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**Liquor Licensing Laws:
An Update**

by

Lenny Roth

Briefing Paper No 12/07

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ISSN 1325-5142

ISBN 978 0 7313 1828 5

November 2007

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Lenny Roth

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CONTENTS

EXECUTIVE SUMMARY	1
1. INTRODUCTION	1
2. OVERVIEW OF LICENSING LAWS IN NSW IN 1995.....	2
2.1 Types of liquor licences.....	2
2.2 Obtaining a licence	2
2.3 Licence applications and determinations.....	3
2.4 Licence conditions.....	5
2.5 Trading hours.....	6
2.6 Licence fees	6
2.7 Management and control of premises.....	7
2.8 Disciplinary action for licensees/managers	7
2.9 Complaints about disturbances of quiet and good order	8
2.10 Offences in relation to licensed premises.....	9
2.11 Enforcement of laws by police and inspectors	10
3. SIGNIFICANT REFORMS IN NSW SINCE 1995.....	11
3.1 Harm minimisation, enforcement and nightclub reforms (1996).....	11
3.2 New scheme for function licences (1997).....	14
3.3 Changes to annual licence fees after High Court decision (1997)	15
3.4 Dine or drink authorities for restaurants and nightclubs (1998/99)	15
3.5 Dealing with late night trading disturbances (1999)	16
3.6 Small restaurant and other reforms (1999).....	17
3.7 Liquor accords (1999/00)	18
3.8 Managers and harm minimisation (2001).....	19
3.9 Compulsory responsible service of alcohol training (2003)	19
3.10 Changes to comply with national competition policy (2004)	19
4. MAJOR REFORMS TO LICENSING LAWS IN OTHER STATES	22
4.1 South Australia	22
4.2 Victoria	23
4.3 Queensland	23
4.4 Tasmania.....	24
4.5 Western Australia	25
5. INTERSTATE COMPARISON OF LIQUOR LICENSING	26
5.1 Main types of licence.....	26
5.2 Sale of liquor without meals in restaurants	26
5.3 Licence fees	27
5.4 Determination of licence applications	29
5.5 Standard trading hours.....	36
5.6 Extension of trading hours.....	36

6. PROPOSED REFORMS TO LICENSING LAWS IN NSW	39
6.1 The NSW Government’s proposed reforms	39
6.2 Sydney Council and Clover Moore MP’s proposed small bar reforms.....	41
7. CONCLUSION	45
APPENDIX 1 – LICENCE TYPES	46
APPENDIX 2 – STANDARD TRADING HOURS	2

EXECUTIVE SUMMARY

Changes to licensing laws in NSW since 1995

Since 1995, there have been a number of significant changes to liquor licensing laws in NSW. These include the harm minimisation and enforcement reforms enacted in 1996, the introduction of nightclub licences in the same year, the introduction of 'dine or drink' authorities for restaurants in 1998, and the establishment of compulsory responsible service of alcohol training for the liquor industry in 2003. In addition, in 2004, the Government implemented the first stage of the National Competition Policy reforms, which replaced the 'needs' based objection for hotel licences and off-licences (retail) with a social impact assessment process and made changes to licence fees.

Reforms to licensing laws in other States

All other States have also enacted major licensing reforms in the last decade, largely in response to National competition policy reviews. Most other States have replaced the 'needs' test for determining licence applications with a public interest test and they have relaxed restrictions on restaurants serving liquor without a meal. Western Australia has also recently introduced a new category of licence for small bars. Several States have also enacted new provisions directed at harm minimisation. Queensland is currently finalising a further review of its liquor licensing laws to ensure that they reflect recent community attitudes and the growth of the tourism and hospitality industry.

Interstate comparison of liquor licensing

In some other States there are different types of licence available and there are less restrictions on the sale of liquor without meals. In all other States licence fees for hotel and nightclub licences are much cheaper than in NSW. Other differences include the court-based licensing system in NSW compared to the administrative based system in most other States, and the social impact assessment process in NSW compared to public interest tests in most other States. There are also some differences in trading hours.

Proposed reforms to licensing laws in NSW

The NSW Government is set to introduce major reforms, which would implement the next stage of the national competition policy reforms and make changes arising out of the 2003 NSW Summit on Alcohol Abuse. The reforms include moving away from a court-based to an administrative-based licensing system, a new licence fee system and an extension of the social impact assessment process to other types of licence.

Clover Moore MP has also recently introduced a bill to give restaurants more flexibility to serve alcohol without a meal and to create a new small bar licence. The bill has received support from some stakeholders but it has been opposed by others, most notably the Australian Hotels Association. The Premier has indicated opposition to the bill on the basis that it does not include a social impact assessment. The Opposition would support the bill if small bars were limited to a maximum number of 50 patrons instead of 120.

1. INTRODUCTION

Since early 1996, when a briefing paper entitled *Liquor Regulation in New South Wales* was published¹, significant changes have been made to liquor licensing laws in NSW. In 2005, the NSW Government released a draft bill proposing further reforms. After a lengthy consultation period, it has been reported that this bill will be introduced into Parliament before the end of 2007. The bill will implement recommendations from a 2003 National Competition Policy review and from the 2003 Alcohol Summit. Clover Moore MP has also recently introduced a controversial bill that would give restaurants more flexibility to serve alcohol without a meal as well as creating a new category of small bar licence.

This paper reviews the major licensing law reforms in NSW over the last decade. It then looks at reforms, largely driven by National Competition Policy, that have been enacted in other States. Next, it provides an interstate comparison of some aspects of liquor licensing. Lastly, the proposed reforms in NSW are examined. By way of background, this paper begins with a brief overview of the NSW licensing laws as they existed in 1995. It is important to note that the focus in this paper is on licensing laws that regulate the sale of liquor for consumption *on licensed premises*. In addition, this paper only deals with the *Liquor Act 1982* (NSW) and not the *Registered Clubs Act 1976* (NSW).

¹ NSW Parliamentary Library Research Service, Briefing Paper No 5/96.

2. OVERVIEW OF LICENSING LAWS IN NSW IN 1995

This section presents a brief overview of the *Liquor Act 1982*, as the Act existed in 1995.² While the laws are expressed in the past tense, many of the provisions outlined in this section have not been changed since 1995.

2.1 Types of liquor licences

There were various types of liquor licences available under the Act:³

Categories	Summary of licence
Hotelier's licence	Authorised the licensee to sell liquor by retail on the licensed premises, whether or not for consumption on those premises.
On-licence	Authorised the licensee to sell liquor on licensed premises, but only for consumption on those premises. The types of premises in relation to which an on-licence could be granted included a restaurant, motel, theatre, public hall, university club, airport, or a vessel or aircraft. An on-licence could also be granted to sell liquor at a function.
Off-licence	Authorised the licensee to sell liquor on licensed premises but only for consumption otherwise than on those premises. The types of off-licence that could be granted included an off-licence to sell liquor by retail, or to sell liquor to persons authorised to sell liquor; or for a vigneron or a brewer.
Caterer's licence	Authorised the licensee to sell liquor at a function, occasion or event held on any premises on which the licensee provides catering services, but only for consumption on those premises
Governor's licence	Authorised the licensee to sell liquor on premises vested in the Crown or a public authority constituted by an Act.

2.2 Obtaining a licence

A liquor licence could be obtained by applying to the Licensing Court for:

- The **grant** of a new licence; or
- The **transfer** of an existing licence from one person to another; or
- In the case of a hotelier's licence or an off-licence - **removal** of an existing licence from one premises to another.

² For a history of liquor licensing laws in NSW see NSW Parliamentary Library Research Service, Briefing Paper No 5/96, p4-10.

³ Part 3 of the Act.

2.3 Licence applications and determinations

Making an application: An application for a licence could be made to the Court by a natural person who was over the age of 18 years or by a body corporate.⁴ An application for the *transfer* of a licence could be made by the licensee and proposed transferee.⁵

Affidavits as to interested persons: Applications for licences, removals or transfers needed to be accompanied by an affidavit stating whether or not there were any persons who would be directly or indirectly interested in the application or in the businesses, or the profits of the business, to be carried on pursuant to the licence if the application was granted; and if there were any interested persons, stating their names and dates of birth.⁶

Investigation of applications: The Licensing Court was required to refer to the Director for Liquor and Gaming for investigation each application for a licence or for the transfer of a licence.⁷ The Director was required to carry out all such investigations in relation to the applicant as were considered to be necessary for a proper consideration of the application; and was to complete this investigation within 6 months of the application being lodged.⁸ As part of this investigation, the Director was required to refer details of the applicant to the Commissioner of Police, who was required to report back to the Director.⁹

Objections to applications: An objection to an application could be made by:

- The Director of Liquor and Gaming;
- The Commissioner of Police;
- The owner of premises to which the application relates;
- Three or more residents of the neighbourhood;
- A delegate of the local council;
- A person whose interests, financial or other, were likely to be adversely affected;
- Any other person with leave of the court.¹⁰

There were several grounds of objection including:

- *Fitness:* That the applicant was not a fit and proper person to be the holder of a licence; or that the applicant was closely associated with a specified person and by

⁴ Section 36.

⁵ Section 41.

⁶ Section 38; and section 41(4).

⁷ Section 42B.

⁸ Section 42C(1).

⁹ Section 42C(2), (3)

¹⁰ Section 44.

reason of that association, was not a fit and proper person to be the holder of a licence; or that a person directly or indirectly interested in the application or in the business, or profits of the business, to be carried on pursuant to the licence was not a fit and proper person to be so interested.

- *Quiet and good order of neighbourhood:* That the quiet and good order of the neighbourhood would be disturbed if the application were granted.
- *Needs met by existing facilities in the area:* Objection to the grant of an application for a *hotelier's licence or an off-licence to sell liquor by retail* could also be taken on the ground that the needs of the public in the neighbourhood of the premises to which the application related could be met by facilities for the supply of liquor existing in, and outside, the neighbourhood. As outlined below, in 2004, this 'needs' objection was replaced by a social impact assessment process.
- *Would not be in public interest:* That for other reasons it would not be in the public interest to grant the application.¹¹

Determination of applications: The Court had a discretion to grant an application even though an objection had been made out (except for an objection on the grounds of fitness).¹² The Court also had a discretion to refuse an application on the grounds of fitness even if an objection was not taken or made out on the grounds of fitness.

Aside from objections, the Act outlined a number of matters that the Court needed to be satisfied of before it could grant a licence. These varied according to the type of licence:¹³

- In the case of a *hotelier's licence*, the Court could not grant a licence unless it was satisfied that an existing hotelier's licence was not available at a reasonable market price for removal to the premises to which the application for the new licence related.¹⁴ In addition, the Court could not grant a licence unless the premises contained reasonable accommodation for the licensee, residential accommodation, sanitary facilities and parking, as the Court considered necessary.¹⁵
- Note also that the Court could not grant an application for removal of a *hotelier's licence* or an *off-licence (retail)* to a place outside the neighbourhood of the existing licensed premises unless it was satisfied that the removal of the licence would not affect detrimentally the interests of the public in the neighbourhood of the existing

¹¹ Section 45.

¹² Section 47.

¹³ Part 3, Division 6.

¹⁴ Section 18(9).

¹⁵ Section 50(a)

licensed premises.¹⁶

- In the case of an *on-licence (restaurant)*: The Court could not grant a licence unless it was satisfied that adequate staff, fittings, equipment and accommodation were, or would be, available on the premises for the supply of meals at the same time for at least 50 persons, or such less number of persons as the court could in special circumstances determine; and the premises had sanitary facilities.¹⁷

2.4 Licence conditions

Statutory conditions: The Act imposed a number of miscellaneous conditions on each category of licence. These included:

- *Hotelier's licence:* It was a condition of a hotelier's licence that the hotel must not be open at any time for the sale or supply of liquor for consumption on the premises unless, in a part of the premises, at least a light meal was available, with or without charge, for consumption by persons to whom liquor was sold or supplied.¹⁸
- *On-licence (restaurant):* It was a condition of an on-licence (restaurant) that liquor must be sold, supplied and consumed in the restaurant only:
 - (a) in the reception area (if any) or at a table in the restaurant; and
 - (b) with or as ancillary to a meal consumed at a table in the restaurant.¹⁹

In relation to (a), note that when granting an application for an on-licence (restaurant), or on the application from a restaurant licensee, the Court could authorise the use of a specified part of a restaurant as a reception area.²⁰

Conditions imposed by Court: On the hearing on application for the grant of a licence, the Court could impose conditions on the licence, either on its own motion or on the application of a party, the application of the Director of Liquor and Gaming or of the Commissioner of Police.²¹ At any other time, the Court could also impose conditions on a licence on application from the Director or the Commissioner of Police.²²

¹⁶ Section 57(1).

¹⁷ Section 53(1).

¹⁸ Section 21(3).

¹⁹ Section 23(3).

²⁰ Section 88.

²¹ Section 20.

²² Section 20.

2.5 Trading hours

The Liquor Act sets out the hours during which liquor can be sold or supplied under a licence. The Act does not 'regulate the trading hours of premises as such as this is a matter for development consent, granted by the relevant consent authority under the *Environmental Planning & Assessment Act 1979*'.²³ The hours during which liquor could be sold or supplied under a hotelier's licence and on-licence (restaurant) are outlined below:

- **Hotelier's licence:** The standard hours were from 5am to midnight except on Sunday, where they were from 10am to 10pm.²⁴ An application could be made to the Court to vary these trading hours.²⁵ However, the Court could only grant an extension after midnight if it was satisfied that doing so would not result in the frequent undue disturbance of the quiet and good order of the neighbourhood.²⁶
- **On-licence (restaurant):** The standard hours were from midday to midnight except on Sunday, where they were from midday to 10pm.²⁷ The Court could vary these hours for particular premises to permit the sale or supply of liquor otherwise than with or as ancillary to a meal from 11pm up to 3am on the next day if the liquor was sold or supplied with or as ancillary to entertainment and a meal was available on the premises for persons to whom the liquor was sold or supplied.²⁸ A variation of hours was known as a 'cabaret endorsement' on the licence.

2.6 Licence fees

Fees for grant of a licence: All applicants were required to pay a fee for the grant of a licence.²⁹ In the case of certain licences, such as a hotelier's licence and an off-licence (retail), the fee for the grant of the licence was 'the fee fixed by the Board for the licence'. According to the Board's 1995/96 annual report, the fees for three hotel licences ranged from \$25,000 to \$125,000.³⁰ The Act specified fees for other types of licence: eg the fee for an on-licence (restaurant) was \$500 (or \$2000 with a cabaret endorsement).

²³ Palmer K and Bulford B, *Liquor Licensing Law and Practice New South Wales*, Thomson Law Book Company, Loose-leaf service, [13.01].

²⁴ Section 24.

²⁵ Section 25(1), (2).

²⁶ Section 25(2).

²⁷ Section 31.

²⁸ Section 32

²⁹ Section 56.

³⁰ Liquor Administration Board, *Annual Report 1995/96*, p 51.

Annual licence fees based on liquor purchases: In 1995, licensees were required to pay annual liquor licence fees to the NSW Government based on the amount of liquor they purchased each year.³¹ The fee payable for a hotelier's licence or an on-licence (restaurant) was 13 percent of the amount paid by the licensee for all liquor (other than low alcohol liquor) that was delivered upon or purchased for the licensed premises.³²

2.7 Management and control of premises

Management:³³ The licensee could not, without the consent of the Board, permit any person to manage or conduct the sale of liquor on the licensed premises during the absence of the licensee for a longer continuous period than 6 weeks. In addition, licensees were required to have the immediate supervision of the conduct of the premises.

Corporate licensees:³⁴ Corporate licensees were required to appoint a manager for the licensed premises. A person could not be appointed as a manager unless approved by the Court; and the Court needed to be satisfied that the person was a fit and proper person to manage licensed premises. The licensee was required to give the Board notice of the appointment of a person as manager. Managers were to be responsible for the personal supervision and management of the conduct of the business on the licensed premises.

Exclusion of persons from premises: A licensee or his employee could refuse to admit to the licensed premises, and could turn out of the premises, any person who was intoxicated, violent, quarrelsome or disorderly; any person whose presence on the premises rendered the licensee liable to a penalty under the Act; and certain other persons.³⁵

2.8 Disciplinary action for licensees/managers

Making of complaints: Certain persons (similar to list of persons who could object to an application) could make complaints to the Court on a number of grounds including that:

- The licensee or manager has, while holding a licence or managing licensed premises been convicted of an offence against the Act (see below) or an offence for which the licensee or manager has been sentenced to imprisonment;
- The licensee/manager has been guilty of a breach of a licence condition;
- The licensee/manager has not complied with a direction/order of the Board/ Court;
- The continuation of the licence is not in the public interest;
- The licensee/manager is not a fit and proper person to be the holder of a

³¹ Section 80.

³² Section 80.

³³ Section 101.

³⁴ Sections 69B-69F.

³⁵ Section 103.

licence/manager of the licensed premises; or that the licensee has a close associate who is not a fit and proper person; or that a person named in a relevant affidavit is not a fit and proper person to be interested in the licence or business;

- Entertainment has been conducted on the premises otherwise than in accordance with the conditions of an approval under the Local Government Act.³⁶

Determination of complaint: Upon the making of a complaint, the Court could summons the licensee or manager to whom the complaint related to appear before the Court to answer the complaint and show cause why disciplinary action should not be taken.³⁷

Disciplinary powers of Court: If satisfied that the complaint was made out, the Court had a range of disciplinary powers including the power to:

- Reprimand the licensee/manager;
- Order the licensee/manager to pay a fine of up to 200 penalty units (up to 500 penalty units for a corporation);
- Impose a condition on the licence or vary or revoke a licence condition;
- Suspend the licence for a period not exceeding 12 months;
- Cancel the licence;
- Disqualify the licensee from holding a licence for period not exceeding 3 years;
- Withdraw the manager's approval to manage the premises;
- Disqualify the manager from being able to manage licensed premises.³⁸

2.9 Complaints about disturbances of quiet and good order

Certain persons (similar to list of persons who could object to an application) could complain to the Board about the undue disturbance of the quiet and good order of the neighbourhood of licensed premises caused by the manner in which the business of the licensed premises was conducted, or the behaviour of persons after they had left the licensed premises.³⁹ On receiving a complaint, the Board could convene a conference to hear submissions about the complaint. The Board could then take certain action including imposing, varying, or revoking conditions of the licence; adjourning the conference subject to undertakings given by the licensee; or issuing a warning to the licensee.⁴⁰ Conditions that could be imposed on the licence included a condition relating to noise abatement or a prohibition on the sale or supply of liquor after 11 pm.⁴¹

³⁶ Section 68.

³⁷ Section 67(2).

³⁸ Section 69.

³⁹ Section 104(1).

⁴⁰ Section 104(3).

⁴¹ Section 104(4).

2.10 Offences in relation to licensed premises

Offences by licensees generally: There were a number of offences including:⁴²

Offence	Max penalty
Sale or supply of liquor outside trading hours	20 penalty units
Unauthorised sale of liquor by licensee	10 penalty units or 6 months prison
Sale of liquor without licence	10 penalty units or 6 months prison
Opening unlicensed premises for purpose of selling liquor	10 penalty units or 6 months prison
Permitting premises to be used for prostitution	20 penalty units
Permitting premises to be used for sale of stolen goods or drugs	10 penalty units
Permitting intoxication, or indecent, violent or quarrelsome conduct on premises – licensee deemed to have permitted intoxication unless he proves that he took all reasonable steps to prevent it.	20 penalty units
Selling or supplying liquor to a person who is intoxicated	20 penalty units

Offences by licensees in relation to minors: There were a number of offences including:⁴³

Offence	Max penalty
Allowing liquor to be sold or supplied to minor	20 penalty units
Allowing a minor to enter a restricted area in a hotel (ie an area where liquor is ordinarily sold for consumption on the premises); or allowing a minor to enter unaccompanied by a responsible adult a part of hotel authorised for use by minor in the company of an adult.	20 penalty units
Allowing a minor to enter unaccompanied by a responsible adult a licensed restaurant during a late-trading period.	20 penalty units
Allowing a person who appears to be under the age of 18 to enter a hotel without requiring him/her to provide documentary proof that he or she is above the age of 18.	10 penalty units

⁴² See Part 8 of the Act.

⁴³ See Part 7A of the Act.

2.11 Enforcement of laws by police and inspectors

Powers to inspect premises: The Commissioner of Police could enter licensed premises at any time of the day or night if the Commissioner believed (a) that unlawful or disorderly conduct was taking place on the premises or (b) that a breach of the Act had been, or was being, committed on the premises.⁴⁴ In exercising this power, the Commissioner could break into the premises if entry was refused or unreasonably delayed. In addition to the Commissioner's power of entry, a member of the police force or a special inspector appointed by the Minister could, at any reasonable time, enter and examine licensed premises to ascertain whether the Act had been, or was being, complied with.⁴⁵

Roles of police and inspectors: The respective roles of the police and inspectors in enforcing licensing laws have been described as follows:

On the one hand, NSW Police is responsible for the overall enforcement of liquor laws on a state wide basis. On the other hand, Departmental inspectors monitor licensed venues on a targeted basis to ensure that Government policy and laws are being implemented, [and] to educate licensees about their obligations.⁴⁶

⁴⁴ Section 110(1).

⁴⁵ Section 110(3).

⁴⁶ NSW Department of Gaming and Racing, *National Competition Policy Review: New South Wales Liquor Act 1982 and Registered Clubs Act 1976 – Final Report*, October 2003, p18.

3. SIGNIFICANT REFORMS IN NSW SINCE 1995

3.1 Harm minimisation, enforcement and nightclub reforms (1996)

Overview: In 1996, the NSW Government enacted four reform packages:

- (1) The harm minimisation reforms;⁴⁷
- (2) The enforcement reforms;⁴⁸
- (3) The minors' entertainment reforms;⁴⁹
- (4) The nightclub licence reforms.⁵⁰

Harm minimisation: The harm minimisation reforms were introduced to minimise the harm associated with the misuse and abuse of alcohol in the community; such as harm arising from violence and other anti-social behaviour. The measures included:

- (i) Making harm minimisation a primary objective of the Act; and requiring the Licensing Court, the Board, the Director, the Commissioner of Police and other persons having functions under the Act to have due regard to the need for harm minimisation when exercising functions under the Act.
- (ii) Requiring the Licensing Court to refuse an application for a licence (or for an extension of hours) unless the Court was satisfied that practices would be in place at the premises as soon as the licence was granted that would ensure as far as reasonably practicable that liquor was supplied and served responsibly on the premises, that all reasonable steps were taken to prevent intoxication on the premises, and that those practices would remain in place.
- (iii) Allowing complaints to be made to the Court under the disciplinary provisions on three new grounds: that the licensee/manager has engaged in conduct that is likely to encourage misuse or abuse of liquor by patrons; that intoxicated persons have frequently been on licensed premises or have frequently been seen to leave those premises; and that acts involving violence against persons or damage to property have frequently been committed on or near the licensed premises by persons who have been on the premises.
- (iv) Inserting a new regulations power into the Act that would allow for the staged introduction of compulsory responsible service of alcohol training across the liquor industry. At the time, only applicants for hotel, restaurant and motel

⁴⁷ *Liquor and Registered Clubs Legislation Amendment Act 1996*. These reforms were proposed in 1995 and were discussed in the 1996 briefing paper at p20ff.

⁴⁸ *Liquor and Registered Clubs Legislation Amendment (Enforcement) Act 1996*. These reforms were proposed in 1995 and were discussed in the 1996 briefing paper at p25ff.

⁴⁹ *Liquor and Registered Clubs Legislation Amendment (Minors' Entertainment) Act 2006*.

⁵⁰ *Liquor Amendment (Nightclub Licences and Trading Hours) Act 1996*.

licences were required to undertake this training. The training requirements did not apply to other liquor licensees, club secretary managers or bar and service staff. As outlined below, the new scheme was not introduced until 2003.

- (v) Increasing penalties for the offence of permitting intoxication on licensed premises and for offences involving the sale or supply of liquor to minors.

Enforcement: In 1996, the Government enacted new enforcement measures in response to findings made by a special Departmental task force formed in 1995 to investigate illegal activities on licensed premises in Kings Cross. When announcing the new laws in April 1996, the Minister for Gaming and Racing, Mr Face, reported:

The findings of the task force reinforce disclosures made at the Wood royal commission, namely, that unfit operators and criminals, in breach of licensing laws, are in control of licensed premises. Such persons have effectively taken over the businesses conducted under many liquor licences to the exclusion of licensees, and run the businesses in a manner to encourage drug sales and prostitution. In effect, the licensee is a front man or a “clean skin”.⁵¹

The Minister also reported that the task force had ‘uncovered more than 300 breaches of licensing laws’.⁵² According to the Minister, the new enforcement laws would ‘ensure more responsible and lawful management of licensed premises by overcoming a number of serious deficiencies in the current legislation and enabling more effective enforcement of licensing laws’.⁵³ The reforms included the following measures:

- (i) *Close associates:* Expanding the definition of close associate, allowing complaints under the disciplinary provisions to be made in relation to close associates, and giving the Licensing Court the power to exclude a close associate from being involved in any licensed premises for a period of time.
- (ii) *Management of licensed premises in special areas:* Making it a condition of the licence for premises in a special area (eg Kings Cross) that the licensee has responsibility for the personal supervision and management of the conduct of the business on the premises except during any period for which a manager has that responsibility; and not allowing licensees to appoint a manager unless the licensee notifies the Court of the intended appointment.
- (iii) *Higher penalties in complaint matters:* Allowing the Court to impose deterrent penalties in complaint matters; and providing for higher penalties in complaint matters where aggravating circumstances exist in relation to breaches of the provisions concerning conduct on licensed premises or the sale of stolen goods or possession, use or sale of drugs on licensed premises.

⁵¹ Mr Face, *NSW Parliamentary Debates*, 17/4/96, p148.

⁵² Mr Face, *NSW Parliamentary Debates*, 17/4/96, p148.

⁵³ Mr Face, *NSW Parliamentary Debates*, 17/4/96, p149.

- (iv) *Orders for closure of licensed premises:* Allowing for an authorised justice on the application of the Director of Liquor and Gaming or Commissioner of Police to order the closure of licensed premises for up to 72 hours when the public interest is at risk, including where there is a risk of serious offences being committed on the premises; and allowing for the Court to order the closure of licensed premises for up to 6 months in similar circumstances.
- (v) *Additional powers for special inspectors and police:* Allowing special inspectors from the Department to enter licensed premises at any time of the day or night if they believe on reasonable grounds that a breach of the Act has been, or is being, committed on the premises (thereby providing special inspectors with the same entry powers as police); and allowing special inspectors and police to seize documents relating to the business.

Minors' entertainment: The minors' entertainment reforms are not discussed here except to note that they aimed to make it easier for hoteliers to make their premises available for alcohol-free entertainment for young people under 18 years of age.⁵⁴

Nightclub licences: The Government introduced a new category of liquor licence for nightclub venues (the nightclub licence), which would replace the cabaret endorsement on a restaurant licence.⁵⁵ In doing so, the Government sought to address its concerns about nightclubs, which 'for some time...[had] figured highly in terms of breaches of the licensing laws, breaches of their restaurant licence conditions and complaints about conduct under the quiet and good order provisions of the Liquor Act'.⁵⁶ The Minister for Racing and Gaming, Mr Face, explained the object of the new laws:

The bill recognises that nightclub venues are legitimate venues in their own right...There is a clear community demand for these venues. But the bill also provides a licensing regime with clear and appropriate control measures, including a range of probity and integrity measures.⁵⁷

Some key features of the new nightclub licence are outlined below.

Pre-conditions to grant of licence: The Court could not grant an application for a nightclub licence or removal of a nightclub licence unless certain preconditions were satisfied. Two preconditions were that the benefit to the public in granting the application would outweigh the costs to the public; and that the granting of the application would not result in frequent undue disturbance of the quiet and good order of the neighbourhood.⁵⁸

⁵⁴ Mr Face, *NSW Parliamentary Debates*, 20/5/96, p1716.

⁵⁵ *Liquor Amendment (Nightclub Licences and Trading Hours) Act 1996*.

⁵⁶ Mr Face, *NSW Parliamentary Debates*, 15/10/96, p4806.

⁵⁷ Mr Face, *NSW Parliamentary Debates*, 15/10/96, p4806.

⁵⁸ New section 54BA, *Liquor Act 1982* (NSW).

Licence conditions: The Minister for Gaming and Racing, Mr Face, explained:

The new licence is being created in recognition that nightclubs operate in some ways like a hotel. It will allow sales of liquor without a meal, but with entertainment, during times when nightclubs generally operate [ie after 8pm]. However, nightclubs licensees will not gain all of the trading advantages that apply to hotels...Nightclubs will not be permitted to sell liquor without meals outside their trading period [ie before 8pm]; they will not be able to operate gaming devices...and they will not be able to make takeaway sales of liquor.⁵⁹

Trading hours:⁶⁰ The trading hours for a nightclub in Sydney, Newcastle, Wollongong and the Central Coast are from midday to 3am, except on Sundays where the trading hours in these locations are from midday to midnight (except in the Sydney CBD, Kings Cross, Oxford and Darlinghurst, where trading is still permitted up to 3am). In other areas, the standard hours for a nightclub are from midday to midnight. In these other areas, the Court can grant an extension up to 3am except for trading on a Sunday.

Licence fees: The Minister stated that nightclub licences would be subject to significant fees, in recognition of the fact that they operate more like hotels than restaurants.⁶¹ The fee for the grant of a licence in the Sydney CBD, Kings Cross and Oxford Street-Darlinghurst areas would be \$60,000. A fee of \$40,000 would be charged for premises in other parts of the Sydney, Newcastle and Wollongong metropolitan areas and the central coast, while a fee of \$10,000 would apply to nightclubs in country areas of NSW.

Transitional provisions: The Minister explained that existing cabaret licensees:

...will have six months to apply for a new nightclub licence if they wish to continue operating as a nightclub. Special provisions will also operate for those licensees in recognition of their existing trading rights. Existing restaurants with late trading endorsements will not be required to meet the proposed public benefit test when the licensee applies for a nightclub licence within the six month period allowed...⁶²

3.2 New scheme for function licences (1997)

In 1997, the NSW Government replaced the existing licensing scheme that allowed non-profit organisations to sell liquor at functions 'with a new scheme providing for three different classes of function licence incorporating a range of new, more appropriate controls'.⁶³ The Minister for Racing and Gaming, Mr Face, explained that:

⁵⁹ Mr Face, *NSW Parliamentary Debates*, 15/10/96, p4806.

⁶⁰ New section 35C, *Liquor Act 1982* (NSW).

⁶¹ Mr Face, *NSW Parliamentary Debates*, 15/10/96, p4806. The fees are outlined in section 56, *Liquor Act 1982* (NSW), as inserted in 1996.

⁶² Mr Face, *NSW Parliamentary Debates*, 15/10/96, p4807.

⁶³ Mr Face, *NSW Parliamentary Debates*, 28/5/97, p9379. The amendments were enacted via

The Government, since coming to office in 1995, has been concerned about reports of abuse of the law in relation to function licences. One of the special problem areas seems to be responsible serving and the need for function licensees to be aware of, and to comply with, obligations not to serve minors and intoxicated people.

Another reason for giving attention to function licences is that the Government is now requiring all liquor licensees to become more responsible in the service of liquor as a result of its harm minimisation policies and programs.⁶⁴

3.3 Changes to annual licence fees after High Court decision (1997)

On 5 August 1997, the High Court ruled that the collection of tobacco business franchise fees under State legislation was constitutionally invalid.⁶⁵ Following that decision, the NSW government along with the governments of other States and Territories, decided to cease the collection of business franchise fees for tobacco, liquor and petroleum from 6 August 2007.⁶⁶ To ensure the States were not worse off, an arrangement was made with the Federal Government, whereby it would increase the wholesale sales tax rate on alcohol by 15 percent and would redistribute those funds to the States where the sale took place.⁶⁷ Sales tax 'was subsequently abolished as part of the changes to the Commonwealth taxation regime associated with the introduction of the Goods and Services Tax in July 2000'.⁶⁸

3.4 Dine or drink authorities for restaurants and nightclubs (1998/99)

In 1998, the NSW Government introduced the 'dine or drink' authority for licensed restaurants.⁶⁹ The Court could endorse a licence with a 'dine or drink' authority, which would allow 30 percent of dining seats in the restaurant to be used for the consumption of liquor without the need to consume a meal. The Government explained that:

... An important result will be that the many thousands of people who enjoy going to licensed restaurants will have the opportunity to dine or drink at their favourite restaurants. This legislation is therefore landmark legislation for New South Wales.

the *Liquor and Registered Clubs Legislation Amendment Act 1997*.

⁶⁴ Mr Face, *NSW Parliamentary Debates*, 28/5/97, p9379-9380.

⁶⁵ *Ha & Hammond v New South Wales* (1997) 189 CLR 465.

⁶⁶ Mr Face, *NSW Parliamentary Debates*, 19/11/97, p2083. Part 5 of the Act, which required the payment of periodic licence fees was ultimately repealed by the *Liquor and Registered Clubs Legislation Amendment Act 1997*.

⁶⁷ Mr Face, *NSW Parliamentary Debates*, 19/11/97, p2083.

⁶⁸ National Competition Policy Review 2003 report, note 46, p6.

⁶⁹ *Liquor Amendment (Restaurants and Nightclubs) Act 1998*.

It is a result of many of the major changes that have been made to the restructuring of liquor laws in this State in the past three years.

I stress that the amendments...are not about deregulation of the liquor industry, unlike what has been done in other States. The position is quite the contrary. These are sensible measures which will ensure that we will not have a proliferation of public bars in New South Wales...The bill also contains proper measures to promote responsible service and responsible drinking.⁷⁰

In support of these changes, the Government also stated:

It is clear that the community demands small cafes and venues, particularly in tourist areas, where men, women, mixed groups, single-sex groups, couples, and families, in fact everybody, can eat, drink and socialise in pleasant surroundings. Honourable members also know that patterns of liquor consumption are changing with per capita consumption of beer decreasing in Australia, along with other trends such as a greater emphasis on fine food and wine, eating out, and casual dining.⁷¹

There was a four tier fee structure for dine or drink authorities: \$15,000 for large restaurants (over 100 seats) in the Sydney metropolitan area, Newcastle and Wollongong, \$10,000 for small restaurants (100 seats or less) in those metropolitan areas, \$10,000 for large restaurants in non-metropolitan areas and \$5,000 for small restaurants in these areas.⁷²

In 1999, the Government enacted legislation to allow nightclubs with restaurant facilities to also obtain 'dine or drink' authorities.⁷³ This would mean that 'at the times a nightclub is required by law to operate as a proper restaurant, it can operate as a dine or drink venue with 30 per cent of patrons having a drink without a meal'.⁷⁴

3.5 Dealing with late night trading disturbances (1999)

In 1999, the Government enacted reforms 'to help local communities deal with disturbance associated with late-trading licensed premises'.⁷⁵ These reforms arose out of a review of late night liquor trading, which was conducted in 1996/97. Two practical changes were made to the complaints system in relation to late night trading disturbances:

⁷⁰ Mr Face, *NSW Parliamentary Debates*, 23/9/98.

⁷¹ Mr Face, *NSW Parliamentary Debates*, 23/9/98.

⁷² New section 56, *Liquor Act 1982* (NSW).

⁷³ *Liquor Amendment Act 1999* (NSW).

⁷⁴ Mr Face, *NSW Parliamentary Debates*, 26/10/99.

⁷⁵ Mr Face, *NSW Parliamentary Debates*, 12/5/99, p107. These reforms were contained in the *Liquor and Registered Clubs Legislation Amendment Act 1999*.

First, the amendments [would] make it clear that a single complaint made to the Liquor Administration Board about the disturbance to the quiet and good order of a neighbourhood may be made in relation to more than one licensed premises or registered club. Second, the amendments [would] enable the Board to include a premises that has not been the subject of a specific disturbance complaint in a conference established to deal with a complaint.⁷⁶

The Minister referred to other measures that the Government had implemented in 1998, and would continue to implement, to deal with problems arising from late night trading.⁷⁷ The Government was encouraging the use of *liquor accords* (see further below) in areas where liquor-related problems had been identified⁷⁸; it had introduced (in July 1998) a \$550 on the spot fine for failing to leave licensed premises and the Department's harm minimisation inspectors were targeting problem premises and hot spot areas.⁷⁹

3.6 Small restaurant and other reforms (1999)

Licences for cafes and small restaurants: In 1999, the Government removed the requirement in the Act for a restaurant to have a minimum of 50 seats in order to obtain a liquor licence.⁸⁰ The Government stated:

This requirement is an anachronism which prevents small food venues being licensed based on an artificial limit which has no meaning in the real world. There is obvious merit in allowing smaller eating places to be licensed. It encourages diversity of venues and meets community demands.⁸¹

Minors' entertainment in nightclubs: In 1999, changes were made to allow the Court to grant an authority for a nightclub to provide alcohol-free entertainment for minors, subject to certain conditions.⁸² This followed from changes introduced in 1996 to make it easier for hotels and registered clubs to provide alcohol free entertainment for minors.

Community liquor licences: In 1999, the Government introduced a new category of licence (community liquor licence) 'so that small rural communities throughout the State that have been disadvantaged in recent years by hotel closures can continue to have ready access to a local and convenient liquor and hospitality service'.⁸³ The Minister explained:

⁷⁶ Mr Face, *NSW Parliamentary Debates*, 12/5/99, p107.

⁷⁷ Mr Face, *NSW Parliamentary Debates*, 12/5/99, p114.

⁷⁸ Mr Face, *NSW Parliamentary Debates*, 12/5/99, p114.

⁷⁹ Mr Face, *NSW Parliamentary Debates*, 12/5/99, p115.

⁸⁰ *Liquor Amendment Act 1999* (NSW).

⁸¹ Mr Face, *NSW Parliamentary Debates*, 26/10/99.

⁸² *Liquor and Registered Clubs Legislation Further Amendment Act 1999*.

⁸³ Mr Face, *NSW Parliamentary Debates*, 26/10/99, p1986: the community liquor licence

[A community liquor licence] will be granted by the Licensing Court to a person who will operate it on behalf of a non-profit organisation and where there is community support for the licence. The licence can only be granted in areas of the State outside of metropolitan Sydney, Newcastle and Wollongong and if the court were satisfied that there is no hotel in the neighbourhood or its vicinity, due either to a hotel ceasing to operate or to the removal of a hotel licence.⁸⁴

3.7 Liquor accords (1999/00)

In 1999 and 2000 the Government enacted amendments to address concerns about the legality of provisions of liquor accords.⁸⁵ Liquor accords are agreements reached between local stakeholders (usually involving licensed premises, local councils, and police) that aim to minimise harm (including violence and anti-social behaviour) associated with liquor use.⁸⁶ By way of example, under the Dubbo accord, which was introduced in 1998, all licensed premises decided to stop people from entering the premises after 1.00am although not to stop serving liquor.⁸⁷ In June 2000, the Minister, Mr Face, commented:

Liquor accords have been outstandingly successful in addressing alcohol-related problems. That is why the Government is encouraging the development of accords as an effective way of dealing with alcohol-related violence and anti-social behaviour in and around licensed venues. Accords have been successful because they represent a local solution that is largely driven by local stakeholders.⁸⁸

The amendments did not deal with the issue of the illegality of “barred from one, barred from all” provisions that had been included in some liquor accords (ie providing that a person who was barred from one licensed premises could be barred from all licensed premises in the area). The Government said it would be carefully considering this issue in cooperation with the liquor industry and other stakeholders over the coming months.⁸⁹

provisions were enacted via the *Liquor Amendment Act 1999*.

⁸⁴ Mr Face, *NSW Parliamentary Debates*, 26/10/99, p1988.

⁸⁵ *Liquor and Registered Clubs Legislation Further Amendment Act 1999*; and *Liquor and Registered Clubs Legislation Amendment Act 2000*.

⁸⁶ Department of Gaming and Racing, ‘Liquor Accords: Local Solutions for Local Problems’, Fact Sheet, November 2004, p1.

⁸⁷ Mr Face, *NSW Parliamentary Debates*, 12/5/99, p109.

⁸⁸ Mr Face, *NSW Parliamentary Debates*, 21/6/00.

⁸⁹ Mr Face, *NSW Parliamentary Debates*, 21/6/00.

3.8 Managers and harm minimisation (2001)

As noted above, the Liquor Act required corporate licensees to appoint a manager approved by the Court to manage the licensed premises. In 2001, amendments were enacted to require the Court to be satisfied that the manager understands his or her responsibilities in relation to, and is capable of implementing, practices in place at licensed premises for ensuring the responsible sale, supply and service of liquor and the prevention of intoxication.⁹⁰

3.9 Compulsory responsible service of alcohol training (2003)

In October 2003, shortly after the NSW Government's Summit on Alcohol abuse, the Government enacted regulations to introduce compulsory responsible service of alcohol (RSA) training for the NSW liquor industry.⁹¹ These provisions applied to all liquor licensees and club secretaries, all permanent and casual staff and other persons involved in the sale, supply or service of liquor in licensed venues.⁹² The regulations required licensees, club secretaries and permanent serving staff to have been trained by 31 December 2003, with casual serving staff having until 30 June 2004 to complete the training. Liquor licensees and club secretaries are liable for a fine of up to \$5,500 (or \$550 penalty notice) if they do not hold a recognised RSA certificate or if a staff member who does not hold a recognised RSA certificate sells, supplies or serves liquor on their venue. Staff members are also liable for a fine of up to \$1,100 (or \$110 penalty notice).

3.10 Changes to comply with national competition policy (2004)

National Competition Policy:⁹³ In 1995, all Australian governments adopted a program of economic reform known as the National Competition Policy (NCP). The Federal Government agreed to make NCP payments to the States and Territories as a financial incentive to implement the NCP. The National Competition Council (NCC) assesses governments' progress against the NCP obligations and makes recommendations to the Treasurer on the distribution of NCP payments.

One component of the NCP was a requirement for governments to review and, where appropriate, reform legislation that restricts competition. The initial target date for this was 2000 but this was later extended to 2003. In August 2003, the NCC reported on

⁹⁰ *Liquor and Registered Clubs Legislation Amendment Act 2001.*

⁹¹ *Liquor Amendment (Responsible Service of Alcohol Training) Regulation 2003.*

⁹² NSW Department of Gaming and Racing, 'Mandatory Responsible Service of Alcohol Training', *Information Sheet 9/03*, October 2003 (updated December 2003), p1. The following summary of the provisions is taken from this Information Sheet, p1-2.

⁹³ The information in this section is taken from National Competition Council, *Assessment of governments' progress in implementing the National Competition Policy and related reforms: 2003*, Commonwealth of Australia, August 2003: pxxix, p1.4, p4.1, p7.12-7.13.

governments' progress in implementing the legislation review and reform program.⁹⁴ In relation to liquor licensing laws in NSW, the NCC concluded:

Despite having reported to the Council that it had commenced a review of liquor licensing legislation in 1998, [NSW] is yet to consider the review report. Its legislation retains significant restrictions on competition for which it has not yet provided a public benefit justification. The Council thus assesses [NSW] as not having met its CPA obligations in relation to liquor licensing.⁹⁵

The legislative restrictions on competition were the 'needs' test - that allowed any person who would be affected by a licence application to object on the grounds that existing facilities meet the needs of the public – and the high licence fees. The NCC ultimately recommended a permanent deduction of 5 per cent of competition payments for 2003-04 for non-compliance in this area. This was estimated to be worth \$12.86 million.

The 2004 reforms in NSW: In 2004, the NSW Government reluctantly⁹⁶ enacted amendments in order to satisfy the NCC and the Federal Treasurer and thereby avoid forfeiting NCP payments.⁹⁷ There were two major reforms:

- (1) *Social impact assessments:* The reforms replaced the 'needs' test with a social impact assessment process in relation to applications for a hotelier's licence and an off-licence to sell liquor by retail.⁹⁸ Under the new laws, the Licensing Court cannot grant an application for such a licence (or for the removal of a such a licence) unless the Liquor Administration Board has been provided with a social impact assessment (SIA) and has approved it. The Board cannot approve the SIA unless the overall social impact of the application would 'not be detrimental to the local community or to the broader community'. The regulations set out detailed requirements as to the information that must be included in a SIA.⁹⁹ The regulations also require copies of an SIA to be provided to the local council, the police and a range of other organisations, inviting them to make submissions to the Board. On lodging an SIA with the Board, an applicant must pay a fee of \$6,600.¹⁰⁰

⁹⁴ NCC 2003 report, note 93.

⁹⁵ NCC 2003 report, note 93, p7.13.

⁹⁶ See Bob Carr, *New South Wales Parliamentary Debates*, 17/2/04, p6172.

⁹⁷ *National Competition Policy Liquor Amendments (Commonwealth Financial Penalties) Act 2004* (NSW), which commenced on 1 August 2004.

⁹⁸ See section 62C of the *Liquor Act 1982* (NSW).

⁹⁹ Clause 18E, *Liquor Regulations 1996*.

¹⁰⁰ Note that the SIA requirements are less onerous in the case of the removal of a hotelier's licence to premises within 1km of the previous premises (or 5km in country areas). In addition the fee for lodging the SIA for the removal is less (\$550).

(2) *Changes to licence fees:* Instead of being determined by the Board, the fee for the grant of a hotelier's licence and an on-licence (retail) have been fixed at the rate of \$2,000.¹⁰¹ By way of comparison, in 2003/04 fees determined by the Board for a hotelier's licence ranged from \$20,000 to \$100,000.¹⁰² In addition to changing the fees for the grant of a licence, the 2004 reforms introduced fixed annual fees for hotelier's licences and on-licences (retail) of \$2,500.¹⁰³ These annual fees were not payable in respect of licences that were in force before the reforms commenced.

¹⁰¹ See section 56, *Liquor Act 1982* (NSW); and clause 59, *Liquor Regulations 1996* (NSW)

¹⁰² Liquor Administration Board, *Annual Report 2003-2004*, p41.

¹⁰³ See section 56C, *Liquor Act 1982* (NSW); and clause 60, *Liquor Regulations 1996* (NSW).

4. MAJOR REFORMS TO LICENSING LAWS IN OTHER STATES

This section presents a brief overview of major reforms to liquor licensing laws in other States over the past decade. Many of these reforms were enacted in response to National Competition Policy. Note that this section only outlines those licensing reforms relating to the sale of liquor for consumption *on licensed premises*. Some of the reforms mentioned in this section are outlined in more detail in **Section 5**.

4.1 South Australia

South Australia enacted major changes to licensing laws in 1997.¹⁰⁴ These changes were implemented following an independent review of the *Liquor Licensing Act 1985*, which was completed in October 1996. The terms of reference for the review included National Competition Policy. The 1997 Act made changes to the licence application process and it also placed a greater emphasis on the responsible service of alcohol and minimisation of harm.¹⁰⁵ The competition policy changes included:

- Requiring the licensing authority when determining an application not to take into account the economic impact of a new licence on existing licensees;
- Allowing the licensing authority to grant approval for restaurants to supply liquor without a meal to persons whilst seated at a table;
- Removing the requirement in the Act for the provision of entertainment as a prerequisite for late night trading.¹⁰⁶

Pursuant to a recommendation in the 1996 review report, the new Act retained the ‘needs’ based test that applied to applications for hotel licences and retail liquor merchant’s licences.¹⁰⁷ The 1996 report had recommended conducting a further review of these provisions after three or four years. In April 2003, a draft report recommended that the needs test be abolished. The Government subsequently convened a working party to examine options for reform. Since then, however, there has been no repeal of the needs test and South Australia is now the only State that has retained this test.

In 2002, the Government made changes to the Act in response to concerns expressed by the live music industry and publicans about noise complaints putting at risk the future of live music in hotels and clubs.¹⁰⁸ One of these changes was to include in objects of the Act the

¹⁰⁴ *Liquor Licensing Act 1997 (SA)*.

¹⁰⁵ Hon S J Baker, *South Australia Parliamentary Debates*, 2/7/97.

¹⁰⁶ South Australia, *Report to the National Competition Council – Implementation of National Competition Policy and Related Reforms in South Australia*, March 1997, p13.

¹⁰⁷ This paragraph is based on National Competition Council, *Assessment of governments’ progress in implementing the National Competition Policy and related reforms: 2005*, October 2005, p15.16-15.17.

¹⁰⁸ *Liquor Licensing (Miscellaneous) Amendment Act 2002 (SA)*; and Hon M J Atkinson MP, *South Australia Parliamentary Debates*, 13/5/02.

object of furthering the interests of live music; and requiring the licensing authority to have regard to this object when deciding matters such as a noise complaint involving a live music venue. The Act also set out a list of other matters that the licensing authority should have regard to in determining a noise complaint.

4.2 Victoria

By way of background, it is noted that Victoria partly deregulated its liquor licensing laws in 1987 when it enacted the *Liquor Control Act 1987*. Ten years later further major reforms were introduced in the *Liquor Control Reform Act 1998*. The 1998 Act was enacted following a review of the 1987 Act, which was triggered by the National Competition Policy review process. The reforms in the 1998 Act included:

- Making harm minimisation the principal purpose of the Act;
- A new Director of Liquor Licensing to determine licence applications, with a new panel to provide recommendations to the Director on contested applications;
- Expansion in the types of business able to apply for liquor licences provided that appropriate planning permission is obtained;
- Abolition of the 8% rule in relation to general licences (ie abolition of the cap on the number of general licences a person or corporation can hold);
- Removing the needs objection and replacing it with an objection on the grounds that granting the licence would be detrimental to the amenity of the area;
- Allowing restaurants to sell liquor without a meal as long as the restaurant provides tables and chairs for 75% of customers;
- Introduction of strict controls to ensure that restaurants do not convert into bars without community and police knowledge, and local government approval.
- Reductions in some liquor licence fees.¹⁰⁹

In 2004, the Government introduced new offences and penalties to address under-age drinking and new provisions to enhance police enforcement powers.¹¹⁰ In 2006, the Government made amendments to tackle anti-social and violent behaviour in and around licensed premises.¹¹¹ The Director of Liquor Licensing was given the power to make late-hour entry declarations for an area or locality (prohibiting entry to a licensed premises after a designated time) and intoxication was defined for the purposes of the Act.

4.3 Queensland

In 2001, the Government made changes to licensing laws following a review of the Act

¹⁰⁹ This summary is based on Hon Louise Asher, *Victoria Parliamentary Debates*, 10/11/98, p612; and Office of the Minister for Small Business and Tourism, 'Victoria's Liquor Revolution Set to Take Effect', *News Release*, 16/2/99.

¹¹⁰ *Liquor Control Reform (Underage Drinking and Enhanced Enforcement) Act 2004* (Vic).

¹¹¹ *Liquor Control Reform (Amendment) Act 2006* (Vic).

under the principles of national competition policy.¹¹² The changes included:

- Replacing the ‘needs’ based test for licences with a public interest test;
- Allowing restaurants and cabarets to sell liquor to non-diners as long as their primary purpose of providing meals is adhered to;
- Involving local government further in relation to applications by licensed premises for extended trading between 5am and 7am.

In 2003, the Act was amended to introduce mandatory training for prospective licensees.¹¹³ Under the new laws, the Chief Executive cannot grant a new licence or transfer a licence unless the applicant has undertaken an approved licensee’s course. The training, which is known as Responsible Management of Licensed Venues training, is a two day course which focuses on liquor laws and best practices in venue management.¹¹⁴

Since 2006, the Government has been conducting a review of the Act to ensure that it reflects recent community attitudes including concerns of alcohol abuse and binge drinking; and to consider how the nature of venues that serve alcohol has changed, recent changes in serving practices and the rapid growth of the tourism and hospitality industry.¹¹⁵ A discussion paper was released on 10 April 2006 seeking public comment. Submissions closed on 2 June 2006. The outcomes of the review have not yet been finalised.

4.4 Tasmania

The Tasmanian Government enacted significant changes to licensing laws in 2003.¹¹⁶ Some changes were proposed in May 2002 and some arose from a review undertaken in 2002 to meet national competition policy obligations. The changes included:

- Removing the requirement for the licensing authority to take into account whether granting the licence will promote the economic and social growth of Tasmania – instead it is required to make a decision in the best interests of the community;
- Allowing restaurants to obtain an on-licence that permits the sale of liquor without a meal so long as the principal activity of the business is the serving of food;
- Requiring an applicant for a new licence to have successfully completed an approved licence course, or to have already obtained suitable qualifications;
- Requiring staff that serve liquor to be trained in the responsible service of alcohol.

¹¹² *Liquor Amendment Act 2001* (Qld).

¹¹³ *Liquor Amendment Act 2003* (Qld).

¹¹⁴ Queensland Government, Liquor Licensing Division, <http://www.liquor.qld.gov.au/Licensees/RSA+and+RMLV+Training/RMLV+Training>

¹¹⁵ Queensland Government, Liquor Licensing Division, <http://www.liquor.qld.gov.au/About+us/Liquor+Act+Review>

¹¹⁶ *Liquor and Accommodation Amendment Act 2002* (Tas); and *Liquor and Accommodation Amendment Act 2003* (Tas).

4.5 Western Australia

In 2006, Western Australia introduced what was described as ‘the most significant package of reforms to liquor licensing in more than 100 years’.¹¹⁷ The introduction of the reforms followed an independent review of the Act by the Freemantle Committee, which reported in May 2005.¹¹⁸ In addition, in December 2005, the Allen Consulting Group provided the Government with an assessment of the likely impacts of the proposed reforms having regard to the deregulation of licensing laws in other jurisdictions.¹¹⁹ On introducing the new legislation into Parliament, the Government stated (in part):

The 2005 Freemantle review of the Liquor Licensing Act concluded that our liquor laws need to provide greater flexibility to meet the needs of consumers and tourists while promoting the consumption of liquor in low-risk drinking environments. For too long the interests of consumers have taken a back seat to vested industry interests. Through the reforms...this government plans to put the interests of consumers at the forefront. The government is determined to promote the innovation and diversity in the way liquor services are provided to consumers and provide more opportunities for small businesses.¹²⁰

The key changes in the reform package included:

- A new Liquor Commission to replace the Liquor Licensing Court;
- Replacing the ‘needs’ based test for new licences with a public interest test;
- Giving restaurants more flexibility to serve drinks without a meal;
- A new small bar licence for venues that accommodate up to 120 patrons;
- Stronger harm minimisation and policing measures to promote responsible drinking and reduce anti-social behaviour.¹²¹

¹¹⁷ Western Australia Department of Racing, Gaming and Liquor <http://www.rgl.wa.gov.au/reforms/index.php?catid=1&id=26>

¹¹⁸ The Review Committee’s report can be accessed at: http://www.rgl.wa.gov.au/liquor/liquor_act_independant_review_2005_report.pdf

¹¹⁹ The Allen Consulting Group, *Assessment of the Impacts of Liquor Licensing Reforms: A review of the Australian experience*, December 2005. This report can be accessed at: http://www.rgl.wa.gov.au/liquor/document/reforms_2006/allens_report_2006_05_11.pdf

¹²⁰ Hon Mark McGowan, *Western Australia Parliamentary Debates*, 20/9/06, p6341.

¹²¹ Western Australia Department of Racing, Gaming and Liquor, *Liquor Licensing Review: An explanation of the proposed changes*, 2006, accessed at http://www.rgl.wa.gov.au/liquor/document/reforms_2006/summary.pdf

5. INTERSTATE COMPARISON OF LIQUOR LICENSING

This section compares the NSW licensing laws with other States but only with respect to the types of licence, licence fees, the determination of licence applications, and trading hours. Note that this section focuses on licences that permit the sale of liquor for consumption *on the premises*. Note also that it refers to the current laws in NSW rather the laws that would exist if the reforms outlined in **Section 6** were enacted.

5.1 Main types of licence

The main types of licence available in each State are shown in **Appendix 1**. In NSW, the main types of licence that permit the sale of liquor for consumption on the premises are: the hotelier's licence, the on-licence (restaurant), and the nightclub licence. Registered clubs are also authorised to sell liquor for consumption on the premises. In some other States there are different types of licence available. In Victoria, an on-licence can be obtained for any business with appropriate planning permission, including restaurants, bars, nightclubs, and bookshops. There is no requirement to provide meals with the sale of liquor (but see conditions for restaurants at [5.2] below). Similarly, in Tasmania the Act does not restrict an on-licence to certain types of business. In Western Australia, there is now a small bar licence that allows for the sale of liquor without meals in premises with up to 120 patrons. Interstate differences with respect to restaurant licences are outlined in the next section.

5.2 Sale of liquor without meals in restaurants

New South Wales: In NSW, it is a condition of a restaurant licence that liquor must be sold (i) in the reception area or at a table; and (ii) with or as ancillary to a meal consumed at a table. However, as outlined at [3.4], restaurants can apply to the Licensing Court for a 'dine or drink' authority, which allows 30 percent of the dining seats in the restaurant to be used for the consumption of liquor without the need for patrons to consume a meal. The fee ranges from \$5,000-\$15,000 depending on the location and size of the restaurant.

Other States: In Victoria, an on-premises licence for a restaurant allows the restaurant to sell liquor without a meal, subject to the following two conditions: (i) that the main activity carried out on the premises is the preparation and serving of meals for consumption on the premises; and (ii) that tables and chairs are available for at least 75 per cent of patrons attending the premises at any one time. In Queensland and Tasmania, an on-licence for a restaurant allows liquor to be sold to people who do not consume a meal as long as the primary purpose of the business is the serving of meals for consumption on the premises.¹²² Like NSW, in South Australia and Western Australia, a restaurant licence only permits the sale of liquor with a meal but a special permit can be obtained as outlined below:

- In *South Australia*, a restaurant licensee may obtain an authorisation to sell liquor

¹²²

QLD: sections 73, 73A, *Liquor Act 1992* (Qld); **Tas:** sections 8, 24A and 3, *Liquor Licensing Act 1990* (Tas). Note that restaurants in Tasmania can also obtain a special licence but this restricts the restaurant to serving liquor with meals.

without a meal to a patron who is at a table.¹²³ However, the supply of meals must at all times be the primary and predominant service provided to the public at the premises.¹²⁴ According to a guide to the Act, if a group attend a restaurant and some want to eat but others only want to have a glass of wine, the licensee could sell liquor to the whole group.¹²⁵ The authorisation allows for the sale of liquor without a meal until midnight (Monday-Saturday) and until 8pm (Sunday), unless the licence has an extended trading authorisation. A similar authorisation to sell liquor without a meal can be obtained in relation to an entertainment venue licence.¹²⁶ There is no fee for an authorisation to sell liquor without a meal.

- In *Western Australia*, prior to the 2006 reforms, restaurant licensees could obtain an extended trading permit, authorising the licensee to sell liquor without a meal but only in a designated area of the restaurant that did not exceed 20 per cent of the seating capacity.¹²⁷ In 2006, the seating capacity requirement was removed, and an extended trading permit can now authorise the sale of liquor without a meal in the whole restaurant provided that the liquor is consumed by a person while sitting at a table or a fixed structure used as a table¹²⁸; and also provided that the business conducted on the premises consists primarily of the regular supply to customers of meals to be eaten there.¹²⁹ The fee for an extended trading permit is \$345.

5.3 Licence fees

The Table below provides a comparison of licence fees for those licences that allow for consumption of liquor on premises.¹³⁰ Also included in the Table are fees payable for

¹²³ Section 34(1)(c), *Liquor Licensing Act 1997* (SA)

¹²⁴ Section 34(2), *Liquor Licensing Act 1997* (SA).

¹²⁵ Office of the Liquor and Gambling Commissioner (SA), *Liquor and Gaming Machine Licensing: Information Booklet*, August 2005, p20.

¹²⁶ Section 35(1)(c), *Liquor Licensing Act 1997* (SA)

¹²⁷ Section 60(4)(ca), *Liquor Control Act 1988* (WA)

¹²⁸ Sections 60(4)(ca) and 50(1a), *Liquor Control Act 1988* (WA)

¹²⁹ Section 50(3) *Liquor Control Act 1988* (WA).

¹³⁰ Sources: **NSW**: Department of Gaming and Racing, 'Liquor Licences in New South Wales', accessed at http://www.dgr.nsw.gov.au/pdfs/1_liquor_licences.pdf; **Victoria**: Consumer Affairs Victoria, 'Liquor Fees', accessed at: <http://www.consumer.vic.gov.au>; **Queensland**: Liquor Licensing Division, 'Application fees', accessed at: <http://www.liquor.qld.gov.au/Licensees/Getting+licensed/Application+fees>; **Western Australia**: *Liquor Control Regulation 1989*, Sch 3; **South Australia**: Office of the Liquor and Gambling Commissioner, 'Fees and Charges for Liquor Applications', accessed at http://www.olgc.sa.gov.au/default.asp?page=General.Applications.Fees_and_Charges.general_fees_and_charges_liquor_021203.htm; **Tasmania**., Liquor and Gaming Branch, 'Liquor Licensing Fee Schedule', accessed at: <http://www.treasury.tas.gov.au/domino/dtf/dtf.nsf/vlicensing/80B24F266FE83F6BCA256E310016105F>. The fees in the Table are current as of 1 July 2007. [transfers/removals?]. Note

permits that allow restaurants to sell liquor without a meal. It can be seen that in NSW the initial fees for a hotel licence and nightclub licence are much higher than the initial fees for all types of licence in other States. In NSW the initial fee for a restaurant licence is similar to most States and there are no annual fees (unlike some other States) but it is much more expensive in NSW for a restaurant to be authorised to sell liquor without a meal.

State	Type of licence	Initial fee	Annual fee
NSW	Hotel	Initial fee: \$2,000 *SIA fee: \$6,600	\$2,500
	Nightclub	**\$10,000-\$60,000	Nil
	Restaurant	\$500	Nil
	Restaurant/nightclub – permit for sale of liquor without meal*	**\$5,000- \$15,000	Nil
VIC	All	\$567.50	\$170.30
QLD	All	\$1,361.00	Nil
WA	Hotel, tavern, nightclub, small bar	\$2,025	\$145
	Restaurant, club	\$460	\$145
	Restaurant – permit for sale of liquor without meal	\$345	Nil
SA	All	\$413	Nil
	Restaurant-permit for sale of liquor without a meal	Nil	Nil
TAS	General	\$1,250	\$411.25
	On-licence	\$1,250	\$247.50
	On-restaurant	***\$1,250	\$192.50
	Special	\$500	\$192.50

NOTES TO TABLE:

*In NSW the SIA fee is the fee for lodging a Social Impact Assessment (see [3.10])

**In NSW the fees for a nightclub licence and, separately, for a ‘dine or drink’ authority depend on the size and location of the premises (see [3.1], [3.4])

that the fees shown in the Table do not include advertising fees.

***In Tasmania, the fee for obtaining an on-licence (restaurant) is \$500 rather than \$1,250 in the case of restaurants that already have a special licence.

5.4 Determination of licence applications

New South Wales:

Licensing authority: The Licensing Court determines licensing applications.¹³¹ Appeals may be brought to the Supreme Court on a question of law.¹³²

Objections: Certain persons may make objections on various grounds including:

- That the applicant is not a fit and proper person to be the holder of a licence or that a person who will be a close associate of the applicant is not a fit and proper person to be a close associate of the holder of a licence;
- That the premises are in the immediate vicinity of a place of public worship, a hospital or a public school;
- That the quiet and good order of the neighbourhood in which the premises are situated will be disturbed; or
- That it would not be in the public interest to grant the application.¹³³

In the case of a nightclub licence, an objection can also be taken on the ground that the costs to the public of granting the licence will outweigh the benefits to the public.¹³⁴

Deciding applications: The court has a discretion to grant an application even if certain types of objection have been made out.¹³⁵ The Court has no discretion where an objection is made out on the grounds that the applicant is not a fit and proper person or that it would not be in the public interest to grant the application. The Court also has no discretion in the case of an objection to a nightclub licence on the ground mentioned above. Specific criteria that apply to the determination of licence applications are outlined below:

- *Hotelier's licence:* A hotelier's licence cannot be granted unless the applicant provides the Liquor Administration Board with a social impact assessment and the Board considers that the overall social impact of a licence application would 'not be detrimental to the local community or to the broader community'.
- *Nightclub licences:* The Court must not grant a nightclub licence unless it is satisfied that the benefit to the public in granting the application will outweigh the

¹³¹ Section 18, *Liquor Act 1982* (NSW)

¹³² Section 146, *Liquor Act 1982* (NSW)

¹³³ Sections 44, 45, *Liquor Act 1982* (NSW)

¹³⁴ Section 45(2A), *Liquor Act 1982* (NSW)

¹³⁵ Section 47(1), *Liquor Act 1982* (NSW)

costs to the public; and that the granting of the application would not result in the frequent undue disturbance of the quiet and good order of the neighbourhood.¹³⁶

- *Responsible service:* The Court must not grant any type of licence unless satisfied that practices will be in place at the premises that ensure that as far as reasonably practicable that liquor is sold, supplied and served responsibly and that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place.¹³⁷
- *Training course:* The Court must not grant an application for a hotelier's licence, a nightclub licence or an on-licence restaurant unless the applicant has attended a course of training or instruction approved by the Board.¹³⁸
- *Other criteria:* The Court must not grant certain types of licence unless certain other criteria have been met: eg adequate parking and sanitary facilities.¹³⁹

Victoria

Licensing authority: The Director of Liquor Licensing determines licence applications.¹⁴⁰ Decisions can be appealed to the Victorian Civil and Administrative Tribunal.¹⁴¹

Objections:¹⁴² Any person may object to grant or relocation of licence on the ground that (i) it would detract from or be detrimental to the amenity of the area in which the licensed premises are situated; or (ii) that it would be conducive to or encourage the misuse or abuse of alcohol. The Council may object on ground (i). A licensing inspector may object on grounds (i) and (ii) and also on the ground that the licensee is not a suitable person to hold the licence. The Chief Commissioner of Police may object on any grounds.

Referral of contested applications to Panel:¹⁴³ The Director must refer a contested licence application to the Liquor Licensing Panel for consideration and report. The Panel must make a recommendation as to whether or not the application should be granted and it may make other recommendations. The Director must consider the Panel's report but the Director is not bound to accept the Panel's recommendations.

¹³⁶ Section 54BA(1)(a), (b), *Liquor Act 1982* (NSW)

¹³⁷ Section 47A, *Liquor Act 1982* (NSW)

¹³⁸ Section 150, *Liquor Act 1982* (NSW); and clause 89, *Liquor Regulations 1996* (NSW).

¹³⁹ See Part 3, Div 6, *Liquor Act 1982* (NSW)

¹⁴⁰ Part 2, Div 6, *Liquor Control Reform Act 1998* (Vic)

¹⁴¹ Part 5, *Liquor Control Reform Act 1998* (Vic)

¹⁴² Sections 38, 39, 40, 41, *Liquor Control Reform Act 1998* (Vic)

¹⁴³ Sections 45-47, *Liquor Control Reform Act 1998* (Vic)

Grounds for refusal of applications:¹⁴⁴ The Director *may* refuse to grant an application if:

- (1) The applicant or proposed transferee is not a suitable person to hold or carry on business under the licence;
- (2) The granting of the application would detract from or be detrimental to the amenity of the area in which the premises are situated;
- (3) The granting of the application would be conducive to or encourage the use misuse or abuse of alcohol; or
- (4) The applicant does not have an adequate knowledge of the Act.

The factors that may be taken into account for the purposes of (2) include the presence or absence of parking facilities, traffic movement and density, noise levels, the possibility of nuisance or vandalism and the harmony and coherence of the environment.¹⁴⁵

Queensland

Licensing authority: The Chief Executive of the Liquor Licensing Division determines licence applications. Appeals can be made to the Liquor Appeals Tribunal.

Objections: Members of the public who are likely to be affected by the grant of an application may object on the grounds that:

- (i) Undue offence, annoyance, disturbance or inconvenience to persons who reside or work or do business in the locality, or to persons in or travelling to or from a place of public worship, hospital or school is likely to happen; or
- (ii) The amenity, quiet, or good order of the locality would be lessened in some way.¹⁴⁶

The local government may also object on the grounds in (ii). On receipt of an objection, the Chief Executive must convene a conference with the applicant and objector.¹⁴⁷ Note that members of the public can also make submissions as to the public interest (see below).

¹⁴⁴ Sections 44, 47, *Liquor Control Reform Act 1998* (Vic)

¹⁴⁵ Section 3A, *Liquor Control Reform Act 1998* (Vic)

¹⁴⁶ Section 119, *Liquor Act 1992* (Qld)

¹⁴⁷ Section 121, *Liquor Act 1992* (Qld)

Deciding applications: The Chief Executive may only grant an application if:

- (1) The Chief Executive is satisfied that the applicant is not a disqualified person and is a fit and proper person to hold a licence;¹⁴⁸
- (2) The applicant has, within the last 3 years, successfully completed an approved licensee's course (unless exempted);¹⁴⁹ and
- (3) The applicant satisfies the Chief Executive that it is in the *public interest* for the application to be granted (see below).¹⁵⁰

The Chief Executive must also have regard to the following in deciding an application:

- Objections made to the grant of the application;
- Any agreement reached at an objection conference;
- Comments from the local government;
- If the application relates to a declared restricted area – comments from the assistant commissioner for Police in the locality;
- The impact on the amenity of the community concerned.¹⁵¹

The public interest test:¹⁵² For the purposes of demonstrating that the application is in the public interest, the applicant must provide information about:

- The number and condition of licensed premises already existing in the locality;
- The distribution of licensed premises already existing throughout the locality;
- The extent and quality of services provided by existing licensed premises;
- Any other relevant information that the applicant is asked to provide.

In deciding the public interest of an application, the Chief Executive is to take into account this information and must also have regard to a range of other matters listed in the Act including the objects of the Act and the likely health and social impacts that granting the application would have on the population of the locality. A member of the public who is likely to be affected by the grant of the application may make a written submission about the matters listed in the Act to which the Chief Executive must have regard to.¹⁵³

¹⁴⁸ Section 105, *Liquor Act 1992* (Qld)

¹⁴⁹ Section 107A, *Liquor Act 1992* (Qld).

¹⁵⁰ Section 116(2), *Liquor Act 1992* (Qld). This does not apply to club licences.

¹⁵¹ Section 121(5), *Liquor Act 1992* (Qld)

¹⁵² Section 116, *Liquor Act 1992* (Qld)

¹⁵³ Section 118A, *Liquor Act 1992* (Qld)

Western Australia

Licensing authority: The Director of Liquor Licensing determines licence applications.¹⁵⁴
The Director's decisions can be appealed to the new Liquor Commission.¹⁵⁵

Objections: Any person may object on one or more of the following grounds:

- That the grant of the application would not be in the public interest;
- That the grant of the application would cause undue harm or ill-health to people, or any group of people, due to the use of liquor;
- That if the application were granted (i) undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity, or to persons travelling to or from an existing or proposed place of public worship, hospital or school, would be likely to occur; or (ii) the amenity, quiet or good order of the locality in which the premises are situated would in some other manner be lessened.
- That the application would otherwise be contrary to the Act.¹⁵⁶

Deciding applications: Subject to the provisions of the Act, the Director of Liquor Licensing has an absolute discretion to grant or refuse an application on any ground, or for any reason, that the licensing authority considers in the public interest.¹⁵⁷ The Director must not grant an application for a licence unless satisfied:

- (1) That the applicant is a fit and proper person to be a licensee;
- (2) That each person directly or indirectly interested in the application or in the business, or the profits or proceeds of the business, to be carried on under the licence is a fit and proper person to be so interested;
- (3) That the premises will be of a sufficient standard and suitable for the proper conduct of the business to be carried on there.¹⁵⁸

In relation to (1), note that unless the Director otherwise approves, a determination cannot be made that a person is a fit and proper person to hold a licence unless the person has successfully completed an approved course of training or an assessment in the management of licensed premises and in responsible practices in the sale and service of liquor.¹⁵⁹

¹⁵⁴ Section 30(2), *Liquor Control Act 1988* (WA).

¹⁵⁵ Section 25, *Liquor Control Act 1988* (WA).

¹⁵⁶ Section 74, *Liquor Control Act 1988* (WA).

¹⁵⁷ Section 33(1), *Liquor Control Act 1988* (WA).

¹⁵⁸ Section 37(1), *Liquor Control Act 1988* (WA).

¹⁵⁹ Section 33(6b), *Liquor Control Act 1988* (WA).

In addition the above criteria, the Director must not grant an application for a licence if it is satisfied that it would be likely to result in an undue degree of offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the place or premises to which the application relates; or to persons in or travelling to or from, an existing or proposed place of public worship, hospital or school.¹⁶⁰

Furthermore, an applicant for a licence must satisfy the Director that granting the application would be in the *public interest*.¹⁶¹ The applicant must provide to the licensing authority any information reasonably required for making this assessment. The matters that the Director may have regard to include:

- (a) The harm or ill-health that might be caused to people, or any group of people, due to the use of liquor; and
- (b) The impact on the amenity of the locality in which the licensed premises, or proposed licensed premises are, or are to be, situated; and
- (c) Whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises.

South Australia

Licensing authority:¹⁶² The Liquor and Gambling Commissioner is required to determine all non-contested licence applications. If an application is contested, the Commissioner must make reasonable attempts to achieve agreement between the parties by conciliation. If conciliation is unsuccessful and the parties request the Commissioner to determine the application, the Commissioner must determine it (this decision can be appealed to the Licensing Court). If the parties do not request the Commissioner to determine a contested application, it must be referred to the Licensing Court for determination.

Objections: Any person may object on one or more of the following grounds:

- That the grant of the application would not be consistent with the objects of the Act or would be contrary to the Act in some other way;
- That the applicant is of bad reputation or character or is in other respects not a fit and proper person to be licensed;
- That the position or standard of the premises renders them unsuitable to be licensed;
- That if the application were granted:
 - Undue offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of the premises would be likely to result;
 - The safety or welfare of children attending kindergarten or school in the vicinity of the premises would be likely to be prejudiced; or

¹⁶⁰ Section 37(3), *Liquor Control Act 1988* (WA).

¹⁶¹ Section 38, *Liquor Control Act 1988* (WA).

¹⁶² Section 17, *Liquor Licensing Act 1997* (SA)

- o The amenity of the locality would be adversely affected in some other way.¹⁶³

In the case of a hotel licence, an objection may also be made on the grounds that the grant of the application is not necessary in order to provide for the needs of the public in the area in which the premises are situated.¹⁶⁴ As noted above, other States have removed this ‘needs’ ground of objection in pursuance of national competition policy reforms.

Deciding applications: Subject to the provisions of the Act, the licensing authority has an unqualified discretion to grant or refuse an application on any ground, or for any reason, the authority considers sufficient (but the authority is not to take account of any economic effect on other licensees in the locality).¹⁶⁵ It must refuse an application if it is satisfied that granting the application would be contrary to the public interest.¹⁶⁶

An applicant for a licence must satisfy the licensing authority that the applicant is a fit and proper person to hold the licence.¹⁶⁷ An applicant must also satisfy the licensing authority that the premises are of sufficient standard for the purpose of properly carrying on the business under the licence; and that the operation of the licence would be unlikely to result in undue offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of the premises; or to prejudice the safety or welfare of children attending kindergarten or school in the vicinity of the premises.¹⁶⁸

In the case of a hotel licence – an applicant must also satisfy the licensing authority that, having regard to the licensed premises already existing in the locality, the licence is necessary in order to provide for the needs of the public in that locality.¹⁶⁹ As noted above, South Australia is the only State that has retained this ‘needs’ test.

Tasmania

Licensing authority: The Commissioner for Licensing determines whether an applicant for a licence is qualified to hold a licence.¹⁷⁰ If satisfied that the applicant is qualified to hold a licence, the Commissioner is to refer the application to the Licensing Board, which then determines whether the application should be granted.¹⁷¹

¹⁶³ Section 77, *Liquor Licensing Act 1997* (SA)

¹⁶⁴ Section 77, *Liquor Licensing Act 1997* (SA)

¹⁶⁵ Section 53(1), *Liquor Licensing Act 1997* (SA)

¹⁶⁶ Section 53(1a), *Liquor Licensing Act 1997* (SA)

¹⁶⁷ Section 56, *Liquor Licensing Act 1997* (SA)

¹⁶⁸ Section 57, *Liquor Licensing Act 1997* (SA)

¹⁶⁹ Section 58, *Liquor Licensing Act 1997* (SA)

¹⁷⁰ Section 24, *Liquor Licensing Act 1990* (Tas)

¹⁷¹ Section 25, *Liquor Licensing Act 1990* (Tas)

Qualifications to hold a licence: A person is not qualified to hold a liquor licence unless:

- The person has satisfied the Commissioner that the person and each associate of the person is of good repute, having regard to character, honesty and integrity;
- The person has satisfied the Commissioner that the person will be able to exercise effective control over the service, and any consumption, of liquor on the premises;
- The person has successfully completed a course or traineeship approved by the Commissioner relating to the service of liquor or has satisfied the Commissioner that the person has the necessary knowledge, experience and competency.¹⁷²

Representations and decisions: A person may make a written representation to the Commissioner in respect of an application for a liquor licence.¹⁷³ The Commissioner is to forward the representation to the Licensing Board together with the application. In considering an application for a liquor licence, the Licensing Board must make a decision which is in the best interests of the community.¹⁷⁴

5.5 Standard trading hours

The standard trading hours for the sale of liquor in all States are outlined in **Appendix 2**.

Starting times for liquor sales: In NSW the standard starting time for the sale of liquor in hotels (5am) is the same as in South Australia and Tasmania but earlier than in other States (6am in Western Australia, 7am in Victoria and 10am in Queensland). In NSW the starting time for the sale of liquor in restaurants (noon) is later than all other States (eg 7am in Victoria, and 10am in Queensland). In NSW the starting time for the sale of liquor without meals in nightclubs (8pm) is earlier than in South Australia (9pm) but later than other States (eg 7am in Victoria, 5pm in Queensland, and 6pm in Western Australia).

Finishing times for liquor sales: In NSW the standard finishing time for the sale of liquor in relation to licences other than nightclub licences (12pm) is the same as most other States (11pm in Victoria). NSW has an earlier standard finishing time on Sundays as does Western Australia and South Australia but this is not the case in Queensland, Tasmania or Victoria. In the case of nightclub licences, the standard finishing time in NSW (3am) is the same as in Queensland, earlier than some States (5am in South Australia, 5-6am in Western Australia) but later than other States (11pm in Victoria, 12pm in Tasmania).

5.6 Extension of trading hours

New South Wales: The Licensing Court may grant an extension of trading hours for a hotelier's licence and an on-licence (restaurant).¹⁷⁵ Applications for an extension of trading

¹⁷² Section 22, *Liquor Licensing Act 1990* (Tas)

¹⁷³ Section 23A, *Liquor Licensing Act 1990* (Tas)

¹⁷⁴ Section 24A(1), *Liquor Licensing Act 1990* (Tas)

¹⁷⁵ Sections 25, 32, *Liquor Act 1982* (NSW). Unless otherwise indicated the following

hours must be advertised.¹⁷⁶ The Court cannot grant an extension in either case unless satisfied that practices are in place and will remain in place at the premises that will ensure the responsible service of alcohol. In the case of a hotelier's licence, the Court cannot grant an extension after midnight to a time not later than 5am unless also satisfied that to do so would not result in the frequent undue disturbance of the quiet and good order of the neighbourhood (other limitations apply to an extension of hours on a Sunday). The Act does not limit an extension of hours to a certain time. The Court may revoke or amend an extension of trading hours on application by the local Council, the Commissioner of Police or the Director of Liquor and Gaming. Trading hours cannot be extended in the case of a nightclub licence, except if the premises are outside of Sydney, Newcastle or Wollongong, in which case the standard closing time can be extended to 3am (Mon-Sat).¹⁷⁷

Other States: All other States allow the relevant licensing authority to grant an extension of trading hours for the sale of liquor.¹⁷⁸ In Victoria, the Act does not set out criteria for granting an extension of hours. However, if an extension is granted, the Act makes it a condition of the licence that the licensee does not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises.¹⁷⁹

In Queensland and Western Australia, an applicant for an extension of hours must satisfy the licensing authority that it would be in the public interest for the extension to be granted.¹⁸⁰ In Queensland, the application must be advertised and the licensing authority must have regard to any objections and to any comments from the local council and the police. For a permit to trade beyond 2am, the authority must have regard to other matters including the applicant's ability to control the noise and behaviour of the number of persons that could be expected to be on and in the vicinity of premises. An extended hours permit granting an extension of hours beyond 3am may only remain in force for a maximum period of 12 months.¹⁸¹ The licensing authority must allow the local government and police to comment on any application for renewal of extended hours beyond 3am.

In South Australia, an extended trading authorisation (which can authorise trading from midnight-5am, Mon-Sat, and 8pm-midnight, Sun) cannot be granted unless the licensing

information is based on these sections.

¹⁷⁶ Clause 16, *Liquor Regulations 1996* (NSW)

¹⁷⁷ Sections 35C, 35D, *Liquor Act 1982* (NSW)

¹⁷⁸ **VIC:** ss 8(1)(a), 9(1)(a), 10(2), *Liquor Control Reform Act 1998*; **QLD:** s 102, *Liquor Act 1992*; **WA:** s 60(4)(g), *Liquor Control Act 1988*; **SA,** s 44, *Liquor Licensing Act 1997*; and **TAS:** s 12, *Liquor Licensing Act 1990* (Tas).

¹⁷⁹ Section 17, *Liquor Control Reform Act 1998* (Vic).

¹⁸⁰ **QLD:** section 116, *Liquor Act 1992*; **WA:** section 38, *Liquor Control Act 1988*; and cl 9F, *Liquor Control Regulations 1989*.

¹⁸¹ According to the Queensland *Guide to the Liquor Act*, extended trading beyond 3am is only granted for a period of 6 months renewable each March and September: see <http://www.liquor.qld.gov.au/Documents/Guides/Liquor+Act+guide.pdf>

authority is satisfied that the grant would be unlikely to result in undue offence, annoyance, disturbance, noise or inconvenience to people who reside or work in the area; and that the licensee will implement appropriate policies and practices to guard against the harmful and hazardous use of liquor.¹⁸² In Tasmania, the licensing authority cannot grant an out-of-hours permit (which can authorise trading from midnight-5am) unless satisfied that it would not cause undue annoyance or disturbance to people living or working in the neighbourhood or clients or customers of any business in the neighbourhood; and that it would not cause disorderly conduct in the premises or in the neighbourhood.¹⁸³

¹⁸² Section 44, *Liquor Licensing Act 1997* (SA).

¹⁸³ Section 32(4), *Liquor Licensing Act 1990* (Tas)

6. PROPOSED REFORMS TO LICENSING LAWS IN NSW

6.1 The NSW Government's proposed reforms

The NSW Government is proposing to introduce into Parliament before the end of 2007 a bill containing substantial reforms to liquor licensing laws. In November 2005, the Government released a consultation draft *Liquor Bill* and *Liquor and Gaming Court Bill 2005*, which followed the release of an exposure bill in March 2005.¹⁸⁴ The proposed reforms will rewrite the laws to make them simpler and will implement recommendations made by the 2003 National Competition Policy (NCP) review of liquor laws¹⁸⁵, as well as recommendations from the 2003 NSW Summit on Alcohol.¹⁸⁶ In summary, the main changes proposed in the 2005 bills are:¹⁸⁷

- ***A new licensing authority:*** The Director of Liquor and Gaming will take over from the Licensing Court in determining licence applications and most disciplinary matters in the first instance. The Director's decisions will be appealable to the new Liquor and Gaming Court, which will replace the current Licensing Court. The Director will also take over the functions of the Liquor Administration Board, which will cease to exist. This new administrative licensing system was recommended by the 2003 NCP review, which 'identified the complexities and judicial nature of the current licensing system as contributing to costs and delays, which can act as a barrier to entry and increase costs'.¹⁸⁸ The 2005 consultation document noted that 'most other Australian states have moved away from a court-based liquor licensing system towards administrative systems'.¹⁸⁹
- ***Extension of social impact assessments to other licences:*** The current requirements for social impact assessments (SIAs), which were introduced in 2004, only apply to applications for hotel licences and off-premises (retail) licences. Under the new laws, SIAs will be required for other licence types and for special permits such as dine or drink authorities and extended trading authorities. SIAs will be tailored to recognise the different impacts of various types of licensed venues. The assessment process for some licences – such as most on-premises licences and limited licences – will be simpler than for other types of licence. Assessment costs will be commensurate with the extent of information and processing required.

¹⁸⁴ *Liquor Legislation Amendment (Alcohol Summit) Bill 2005: Consultation Draft Bill.*

¹⁸⁵ See NSW Department of Gaming and Racing, *National Competition Policy Review, New South Wales Liquor Act 1982 and Registered Clubs Act 1976 – Final Report*, October 2003.

¹⁸⁶ The outcomes of the Summit can be accessed at: <http://www.alcoholsummit.nsw.gov.au/>

¹⁸⁷ This summary is in part based on NSW Department of Gaming and Racing, *Liquor Bill 2005; Liquor and Gaming Bill 2005 – Consultation Drafts – Summary of Provisions*, November 2005, pp1-10. It is also based on the author's perusal of the bill.

¹⁸⁸ Department of Gaming and Racing: Summary of Provisions, note 187, p7.

¹⁸⁹ Department of Gaming and Racing: Summary of provisions, note 187, p7.

- ***Objections to be replaced by submissions:*** Under the new laws, objections will be replaced by submissions. Any person will be able to make a submission to the Director in relation to an application for a licence. The Director will be required to take submissions into account before deciding an application but only those submissions that relate to matters that have not been addressed by a SIA.
- ***Hotel licences to replace nightclub licences:*** Under the proposed new laws, there will not be a separate nightclub licence. Businesses wanting to operate as nightclubs will instead need to apply for a hotel licence. Nightclubs will therefore be subject to the same licence conditions as hotels. This means that nightclubs will no longer be subject to the requirement that liquor be sold as ancillary to live entertainment. Nightclubs and hotels will also be subject to the same standard trading hours.
- ***New live music licence:*** Since the release of the draft bill, it has been reported that there will be a new category of liquor licence for live music operators.¹⁹⁰ The details are not clear but it would apparently allow cafes and restaurants to sell liquor in conjunction with live music, with no requirement for patrons to have a meal.
- ***New provisions as to trading hours:*** Under current laws, different types of licence have different standard trading hours and for most licence categories, the standard trading hours for Monday-Saturday are longer than those for Sunday. The new laws will introduce a standard trading period of 5am-midnight, seven days a week, for most licence categories. The Director of Liquor and Gaming may, on application, authorise extended trading hours for on-premises consumption, subject to harm minimisation and neighbourhood disturbance controls. If necessary, trading hours can be reduced by regulation for specified classes of premises.
- ***A new licence fee system:*** A new licence fee system will be introduced. The details of this new fee system have not yet been finalised. The 2005 consultation document stated that ‘application, grant and annual fees will be developed in consultation with stakeholders, and included in a new Liquor Regulation’.¹⁹¹ It is relevant to note that the 2003 National Competition Policy Review report recommended that liquor licence ‘entry fees be set at levels which reflect the cost to Government of processing an application and administering the licensing regime’.¹⁹²
- ***New disciplinary action procedures:*** Under the new laws, the Director of Liquor and Gaming may initiate disciplinary action against a licensee or manager. If the Director is satisfied that any of the specified grounds for taking disciplinary action

¹⁹⁰ ‘Rhythm and booze: we’ll drink to that’, *Sydney Morning Herald*, 11/1/07; and ‘Liquor licence reform is small beer for drinkers’, *Sydney Morning Herald*, 19/1/07.

¹⁹¹ Department of Gaming and Racing: Summary of provisions, note 187, p2.

¹⁹² NCP 2003 review report, note 185, p72.

apply, the Director may take action against the licensee or manager or refer the matter to the new Liquor and Gaming Court. If the Director decides not to take disciplinary action or not to refer the matter to the Court, the Commissioner of Police may request that the Court deal with the matter.

- ***New offences and penalties:*** The new laws create an offence if a person re-enters, or remains in the vicinity of, licensed premises in circumstances where he or she has been refused admission, or turned out of, licensed premises because he or she was intoxicated, violent, quarrelsome or disorderly. The new laws also provide for increased maximum penalties for various offences where the offender has been convicted of the same kind of offence within the previous 3 years or the court attendance notice alleges that the offence is so serious as to warrant a penalty exceeding 50 penalty units and the court is of the same opinion. Note also that the new regulations will contain a definition of “intoxication”.
- ***Registered clubs to be regulated by Liquor Act:*** Registered clubs will be subject to the provisions of the new Liquor Act. The *Registered Clubs Act* will be renamed and will focus on club management/governance issues.

Note that the proposed new laws provide for the continued operation of existing liquor licences and the preservation of existing trading entitlements and authorisations.

6.2 Sydney Council and Clover Moore MP’s proposed small bar reforms

Sydney Council: Late Trading Premises Development Control Plan: In August 2007, the City of Sydney Council released the City of Sydney Draft Late Night Trading Premises Development Control Plan¹⁹³, which applies to development applications for licensed premises that seek trading hours beyond 10pm.¹⁹⁴ There are two categories of premises: Category A (high impact), which includes hotels, registered clubs, nightclubs, and premises operating under a restaurant licence that have a floor area of 200 square metres or more; and Category B (low impact), which includes premises operating under a restaurant licence that have a floor area of less than 200 square metres.¹⁹⁵ Under the Draft Plan, low impact premises will have later standard hours than high impact premises (for example in certain areas, low impact premises will have standard hours up to 2am compared to midnight for high impact premises). Both categories of premises will be able to apply for extended trading hours. However, high impact premises will have more onerous requirements for obtaining extended hours and any extensions will be reviewed more frequently.

¹⁹³ The Draft Plan would replace the City of Sydney *Policy on Trading Hours for New and Existing Premises*, which was adopted in August 2001.

¹⁹⁴ Draft Plan, clause 2.4.

¹⁹⁵ Draft Plan, clause 2.3.

Liquor Amendment (Small Bars and Restaurants) Bill 2007: On 27 September 2007, Clover Moore MP introduced this bill into Parliament, stating:

For too long the New South Wales night economy has been dominated by large pubs and clubs with poker machines and televised sport, and large nightclubs with loud pumping music. While these venues provide entertainment for many, growing numbers of people support an alternative night culture. [The] Bill aims to encourage a night economy that has less impact on neighbouring amenity; a night economy that is diverse and in line with other cities – Australian cities like Melbourne and Perth, and European, American and Asian cities, such as Paris, Florence, San Francisco and Shanghai. Our current licensing system is more restrictive, expensive and complex than any other system in Australia. Small venues that would have less impact on the local neighbourhood either do not fit within the rigid licence categories or entrepreneurs cannot afford the exorbitant costs.¹⁹⁶

The two proposed changes in the bill were:

Firstly, [the bill would allow] restaurants to supply liquor without a meal, provided that food service remains the predominant activity, and tables and chairs are available to at least 70 per cent of patrons at all times. Currently restaurants have to obtain a dine-or-drink authority to serve alcohol without meals, which can cost up to \$15,500 and still require food service to at least 70 per cent of customers at all times. Should the bill be enacted there will be no need for restaurants to obtain a dine-or-drink authority because they will be able to serve alcohol without food. Victoria has similar provisions except seating is required for 75 per cent rather than 70 per cent of patrons; 70 per cent was chosen for New South Wales to allow a seamless transition for restaurants with existing dine-or-drink authorities.

Secondly, the bill introduces a new small bars category of licences. The small bars licence will be different to other licences because the supply of alcohol must be the predominant activity, whether or not other entertainment is provided – that is, alcohol does not have to be ancillary to any other activity. Like the small bar licence introduced in Western Australia last year, it will be limited to venues with 120 patrons or fewer, ensuring that it only applies to small, low-impact venues. Small bar licences will not permit premises to have gaming machines or be allowed to sell take away liquor. The cost of a small bar licence will be \$500, in line with other low impact licences including restaurants, public halls and theatres.¹⁹⁷

The standard trading hours for small bars would be 7.00am to 11.00pm on Mondays to Thursdays; 7.00am to 1.00am on Fridays and Saturdays; and 10.00am to 11.00pm on Sundays. Small bars could also apply to the Court for an extension of trading hours.

¹⁹⁶ Clover Moore MP, *NSW Parliamentary Debates*, 27/9/07, p2487.

¹⁹⁷ Clover Moore MP, *NSW Parliamentary Debates*, 27/9/07, p2487.

Under the bill, applicants for a small bar licence would not need to obtain social impact assessments (SIAs). Clover Moore MP advanced several reasons in support of this approach. One was that SIAs were currently only required for hotel licences and retail off-licences. Other reasons were that the cost of SIAs could exceed \$50,000 and that applicants themselves prepared SIAs, which raised questions about their independence. Clover Moore MP said that small bars would need to obtain development approval from the local council, which would ‘provide a more open, accountable, independent and comprehensive process’.

Debate about Clover Moore MP’s small bar reforms: The NSW Premier, Hon Morris Iemma MP, has indicated that he would not support Clover Moore MP’s bill because restaurant licences and small bar licences would not be subject to a social impact assessment. The NSW Opposition initially expressed opposition to the proposal. The Shadow Minister for Gaming and Racing, George Souris MP, stated that ‘alcohol-related problems like binge-drinking, antisocial behaviour, domestic violence and youth alcoholism would potentially be exacerbated by a streetscape lined with alcohol outlets’.¹⁹⁸ However, on 29 October 2007 it was reported that the Coalition would support the bill if the maximum number of people allowed in a small bar was reduced from 120 to 50.¹⁹⁹

Some stakeholder views on the reforms are presented below:

- ***Hotel industry:*** The NSW President of the Australian Hotels Association, John Thorpe, initially opposed the reforms on the grounds that people in Sydney do not want Melbourne’s culture forced on them.²⁰⁰ He stated, ‘We aren’t barbarians, but we don’t want to sit in a hole and drink chardonnay and read a book’.²⁰¹ Mr Thorpe has subsequently advanced other grounds of opposition including that small bars would not be required to undertake social impact assessments; that they could operate without toilets, without providing meals, and without CCTV cameras or security staff; and that increasing the number of licensed venues will result in more people and more noise in traditionally quiet streets and suburbs.²⁰²
- ***Restaurant industry:*** Several of Sydney’s top restaurateurs have argued for the reforms, with one stating that ‘there should be an alternative to going to the pub’.²⁰³ However, one prominent restaurateur believes that ‘creating cheap liquor licences will flood the market with small bars and endanger Sydney’s restaurant scene’.²⁰⁴ In addition, the Chief Executive of Restaurant and Catering NSW has expressed

¹⁹⁸ ‘Moore fails to convince Liberals on liquor laws’, *Sydney Morning Herald*, 24/8/07.

¹⁹⁹ ‘Coalition to back small bars bill’, *Sydney Morning Herald*, 29/10/07.

²⁰⁰ ‘Hotel warlords rile Keating’, *Sydney Morning Herald*, 27/9/07.

²⁰¹ ‘Time, please, for new drink laws’, *Sydney Morning Herald*, 9/8/07.

²⁰² ‘Raising the bar on licences’, *Sydney Morning Herald*, 30/10/07.

²⁰³ ‘Hotel warlords rile Keating’, *Sydney Morning Herald*, 27/9/07.

²⁰⁴ ‘Mini bars idea ludicrous, says restaurant chief’, *Sydney Morning Herald*, 3/10/07.

concern that small bars would not have to pass a social impact assessment.²⁰⁵

- *Property industry:* The NSW Executive Director of the Property Council of Australia has said that the ‘business case for small bars in our city is really a no-brainer’.²⁰⁶ In his view, ‘anything that makes our city centres more vibrant makes them better places to work, visit and have fun. And that is good for business’. The Westfield Group has recently published a paper by Professor Nieuwenhuysen (the architect of the Victorian reforms in the 1980s), which argues that that the Victorian reforms have been successful and could be emulated in NSW.²⁰⁷
- *Local government:* The Mayors of Manly, Parramatta, Newcastle and Wollongong have spoken out in support of the reforms on the basis that it would provide more diversity in drinking venues.²⁰⁸ The Manly Mayor, Peter MacDonald, also believes that the reforms could help to alleviate the problem of alcohol related violence in Manly.²⁰⁹ He considers that one of the main contributors to this problem is the ‘the high concentration of large drinking establishments which encourage a culture of excess drinking and related anti-social behaviour’.²¹⁰

²⁰⁵ ‘Moore on front foot in fight on small bars’, 24/9/07.

²⁰⁶ ‘Small bars are not small beer’, *Sydney Morning Herald*, 27/9/07.

²⁰⁷ Nieuwenhuysen J, *Victoria and New South Wales: Liquor Law Comparisons: Discussion Paper*, 7 September 2007, accessed at: http://westfield.com/corporate/pdf/media/070924_Discussion_paper.pdf

²⁰⁸ ‘Clover Moore’s Small bar Bill finds support across NSW’, *The Daily Telegraph*, 26/10/07.

²⁰⁹ ‘Manly joins small bar push’, *Sydney Morning Herald*, 16/10/07; and ‘Putting the ‘life’ back into night life’, *Mayor’s weekly message*, 26/10/07 accessed at: <http://www.manly.nsw.gov.au/content.aspx?PageID=9&ItemID=182>

²¹⁰ ‘Putting the ‘life’ back into night life’, note 209.

7. CONCLUSION

Liquor licensing has been the subject of much reform activity over the last decade in NSW and other States. In NSW, this has included the harm minimisation and enforcement reforms in 1996, the introduction of 'dine or drink' authorities for restaurants in 1998, provision for compulsory responsible service of alcohol training in 2003 and – as the first stage of National Competition Policy reforms in 2004 - the replacement of the needs test for hotel licence applications with a social impact assessment process. Other States have also introduced harm minimisation measures and competition policy reforms. With respect to the latter, most other States have replaced their needs test with a public interest test and have relaxed restrictions on restaurants serving liquor without meals.

There are currently some significant differences between the licensing laws in NSW and other States. These include higher licence fees in NSW for hotel and nightclub licences than in all other States, higher fees and less flexibility in NSW for restaurants to serve liquor without a meal than some other States, a social impact assessment process in NSW compared to a public interest test in most other States, and a court-based system in NSW compared to an administrative system in most other States. The NSW Government's new reforms would move to an administrative system, with new (possibly lower) licence fees. On the other hand, the reforms would extend the social impact assessment process to applications for other types of licence and 'dine or drink' authorities. At the same time, Clover Moore MP is proposing further deregulation for restaurants and small bars.

APPENDIX 1 – LICENCE TYPES

State	Licence type	Description
NSW	Hotel	Liquor may be sold for consumption on or off the premises.
	On-licence (restaurant)	Liquor may be sold in the restaurant only: (a) in the reception area or at a table; and (b) with or as ancillary to a meal consumed at a table.
	Nightclub	Liquor may be sold for consumption on the premises. Liquor must not be sold from noon-8pm except with or as ancillary to a meal consumed at a table. Liquor must not be sold after 8pm except (a) with or as ancillary to entertainment and where at least a light meal is available; or (b) with or as ancillary to a meal consumed at a table.
	Club	A certificate of registration allows the club to sell liquor on the defined premises. Only members and guests are permitted to use these premises.
VIC	General	Liquor may be sold for consumption on and off the premises.
	On-premises	Liquor may be sold for consumption on the premises. Any business with appropriate planning approval from the local Council can apply for this type of licence: eg restaurants, bars, bookshops, hairdressers and boutiques. Generally, there is no requirement to provide meals. However, an on-premises licence granted to a business with a permitted planning use as a <i>restaurant</i> is subject to the conditions that: (a) the main activity must be the preparation and serving of meals for consumption on the premises; and (b) tables and chairs must be available for at least 75% of patrons attending the premises at any one time.
	Club	Liquor may be sold by a 'members club' to members, guests of members and authorised gaming visitors. A full club licence allows for the sale of liquor for consumption on and off the premises while a restricted club licence does not allow for the sale of liquor for consumption off the premises.
QLD	General	Liquor may be sold for consumption on or off the premises. The primary purpose of the business must be the sale of liquor for consumption on, or on and off, the premises and the provision of meals and accommodation as required under the licence. Examples include hotels and taverns.
	On-premises (meals)	The primary purpose of the business must be the provision of meals prepared and served to be eaten on the premises. Liquor may be sold to both diners and non-diners as long as this primary purpose is complied with.
	On-premises (cabaret)	From 10am-5pm the primary purpose of the business must be the provision of meals but liquor can be sold to both diners and non-diners. From 5pm-3am, the primary purpose of the business must be the provision of entertainment (liquor can be sold without the provision of meals).
	Club	Liquor may be sold for consumption on the premises to members, guests of members, and other prescribed persons. Liquor may also be sold for takeaway purposes to members and other prescribed persons.

WA	Hotel	Liquor may be sold for consumption on and off the premises (note that under a hotel restricted licence liquor may be sold for consumption on the premises only). The licensee must provide accommodation.
	Tavern	Liquor may be sold for consumption on and off premises - there is no requirement for the licensee to provide accommodation.
	Small bar	Liquor may be sold for consumption on the premises only. No more than 120 persons may be on the premises at any one time.
	Restaurant	Liquor may be sold to persons on premises for consumption with a meal supplied by the licensee.
	Nightclub	Liquor may be sold for consumption on the premises but it can only be sold ancillary to live entertainment provided by one or more artists present performing; or by way of recorded music presented personally by a person employed by the licensee to do so.
	Club	Liquor may be sold for consumption on the premises by members and guests.
SA	Hotel	Liquor may be sold for consumption on and off the premises. The licensee is obliged to trade from 11am-8pm (Mon-Sat) and to provide a meal on request from noon-2pm and 6pm-8pm when to open to public for the sale of liquor.
	Restaurant	Liquor may be sold for consumption on the premises at any time with or ancillary to a meal eaten while seated at a table.
	Entertainment venue	Liquor may be sold for consumption on the premises throughout live entertainment from 9pm-5am. Liquor may also be sold at any time in a designated dining area to a diner for consumption ancillary to a meal.
	Club	Liquor may be sold for consumption on the premises. A limited club licence is subject to conditions including that liquor will only be sold to a member or guest of a member; and that a member will not be permitted to have more than 5 guests on the premises at any one time.
TAS	General	Liquor may be sold for consumption on or off the premises.
	On-licence	Liquor may be sold for consumption on the premises.
	On-licence (restaurant)	The principal activity of the business on the premises must be the serving of food for consumption on the premises. However, there is no requirement for liquor to be sold as ancillary to a meal.
	Special	Liquor may be sold subject to conditions specified in the licence. This licence can be issued for the sale of liquor in areas of the hospitality industry such as restaurants, function centres, tertiary institutions, accommodation providers, wine producers or tourist attractions. In the case of restaurants, liquor may only be sold as an accompaniment to meals.
	Club	Liquor may be sold for consumption on or off the premises to members, guests of members, and other prescribed persons.

APPENDIX 2 – STANDARD TRADING HOURS

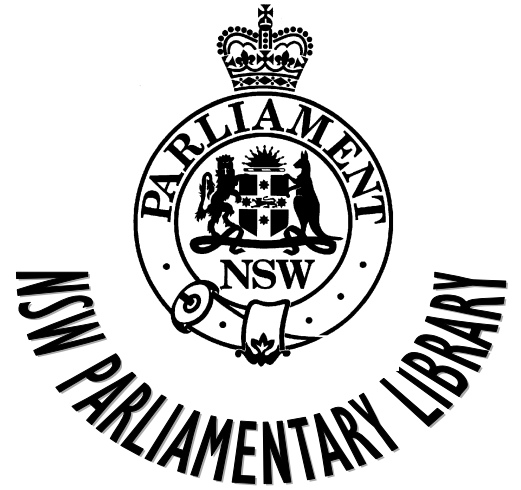
State	Type of licence	Standard Hours		
		Days	From	To
NSW	Hotel	Mon-Sat	5am	12pm
		Sun	10am	10pm
	On-licence (restaurant)	Mon-Sat	Noon	12pm
		Sun	Noon	10pm
	Nightclub – Sydney CBD, Kings Cross, Oxford St	All	Noon/8pm	3am
	Nightclub – Sydney, Newcastle, Wollongong	Mon-Sat	Noon/8pm	3am
		Sun	Noon/8pm	12pm
	Nightclub – Other areas	All	Noon/8pm	12pm
	Club	N/R	N/R	N/R
VIC	General	Mon-Sat	7am	11pm
		Sun	10am	11pm
	On-premises	Mon-Sat	7am	11pm
		Sun	10am	11pm
	Club	Mon-Sat	Any	Any
		Sun	10am	11pm
QLD	General	All	10am	12pm
	On-premises (meals)	All	10am	12pm
	On-premises (cabaret)	All	10am/5pm	3am
	Club	All	10am	12pm
WA	Hotel/Tavern	Mon-Sat	6am	12pm
		Sun	10am	10pm
	Small bar	Mon-Sat	6am	12pm
		Sun	10am	10pm
	Restaurant	All	Any	Any
	Nightclub	Mon-Thur	6pm	5am
		Fri-Sat	6pm	6am
	Club	Mon-Fri	6am	12pm
		Sat	6am	1am
		Sun	10am	10pm
SA	Hotel	Mon-Sat	5am	12pm
		Sun	11am	8pm
	Restaurant	All	N/R	N/R
	Entertainment venue	All	NR/9pm	5am
	Club	Mon-Sat	5am	12pm
		Sun	11am	8pm

TAS	General	All	5am	12pm
	On-licence	All	5am	12pm
	Club	All	5am	12pm

NOTES TO TABLE:

- NR = There is no restriction on standard hours in the licensing laws.
- In the case of licences applicable to nightclubs two standard starting times are specified in some States (eg noon/8pm in NSW). The second time noted is the time when the nightclub is able to sell liquor without a meal.

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