



REPORT OF THE

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

IN RELATION TO

LIQUOR LICENSING AMENDMENT REGULATIONS (No 3) 1999

Presented by Hon Bob Wiese MLA (Chairman)

And

Hon Tom Helm MLC (Deputy Chairman)

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Date first appointed:

November 19 1987

Terms of Reference:

It is the function of the Committee to consider and report on any regulation that:

- (a) appears not to be within power or not to be in accord with the objects of the Act pursuant to which it purports to be made;*
- (b) unduly trespasses on established rights, freedoms or liberties;*
- (c) contains matter which ought properly to be dealt with by an Act of Parliament; or*
- (d) unduly makes rights dependent upon administrative, and not judicial, decisions.*

If the Committee is of the opinion that any other matter relating to any regulation should be brought to the notice of the House, it may report that opinion and matter to the House.

Members as at the time of this inquiry:

Hon Bob Wiese MLA (Chairman)
Hon Tom Helm MLC (Deputy Chairman)
Hon Ray Halligan MLC
Hon Simon O'Brien MLC
Hon Jim Scott MLC
Norm Marlborough MLA
Bill Thomas MLA

Staff as at the time of this inquiry:

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1 EXECUTIVE SUMMARY

- 1.1 Liquor licence fees for occasional licences have been raised from \$15 across the board to between \$25 and \$2000. This represents an increase of between a 66% and 13233%.
- 1.2 The Committee acknowledges that the previous \$15 fee could not be expected to cover the costs to the Office of Racing Gaming and Liquor in processing and issuing occasional licences. The Committee accepts that fee increases could be justified on cost recovery principles.
- 1.3 The range of increases are based on an additional fee of 10 cents per person attending the licensed area above the base figure of 100 persons. This has resulted in fee increases which appear to reflect the increased time and resources allocated by the Office of Racing, Gaming and Liquor to licensed functions involving larger numbers of people.
- 1.4 Based on the costings provided by the Office of Racing, Gaming and Liquor, the Committee is satisfied that the Office of Racing, Gaming and Liquor is not raising more fees from liquor licensing than the actual cost of operating the liquor licensing division.
- 1.5 The Committee is unable to establish with any certainty what indirect costs are incorporated into each of the occasional liquor licence fee increases. However, the evidence of the Executive Director is that the least expensive occasional licences, those for up to 100 persons, do not incorporate any indirect costs component.
- 1.6 The Executive Director has informed the Committee that the Minister for Racing and Gaming has approved the drafting of an amendment to Schedule 3 of the Principal Regulations to extend the benefit of the lowest occasional licence fee of \$25 to those functions at which up to 250 persons attend the licensed premises. The Committee welcomes this amendment. It will ensure that the vast majority of occasional licence applications made by non-profit sporting and charitable organisations will only be

subject to a \$10 increase. The Minister has also agreed to amend regulation 26(4) of the Principal Regulations to clarify the meaning of “number of persons attending”.

- 1.7 Despite the significant increases in occasional liquor licence fees, the Committee is of the view that by reason of section 45A of the *Interpretation Act 1984*, none of the increased fees appear to be taxes. However, the Committee draws the Parliament’s attention to the fact that section 45A would appear to authorise government departments and agencies to raise fees and charges which may otherwise bear the legal character of taxes at common law.

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IN RELATION TO:

LIQUOR LICENSING AMENDMENT REGULATIONS (No 3) 1999

2 INTRODUCTION

- 2.1 In the exercise of its scrutiny function, the Joint Standing Committee on Delegated Legislation (“Committee”) reviewed the *Liquor Licensing Amendment Regulations (No 3) 1999* (“Amendment Regulations”).
- 2.2 Under the Committee’s Joint Rules, if the Committee is of the opinion that a matter relating to any regulation should be brought to the attention of the House, it may report that opinion and matter to the House. It is also a function of the Committee to consider and report on any regulation which appears not to be within power of the enabling legislation.

3 BACKGROUND TO THE AMENDMENT REGULATIONS

- 3.1 The Amendment Regulations were published in the *Government Gazette* on December 21 1999 and tabled in the Parliament on March 14 2000. The Amendment Regulations amend the *Liquor Licensing Regulations 1989* (“Principal Regulations”) and came into operation on January 1 2000.
- 3.2 The effect of the Amendment Regulations is to increase the fees and charges relative to some liquor licences and permits and is part of a strategy to achieve full cost recovery so that the costs of regulating the industry are met by projected revenues.¹ This policy of cost recovery is in part achieved by amending Schedule 3 of the Principal Regulations to increase fees as set out in the table below.

¹ Explanatory Memorandum from the Office of Racing, Gaming and Liquor to the Committee dated December 22 1999, p. 1.

Application Type	Current Fee	Proposed Fee	Percentage Increase
Grant or removal of Category A Licence	\$250	\$750	200%
Grant or removal of Category B Licence	\$250	\$400	60%
Transfer of licence	\$250	\$400	60%
Alteration/redefinition of licensed premises	\$60	\$150	150%
Extended Trading Permits (ETP)			
• Ongoing/indefinite ETP	\$200	\$400	100%
• Ongoing/indefinite ETP – Alfresco	\$200	\$200	0%
• Ongoing/indefinite ETP – 20% area “Dine or Drink”	\$200	\$300	50%
• One off ETP – (per day)	\$25	\$50	100%
Occasional licence			
Less than 100 people	\$15	\$25	66%
100 – 500 people	\$15	\$65	333%
501 – 1000 people	\$15	\$115	666%
1001 – 5000 people	\$15	\$500	3233%
5001 – 10000 people	\$15	\$1000	6566%
Over 10000 people	\$15	\$2000	13233%

3.3 The Amendment Regulations have been made under section 175 of the *Liquor Licensing Act 1988*. This section provides for the making of regulations by the Governor in Executive Council. The relevant subsections authorising the imposition of licence and other fees is contained in section 175(1)(a) and (b) which state:

“175. Regulations

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be provided for carrying out the purposes of this Act or for giving effect to the objects of this Act, and in particular for or with respect to -

(a) the payment and collection of licence fees;

(b) other fees payable to the licensing authority.”

- 3.4 A copy of the Amendment Regulations is attached to this report as “Annexure A.”
- 3.5 The Committee first considered the Amendment Regulations at its meeting on Monday, March 20 2000. The Committee’s attention was drawn to the Amendment Regulations due to the significant increases to fees, particularly those increases relating to the issue of an occasional liquor licence. The Committee was concerned with the extent to which the increase in fees may impact on those charitable, sporting and other non-profit organisations which account for a significant proportion of occasional liquor licence applications.
- 3.6 The Committee noted that the explanatory memorandum provided by the Office of Racing, Gaming and Liquor did not provide details justifying the substantial fee increases other than that they were imposed to recover expenditure incurred in regulating the liquor industry.²
- 3.7 As a result of its concerns the Committee held a hearing on Monday, March 27 2000. Mr Barry Sargeant, Executive Director of the Office of Racing, Gaming and Liquor, gave evidence at the hearing to assist the Committee in its deliberations.
- 3.8 Following the hearing, the Committee resolved to give notice of motion to disallow the Amendment Regulations to provide it with sufficient time to consider the evidence and to seek further information from the Executive Director.
- 3.9 Notice of the motion to disallow was given on Tuesday, May 2 2000.³ The motion moved *pro forma* pursuant to Standing Order 152(b) of the Standing Orders of the Legislative Council on Tuesday, May 9 2000.⁴

² Ibid, p. 1.

³ Legislative Council Notice Paper No. 52, Thursday, May 4 2000, p. 6.

⁴ Legislative Council Notice Paper No. 53, Tuesday, May 9 2000, p. 8.

4 THE COMMITTEE'S CONCERNS

- 4.1 The Committee had the following concerns with the Amendment Regulations:
- 4.1.1 The uncertainty surrounding the meaning of “anticipated number of persons attending” in new regulation 26(4) may result in applicants for an occasional licence being unsure as to the appropriate fee to be paid;
 - 4.1.2 Whether the fee increases for occasional licences were justified on the basis of cost recovery principles given the extent to which the increase in fees would impact on the those charitable, sporting and other non-profit organisations which may account for a significant proportion of applications; and
 - 4.1.3 Whether the fee increases for an occasional licence amount to taxation not authorised by the *Liquor Licensing Act 1988* or other legislation, thereby rendering the increases *ultra vires* the Act.

5 MEANING OF “ANTICIPATED NUMBER OF PERSONS ATTENDING”

- 5.1 The appropriate fee for an occasional liquor licence under item 4 of Schedule 3 to the Principal Regulations depends upon the “anticipated number of persons attending.” As to what is meant by this expression, item 4 to the schedule directs applicants to regulation 26(4) of the Principal Regulations. This states:

“(4) in calculating the fee for an application for an occasional licence for an occasion or event lasting more than one day, the anticipated number of persons attending is the sum of the number of persons expected to attend on each day, calculated using the information provided in the application form.”

- 5.2 The concern of the Committee was that applicants for an occasional licence may pay a higher fee than was required because the estimate provided by them related to the number of persons coming through the door or gate of the premises at which the function was held.
- 5.3 The Executive Director clarified the meaning of “anticipated number of persons attending” in his evidence before the Committee as follows:

“**Mr Sargeant** -... under the Liquor Licensing Act, the number of people attending means the number of people attending a licensed area. We have had some feedback to the effect that although we, as bureaucrats, understand what attending means, we might need to make an amendment to make clear that it is not those who will attend a function through the gate; it is those who will

attend in the licensed area. Therefore, if a licensed function were held in this room, the relevant figure is the number of people attending in this room.”⁵

- 5.4 The Executive Director explained to the Committee how the Office of Racing, Gaming and Liquor calculates the persons attending the licensed area of a function for the purpose of setting the appropriate fee in the following exchange with Committee Member Hon Ray Halligan MLC:

“**Hon RAY HALLIGAN**—You may have already answered this, and I apologise in advance if you have: You mentioned that with an occasional licence, the area, not the number of people, is licensed. When you talk of the number of people at a function, is it the number of people who are there at one time or the number who are likely to go through that licensed area over a period?

Mr Sargeant—If a room has a capacity of 30 people, even on a rolling basis we will base it on 30 people in that area. If a room has a capacity of 100 but only 50 people are expected to arrive, we would base it on 50 people. We would not conduct a head count every hour. We are saying that even if we sent one person in there to stay for the full eight or six hours or for however long it is licensed, that is the number we would agree on with the group. The instruction that I have given to staff is that we are not to try to maximise fees in the sense that we are providing a service to ensure in the majority of cases that people are not making a substantial amount of money and we must be flexible with a bit of give and take. People in general make a genuine estimate of their numbers. However, there are occasions when you must have the law behind you to be able to throw the book at people when they are not playing the game. Most of legislation that I deal with is social legislation. Unless people go to extremes, there is not much point in prosecuting. We say, "You will not get a licence again if you burn your bridges behind you." That is the way we should approach it, rather than throwing the book at people.”⁶

- 5.5 In light of the Committee’s concerns, the Executive Director indicated in his evidence that an amendment could be made to the Principal Regulations to make it clear that the anticipated number of persons attending means only the anticipated number of persons attending the licensed area of a function.

⁵ Corrected Transcript of Evidence taken at Perth, Monday, March 27 2000 at p. 8.

⁶ Ibid, pp. 12 –13.

6 JUSTIFICATION FOR THE INCREASES IN FEES FOR OCCASIONAL LIQUOR LICENCES

- 6.1 The general approach by the courts is that without clear legislative authority, a body exercising delegated legislative authority has no right to impose a charge for licences or other services.⁷ Government departments or agencies can impose fees for licences or other services without an express power if this arises from necessary implication.⁸ The Committee acknowledges that the Office of Racing, Gaming and Liquor has an express power to impose fees for liquor licences pursuant to the authority contained in section 175 of the *Liquor Licensing Act 1988*.
- 6.2 Section 64 of the *Constitution Act 1889* requires that “All taxes, imposts, rates, and duties, and all territorial, casual, and other revenues of the Crown (including royalties) from whatever source arising within the Colony, over which the Legislature has power of appropriation, shall form one Consolidated Fund ... ”
- 6.3 However, section 23A of the *Financial Administration and Audit Act 1985* provides that “the Treasurer may make a determination providing for prescribed revenue received by a department or statutory authority to be retained for services under the control of the department or statutory authority.” In those circumstances the department or statutory authority may retain funds for its own use and is not required to transfer these funds to the Consolidated Fund.⁹
- 6.4 The Office of Racing, Gaming and Liquor is a net appropriation agency for the purpose of the *Financial Administration and Audit Act 1985* and is therefore permitted to retain prescribed revenue. However, the evidence of the Executive Director, is that the revenue retained by the Office of Racing, Gaming and Liquor from liquor licence fees does not cover the costs of providing the licensing and related services. The Office of Racing, Gaming and Liquor is therefore not self-funding and requires an appropriation from the Consolidated Revenue Fund to meet the operating costs of the liquor licensing division.
- 6.5 The fee increases put in place by the Amendment Regulations arose from qualifications attached by the Department of Treasury to its approval of a request by the Office of Racing, Gaming and Liquor to retain revenue raised from liquor licensing fees. One of the qualifications set by Treasury included a requirement that the Office undertake a comprehensive review of fees and charges for the 2000/2001

⁷ See *Attorney General v Wilts United Dairies* (1922) 91 LJKB 897 and *Commonwealth v Colonial Combing, Spinning and Weaving Co Ltd* (1922) 31 CLR 421.

⁸ See *Wilson Parking (1962) Pty Ltd v City of Perth* [1983] WAR 12.

⁹ Pursuant to section 4, the *Financial Administration and Audit Act 1985*, takes precedence over all other legislation whether enacted before or after the *Financial Administration and Audit Act 1985* unless the other Act expressly states otherwise.

budget process. Treasury's requirements are set out in its letter to the Executive Director dated March 24 1999, a copy of which is attached as "Annexure B".

- 6.6 The Executive Director justified the increase in fees on the basis of redressing the imbalance between the amount of fees raised by licence fees and the costs of running the liquor licensing division. He explained the situation this way:

"Mr Sargeant -Under the Financial Administration and Audit Act, and as the accountable officer, I have responsibility to review annually the fees and charges of my department. In addition to that, Treasury requested that we undertake a comprehensive review of our fees and charges as a result of moving to the net fee appropriation system. Treasury identified that it costs approximately \$2.2 million to run the liquor licensing division, and we were collecting fees in the vicinity of about \$1 million, so there was shortfall of \$1.2 million. Therefore, Treasury was looking at a review to try to narrow that discrepancy. We looked at a range of fees and charges that we apply. Included in that range were the occasional licences that we administer. In looking at that area, we undertook a review of our costs. We estimated that it costs \$25 as a minimum to process a straightforward application for an occasional licence. It must be borne in mind that our base grade officer is a level 1 and when those officers go through to the top of the range, they can earn up to about \$32,000. It has now probably gone up to about \$33,000 as a result of the new workplace agreement. If Treasury's recommended on costs are added to that, we are looking at about a \$70,000 cost per year for an officer to be stationed and operate within the office."¹⁰

- 6.7 Treasury's "on costs" include annual leave loading, annual leave, long service leave, workers compensation, superannuation, payroll tax (when applicable), fringe benefits tax, operational expenses, accommodation and corporate support.¹¹
- 6.8 In relation to calculating the fees for an occasional licence under item 4 of Schedule 3, these fees were arrived at by attributing a fee of 10 cents per person over the base fee of \$25 for up to 100 persons attending the licensed premises. The Executive Director explained the calculation as follows:

"Mr Sargeant ...Fundamentally, we said that as a minimum we believe it costs approximately \$25 to process an application. Some of the large functions, particularly those with over 10,000 people attending — about three or four of those occur a year — are very extensive operations. They are people

¹⁰ Corrected Transcript of Evidence taken at Perth, Monday, March 27 2000 at p. 7.

¹¹ See Table 1 of Costing Guidelines in "A Users Guide to the Consolidated Fund Budget Process", Department of Treasury, July 1995, p38. This publication has been superseded by "Costing and Pricing Government Outputs", Department of Treasury, December 1998.

who actually run them not for profit; they are people who have an enterprise that makes substantial amounts of money out of them. However, these functions require an extensive amount of work on our part, liaising with the police and also the local authority. The fee of \$15 that was charged came nowhere near meeting the costs incurred. There might be some sort of subsidisation between one extreme and the \$25 mark. However, we went through an exercise and, commensurate with the amount of work involved, we devised a reasonable fee structure, and these should be more applicable to the higher-level function fees. In addition, we changed the focus from a number of days to the number of people attending, which is the real criterion. A function that has in excess of 200 people attending is a substantial function, and a degree of liaison is required. One hundred is a fairly straightforward number, and it is more of a routine process to approve those occasional licences. We went through a structure and set \$25 as the minimum. Being accountants, my minister at the time and I worked out a ratio for the groups. For the group comprising 100 people up to 500 people, we increased the maximum fee to \$65. If there were 400 people at 10c per person, it came into the fee range of \$65. In the group of 500 to 1,000 people, the amount for 500 people at approximately 10c per person would be an additional \$50. For 5,000 to 10,000 people, it is another 10c per person. Therefore, on a per-person basis, it works out at a very small amount.”¹²

- 6.9 The explanatory memorandum provided by the Office of Racing, Gaming and Liquor did not include the basis upon which the new fees were calculated. The Committee was concerned that the significant increases in occasional licence fees may amount to taxes rather than being reasonable fees for the services provided.
- 6.10 A compulsory payment, which is described as a fee for a licence or service, may nevertheless be an unauthorised tax. For example, at common law, a service fee may be a tax if there is no sufficient relationship between the liability to pay the charge and the provision of the relevant service.¹³ Conversely, the fact that a charge bears a close relationship with the cost or value of the grant of a valuable right has been seen as indicating that it is not a tax.¹⁴ A licence fee may be a tax if it is not possible to discern a relationship between the amount paid and the value of the privilege

¹² Ibid, at p. 8.

¹³ See *Air Caledonie International v The Commonwealth* (1988) 165 CLR 462 and *Northern Suburbs General Cemetery Reserve Trust v The Commonwealth* (1993) 176 CLR 555.

¹⁴ *Harper v Victoria* (1966) 114 CLR 361 at 377 per McTiernan J. See also at 378 per Taylor J, 379 per Menzies J, 382 per Owen J.

conferred by the licence.¹⁵ The amount of the fee for a licence or service may be so large that it could not reasonably be regarded as a fee.¹⁶

- 6.11 The Committee notes the difficulty of distinguishing a genuine fee for service or licence from surreptitious revenue raising not authorised by law. However, the legal principles indicate that at common law, there must be some relationship between the amount of the fee imposed and the cost to the department or agency of providing the licence or the value to the licensee of the grant. The Committee requested the Executive Director to provide it with details of the costs taken into account and the means by which the fees for occasional licences were calculated. Attached as “Annexure C” is the Executive Director’s letter to the Committee dated April 4 2000.
- 6.12 “Annexure C” sets out the method by which the new fees have been calculated. The Executive Director indicated that the fees comprise both direct and indirect costs which he has allocated to the total cost of delivering the liquor licensing service to the public.
- 6.13 Direct costs are easily quantifiable and will include the wages of staff processing the applications together with the “on costs” recommended by Treasury. Based on the \$70,000 figure for direct costs estimated by the Executive Director and assuming a 40 hour week, the minimum time taken by a Grade 1 officer to process a straight forward application for an occasional liquor licence for less than 100 persons would be approximately 40 minutes. This of course assumes an application has been made in person and that only direct costs are taken into account. The Committee acknowledges that additional time would usually be taken to process an application made by post.
- 6.14 Indirect costs are also included in the licence fee calculation. In his letter of April 4 2000, the Executive Director explained these costs as follows:

“Secondly and more importantly, there are indirect costs incurred in the development of policy, planning and liaison activities in relation to managing the consumption of liquor in the community generally. This component is difficult to assess, suffice to say that liquor consumption involving large

¹⁵ *Harper v Minister for Sea Fisheries* (1989) 168 CLR 314 at 336 per Dawson, Toohey and McHugh JJ.

¹⁶ *Hematite Petroleum Pty Ltd v Victoria* (1983) 151 CLR 599 at 647. See also *General Practitioners Society v The Commonwealth* (1980) 145 CLR 532 at 562 per Gibbs J (Barwick CJ, Stephen, Mason, Murphy and Wilson JJ agreeing). This possibility was also implicitly accepted by Aickin J (at 568-571). See also *Logan Downs Pty Ltd v Queensland* (1977) 137CLR 59 at 63 per Gibbs J, where in holding the impost there in question to be a tax, his Honour referred to the fact that the impost was not payable in respect of services rendered to the person required to pay the impost, and bore no necessary relation to the expenditure incurred in providing the services.

numbers of people presents the highest potential for alcohol abuse and community conflict and, therefore attracts the most attention in terms of general policy development and planning. Certainly, this area requires significant input on an ongoing basis by the Executive Director (S3) and the Director Liquor Licensing (L9).

These costs need to be recovered and, in the absence of any qualitative assessment method, a fee basis of 10 cents per person attending the licensed area was determined as being the most practical and accurate way of allocating the cost burden.”¹⁷

- 6.15 Set out below is a table based upon direct costs incurred by the Office of Racing, Gaming and Liquor for the various categories of occasional licence. The table shows the percentage of the licence fee representing minimum direct costs incurred for in-person applications. The difference between the actual direct costs of issuing the licence to in-person applicants and the licence fee will represent indirect costs.

No. persons attending licensed area	Minimum direct cost - In person	Minimum direct cost - By post	Licence fee	Percentage of licence fee representing minimum direct costs for in person applications
Less than 100	\$23	\$36	\$25	92%
101 to 500	\$35	\$50	\$65	54%
501 to 1000	\$75	\$100	\$115	65%
1001 to 5000	\$150	\$200	\$500	30%
5001 to 10000	\$250	\$350	\$1000	25%
10000 upwards (based on 20000 persons)	\$500	\$750	\$2000	25%

- 6.16 The Committee accepts that there appears to be a rational basis for calculating the fees for occasional licences. The scale of fees takes into account the fact that the

¹⁷ Letter from Mr Barry Sargeant, Executive Director, Office of Racing, Gaming and Liquor to the Committee dated April 4 2000, p. 2.

occasional licences for larger events will tend to involve the allocation of additional time and greater resources and require input from more senior staff up to the level of the Executive Director. The level of licence fees for larger functions are consistent with the Executive Director's evidence that these functions attract the most attention in terms of general policy development and planning, and therefore attract a greater percentage of indirect costs.

- 6.17 The Committee notes that there appears to be a form of cost averaging or cost spreading in the scale of fees. The fee of \$25 for an occasional licence for less than 100 persons is set below the minimum direct cost for assessing an application by post and very little if any indirect costs are included in this fee. The remaining fees are set to recover all minimum direct costs as well as indirect cost whether the application is made in person or by post. Those persons applying for a licence for the larger functions also bear a more significant proportion of the indirect costs in the development of policy, planning and liaison activities and in relation to managing the consumption of liquor in the community generally. This appears to take into account that applicants for licences for larger events will tend to run them for the purpose of commercial gain rather than for charitable or fund-raising purposes. The organisers of these events would have a greater capacity to either absorb these costs or pass them onto patrons in the form of higher ticket prices.
- 6.18 The method of calculating the increase in occasional licence fees is imprecise given that the Office of Racing, Gaming and Liquor has no means by which indirect costs can be accurately apportioned between the fees for occasional liquor licences and the other licences under the Principal Regulations. However, the Committee is satisfied, on the evidence available to it, that the Office of Racing, Gaming and Liquor is not raising revenue in the sense that its receipts from licensing exceed its total costs of providing the licensing service. However, the fact that total revenue raised from fees does not exceed total costs is not determinative of whether a licence fee will amount to taxation.

7 DO THE INCREASED FEES FOR OCCASIONAL LIQUOR LICENCES AMOUNT TO TAXATION?

- 7.1 The starting point at common law when considering whether a fee for service amounts to taxation is the statement by Latham CJ in *Matthews v Chicory Marketing Board (Vict.)* (1938) 60 CLR 263 (at 276). A tax is "... a compulsory exaction of money by a public authority for public purposes, enforceable by law, and ... not a payment for services rendered."
- 7.2 An impost, described as a fee for service, may nevertheless be an unauthorised tax in certain circumstances. In *Air Caledonie International v The Commonwealth* (1988)

165 CLR 462, the High Court held that a fee payable by international airline passengers for the “service” of immigration clearance was a tax when paid by returning Australian citizens. The court found that for an impost to be classified as a “fee for service”, it is not enough to say that a person paying it is deriving benefits in return from the government or other body receiving the fee, in the sense of the totality of benefits and services which he or she receives from governmental services. In this sense all taxes exacted by a national government and paid into national revenue can be described as “fees for services”. That the fee is paid for public services in this general impersonal sense is not enough. What is required is “a fee or charge exacted for particular identified services provided or rendered individually to, or at the request or direction of, the particular person required to make the payment.”¹⁸

- 7.3 The requirement that the benefit to the payee must be direct and proportionate to the charge paid was endorsed by the High court in *Northern Suburbs General Cemetery Reserve Trust v Commonwealth* (1993) 176 CLR 555. In this case the High Court determined that a compulsory charge, payable by those employers who did not expend all of their minimum training levy in any one year, equivalent to that shortfall was a tax. In reaching its conclusion, the lack of a direct benefit to the payee from the payment of the charge into the Training Guarantee was determinative. Dawson J said at p. 588:

“The principal purpose of the Training Guarantee Fund, into which the amount of the training guarantee charge is paid, is to make payments under training guarantee agreements with the States and Territories. The amounts paid are then to be used by the States and Territories in relation to eligible training programs. The employees of an individual employer upon whom the charge is levied might or might not benefit from a training program financed by a State or Territory. If a training program may be characterized as a service it is not a particular service rendered to a particular employer by reference to the charge levied upon him. A particular employer may derive no more benefit from payments made under training guarantee agreements than is derived by employers or the community in general from having a better trained workforce upon which to draw. The training guarantee charge is not a charge “exacted for particular identified services provided or rendered individually to, at the request or direction of” the employer required to make the payment. It cannot, therefore, be said to be a fee for services or akin to a fee for services in any sense which would prevent it from being a tax.”

- 7.4 The above cases are helpful in determining whether a charge described as a licence fee is a tax. The fee for issuing a licence can be seen as a fee for the licensing service.

¹⁸ *Air Caledonie International v The Commonwealth* (1988) 165 CLR 462 at pp. 469-470.

The High Court cases of *Harper v Victoria* (1966) 114 CLR 361 and *General Practitioners Society in Australia v The Commonwealth* (1980) 145 CLR 532 indicate that a licence fee will not be a tax where it merely covers the actual cost of administrative services rendered to the licence holder in issuing the licence. This is notwithstanding the fact that the exaction is compulsory, in that the licence is one that must necessarily be obtained.¹⁹

- 7.5 The Committee notes that the indirect costs component of the increased fees is, according to the Executive Director, for the “... development of policy, planning and liaison activities in relation to managing the consumption of liquor in the community generally.” To this extent, the indirect cost portion of the occasional licence fee appears to go beyond the direct administrative cost of issuing the licence to the particular applicant. A licence fee that goes to defraying the cost of carrying out the purposes of the Act generally rather than for particular services has been found to be a tax at common law.²⁰ The requirement that the benefit to the payee must be direct and proportionate to the charge paid will not be satisfied in these circumstances.
- 7.6 Whether or not the lack of a discernible relationship between the manner in which the fee is calculated and the value to the licensee of, or cost to the licensing authority of providing the service renders a fee a tax has recently been questioned by the High Court. In *Airservices Australia v Canadian Airlines International Ltd* [1999] HCA 62 (2 December 1999) the full court determined that landing and other service charges payable by Compass and other airlines were not taxes. This was despite the fact that Compass paid fees that in part funded services it did not use. This was because the fees were levied at a rate calculated to defray the cost of all services provided to all airport users by the Civil Aviation Authority. Compass and other airlines argued that the fees were taxes because there was no relevant relationship between the charges and services provided to those individual users. In addition, the use of Ramsay Pricing meant that some users paid more for the same services than other users.
- 7.7 The problem for the court was summarised in the joint judgement of Chief Justice Gleeson and Justice Kirby who said:

“The critical matter is said to be the lack of relationship between the manner in which the charges were calculated and the value to Compass of, or the cost to the CAA of providing to Compass, the particular services and facilities which it used. The question is not whether this makes the charges unfair; the question is whether it makes them taxes. The answer to the question has wide implications for instrumentalities of government operating in an environment

¹⁹ *General Practitioners Society in Australia v The Commonwealth* (1980) 145 CLR 532 per Gibbs J at 562.

²⁰ See *Swift Australia (Pty Ltd) v Boyd Parkinson* (1962) 108 CLR 189 at pp. 200-201.

in which the users of services and facilities are expected to bear the cost of providing them, even where such users have no practical choice but to use the services and facilities, and where some of the "services" are in the nature of public regulation and control. Do charges bear the legal character of taxation because some individual users or consumers pay more than the cost of the particular services which they use? In Australia, postal services, transportation services, educational services, and health services, amongst others, and many facilities, are provided by governments, or government instrumentalities, in circumstances where charges are imposed which take account of such factors as price sensitivity or capacity to pay, or which seek to equalize costs between, for example, rural and urban consumers, or which in some other way exhibit characteristics similar to those of the charges presently in question. It is not to the point that such pricing of services may have an economic effect, equivalent, or similar, to taxation. What is presently in issue is whether what is involved is taxation..."

7.8 Gleeson CJ and Kirby J concluded that the fees were not taxes because:

1. the charges were not imposed to raise revenue;
2. the charges were undoubtedly charges for the provision of services and facilities;
3. the charges were imposed to recover the cost of providing such services and facilities across the entire range of users;
4. the charges for categories of services were reasonably related to the expenses incurred in relation to the matters to which the charges related;
5. the services and facilities were, of their nature, part of an activity which must be highly integrated in order to be effective; and
6. there was a rational basis for such discrimination between users as existed.²¹

7.9 The Committee's concerns regarding the possible taxing component of the increased fees for occasional licences were communicated to the Executive Director by letter dated May 2 2000, a copy of which is attached as "Annexure D". The Executive Director's reply to the Committee is attached to this report as "Annexure E".

7.10 The Executive Director advised that the fees raised from liquor licences raise approximately \$1 million of the \$2.2 million budgeted cost of the liquor licensing

²¹ *Airservices Australia v Canadian Airlines International Ltd* [1999] HCA 62 (2 December 1999) per Gleeson CJ and Kirby J at paragraph 95. This latest pronouncement by the High Court on the tax/fee distinction represents a shift in the Court's reasoning. The Court appears to reject a requirement that the fee for a service or licence to individual users be direct and proportionate to the cost of providing the service or licence or the value to the licensee of the benefit conferred by the licence.

programs. Occasional licence fees raised by the Office (not including revenue raised by applications processed by clerks of court in country areas) are estimated at \$120,000. This is only 6% of the total cost of the liquor licensing programs. The Executive Director's reply makes it clear that the Office of Racing, Gaming and Liquor is not involved in revenue raising beyond the recovery of its costs.

- 7.11 The Committee has concluded that notwithstanding the uncertainty surrounding the common law position raised by the decision in *Airservices Australia v Canadian Airlines International Ltd*²², the occasional licence fees appear not to be taxes. This is put beyond doubt by reason of the operation of section 45A of the *Interpretation Act 1984*.

8 SECTION 45A INTERPRETATION ACT 1984

- 8.1 The Committee's previous observations regarding fees raised by a government department for licences being unauthorised taxes has been the subject of a report to the Parliament.²³ In its Twenty-Fifth Report, the Committee recommended disallowance of regulations dealing with increases to motor vehicle licence fees on the basis that the increases in these fees were taxes not authorised by the *Road Traffic Act 1974*. As a result of the Committee's views, the Parliament amended the *Interpretation Act 1984* in 1997 by inserting section 45A. This section provides:

"Fees for licences

45A. (1) A power conferred by a written law to prescribe or impose a fee for a licence includes power to prescribe or impose a fee that will allow recovery of expenditure that is relevant to the scheme or system under which the licence is issued.

(2) Expenditure is not relevant for the purposes of subsection (1) unless it has been or is to be incurred --

(a) in the establishment or administration of the scheme or system under which the licence is issued; or

(b) in respect of matters to which the licence relates.

²² Unreported HCA 62 (2 December 1999).

²³ Joint Standing Committee on Delegated Legislation, Twenty-Fifth Report: *Road Traffic (Drivers' Licences) Amendment Regulations (No. 2) 1997, Road Traffic (Licensing) Amendment Regulations (No. 2) 1997*. Tabled in the Legislative Council on August 25 1997.

(3) The reference in subsection (1) to a fee for a licence includes reference to a fee for, or in relation to, the issue of a licence and a fee payable on an application for the issue of a licence.

(4) In this section --

"fee" includes charge;

"issue" includes grant, give or renew;

"licence" includes registration, right, permit, authority, approval or exemption."

- 8.2 The introduction of this section broadens considerably the scope for government departments and agencies to charge fees for licences, which at common law may be taxes which are not authorised by the enabling legislation. Section 45A contains no requirement that there be a relationship between either the value or benefit the licensee receives for the payment or what the cost of issuing the specific licence or type of licence would be.
- 8.3 For example, under section 45A, a component of a licence fee could incorporate the capital cost of new computer equipment, yet to be purchased, for the processing of licence applications. In those circumstances the licensee would derive no direct or immediate benefit from the payment of that part of the fee relating to raising this revenue.
- 8.4 Administrative costs not directly related to the issue of a specific licence, but related to the licensing scheme or system generally could be recovered over the whole range of licensees. The cost of installing a credit card payment system could be raised through licence fees borne by all licensees whether or not the credit card payment system is in place or whether some licensees do not intend to use the system.
- 8.5 Section 45A would appear to allow cost averaging or cost spreading, by permitting one group of licensees to subsidise another group using a system of Ramsay Pricing.²⁴ The Amendment also allows the raising of revenue for capital expenditure where this component of the licensing fee is related to the *establishment* of the administrative system under which the licence is issued. This is a matter more traditionally dealt with by an appropriation from consolidated revenue.

²⁴ Ramsay Pricing is a system where prices to different users are set in inverse proportion to the sensitivity of their usage to price. This system is widely regarded as the best practice for pricing monopoly services such as a public sector monopoly providing services on a commercial basis. The system encourages efficiency in that if those who are price sensitive are forced out of the market, the cost to others will necessarily increase.

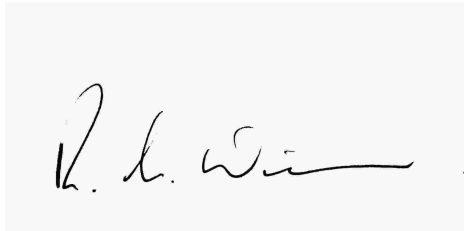
- 8.6 The wording of section 45A is broad enough to include policy development, planning and liaison activities in relation to the licensing regime established under the *Liquor Licensing Act 1988*. These costs are likely to be seen to be matters *relevant* to the administration of the scheme or system under which the licence is issued. This would include liaison with the clerks of country courts who issue occasional licences under the power delegated by the Executive Director.
- 8.7 The statutory scheme of the *Liquor Licensing Act 1988* supports this conclusion. Under section 33 of the Act, the Executive Director must consider issues relevant to the public interest when determining whether to grant or refuse an application. The licensing authority in issuing a licence under section 59 must take into account the objects of the Act set out in section 5 which are:
- “(1) The primary objects of this Act are -
- (a) to regulate the sale, supply and consumption of liquor; and
- (b) to minimize harm or ill-health caused to people, or any group of people, due to the use of liquor.
- (2) In carrying out its functions under this Act, the licensing authority shall have regard to the primary objects of this Act and also to the following objects-
- (a) to regulate, and to contribute to the proper development of, the liquor, hospitality and related industries in the State;
- (b) to cater for the requirements of the tourism industry;
- (c) to facilitate the use and development of licensed facilities reflecting the diversity of consumer demand;
- (d) to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
- (e) to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.”
- 8.8 The long title of the Act states that it is an Act “to regulate the sale, supply and consumption of liquor, use of premises on which liquor is sold and the services and facilities provided in conjunction with or ensuring the sale of liquor, to minimise harm or ill health caused to people due to the use of liquor.”

- 8.9 The indirect costs incorporated into occasional liquor licence fees for the “... development of policy, planning and liaison activities in relation to managing the consumption of liquor in the community generally”, are likely to be interpreted under section 45A as part of the administration of the statutory scheme under which the licence is issued. At common law, the same indirect costs may be characterised as taxes.

9 CONCLUSION

- 9.1 Liquor licence fees for occasional licences have been raised from \$15 across the board to between \$25 and \$2000. This represents an increase of between a 66% and 13233%.
- 9.2 The Committee acknowledges that the previous \$15 fee could not be expected to cover the costs to the Office of Racing Gaming and Liquor in processing and issuing occasional licences. The Committee accepts that fee increases could be justified on cost recovery principles.
- 9.3 The range of increases is based on an additional fee of 10 cents per person attending the licensed area above the base figure of 100 persons. This has resulted in fee increases which appear to reflect the increased time and resources allocated by the Office of Racing, Gaming and Liquor to licensed functions involving larger numbers of persons.
- 9.4 Based on the costings provided by the Office of Racing, Gaming and Liquor, the Committee is satisfied that the Office of Racing, Gaming and Liquor is not raising more fees from liquor licensing than its actual costs of operating the liquor licensing division.
- 9.5 The Committee is unable to establish with any certainty what indirect costs are incorporated into each of the occasional liquor licence fee increases. However, the evidence of the Executive Director is that the least expensive occasional licences, those for up to 100 persons, do not incorporate any indirect costs component.
- 9.6 The Executive Director has informed the Committee that the Minister for Racing and Gaming has approved the drafting of an amendment to Schedule 3 of the Principal Regulations to extend the benefit of the lowest occasional licence fee of \$25 to those functions at which up to 250 persons attend the licensed premises. The Committee welcomes this amendment. It will ensure that the vast majority of occasional licence applications made by non-profit sporting and charitable organisations will only be subject to a \$10 increase. The Minister has also agreed to amend regulation 26(4) of the Principal Regulations to clarify the meaning of “number of persons attending”.

- 9.7 Despite the significant increases in occasional liquor licence fees, the Committee is of the view that by reason of section 45A of the *Interpretation Act 1984*, none of the increased fees appear to be taxes. However, the Committee draws the Parliaments attention to the fact that section 45A would appear to authorise government departments and agencies to raise fees and charges which may otherwise bear the legal character of taxes at common law.

A handwritten signature in black ink, appearing to read 'B. Wiese', on a light grey rectangular background.

Hon Bob Wiese MLA

Chairman

May 24 2000

ANNEXURE A

Liquor Licensing Act 1988

**Liquor Licensing Amendment Regulations
(No. 3) 1999**

Made by the Governor in Executive Council.

1. Citation

These regulations may be cited as the *Liquor Licensing Amendment Regulations (No. 3) 1999*.

2. Commencement

These regulations come into operation on 1 January 2000.

3. The regulations amended

The amendments in these regulations are to the *Liquor Licensing Regulations 1989**.

[* Reprinted as at 8 September 1997

For amendments to 22 November 1999 see 1998 Index to Legislation of Western Australia, Table 4, pp. 188-9, and Gazettes 30 April and 31 August 1999.]

4. Regulation 26 amended

After regulation 26(3) the following subregulation is inserted —

“

- (4) In calculating the fee for an application for an occasional licence for an occasion or event lasting more than one day, the anticipated number of persons attending is the sum of the number of persons expected to attend on each day, calculated using the information provided in the application form.

”

Liquor Licensing Amendment Regulations (No. 3) 1999

r. 5

5. Schedule 3 amended

Schedule 3 is amended as follows:

- (a) by deleting items 1 and 2 and inserting instead the following items —

“

- | | | |
|----|---|--------|
| 1. | Application for the grant or removal of a Category A licence | 750.00 |
| 2 | Application for the grant or removal of a Category B (other than an occasional licence) licence | 400.00 |
| 3 | Application for the transfer of a licence | 400.00 |

”;

- (b) by deleting items 4, 5 and 6 and inserting instead the following items —

“

- | | | |
|-----|--|----------|
| 4 | Application for an occasional licence where the anticipated number of persons attending* is — | |
| (a) | up to 100 | 25.00 |
| (b) | between 101 and 500 | 65.00 |
| (c) | between 501 and 1 000 | 115.00 |
| (d) | between 1 001 and 5 000 | 500.00 |
| (e) | between 5 001 and 10 000 | 1 000.00 |
| (f) | over 10 000 | 2 000.00 |
| | [*See regulation 26(4) as to the anticipated number of persons attending] | |
| 5. | Application for extended trading permit for a period of over 21 days — | |
| (a) | issued for a purpose referred to in section 60(4)(ca) of the Act | 300.00 |
| (b) | issued for a purpose referred to in section 60(4)(h) of the Act | 200.00 |
| (c) | issued for any other purpose | 400.00 |
| 6. | Application for extended trading permit for a period of 21 days or less (for each day, up to a maximum of \$500) | 50.00 |

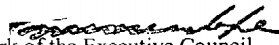
”;

Liquor Licensing Amendment Regulations (No. 3) 1999

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- (c) in item 10 by deleting "60.00" and inserting instead —
" 150.00 ".

By Command of the Governor,

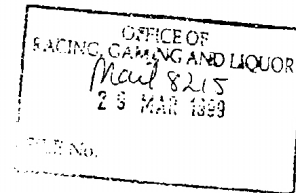

Clerk of the Executive Council.

14 DEC 1999

ANNEXURE B



TREASURY



In reply please quote : T.25815/04
Direct enquiries to : Geoff Lobb
Telephone : 9222 9243

Executive Director
Office of Racing, Gaming and Liquor
P.O. Box 6119
East Perth WA 6892

Noted.

BS
9/4/99

PWA
17.4.99.

NET APPROPRIATION OF LIQUOR FEES

I refer to your letter of 25 November 1998 regarding the retention of revenue for Liquor fees and subsequent discussions at officer level between your office and Treasury.

Following an examination of the areas sought for revenue retention as part of the 1999-2000 budget process Treasury has no objection to the proposal and notes, that in some instances, fees have remained at the same level for some time. ✓

Accordingly, the net appropriation of this revenue is supported but with the following qualifications attached:

- that a comprehensive review of fees and charges be undertaken for the 2000/01 budget process, as there may be scope to narrow the gap between the cost of services and the revenue from liquor fees by increasing some of the fees, especially those based on partial cost recovery; ||
- should additional revenues flow within the next two years from any proposed increases or from increased activity, and these increases in revenue exceed 10% of liquor fees budgeted revenue in total or \$100,000, then the excess above \$100,000 will be adjusted on the compilation of forward estimates sheet for the Office; and ✓
- following the setting of appropriate rates for fees and charges, Treasury will review the arrangement for the 2001/02 year.

- 2 -

Should you require further clarification on the above issue, your office may contact Geoff Lobb (Resource Analyst) on 9222 9243.

Yours sincerely

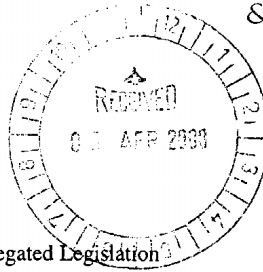

J. LOBB
UNDER TREASURER

24 March 1999

ANNEXURE C



Your Ref: A05/22/03
Our Ref:
Enquiries:



OFFICE OF RACING, GAMING & LIQUOR



87 Adelaide Terrace
East Perth, 6004
Western Australia

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Western Australia

Phone: (08) 9425 1888
Facsimile: (08) 9325 1636
Country Callers 1800 634 541
www.ogrl.wa.gov.au

Ms J Paniperis
Committee Clerk
Joint Standing Committee on Delegated Legislation
Parliament House
PERTH 6000

Dear Ms Paniperis

At a hearing before the Joint Standing Committee on Delegated Legislation, held on Monday, 27 March 2000, in relation to recent amendments to the fees for occasional liquor licences issued under the Liquor Licensing Act, I undertook to provide the Committee with details of the basis for assessing the new fees.

In this regard I indicated to members at the hearing that there are two cost components in relation to the delivery of a service to the public for occasional liquor licences.

First, there are the direct costs of processing individual licence applications. This cost component is relatively simple to assess and these details are as follows:

No. persons attending licensed area		Minimum Cost	Permit fee
less than 100	at counter -	\$23	\$25
	by post -	\$36	
101 to 500	at counter -	\$35	\$65
	by post -	\$50	
501 to 1,000	at counter -	\$75	\$115
	by post -	\$100	
1,001 to 5,000	at counter -	\$150	\$500
	by post -	\$200	
5,001 to 10,000	at counter -	\$250	\$1,000
	by post -	\$350	
10,000 upwards	at counter -	\$500	\$2,000
	by post -	\$750	



Note: At the hearing, I informed members of my intention to consider an increase in the upper threshold of persons to 200 relative to the minimum \$25 licence fee and to amend the regulation to clarify that the number of persons attending relates to the licensed area only.

Second, and more importantly, there are indirect costs incurred in the development of policy, planning and liaison activities in relation to managing the consumption of liquor in the community generally. This component is difficult to assess, suffice to say that liquor consumption involving large numbers of people presents the highest potential for alcohol abuse and community conflict and, therefore, attracts the most attention in terms of general policy development and planning. Certainly, this area requires significant input on an ongoing basis by the Executive Director (S3) and the Director Liquor Licensing (L9).

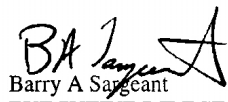
These costs need to be recovered and, in the absence of any qualitative assessment method, a fee basis of 10 cents per person attending the licensed area was determined as being the most practical and accurate way of allocating the cost burden.

The Committee also asked for information to assess the impact on regional areas. In this regard, I understand that as follows:

1. Country courts process approximately 1,500 occasional licence applications per year.
2. In relation to the number of persons attending these functions, estimates from discussions with Managing Registrars suggest that –
 - 90-95 per cent relate to functions involving less than 100 persons; and
 - applications for large functions are generally made to, or referred to my office.
3. On this basis, the additional cost imposed on regional areas as a result of the fee increase would likely be less than \$20,000; this would be less if the minimum 100 person threshold is increased to 200.

Attached is the corrected transcript for the hearing.

Yours sincerely


Barry A Sargeant
EXECUTIVE DIRECTOR

4 April 2000

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ANNEXURE D



Joint Standing Committee on Delegated Legislation

Our Ref: 3539/6
Your Ref: L45/11/03-03

Mr Barry Sargeant
Executive Director
Office of Racing & Gaming
PO Box 6119
EAST PERTH WA 6892

By Facsimile: 9325 1636

Dear Mr Sargeant

Liquor Licensing Amendment Regulations (No.3) 1999

Thank you for your letter dated April 4 2000 in relation to the *Liquor Licensing Amendment Regulations (No.3) 1999* ("Amendment Regulations").

The Joint Standing Committee on Delegated Legislation ("Committee") considered your correspondence at its meeting on Thursday, April 27 2000 and resolved to seek further information from you in relation to the following matters.

Difference in cost between counter and postal applications

Your correspondence sets out the minimum direct cost of processing individual licence applications for an occasional liquor licence. Could you please advise the means by which these direct costs have been calculated both in relation to at the counter applications and postal applications. The Committee was concerned that there appears to be a significant difference between counter and postal applications. Why are the costs for a postal application so much greater than applications made in person?

Recovery of indirect costs

The Committee noted your comments that incorporated into the licence fee for occasional licences are indirect costs "incurred in the development of policy, planning and liaison activities in relation to managing the consumption of liquor in the community generally" You acknowledge the difficulty in assessing this component of the licensing fee.

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PARLIAMENT HOUSE PERTH WA 6000 TELEPHONE +61 8 9222 7222 FACSIMILE +61 8 9222 7809
E-MAIL(GENERAL OFFICE): council@parliament.wa.gov.au

The Committee is concerned that the component of the licensing fee that accounts for these indirect costs may not be authorised under the *Liquor Licensing Act 1988* or the *Interpretation Act 1984*. This will be the case if that component of the fee accounting for indirect costs goes beyond the legitimate recovery of costs incurred or to be incurred:

(a) in the establishment or administration of the scheme or system under which the licence is issued; or

(b) in respect of matters to which the licence relates.¹

It would appear that costs incurred by the Office "in relation to managing the consumption of liquor in the community generally" do not fall within either of the above categories.

Could you please provide the Committee with a list of the policy, planning and liaison activity costs that have been accounted for in calculating the indirect costs component of the licensing fees for occasional licenses. The Committee requests a breakdown of the costs from each of these areas that contribute to the indirect costs component of occasional license fees.

In respect of each of these indirect costs, please advise to what extent these costs have been incurred or are to be incurred in the establishment or administration of the scheme or system under which the licence is issued. Please also advise to what extent each of these costs is related to the issue of the occasional licence.

I would appreciate receiving your reply by no later than **9:00am, Monday, May 22 2000** so the Committee can consider the matter at its meeting that morning.

To provide it with sufficient time to consider your response, the Committee has resolved to give notice of motion of disallowance of the Amendment Regulations. The notice will be given on Tuesday May 2 2000. The giving of such a notice should not be taken as indicating that the Committee has resolved to recommend disallowance of the Amendment Regulations at this stage.

Should you have any queries regarding the above please contact the Committee's Advisory Officer, Nigel Pratt on 9222 7406.

Yours sincerely



Hon Bob Wiese MLA
Chairman

May 2 2000

¹ See section 45A *Interpretation Act 1984*.
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ANNEXURE E



Your Ref: A05/22/03
Our Ref:
Enquiries:

OFFICE OF RACING, GAMING & LIQUOR



87 Adelaide Terrace
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Hon. Bob Wiese MLA
Chairman
Joint Standing Committee on Delegated Legislation
Parliament House
PERTH WA 6000

Dear Mr Wiese

I refer to your letter of 2 May 2000 regarding Liquor Licensing Amendment Regulations (No 3) 1999.

Difference in Costs between Counter and Postal Applications

The difference in the processing costs between counter and postal applications is due to the fact that applicants lodging applications for occasional licences at the counter can be interviewed, and an assessment regarding the venue and numbers can be explained by the applicant, additional information at the time of the application can also be provided, and where appropriate responsible server practices explained.

Applicants lodging an application for occasional licences by post means that the assessing officer has to glean an understanding of venue, numbers etc from the papers submitted, and if an explanation and/or additional information is required, contact needs to be made with the applicant, who can often be difficult to contact, and, therefore, involves additional time for follow-up before the application can be determined. The processing of postal applications can also impact on the liaison the office must make with police, owners of venues or local government (particularly for the larger functions) when all the required information cannot be gleaned from the application

Determining an application for an occasional licence in accordance with section 59 of the Liquor Licensing Act, the Director must consider whether –

- (i) the place in which the sale, supply or consumption of liquor would be authorised by the licence can be lawfully used for that purpose;
- (ii) there are sufficient facilities and expertise to enable the licence to be operated in a proper manner;
- (iii) there are adequate measures to ensure that trading is not conducted in a manner detrimental to the public interest; and
- (iv) the granting of further occasional licences would tend to establish an undesirable pattern.



The Director must also be satisfied that where the occasional licence is sought in respect of a function organised by a person other than the applicant, that the consent of the organiser to the proposed sale has been obtained, and that the consent of the occupier or of the person or authority having control of the premises where the sale, supply or consumption of liquor would take place has been obtained.

The Director also requires, as a matter of policy, that liquor sold or supplied under an occasional licence be purchased for the purpose from a supplier specified in the licence.

Justifying Recovery of Indirect Costs

The Office of Racing, Gaming and Liquor does not have a costing system in place to provide the costing information requested.

In considering this issue, it must be borne in mind that approximately 90% of applications for occasional licence permits are for functions of 100 or less persons attending, and the permit fee of \$25 was set, taking into account the estimated processing costs of counter applications of \$23 and by post of \$36. Therefore, I do not consider an element of this fee contributes to the indirect costs referred to in my letter of 4 April 2000. It should also be noted that consideration is being given to increasing the threshold for the \$25 fee from 100 to 200 persons attending a function

The fee structure for subsequent numbers of persons attending a licensed area, was essentially based on a charge of 10 cents per additional person over 100, so that the fee of \$65 for functions with 101 – 500 persons attending was arrived at as follows:

Base Fee to 100	\$25
400 @ 10 cents	\$40
Total	<u>\$65</u>

This principle was followed to arrive at the permit fee of \$1,000 for functions with persons of between 5,000 and 10,000 attending, with the view that the maximum fee that could be charged for functions with in excess of 10,000 persons attending would be \$2,000.

Accordingly, the indirect costs are attributed to the larger functions which are more likely to have the most impact on the community.

In an attempt to resolve this issue, I have approached it from a different perspective.

The 1999-2000 budgeted cost of the liquor licensing programs is \$2.2 million, and with fees of approximately \$1 million, the Consolidated Fund covers a shortfall of \$1.2 million. With the operation of the increased liquor licence fees from 1 January 2000, in a full year the occasional licence fees are expected to raise to approximately \$120,000. Accordingly it must be appreciated that the "policy planning and liaison" activities are accounted for within the \$2 million operating costs of the liquor licensing programs, and, therefore, the occasional licence fees of \$120,000 will only cover approximately 6 percent of the costs of the liquor licensing programs.

Another way of looking at the estimated occasional licence fees of \$120,000, is to compare them with the salary costs of the Level 1-3 officers who, in the main, process the 3,400 occasional licence applications the Office receives annually:

	Annual Salary plus Treasury's recommended 116% "add-on" costs
Level 1	\$71,386
Level 2	\$82,067
Level 3	\$92,392

Accordingly the \$120,000 of fees does not cover the costs of two Level 1 officers.

With respect to the occasional fees being incurred in accordance with section 45A of the Interpretation Act, I am of the opinion that the issue of occasional licences under section 59 of the Liquor Licensing Act is part of the administration of the scheme for the regulation of the supply and consumption of liquor contemplated under the Act. In this regard, the long title of the Act states that it is an Act "to regulate the sale, supply and consumption of liquor, use of premises on which liquor is sold, and the services and facilities provided in conjunction with or ensuring the sale of liquor, to minimise harm or ill health caused to people or any group of people due to the use of liquor".

In determining the applications for occasional licences, the Director of Liquor Licensing must consider all issues relevant to the public interest when determining whether to grant or refuse an application (section 33). In turn, the Director must take into account the objects of the Act (section 5) which are:

- (1) (a) to regulate the sale, supply and consumption of liquor, and
(b) to minimize harm or ill-health caused to people, or any group of people, due to the use of liquor.
- (2) In carrying out its functions under this Act, the licensing authority shall have regard to the primary objects of this Act and also to the following objects –
 - (a) to regulate, and to contribute to the proper development of, the liquor, hospitality and related industries in the State;
 - (b) to cater for the requirements of the tourism industry;
 - (c) to facilitate the use and development of licensed facilities reflecting the diversity of consumer demand;
 - (d) to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
 - (e) to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.

Should you have any queries regarding this matter, please telephone me on 9425 1819.

Yours sincerely


Barry A Sargeant
EXECUTIVE DIRECTOR

5. May 2000.

ANNEXURE F



Your Ref: 3539/6
Our Ref: A05/22/03
Enquiries:

OFFICE OF
RACING, GAMING
& LIQUOR



87 Adelaide Terrace
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www.orgl.wa.gov.au

Hon B Wiese MLA
Chairman
Joint Standing Committee on Delegated Legislation
Parliament House
PERTH 6000

FAXED

Dear Mr Wiese

Liquor Licensing Amendment Regulations (No 3) 1999

I refer to your letter of 11 May 2000 regarding the Liquor Licensing Amendment Regulations (No 3) 1999.

The Minister for Racing and Gaming has approved the drafting of an amendment to Schedule 3 of the Liquor Licensing Regulations 1989 to increase the threshold for the \$25 fee for an occasional licence for a function at which it is anticipated that up to 250 persons may attend. Accordingly, the schedule will be amended so that the \$65 fee will apply to functions where between 251 and 500 persons are expected to attend.

Regulation 26(4) and Schedule 3 will also be amended to make it clear that the expression "anticipated number of persons attending" applies to the number of persons who attend the licensed area.

Drafting instructions have been forwarded to Parliamentary Counsel to draft the amendment regulations.

Yours sincerely


Barry A Sargeant
EXECUTIVE DIRECTOR

18 May 2000

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