



## Submission on Behalf of the Western Australian Local Government Association Regarding the Review of the Liquor Licensing Act

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### 1.0 Introduction

This submission is made on behalf of the Western Australian Local Government Association (WALGA).

It was compiled with the assistance of a Reference Group in response to a review of the Liquor Licensing Authority, however many of the matters identified are relevant to the review of the Act. As such, in response to the current review, the Association is restating the issues, concerns and potential strategies identified by member Councils in 2002 and 2003 in relation to the development and operation of licensed premises.

*The following comments are a direct extract from WALGA's previous submission:-*

This submission primarily addresses the issue of the current licensing *process*, how it is affecting local government, and what could be done in both the short-term and long-term to improve the relationship between the authorities with town planning and liquor licensing responsibilities.

WALGA intends to use this submission, and further discussion between its members and the Department of Racing, Gaming and Liquor, as steps towards formulating a detailed position paper which will address the whole relationship between local government and the Department. WALGA wants to promote a more holistic approach than presently exists, which would see a better integration of the various roles of the authorities presently involved, and perhaps a closer correlation between what the community wants, and what the hospitality industry needs.

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It is stressed that this submission may not represent the views of every local authority in Western Australia, as each Council has different circumstances to deal with. However, it does reflect input from several major metropolitan and country Councils, including :

- City of Perth
- City of Fremantle
- City of Subiaco
- City of Stirling
- City of Joondalup
- Town of Victoria Park
- Town of Cottesloe
- Town of Claremont
- City of Albany

The first-mentioned seven of these local authorities came together to form a Reference Group under the guidance of the WA Local Government Association, and, together with other metropolitan and country authorities, have made specific input into this submission.

## **2.0 Liquor Licensing Authority Review Context**

### **2.1 Forward to the Review**

The Minister for Racing and Gaming is undertaking a review of the operation of the licensing authority, which is constituted by either the Liquor Licensing Court or the Director of Liquor Licensing. The review includes an assessment of the manner in which applications are determined under the Liquor Licensing Act 1988, and the relationship between the Liquor Licensing Court and the Director of Liquor Licensing.

A Discussion Paper has been prepared by the Department of Racing, Gaming and Liquor to facilitate the review and to provide an opportunity for stakeholders to make submissions in relation to the review. It will also assist Government in determining what, if any, amendments are necessary.

The Paper discusses the current process for determining applications, and considers the recommendations of the 1990 Review of the Liquor Licensing Act 1988, the 1994 Review of the Liquor Licensing Act, the 1995 (Mattingley Report) and the 1999 National Competition Policy Review of the Liquor Licensing Act 1988. It also reviews the structure of the liquor licensing authorities of a number of other jurisdictions.

### **2.2 Terms of Reference of the Review**

The terms of reference are :

- To examine the effectiveness/appropriateness of the existing process for determining applications;
- To assess the relationship between the Liquor Licensing Court and the Director of Liquor Licensing;
- To consider alternative options for the structure of the licensing authority; and
- To examine the existing appeal provisions.

## **3.0 The Role of Liquor in Society**

As a preface to this submission, the Western Australian Local Government Association acknowledges the role of liquor and liquor outlets in modern western society. Liquor and its production and consumption contribute in various ways to employment, the national economy, and the recreational and social needs of a large section of the Australian community.

WALGA and the local authorities it represents have responsibility for local land use planning and the protection and enhancement of the amenity of our developed areas, and therefore are required to ensure that liquor outlets – their location and function - contribute positively to the communities in which they are, or are proposed to be, located.

In fulfilling their obligations, local authorities are required to balance the (often competing) requirements of established communities and proposed changes to existing liquor distribution situations. Mixed use (commercial and residential) areas are becoming more common since strict segregation of land uses began to be phased out of planning philosophies. This has added to the challenges already facing local government in Western Australia.

Local authorities are required to fulfill an extremely important function in the liquor regulating process, and WALGA is therefore firmly of the view that the comments of local authorities in this review process deserve close attention by the Department of Racing, Gaming and Liquor.

## **4.0 An Overview of the Current System and How Local Authorities Are Required to Operate Within It**

#### 4.1 Licensed Premises – Inspection & Control :

Under the provisions of the *Health (Public Buildings) Regulations 2002*, licensed premises are classified as public buildings. Prior to the introduction of these amendments, hotels were only considered public buildings if they provided entertainment.

The *Health Act 1911* defines a public building as :

“ a) a building or place or part of a building or place where persons may assemble for –

- (i) civic, theatrical, social, political or religious purposes;
- (ii) educational purposes;
- (iii) entertainment, recreational or sporting purposes; and
- (iv) business purposes; and

b) any building, structure, tent, gallery, enclosure, platform or other place or any part of a building, structure, tent, gallery, enclosure, platform or other place in or on which numbers of persons are usually or occasionally assembled, but does not include a hospital.”

Due to the broader interpretation placed on the definition of “public building” many buildings previously considered not to fall within this category of building such as “licensed premises” without entertainment and restaurants are now included.

#### 4.2 Local Authority Responsibilities :

Section 156 (3) of the *Liquor Licensing Act 1988* states that :

“A local government is required to afford the licensing authority such assistance, by way of the examination of, and reporting on, licensed premises, as the licensing authority may reasonably require.”

In general terms, most local authorities allocate their responsibilities internally in the following manner :

Planning Services are responsible for ensuring that the premises are used in accordance with their approved use, and that the conditions attached as part of the approval process are being adhered to. Whilst no formal inspection may always take place, information regarding use is generally conveyed via the Health or Buildings Sections of the LA as a result of observations during routine inspections.

Health Services (Environmental Health) Officers (EHOs) under the provisions of the *Health Act* conduct routine inspections of all premises where food is manufactured and/or sold. This inspection regime includes licensed restaurants and hotels. These officers also carry out inspections of all public buildings to ensure that the provisions of the *Health (Public Buildings) Regulations 1992*, and *Health (Public Buildings) Amendment Regulations 2002*, are adhered to with regard to :

- Maximum accommodation numbers;
- Provision and maintenance of exits; and
- Emergency evacuation plans.

In addition to the above, these EHOs complete noise assessments following complaints about noisy premises, particularly loud music.

Building Services carries out inspections to ensure compliance with the *Building Code of Australia*.

#### 4.3 Liquor Licence Applications – LA Involvement in the Process :

The following chart explains the process in applying for a Category 'A' Licence (hotel, tavern, cabaret/nightclub) :

- > Application lodged with Office of Racing, Gaming & Liquor.
  - > Applicant posts notice of intention of application on the proposed premises advising of proposed use and giving 28 days notice to lodge an objection/appeal. Notice of intent also advertised in the local newspaper *The West Australian*.
    - > Application for a Section 39 Certificate submitted to the Local Authority Health Services section, and Application for a Section 40 Certificate lodged with the Local Authority Planning Services section.
      - > Licensing Court considers all objections from 28 day advertising period, and comments from Local Authority. Section 39 and 40 Certificates to be produced. Hearing should not proceed without Section 39 & 40 Certificates being produced.
        - > Pending outcome of hearing, the application is either dismissed or approved.

The process from time of initial application to a decision being handed down by the Licensing Court usually takes a minimum of three months, and longer if there are objections received to the granting of the Liquor Licence.

#### 4.4 Liquor Licensing Act 1988 :

LAs are potentially able to influence liquor licensing decisions through various provisions of the *Liquor Licensing Act*, which provides the power for LAs 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 processes which allow for objections, interventions or complaints.

#### 4.5 Town Planning Issues :

Town Planning Schemes can help a community control and manage the type, number and trading hours of licensed premises through zoning, and the setting of standards and ordinances. Liquor outlets constitute a significant element of commercial enterprises in many communities. A town planning scheme should be framed using potential liquor-related problems and the protection of community amenity as basic criteria for allocating appropriate land uses.

However, a town planning scheme can only be fairly general in its land use category descriptions, and cannot be highly specific about the differences between the various liquor outlet categories. This is a situation that many LAs would like to see change, but this would require the support of the WA Planning Commission, and changes being made to the Model Scheme Text provisions.

A town planning scheme should seek to balance the number, type and density of outlets in a community. LA planners are faced with the question of whether to recommend the granting of routine zoning changes to allow liquor outlets and allow their growth to occur according to market mechanisms, or to review such applications bearing in mind their potential to impact upon community life.

There are special planning considerations required for late night trading venues. Licensed premises such as cabarets, special facility licenses, hotels and taverns need to be closely examined, particularly if they are situated close to residences. Other key issues that must be considered include the availability of late night transport, and adequate security and policing in the early hours of the morning.

#### **4.6 Section 39 Certificate (Local Authority Health/Environmental Noise Approval) :**

A Certificate issued by a LA under Section 39 of the Liquor Licensing Act confirms that the premises, or proposed premises, complies with the *Health Act 1911*, *Local Government Act 1995*, *Local Government (Miscellaneous Provisions) Act 1960* and laws relating to sewerage and drainage.

Section 39 Certificates are required for all new liquor licensing applications and applications for any alterations to existing licensed premises, including hotels, taverns, cabarets, liquor stores, special facility licences, restaurants and club licences.

LAs are able to place conditions on Section 39 Certificates if a premises has outstanding work to be completed, or withhold the Certificate until the premises has been made to comply.

If the premises cannot be made to comply with the legislation, the Certificate can be issued with an appropriate condition. Following receipt of such a Section 39 Certificate, the Licensing Authority would usually ensure that the application does not proceed any further.

This Certificate could be broadened to include a component where the LA can make comment in respect to noise issues. That is, complaints received or the existence of any Pollution Abatement Notice (noise).

#### **4.7 Section 40 Certificate (Local Authority Planning Approval) :**

A Certificate issued by a LA under Section 40 of the *Liquor Licensing Act* confirms that the premises or proposed premises complies with the LA's adopted laws relating to planning.

Section 40 Certificates are supposedly required for all new liquor licensing applications and any application for alterations to existing licensed premises, including hotels, taverns, cabarets, liquor stores, special facility licences, restaurants and club licences.

LAs are able to place conditions on Section 40 Certificates if the premises can only be made to comply with the prevailing planning laws through the imposition of specified trading restrictions. Usually any trading restrictions specified by a LA would be imposed by the Liquor Licensing Authority as conditions on any licence issued. For example, such restrictions could relate to restrictive trading hours, a limitation on the number of persons who can enter the premises at any one time, and conditions requiring that the music not be amplified over a specified level.

These Certificates should be mandatory when a licensee applies for an Extended Trading Hours Permit.

If the premises cannot be made to comply, the Certificate can be issued with an appropriate condition. Following the receipt of a Section 40 Certificate confirming that a premises cannot comply with planning laws, the Licensing Authority usually ensures that the application does not proceed any further.

LAs need to be particularly careful in their assessment of applications for Section 40 Certificates, particularly in light of recent cases in the Cities of Melville and Bunbury.

#### **4.8 Liquor Licensing Applications :**

LAs are in a position to influence liquor licensing decisions. Where an application is made to grant a Category 'A' (hotel, tavern, cabaret) licence, Council can request that the Director of Liquor Licensing

forward to the LA a copy of that particular application. However, LAs can only have an influence if the Director chooses to inform the LA, or if the LA is aware of the application.

#### 4.9 Licence Types

The *Liquor Licensing Act* provides for a number of different types of liquor licence, each with specific trading conditions.

The licence types are :

- Hotel
- Tavern
- Hotel – restricted
- Cabaret (nightclub)
- Liquor store
- Restaurant
- Club
- Club restricted

A special facility licence can be granted for any of the following purposes. The trading hours are not prescribed by the Act, but are imposed as conditions at the time the licence is granted.

- Works canteen
- Theatre or cinema
- Reception or function centre
- Transport
- Sports arena
- Foodhall
- Caterer
- Bed & breakfast facility
- Amusement venue
- Room service facility

Unless otherwise specified above, the sale of packaged liquor under a special facility licence is not permitted.

#### 4.10 Trading Hours

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

Licence Type	Monday – Saturday	Sunday
Hotel (incl. tavern & hotel restricted)	6am to 12 midnight	10am to 10pm
Cabaret (nightclub)	6pm to 6am	8pm to 12 midnight
Liquor store	8am to 10pm	no trading
Restaurant	at any time, ancillary to a meal	at any time, ancillary to a meal
Wholesaler	at any time	at any time
Producer	at any time	at any time
Club	6am to 12 midnight	up to 1am from Saturday night, and between 10am & 10pm
Club restricted	between those hours specified on the individual licence	between those hours specified on the individual licence
Special facility	between those hours specified on the individual licence	between those hours specified on the individual licence

#### 4.11 Monitoring

To varying degrees, LAs monitor the level of compliance with regard to overcrowding in high risk public buildings in their individual districts, with particular emphasis on busy times during the summer months. Inspections are conducted by Council staff and carried out when the facilities are operating, usually between the hours of 9pm and 2am.

Two officers acting together are always required for this duty. If it is determined that the patron numbers are more than 15% in excess of the maximum accommodation, the following actions are taken :

- A direction is issued to reduce the patron numbers by the excess amount within a specified time, usually an hour;
- The officers conduct a recount within the specified time;
- A warning letter is sent during office hours;
- If it is a second offence, prosecution is recommended; and
- If exits are blocked or locked, prosecution is recommended.

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## **5.0 Local Authority Experiences and Main Concerns**

The major concerns of local government can be summarised as follows :

### **5.1 Narrowness of the Terms of Reference of the Review**

The terms of reference for the review of the Liquor Licensing Act could have been broader than those established, which are primarily focussed on the operational structure of the Licensing Authority, and the delineation of responsibilities between the Liquor Licensing Court and the Director of Liquor Licensing.

WALGA has some reservations regarding the current operational structure of the licensing authority and the Court, but its main concerns are related to the manner in which the current system is operating and the lack of local government control, which is creating major conflicts within local communities. These concerns are significant, and experienced widely throughout the State by local authorities large and small.

While there may be some benefits in examining the relationship between the Liquor Licensing Court and the Director of Liquor Licensing, WALGA and the local authorities it represents believe there are more fundamental problems associated with the current process and the relationship between local government and the liquor licensing authority that need reviewing.

WALGA therefore requests its views be considered by the Department of Racing and Gaming on two levels:-

- (i) An identification of problems with the existing process, and how it could be made to work better; and
- (ii) Suggestions for a more strategic approach, which could be investigated and developed further subsequent to this Review.

WALGA's main concern with the current process are summarised below in the remainder of this Section.

Suggestions as to how the current process can be made to work better are contained in the following Section 6.0, specific responses to the 16 'Issues for Consideration' contained in Section 6 of the Discussion paper are provided in Section 7.0, some suggested changes to the current licensing process are provided in Section 8.0, and a suggested framework for a more strategic, long-term approach is set out in Section 9.0.

### **5.2 Lack of Planning Control for Local Authorities**

- The liquor licensing authority and Court often do not pay sufficient regard to the recommendations /decisions issued by the local authority, or the conditions it imposes. There is a perceived lack of consultation in specific important instances with local authorities. LAs are very frustrated at the lack of local control over liquor licensing decisions.
- There is a lack of consideration of local planning issues when liquor licence applications are being assessed. There is not enough regard for the subject site's context, as well as the implications that a decision regarding a liquor licence may have on the surrounding land uses and community. The LAs attempt to convey these important considerations, but sometimes this information and advice is ignored.
- Large, isolated licensed premises are permitted to gradually grow in scale and expand their functions and hours of operation which adversely affects the amenity of the surrounding area.



- A large number of licensed premises (which may or may not include individually large premises) are approved in close geographic proximity to each other, which can adversely affect amenity both within and around the area.
- 'Licence creep' is regularly permitted, where applicants receive a series of approvals to regularly change the nature of their licence(s), without the approval of the relevant local authority. There is also capacity under the Act for a licensee to lodge numerous applications to add, vary or cancel conditions of his/her licence or permit, even when the previous application has only just been refused.
- Inconsistent decisions have been made in specific areas, such as Northbridge, especially in the granting of Extended Trading Permits.
- In the past, the granting of Special Facility Licences by the licensing authority had to be tightened up, as they were often non-specific in their nature, unrestricted in their hours of operation, and the concept of the licences being primarily for tourist-related purposes was being abused.
- Restaurant Licences are sometimes granted with no restrictions on the hours of operation. In addition, the City of Perth is of the view that the 20% rule has the potential to result in a series of 'mini bars' springing up around the central city.
- There is an unclear relationship between development approval for a particular use under the town planning framework, and a subsequent liquor licence which may be issued which effectively allows a modification to the approved use, without the landowner seeking or receiving an appropriate change of use approval from the local authority. There should be greater controls available in town planning schemes to include liquor licence categories as specific land use categories.
- LAs should be able, through their town planning schemes, to limit the number of patrons permitted in licensed venues located in residential areas. If Councils adopt this principal then the Director of Liquor Licensing could place a condition on the Liquor Licence so that the number of patrons would be as stipulated by the relevant planning control/regulation of the town planning scheme.

### **5.3 Monitoring & Enforcement Concerns**

- There is duplication and sometimes lack of co-ordination in the inspecting roles of local government officers and the licensing authority inspectors.
- LAs experience extreme frustration at their lack of ability under the current arrangements to adequately regulate and prosecute licensees flouting their licence conditions (e.g., noise limits, security patrol requirements).
- There needs to be more emphasis instead on imposing conditions such as a reduction in numbers, or a reduction in hours of operation.
- As compliance is not being achieved in many instances, this seems to indicate there is a lack of resources available to the liquor licensing authority.
- Errant licensees sometimes have to be prosecuted up to three times before penalties are imposed.
- The current process of gathering and presenting evidence results in lengthy proceedings that are vigorously challenged in the Licensing Court at great expense to LAs and their ratepayers.
- LAs are concerned at the minimal fines imposed compared with the significant costs of monitoring and enforcement. Heavier fines are warranted to ensure compliance with licence conditions.

- There is a requirement for LAs to inform the Director of Liquor Licensing of convictions against a licensee, but Councils seldom hear of any outcomes. So why is the referral made? Clearly this situation should be rectified.

#### **5.4 Lack of Integration of Planning/Land Use and Liquor Licensing Issues**

- There needs to be a better integration of the role of local government, which has the responsibility for managing and co-ordinating land uses and development, with the role of the liquor licensing authority.
- Greater importance should be placed on the requirements of a LA, especially through the Section 40 Certificates. Conditions imposed by LAs on Section 39 Certificates, and in particular, Section 40 Certificates, are sometimes ignored and not imposed on the licence as a condition.
- Established written agreements between a licensee and a LA should also be respected by the licensing authority.
- There is a lack of clarity regarding the various regulations and roles of the agencies involved, and a lack of consistency and awareness of the activities of the respective regulatory agencies.

#### **5.5 Financial Implications**

- There are widespread concerns at the high legal costs incurred by local governments in administering the current process of appeals and monitoring of premises. The attendance of staff and the hiring of legal representation at court hearings is a significant strain on local authorities' resources, especially for the smaller authorities.

### **6.0 Comments on the Legislative Framework**

There is general support amongst LAs for the basic structure and operations of the liquor licensing authority, however, there is an issue with the court process.

#### **6.1 The Court Process**

There is widespread concern at the ability under the current structure for an application having been refused by the Director of liquor Licensing to be reheard by the Liquor Licensing Court under Section 25 of the Act. (This scenario is covered extensively in Part 3.1 of the Discussion Paper.) WALGA supports strengthening the Director's responsibilities. A change from *de novo* to *stricto sensu* hearings by the Court on matters of law and reasonableness of judgements would help to reduce legal costs, prevent unnecessary and frivolous appeals, and prevent 'new evidence' hearings.

A proper court hearing should be concerned with *all* the issues, and not just one or two small points of law.

#### **6.2 Resourcing**

The liquor licensing authority clearly requires more resources to operate efficiently, and the Director deserves more support.

In addition, as compliance with licence conditions is not being achieved in many instances, this seems to indicate another area where a lack of resources is being made available to the authority.

### 6.3 Incomplete/Insufficient Evidence at Hearings

WALGA also believes that the decisions of the Director should be cognisant of the adopted policies of other Government departments. The Director should be empowered to consider what, if any, impacts other Government policies may have on the matter under consideration. His decisions should take into consideration related State Government policies concerning, for example, harm minimisation (Department of Health), policing (Police Service), emergency access (Fire and Emergency Services) transport (Department of Planning & Infrastructure). These are State Government responsibilities which the Director at present is assuming incorrectly that LAs have taken into consideration in their submissions. This means that the Director is often considering licensing matters with incomplete and/or insufficient evidence before him.

It is therefore suggested that the Section 39 and 40 referrals be broadened so that, in certain circumstances and for particular licence categories, a LA could ask for wider referrals to be undertaken to permit relevant State Government authorities to state their positions, thereby giving the Director a more 'holistic' view of the issues under consideration. (That is, wider referrals would not be necessary in every case – the process could operate in a similar manner to DEP consideration of proposals where that body determines an appropriate "level of assessment", depending upon the complexity of the case.)

### 6.4 NCP Review of the Act

There is agreement with the recommendations of the draft review relating to Section 25 as covered in Section 3.2, pages 17 & 18 of the Discussion Paper.

## 7.0 Specific Responses to the "Issues for Consideration" (Section 6 of the Discussion paper)

The Discussion Paper requests comments be directed at the specific questions set out in Section 6 of the Paper (pages 35 and 36).

This submission has addressed under various Section headings the main issues regarding the operations of the liquor licensing authority from the viewpoint of WALGA and its members. It has done so in some detail, and cited individual LA experiences to highlight WALGA's concerns.

In summary, the responses to the individual questions in Section 6 of the Paper are as follows :

1. All applications should be dealt with by the Director, and only appeals on a question of law or fact should be heard by the Court, with no provision for a complete new hearing.
2. The Victorian model appears the most preferred model that may be relevant to WA, however, closer scrutiny of this would be required.
3. No change is recommended to Section 13 of the 1988 Act. It is considered appropriate for the Minister to have power to direct the development of Policy.
4. The role and function of the Director should be strengthened.
5. The position of the Director is appropriately located within the structure. WALGA is of the view that the inadequacy of the system the Director administers is the impediment to the proper functioning of, and impact on, the liquor licensing industry.
6. No, consideration should not be given to having decisions made by another person or entity.
7. Not applicable.
8. The Director should determine disciplinary matters. Those that cannot be dealt with by the Director should be reviewed by a single judge of the Supreme Court only where it is a matter of law.
9. WALGA does not believe the current role of the Court in determining reviews of decisions of the Director is satisfactory.

10. No.
11. Not applicable.
12. No, as it has been operating with appeals being dealt with *de novo* and with applications having the potential to be heard three times.
13. No.
14. Yes to all points.
15. WALGA may be willing to consider another model for determining appeals against other decisions of the director, however, more discussion based on suggested models is required.

## **8.0 Some Suggested Changes to the Current Licensing Process**

### **8.1 Short- to Medium-Term :**

- The liquor licensing authority and Court should not be able to issue an approval that is in conflict with any conditional town planning approval or refusal by a LA.
- Any application for a liquor licence or variation of a liquor licence ('licence creep'), including transfers, should be required to receive the support of the relevant LA, otherwise the application should not be progressed or accepted.
- Maximum patron numbers should be attached to the liquor licence automatically, which would then permit the police, through the Magistrate's Court, to prosecute errant licensees if required. This could provide significant support for the current efforts of the LAs in managing particular problem premises.
- Policing of premises maximum numbers could perhaps become the role of a separate 'inspectorate', rather than of the police service, if that body views this role as being something outside their acceptable area of responsibility. (This in turn would reinforce the role of the Director.)
- The format of the Section 39 and Section 40 Certificates should be reviewed and improved to ensure greater clarity of intent.
- The Section 39 & 40 Certificates should be capable of wider referral by the Director in certain circumstances to ensure relevant Government Departments could have input into evidence by stating adopted Government policies which have relevance to liquor licensing decisions.
- Every application for a liquor licence or licence variation should be advertised in a consistent manner. Posting on the world wide web would probably be sufficient.
- Greater controls should be available in town planning schemes to include liquor licence categories as land use categories, and the Model Scheme Text should be amended accordingly.
- A review should be undertaken of the assessment criteria, the process and development of a framework for LAs to draft strategic local plans and policies to ensure more consistency between the responsible agencies.

### **8.2 Long Term :**

- The WA Local Government Association is strongly in favour of a more holistic approach to liquor licensing that would result in a better integration of town planning and liquor licensing issues, provide more consistency between agencies, provide effective local control over existing licensed premises, and provide better prosecution/penalty mechanisms.

- WALGA also supports a more strategic approach to planning, to give each LA the ability, if it chooses, to develop a framework for strategic local plans and policies relating to liquor licensing.
- WALGA intends to pursue this proposal for 'Strategic Liquor Plans' and the mechanism of how they could be developed.

## 9.0 The Long-term : A Suggested Strategic Approach

### 9.1 Development of 'Strategic Liquor Plans'

Several LAs, mostly located in the existing urban, near-urban and inner-city areas, are keen to see a more strategic approach to liquor licensing issues that consider the cumulative effect and impact of the various liquor outlets.

There is support from some major LAs for a system of 'Strategic Liquor Plans' (SLP) to be implemented as a means for LAs to have greater involvement in the regulation of liquor and licensed premises. SLPs would operate under a broader framework such as the WAPC Metropolitan Centres Policy.

Such a system obviously requires research and vigorous debate, and WALGA would support this, however a suggested initial outline of the proposed system could be as follows :

- Preparation of a SLP by a LA or group of LAs.
- Preparation of the SLP may involve advertising and public consultation in a manner similar to the preparation of Local Laws.
- The completed SLP to be considered and approved by the Minister, with the opportunity for the Minister to suggest amendments to the Plan in a manner similar to the role of the WAPC and the Minister for Planning in relation to town planning schemes.
- Once approved by the Minister, the SLP would be formally adopted by the LA.
- The SLP would identify entertainment areas or precincts by reference to a 'hierarchy' similar to that utilised for retail trading – e.g., regional, district and local entertainment precincts. Regional precincts would probably include Northbridge, Perth central area and Fremantle central area. District precincts may include areas such as Claremont, Subiaco, Joondalup, Armadale, Guildford, Cannington etc., and local precincts would encompass many of the existing 'main streets' of suburbs which may contain a tavern and/or restaurants. The LA would be required to determine in their SLP what each area could reasonable cope with in terms of the intensity of development of liquor outlets.
- Within the various areas or precincts the SLP would reflect general provisions in the relevant TPS in terms of which types of liquor licence would be permitted in broad areas, but would go further in terms of perhaps establishing maximum or desirable numbers or floor space areas for certain types of liquor licences, trading hours, trading conditions etc. The SLP could also include 'policy' provisions dealing with the mix of liquor licences of different types or the operational nature of liquor licences (such as, for example, whether there is a preference for a number of smaller licensed premises or fewer, large premises).
- The adopted SLP would provide the framework for decisions by the Liquor Licensing Authority for new liquor licences and applications such as extended trading permits and changes to licence conditions, in much the same manner as town planning schemes provide the framework for

planning decisions by LAs and, ultimately, the Town Planning Appeals Tribunal. In other words, there would likely be discretions to be exercised within the provisions of the SLP and these would be exercised by the Liquor Licensing Authority.

Legal advice received by the City of Fremantle is that the system of SLPs could be accommodated by amendments to the *Liquor Licensing Act 1988*, without requiring amendments to the *Local Government Act 1995*, or any other legislation.

(Another possible method of introducing the system may be through the W. A. Planning Commission via a Statement of Planning Policy under Section 5AA of the Town Planning and Development Act (1928). Model provisions could be included in the revised Model Scheme Text.)

Local authorities could draft and adopt SLPs if they had particular problems, and could see merit in having such a management tool at their disposal. (That is, it would not be mandatory for a local authority to draft a SLP.)

## 9.2 Specific Recommendations from the 'Busch Report' #

This recently released report recommends the development of a 'Liquor Licensing Policy', to be developed from the Northbridge area by the City of Perth, the Police Service and the Department of Racing, Gaming and Liquor.

*"The proposed Policy should set out relevant information, objectives, rationale, recommendations for the number and type of licences in Northbridge, hours of operation, guidelines for applications, etc., consistent with the vision (for Northbridge), and should be endorsed by all industry participants, the City of Perth and all relevant State Government agencies. This Policy should be developed in close cooperation with the Department of Racing, Gaming and Liquor, and any identified policy and legislative issues addressed.*

*Relevant elements of the Liquor Licensing Policy should be incorporated in the City of Perth Planning Scheme."*

The report also states the following :

*"While Police and City of Perth advice is sought regarding applications for license variations and new licences, there is no clear overall framework for providing such advice, or for other interested parties, e.g. – businesses, residents, Government agencies such as the Tourism Commission etc.*

*There are also growing interface issues with the increasing number of residents.*

*A Policy would also assist existing businesses and prospective new businesses to plan with more confidence.*

*The need for this Policy was strongly expressed by a number of key agencies and stakeholders consulted, particularly in view of the issues regarding the number, type and hours of operation of licensed premises.*

*The City of Melbourne has undertaken some work on a Licensed Premises policy for incorporation into its Planning Scheme. (author's emphasis) This work is still very much in progress.*

*It is worthwhile noting that with the introduction of the new Melbourne Planning Scheme in March 1999, the Council now requires a planning permit application to be made for premises seeking to extend or amend an existing liquor licence or seeking a licence for the first time."*

Note : # 'Busch Report' : 'Northbridge: Shaping the Future' Department of the Premier and Cabinet, W.A., March 2002 (Jack Busch)

### 9.3 City of Melbourne : Liquor Licence/Town Planning Relationship

A person wishing to operate a premises that serves liquor within the City of Melbourne must have approval from both the liquor licensing authority *and* planning approval from the City of Melbourne. The applicant must provide to Liquor Licensing Victoria a statement of planning approval in the form of an existing valid permit or a statement showing that the use does not require planning approval in the zone where the premises is located.

It is understood, however, that the Melbourne system only permits either an approval or a refusal, and there is no means for LAs to add appropriate conditions, which WALGA regards as a deficiency in the system. Nevertheless, the City of Melbourne model could form the basis of a reformed process in WA.

## 10.0 CONCLUSION

The WA Local Government Association is generally supportive of the structure and operations of the liquor licensing authority.

It does, however, have significant concerns regarding the court processes, in particular *de novo* hearings, and the diminished role of the Director.

The liquor licensing authority clearly requires more resources to operate efficiently, and to provide better support for the Director.

There needs to be greater integration between the planning/land use roles of local government, and the decision-making role of the liquor licensing authority.

WALGA would like to assist in the development of a long-term strategic approach to liquor licensing issues that would consider the cumulative effects and impacts of the growth in the development of liquor outlets.

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## **APPENDIX – Individual Local Authority Experiences & Concerns**

This Appendix details the experiences and concerns of some individual local authorities in carrying out their required roles in the liquor regulating process.

### **City of Perth**

#### **Review Terms of Reference**

The City of Perth does not have any major issues with the current operational structure of the licensing authority, however, it would support the strengthening of the role of the Director in the process. It is a concern that applicants view the initial hearing before the Director as simply a 'trial run' before the real business of the appeal is addressed. In this regard the City of Perth supports the views of several other local authorities – in particular the Cities of Fremantle and Subiaco, and the Town of Victoria Park.

Of most concern to the City is the unsatisfactory manner in which the current system is operating, which is creating real conflicts within several local communities.

#### **Land Use Conflict Issues (Town Planning)**

The issuing of a town planning approval remains the most fundamental element of control that a local authority has in the assessment of a licensed premises. It is the local authority's responsibility to determine whether to grant approval for a new premises or not. In making this decision, every local authority has the fundamental planning principles of amenity and orderly and proper planning to fall back on, even if it does not have greater and more detailed controls within its town planning scheme. These principles are clearly defensible within an appeal to the Town Planning Appeals Tribunal.

Furthermore, it is open to Councils to impose conditions on any approval that may affect the operation of the premises in order to achieve the principles of amenity or orderly and proper planning. This includes imposing conditions restricting the hours of operation of a licensed premises, irrespective of what hours may be permitted under the Liquor Licensing Act. The applicant should comply with all approvals, as the town planning approval issued by the LA is as legitimate as any decision issued by the Liquor Licensing Authority.

In this regard, however, it is evident that the Liquor Licensing Authority does not always pay due regard to the decisions issued by the LA, or the conditions in some cases. In fact, the Liquor Licensing Authority has also shown a willingness to consider applications that have not yet received a Section 40 Certificate from the LA. This is a most fundamental problem with the Act. The Liquor Licensing Authority should not be able to issue a decision that is in conflict with any town planning approval or refusal issued by the LA.

For example, the City of Perth has on four occasions in the last year imposed hours of operation conditions on licensed premises (restaurant, a cabaret and a special facility licence) that are more restrictive than those specified within the Act. Another application for a tavern had a recommendation to Council to impose hours of operation conditions, however, the application was subsequently refused by Council. The City is also currently negotiating appropriate hours of operating conditions on a major tavern proposal in East Perth with an extended al fresco trading area in order to minimise conflict with the adjacent residential community. The Liquor Licensing Authority does not seem to impose narrower hours of operation in response to on-site conditions, so it is important that the LA plays this role.

Land use conflicts between licensed premises and residential properties in a mixed use environment remain a significant problem even in areas such as Northbridge which is a predominantly entertainment precinct.