIMEN

Liquor Licensing Act 1997

# General Liquor Licence

123456789

**ATTACHMENT A – LICENSING AUTHORITY CONDITIONS**

*(This Page Does Not Need To Be Displayed But Must Be Presented On The Request Of An Authorised Officer)*

The following conditions have been imposed by the Licensing Authority pursuant to Section 43 of the *Liquor Licensing Act 1997*—

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SPECIMEN

LIQUOR AND GAMBLING COMMISSIONER
DATE OF ISSUE 30 JUNE 2016

Government of South Australia
Attorney-General's Department

## Restaurant and Catering Licence

**Liquor Licensing Act 1997**

# Restaurant and Catering Licence 123456789

Subject to the provisions of the *Liquor Licensing Act 1997* and any conditions specified in this licence, the licensee is authorised to sell or supply liquor for consumption on premises with or without a meal

| | | | |
|---|---|---|---|
| PREMISES NAME | SA GOURMET DELIGHTS | | |
| LICENSEE | SA DELIGHTS PTY LIMITED | | |
| PREMISES ADDRESS | 12345 ANY STREET<br>SUBURB SA 5999 | ADDRESS FOR SERVICE OF NOTICES | PO BOX 789<br>SUBURB SA 5999 |
| BUSINESS TYPE | RESTAURANT | | |
| NOMINEE | PETER PANACHE ID 98765 | CONTACT DETAILS | (08) 8777 1235 |

| NOMINATED TRADING HOURS FOR CONSUMPTION ON THE LICENSED PREMISES BETWEEN | | | |
|---|---|---|---|
| MONDAY | | TO | NO LIQUOR SALES |
| TUESDAY | | TO | NO LIQUOR SALES |
| WEDNESDAY | 11.30AM | TO | 10.00PM |
| THURSDAY | 11.30AM | TO | 10.00PM |
| FRIDAY | 11.30AM | TO | MIDNIGHT |
| SATURDAY | 11.30AM | TO | MIDNIGHT |
| SUNDAY | 11.30AM | TO | 10.00PM |

MAXIMUM CAPACITIES TOTAL 160 PERSONS

SPECIFIC TRADING AUTHORISATIONS

| | | | |
|---|---|---|---|
| ENTERTAINMENT | ☑ | PRESCRIBED ENTERTAINMENT | ☒ |
| BYO | ☑ | TYPE OF PRESCRIBED ENTERTAINMENT | N/A |
| | | SELL LIQUOR FOR CONSUMPTION WITHOUT A MEAL | ☑ |
| | | SELL LIQUOR FOR CONSUMPTION AT ANOTHER PLACE | ☒ |
| | | OTHER LICENSING AUTHORITY CONDITIONS APPLY | ☑ *See Attachment A* |
| | | OTHER PLANNING AUTHORITY CONDITIONS APPLY | ☑ *To Be Presented On Request* |

LIQUOR AND GAMBLING COMMISSIONER
DATE OF ISSUE 30 JUNE 2016

BY ORDER B99999

Government of South Australia
Attorney-General's Department

SPECIMEN

Liquor Licensing Act 1997

# Restaurant and Catering Licence 123456789

**ATTACHMENT A – LICENSING AUTHORITY CONDITIONS**

*(This Page Does Not Need To Be Displayed But Must Be Presented On The Request Of An Authorised Officer)*

The following conditions have been imposed by the Licensing Authority pursuant to Section 43 of the *Liquor Licensing Act 1997*—

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SPECIMEN

LIQUOR AND GAMBLING COMMISSIONER
DATE OF ISSUE 30 JUNE 2016

Government of South Australia
Attorney-General's Department

## Liquor Production and Sales Licence

Liquor Licensing Act 1997

# Liquor Production and Sales Licence 123456789

Subject to the provisions of the *Liquor Licensing Act 1997* and any conditions specified in this licence, the licensee is authorised to sell liquor or a licensees own product for consumption on or off the licensed premises

| | | | |
|---|---|---|---|
| **PREMISES NAME** | WONDERFUL VALLEY RED WINES | | |
| **LICENSEE** | WVRW Pty Limited | | |
| **ADDRESS 1 PRODUCTION OUTLET** | 12345 ANY STREET SUBURB SA 5999 | **ADDRESS 3 WHOLESALE OUTLET** | 12345 ANY STREET SUBURB SA 5999 |
| **ADDRESS 2 RETAIL OUTLET** | 12345 ANY STREET SUBURB SA 5999 | **ADDRESS 4 OTHER OUTLET** | N/A |
| | | **ADDRESS FOR SERVICE OF NOTICES** | PO BOX 789 SUBURB SA 5999 |
| **BUSINESS TYPE** | WINE PRODUCER WITH CELLAR DOOR & WHOLESALE OUTLET | | |
| **NOMINEE** | SUSAN SHIRAZ ID 22547 | **CONTACT DETAILS** | (08) 9547 7778 |

| **NOMINATED TRADING HOURS FOR CONSUMPTION** | **ON THE LICENSED PREMISES BETWEEN** | | | **OFF THE LICENSED PREMISES BETWEEN** | | |
|---|---|---|---|---|---|---|
| **MONDAY** | - | TO | - | - | TO | - |
| **TUESDAY** | 11.00AM | TO | 4.00PM | 11.00AM | TO | 4.00PM |
| **WEDNESDAY** | 11.00AM | TO | 4.00PM | 11.00AM | TO | 4.00PM |
| **THURSDAY** | 11.00AM | TO | 4.00PM | 11.00AM | TO | 4.00PM |
| **FRIDAY** | 11.00AM | TO | 4.00PM | 11.00AM | TO | 4.00PM |
| **SATURDAY** | 11.00AM | TO | 6.00PM | 11.00AM | TO | 6.00PM |
| **SUNDAY** | 11.00AM | TO | 6.00PM | 11.00AM | TO | 6.00PM |

**MAXIMUM CAPACITIES** TOTAL 100 PERSONS BALCONY 40 PERSONS

**SPECIFIC TRADING AUTHORISATIONS**

| | | | | |
|---|---|---|---|---|
| ENTERTAINMENT | ☑ | PRESCRIBED ENTERTAINMENT | ☒ | |
| SAMPLING | ☑ | TYPE OF PRESCRIBED ENTERTAINMENT | N/A | |
| DIRECT SALES | ☑ | CONSUMPTION ON THE PREMISES | ☑ | |
| RETAIL PRODUCT SALES | ☑ | PRODUCERS EVENT ENDORSEMENT | ☑ | *See Attachment B* |
| WHOLESALE LIQUOR SALES | ☑ | EXTENDED EVENT TRADING | ☑ | 5 EVENTS PER YEAR |
| BULK RETAIL LIQUOR SALES BY WHOLESALER | ☑ | | | |
| | | OTHER LICENSING AUTHORITY CONDITIONS APPLY | ☑ | *See Attachment A* |
| | | OTHER PLANNING AUTHORITY CONDITIONS APPLY | ☑ | *To Be Presented On Request* |

LIQUOR AND GAMBLING COMMISSIONER
DATE OF ISSUE 30 JUNE 2016

BY ORDER B99999

Government of South Australia
Attorney-General's Department

SPECIMEN

Liquor Licensing Act 1997

# Liquor Production and Sales Licence 123456789

**ATTACHMENT A – LICENSING AUTHORITY CONDITIONS**
*(This Page Does Not Need To Be Displayed But Must Be Presented On The Request Of An Authorised Officer)*

The following conditions have been imposed by the Licensing Authority pursuant to Section 43 of the *Liquor Licensing Act 1997*—

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SPECIMEN

LIQUOR AND GAMBLING COMMISSIONER
DATE OF ISSUE 30 JUNE 2016

BY ORDER B99999

Government of South Australia
Attorney-General's Department

Liquor Licensing Act 1997

# Liquor Production and Sales Licence 123456789

| | | | |
|---|---|---|---|
| **PREMISES NAME** | WONDERFUL VALLEY RED WINES | | |
| **LICENSEE** | WVRW Pty Limited | | |
| **ADDRESS 1**<br>**PRODUCTION OUTLET** | 12345 ANY STREET<br>SUBURB SA 5999 | **ADDRESS 3**<br>**WHOLESALE OUTLET** | 12345 ANY STREET<br>SUBURB SA 5999 |
| **ADDRESS 2**<br>**RETAIL OUTLET** | 12345 ANY STREET<br>SUBURB SA 5999 | **ADDRESS 4**<br>**OTHER OUTLET** | N/A |
| | | **ADDRESS FOR SERVICE OF NOTICES** | PO BOX 789<br>SUBURB SA 5999 |
| **BUSINESS TYPE** | WINE PRODUCER WITH CELLAR DOOR & WHOLESALE OUTLET | | |
| **NOMINEE** | SUSAN SHIRAZ ID 22547 | **CONTACT DETAILS** | (08) 9547 7778 |

**ATTACHMENT B – PRODUCERS & EXTENDED EVENT ENDORSEMENT**
*(This Page Must Be Displayed When Attending A Producers Or Extended Event)*

**PRODUCERS EVENT**

Subject to the provisions of the *Liquor Licensing Act 1997* and any conditions specified in this licence, the licensee is authorised to sell or supply the licensees own product at a site during an event specified in this endorsement for consumption on or off the site at—

1 Somewhere In The Valley Farmers Market— in the wine region of the Adelaide Super Zone for consumption on or off the site

2 Suburb Sunday Market— in the wine region of the Adelaide Hills for consumption on or off the site

3 Country Show— in the wine region of the Adelaide Hills for consumption on or off the site

4

5

**EXTENDED EVENTS**

Subject to the provisions of the *Liquor Licensing Act 1997* and any conditions specified in this licence, the licensee is authorised to sell or supply the licensees own product at a site during an event not specified in this endorsement for consumption on or off the site at—

1 Up to 5 events per year for consumption on or off the relevant site

SPECIMEN

LIQUOR AND GAMBLING COMMISISONER
DATE OF ISSUE 30 JUNE 2016

BY ORDER B99999

Government of South Australia
Attorney-General's Department

## Packaged Liquor Sales Licence

**Liquor Licensing Act 1997**

# Packaged Liquor Sales Licence 123456789

Subject to the provisions of the *Liquor Licensing Act 1997* and any conditions specified in this licence, the licensee is authorised to sell or supply liquor for consumption off the licensed premises

| | | | |
|---|---|---|---|
| **PREMISES NAME** | HEARTY SUPERMARKETS | | |
| **LICENSEE** | HEARTY SUPERMARKETS AUSTRALIA PTY LIMITED | | |
| **PREMISES ADDRESS** | 12345 ANY STREET<br>SUBURB SA 5999 | **ADDRESS FOR SERVICE OF NOTICES** | PO BOX 789<br>SUBURB SA 5999 |
| **BUSINESS TYPE** | SUPERMARKET | | |
| **NOMINEE** | MICHAEL GROCER ID 65478 | **CONTACT DETAILS** | 0611 222 111 |

| **NOMINATED TRADING HOURS FOR CONSUMPTION** | **OFF THE LICENSED PREMISES BETWEEN** |
|---|---|
| **MONDAY** | 8.00AM TO 9.00PM |
| **TUESDAY** | 8.00AM TO 9.00PM |
| **WEDNESDAY** | 8.00AM TO 9.00PM |
| **THURSDAY** | 8.00AM TO 9.00PM |
| **FRIDAY** | 8.00AM TO 9.00PM |
| **SATURDAY** | 8.00AM TO 5.30PM |
| **SUNDAY** | 11.00AM TO 5.00PM |

**SPECIFIC TRADING AUTHORISATIONS**

| | | | | |
|---|---|---|---|---|
| SAMPLING | ☑ | RETAIL PRODUCT SALES | ☑ | |
| DIRECT SALES | ☒ | WHOLESALE LIQUOR SALES | ☒ | |
| | | OTHER LICENSING AUTHORITY CONDITIONS APPLY | ☑ | *See Attachment A* |
| | | OTHER PLANNING AUTHORITY CONDITIONS APPLY | ☑ | *To Be Presented On Request* |

**LIQUOR AND GAMBLING COMMISISONER**
**DATE OF ISSUE 30 JUNE 2016**

**BY ORDER B99999**

Government of South Australia
Attorney-General's Department

SPECIMEN

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**ATTACHMENT A – LICENSING AUTHORITY CONDITIONS**

*(This Page Does Not Need To Be Displayed But Must Be Presented On The Request Of An Authorised Officer)*

The following conditions have been imposed by the Licensing Authority pursuant to Section 43 of the *Liquor Licensing Act 1997*—

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