

# Liquor Control Act 1988 - A Guide for Local Governments



Department of  
**Local Government, Sport  
and Cultural Industries**

GOVERNMENT OF  
WESTERN AUSTRALIA



## TABLE OF CONTENTS

---

<b>INTRODUCTION .....</b>	<b>2</b>
<b>LIQUOR LAW IN WESTERN AUSTRALIA .....</b>	<b>3</b>
<b>WHAT CONSTITUTES A SALE? .....</b>	<b>3</b>
<b>HOW THE LIQUOR CONTROL ACT AFFECTS OR EMPOWERS LOCAL GOVERNMENTS .....</b>	<b>4</b>
TOWN PLANNING ISSUES .....	4
SECTION 39 CERTIFICATE (LOCAL GOVERNMENT APPROVAL) .....	5
SECTION 40 CERTIFICATE (LOCAL PLANNING APPROVAL)/DEVELOPMENT APPROVAL .....	5
SECTION 99 – MAINTENANCE OF PREMISES .....	6
LIQUOR LICENSING APPLICATIONS .....	6
LOCAL GOVERNMENT LIQUOR POLICY .....	6
<b>EXEMPTIONS TO THE LIQUOR CONTROL ACT 1988 .....</b>	<b>8</b>
LIVE ENTERTAINMENT VENUES .....	8
SMALL FUNCTIONS .....	9
COMPLIMENTARY SUPPLY BY BUSINESS .....	9
TOURISM OPERATORS .....	10
BED AND BREAKFAST GUESTS .....	10
FARMERS MARKETS .....	10
ORGANISERS OF FUNCTIONS ON LICENSED PREMISES .....	11
CHARTER VEHICLES .....	11
WAREHOUSE .....	11
TRANSPORT SERVICES .....	12
GIFT HAMPERS .....	12
LOTTERY PRIZE .....	12
FOOD ESSENCE .....	12
HEALTH CARE SERVICES .....	12
OFFENCE PROVISIONS .....	13
<b>LIQUOR RESTRICTIONS .....</b>	<b>13</b>
LIQUOR RESTRICTIONS UNDER SECTIONS 64 AND 175 .....	13
RESTRICTED PREMISES .....	13
<b>LIQUOR LICENSING AND COMPLIANCE .....</b>	<b>14</b>
LICENCE TYPES .....	14
TRADING HOURS .....	18
OCCASIONAL LICENCES .....	19
EXTENDED TRADING PERMITS .....	19
POWER OF THE LICENSING AUTHORITY TO IMPOSE, VARY OR CANCEL LICENCE CONDITIONS .....	19
DISPOSAL OF APPLICATIONS AND INTERVENTIONS .....	20
PROTECTION ORDERS .....	20
OBJECTIONS AND COMPLAINTS .....	20
OBJECTIONS TO APPLICATIONS .....	21
COMPLAINTS ABOUT LICENSED PREMISES .....	22
DISCIPLINARY ACTION .....	22
INFORMATION SHARING .....	23
<b>CONTACTS .....</b>	<b>24</b>



## INTRODUCTION

The first liquor laws, which concerned only public revenue and drunkenness, were passed following the foundation of the State in 1829. Over time, the objectives of liquor legislation have shifted to focus on the social effects of the supply and consumption of liquor. In this regard, the legislation includes controls in respect of under-age drinking, public order issues and the amenity of the local community. The legislation also has “harm minimisation” as one of the primary objects of the *Liquor Control Act 1988*.

Although the sale, supply and consumption of liquor is accepted throughout society, alcohol is not an ordinary commodity. The misuse of liquor can be associated with harm and anti-social behaviour, and this can have a significant impact on the amenity and the quiet or good order of the local neighbourhood. These problems can go unaddressed and raising the awareness at the local level about the types of remedies that can be applied to such activity can assist to remedy some of these problems. The development of a liquor policy by local governments may be of assistance.

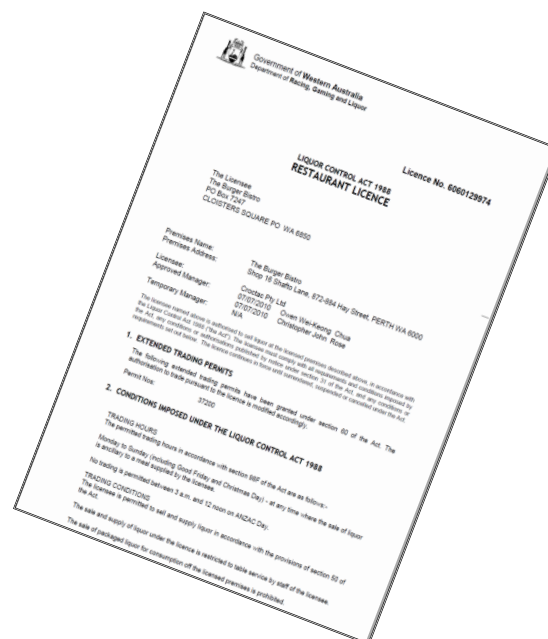
This Guide has been produced to provide assistance and information for local governments in relation to the *Liquor Control Act 1988* and the development of a local liquor policy.

### Summary of Key Points

Local governments have power under the Act to:

- Take responsibility for issuing section 39 and 40 certificates, particularly in respect of the type of licence being sought and the proposed trading hours.
- Intervene on liquor licensing applications.
- Lodge a complaint under section 117 of the Act where undue noise and disturbance is emanating from licensed premises.

- Lodge a complaint under section 95 of the Act, with the Liquor Commission, if the licensed premises are not being properly managed.
- Develop a local liquor policy in consultation with the community, where possible.
- Properly control the consumption of liquor on local government property.



## LIQUOR LAW IN WESTERN AUSTRALIA

---

The *Liquor Control Act 1988* provides the legislative framework for the liquor licensing authority, comprising the Director of Liquor Licensing and the Liquor Commission, to regulate the sale, supply and consumption of liquor in Western Australia.

Section 5(1) identifies the Act's primary objects as to:

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

Section 5(2) lists the secondary objects of the Act, which are to:

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

The Act not only affects licensees and their businesses, but also the general public of Western Australia.

### Definition of Liquor

The Act defines liquor as:

- a substance intended for human consumption which at 20° Celsius contains more than 1.15% ethanol by volume, or such other proportion as is prescribed;
- any liquid-based food essence which contains more than 1.15% of ethanol by volume in a container that has a volume exceeding 100 ml in the case of natural vanilla essence; or 50 ml in any other case;
- any novelty food item or ice confection which contains more than 0.5% ethanol by volume, and is modelled on children's food stuff, including but not limited to, lollipops, ice creams, or jellies;
- any mist made up of a gas or liquid droplets that at 20° Celsius contains more than 0.5% ethanol by volume;
- any aerosol intended for human inhalation that at 20° Celsius contains more than 0.5% ethanol by volume; and
- anything that, for the purposes of sale, is held out to be such a substance.

### WHAT CONSTITUTES A SALE?

---

The most common instance of a sale occurs when the owner of the goods (e.g. the vendor, seller or supplier) agrees to sell those goods to someone else (the purchaser or customer) in return for money (the price).

For the purposes of the *Liquor Control Act 1988*, "sell" also includes:

- (a) agreeing or attempting to sell;
- (b) offering or exposing for the purpose of selling;
- (c) sending, forwarding or delivering for sale or on sale;

- (d) bartering or exchanging;
- (e) disposing, by lot or by chance, or by auction;
- (f) supplying, or offering, or agreeing or attempting to supply:
  - (i) in circumstances in which the supplier derives, or would be likely to derive, a direct or indirect pecuniary benefit; or
  - (ii) gratuitously, but with a view to gaining or maintaining custom or other commercial advantage;
- (g) authorising, directing, causing or permitting to be done any act referred to in this definition.

and includes, in relation to a club, supply to or to the order of members otherwise than by way of sale, but does not in relation to any class of licence include the provision of a free sample authorised by this Act.

The Act also provides that any trader who gives away or delivers liquor to a customer with other goods, is deemed to have sold that liquor.

Furthermore, in the absence of proof to the contrary, the supply of liquor to someone who has:

- paid admission or some other charge to enter a premises;
- been asked to make a donation or contribute money to cover costs;
- paid for the hire of glasses or containers or any device or the use of any facility on the premises; or
- paid for entertainment or refreshments provided on a premises in circumstances in which the provision of entertainment or refreshments is related to the provision of liquor by way of sample, one being incidental or ancillary to the other,

will be deemed to be a sale of liquor and would require a liquor licence.

## HOW THE LIQUOR CONTROL ACT AFFECTS OR EMPOWERS LOCAL GOVERNMENTS

---

Local governments are able to influence liquor decisions through the various provisions of the Liquor Control Act, which provide a power for local government to confirm or refute that liquor licensing applications comply with local government legislative requirements; or express any concerns about existing or proposed licensed premises through the Act's objection, intervention or complaint process.

There is often public confusion about who to contact regarding complaints about licensed premises. In the past, this has resulted in local governments not being aware of community or individual concerns about a proposed or existing licence, or liquor related issues.

By informing the public within the vicinity of an impending application, the local government will be better able to assist its constituents in forwarding concerns to the liquor licensing authority.

The relevant sections of the Act are mentioned below and are followed by comments to assist local government in interpreting the section's provisions. An on-line copy of the Liquor Control Act and Regulations can be accessed at the website of the State Law Publisher at [www.slp.wa.gov.au](http://www.slp.wa.gov.au)

### Town Planning Issues

Local planning schemes (LPS) can help a community control the type, number and trading hours of licensed premises through zoning and setting development standards. Liquor outlets constitute a significant percentage of commercial enterprises in many communities. A LPS could be framed so as to have regard to liquor-related and community amenity issues.

A LPS should seek to balance the number, type and density of outlets in a community. The question for planners is whether to grant routine planning approvals for liquor outlets,

leaving their growth to market mechanisms or to review such applications for their impact upon community life.

There are special planning considerations for late night trading venues in regard to amenity impacts on the local community. Licensed premises such as nightclubs, special facility licences, hotels, taverns and small bars, need to be closely examined, particularly if they are situated close to residential homes. Other key issues that could be considered include the availability of late night transport and adequate security and policing in the early hours of the morning.

### **Section 39 Certificate (Local Government Approval)**

A certificate issued by a local government under section 39 of the Liquor Control Act confirms that the premises or proposed premises comply with all the relevant requirements of the following legislation: the *Health Act 1911*; the *Food Act 2008*; the *Local Government Act 1995*; the *Building Act 2011*; and any written laws relating to sewerage and drainage.

Section 39 certificates are required for all new liquor licence applications and applications for any alterations to existing licensed premises. There is no prescribed form for section 39 certificates, however a pro-forma is available from the Department if required.

This certificate is not required to be lodged at the same time as the application if the applicant is seeking the conditional grant of a liquor licence. The certificate, however, must be lodged prior to the issue of the licence.

Local governments can condition section 39 certificates if a premises has outstanding work to be completed, or withhold the certificate until the premises has been made to comply. Local governments can also impose conditions relating to the use of premises, or certain areas of the premises as deemed necessary.

A common example is where local government condition a building certificate/s to specify the number of patrons who can be on the premises at any one time under the Health (Public Building) Regulations. This

can be imposed as a condition of licence if required.

The Department is seeking confirmation that the premises complies with the relevant requirements of the *Building Act 2011* as it pertains to each particular application. Therefore, where construction or building works are undertaken as part of a new liquor licence application or an alteration/redefinition application, the Department's expectation is that all works undertaken have been completed in accordance with any building permits issued by the local government.

With respect to a new licence application to be located in a premises constructed prior to 2011, provided no additional building or construction works are to be undertaken, then the Department is seeking confirmation from the local government that the premises was constructed in accordance with the relevant legislation at the time of its construction.

The only instance where it is expected that a section 39 certificate has reference to the *Building Act 2011* deleted or removed is for an application for a liquor without a meal permit, or for an alteration/redefinition application where no building/construction works are undertaken (i.e., adding a lawn outdoor area to the licensed premises).

### **Section 40 Certificate (Local Planning Approval)/Development Approval**

A certificate or development approval issued by a local government under section 40 of the Liquor Control Act confirms that the premises or proposed premises comply with the local government's LPS and other planning requirements.

Section 40 certificates or development approvals are required for an application for the grant or removal of a licence, or for a change in the use or condition of any premises, unless otherwise determined.

Development approvals must specify the type of liquor licence sought and all conditions. A pro-forma section 40 certificate is available from the Department on request.

The certificate or development approval is not required to be lodged at the same time as the application, however, the application can not be determined until the certificate or development approval has been provided, unless the licensing authority determines otherwise.

Local governments are able to condition certificates or development approvals if the premises requires the imposition of specified trading restrictions in order to comply with planning approval requirements. As a general rule, any trading restrictions specified by a local government would be imposed by the licensing authority as conditions on any licence issued. For example, such restrictions could include compliance with noise requirements or maximum accommodation numbers.

If the premises can not be made to comply with planning legislation, the certificate or development approval can be conditioned accordingly. Following receipt of a certificate or development approval confirming that a premises can not comply with planning laws, the licensing authority would not allow that the application to proceed any further.

### **Section 99 – Maintenance of Premises**

Section 99 of the Liquor Control Act requires every licensee to:

- maintain the licensed premises at a standard that is reasonable, having regard to the class of the licence, the locality and the expectations of the public; and
- keep the premises and all fittings and fixtures in the premises thoroughly cleansed, in a hygienic condition and in good repair.

Where a local government health or building inspection has identified items that a premises or its fittings and fixtures are not being maintained, kept in a clean, hygienic condition or in good repair, then the Department can adopt any work orders/schedule of works issued by local government to also be carried out under section 99 of the Act.

### **Liquor Licensing Applications**

Local governments are in a unique position to assist in liquor licensing decisions. Where an application is made for the grant of a licence, local governments can request that the Director of Liquor Licensing forward to them a copy of that particular application. Details regarding these applications are also available from the Department's website at [www.dlgsc.wa.gov.au](http://www.dlgsc.wa.gov.au).

Local governments could consider consulting with residents, schools, hospitals, businesses and community groups in the vicinity of each application site. In this regard, local governments could provide an outline of the application, explain residents' rights of objection and invite responses. They may then represent the objectors at a hearing before the licensing authority.

The flowchart on the next page highlights how important local government approval is to the liquor licence process.

### **Local Government Liquor Policy**

Each local government has a different planning scheme and other policies that are specific to their community. While local governments can influence whether or not a liquor licence type is permitted at a particular location, it is not always able to do so unless it has the appropriate scheme and policy provisions in place.

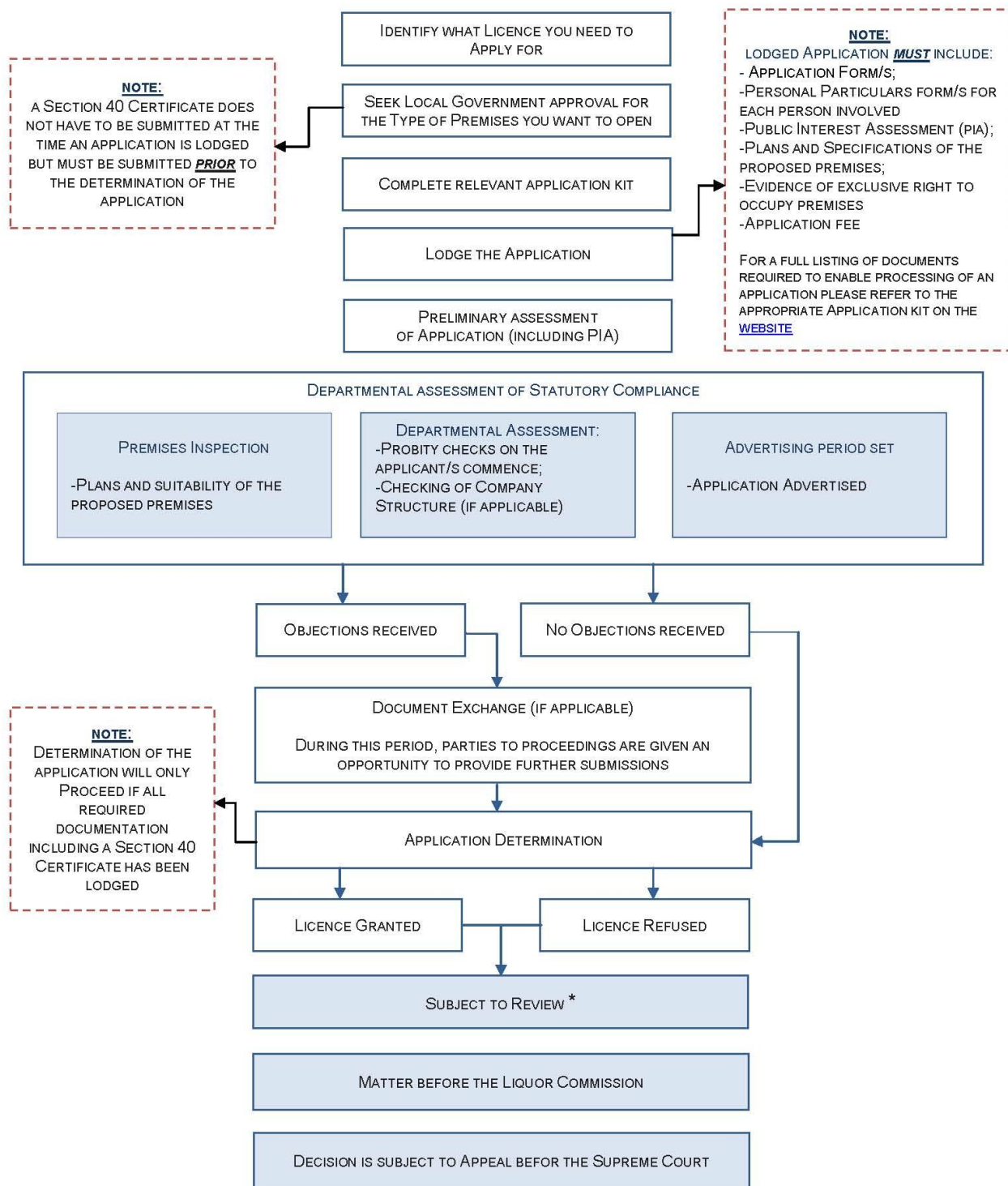
To be effective in ensuring desired outcomes with regard to licensed venues, regulatory approvals systems need to provide to clear, coordinated and defined interrelationship between policies, structures and processes. Local planning policies are a way for Local Governments to incorporate provisions relating to the treatment of licensed premises.

For those local governments seeking assistance to work towards the management of alcohol-related harm, there are a number of existing town planning tools available that may be employed more effectively through appropriate strategic planning processes.

Local governments should contact the WA Local Government Association for further details about these existing tools and support resources.



## APPLICATION PROCESS FOR THE GRANT OF A LICENCE



\* The review process does not happen automatically. It only takes place if someone seeks a review of the Director of Liquor Licensing’s decision to grant or refuse a licence.



## EXEMPTIONS TO THE LIQUOR CONTROL ACT 1988

There are a number of situations where the sale, supply and consumption of liquor is specifically exempt from the application of the Act, that is, there is no need for a licence. Such situations involve small amounts of liquor supplied in controlled environments and social situations where relatively few people are in attendance.

These prescribed situations are only considered to be exempt from the Act when the exact conditions of the exemptions, as stated in the *Liquor Control Regulations 1989* (the regulations), are met. The prescribed exemptions and the conditions of each are summarised below.

### Live Entertainment Venues

This exemption applies only when BYO liquor is consumed at a live entertainment venue. "Live entertainment" is defined as a musical, theatrical, dance or comic entertainment provided by one or more persons present at the venue. Live entertainment does not include sporting contests, recorded music, DJs, and live broadcasts or transmissions.

Where the primary purpose of a venue is to facilitate continuous live entertainment, the consumption of BYO liquor on the premises is exempt from the Act, provided this consumption is ancillary to the provision of live entertainment. This exemption does not allow the sale and supply of liquor by the venue operator.

The following conditions must be met in order for the consumption of BYO liquor at live entertainment venues to be exempt from the Act:

- No more than 200 patrons are permitted on the premises at any one time;
- Juveniles must be accompanied by a responsible adult at all times (unless the juvenile is employed at the premises or providing entertainment);
- A drunk person is not allowed to consume liquor on the premises;

- X18+, R18+ or RC classified films are not permitted to be shown on the premises;
- RC, Category 1 or Category 2 restricted publications are not permitted to be shown on the premises;
- RC classified computer games are not permitted to be shown on the premises;
- No person on the premises can be indecently dressed or take part in indecent activities;
- Free drinking water must be provided to patrons at all times;
- The person in charge of the premises must notify the Director of Liquor Licensing, in writing, of their intention to allow the consumption of BYO liquor in their venue, at least 14 days prior to this occurring. The notification template *Notice of Intention to Allow Consumption of Liquor at a Live Entertainment Venue*, which can be used for this purpose, is available from [www.dlgsc.wa.gov.au](http://www.dlgsc.wa.gov.au).
- The person/s in charge of operating the premises, employees, agents and contractors providing services can not be the subject of a prohibition order; or have previously been found not fit and proper (by the Licensing Authority) to have an interest in any licence or permit under any section of the Act.

Where liquor consumption takes place at a live entertainment venue, the premises is deemed to be a regulated premises under section 122 of the Act. Offence provisions under sections 115 and 122 therefore apply to the supply of liquor to juveniles and drunk persons, the consumption and possession of liquor by juveniles and the consumption of liquor by drunk persons on these premises.

Whilst the consumption of BYO liquor is exempt from the Act in many circumstances, it is important to note that section 119(7) of the Act prohibits allowing unlicensed premises to be kept or used as a place of resort for the consumption of liquor. The exemption relating to live entertainment venues therefore clarifies that this type of

BYO consumption is not a breach of section 119(7).

### Small Functions

The small functions exemption is applicable to small events where previously the organiser would have been required to apply for an occasional licence (e.g. a book launch or a small private event); does not apply to premises where a permanent liquor licence is already in effect; and does not provide the means by which an entity can establish a permanent business in the sale and supply of liquor.

The sale or supply of liquor at a function where the serving of liquor is ancillary to the purpose of the function is exempt from the Act, provided:

- the total number of attendees over the entire course of the function does not exceed 100 and the service of liquor lasts a maximum of two hours (continuous); or
- the total number of attendees over the entire course of the function does not exceed 75 and the service of liquor lasts a maximum of four hours (continuous).

An attendee does not include a person who is managing or supervising the function; providing services at the function (such as serving food or liquor; security etc); and providing entertainment at the function or assisting a person who is providing entertainment.

A function can only be held between the hours of 6am and 10pm on the same day. Additionally, a drunk person is not allowed to consume liquor at the function, nor is liquor to be supplied to a drunk person.

For the purposes of this exemption, a function is defined under section 3(1) of the Act as *“a gathering, occasion or event (including a sporting contest, show, exhibition, trade or other fair, or reception) at which it is proposed that liquor be sold or supplied to those present.”*

Where liquor is sold or supplied at a small occasional function, the premises on which the function takes place is deemed to be

regulated premises under section 122 of the Act. Offence provisions under sections 115 and 122 therefore apply to the supply of liquor to juveniles and drunk persons, the consumption and possession of liquor by juveniles and the consumption of liquor by drunk persons on those premises.



### Complimentary Supply by Business

This exemption provides that businesses may supply liquor to customers, provided it is gratuitous (without charge) and ancillary to the purpose of the customer's attendance at the business. However, the quantity of liquor supplied can not be more than two standard drinks per person for consumption on the premises or one litre per person for consumption away from the premises.

For example, a hair salon may wish to offer a complimentary glass of wine or champagne to a client; or a real estate agent may wish to offer a complimentary bottle of champagne to a home buyer.

A standard drink is classified as a drink containing no more than 10 grams of ethanol measured at 20°C. *The Australian Guidelines to Reduce Health Risks from Drinking Alcohol*, published by the National Health and Medical Research Council in February 2009, provide further guidance on the Australian standard drink size.

Where gratuitous liquor is supplied by a business in these circumstances, the business premises is deemed to be regulated premises under section 122 of the Act. Offence provisions under sections 115 and 122 therefore apply to the supply of liquor to juveniles and drunk persons, the consumption and possession of liquor by

juveniles and the consumption of liquor by drunk persons on those premises.

This exemption does not provide the means by which an entity can establish a permanent business in the sale and supply of liquor. In these instances it would be necessary to obtain a permanent liquor licence.

### **Tourism Operators**

The gratuitous (without charge) supply of liquor by a tourism business, either on the business premises or during the course of a tour, is exempt from the Act in the following circumstances:

- The business must be accredited under the Australian Tourism Accreditation Program;
- The supply of liquor is ancillary to the purpose of the business;
- The supply of liquor must not take place on a premises that is licensed under the Act;
- The supply and consumption of liquor must not take place on a public road;
- Liquor can only be supplied or consumed with the permission of the person or authority in charge of the land or premises where this takes place;
- Liquor must not be supplied to a juvenile or a drunk person;
- The supply and consumption of liquor must not take place in an area that has been declared as a liquor restricted area under section 175(1a) of the Act; and
- The person who supplies the liquor to the customer has successfully completed the 'Provide Responsible Service of Alcohol' course.

For the purpose of the regulations, the person who supplies the liquor to the customer is taken to mean the person in charge of the business such as the owner/manager and the tour leader. Staff that are involved in serving liquor (such as pouring glasses of wine for guests) will also require training, however staff who simply

place liquor in a room or on a table for example, do not require training.

A map showing the relevant restricted areas is available on the Department's website at [www.dlgsc.wa.gov.au](http://www.dlgsc.wa.gov.au).

### **Bed and Breakfast Guests**

The supply of liquor by a person who conducts, supervises or manages a bed and breakfast facility (with a maximum capacity of eight guests at any one time) is exempt from the Act provided that the following conditions are met:

- the supply of liquor is to an adult staying at the facility;
- the supply of liquor takes place at the facility;
- the supply of liquor is gratuitous;
- the supply of liquor does not exceed 1.5 litres in total for the entire time the guest stays at the facility; and
- the liquor was purchased from a licensee who can sell packaged liquor (with the exception of wholesalers and club licences).

The operator of a bed and breakfast facility may elect to rely on this exemption or on the tourism operator exemption instead.

### **Farmers Markets**

Where one or more liquor producers host a stall at a farmers market, liquor may be sold or supplied where it is no more than 9 litres of packaged liquor per customer or by way of free sample. Orders can also be taken for larger quantities, with the sale or supply of the liquor to take place at a later date.

Sample sizes can not be greater than 100ml for beer, 50ml for wine and 15ml for spirits. Orders can also be taken for larger quantities, with the sale or supply of the liquor to take place at a later date.

Farmers markets are those markets where primary producers display and sell their products directly to the public. Primary



producers include agriculture, pastoral pursuits, horticulture, grazing, dairy farming, bee-keeping, orcharding, viticulture, silviculture and other similar farming activities.

The stall, and the area immediately surrounding the stall in which customers congregate to sample or purchase liquor, is deemed to be regulated premises under section 122 of the Act. Offence provisions under sections 115 and 122 therefore apply to the supply of liquor to juveniles and drunk persons, the consumption and possession of liquor by juveniles and the consumption of liquor by drunk persons on these premises.

### **Organisers of Functions on Licensed Premises**

Where the organiser of a function enters into an arrangement with a licensee of an appropriately licensed premises and the licensee provides the venue, food and liquor for the function, at a set price; and the organiser arranges for the function to advertised to the public and for the sale of tickets to the function, then the sale or supply of liquor by the function organiser is exempt from the Act, provided that:

- the profit sharing arrangement is approved by the Licensing Authority under section 104 of the Act; and
- the price of a ticket for admission to the function includes food, liquor and entertainment at the function; and
- all advertising for the function must refer to the licence details under which the function is occurring; and
- the function is held on an appropriately licensed premises where the liquor licence permits the sale and supply of liquor to the general public for consumption on the premises. Licence categories such as liquor stores, wholesalers and clubs, do not allow for the general public to consume liquor on the premises and therefore will not be able to utilise this exemption.

### **Charter Vehicles**

The consumption of BYO liquor in charter vehicles that are licensed by the Department of Transport, are exempt from the Act, provided that all of the following conditions are met:

- the vehicle is licensed as an Omnibus under the *Transport Coordination Act 1966*; and
- the vehicle is capable of carrying 14 passengers or less (excluding the driver); and
- the vehicle is hired in advance of the trip; and
- the vehicle is hired for at least one continuous hour; and
- the driver of the vehicle does not allow a drunk person or a juvenile to consume liquor in the vehicle; and
- any juvenile in the vehicle is accompanied by a responsible adult; and
- the purpose of the vehicle hire can not include transportation of one or more school students to or from a school based function (such as a school ball etc, regardless of whether the function takes place at the school or not).

A responsible adult is defined in section 125(2)(b) of the Act as “*an adult who is a parent, step-parent, spouse, de facto partner or legal guardian of the juvenile, or other person in loco parentis to the juvenile.*”

Where BYO liquor consumption takes place in a charter vehicle, the vehicle is deemed to be regulated premises under section 122 of the Act. Offence provisions under sections 115 and 122 therefore apply to the supply of liquor to juveniles and drunk persons, the consumption and possession of liquor by juveniles and the consumption of liquor by drunk persons on these premises.

### **Warehouse**

Where a premises is licensed as a warehouse (under the *Customs Act 1901*) and the sale of liquor in bond by the

proprietor occurs with a person who proposes to personally take the liquor outside of Australia, this sale is exempt from the Act.

### Transport Services

The sale and supply of liquor is exempt when it occurs:

- on an interstate rail passenger service to or from Perth;
- on an aircraft during the course of a flight;
- on a commercial vessel in the course of an inter-State or overseas voyage;
- to the master of a ship as ship's stores, for consumption on that ship once it has passed outside of WA territorial seas; and
- on an intra-State cruise:
  - during the course of a scheduled deep water cruise<sup>1</sup>; and
  - where the vessel has a minimum capacity of 100 passenger berths; and
  - that continues at least over one night; and
  - where liquor is sold to a fare-paying passenger or crew member who is over 18 years of age and is not drunk.

### Gift Hampers

The sale or supply of liquor together with flowers, a food parcel or a gift hamper to be delivered by the vendor or supplier as a gift, to a person other than the purchaser, vendor or supplier is exempt from the Act, provided that the following conditions are met:

- the gift must be delivered between 7am and 7pm;
- the person to whom the gift is delivered must be at least 18 years of age;

- the quantity of the liquor sold or supplied can not be more than two litres;
- the business of the vendor or supplier must be genuinely marketed as a service for the sale and delivery of gifts;
- the gift must be packaged so that the person to whom it is delivered would be likely to know that it was intended as a gift;
- the vendor or supplier must have purchased the liquor from the holder of a Hotel or Liquor Store licence;
- the value of the liquor and its container can not be more than half of the purchase price of the gift.

The value of the liquor and its container is based on the cost of buying that liquor from a liquor store or hotel licence.

### Lottery Prize

The sale or supply of liquor as a prize in a lottery conducted in accordance with the *Gaming and Wagering Commission Act 1987* is exempt from the Act.

### Food Essence

The retail sale of an alcohol based food essence is exempt from the Act. This is defined as a flavour substance in liquid form, with a concentration of ethanol exceeding 1.15% by volume in a container that has a volume exceeding 100 millilitres in the case of vanilla essence; or 50 millilitres in any other case.

The sale must be authorised in writing by the Director of Liquor Licensing in order for the exemption to apply.

### Health Care Services

The sale or supply of liquor is exempt from the Act where it is to a patient or resident at a nursing home; hospital; private psychiatric hostel; or a residential facility operated by an approved provider of residential care.

The sale or supply is authorised by the person who conducts or manages the

<sup>1</sup> Deep water is characterised by water of considerable depth, especially able to accommodate oceangoing vessels.

premises or is the approved provider of residential care.

### Offence Provisions

Despite being exempt from the application of the Act, in many of the above situations the venue/premises are deemed to be regulated premises under section 122 of the Act. This means that offence provisions apply if a juvenile or drunk person is sold, supplied or permitted to consume liquor on the premises. The penalty for a breach of these sections of the Act is a fine of up to \$10,000.

## LIQUOR RESTRICTIONS

---

### Liquor Restrictions under sections 64 and 175

A significant number of Western Australian remote communities continue to explore methods to reduce the level of harm caused due to the use of liquor.

Section 175(1a) of the Act enables the Governor, on the recommendation of the Minister for Racing and Gaming, to declare an area of the State a restricted area that prohibits the bringing in, possession and consumption of liquor in the declared area. If a person commits an offence against the regulations, a penalty of between \$2000 and \$5000 applies. Police have the necessary powers to seize and dispose of opened or unopened containers of liquor that are brought into the restricted area illegally.

The restricted area declaration is currently the State Government's preferred legislative mechanism for alcohol management in Aboriginal communities.

Section 64 of the Act allows the Director of Liquor Licensing, where it is in the public interest, to impose conditions on licensees restricting the sale and supply of liquor from licensed premises. A condition may include a limitation, prohibition or an authorisation on any licence or permit and can relate to any aspect of business carried out under the licence, or any activity that takes place at the licensed premises.

Restrictions imposed under section 64 of the Act apply to a number of rural and remote communities throughout Western Australia.

An interactive map showing the location of all liquor restrictions in WA (imposed under sections 64 and 175 of the Act), with a description of each restriction, is available on the Department's website at [www.dlgsc.wa.gov.au](http://www.dlgsc.wa.gov.au).

### Restricted Premises

Part 5B of the Act enables the owner or occupier of a private premises or privately owned land to apply to the Director of Liquor Licensing to have the premises declared a restricted premises. This makes it an offence for a person to bring into, consume or possess liquor on those premises for a specified period.

A penalty of \$2000 applies if:

- a person brings into, consumes or possesses liquor on a declared restricted premises;
- the applicant fails to display a notice declaring that the premises is a restricted premises; and
- the applicant fails to notify the Director that the occupants of the premises no longer reside there.

Section 152P(4) of the Act also allows for a prescribed class of person to apply for a declaration of a liquor restricted premises. In this regard, the Chief Executive Officer of the Department of Communities is the only class of prescribed person in the regulations.

It is not an offence for a person who is passing through restricted premises, open to or used by the public, with unopened liquor if it is to be consumed somewhere else. For example, if part of a shopping centre is a restricted area you can carry liquor bought at a liquor store through the area without committing an offence.

A person can not be charged if that person did not know, and could not reasonably have been expected to know, that the premises were liquor restricted premises.



## LIQUOR LICENSING AND COMPLIANCE

### Licence Types

The Liquor Control Act provides for a number of different types of liquor licence, each with specific trading conditions. They are:

Licence Type	Trading Conditions
Hotel	Authorises the sale of liquor for consumption on the premises and as packaged liquor. Liquor may also be sold to residential guests at any time (e.g.; via mini-bars; room services; etc).
Hotel-Restricted	Authorises the sale of liquor for consumption on the premises only. Liquor may also be sold to residential guests at any time (e.g.; via mini-bars; room services; etc).
Tavern	Authorises the sale of liquor for consumption on the premises and as packaged liquor.
Tavern Restricted	Authorises the sale of liquor for consumption on the premises only.
Small Bar	Authorises the sale of liquor for consumption on the premises only. The size is restricted to no more than 120 persons (i.e., patrons plus staff) at any one time.
Nightclub	Authorises the sale of liquor for consumption on the premises only and is subject to the condition that liquor may only be sold ancillary to continuous live entertainment. The entertainment must be provided by one or more artists present in person performing there, or by way of recorded music presented by a person personally (i.e.: a DJ).
Liquor store	Authorises the sale of packaged liquor. Tastings may be conducted on the licensed premises if authorised.
Restaurant	Authorises the sale of liquor, for consumption on the premises, ancillary to a meal supplied by the licensee.
Wholesaler	Authorises the sale of packaged liquor primarily to liquor merchants or other persons authorised by law to sell liquor. Such sales must constitute at least 90% of the gross turnover from sales of liquor. A wholesaler may also sell liquor to members of the general public in quantities of not less than 4 litres.
Producer	Authorises the sale of liquor, produced by the licensee, for consumption on the premises (wine and beer only – see below) and as packaged liquor.  Tastings may be conducted on the licensed premises, if authorised.  Wine and beer producers can sell or supply liquor other than their own product ancillary to a meal or for comparative tastings, if authorised.  Beer producers can sell their product for consumption on the premises between 10am and 10pm with the exception of Good Friday, Christmas Day and ANZAC Day, if authorised.
Club	Authorises the sale of liquor, for consumption on the premises to members of a club and up to five guests per member. The licence also authorises the sale of packaged liquor to members only.
Club Restricted	Authorises the sale of liquor for consumption on the premises to club members and up to five guests per member. The sale of packaged liquor is not permitted.

A Special Facility licence can be granted for any of the purposes shown in the table below. The trading hours are not prescribed by the Act, but are imposed as conditions at the time the licence is granted.

An applicant for the grant of a Special Facility licence is required to lodge a written submission demonstrating how the business for which the licence is sought meets any of the prescribed purposes for which a Special Facility licence may be granted.

The onus is upon the applicant to demonstrate that no other class of licence (such as a Tavern, Hotel, Restaurant, etc) is adequate. In addition, the applicant should provide a detailed outline of how the business under the licence is proposed to operate and the trading conditions which are sought for the licence.

Local government authorities should note that the licensing authority will not grant a Special Facility licence just because the grant of another class of licence for the premises is not possible under the town planning scheme.

The licensing authority can substitute an alternative type of licence if another type of licence is deemed more appropriate.

<b>Special Facility Licence Type</b>	<b>Trading Conditions</b>
Works Canteen	<p>A special facility licence may be granted for the purpose of allowing the sale of liquor at a works canteen, or at other premises specified in the licence, to workers and their guests. A licence granted for this purpose may permit the sale of packaged liquor.</p> <p>“<i>Workers</i>” are defined as persons working on a project or for a business in relation to which a works canteen is provided.</p> <p>A “<i>works canteen</i>” is defined as a canteen, located at or near the place where a project is being undertaken or a business carried on, catering for the needs of persons working on the project or for the business.</p>
Theatre or Cinema	<p>A special facility licence may be granted for the purpose of allowing the sale of liquor at a theatre or cinema to persons attending a performance or film at the theatre or cinema.</p>
Reception or Function Centre	<p>A special facility licence may be granted for the purpose of allowing the sale of liquor at a reception or function centre (being premises primarily used as a venue for functions and receptions) to persons attending a reception or function at the centre.</p>
Transport	<p>A special facility licence may be granted for the purpose of allowing the sale of liquor to passengers and their guests at an airport, railway station, bus station or seaport; or on a train, bus, ship or vehicle.</p> <p>A special facility licence of this nature may also be granted for the purpose of allowing the sale of liquor at another place of the licensee provided that the sale and supply is in connection with a booking for travel on a train, bus, ship or vehicle.</p>
Education and Training Institution	<p>A special facility licence may be granted for the purpose of allowing the sale of liquor at a vocational education and training institution or a higher education institution to students and staff of the institution and their guests.</p>

Special Facility Licence Type	Trading Conditions
Education Training Course	<p>A special facility licence may be granted for the purpose of allowing the sale or supply of liquor by vocational and education training institution or a higher education institution to provide:</p> <p>(a) for the tasting of liquor by students/trainees as part of the course curriculum and the sale and supply of liquor by students/trainees for the purposes of a course of instruction or training conducted by the institution in which the students are enrolled.</p> <p>(b) for the sale of liquor that is produced as part of an approved viticulture course, provided the liquor is only sold or supplied during a special event; and in an area approved by the Director. The liquor must be sold or supplied by persons aged 16 years or older; and the amount of liquor being sold or supplied is limited:</p> <p>(i) in the case of liquor supplied for consumption on the grounds of the institution, to the supply of free 30 ml samples for tasting purposes; or</p> <p>(ii) in the case of packaged liquor, to the provision of not more than 9 litres per person and per transaction.</p> <p>(iii) in the case of liquor supplied to a liquor merchant, points (i) and (ii) apply however prior approval must be sought from the Licensing Authority.</p> <p>Tasting of liquor will only be authorised in circumstances where the students/trainees are 16 years or older, the student/trainee is supervised at all times and the activity they are undertaking is being assessed for the purposes of an accredited hospitality qualification in which they are enrolled.</p> <p>An “<i>approved viticulture course</i>” is defined as: a course that delivers “Units of Competency” from the Food Processing Industry Training Package (Wine Sector) leading to a qualification recognised under the a) Australian Qualifications Framework; b) a higher education course relating to viticulture.</p> <p>A “<i>special event</i>” is defined as a graduation ceremony, speech night or annual open day that relates to vocational education and training institution or higher education institution, or any other related event approved in writing by the Director.</p> <p>A “<i>vocational education and training institution</i>” includes a secondary school if the relevant course of instruction or training conducted by the school is vocational education and training, as defined in section 5(1) of the <i>Vocational Education and Training Act 1996</i>.</p>
Sports Arena	<p>A special facility licence may be granted for the purpose of allowing the sale of liquor at a sports arena (being premises primarily used for playing and viewing sport) to persons playing or viewing sports, or attending any other event, at the arena.</p>



Special Facility Licence Type	Trading Conditions
Tourism	<p>A special facility licence may be granted for the purpose of allowing the sale of liquor to persons likely to be attracted to, or present at, a place that, in the opinion of the licensing authority, is or will become an attraction for tourists; or a facility that enhances the State's tourist industry. A licence granted for this purpose may permit the sale of packaged liquor.</p> <p>A "tourist" is defined as a person who is staying at a place that is at least 40 kilometres from his or her usual place of residence for a period of at least one night; intending to stay away from his or her usual place of residence for a period of less than 12 months; not in the course of travelling on a regular journey between his or her usual place of residence and his or her place of work or education; and travelling in the course of a holiday or for leisure, business, to visit friends or relatives or for any other reason.</p>
Foodhall	<p>A special facility licence may be granted for the purpose of allowing the sale of liquor at a foodhall to customers of the foodhall for consumption ancillary to a meal.</p>
Caterer	<p>A special facility licence may be granted for the purpose of allowing at a function the sale, by a caterer, of liquor supplied at premises at which the caterer has agreed with the person organising the function to provide liquor (whether with or without food), for consumption by persons at that premises.</p> <p>A "caterer" is defined as a person who carries on a food business as defined in section 10 of the <i>Food Act 2008</i>; and handles or sells food for consumption at functions.</p>
Bed and Breakfast Facility	<p>A special facility licence may be granted for the purpose of allowing the sale of liquor at a bed and breakfast facility (being an accommodation facility that offers bed and breakfast) to persons staying at the facility.</p>
Amusement Venue	<p>A special facility licence may be granted for the purpose of allowing the sale of liquor at an amusement venue to persons in the venue. An <i>amusement venue</i> means a premises the primary purpose of which is to allow person in the premises to play or view snooker, bowling, electronic games or other similar amusements; or to participate in or view karaoke.</p>
Room Service Facility	<p>A special facility licence may be granted for the purpose of allowing the sale of liquor to customers at the room service restaurant whether or not ancillary to meals eaten at the restaurant if the liquor is consumed at the restaurant during hours that are permitted hours under a hotel licence; and by customers while sitting at a table, or at a fixed structure used as a table; and the sale and consumption of the liquor are in accordance with any conditions imposed on the special facility licence by the licensing authority.</p> <p>A "room service restaurant" is defined as a restaurant that provides room service to persons residing or staying in residential accommodation on the same premises as the restaurant or adjacent premises (not being accommodation provided by the licensee).</p>
Auction	<p>A special facility licence may be granted for the purpose of allowing the sale by auction of packaged liquor at premises specified in the licence.</p> <p>A licence granted for this purpose may permit the supply of samples of the packaged liquor that is for auction, for tasting.</p>
Online Wine Sales	<p>A special facility licence may be granted for the purpose of allowing the sale of packaged liquor (wine only) produced by holders of a Western Australian producer's licence, via the internet only.</p>

## Trading Hours

The normal prescribed trading hours for the different licence types are:

Permitted Trading Hours					
Licence type	Monday to Saturday	Sunday	New Year's Day	Good Friday and Christmas Day	ANZAC Day
Hotel, Hotel Restricted, Tavern, Tavern Restricted and Small Bar	6am to 12 midnight	10am to 12 midnight	Until 2am	12 noon to 10pm only ancillary to a meal supplied by the licensee	12 noon to 12 midnight
Nightclub	6pm to 5am	8pm to 2am	6pm to 5am	No permitted trading after 3am	Until 3am ANZAC Day morning, then reopen at normal trading hours
Liquor store – Metropolitan	8am to 10pm	10am to 10pm	Normal trading hours	Not permitted	12 noon to 10pm
Liquor store - Regional	8am to 10pm	Not permitted, unless they have Ongoing Hours ETP	Normal trading hours	Not permitted	12 noon to 10pm
Restaurant	At any time, ancillary to a meal				Until 3am ANZAC Day morning, then from 12 noon ANZAC Day
Wholesaler	At any time to other licensees; sales to the public to occur within metropolitan liquor store trading hours		Not permitted	Not permitted	12 noon to 12 midnight to other licensees only
	At any time if selling and delivering to someone outside Australia				
Producer	At any time	At any time	Any time	12 noon to 10pm only ancillary to a meal supplied by the licensee (wine producers only)	12 noon to 12 midnight
Club	6 am to 12 midnight	Up to 1am from Saturday night; and 10am to 10pm	Until 2am	Good Friday – 12 midnight to 12:30am only ancillary to a meal supplied by or on behalf of the licensee  Christmas Day - 12 midnight to 12:30am; and 12 noon to 10pm only ancillary to a meal supplied by or on behalf of the licensee	12 noon to 12 midnight
Club Restricted	Between those hours specified on the individual licence				
Special Facility	Between those hours specified on the individual licence				

## Occasional Licences

Section 59 of the Liquor Control Act provides for occasional licences to be issued for a period of up to three weeks. If the proposed event is to be conducted on a council reserve or in a public open space, local governments can influence the grant of occasional licences.

Similarly, local governments can liaise informally with the licensing authority to identify any concerns and suggest possible solutions.

Local governments should note that outside the metropolitan area, the Director has delegated to the local Clerk of Courts the power to grant or, in certain circumstances, to refuse occasional licences.

In addition, section 75 also provides local governments with an opportunity to be heard in respect of applications relating to the grant of an occasional licence.

Occasional licences are intended for people who want to sell liquor, but do not have any other liquor licence. An occasional licence authorises the sale of liquor at a “function”, defined by the Act as meaning “*a gathering, occasion or event, including a sporting contest, show, exhibition, trade or other fair or a reception.*”

Most occasional licences will cover one function lasting only a few hours, however, an occasional licence can be granted to authorise the sale of liquor over a number of days.

However, one licence can not cover a period of more than 21 days. One occasional licence can also licence several different venues, if those venues are involved in something like a cultural festival.

When considering an application for the grant of an occasional licence, the Director must be satisfied that the owner or occupier or person having control of the premises has consented to the application. This includes local government approval for public areas, parks, ovals, etc. In this respect, some local governments issue their own function permits for the use of their facilities. The occasional licence is required in addition to such a permit. If consent is not given, the Director of Liquor Licensing would not allow that application to proceed any further.

## Extended Trading Permits

Section 60 of the Liquor Control Act allows extended trading permits to be issued to licensees to authorise the sale and supply of liquor at times outside of normal trading hours, for example after midnight on Fridays.

Section 61 provides a direct power for local governments to influence any application for the grant of an extended trading permit to allow the sale of liquor in an extended area outside of the licensed premises.

Local governments are able to condition such approvals so as to comply with specified trading restrictions. Usually, any trading restrictions specified by a local government would be imposed by the licensing authority as conditions on any permit issued.

This provision is especially relevant to applications for extended trading permits to sell and supply liquor al fresco on footpaths outside of licensed premises and when the licensee of a restaurant seeks an extended trading permit to sell and supply liquor without a meal.

If an applicant can not establish that the local government has been consulted, or the local government does not give approval, the licensing authority would not allow the application to proceed any further.



## Power of the Licensing Authority to Impose, Vary or Cancel Licence Conditions

Section 64(3)(ba) of the Liquor Control Act provides power for the licensing authority to impose conditions on an existing licence, which it considers to be in the public interest, or desirable to ensure that the local laws of a local government under the *Local Government Act 1995* are complied with. In effect, this section provides for local communities to have some impact on liquor licensing decisions, following the proclamation of a local law, even if the

imposition of such a condition resulted in a condition imposed by the Act becoming more restrictive. Local governments can bring any matter of this type to the attention of the Director of Liquor Licensing by way of a report or submission.

### **Disposal of Applications and Interventions**

Section 69 of the Liquor Control Act provides for a Local government that has an interest in any application for the grant of a licence to:

- be given, on request, a copy of the application and of any associated plans or specifications;
- intervene in proceedings in respect of that application, for the purpose of introducing evidence or making representations as to whether the premises are suitable to be licensed or the subject of a permit, whether a proposed alteration or redefinition of licensed premises should be approved and on the question of whether, if a particular application was granted, persons who reside, work or worship in the vicinity would be likely to suffer undue offence, annoyance, disturbance or inconvenience, and may submit a report to the licensing authority on those matters.

Section 69(8) also provides for a person authorised by the relevant local government to intervene in proceedings before the licensing authority. An intervention can be exercised instead of, or in conjunction with a notice of objection. Grounds for intervention by a local government is restricted to the requirements of the *Health Act 1911*, any written law relating to sewerage or drainage; or the *Local Government Act 1995* or the *Local Government (Miscellaneous Provisions) Act 1960*, in relation to health matters.

It is important to note that section 69(12) provides that a notice of intervention by a local government should be lodged before the last day on which objections can be lodged.

This date is made public in the application notice and applicants are required to post it on the premises; and publish it in *The Western Australian* newspaper (all licence grants).

Details of advertised applications are also displayed on the Department's website at [www.dlgsc.wa.gov.au](http://www.dlgsc.wa.gov.au).

Section 69(13) provides that a person who intervenes in proceedings before the licensing authority may be held on any appeal to have become a party to the proceedings and may be made a respondent to any appeal. This means that if a local government has sought to intervene in an application and is not happy with the decision of the Director of Liquor Licensing, then that authority can seek a review or appeal of the decision (see sections 25 and 28 of the Liquor Control Act).

### **Protection Orders**

Liquor licences are issued to specified persons, "the licensee", to authorise those persons to sell liquor. No one except the licensee may use the licence. Sometimes, however, situations arise in which other persons can be authorised by the licensing authority to step in and temporarily carry on the business at the licensed premises, instead of the licensee.

Section 86 of the Liquor Control Act provides for an authorisation, known as a "protection order," to be granted to a local government, located in a rural area, to temporarily carry on the business of a hotel or liquor store, in order to service the needs of the local community, until the licence can be lawfully transferred.

An application for the grant of a "protection order" must be made on the approved Form 13. Until the Director grants the protection order, the local authority would not be permitted to sell and supply liquor under the licence.

An application for a protection order does not need to be advertised, unless the Director orders it. If granted to a local government, the order commences on a specified date and lasts for up to 12 months, unless a shorter time is specified in the order.

### **Objections and Complaints**

The Liquor Control Act requires licensees to ensure that the activities of their licensed premises or the actions of its patrons do not unduly affect any person(s). For this reason, applicants for the grant of a new licence are usually required to advertise their applications for public comment.



## Objections to Applications

There are provisions in the Act enabling local governments to forward submissions of concern regarding any probable negative effects (see sections 69 (7) (c) and 74 of the Liquor Control Act) of the grant of a new licence.

An objection to a proposed licensed premises may be lodged by the local government in which the premises is situated, or by any adjacent local government with an interest in the neighbourhood of the licensed premises. The power to intervene is provided by section 69 of the Act.

For an individual to object to an application, he or she may be required by the Director of Liquor Licensing to verify the objection with the support of other people (with their consent) who object to the application. A local government can assist these people to become aware of other community members' concerns, their rights to action and provide support to resolve their problem.

Objections may be lodged against most applications under the Liquor Control Act. The following applications are specifically advertised for public information:

- applications for the grant of a licence, other than an occasional licence;
- applications for the removal of a licence, except where the Director certifies that the removal is within the same area;
- applications for major alterations to premises licensed; and
- applications for some extended trading permits.



No objection may be made unless it is on one or more of the following grounds:

- that the grant of the application is not 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, the quiet or good order of the relevant locality would be lessened, or there would probably be undue annoyance, disturbance or inconvenience suffered by people who reside, work or worship near the site; or are in or travelling to or from an existing or proposed church, hospital or school; or
- that the grant of the application would otherwise be contrary to the provisions of the Act.

The approved form for objections is the Form 17 - Notice of Objection, a copy of which is available from the Department's website at [www.dlgsc.wa.gov.au](http://www.dlgsc.wa.gov.au). The form should be lodged no later than the date shown on the advertisement published in the newspaper. All objections must be lodged on the Director of Liquor Licensing and on the applicant.

Where an objection is lodged, the objector must provide full particulars in support of their objection prior to the last day for objections.

During the objection period any person may view application details.

The Director may also allow objections to be lodged by a person or body of persons not otherwise allowed to object; which are not in the approved form, or that are otherwise incomplete; or which are outside of the prescribed time limitation.

In those cases, the licensing authority will then decide whether such an objection should be heard.

While an occasional licence is not subject to the Act's objection process, it may be made the subject of a submission or an intervention under section 69 of the Act. Under section 69, local governments may also intervene in proceedings for the purpose of introducing evidence or making representations as to whether the premises are suitable to be licensed or the subject of a permit (see earlier reference to section 69).

## Complaints about licensed premises

Section 117 of the Liquor Control Act provides for a complaint to be made against a licensee if noise coming from the licensed premises or the behaviour of patrons at premises is affecting people in the neighbourhood.

A complaint may be made by the local government of the municipality in which the premises are situated, or by an adjoining local government, in addition to residents and the Commissioner of Police.

A complaint may be made where it is alleged that:

- the amenity, quiet or good order of the neighbourhood of the licensed premises is frequently disturbed by any activity occurring on the licensed premises;
- the behaviour of persons on the licensed premises is unduly offensive, annoying, disturbing or inconvenient;
- the noise coming from the licensed premises is unduly offensive, annoying, disturbing or inconvenient; or
- disorderly conduct frequently occurring in the vicinity of the licensed premises on the part of patrons coming from the licensed premises is offensive, annoying, disturbing or inconvenient.

A pro-forma Section 117 complaint form is available from the Department's website at [www.dlgsc.wa.gov.au](http://www.dlgsc.wa.gov.au).

Ideally, before lodging a complaint with the Director, the local government should serve a copy of the complaint on the licensee and allow sufficient time for the licensee to rectify the cause of the complaint.

Once a complaint has been lodged, the Director of Liquor Licensing will request an Inspector to visit the premises to attempt to resolve the complaint through negotiation and conciliation.

If the Inspector's effort does not resolve the complaint satisfactorily, the Director will determine the matter. All parties to the complaint will be given the opportunity to make submissions on their respective case and the Director will consider the information on its merits.

There is no requirement for parties to be legally represented.

After considering the information presented, the Director may dismiss the complaint, or:

- impose conditions on the licence which restrict the type of entertainment or noise levels permitted at the premises;
- redefine or redesignate a part of the licensed premises;
- vary the existing conditions of the licence; or
- otherwise deal with the complaint in such a manner as is likely, in the opinion of the Director, to resolve the complaint.

Any party to these proceedings who is dissatisfied with the Director's decision may apply to the Liquor Commission for a review of the decision. An application for review should be made within one month of the parties receiving notice of the Director's decision. Any order made by the Director remains in force until quashed by the Commission or revoked by the Director.

## Disciplinary action

Section 95 of the Liquor Control Act empowers a local government to make an official complaint about licensed premises to the Liquor Commission. The grounds available for complaint by a local government are the:

- business conducted under the licence is not properly conducted in accordance with the licence;
- licensed premises are not properly conducted in accordance with the licence;
- licensed premises:
  - have fallen into disrepair;
  - are otherwise in an unsatisfactory condition;
  - have been altered without the prior approval of the Director; or
  - contravene the requirements of a written law as to planning, building, health or safety;

- licensee has:
  - contravened a requirement of this Act or a term or condition of the licence;
  - sold or supplied liquor otherwise than in accordance with the authorisation conferred by the licence; or
  - failed to comply with a summons, direction or order under this Act; the licensee has been given an infringement notice under section 167 and the modified penalty has been paid in accordance with that section;
- licensee otherwise is, or becomes, an unsuitable person to hold a licence under this Act;
- continuation of the licence is not in the public interest or the licence has not been exercised in the public interest; and
- safety, health or welfare of persons who resort to the licensed premises is endangered by an act or neglect of the licensee.

Further information in respect to lodging a section 95 is available from the Liquor Commission's website at

[www.liquorcommission.wa.gov.au](http://www.liquorcommission.wa.gov.au)

### Information Sharing

The Liquor Control Act provides for inspectors and local governments to share information on licensed premises in certain circumstances.

Section 153 of the Act provides for a liquor licensing inspector to make his or her report, on the suitability of licensed or proposed licensed premises, available for inspection by the local government where so requested by a local government.



## CONTACTS

---

Title	Name	Telephone No.
Director Licensing and Industry Services	Nicola Perry	6551 4872
Director Industry Regulation and Education	Lance Sgro	6551 4830
Manager Premises	Daryl McLaughlin	6551 4822

**Office location:** Gordon Stephenson House  
Level 2, 140 William Street  
Perth WA 6000

**Postal address:** PO Box 6119  
East Perth WA 6892

**Telephone:** (08) 6551 4888

**Facsimile:** (08) 9325 1041

**Free Call:** 1800 634 541 (WA country callers only)

**Internet:** [www.dlgsc.wa.gov.au](http://www.dlgsc.wa.gov.au)

**Email:** [rgl@dlgsc.wa.gov.au](mailto:rgl@dlgsc.wa.gov.au)

### Other Agencies

Mental Health Commission  
Level 1, 1 Nash Street  
PERTH WA 6000

Telephone: 08 6553 0600

[www.mhc.wa.gov.au](http://www.mhc.wa.gov.au)

Licensing Enforcement Division  
Western Australia Police Service  
303 Seven Oaks Street  
CANNINGTON WA 6104

Telephone 08 9454 1300

[www.police.wa.gov.au](http://www.police.wa.gov.au)

Chief Health Officer  
Department of Health  
PO Box 8172  
PERTH BC WA 6849

[www.public.health.wa.gov.au](http://www.public.health.wa.gov.au)