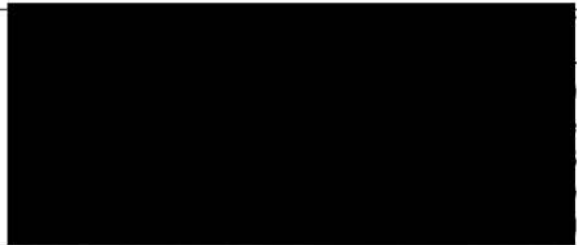


**IN THE MATTER OF THE ROYAL COMMISSION
INTO FAMILY VIOLENCE**

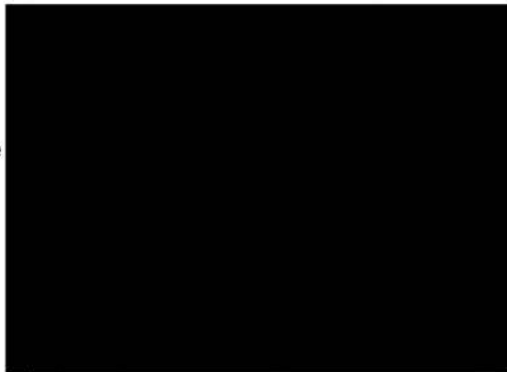
ATTACHMENT CC-1 TO STATEMENT OF CATHERINE MARY CARR

Date of document: 13 July 2015
Filed on behalf of: State of Victoria
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Liquor Control Act 1987

REVIEW

FINAL REPORT
April 1998



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FOREWORD

The recommendations in this Report represent the outcomes of a review of the *Liquor Control Act 1987* initiated by the Minister for Small Business, the Hon. Louise Asher M.L.C.

The review was done pursuant to the terms of the National Competition Policy and accordingly was confined to an examination of those provisions of the Act which could be considered anti-competitive. It was not a review into the Act or the liquor industry generally.

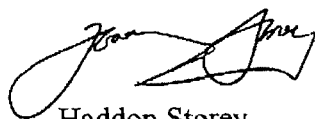
We found our task both challenging and stimulating. The submissions and material placed before us provoked extensive discussion which helped us to clarify and resolve the issues raised.

In our view, the implementation of our recommendations would build on the changes to the Act made in 1987. It would continue the transformation of the Act from one heavily concerned with industry protection and development to one concerned with mitigating the potential harm which can arise from the irresponsible sale and use of liquor. Consumers would be offered greater choice and diversity, and the industry would be able to respond readily to changing tastes and lifestyles. Procedures would be streamlined and simplified and would operate within a regulatory framework offering safeguards to the public.

We have been greatly assisted by many people. In particular we would like to thank the Minister and her staff, the members of the Steering Committee, particularly its Chairmen, Robert Bardsley and Martin Oakley, the members and staff of the Liquor Licensing Commission, particularly its Chief Executive Officer, Brian Kearney, and Gerry Nooney who have answered every request with courtesy and speed, officers of the Police Department, in particular Inspector Colin Moffitt, the Minister for Planning, the Hon. Robert Maclellan M.P. and officers of his Department, Dr John Nieuwenhuysen, and Dr Greg Rumbold from Turning Point Alcohol and Drug Centre Inc.

We are also grateful for the many submissions we received and for the ready cooperation of those with whom we had subsequent consultations.

Finally, we would like to thank the Review staff: Dr Alan Morris, Executive Officer; Joanne Bradford, Research Officer; and Penelope Gallagher, Executive Assistant, for their commitment and hard work. Their performance has been outstanding.



Haddon Storey



Margaret Hamilton



Gordon Broderick

EXECUTIVE SUMMARY

- The Review of the *Liquor Control Act 1987* ('the Act') is a result of the Victorian Government's commitment to the National Competition Policy ('NCP'). The Policy requires that all Acts, whether Commonwealth or State, that prescribe regulations, should be reviewed.
- NCP presumes that markets should not be regulated, unless restrictions are necessary to achieve social objectives, or to correct market failure. Following the identification of the provisions of the Act that restrict competition, the process of evaluation, according to NCP guidelines, is that they should be removed if: (1) they do not achieve an object; (2) their benefits do not outweigh the costs; and (3) the object could be achieved by alternative non-regulatory means.
- In many cultures, including our own, liquor is regarded as a 'special' product. There are long traditions that seek to control or mediate in the consumption of liquor. This is, in part, a consequence of the possible effects of the consumption of liquor on safety, social behaviour and public health. Alcohol has a particular place in both history and contemporary society, and in many religious traditions. It is reasonable to assume that the Victorian community has an expectation that there should be some controls over the sale of liquor.
- Following the implementation of the 1987 Act, there has been a significant increase in the number of licensed premises, and extended hours permits have been granted to many licensees. During this period, per capita consumption has declined slightly. The increased availability of liquor has not coincided with an increase in consumption.
- In June 1997 there were 8,560 liquor licences in Victoria. Employment in the liquor and associated industries, on a full-time or part-time basis, probably exceeds 100,000 people. Turnover on liquor sales, at wholesale prices, was approximately \$1.4 billion in 1997.
- The Act has four objects that seek '*proper development*', '*diversity*', '*adequate controls*' and '*effective co-ordination*'. The objects take into account potential harms that may be associated with particular patterns of liquor consumption and seek to minimise these harms.
- The Act prescribes conditions for all licensees, and allows the Liquor Licensing Commission discretion to set terms and conditions on individual licences. Some provisions of the Act, irrespective of their *raison d'être*, may be regarded as anti-competitive, and are the subject of the Review.
- The Review has sought and received written submissions from individuals and organisations who have an interest in the Act, and has met with particular groups for further discussions.
- The Review believes that a licensing system enables a coherent structure for regulation of the industry to achieve the objects of the Act, and provides a vehicle for enforcing that regulation. It is unable to identify a practical non-regulatory alternative to licensing.

MAIN RECOMMENDATIONS

- The restriction that all liquor sellers must be licensed should be retained in the Act.
- The Review recommends the following licence categories:
 1. an on premises licence;
 2. an off premises licence;
 3. an on and off-premises licence;
 4. a club licence;
 5. a pre-retail licence;
 6. a vigneron's licence; and
 7. a limited licence.
- Licence categories should not have primary purpose requirements.
- Licensees should be suitable persons and have an adequate knowledge of the Act.
- Licensees carrying out the business of a distributor or producer should be granted a pre-retail licence that would enable the business to trade at any time or any place where it is approved by local planning.
- The 'needs' criterion should be removed from the Act.
- The Act should be amended to exclude from consideration in liquor licensing applications, matters that have or could have been raised in relation to planning approval, and to provide that consideration of community interest in liquor licensing applications does not include local amenity planning issues.
- Objections to licence applications on community interest grounds should be subject to the following rules:
 - (a) only affected persons may object;
 - (b) an objection must state the reasons for the objection and how the objector is affected; and
 - (c) an objection considered to have been made for the commercial advantage of the objector may be rejected.
- The initial decision whether to grant or refuse a licence, with or without conditions, should be made administratively without a hearing, but any aggrieved party, including objectors, should have a right of appeal to an appropriate appeals tribunal.
- Concern for community interest, in so far as local amenity is concerned, should be a matter for local planning authorities. The functions of the Commission should be confined to matters arising as a consequence of premises being licensed.
- Applications for planning permits and liquor licenses should be able to be made simultaneously to the Commission and local planning authorities, and appeals arising out of either or both applications should occur before a single tribunal and at the same time.
- Changes to the Act should give consideration to the overall weight of restrictions on businesses.
- Licences should not be granted to drive-in cinemas, petrol stations, milk bars, convenience stores and mixed businesses.

- The 8% rule for general and packaged liquor licences should be removed from the Act.
- A poll should be taken of all electors in the 'dry areas' to determine whether they wish to retain the provision for each of on-premises licences, on and off-premises licences and club licences. Removal of the provision in whole or in part should be determined by the poll.
- The restriction on the sale or supply of liquor to minors be retained in the Act.
- The restriction that prohibits the presence of minors on licensed premises (for example, restaurants, cafes, packaged liquor outlets and similar) should be removed, except for bar areas in premises with on-licences or on and off-licences (for example, hotels, nightclubs and similar).
- The provision preventing persons under the age of eighteen years selling or disposing of liquor should be retained in the Act.
- The provision preventing sub-letting and allowing other persons operating businesses on the premises for the purpose of selling or disposing of products other than liquor should be removed from the Act.
- All licensed businesses that retail liquor should have the same normal trading hours. Normal trading hours for all licensees should be 7 a.m. to 1 a.m. on all days except Good Friday and Anzac Day. Trading hours on Anzac Day and Good Friday should be 12 noon to 1 a.m. on the following day.
- The 20 bedroom rule should be removed from the Act.
- Bed and breakfast establishments should be eligible to receive limited licences. The only conditions that should be met are that the Commission is satisfied that the applicant is a fit and proper person and has an adequate knowledge of the Act, and that a local planning approval has been obtained.
- The provision that requires unlicensed restaurants and clubs to obtain BYO permits if they wish to allow people to bring their own liquor for consumption on the premises should be removed from the Act. The Act should permit restaurants and clubs operating in accordance with local planning laws to allow persons to bring their own liquor for consumption on the premises.
- The provision for the approval of training programs that involve the serving of liquor by minors, by the Minister be removed from the Act. Approval should be granted by the Chief Executive Officer of the Commission.
- The restriction prohibiting sub-letting and allowing other persons operating businesses on the premises should be amended so that it refers only to sub-letting and allowing other persons operating businesses on the premises for the purpose of selling or disposing of liquor.
- The principal object of the Act should be the minimisation of harm.

1 INTRODUCTION

1.1 NATIONAL COMPETITION PROCESS

This Review of the *Liquor Control Act 1987* ('the Act') is a result of the Victorian Government's commitment to the National Competition Policy ('NCP'). The Policy requires that all Acts, whether Commonwealth or State, that prescribe regulations that may inhibit competition, should be reviewed and, where necessary, amended before the year 2000.

National Competition Policy is given effect through intergovernmental agreements signed by the Council of Australian Governments in 1995. The guidelines for all Reviews are contained in the *Competition Principles Agreement*, which requires that legislation should not restrict competition unless it can be shown that the benefits of regulation to the community outweigh the costs, and further, that the objectives of the legislation could not be achieved in a non-regulatory way. It is not the task of the Review to evaluate the rationale of NCP. Rather, it is to determine whether, according to the guidelines, the restrictions in the Act can be justified in terms of being necessary to achieve the objects.

A commitment to National Competition Policy does not indicate that competition is the only policy objective. Historically, both in Australia and elsewhere, governments have taken the view that the sale and consumption of liquor should be controlled and not left solely to market forces. Restrictions, however, create legislative barriers to entry to the market, may limit consumer choice and may impede innovation by the industry.

In October 1997, the Review produced an *Issues Paper* that identified the anti-competitive provisions in the Act and explained the criteria, specified in the *Review of Legislative Restrictions on Competition Guidelines*, by which they are to be evaluated. In February 1998, the Review produced a *Discussion Paper* that gave some consideration to how the anti-competitive provisions might be evaluated. The Review is classified under the NCP as a Semi-Public Review because the removal of existing restrictions is technically straightforward, but there are relatively complex public interest issues to address. The presumption of all NCP reviews is that competition should *not* be restricted, unless it can be shown that restrictions are necessary to achieve social objectives, or to correct market failure.

1.2 TERMS OF REFERENCE

The Terms of Reference as set out in the Minister's announcement of the Review on 15 September 1997, are as follows.

The Review will examine the case for the reform of legislative restriction on competition contained in the *Liquor Control Act 1987* and associated regulations, in accordance with the Victorian Government's *Guidelines for the Review of Legislative Restrictions on Competition*. In particular, the review will provide evidence and findings in its report in relation to the following:

1. the objective of the legislation;
2. the nature of the restrictions on competition;
3. the likely effects of the restrictions on competition and on the economy in general;
4. the costs and benefits of the restrictions; and
5. alternative means of achieving the same result including non-legislative means.

The Review is required to specifically address the appropriateness of modifying or removing the restrictions on competition while meeting the identified objectives of the Act.

Without limiting its scope, the Review should examine:

- the appropriateness of the current conditions of entry to the industry (eg. licensing) and the regulation of the sale and consumption of liquor;
- alternative means (both legislative and non-legislative) of addressing public health concerns while minimising economic and compliance costs. This may include the scope for greater industry self-regulation;
- creating equal treatment between the various market participants involved in the retail of liquor; and
- the benefits of greater consistency between the regulation of liquor and shop trading, trade practises and planning legislation.

The Review should give consideration to the impact of its recommendations on the ability to continue to securely collect revenue.

1.3 THE REVIEW PANEL AND SECRETARIAT

The members of the Review Panel are:

- Hon. Haddon Storey QC (Chair);
- Associate Professor Margaret Hamilton; and
- Mr Gordon Broderick.

The Review Secretariat is:

- Dr Alan Morris;
- Ms Joanne Bradford; and
- Ms Penelope Gallagher.

The qualifications of the Panel and Secretariat are shown in Appendix 1.

1.4 FOCUS OF THE REPORT

The Act contains four objects that seek to promote an efficient and dynamic industry which satisfies the expectations of the community. The objects are assumed to take into account potential harms that may be associated with particular patterns of consumption.

The Act prescribes conditions which must be observed by all licensees, and allows the Commission discretion to set terms and conditions on individual licences. It is the provisions of the Act that may be regarded as anti-competitive that are the subject of the Review, irrespective of their *raison d'être*.

The Review believes that there is a community perception that liquor is a 'special' product and there is a considerable body of research that supports this view. As a consequence, it is a reasonable expectation of the community that the sale of liquor should not be subject only to the market forces of supply and demand. In other words, there is a common view that the sale of liquor ought to be controlled and this will, *ipso facto*, restrict competition. The focus of NCP, and the Review, is therefore on the removal of those restrictions which do not serve any identifiable community interest.

In the past, an important aspect of liquor licensing has been the collection of licence fees by the State Government, and these have made a significant contribution to the State's revenue. Because of a High Court decision in 1997 that the imposition of licence fees by the State is unconstitutional, the matter of revenue is not an issue for the Review.

The Terms of Reference for the Review are such that it is not called upon to examine all aspects of the Act. It is limited to those parts of the Act that restrict competition in the liquor industry.

1.5 THE PROCEDURE OF THE REVIEW

The procedure of the Review has been to:

- Examine the Terms of Reference to determine the requirements of the Review;
- Achieve an understanding of the *Competition Principles Agreement* and NCP;
- Acquire an understanding of the objects of the Act;
- Identify and examine the effect of the restrictions on competition in the Act;
- Obtain information from other States and countries with similar cultural characteristics regarding their approach to the regulation of the sale of liquor;
- Produce and distribute an *Issues Paper* to inform interested parties of the Review, the matters under investigation, and criteria prescribed by NCP;
- Seek written submissions from the liquor industry, public health and welfare groups, and other parties who may have an interest in the matters before the Review;
- Examine the research literature which investigates the relationship between the availability of liquor and the incidence of harm, and seek an authoritative literature survey from a consultant well versed in this field;
- Investigate contemporary liquor consumption patterns in Victoria;
- Investigate the likely consequences of the removal of restrictions on competition, and seek an authoritative independent economic analysis of the impact of some of the possible changes to the Act;
- Examine the written submissions to the Review;
- Produce a *Discussion Paper*;
- In a series of meetings, seek information from groups and individuals regarding matters raised in the *Discussion Paper*;
- In the same series of meetings, seek further information from some groups and individuals who made written submissions;
- Further investigate the matters raised in the *Discussion Paper*, taking into account the information presented at the meetings, and obtained from the independently produced literature survey and economic analysis;
- Provide a draft *Final Report* to the Department of State Development Legislation Review Steering Committee to determine whether it is consistent with the Terms of Reference and follows the Government's *Guidelines for the Review of Legislative Restrictions on Competition* and, if necessary, amend the draft;
- Revise the draft and provide a *Final Report* to the Steering Committee, which in turn will submit it to the Minister.

1.6 OUTLINE OF THE REPORT

This Report is set out as follows:

- Chapter 2 describes the market for liquor in Victoria, the history of regulation in Victoria, an overview of the industry and patterns of liquor consumption in Victoria.
- Chapter 3 describes the legislation, the objects and their interpretation, the role of the Liquor Licensing Commission, an overview of the structure of the Act, the restrictions of the licensing system, the restrictions in the Act on licence holders, and restrictions determined by the Commission on individual licence holders.
- Chapter 4 describes National Competition Policy, the criteria for evaluating restrictions on competition, the welfare economics of a less regulated liquor market, the research literature concerning the availability of liquor and harm, the philosophy of the Review, and recommendations concerning the objects of the Act.
- Chapter 5 examines the present system of licences, the primary purpose provisions, proposes a new set of licence categories, and suggests transitional arrangements.
- Chapter 6 addresses matters of community interest including amenity issues and the 'needs' criterion.
- Chapter 7 addresses licence application costs and the weight of restrictions on businesses.
- Chapter 8 considers prohibited businesses.
- Chapter 9 addresses the 8% rule.
- Chapter 10 considers the 'dry areas' provision.
- Chapter 11 considers the prevention of sale of liquor to minors, the presence of minors on licensed premises, and the prevention of sale of liquor by minors.
- Chapter 12 addresses the provisions concerning suitable persons and persons having adequate knowledge of the Act, and sub-letting and other persons operating businesses on licensed premises.
- Chapter 13 addresses restrictions on trading hours.
- Chapter 14 deals with the supply of liquor to intoxicated persons, the 20 bedroom rule for residential licences, the 25% designated area for restaurants and the re-application waiting time requirement.

2 THE MARKET FOR LIQUOR IN VICTORIA

CHAPTER KEY POINTS

- The sale of liquor has been regulated since the early days of the colony of Victoria. A series of reviews during the twentieth century has progressively shifted the emphasis of regulation away from controls seeking to restrict consumption of liquor, towards more liberal controls that facilitate the development of an industry that is responsive to the demands of consumers, and finally, to ensuring that the sale and consumption of liquor takes place under a system that seeks to minimise harm.
- The liquor and associated industries make a significant contribution to the economy of the State. In 1996/97 the turnover on liquor sales (at wholesale prices) was approximately \$1.4 billion and the industry employed in excess of 100,000 Victorians on a full-time or part-time basis.
- Following the 1987 Act, there has been a substantial increase in the number of licensed premises suggesting a greater availability of liquor to the public. At the same time, the apparent per capita consumption has declined slightly.

2.1 HISTORY OF REGULATION IN VICTORIA

Over the years there have been a series of inquiries which have led to changes in the Victorian *Liquor Control Act*; they were Clyne (1942), Moore (1944), Fraser (1960), Phillips (1965), Brokenshire (1976), Davies (1978) and Nieuwenhuysen (1987). As a result, the focus of legislation has shifted in stages from the control of liquor consumption and the collection of revenue for the State towards the facilitation of the provision of a wide range of options for liquor consumers and the minimisation of harm. The most noteworthy changes were in the 1965 Act that abandoned six o'clock closing, and in the 1987 Act which removed the obligation of hotels to provide meals and accommodation. Although some inquiries were more general in scope than others, common threads were examinations of the proper role of the licensing system, the needs of consumers, and the adverse effects of excessive alcohol consumption.

The first Act was introduced at the time of the separation of Victoria from NSW in 1850. The two primary objectives of the Act were to raise revenue for the State and to discourage drunkenness. The Act was, in essence, an adaptation of the NSW Act, and required that licensed houses provide accommodation, effected the separation of on- and off-premises sales, and restricted trading hours. Between 1864 and 1870, trading hours were extended, accommodation restrictions were abandoned, and alcohol was, generally, more freely available.

Between 1870 and 1906, there was a reversion to stricter licensing laws when the temperance movement, churches and proponents of eugenic social philosophies actively campaigned for tighter controls, with some proposing total prohibition. Fairly restrictive laws continued in the first half of the twentieth century, with the primary objectives being the control of the number of licences, restrictions on trading hours, and strict licensing standards and operational rules. The aim was to discourage and curtail excessive alcohol consumption, in an effort to prevent public drunkenness.

Since the 1950s, there have been changes in community attitudes to the availability of alcohol and the places in which it is sold. Many came to believe that the problems associated with excess drinking would decrease through the provision of more relaxed drinking conditions and the development of multipurpose facilities. Since 'problem' drinking is confined to a relatively small part of the community, a view emerged that

targeted programs would be more efficient than general restrictions in tackling this issue.

The Phillips Royal Commission (1965), recommended that hotel bars be allowed to remain open until 10 pm and that liquor be able to be served until 11.30 pm when sold with 'substantial refreshments'. Phillips maintained that, at the time, there were more hotels in operation than were required to satisfy community needs, and the Act had been used to support marginal hotels at the expense of clubs, restaurants and licensed grocers. While taking this pro-competitive stance, Phillips, in contrast, argued that the cross-subsidisations implicit in the three 'pillars' of hotels (liquor, meals and accommodation) were justified, and that the Licensing Court should take an active part in seeking improvements in hotels. The Act that followed ushered in more liberal conditions for BYO permits, and cabaret and theatre licences were introduced.

The Brokenshire Board of Inquiry (1976) was established to determine whether price discounting of beer below the Australian Hotels Association's and Retail Liquor Merchants' Association of Victoria's recommended prices, which followed the passage of the *Trade Practices Act 1974*, was inconsistent with the objects of the *Liquor Control Act 1968*. Brokenshire found that discounting put the 'triad' at risk and, therefore, was contrary to the objects; consequently, he recommended that the Government introduce a minimum price for beer and that discounting be prohibited. The Government responded by passing the *Liquor Control (Orderly Marketing) Act 1976* that required the Commission to set a minimum price for beer.

The Davies Board of Inquiry into the Act (1978) did not recommend any major change to the licensing system, but argued that barriers to competition between licence categories should be reduced. Davies noted that the liquor industry was not then sufficiently strong enough to withstand the competitive pressures of 'unrestricted' licensing, although he warned that, without competition, the industry might stagnate. He proposed that this danger could be minimised by giving the Commission broad discretionary powers in the granting of licences and licence conditions. Following Davies, in 1980 the Act was amended to create several new licences (Canteen, Cultural Centre, Victorian Food and Wine Festival and Tertiary Institution), to extend trading hours and to give wider discretionary powers to the Commission. In 1983, the minimum price for beer was abandoned (although this was not one of Davies' recommendations). In 1984, further liberalisations allowed the Commission to exempt hotels from being required to provide accommodation, extended Sunday and other trading hours, and eased meal requirements in hotels and under cabaret licences.

The Nieuwenhuysen Review of the Act (1986) proposed that greater use be made of instruments both inside and outside the Act to deal with specific problems associated with the misuse of liquor. Nieuwenhuysen also argued for an Act that would allow licensees greater flexibility in the ways they conducted their businesses, and for separation of the Commission's administrative and judicial functions. The 1987 Act that followed simplified the licensing system by reducing the number of licence categories from twenty-nine to seven, and removed a consideration by the Commission of the impact of a licence application on licensees in the area. Although considerably more pro-competitive than the previous Act, this Act retains certain anti-competitive provisions which Nieuwenhuysen argued against, including the 8% rule, allowing objections based on community needs already being satisfied, and the requirement that restricted clubs buy liquor from retail licence holders. These restrictions on competition, and others in the Act, are the focus of this Review resulting from NCP.

In the years following the 1987 Act, there was a significant increase in the number of restaurant licences, and extended hours were granted to many hotels, bars and night-clubs. During this period, however, Victoria's per capita consumption of alcohol declined slightly, lending support to the view, and one advanced by Nieuwenhuysen, that increased availability of liquor would not lead to a significant increase in consumption.

2.2 OVERVIEW OF THE INDUSTRY

Many Victorian liquor licensees are small business people who have made a major contribution to the State economy generally, and to employment in particular. The *Annual Report 1996/97* of the Liquor Licensing Commission (the Commission) shows that, in June 1997, there were 1,739 general licences (hotels and bars), 219 residential licences, 2,493 on-premises licences (restaurants, caterers and the like), 1,113 packaged liquor licences, 477 producer's or distributor's licences, 774 full club licences, 1,460 restricted club licences, and 285 limited licences. In addition, 2,036 restaurants and clubs held BYO permits.

In 1995/96, general licence holders accounted for 39.6% of liquor purchases, packaged liquor licences, 48.4%, on-premises licences, 6.5%, and club licences, 3.6%. In the same period, sales of beer were 330 million litres (\$715 million wholesale); wine, 68 million litres (\$368 million wholesale); and spirits, 19 million litres (\$321 million wholesale).

It is difficult to estimate the number of Victorians employed in the liquor and associated industries, on a full-time or part-time basis; a conservative estimate, however, is in excess of 100,000 people. Data from the Commission suggests that the turnover on Victorian liquor sales at wholesale prices, was approximately \$1.4 billion in 1997, but this does not include revenue from sales of other products (such as food) and services (such as entertainment). The Australian Bureau of Statistics in its most recent Household Expenditure Survey, estimated that in 1993/94 the average Victorian household spent 2.05% of its income on beer, wine, spirits, and other alcoholic drinks. Also, the average household spent a further 2.23% on food in hotels and restaurants (not including take-away).

It is clear that the Victorian liquor industry does not constitute a single market. First, there is an obvious segmentation of the market into geographical areas. In comparatively small and isolated country towns, a single hotel may have a fairly strong monopoly position, or where there are a few licensed premises, the market may be oligopolistic (i.e. dominated by a few relatively large firms).

In metropolitan areas, the market would be classified by many economists as monopolistically competitive. In this market structure the product is differentiated so that each firm has a 'monopoly' over its own particular product. Additionally, there are many small independent firms in competition with one another for shares of the total market. For example, McDonald's Family Restaurants are the only supplier of Big Mac hamburgers but, of course, there are many fast food suppliers that compete with McDonald's. These markets are often characterised by different product prices between firms, and so-called non-price competition that may include advertising and other promotional activities or differences to the facilities and environment provided for purchase and consumption.

Although there are many liquor outlets in Melbourne, it is not entirely clear how important the presence of large buying and marketing groups (such as Liquor for Less,

Innkeeper, Cheers, Liquor Stop, Liquor Barons, and Tuckerbag) and supermarket chains (such as Liquorland and Safeway Liquor), are on market conduct and performance, particularly in the market for packaged liquor. Their presence suggests an oligopolistic structure, but it is evident that there is fairly vigorous price competition in the packaged liquor market.

Whether businesses have significant monopoly power, or there is effective market dominance, depends to a large extent on whether the products in the market are good substitutes for one another. In the liquor industry there is a vast range of substitutes. Whether there are substitutes for liquor products as a group is another matter. While for some, a choice may be made between liquor and alternatives such as mineral waters and soft drinks, or beverages such as tea or coffee, these are not generally seen as substitutes.

Where there are many good substitutes within a market, demand for any particular product is likely to be 'elastic' so that, say, a 10% price reduction would lead to an increase in consumption greater than 10%. This explains, in part, the phenomena of 'happy hours' in which significant price discounts often result in large increases in consumption during that period. Whether this discounting leads to a much greater consumption in aggregate is less certain.

The total sales of liquor products as a group is probably less sensitive to price changes (i.e. demand may be 'inelastic'), whereas the sales of particular products within the product group are more responsive to price changes. There was only a small and temporary reduction in the average price of liquor products (in real terms) in Victoria following the reforms of the 1987 Act. It seems unlikely that the removal of the anti-competitive restrictions in the Act would lead to a large general reduction in liquor prices and, if so, the expected increase in per capita consumption of liquor is small.

The question of substitutes is not always a simple one. In bottle shops, people buy liquor, but elsewhere they may purchase liquor bundled together with other products or services. Examples of these composite products are liquor with food in restaurants, liquor with gambling facilities in clubs and hotels, and liquor with entertainment at theatres and nightclubs.

The retail part of the market is domestic in the sense that sales occur *in* Victoria, however some proportion of sales are to tourists from interstate and overseas.

Carlton and United Breweries Ltd sources indicate that its only Victorian plant at Abbotsford currently produces 470 million litres of beer annually; approximately 27% of this is exported to other states and 5% overseas. Carlton's share of the Victorian beer market is approximately 87%, with most of its competition coming from Lion Nathan Australia Pty Ltd.

Data from the Winemakers' Federation of Australia Incorporated shows that, in 1995/96, the Victorian wine industry produced 103 million litres of unfortified wine and 7 million litres of fortified wine. In the same year, the value of Victorian overseas wine exports was \$63 million, or approximately ten percent of production. It is uncertain how much wine produced in other states is consumed in Victoria, however it seems clear that imports from South Australia and New South Wales are a large part of the market.

The only significant producer of spirits in Victoria is Mildara Blass Ltd. The company indicated that it produces approximately 180,000 litres of brandy annually, of which

60% is sold within the State. Most of the spirits consumed in Victoria are produced overseas.

Holders of liquor licences are found at virtually all levels of the production chain. At the lowest end, there are brewers, vignerons and distillers; in the middle are distributors (or wholesalers); and at the top are retailers who include hotels, bottleshops, restaurants and clubs.

The Act has a direct impact on at least two other markets. First, the prohibition on the employment of persons under the age of 18 years (Section 130), clearly, but perhaps justifiably, restricts employment opportunities for young people. Second, the 'dry area' provisions (Section 172) may have some impact on property values in those areas. The Act is related to gaming legislation because to be able to provide gaming services, businesses must hold a general or a full club licence.

A complementary and detailed perspective of the structure of the market for liquor is contained in the KPMG Economic Analysis of Certain Restrictions on the Sale of Liquor in Victoria. See Appendix 6, Section 2.3 to 2.9.

2.3 PATTERNS OF LIQUOR CONSUMPTION IN VICTORIA

Following the implementation of the 1987 Act, the number of Victorian licensed premises increased from 5,212 in 1987/88 to 8,240 in 1995/96. Table 2.1 shows the numbers of licences of each type and the increases in the number of licences which occurred between 1987/88 and 1990/91, and between 1990/91 and 1995/96.

Table 2.1

Victorian Licences Number and Percentage Increase 1987/88-1990/91 and 1990/91-1995/96						
Type of Licence	1987/88		1990/91		1995/96	
	No.		No.	%	No.	%
General 1&2 (Hotel)	1447		1484	(2.6)	1681	(13.3)
Residential	36		138	(283.3)	199	(44.2)
On-Premises	731		1596	(118.3)	2340	(46.6)
Packaged Liquor	831		1048	(26.1)	1112	(6.1)
Producer's or Distributor's	301		363	(20.6)	459	(26.4)
Full Club	580		671	(15.7)	778	(15.9)
Restricted Club	1114		1219	(9.4)	1406	(15.3)
Limited	172		200	(16.3)	265	(32.5)

Source: Liquor Licensing Commission, Victoria, *Annual Reports*.

Figure 2.1 shows changes in the main types of licence per 100,000 Victorians between 1970 and 1997. Changes in licensing brought about by the 1987 Act coincide with an arrest in the gradual decline in the hotel sector (general licences), substantial growth in the packaged liquor, producer or distributor and club sectors, and spectacular growth in the on-premises (including restaurants) sector.

Figure 2.1

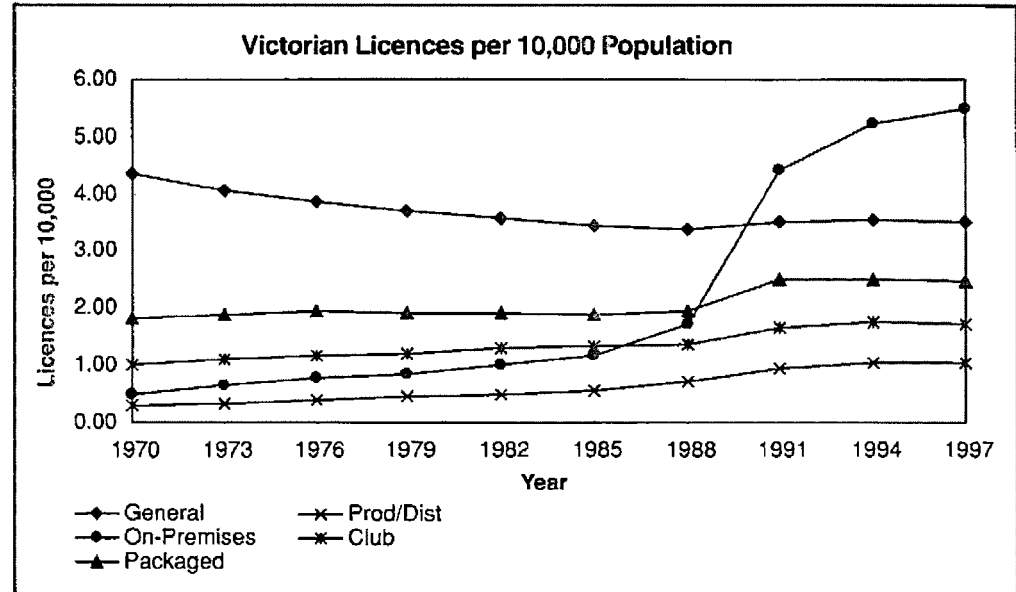
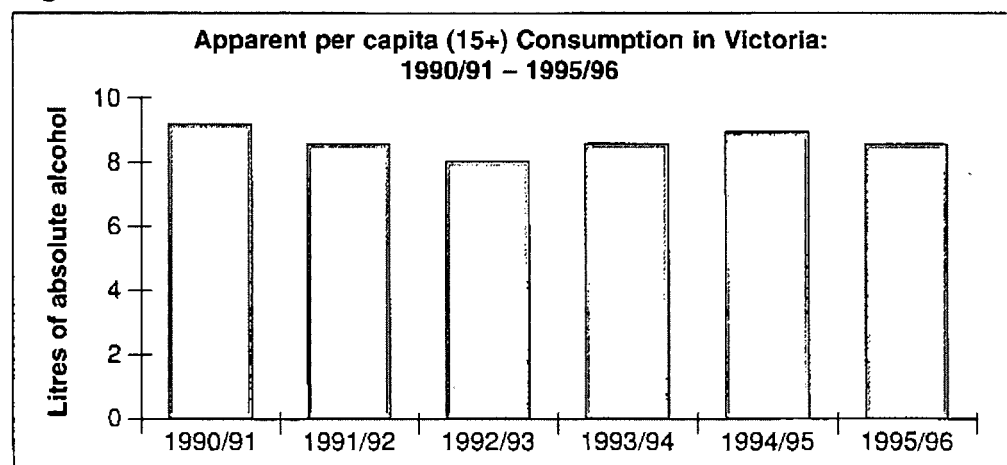


Figure 2.2 shows the apparent per capita (15 plus) consumption of absolute alcohol in Victoria for the period 1990/91 to 1995/96, obtained from Turning Point Alcohol and Drug Centre Inc. (Data was unavailable for all of the 1988/89 to 1995/96 period.) The data suggests that, in a period in which the number of licences has increased very substantially, per capita consumption has not increased and, indeed, has probably undergone a small decline. It is unlikely that this phenomenon can be explained by higher relative prices for liquor products, or by the business cycle alone.

Figure 2.2



Source: Turning Point *Epicentre* Bulletin No 1.

Because of the diversity of types of licences, it would be misleading to base any judgements about changes in the availability of liquor in Victoria on the total number of licences. Nevertheless, since the numbers of all types of licences increased following the implementation of the 1987 Act, it is clear that availability did increase absolutely, and almost certainly on a per capita basis.

Table 2.2

International Comparisons Annual per capita Consumption of Pure Alcohol		
Rank	Country/State	Litres
1	Luxembourg	11.8
2	Portugal	11.2
3	France	11.1
5	Denmark	10.0
7	Germany	9.8
14	Greece	9.2
16	Italy	8.2
19	United Kingdom	7.6
20	Australia	7.5
25	United States	6.6
26	Japan	6.6
30	Canada	6.0

Source: *World Drinking Trends 1997*.

Table 2.2 shows that in 1996 Australia had an average consumption level similar to that of New Zealand, the United Kingdom and the United States, and was significantly lower than those of several European countries. Although the Review is unable to obtain 1996 consumption data for Victoria, Turning Point *Epicentre* Bulletin No 1 shows that in 1993, Victoria's consumption was 6.6 litres compared with 7.5 litres for the whole of Australia, and may still be lower in 1998. These figures, of course, do not reveal patterns of consumption which may be illuminating, such as whether consumption is spread relatively uniformly across the adult population, and whether liquor is generally consumed on a day-to-day basis or more sporadically. Indeed, public health researchers increasingly recognise the importance of particular patterns of consumption rather than merely focussing concern on total per capita consumption.

3 THE LEGISLATION: OBJECTS AND RESTRICTIONS ON COMPETITION

CHAPTER KEY POINTS

- The objects of the Act are stated in terms of '*proper development*', '*diversity*' '*adequate controls*' and '*effective co-ordination*' and encompass many matters of concern that may be held by the community regarding the sale and disposal of liquor.
- The Liquor Licensing Commission is the regulatory agency that oversees the sale and disposal of liquor in the community through the imposition of controls and conditions.
- Some aspects of the Act dealing with the granting of licences, may create barriers to entry to the market and may be regarded as anti-competitive.
- Some provisions in the Act that regulate the operations of licensees may be considered to be anti-competitive.
- The Act enables the Commission to prescribe *ad hoc* terms and conditions to licences and permits that may be regarded as anti-competitive.

3.1 THE OBJECTS AND THEIR INTERPRETATION

In many cultures, including our own, there are very long traditions which seek to control or mediate in the consumption of liquor. This appears to be a consequence of the psycho-active properties of liquor which means that it can effect how people feel, think and behave. This is one reason why people enjoy liquor, but it is also a reason to regulate this product. The consumption of liquor if misused, can impact on safety, social behaviour and public health. It is reasonable to assume that the Victorian community expects this product to be regulated.

The objects of the Act are specified in Section 5. They are:

to respond to community interests by -

- (a) promoting economic and social growth in Victoria by encouraging the proper development of the liquor, hospitality and related industries; and*
- (b) facilitating the development of a diversity of licensed facilities reflecting consumer demand; and*
- (c) providing adequate controls over the sale, disposal and consumption of liquor; and*
- (d) contributing to the effective co-ordination of the efforts of government and non-government agencies in the prevention and control of alcohol abuse and misuse.*

The question that the Review is asked to address is *not* whether the objects of the Act adequately reflect the community interest, but whether the anti-competitive provisions of the Act can be justified in terms of meeting the objects, and further, whether the objects could be achieved by non-regulatory means. The objects, however, are specified loosely, so that an evaluation of the efficacy of the anti-competitive provisions is complex.

The objects are stated in sufficiently broad terms as to encompass all likely matters of concern that may be held by the community with respect to the sale and disposal of liquor. Indeed, the undefined term '*adequate controls*' seems to imply that the Act is

designed to address any problems associated with the misuse of liquor. Similarly, the terms '*proper development*' and '*diversity*' suggest that it is also designed to promote a thriving, dynamic industry. In Section 4.6 the Review proposes a clearer set of objects to minimise harm whilst encouraging the development and diversity of industry with minimal government intervention.

The presence of restrictions on competition in the Act is, *prima facie*, not consistent with the first and second objects. In other words, restrictions seem more likely to constrain 'development' and 'diversity', than to promote it. Parliamentary debates concerning the Act, *circa* 1987, paid considerable attention to the consequences for the industry and the community, of a possible proliferation of liquor outlets that might follow substantial de-regulation. Given this, the term '*proper development*' in the first object, may signify the Government's intention of encouraging the development of the industry without the unbridled instability that might occur under a *laissez faire* regime. Another interpretation is that the restrictions that remained in the 1987 Act, were less restraining than those in the 1968 Act and, therefore, the first two objects may simply reflect an intention to partially de-regulate the liquor industry.

The third object is, perhaps, the most important one in this Review of the anti-competitive provisions of the Act. Historically, both in Australia and elsewhere, governments have taken the view that the sale and consumption of liquor should be controlled and not left solely to market forces. The Review presumes that this object seeks the minimisation of harm, broadly defined, while recognising the demands of responsible drinkers. The object encompasses concern for risks to local amenity, health, safety, violence, under-age drinking, and public nuisance. The Act, of course, seeks to control the *sale* of liquor, but it has a limited ability to deal with improper consumption away from licensed premises and the harm that may ensue.

The fourth object is consistent with the view of the *Nieuwenhuysen Report*, that problems resulting from the misuse of liquor are more effectively treated with specific instruments, instead of through general restrictions on the sale of liquor. In accordance with this, the Act established a Co-ordinating Council to advise the Minister on problems of liquor abuse, however none of the restrictions identified by the Review appear to be associated with this object.

In summary, the objects draw attention to the interests of three broad overlapping groups. They are:

- the liquor and related industries;
- liquor consumers; and
- the 'broad community' whose concerns may involve community health (morbidity and mortality), safety (including road safety), public nuisance, crime and violence, and public morality.

At a series of meetings with industry and community groups, representatives were asked whether the objects are appropriate for the regulation of the liquor industry in a manner that reflects the expectations of the general community. Opinion was divided on whether a 'harm minimisation' object should be included as a separate object. Many felt that it was already implied by 'adequate controls' and/or 'proper development' although they nominated different objects and provisions that they thought reflected this indicating considerable ambiguity.

Some of the discretionary powers invested in the Commission by the Act have been, and continue to be used, as means of achieving aims that are not clearly articulated in the objects in the Act.

Conditions attached to individual licences by the Commission may seek to minimise harms such as street crime and public nuisance, or to place limits on conduct in licensed premises that provide sexually explicit entertainment.

The ability of the Commission to suspend or cancel licences is a substantial deterrent to breaches of licence conditions. It is also a powerful deterrent to licensees who might breach other Acts such as the *Health Act*, the *Local Government Act*, the *Summary Offences Act*, the *Environment Protection Act* and perhaps others.

If the removal of some parts of the Act deemed to be anti-competitive, was to weaken the Commission's powers in these matters, other Acts and/or administrative procedures may need to be strengthened to protect these interests.

3.2 THE ROLE OF THE LIQUOR LICENSING COMMISSION

Traditionally, the Liquor Licensing Commission has been regarded as the regulatory agency that oversees the sale of liquor in the community through the imposition of controls and conditions. Later in the Report the Review will address the extent to which licence conditions are anti-competitive, and whether they serve any objects of the Act.

Whilst maintaining this role, in recent years, the Commission has played a major role in industry development, the encouragement of diversity, and harm minimisation through education, training and advisory services and programs. Through the various operations of the Commission, it contributes to a range of social and economic outcomes that are consistent with the Government's policies.

The operations of the Commission includes a policy development sector that reviews liquor policy together with legislation and policy relating to small business, public health and safety, and industry. Services to the Minister provide briefings, correspondence, advice and reporting on the liquor industry.

In the administration process provided by the Commission, assistance is available to applicants and existing licensees. Licences may be granted administratively and an independent mechanism is provided for decisions in disputed cases. A record of licences and licence conditions is kept to show the rights and obligations of licensees and permittees. It is engaged in enforcement, and when it determines that a breach of licence conditions has occurred, it is able to impose penalties.

The Commission responds to a harm minimisation objective by encouraging understanding and compliance with liquor laws through appropriate education and training programs with particular emphasis on the 'Responsible Serving of Alcohol'. In an effort to minimise harm, the Commission liaises with police, industry associations and other government and non-government agencies on initiatives to reduce the misuse and abuse of alcohol. Its role in encouraging the proper development of the liquor and licensed hospitality industry and other related sectors, is achieved through providing advice on major projects and developments, and through assistance to visitors and developers to ensure their understanding of the liquor licensing laws in Victoria.

A situation that has also arisen, is the emergence of the Commission as being regarded as the paramount authority for all problems connected with licensed premises, including issues of planning, health, public safety, fire regulation, noise, and sexually explicit entertainment. There appears to be a perception of the industry that the Act can provide

rapid and potentially severe sanctions for licensees who breach liquor laws, and are more effective than those available to most other authorities. Therefore the licensing process is used to ensure that a range of other laws and regulations have been complied with, resulting in the Commission becoming increasingly involved in a wide range of issues peripheral to the Act.

The objectives of the Commission are to respond to community interest by fulfilling the objects as contained in Section 5 of the Act, and to follow the mission statement of the Department of State Development: 'to position Victoria for sustained development and innovation in the world economy in a way that delivers an improved lifestyle for Victorians'.

In recent years the Commission has endeavoured to co-operate with industry and law enforcement agencies in an effort to minimise harm through programs that include the responsible serving of alcohol. A responsive and creative approach to licensing by the Commission has seen the development in recent years of a diverse liquor and licensed hospitality industry. In addition, it has facilitated major projects and events such as the Grand Prix, Melbourne Sports and Aquatic Centre and the Melbourne Exhibition Centre.

3.3 OVERVIEW OF THE STRUCTURE OF THE ACT

The 1987 Act is structured as follows.

Part 1 – Preliminary

This describes the purpose of the Act, its objects and definition.

Part 2 – Liquor Licensing Commission

This describes the Commission, the Commissioner, Deputy Commissioner and Assistant Commissioners, proceedings of the Commission and the Chief Executive Officer and staff.

Part 3 – Sale, Disposal and Consumption of Liquor

This describes licences and permits, additional authority of licences and permits, special provisions applying to clubs, restrictions on applications and grant of licences and permits, the grant, variation, transfer and removal of licences and permits, renewal of licences and permits, executors etc, surrender, cancellation etc, appeals, Casino premises, and the Australian Grand Prix.

Part 4 – Obligations of Owners, Mortgages, Licensees and Permittees

Part 5 – Fees

Part 6 – Offences and Legal Proceedings

This describes offences, legal proceedings, recovery of fees and fines, and infringement notices.

Part 7 – General

Part 8 – Transitional Provisions

3.4 RESTRICTIONS OF THE LICENSING SYSTEM

Some aspects of the Act dealing with the granting of licences, may be regarded as anti-competitive. These are listed below, together with reasons why they may be regarded as anti-competitive. Later in the Report, the Review will address whether the restrictions in the licensing system can be justified in terms of the objects of the Act.

Restrictions on the Primary Purpose

Sections 46 to 52 tie the grant of the licence to the primary purpose for which the business is to be carried on. These provisions constrain the range of services able to be provided by licensees, and they tend to limit competition between businesses holding different types of licences.

Prohibited Businesses

Section 60(1) prohibits drive-in cinemas, petrol stations, milk bars, convenience stores and mixed businesses from obtaining a licence. Business of these types are faced with an absolute barrier to entry to the liquor market.

The 8% Rule

Section 61 limits the total number of general licences or packaged licences held by a person or corporation (including those held by related corporations) to no more than 8% of all such licences. Larger businesses are prevented from increasing their number of licences beyond the limit, although large buying and marketing groups are unaffected by this provision.

Re-application Waiting Time

Section 62 prohibits an applicant for a licence or permit who is unsuccessful or withdraws the application, from re-applying within one year of the refusal or withdrawal, except with consent of the Commission. It poses a barrier to entry for one year to those applicants who may otherwise be able to satisfy the Commission that the grant of a licence should be allowed.

Application Costs

Sections 63 to 79 deal with the granting of licences. The cost of applying for a licence varies between \$562 and \$624 depending on the type of licence (excluding limited licences, \$23), which few would regard as a high barrier to entry. The annual fee for all licences is \$150, except that it is \$37 for limited licensees with liquor purchases of less than \$2,000 per annum. (As of 8 August 1997, the fee of 11% of purchases, has been replaced by a uniform 15% wholesale tax levied by the Commonwealth.)

Although the fee structure suggests that barriers to entry are low, the Act requires that applicants comply with certain conditions imposed by other Acts although these have to be met before the applicant can trade, irrespective of the *Liquor Control Act 1987*. Section 63 specifies, amongst other matters, that applicants must present evidence to the Commission that they have complied with relevant planning laws, fire authority requirements and the *Health Act*. In addition, the Act requires that applicants advertise and display plans of proposals (Section 72), specifies statutory waiting times to allow objections (Sections 75 and 76), calls for police checks of applicants (Section 71), and requires public hearings if objections are made (Sections 78 and 79). None of these requirements, in isolation, appear to be unreasonable or a major barrier to entry to the market, but taken together, and in conjunction with the quasi-legal application process, may present high barriers to entry.

Suitable Person and Adequate Knowledge

Section 75(1) requires that an applicant for a licence must be a suitable person and Section 75(5) requires that the applicant must have an adequate knowledge of the Act. The provision asks the Commission to make a judgement regarding the suitability of the

applicant without any clear guidelines. Tests of adequate knowledge are not applied to all applicants and, therefore, could be regarded as discriminatory.

The 'Needs' Criterion

Section 74(6) in combination with Section 76(2) requires the Commission, in determining whether the grant of an application is in the community interest, *not* take into account the effect of the granting of a licence or permit on the business of other licensees, and *not* have regard to whether the applicant's business is likely to be successful. This suggests that, as in unregulated industries, the market should determine which businesses will prosper and those that will fail. Against this, however, the Commission is required to take into account 'the extent to which businesses carried on under licences and permits in the area to which the application relates are satisfying the need intended to be satisfied by the applicant'. Although such a consideration may not prevent the granting of a licence, its existence can be used as a vehicle for delaying an application. The same constraints apply to the Chief Executive Officer in making a recommendation on an application under Section 76.

This provision has the potential to restrict the number of licensed premises in an area. Although the Commission has some discretion on this matter, the provision may be used as a delaying tactic by current licence holders.

Interest of the Community

Section 76(2)(c) requires that the Chief Executive Officer of the Commission make a recommendation, taking into account objections on the grounds that 'the application is likely to have an adverse effect on the interest of the community in that area'. It may prevent the grant of a licence in an area where an applicant perceives there to be a demand for the service proposed to be offered.

Licensing of Liquor Outlets

Section 123 makes it an offence to sell liquor without a licence. This requirement allows only licensed businesses to sell liquor.

'Dry Areas'

Section 172 requires that in designated dry areas, applications for licences must be approved by a poll of residents. It denies businesses that wish to sell liquor in designated areas the opportunity to enter the market in the manner of other businesses. It is not competitively neutral because most areas are not so designated, and it does not apply to packaged liquor licences and BYO permits.

3.5 RESTRICTIONS IN THE ACT ON LICENCE HOLDERS

The Act places a number of restrictions on the operations of licensees which may be considered anti-competitive. These are listed below, together with reasons why they may be regarded as anti-competitive and the objects that they appear to address. Later in the Report, the Review will address whether the restrictions on licensees can be justified in terms of the objects of the Act.

Restrictions on Trading Hours

The hours in which most licensees may trade are prescribed in the Act, however the Commission may grant extended hours permits. General Licences (Section 47(1)(a)) and 47(3)(a)), Producer's or Distributor's (Section 49(1)(a)) and On-Premises Licences

(Section 50(1)(a)) are generally limited to ordinary trading hours as defined in Section 3; Club Licences (Section 48(1)(a)) and Packaged Liquor Licences (Section 51(1)) prescribe other schedules of trading hours. These trading hours provisions are not competitively neutral because some licensees may trade for longer periods than others. Further, maximum trading hours may be less than those that some licensees might choose, based on commercial considerations, if unconstrained.

Residential Licences — the 20 Bedroom Rule

Section 46(2)(b) requires the holders of residential licences to have at least 20 bedrooms. This provision is not competitively neutral because small establishments are denied the opportunity to obtain this type of licence.

Restricted Club Liquor Purchases

Section 48(2)(c) confines the holders of restricted club licences to obtaining liquor supplies from holders of general licences or packaged liquor licences. The provision is not competitively neutral. These licensees are denied access to wholesale suppliers, unlike full club licensees and other licensees. In particular, they may not purchase liquor from a full club licensee with whom the restricted club licensee may be affiliated.

The 70% and Other Rules for Vignerons

Section 49(3) requires that when a producer's or distributor's licence is granted to a vigneron, that wine, cider, perry or brandy produced by the licensee is made from fruit grown in Australia. For wine, at least 70% of the fruit must be grown or pressed by the licensee; for cider or perry, at least 25% made from fruit grown by the licensee; and for brandy, at least 70% made from wine distilled by the licensee.

Licensees are denied the opportunity to use input combinations which fall outside these limits. Other combinations might allow producers to reduce costs or offer a wider range of products. Further, the licence prevents a vigneron from sharing cellar door sales facilities with neighbouring vignerons, or to use a shop front in a nearby township for sales to the public.

The 90% Rule for Distributors

Section 49(4) requires that the holder of a producer's or distributor's licence who is a distributor, must operate so that at least 90% of their liquor selling business, is selling and supplying liquor to licensees. This prevents licensees from diversifying into the retailing of liquor (except in relatively small amounts) from the licensed premises.

The 25% Designated Area for Restaurants

Section 50(3)(a) restricts the area in which an on-licence premises is permitted to sell liquor without a meal to 25% of the total area, and this area must be set apart from the area in which food is served. This limits the ability of licensees to provide extensive bar services. To have a larger bar area under a general licence would require that the main purpose of the business was the sale of liquor, not food.

Limited Licences Liquor Purchases

Section 52(2) confines the holders of limited licences to obtaining liquor supplies from holders of general licences or package liquor licences. This provision is not competitively neutral because these licensees are denied access to wholesale suppliers, unlike most other licensees.

Sub-Letting and Other Persons Operating Businesses

Section 120 prohibits licensees from sub-letting, and Section 121 prevents other businesses to operate on any part of the premises, or the right to sell or dispose of liquor, except with the consent of the Commission. This may limit the ability of licensees to offer a broader range of services by sub-letting or allowing other businesses to operate on the premises, and could restrict competition between licensees, and between licensed and unlicensed businesses.

Supply to Intoxicated Persons

Section 122(1)(c) prohibits licensees from supplying liquor to persons in a state of intoxication. This denies a licensee the opportunity to sell liquor to intoxicated persons who wish to consume more liquor.

Prevention of Sale to Minors

Section 127 prohibits a licensee from the sale or the supply of liquor to a person under the age of eighteen years. It denies licensees the opportunity to sell liquor to persons under the age of eighteen.

Presence of Minors on Licensed Premises

Section 128 prohibits a person under the age of eighteen years from being on licensed premises except in certain circumstances. It denies licensees the opportunity to sell products other than liquor to persons under the age of eighteen.

Prevention of Sale by Minors

Section 130 prohibits a licensee from allowing a person under the age of eighteen years to sell or dispose of liquor. This does not apply in training programs approved by the Minister. It denies licensees the opportunity to employ persons under the age of eighteen; as a consequence, employers may face higher labour costs, and young people have restricted employment opportunities. The requirement that the Minister, rather than the Commission, approve training programs, seems an unnecessary barrier to training in the hospitality industry.

3.6 RESTRICTIONS DETERMINED BY THE COMMISSION ON INDIVIDUAL LICENCES

The Act enables the Commission to prescribe *ad hoc* terms and conditions to licences and permits (Sections 46 to 54). These terms and conditions, while they may serve the community interest, are likely to restrict the decisions of licensees and, therefore, may be regarded as anti-competitive.

The Commission imposes three broad types of conditions. They are:

- Situational conditions, which seek to mitigate the concerns of objectors to licence applications, so that licences may be granted more readily;
- Tactical conditions, to facilitate effective policing in circumstances where the Victoria Police have concerns for the conduct of the licensee; and
- Penalty conditions, following successful prosecutions of licensees for breaches of the Act or particular terms and conditions of licences.

Although terms and conditions vary from licence to licence, the object addressed is the provision of 'adequate controls'.

4 THE FRAMEWORK FOR THE ANALYSIS

CHAPTER KEY POINTS

- National Competition Policy requires that legislation should not restrict competition unless it can be shown that the benefits of regulation to the community outweigh the costs, and further, that the objectives of the legislation could not be achieved in another way.
- A qualitative economic analysis suggests that the removal of certain provisions in the Act that restrict the availability of liquor would bring about a net benefit for the community.
- The removal of restrictions on competition would be likely to expand the range of choices available to consumers, however the impact on liquor prices may be small.
- In analysing the relationship between the availability of liquor and harm, recent emphasis has moved away from mean consumption levels to patterns of use. This has important implications for control policies as there is now good evidence to indicate that different patterns of consumption, and especially more appropriate drinking environments, are conducive to reduced levels of harms.
- The Review believes the market for liquor should be regulated only to the extent necessary to achieve the 'adequate controls' object of the Act.
- The Review recommends that the principal object of the Act should be the minimisation of harm.

4.1 THE NATIONAL COMPETITION POLICY

The Review of the *Liquor Control Act 1987* is a result of the Victorian Government's commitment to the National Competition Policy. NCP has its origins in the *National Competition Policy Report* by the Independent Committee of Inquiry, chaired by Professor Hilmer, that was appointed in 1992 by the Prime Minister Mr Keating. The Report was presented to the Council of Australian Governments in 1993, and is now widely known as the Hilmer Report.

The Hilmer Report inquired into:

- whether the scope of the *Trade Practices Act 1974* should be expanded to deal with anti-competitive conduct outside the scope of the Act;
- alternative means of addressing market behaviour and structure outside the scope of the Act; and
- other matters directly related to competition policy.

Much of the Report is directed towards the public sector and, subsequently, there have been a number of reforms in the public sector which have resulted in the privatisation of many public business enterprises and the down-sizing of government departments. The Report also addresses the efficacy of regulation of industries in the private sector. In particular, it deals with, but is not restricted to, anti-competitive structures which are sustained and supported by government intervention, and with general questions concerning the desirability of de-regulation.

On market conduct and performance, the Report found:

Competition provides the spur for businesses to improve their performance, develop new products and respond to changing circumstances. Competition offers the promise of lower prices and improved choice for consumers and greater efficiency, higher economic growth and increased employment opportunities for the economy as a whole. [p 1]

At the same time, however, it recognised that there are some markets in which unfettered competition might not be efficient. It noted:

Competition policy is not about the pursuit of competition per se. Rather, it seeks to facilitate effective competition to promote efficiency and economic growth while accommodating situations where competition does not achieve efficiency or conflicts with other social objectives. These accommodations are reflected in the content and breadth of application of pro-competitive policies, as well as the sanctioning of anti-competitive arrangements on public benefit grounds. [p xvi]

In short, the Hilmer Report takes the view that, *prima facie*, a competitive market outcome is the best outcome; regulation can only be justified when the market 'fails', but regulation has its own costs.

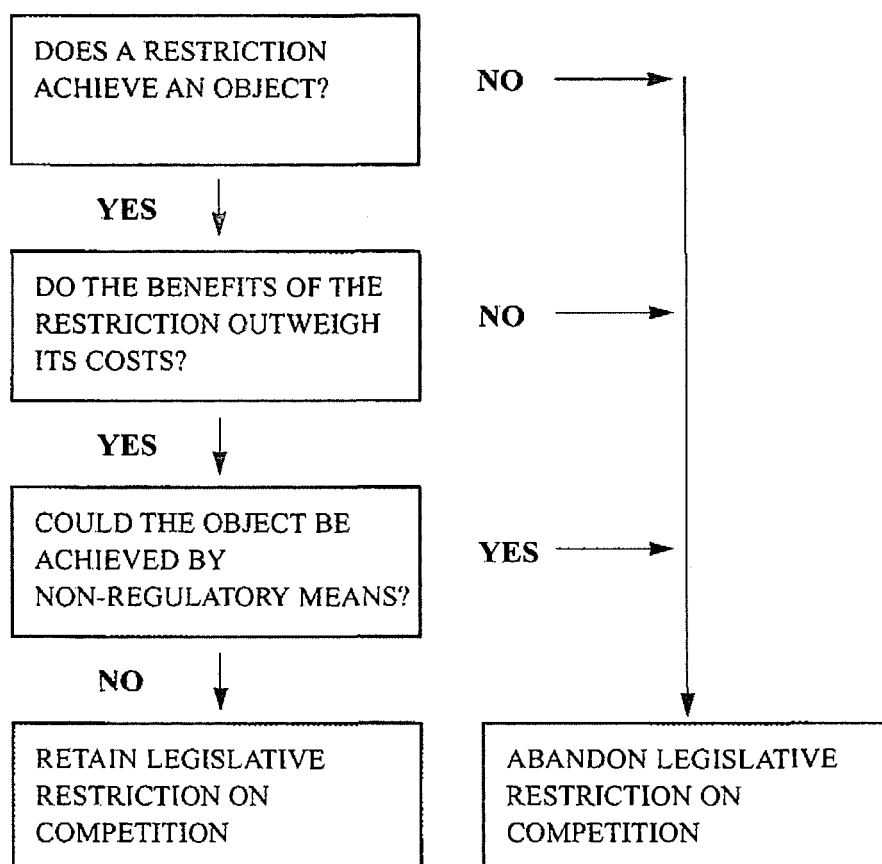
NCP requires that all Acts, whether Commonwealth or State, that prescribe regulations that may inhibit competition, should be reviewed and, where necessary, amended before the year 2000. NCP is given effect through three intergovernmental agreements signed by the Council of Australian Governments in 1995. These are:

- the *Conduct Code* that commits governments to apply uniform competition laws;
- the *Competition Principles Agreement* that establishes consistent guidelines for the pro-competitive reform of government business enterprises and government regulations; and
- the *Agreement to Implement National Competition Policy and Related Reforms* that specifies a timetable for reform and makes provision for additional general purpose payments to the States and Territories conditional on compliance with the reform agenda and timetable.

The guiding principles for *all* Reviews are contained in the *Competition Principles Agreement*. They require that legislation should not restrict competition unless it can be shown that the benefits of regulation to the community outweigh the costs, and further, that the objectives of the legislation could not be achieved in another way. The principles of NCP, while recognising the importance of competition, do *not* indicate that competition is seen as being more important than other policy objectives.

4.2 EVALUATION CRITERIA

The Government's *Guidelines for the Review of Legislative Restrictions on Competition* specify the procedure for the examination of anti-competitive provisions of the Act. The first stage of the Review is the identification of those provisions that restrict competition. After this, the practical effect of each provision is examined according to the following general scheme:



The guidelines suggest that any restriction which does not achieve an object should be removed from the Act. Where a restriction goes some part of the way to achieving an object, but fails the cost-benefit test, there may be a case for redrafting the provision, or replacing it with an alternative provision in this Act or in another Act, or an alternative non-regulatory measure.

The Review notes earlier that the objects of the Act, and 'adequate controls' in particular, are not defined and are open to interpretation. In the evaluation of provisions that are anti-competitive, the Review takes 'adequate controls' to mean the minimisation of harm broadly defined.

The benefit of a regulation is measured by the social gain it produces. This, for example, may include reductions in community health costs, road trauma and crime.

Regardless of the benefits, regulation has an administrative cost falling on the government and ultimately the taxpayer, and a compliance cost borne by businesses. Although de-regulation clearly reduces the administrative burden, it is less certain what the compliance costs would be if government regulation was replaced by self-regulation.

A second type of cost occurs if regulations cause markets to become inefficient by restricting competition, even though the intention of regulation may be to promote effi-

ciency by reducing social costs. In other words, restrictions that successfully reduce the adverse effects of the misuse of liquor may create other problems such as making the industry less innovative or less responsive to the preferences of consumers.

In the liquor industry, many restrictions differ between types of licences. It is arguable that these differences protect some sections of the industry but handicap others, and may as a consequence, disadvantage consumers. In principle, restrictions should be competitively neutral, but this is a vexed question when different licences carry different obligations and, therefore, different costs.

Although we are able to identify the costs and benefits of the restrictions, many are inherently incapable of being measured. Any weighing up of these factors must, therefore, be a matter of judgement.

Alternative non-regulatory measures may include public education and self-regulation by the liquor industry. Further, the Review may find that some aims can be better achieved by other Acts or through other regulatory bodies, and it is recognised that the aims of particular provisions of the Act may be broader than the objects specified therein.

4.3 THE WELFARE ECONOMICS OF A LESS REGULATED LIQUOR MARKET

The nature of the market for liquor is such that the Review is unable to perform a quantitative cost-benefit analysis of the restriction on competition contained in the Act. It is, however, able to perform a qualitative analysis which sheds some light on the probable consequences of the removal of some restrictions.

Liquor is not a single product like, for example, haricot beans, and liquor is often consumed in association with other products such as food, entertainment and gaming services. Because of this there is no one price for liquor that is determined by the forces of supply and demand. Nevertheless it is useful to consider the supply and demand for a composite product that encompasses this diversity.

In a cost-benefit analysis of the type required here, there are four welfare aggregates that should be considered. They are as follows.

- ***Consumer surplus***

This measures the gains from trade or exchange to consumers. It is the difference between the subjective values individuals place on the product, and the price at which they can purchase it in the market. If, for example, a consumer is willing to pay \$25 for a particular product rather than go without, and the market price is \$19, the consumer surplus for that individual is \$6. A reduction in price increases the consumer surplus, other things being equal.

- ***Produce surplus***

This measures the gains from trade to businesses. It is the difference between the price for which the product is sold, and the cost to a business of supplying it. If, for example, a business can place a unit of the product on the market at a cost of \$15, and the market price is \$19, the producer surplus for that unit is \$4. A reduction in price decreases the producer surplus, other things being equal.

- **Taxation**

The sale of liquor provides taxation revenue to governments. This revenue increases the welfare of those who ultimately, as a result, pay lower taxes of other kinds, or receive goods, services or transfer payments from the government.

◦ **External costs and benefits**

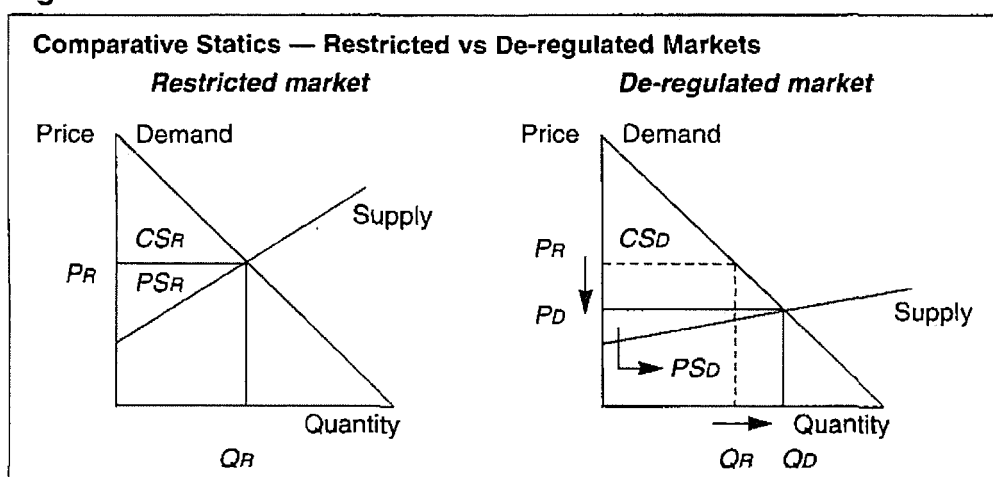
The harms associated with the misuse of liquor constitute an external cost resulting largely from a greater national health bill, road trauma costs and law and order costs. This may be offset in part by a beneficial impact on the health of moderate drinkers. Although the impact on health, whether positive or negative, affects drinkers directly, the net impact falls to a great extent on the national health bill, and ultimately the taxpayer.

Although it is a tenet of the principles of microeconomics that regulations tend to restrict employment opportunities generally, the effect on employment in the liquor industry of the removal of particular restrictions is less certain. Their removal may encourage spending in the liquor industry and create jobs there, but draws spending away from other industries so that the aggregate effect is uncertain. Even though spending may increase in the liquor industry, employment within the industry could decline if the share of the market in the hands of labour intensive businesses declined and that of capital intensive businesses expanded.

4.3.1 The Impact of an Increase in the Supply of Liquor and Associated Products

In this Section a comparison is made between a liquor market in which supply is restricted by absolute barriers in the Act and other provisions that decrease the availability of liquor and raise entry costs. In Figure 4.1, the demand curves indicate that as the price level in the market increases, people consume less of the composite product. Whether as a result people consume less alcohol is uncertain because people may substitute cheaper liquor products for more expensive ones, or they may spend less on the food, entertainment and gaming parts of the composite. The supply curve indicates that as the price level increases, more businesses are attracted into the liquor industry so increasing the supply or availability of the product.

Figure 4.1



The left hand diagram shows a restricted market with an average price level P_R and output Q_R . The area designated CSR represents the magnitude of the gains from trade to consumers, or *consumer surplus*, and the area PSR shows the gains from trade to businesses or *producer surplus*.

The right hand diagram shows a de-regulated market in which supply is greater (or shifted to the right). The result of the greater supply is an average price level PD and output QD. The area CSD represents the consumer surplus, and PSD the producer surplus.

The diagrammatic analysis shown here is sometimes termed a partial equilibrium analysis because it makes no direct reference to the consequence for markets other than the liquor markets. It is also a comparative statics analysis that, in essence, compares a restricted market with a de-regulated market.

The analysis suggests that de-regulation would produce the following outcomes.

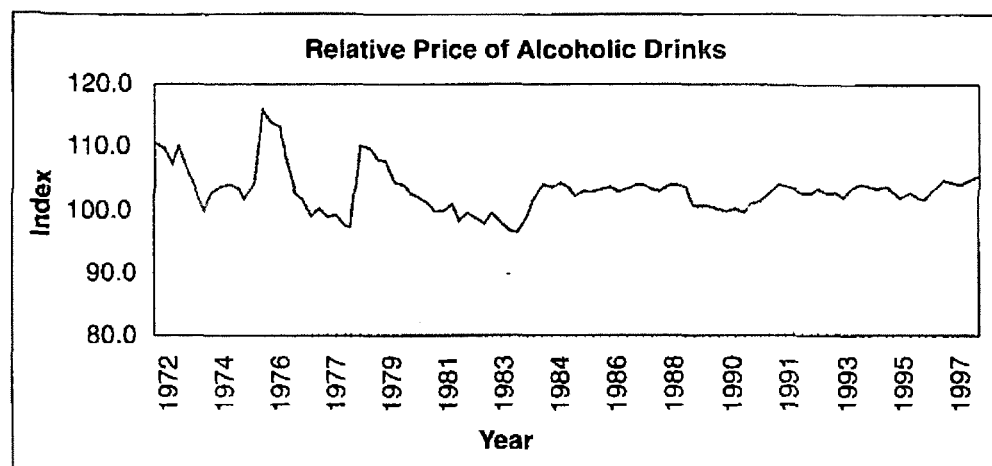
- A lower price level and a greater volume of consumption.
- A larger consumer surplus implying a benefit for consumers.
- A smaller producer surplus but this might be offset if de-regulation permitted businesses to make cost savings.
- Some individual businesses would increase their profits by being able to compete in areas presently denied to them; but some businesses might fail.
- In aggregate, the welfare of consumers and businesses would increase.

There are three important additional considerations not shown by the supply and demand diagrams.

- An increase in liquor sales would generate additional sales tax resulting in a benefit to recipients of government expenditure and/or other taxpayers.
- There is evidence that moderate consumption of liquor is beneficial to some people's health and results in an *external benefit*.
- Additional consumption, to the extent that some misuses may result, may lead to additional harms or *external costs*.

It is clear that the total welfare of the direct participants in the market (i.e. consumers and businesses) is increased by de-regulation. Whether there is a *net social benefit* depends on the gains to the direct participants in the market. To this must be added the additional tax revenue minus the additional external cost of harms, discounted by the positive impact on community health associated with additional moderate consumption.

In Chapter 2, Figure 2.1 shows that the number of licences per capita increased following the 1987 Act indicating that an increase in the availability of liquor occurred and, therefore, supply. The substantial increase in supply invites the question of its impact on prices. The prices in the diagram are not those of liquor, but the composite of liquor and associated products.

Figure 4.2

Australian Bureau of Statistics (ABS) data sheds some light on the liquor price component. Figure 4.2 shows the average price of alcoholic drinks in Victoria, as defined by the ABS, relative to the Consumer Price Index. (The index is set at 100.0 in the base period 1989–90.) The graph suggests that Victorian liquor prices fell by between 3 and 4% in comparison with other prices in 1988 and 1989, shortly after the partial de-regulation of the 1987 Act, but increased in 1990 and remained stable thereafter even though the number of licences continued to grow.

The graph suggest that a further increase in the number of licences might have little impact on liquor prices in the long term. In other words, additional competition seems more likely to result in extra non-price competition than price competition, and may be directed towards the services associated with liquor rather than liquor itself. This is reinforced by Figure 2.2 that suggests that the increase in the availability of liquor since 1990–91 has not been accompanied by a greater per capita consumption of alcohol. Although the Literature Survey indicates that there is an inverse relationship between the price of liquor and consumption levels, Figure 4.2 shows that a large price reduction following a further future de-regulation and a consequent large increase in the consumption of liquor seems unlikely.

What can be said with certainty is that de-regulation would increase the combined welfare of consumers and businesses as a group, and taxation revenue would increase. De-regulation would achieve a net social gain unless the external cost increases were large relative to the additional taxation. The magnitudes of these aggregates are elusive.

4.3.2 De-regulation and 'New' Products

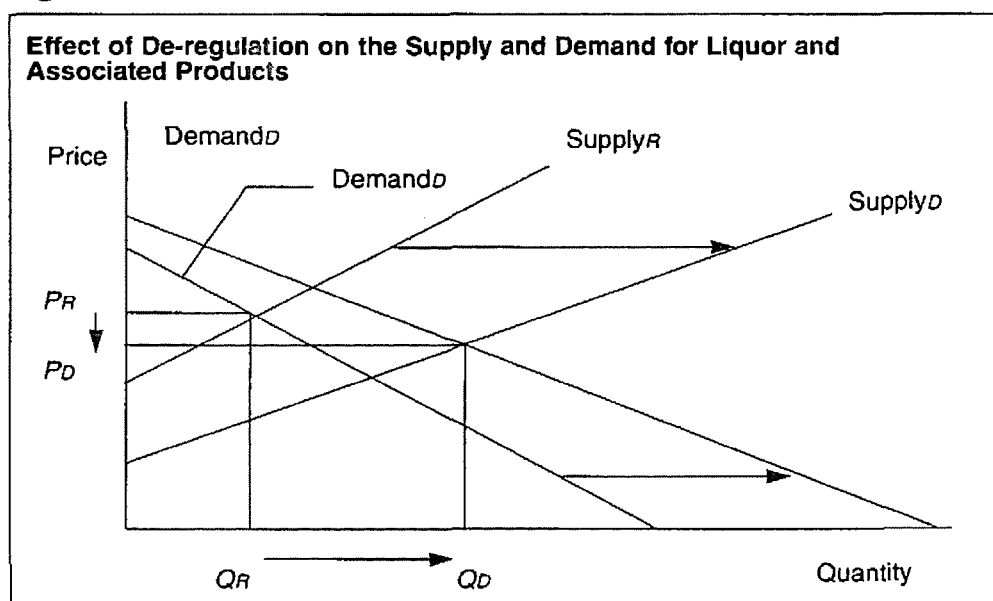
The analysis outlined above makes the implicit assumption that the nature of the product offered by businesses does not change as a result of de-regulation. This is unlikely to be more than a useful starting point. It is probable that businesses would compete by seeking new ways to sell liquor and package it with other products and services. We can only guess at what these offerings may be in the long term and, consequently, consumer surveys are unlikely to show the potential gains to consumers from the removal of some of the restrictions in the Act.

It is instructive to reflect on the level of demand for de-regulated shop trading hours prior to the changes in the *Shop Trading Reform Act 1996* that made it possible. Although many regarded the change as unnecessary or undesirable, unrestricted trading

hours have turned out to be so sufficiently popular that many supermarkets now trade 24 hours per day for most of the week. In a free market, services are provided, not according to a majority decision, but by whether there are sufficient consumers willing to pay the supply price for the product or service.

Figure 4.3 shows an increase in supply from *Supply_R* to *Supply_D* as new businesses enter the market and new composite products are offered to consumers. The increase in demand from *Demand_R* to *Demand_D* indicates a positive response of consumers to the new products.

Figure 4.3



The model suggests the following outcomes in a de-regulation market.

- The consumption of the composite product would be greater. Whether this implies an increase in per capita consumption of alcohol is uncertain.
- Figure 4.3 shows a decrease in the price level, however a larger increase in demand relative to supply might see an increase. In other words, the impact on prices is uncertain.
- The consumer surplus would be greater in a de-regulated market.
- The impact on the producer surplus impact is uncertain. Some individual businesses would increase their profits by being able to compete in areas presently denied to them, but others might fail.
- In aggregate, the welfare of consumers and businesses would increase.

The same considerations of taxation revenue and external costs and benefits that apply in Section 4.4.1 above, also apply here.

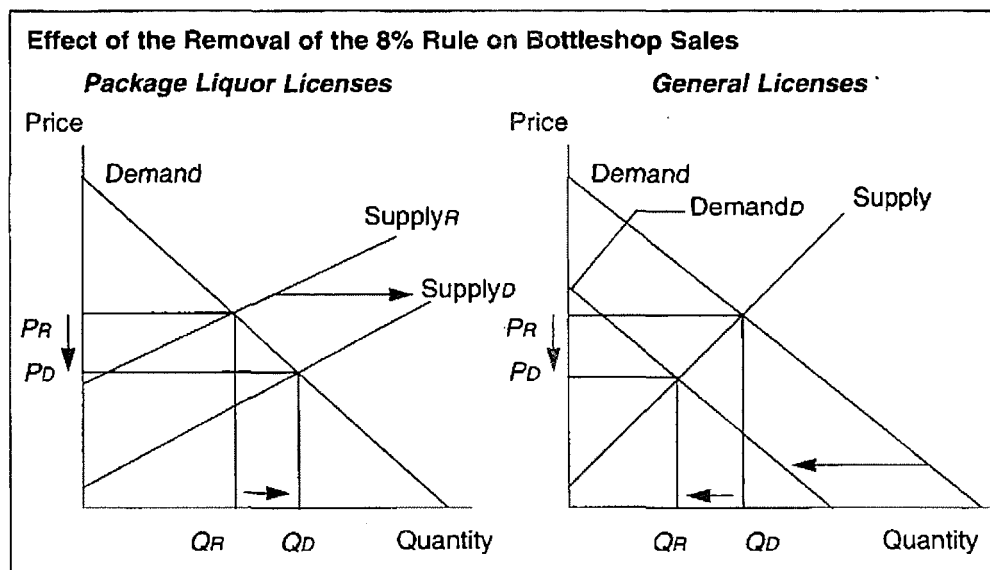
4.3.3 Removal of the 8% Rule

The removal of the 8% rule which limits the number of general or packaged liquor licences that may be held by any person or corporation, could increase the supply of packaged liquor in the packaged liquor licence sector of the market. It would almost certainly reduce the demand for liquor from general licensees. It can be shown that, in

the absence of additional external costs, removal of the rule would bring about a net social benefit.

Figure 4.4 shows the demand for package liquor as a composite product. Prior to the removal of the 8% rule it assumes approximate parity between the prices of packaged liquor licensees and general licence bottle shops.

Figure 4.4



The left hand diagram shows an increase in the supply of liquor in the package liquor licence sector resulting from the removal of the restriction allowing more supermarkets to become licensed. The predicted outcome is as follows.

- Additional competition within the packaged liquor licensed sector causes prices to fall in that sector.
- The right hand diagram shows a contraction of demand at hotel bottle shops resulting from lower prices in the other sector and greater availability of one stop shopping at supermarkets.
- The decline in demand for the services of hotel bottle shops forces them to offer lower prices to remain competitive.
- The combined consumer surplus across both sectors increases.
- Packaged liquor sales increase in the packaged liquor licence sector, but decrease in the hotel sector.
- The producer surplus decreases in the hotel sector.
- The producer surplus in the packaged liquor licensed sector decreases unless offset by cost savings brought about by other aspects of de-regulation or via economies of scale available to supermarkets.
- In aggregate the welfare of consumers and businesses would increase.

The same caveats in Section 4.5.1 regarding taxation and external costs and benefits apply.

Whether supply in the packaged liquor licence sector would increase substantially in the long run depends on the extent to which the entry of more supermarkets would displace independently owned businesses. Again, Figure 4.2 together with Figure 2.2 suggests that the impact on the average price of liquor and on per capita consumption would be small. The greatest gains may come from a greater access of consumers to one stop shopping.

4.4 RESEARCH LITERATURE CONCERNING THE AVAILABILITY OF LIQUOR AND HARM

Since the turn of this century, religious, welfare and health groups have been active in debate about the regulation of alcohol. From early times there have been groups that have sought significant restrictions on the availability of alcohol as a means of avoiding the potential excesses of its use in the broad community. Scientific work conducted in the 1950s provided some mathematical basis for arguments to limit the supply of alcohol overall as a means of preventing severe alcohol problems among a few and, at the same time, drew attention to those who might usually drink moderately but who nevertheless contribute significantly to the burden of harm through behaviours associated with drinking such as drink-driving, accidents, missed work, domestic disputes and violence. While this group might not usually attract attention as suffering from alcohol-related disorders, it is well recognised that their vast numbers overall contribute significantly to the costs the community bears in having alcohol available.

The public health sector heightened its claims of a direct relationship between the supply or availability of alcohol and overall problems or harms associated with alcohol through the 1970s and 1980s particularly. At the time of the last review of liquor licensing in Victoria (Nieuwenhuysen, 1986) one of the strongest groups arguing for maintenance of restrictions was the public health sector.

During the 1990s further research and monitoring of the effect of gradual de-regulation of alcohol sales with increased availability has produced a more sophisticated and perhaps alternative understanding of the possible relationship between alcohol availability and both the acute and long term or chronic negative effects of alcohol consumption.

The Review addressed this issue early and wished to use the most up-to-date knowledge available about the possible public health consequences of any changes that it might recommend. The Review commissioned a survey of current research and writing on this topic and the information gained assisted in the development of the Report.

The survey of the research literature investigates the relationship between the availability of liquor and the incidence of harm, and was carried out by Dr Ann Roche, Queensland Alcohol and Drug Research and Education Centre, Department of Social and Preventative Medicine, University of Queensland. Dr Roche's full report, *The Availability of Liquor and the Incidence of Harm* is shown in Appendix 5. What follows is Dr Roche's Executive Summary from the survey.

Executive Summary

Controversial Premises

- *Alcohol control policies have traditionally been predicated on the view that increased availability equals increased consumption; and that increased consumption equals increased alcohol-related problems. Hence, most research work in this area has been undertaken to determine the veracity of this underpinning premise.*

- *In more recent years, an alternative and perhaps complementary view has developed. That is, that the harms associated with consumption should be the focus of attention not consumption per se. Excellent examples now exist of strategies which have significantly reduced harms associated with alcohol use but have not altered the amount of alcohol consumed. Random breath testing and road trauma is one of the best examples of this approach.*
- *Another important development has been the shift in emphasis away from mean consumption levels to patterns of use. Patterns of use entails the where, when and how of consumption and not just the volume. This has important implications for control policies as there is now good evidence to indicate that different patterns of consumption, and especially more appropriate drinking environments, are conducive to reduced levels of harms. Again, such improvements in health consequences have been achieved without a focus on reducing mean consumption levels.*
- *There is now good evidence from recent developments in countries such as New Zealand that stands in stark contrast to the traditional alcohol available theories. Since the late 1980s, New Zealand nearly doubled its number of licensed liquor outlets without a proportional increase in associated problems. Such findings raise important questions about the complex nature of the supply-problem relationship and indicate the need for careful consideration of a wider range of factors which may impact on public health.*
- *Alcohol control policies are currently being revised in the context of an international shift toward free markets, open competition and general de-regulation. In such a context it becomes even more important to weigh up other considerations, such as health and social concerns, against economic imperatives.*
- *In assessing the contribution of alcohol use to harms experienced either individually or collectively, it is essential to differentiate between the types of potential harms with which alcohol has been associated. Different types of harms have different policy implications. A broad and comprehensive coverage of the range of possible harms is essential. This includes the traditional focus on chronic harms, stemming from heavy use over a long period of time (such as cirrhosis of the liver, brain damage and/or peripheral neuritis), to acute harms, stemming from possible occasional use but at a level which is hazardous for a given individual in a given context or setting (which can result in injuries, road trauma etc). Other types of harms are more social in nature and include violence, domestic disruption, and safety issues.*

Patterns of Use and Prevalence of Problems

To fully gauge the potential impact of alcohol consumption and any associated harms, it is essential to determine population prevalence levels and patterns of use. (The following are summary data from the Australian National Household Survey (1996).)

- *76% of Australians aged over 14 years are current drinkers. Among 14–19 year olds, 63% (males) and 61% (females) were drinkers. Of these 14–19 year old drinkers 48% (males) and 69% (females) reported that they usually drank at a hazardous or harmful levels. Hazardous and harmful consumption was more common in the under age group than in any other age group.*

- *Among drinkers who consumed alcohol at very harmful levels (ie more than 8 standard drinks for females and 12 for males), 57% had intended to get drunk. Those aged 14–19 had the highest rates of intention to get drunk at 72%, followed by 20–24 year olds at 68%. Males were no more likely to get deliberately drunk than females.*
- *Type of alcohol consumed varied by age and sex of the drinker. Spirits were the preferred beverage of 70% of the 14–19 year olds followed by a preference for beer by 47%. Wine was the most preferred beverage among older (>35 year old) females.*
- *Drinking venues: Most (79%) over 35 year olds preferred to drink at home. While the most preferred venue for 20–24 year olds was pubs, clubs and winebars (65%). Pubs and clubs were preferred by more males than females. Younger drinkers (14–19 year olds) most preferred to drink at parties (77%) or friends' homes (57%).*
- *Nearly half (49%) of all drinkers reported attempts to reduce their alcohol consumption over the past 12 months. This was attempted either by reducing the amount of alcohol consumed on any one occasion (attempted by 27% of all current drinkers), reducing the number of occasions when alcohol is consumed (25%), and switching to more low alcohol drinks (16%).*
- *More than one third of the population aged 14 or more reported that they had been verbally abused in the last 12 months by someone affected by alcohol, more than a quarter had been put in fear by someone so affected, while 9% had been physically abused. With respect to property crime, 13% had property damaged by someone affected by alcohol, and 5% had property stolen. Males and regular drinkers were more likely to have experienced alcohol-related crimes than females.*

Which Control Strategies?

Drinking behaviour is complex and is influenced by a multitude of factors. The complex array of factors which may impinge on whether an individual drinks, how much they drink and where they choose to drink is influenced by factors such as:

- *price, promotion, access;*
- *law enforcement;*
- *public health pressures (e.g. anti drink-driving messages);*
- *cultural norms;*
- *religiosity and religious persuasion;*
- *individual factors (including socio-economic status);*
- *psycho-social factors (such as drinking expectancies); and*
- *economic factors.*

Community Support and Compliance Essential

Regardless of the perspective held about alcohol control policies, there is widespread agreement that for any policy to be successful there must be a reasonable level of community acceptance of it. It is well recognised that Australia has very tolerant views about alcohol consumption and also intoxication. However, in recent years there has been growing concern in many quarters of the community about (1) under age drinking and (2) alcohol-related violence and social problems.

Summary of Overall Findings

In general terms, the following findings are supported by the literature:

- *Overall availability is too gross and insensitive a measure to be used in isolation to determine or to guide the development of alcohol policies.*
- *The number of outlets and hours of trading are not strong and consistent predictors of problems, with some important exceptions such as remote and geographically isolated areas or in concert with certain socio-economic circumstances (e.g. high unemployment levels, lack of social restraints).*
- *Price remains one of the consistent measures and predictors of alcohol consumption in general terms. At specific points in time, pricing and other strategies (free drinks, cheap drinks) which encourage excessive consumption and intoxication, with the potential for obvious harmful consequences, are strongly contraindicated.*
- *The nature of the licensed environment is highly predictive of problems. Recent studies in Australia and overseas have demonstrated the extent to which such environments are amenable to problem-reduction. A wide range of problem-reduction and problem-containment strategies now exist which are highly supported through empirical evidence. Substantial scope therefore exists to more fully utilise the potential in the licensed environment to minimise harms associated with alcohol use. Emphasis should therefore be placed on the nature of the licensed premise and enforcement of the regulations, rather than number of outlets.*
- *Improved controls to prevent sales to under aged drinkers and intoxicated patrons are of increasing importance, with evidence of need to improve compliance in this area. Use of improved training of managers and staff and compulsory training of licensees is supported.*
- *Ease of access to alcohol for young and very young drinkers is highly predictive of problems. As these drinkers do not usually frequent on-licence premises, there are important implications here for the provision of alcohol through off-licence premises (such as supermarkets, convenience stores and petrol stations). As such, there is a good basis for curtailing sale of alcohol through these outlets, or at the very least, requiring sales staff to be of legal drinking age and registered and trained to sell alcohol. This would necessitate acquisition of specific skills in service refusal. This is seen as a strong but important measure to safeguard young people.*
- *Enforcement strategies have been demonstrated to have great potency but are generally underutilised. Greater use of enforcement strategies is supported. Lack of enforcement needs to be treated seriously and addressed in a systematic manner at a structural level.*
- *Scope exists for an educational and facilitative role for liquor licensing authorities. It is evident that many licensees are unaware of many aspects of the liquor licensing legislation. The likelihood of achieving compliance is therefore substantially compromised. This can be easily remedied and the licensing authorities provide an obvious vehicle through which this could be achieved.*
- *Clearer and simpler liquor laws are needed both for ready comprehension by the general public and also to facilitate enforcement. To-date, confusing and convoluted laws serve only to befuddle the public and impede enforcement. Public acceptance of strategies has been repeatedly found to be essential for the successful implementation of and compliance with liquor laws and especially for their public health*

implications. Consultation with the general public is seen as essential in any revision of the legislation.

- *Given the highly variable and situation specific nature of much of the evidence about alcohol availability and harms, it is recommended that any changes be implemented in an incremental and step-wise fashion. In this way, major changes are not introduced which later prove to be both unsatisfactory and difficult to amend or revoke.*

4.5 THE PHILOSOPHY OF THE REVIEW

The Review believes that there is a community perception that liquor is a 'special' product, and this view is supported by a considerable body of research. Many, of course, consume liquor in ways that add to their quality of life with negligible or no harm to themselves or others. Indeed, some recent research suggests that moderate consumption of liquor may improve the health of some individuals.

Certain patterns of use of liquor, however, raise concerns of community health (morbidity and mortality), safety (including road safety), public nuisance, crime and violence, and public morality. As a consequence, it is a reasonable expectation of the community that the sale of liquor should not be subject only to the market forces of supply and demand, and that the government should not adopt a *laissez faire* approach. The survey of the research literature referred to above supports this approach.

On the other hand, the Review concurs with the approach of NCP, and believes the market for liquor should be regulated only to the extent necessary to achieve the 'adequate controls' object of the Act. The Review believes that the 'adequate controls' object means the minimisation of harm, and although this requires that some limitations be placed on the sales and disposal of liquor, restrictions which do not serve any identifiable community interest should not remain in the Act.

The Review believes that the 'proper development' and 'diversity' objects are worthy aims for liquor and perhaps all products. Except where there are clear public interest concerns that call for restrictions, these objects are best achieved by allowing the market to determine what is offered to consumers and how it is produced.

There are a number of consequences of this approach. The primary question is what type of regulatory framework should be established to enable these objects to be achieved. Historically, regulation has been through a licensing system and this has been the case not only in Victoria but in all other Australian jurisdictions and most overseas countries. Licensing is anti-competitive and under NCP principles should not be maintained unless it is necessary to achieve the objects and there is no alternative way of achieving them.

The Review has considered this but believes licensing should be retained. The harm that may be associated with the sale and disposal of liquor can arise in several ways. First, there can be a disturbance to local amenity associated with certain liquor outlets and there needs to be a mechanism for minimising this and for allowing the views of local communities to be taken into account. The licensing system provides this mechanism. The Review considered alternatives but believed that the costs to the community in allowing free access to the market far outweighed the benefits. Second, there can be harm done to the community from allowing irresponsible disposal of liquor, and a licensing system provides a mean of ensuring appropriate standards of conduct through the imposition of conditions on licences and the ability to suspend or cancel licences.

Whilst it would be possible to legislate for standards even if there were no licensing system, it would not be possible to cover individual circumstances that can be dealt with by attaching conditions to licences, nor would enforcement be as effective. Again, in the Review's opinion, the benefits of a licensing system outweigh the costs.

The 1987 Act, when compared with earlier Victorian Acts, takes a fairly progressive stance. It may be seen as liberal in comparison with Acts in other states and territories, however other Acts are undergoing or have already been subject to a NCP review. Whether the Victorian Act is more liberal than what has gone before, or has occurred in other states, is not an issue for the Review; the question it is required to ask is whether restrictions in the Act can be justified in terms of public interest.

One of the issues is what should be the basic approach to licensing. Previously, the industry was dominated by the hotel sector and policy measures were taken to reduce the numbers of hotels and bring about improvement in those that remained. The obligations of hoteliers sometimes termed the three 'pillars' of hotels (liquor, meals and accommodation) justified the protection of licensees from unfettered competition. At that time the licensing system was based on the type of business that was being conducted and as new or different types of business evolved new categories of licences were introduced.

This approach has continued to today. Despite the reforms of the 1987 Act, under which the number of categories was greatly reduced, those wishing to sell liquor are still forced into one licence category or another by reference to the type of business they carry on. Because licences carry with them a primary purpose, licensees are limited in their business activities to a lesser or greater extent, and different licence conditions confer advantages on some businesses but disadvantage others. The Review argues that the activities of businesses should only be restricted in the public interest, and that restrictions that are not competitively neutral should be eschewed. At a time when microeconomic reform is being actively pursued by Australian governments, it is important that restrictions that treat some sectors of the liquor industry unfairly and protect the 'turf' of others, with no public interest justification, should be removed from the Act.

The Review believes that the issue of the grant of licences should turn on the fact people want to sell or dispose of liquor, not whether they conduct a particular type of business. Since the object is the minimisation of harm, the question should be whether they will meet the standards required. The categories of licences available should depend on the manner in which the liquor is to be sold, as this will reflect the potential for harm that has to be minimised. As the Review will later elaborate, these considerations have led to the view that the categories of licences in the Act should be based on the different ways in which people want to dispose of liquor, say for consumption on premises or for consumption off premises, and not on the primary purpose for which the business is to be run.

This may appear to mean that any person could get a licence, but in fact there are a range of provisions in the Act which seek to protect the public which are much more directly targeted towards the minimisation of harm than the forcing of people who wish to sell or dispose of liquor into certain categories of businesses. The Review does not believe that any person or business should be able to obtain a licence. First, it is important that unsuitable persons or those without adequate knowledge of their obligations under the Act, should be excluded from holding a licence. Second, persons wishing to hold a licence should comply with relevant planning requirements, thus ensuring that amenity to the neighbourhood is protected. They should also comply with the relevant health and

fire requirements. Next the application process should allow public input so that the community interest can be considered. There should also be an opportunity to impose reasonable conditions directed to the particular type of business being conducted or its location or arising out of the past history of the applicant. This is a very important means of ensuring compliance with the harm minimisation provisions of the Act. Finally, licensees should conduct themselves in a way designed to minimise harm. So licensees should not be permitted to sell liquor to minors or to intoxicated persons. Further, certain restrictions should be placed on the activities of licensed businesses to minimise harm.

In arguing very strongly that some restrictions are necessary to achieve minimisation of harm, the Review is cognisant that restrictions have attendant costs. They create compliance costs for businesses and administration costs for governments and, ultimately, taxpayers. Restrictions may limit the choices offered to consumers. Measures should be taken to reduce the weight of regulation, particularly on licence applicants, by streamlining the application process that involves both local planning and licensing.

Those restrictions considered anti-competitive that the Review recommends remain in the Act, do so following a careful consideration of the social consequence of removing them. Ultimately, the costs of removing the restrictions outweigh the benefits and result in a recommendation for their retention. Where restrictions remain, the Review has considered whether non-regulatory or less intrusive measures could be used to achieve the objects, but is unable to identify less costly alternatives.

Finally, the Review notes again that its Terms of Reference prevent it from examining all aspects of the Act in the manner of the *Nieuwenhuysen Report* in 1986. Only those provisions of the Act that are anti-competitive are to be examined.

4.6 RECOMMENDATIONS CONCERNING THE OBJECTS

In meetings with many industry and community groups, it was clear that all regarded harm minimisation as a proper object of the Act. Many favoured the inclusion of an explicit harm minimisation object, however, others believed the present objects are satisfactory and that harm minimisation is implied by 'adequate controls' and 'proper development'. The Review recommends that the principal object of the Act should be the minimisation of harm.

The Review recommends the following objects for the Act:

- (a) to encourage responsible attitudes towards the promotion, sale, supply, consumption and use of liquor, to develop and implement principles directed towards that end and minimise the harm associated with the consumption of liquor;
- (b) to ensure as far as practicable that the sale and supply of liquor contributes to, and does not detract from, the amenity of community life;
- (c) the facilitation of the development of a diversity of styles of licensed premises and related services; and
- (d) to regulate, and to contribute to the responsible development of the liquor, hospitality, tourism and related industries in the State.

The first two objects focus on the minimisation of harm that may result from the misuse of liquor. The third and fourth objects indicate that the restrictions that are necessary to achieve harm minimisation should not limit competition and the development of the liquor and associated industries.

5 LICENCE CATEGORIES AND PRIMARY PURPOSE PROVISIONS

The Review has previously noted the special nature of liquor, and the community expectation that there should be some form of regulation of its sale and disposal. The existence of a licensing system enables a coherent structure for regulation of the industry, and provides a vehicle for enforcing that regulation.

Section 123 requires that persons who wish to sell or dispose of liquor be licensed. This provision is important in meeting the 'adequate controls' object. It allows the Commission to prevent unsuitable persons from selling or supplying liquor. Further, licensing places conditions on licensees together with a set of penalties, including cancellation of licences, for those licensees who infringe.

Although harm is more likely to manifest itself in association with retail liquor outlets, the Review believes the safeguards of the licensing system should apply to all businesses that sell liquor. **The Review recommends the restriction that all liquor sellers must be licensed should be retained in the Act.**

Although industry self-regulation, perhaps together with a 'negative licensing' scheme that would disqualify businesses that violated voluntary codes of good practice is a possible alternative to licensing, the Review believes there is a community expectation that licensing should remain. The Review is conscious of the achievements of the voluntary Responsible Serving of Alcohol programs, however it believes that licensing provides a powerful means of disciplining those licensees whose practices fall below community standards. Although licensing systems vary from country to country, countries with similar cultural characteristics to Australia regulate the sale of liquor through licensing. **The Review is unable to make a convincing case for a non-regulatory alternative to licensing as a means of achieving the 'adequate controls' object.**

5.1 PRESENT LICENCES

The Review has discussed the appropriateness of retaining a licensing system as a condition of entry into the liquor business, and concluded on an analysis of costs and benefits that a licensing system should be retained. However, it is still necessary to consider whether the current system is unnecessarily anti-competitive, and whether the current procedures involved in obtaining a license impose unnecessary costs. This section relates to the first of these questions.

The 1987 Act contains broad licence categories that are defined in Sections 46 to 52 according to the primary purpose of the business. The 1987 Act, although seeming to have reduced the number of licences significantly from the 29 in the 1968 Act, in fact contains many different licences under broad headings. In effect there are 19 different categories.

The present licences are:

1. Residential licence
2. General licence
 - class 1 (hotels)
 - class 2 (taverns and bars)
3. Club licence
 - Full club licence
 - Restricted club licence

4. Producer's or distributor's licence
 - Producer's licence
 - Distributor's licence
 - Vignerons' licence
5. On-premises licence
 - Catering, receptions and functions
 - Live entertainment
 - Conferences
 - Restaurants
 - Sporting or cultural activities
 - Tourist services
 - Educational or training programs
 - Other activities approved by the Minister
6. Packaged liquor licences
7. Limited licences
 - One-off events
 - Renewable limited licence

In addition, there is a BYO permit and an extended hours' permit.

Although the Review is charged with making recommendations that will simplify the licensing system with a view to reducing the costs of licences and allowing competition to take place, this does not necessarily mean that there should be fewer licence categories. It is important that the licence granted to any business should be sufficient to achieve 'adequate controls' without restricting competition unnecessarily. There is also some advantage in differentiating the type of licence for planning and other purposes.

In the 1987 Act, the broad licence categories are defined by the primary purpose of the business. In summary the licences and primary purposes are:

- Residential licences (Section 46(2)), the provision of accommodation;
- General licence (Class 1) (Section 47(2)), the provision of liquor for consumption on and off the licensed premises;
- General licence (Class 2) (Section 47(3)), the provision of liquor for consumption on the licensed premises;
- Club licence (Section 48(2)(a)), the business of a club;
- Producer's or Distributor's licence (Section 49(2)), the business of producing or distributing liquor;
- On-premises licence (Section 50), prescribed activities other than the sale of liquor;
- Packaged liquor licence (Section 51(1 & 3)), the sale by retail of liquor in sealed containers, bottles or cans for consumption off the licensed premises; and
- Limited licence (Section 52(3)(a & b)), the licence is required for a limited purpose and would not be more appropriately carried on under a licence of another kind.

The licence categories are anti-competitive because they limit the business activities carried out on the licensed premises to those defined by the primary purpose.

The licence categories appear to serve three objects. First, they serve the 'proper development' object by placing broad limits on the business activities of licensees; second, they serve the 'diversity' object by providing a range of types of licences; and third, they

serve the 'adequate control' object by placing different licence conditions on different business activities.

The main stakeholders are as follows.

Positive impact

- Local amenity may be protected by limiting the range of services offered by licensees to those in accord with the type of licence they hold.
- Licensees of a particular type may be protected from competition from those holding other types of licences.
- Licensees are offered a range of licences under which they may sell liquor.

Negative impact

- Consumers have a more limited range of services offered to them by licensees.
- Licensees who wish to offer a wider range of services may be prevented from doing so, unless the proposed services coincide with the primary purpose specified by their particular type of licence. New ways of offering services in response to changing market conditions may be inhibited.

5.2 SUBMISSIONS

Submissions supporting the simplification of the licensing system by the removal of the primary purpose provisions, or part thereof, were received from Carlton United Breweries Limited (to facilitate administrative ease and flexibility for businesses [p 19]), Mr J. Chalker (The Owl & the Pussycat) (to allow a simpler and fairer licensing system [p 9]), Mr J.P. Nolan (because in most cases primary purpose is artificial [p 15]), Restaurant and Catering Association of Victoria (to ensure the same trading abilities for all businesses selling liquor [p 1]) and Victoria Police (because primary purpose provisions may not be the best way of achieving proper control [p 6]).

Those supporting the retention of the present system were the Australian Hotels & Hospitality Association Inc. (to provide sufficient information about the intended business to be available to all interested parties [p 20]), Mr J.F. Larkins (to enable the Commission to promptly vet club licence applications since the advent of gaming machines in Victoria in relation to clubs and hotels [p 14]), and the Victorian Wine Industry Association Inc. (to identify the unique nature of vignerons' enterprises [p 6]).

5.3 KPMG ANALYSIS

The conclusion of the analysis of the number of licence categories and primary purpose is:

The primary purpose provisions constrain business in ways which have little to do with controlling liquor abuse. They restrict the flexibility of business in responding to demand and they inhibit competition. Removing the primary purpose requirement would allow a greater variety of outlets, new entry and increased competition. The impact on consumption cannot be determined but is unlikely to be significant given inelastic demand and switching between outlets.

[p 1]

5.4 EVALUATION OF PRIMARY PURPOSE

The licence categories defined according to primary purpose may be seen as addressing the 'proper development' object by placing broad limits on the business activities of licensees, the 'diversity' object by providing a range of types of licences, and the 'adequate control' object by placing different licence conditions on different business activities.

The Review interprets the 'proper development' and 'diversity' objects as meaning that the Act seeks to promote a thriving and dynamic industry. NCP suggests that the driving force behind this should be the demands of consumers and the efforts of businesses to provide products and services to meet those demands. Businesses are more likely to be efficient and innovative when unconstrained by regulations that limit their primary purpose. In other words, the primary purpose is more likely to inhibit 'proper development' and 'diversity' than to promote them.

Although it is clear that the range of licences is sufficient to cater for many types of businesses, once a licence is issued the business is then bound by its primary purpose provision. If a licensee decides to change the business plan of the enterprise in a way that would conflict with the original primary purpose, the licensee has to apply for a more appropriate licence. A different licence, of course may be rejected on the basis of community interests or other considerations. Furthermore, the application for a different licence may be costly to the business, particularly if it is opposed.

It may be argued that the primary purpose provisions address the 'adequate controls' object by identifying the nature of businesses seeking to be licensed. Identification of primary purpose may assist in an evaluation of community interest and, where appropriate, facilitate the attachment of conditions to licences. Primary purpose, however, is not necessary to achieve 'adequate controls'. In order to protect community interest, it is only necessary that the intended nature of the business be identified, both for local planning and so that conditions may be attached to the licence if deemed necessary by the Commission.

In the Review's view, the notion of primary purpose is no longer relevant to the objects of the Act. As the Review said earlier, the objects of the Act are linked to harm reduction and it is not necessary for that aim to confine the businesses that sell and dispose of liquor to specified primary purposes.

Abandonment of primary purpose would not lead to an uncontrolled market. The Review has argued elsewhere, and it is stressed again here, that 'adequate controls' are warranted because of the special nature of liquor. The Act specifies and should continue to place limitations and obligations on all licensees to minimise harm and protect community interest.

5.5 CATEGORIES OF LICENCES

This brings the discussion to the question of the categories of licences that should be granted. In his review of the 1968 Act, Dr Nieuwenhuysen argued that a single licence

avoids the problem of licence 'boxes', and of endless disputes about which category shape or condition allows fairness, equity or reasonable flexibility to inhabitants of each 'box'. [p 477]

The Review, however, argues that in order to meet the 'adequate controls' object it is useful to make some distinctions between different types of sales and disposal of liquor because of the different potential for harm that they present. For instance, it is useful to differentiate between on-premises and off-premises sales. With sales for consumption

on the premises, the licensee must ensure that consumption takes place in a responsible manner so that harm is minimised. On the other hand, with off-premises sales, the responsibilities of the licensee do not extend to the consumption of liquor which takes place away from the premises.

The KPMG analysis argues that:

by themselves, reducing the number of licence categories would seem to provide some enhanced flexibility for licensees to configure their businesses in ways which better match market demand. It is not just the number of licence categories which is the concern from a competition policy perspective, but rather the terms and conditions that may be attached to them. Within a reduced number of licence categories, the Act could still differentiate between sub-categories of licence as it does now in relation to the general and club licences. Furthermore, the licensing authority could still use its discretion to impose restrictive terms and conditions on particular licences. Little change may result.

On the assumption, however, that a reduction in licence categories does represent a real liberalisation, it is likely that competition would be significantly enhanced. Firms would find they have more flexibility to respond to market demand. Undoubtedly hotels, in particular, would come under renewed pressure to respond more flexibly to the demands of consumers. A greater variety of outlets is likely to develop and new entry would be easier to achieve, assuming no other changes occurred to inhibit entry. Consumers would benefit from a greater mix of services at the point of sale.

Fewer obstacles to competition between licensees may lead to lower prices for particular liquor products over time. However, firms may be required to undertake significant new investment which will have to be funded. An outcome of increased competition may be greater emphasis on non-price competition, especially improved quality and service. Consumers may well be prepared to pay a price.

Whilst we are of the view that greater competition will expose less efficient outlets and trigger improved standards of performance, although there will, no doubt, be those who will have concerns that some firms will reduce standards in trying to cut costs. There may well be some problems of this kind, but they should be seen as transitional. It has been assumed that existing restrictions preventing the serving of under age and intoxicated people remain in place and it will be important that these continue to be rigorously enforced [p 156].

The survey of the research literature suggests that an increase in the availability of liquor brought about by changing the licensing system would be unlikely to have a significant impact on total consumption and harm. Inelastic demand overall would mean that any price reduction, and that would probably be small, would cause less than a proportionate increase in consumption. Switching between outlets would be more important than the overall impact on consumption levels. The impact of a simplified licensing scheme on the consumption patterns of particular consumer groups would be difficult to assess.

The Review believes that with the removal of reference to primary purpose in the Act it would be possible to reduce the number of licence types available to most retail businesses to three: an on premises licence; an off premises licence; and an on and off-premises licence. In addition, for reasons which will be explained in the following examination of individual licence types, there would need to be a club licence, a pre-

retail licence, a vigneron's licence and a limited licence for one-off occasions and other situations in which the sale of liquor is a peripheral part of the business and for which none of the other licences is well suited.

The 'adequate controls' object would, in the first instance, be addressed via local planning to protect local amenity. The Act would retain those controls necessary to encourage responsible serving of liquor, and sanctions for those licensees who breached provisions of the Act or specific conditions attached to their licences.

Each of the licences proposed here encompasses a very wide range of business activities and it is clear that different licence conditions would be required to address the 'adequate controls' object. In achieving this object, standard conditions could be applied to a general category of businesses such as hotels, and specific conditions to address potential harms associated with particular operations and locations.

The Review recommends the following licence categories:

- an on-premises licence;
- an off-premises licence;
- an on and off-premises licence;
- a club licence;
- a pre-retail licence;
- a vigneron's licence; and
- a limited licence.

The Review next considers the existing licence categories.

5.5.1 General Licence (Class 1)

The term 'primary purpose' is not defined in the Act and its application is not uniform across all licence types. For **general licences (class 1)**, Section 47(2) states:

The Commission must not grant a general (class 1) licence unless it is satisfied that the primary purpose of the business to be carried on on the licensed premises is the provision of liquor for consumption on and off the licensed premises.

The Commission interprets primary purpose for hotels as being the sale of liquor with a range of services such as the provision of food, entertainment or gaming facilities. A consideration of the share of liquor sales in the turnover of the business, or whether some hotel customers do not consume liquor along with the other services, is not critical in most licensing decisions that concern general licences.

Primary purpose appears to place few limits on diversity within the hotel sector, but this is not the same as *promoting* diversity. Whether or not primary purpose encourages or inhibits diversity, NCP takes the view that the market, not regulators, should decide the diversity of the liquor and associated industries.

With the removal of primary purpose from this category of licence it is more appropriate to describe it by reference to the manner in which liquor is sold or disposed of from premises which have this type of licence. Essentially, holders of these licences, such as hotels, sell liquor for consumption on and off the premises and the licence should be described as such. Any person who wants to sell and dispose of liquor whether as part of or as the whole of their business would apply for this licence.

The Review recommends that the general licence (class 1) be replaced with an on and off-premises licence.

The Review recommends that in any event this category of licence should not have a primary purpose requirement.

5.5.2 General Licence (Class 2)

The general licence (class 2) has the same primary purpose as a general licence (class 1), except that it limits the sale or disposal of liquor for the purpose of on-premises consumption. Primary purpose is not necessary to achieve 'proper development' and 'adequate controls', and may be counter productive to 'diversity'. **The Review recommends that the general licence (class 2) be absorbed into an on-premises licence.**

The Review recommends that in any event this category of licence should not have a primary purpose requirement.

5.5.3 Residential Licence

The Review can find few differences between the operations of general licensees and residential licensees that would require different types of licences. Both general licensees and residential licensees are able to sell liquor for on-premises consumption at any time to residents and guests. While general licensees are able to sell to the public for on-premises consumption during normal trading hours, residential licensees may do so only if the Commission so determines and specifies in the licence. General licensees (class 1) are able to sell to the public for off premises consumption during normal trading hours, but residential licensees may do so only if sanctioned by the Commission.

It may be possible to mount a case that sales to the public from residential licensed premises could have adverse consequences for local amenity. The Review, however, argues that all licence applications are subject to public scrutiny where objections based on concern for local amenity may be made. Accordingly, if sales for off-premises consumption were deemed to be problematic, the licence could be for on premises sales only, and if sales for on-premises consumption posed difficulties for local amenity appropriate conditions could be attached to the licence.

The Review recommends that the residential licence category be removed from the Act and that the residential licence be absorbed into an on-premises licence. Where a current residential licence holder has the right to sell off-premises, the licence should be absorbed into an on and off-premises licence. It is argued elsewhere that the 20 bedroom rule for residential licences is anti-competitive and should be removed from the Act.

5.5.4 On-Premises Licence

In the present Act, Section 50(2) allows on-premises licences to be granted to businesses whose primary purposes are:

- (a) catering associated with the conduct of social receptions or functions; or
- (b) live entertainment; or
- (c) conferences, conventions or meetings; or
- (d) a restaurant or other place where meals are prepared or served for consumption on the premises; or
- (e) sporting or cultural activities; or
- (f) businesses directly related to the provision of services to the sale of goods to tourists; or

- (g) *educational or training programs relating to the preparation and service of food or beverages; or*
- (h) *such other activities as approved by the Minister.*

Businesses not included in this list are excluded from holding this type of licence. The Section prevents an on-premises licence being granted to other innovative businesses that do not fall within this list. The presence of this list which excludes other businesses from an ability to obtain an on-premises licence, without seeking the approval of the Minister, is anti-competitive. In the Review's opinion, any business should be able to apply for an on-premises licence. This does not mean that there are no controls. As the Review has argued elsewhere, the application of planning requirements and the stringent control provisions of this Act are more appropriate and effective means of minimising harm.

On a strict reading, primary purpose for on-premises licences seems little different in intent from Section 47(2) that allows a generous interpretation to hoteliers. So far as restaurants are concerned, however, a liberal interpretation of primary purpose that would enable the licensee to sell liquor without meals is prevented by the part of Section 50(3)) that states:

if the Commission so determines and specifies in the licence and on payment of \$800, also authorise the licensee to sell or dispose of liquor (otherwise than in association with the serving of meals) for consumption on part of the licensed premises that -

- (a) *comprise not more 25 per centum of the total area of the licensed premises of which liquor is sold and disposed of; and*
- (b) *is set apart, in accordance with any conditions specified in the licence, for the supply of liquor otherwise than in association with the serving of meals.*

The Review makes the point that the liberal interpretation of primary purpose applied to hoteliers is hardly any restriction at all, but for restaurants, primary purpose together with Section 50(3) prevents *any* sales of liquor without food unless the licensee has been authorised to sell in a designated 25% area. Primary purpose, therefore, at least in its application, is not competitively neutral.

The **general licence (class 2)**, once primary purpose is removed from the Act, is simply one of the on-premises licence sub-categories.

The Review recommends that the on-premises licence should not have a primary purpose requirement.

The Review recommends that existing on-premises licence holders continue to be licensed under this category. Elsewhere the Review recommends that the 25% rule be removed from the Act.

5.5.5 Club Licence

The Act does not prevent clubs from obtaining a general licence and in many respects the operations of some clubs under **full club licences** have much in common with hotels with respect to the sale of liquor and the supply of food, entertainment and gaming services. On the other hand, unlike all other licensed businesses, clubs are non-profit organisations and are subject to different fees and conditions to general licensees under the *Gaming Act*. The Review believes that these differences are sufficient to justify a sepa-

rate club licence, but that clubs should not be prevented from seeking other licences. **The Review recommends that a separate category of club licence be retained.**

The distinction between a full club licence and a **restricted club licence** is somewhat arbitrary and depends on the number of members, the standard of facilities and services, the number of full-time staff, the turnover of liquor purchases, the days and hours of operation and any other matters that the Commission considers relevant (Section 48(2A)). Restricted clubs are prevented from sale for off-premises consumption and trading hours are limited to those prescribed by the Commission (Section 48(1)(b)). They are also prevented by the *Gaming Act* from access to gaming machines.

It is clear that many restricted club licences apply to the sale of liquor in circumstances that are different from those of other licensees. Where the difference is because the restricted licence is used for only part of the year, or for lesser hours than normal trading hours, the present **limited licence** could be available to clubs not meeting, or wishing to meet, the criteria for a full club licence. **The Review recommends that the restricted club licence be removed from the Act. Clubs that do not meet the conditions that would enable them to obtain a club licence should be eligible for a limited licence.** Elsewhere the Review recommends that the clubs holding limited licences be not confined to purchase liquor from general licensees or packaged liquor licensees.

The Review recommends that Schedule 1 be simplified and revised to ensure that all requirements are relevant and written in plain English. It also recommends that Schedule 1 should be incorporated into the constitutions of all clubs with the onus on clubs to ensure that this occurs. Whilst not anti-competitive, the Review notes that club provisions are quite burdensome. Requirements for forwarding amendments and the like to club rules are unnecessary and should be removed. New clubs should present their constitutions as part of their application for a licence.

5.5.6 Producer's or Distributor's Licence

The principal difference between the present **producer's or distributor's licence** and other licences is that the primary purpose is the sale and supply of liquor to other licensees. As the Review notes elsewhere in considering the matter of trading hours, the impact of liquor wholesaling businesses on local amenity and harm seems small providing that local planning conditions are complied with. The same applies to businesses that produce liquor but do not sell to the public. These may appear to be arguments for *not* requiring the licensing of businesses whose only activity is the sale or supply of liquor to licensees. The Review, however, is cognisant of the potential harms that could result from the irresponsible sale of liquor and believes that suspension or cancellation of licences is a powerful deterrent.

The Review is aware of a particular problem faced by some wholesalers who lease warehouse space from other (unlicensed) businesses. These wholesalers face higher costs and are restricted in their operations by the requirement that a particular area be licensed. There is no reason, including a concern for the collection of excise, why a particular area should be defined. Further, there seems little reason why any area and any hours of trading should be defined that would prevent these businesses trading anywhere and at any time, provided it is restricted to trade with licensees and does not violate local planning.

Section 49(4) of the Act requires that for the holders of distributor's licences, the business carried on be not less than 90% of the business of selling and supplying liquor to licensees. In other words, distributors may carry on a retail business that may be up to 10% of their total business. It is reasonable that distributors should be able to sell to *bona fide* employees and to the public for promotional purposes, and provided the volume of this business is relatively small, not be required to obtain one of the retail licences. As a consequence some threshold level of retail sales should be specified to draw a line between retailers and wholesalers.

Section 49 places no limits on the retail sales of holders of producer's licences. Although the Review believes that no holder of a producer's licences (other than vigneron) approaches 10% of retail sales, there should be a line of demarcation that is the same for producers and distributors.

The Review proposes that producer and distributors hold a pre-retail licence that would enable great flexibility in their operations. If the holder of a pre-retail licence wishes to make retail sales, conditions applying to other retailers should apply. Retail business should be restricted to normal trading hours and take place within a nominated area consistent with local planning requirements.

The Review recommends that licensees carrying out the business of a distributor or producer be granted a pre-retail licence. The licence would enable the business to trade at any time or any place where it is approved by local planning. The licensee should be a suitable person and have adequate knowledge of the Act. No other limitations should be placed on the licensee except that sales to other licensees should be at least 90% of the business. Businesses wishing to make retail sales should do so in normal trading hours, in a nominated area and be subject to local planning.

In the past the **producer's or distributor's licence for vigneron** has been used to subsidise wine growers by exempting cellar door sales from the 11% licence fee. Since the High Court decision in 1997 that determined that this fee was unconstitutional, the exemption has been redundant. The government, however, may wish to subsidise vigneron in a different way in the future. Accordingly, it would assist both the government and vigneron for wine growers to have a vigneron's licence that would be similar to the present producer's or distributor's licence for vigneron. This should be available to vigneron who meet the criteria presently set out in the Act. These criteria appear to be based on the government's desire to promote wine growing and tourism. As this is the basis on which the government decides to subsidise wine growers, the criterion should be retained in the Act

The Review proposes that the criteria for the licence that 70% of wine should be 'grown or pressed' by the licensee, should be replaced by 'grown or fermented' since this more accurately establishes the *bona fides* of a vigneron. **In order to facilitate the Government's subsidisation of the Victorian wine industry, the Review recommends the establishment of a vigneron's licence as a separate licence category. The criteria should be the same as in Section 49(3) except that the words 'grown or pressed' should be replaced by 'grown or fermented'.**

5.5.7 Packaged Liquor Licence

For packaged liquor licensees, Section 51(3) states;

The Commission must not grant a packaged liquor licence unless it is satisfied that the primary purpose of business to be carried on in the area set aside as the licensed premises is the sale by retail of liquor in sealed containers, bottles or cans.

In this case the primary purpose provision does not restrict the range of businesses that can sell packaged liquor, but it ensures that the sale of liquor is conducted in an identified area. To this extent it does not appear to achieve any object of the Act. Other provisions of the Act make it an offence for a licensee to permit a person under the age of eighteen to sell or dispose of liquor on the licensed premises (Section 130), and subject to a range of exemptions, prevents persons under the age of eighteen being on licensed premises (Section 128). The effect of all of these provisions is that holders of packaged liquor licences must conduct that part of their business in separate premises.

In supermarkets, primary purpose requires that liquor sales be kept within a specified licensed area, but has no implications for the overall activity of the business. On the other hand, the interpretation of primary purpose by the Commission normally prevents other types of businesses partitioning off an area of their premises and applying for a packaged liquor licence for that area. If supermarkets are treated differently to other businesses in this way, the application of primary purpose within this licence category is not competitively neutral. Indeed, businesses so denied an opportunity to obtain a packaged liquor licence because of primary purpose are *de facto* prohibited businesses.

NCP suggests that all businesses should be allowed to obtain liquor licences provided that they meet the qualifications and obligations of the Act, and provided there are not community interest reasons for not granting a licence. The community interest reasons applicable here are three: it is desirable not to have liquor displayed with other products; it is unreasonable and undesirable to place staff under the age of eighteen where they may have to enforce prohibitions against the sale of liquor to persons of their own age; and it is undesirable for persons under the age of eighteen to be exposed to the temptation of liquor.

The Review argues that at this stage the community would not accept liquor being commonly displayed with other products, or that minors should be placed in the position of selling liquor. However, as will be discussed elsewhere, there are many exceptions to the provision that restricts minors from being on licensed premises, and the Review does not believe the provision should be retained.

In summary, the community interest in this area would be served if holders of the licence were required to store and display packaged liquor in an area physically separated from the rest of the business premises, and if the restriction on the sale of liquor by minors is retained.

This would mean that although the liquor was stored and displayed in a part of the business separated off from the rest of the business, it could be carried through the rest of the store by a customer to a check-out provided it was not staffed by a minor.

All of the relevant provisions for obtaining a licence, such as the applicant being a suitable person, planning permits and the like would remain.

The Review recommends that the packaged liquor licence be replaced by an off-premises licence that makes no reference to primary purpose. The licence should

allow the sale of packaged liquor, but require that the liquor be stored and displayed in an area physically separated from the rest of the business premises.

5.5.8 Limited Licence

The present **limited licence** (Section 52) provides a means of granting licences to businesses that do not fit easily into any of the other licence categories. Licence conditions are determined on a case by case basis by the Commission. Many limited licences are granted for one-off occasions where there is no continuing business, or where a continuing business does not wish to be involved in the selling of liquor on a continuing basis or as an important part of the business.

The use of liquor is so widespread and takes place in such a vast range of circumstances that there is a clear need for a licence to cater for the activities that fall outside the definitions in the present Act or those proposed by the Review. **The Review recommends that the present limited licence be retained for situations where the sale or disposal of liquor is 'limited' and no other licence is more appropriate. The licence should be subject to conditions as determined by the Commission to ensure 'adequate controls'.**

Bed and Breakfast establishments fall into this category because, in most instances, the sale of liquor is a minor aspect of their business and confined to their guests and the guests' guests. At present the process of obtaining a licence is costly, particular if an application attracts objections. These costs fall disproportionately more heavily on very small business, and ones for which the community interest is likely to be of little consequence. Accordingly the Review believes that the licensing process as it applies to bed and breakfast establishments is heavy handed. At the same time, the Review believes that all sellers of liquor, including these businesses, should be licensed to ensure 'adequate controls'. The Review considers that if a local council has granted a planning permit for the business, that sufficient regard has been given to the impact of the business on its surroundings. **The Review recommends that bed and breakfast establishments be eligible to receive limited licences. The only conditions that should be met are that the Commission is satisfied that the applicant is a fit and proper person and has an adequate knowledge of the Act, and that a local planning approval has been obtained.**

5.6 BYO PERMITS

The Review notes that many people purchase liquor for consumption in many places that are not licensed. These places include picnic areas, parks and the like where no permit is required. Setting aside the issue of public misbehaviour that sometimes occurs in these places, and which is a policing matter, there appears to be a broad view in the community that public drinking in this way is acceptable. It is arguable that this freedom should extend to unlicensed restaurants and clubs without the cost of obtaining a BYO permit.

The removal of the BYO provision would not oblige unlicensed restaurants or clubs to allow people to bring liquor onto the premises. Whether liquor could be brought onto the premises, and the circumstances in which it could be consumed, would be at the discretion of the proprietor or manager.

The Review recommends removal of the provision that requires unlicensed restaurants and clubs to obtain BYO permits if they wish to allow people to bring their own liquor for consumption on the premises, and the insertion of a provision that permits restaurants and clubs operating in accordance with local planning laws to allow persons to bring their own liquor for consumption on the premises.

5.7 TRANSITIONAL ARRANGEMENTS

It is clear that licences granted under the 1987 Act (or earlier Acts) were contingent on satisfying community interest considerations. It is important that new licences should not be issued to existing licensees in a manner that pays no heed to this community interest. Accordingly, any conditions applying to existing licences should be attached to new licences. The process of transition should not be made unduly burdensome for licensees.

The transitional provisions should be such that no existing licensee is disadvantaged in terms of trade as a result of changes to licence categories. Transfers of the ownership of licences would give the Commission an opportunity to address and, if necessary, change licence conditions. The actual mechanisms for transition should be left to experts in government and the Commission, with the spirit of the Review's recommendations being addressed in the Second Reading Speech.

The Review proposes that current licences be automatically transferred to the proposed new licence categories. Any conditions attached to existing licences should apply to new licences.

5.7.1 Research, Monitoring and Evaluation

There are benefits in supporting research into the patterns of alcohol consumption in the community that might be influenced by the way in which alcohol is provided and sold. With increasingly sophisticated research in this area it may be possible to more accurately target those patterns of consumption that are particularly likely to produce harm for the drinker, those around them and the general community. This could contribute to more focussed alcohol education and broader public health prevention efforts in the community where the focus should be on the overall reduction of alcohol-related harm.

Significant change in the provisions governing the sale and supply of liquor should be accompanied by appropriate monitoring and evaluation. A process to determine the extent to which any changes in the law relating to liquor have been instrumental in any detected changes in patterns of consumption, whether they be deemed positive or negative, would be beneficial.

In addition, the current COAG agreement to review all legislation against NCP guidelines means that other Acts may alter which could have flow on effects in the regulation of liquor sales. This may require further consideration to ensure that any evaluation of the impact and outcome of changes in the Act takes this into account.

5.8 NON-REGULATORY ALTERNATIVES

The Review believes that a licensing system is necessary to achieve 'adequate controls' and that the benefits outweigh the costs. The Review does not believe that there are any satisfactory alternatives to licensing.

The Review notes the apparent success of Responsible Serving of Alcohol courses established by the Commission in encouraging good codes of practices by licensees and their staff. Since its inception in 1992, over 37,000 people have taken the course which

has been run predominantly by businesses in-house. This contrasts with the view of the *Public Bodies Review Committee* that 'since the implementation of the *Liquor Control Act 1987* alcohol abuse had remained a low priority for the Commission'. [p 51, 4.208]

On the other hand, the Review believes that the practices of irresponsible licensees are potentially harmful to the community and that industry self-regulation would not provide a sufficient deterrent. Licensing allows unsuitable persons to be excluded from the industry, and fines, license suspensions and licence cancellations to be imposed upon those who fail to meet their obligations under the Act.

5.9 LICENCE CONDITIONS

While the imposition of conditions could be deemed to be anti-competitive, no submissions were received seeking an examination or removal of the capacity of the Commission to impose conditions.

Each of the licences proposed in this Chapter encompasses a very wide range of business activities and it is clear that different licence conditions would be required to address the 'adequate controls' object. In achieving this object, standard conditions could be applied to a general category of businesses such as hotels, and specific conditions to address potential harms associated with particular operations and locations.

Licence conditions also assist in policing of licensed premises. The research literature survey suggests that enforcement strategies have been demonstrated to have great potency but are generally underutilised. Greater use of enforcement strategies is supported and lack of enforcement needs to be treated seriously and addressed in a systematic manner at a structural level.

Where the Review sought views on the inclusion of conditions on licensees, the response was that they serve a useful purpose. Licensees generally favoured the standard conditions as they allowed some consistency and encouraged responsible practices, providing for positive development and opportunities for promotion of the industry. The Commissioners and their officers suggested that the opportunity to include conditions on licences allows an opportunity for mediation especially when a matter of local amenity or community interest is concerned.

Conditions attached to individual licences by the Commission may seek to minimise harm in a number of ways. Examples include prevention or reduction in aggressive behaviour associated with crowding on licensed premises by limiting the number of patrons allowed in a specified area; prevention or reduction of street crime and public nuisance outside or adjacent to a licensed premises by requiring the provision of security staff outside; disruption to community amenity through restrictions on noise and specific activities such as 'bottle dumps' at certain hours. The recent development of standard conditions for those establishments conducting table top dancing entertainment is an example of the way these conditions may be used to restrict or place limits on conduct in licensed premises.

To assist enforcement, the Review recommends that all licence conditions be prominently displayed on licensed premises.

6 AMENITY ISSUES

6.1 THE 'NEEDS' CRITERION

Section 74(6) in combination with Section 76(2) requires the Commission, in determining whether the grant of an application is in the community interest, *not* take into account the effect of the granting of a licence or permit on the business of other licensees, and *not* have regard to whether the applicant's business is likely to be successful. On the other hand, the Commission is required to take into account 'the extent to which businesses carried on under licences and permits in the area to which the application relates are satisfying the need intended to be satisfied by the applicant'. The same constraints apply to the Chief Executive Officer in making a recommendation on an application under Section 76.

This has the potential to restrict the number of licensed premises in an area. Although the Commission has some discretion on this matter, and few objections of this kind are ultimately upheld, the provision is often used by current licence holders as a vehicle for delaying new applications.

This restriction is directed towards the 'adequate control' object because it draws an association between an over-supply of licensed premises in an area and the protection of community interests.

The main stakeholders are as follows.

Positive impact

- Current licence holders' market shares are protected from new entrants to the market.
- Local amenity may be protected from an over-supply of licensed premises.

Negative impact

- Licence applicants face potential absolute barrier to entry in particular areas or possible delays in having licences approved.
- Consumers may have fewer licensed premises in their local areas to choose from.

6.1.1 Submissions

Submissions supporting the removal of the 'needs' provisions were received from Mr J. Chalker (The Owl & the Pussycat) [p 9] and the Hotel Motel & Accommodation Association of Victoria [p 2] who argued that the criterion is anti-competitive.

Those against its abolition were Australian Hotels & Hospitality Association Inc. (because it assists in curbing harm [p 28]), Collins Street Baptist Church and Executive Council of the Baptist Union of Victoria (because it assists in producing desired social outcomes [p 7]), Mr J.F. Larkins (because it assists the Commissioners in dealing with a plethora of issues [p 3]), Liquor Stores Association of Victoria (because it reduces the waste of economic resources [p 11]), Mr P.J. Nolan (because it prevents domination of the market by larger businesses [p 9]), and Turning Point Alcohol & Drug Centre Inc. (because it allows a consideration of local issues [p 10]).

6.1.2 KPMG Analysis

The conclusion of the analysis of 'needs' criterion is:

The application of the 'needs' criterion inevitably impacts on the economic interests of existing licensees or potential licensees. It unduly restricts competition in the industry and reduces convenience for consumers, especially where sales for off-premise consumption are concerned. Abolition of the 'needs' criterion might be expected to lead to a greater number of applications for packaged liquor licenses in cases where there is a sufficient consumer demand. [p 1]

6.1.3 Evaluation

The criterion appears to be unnecessary for the achievement of the 'adequate controls' object. Other provisions of the Act seem sufficient to protect community interests and, in particular, local amenity.

The Government Response to the Recommendations and Community Submissions on the Review of the Liquor Control Act (1968) described the intention of the criterion in the following terms:

the responsibility will rest with the Commission to inform itself as to why the issue of a particular licence being applied for is not in the interests of the community in the area. The process by the Commission will include:

- (a) Identifying the market that the prospective licensee seeks to serve.*
- (b) Establish the extent to which, within the area in which the licence application relates, the existing licensed premises are satisfying the need intended to be satisfied by the applicant.*
- (c) Determine whether the existence of another liquor licence within the area is likely to have an adverse effect on the interests of the community within that area. [p 21]*

Although the intent of the criterion was originally intended to protect community interests, the provision is often used by licensees as a means of side-stepping Section 76(2)(d) that explicitly forbids objections to applications based on the likely economic impact of a new licence on their businesses.

Under the Act, the 'needs' criterion could be used in a narrow sense and would have the effect of restricting competition in local areas. The Commission, in recent years, however, has generally taken a liberal stance so that comparatively few applications have ultimately been rejected on this basis. On the other hand, objections to applications on the grounds that the 'needs' are already satisfied, is often used by existing licensees to delay the granting of new licences. The *Liquor Licensing Commission Annual Report 1996/97* shows that in 1996/97, 583 new licences were granted and only 12 were refused. Included were the granting of 35 packaged liquor licences and the refusal of 8; in those that were refused, the 'needs' criterion was an important consideration. Amongst the total of 24 applications for packaged liquor licences that were opposed, there were 39 objections from 'commercial' parties.

Under NCP, it is clear that the market, not regulators, should determine community 'needs' for licensed premises, and the market should decide which particular businesses should satisfy the expectations of consumers. In almost any other market, this kind of objection to the establishment of a new business would not be facilitated by legislation. Further, the criterion appears to contradict the provision of the Act (Section 76(2)(d))

that the Commission not take into account the likely impact of the grant of a licence on the business of competitors, or whether the applicant is likely to be successful.

The argument of the submission of the Australian Hotels & Hospitality Association Inc., that the criterion assists in curbing harm, and a similar argument by the Collins Street Baptist Church and Executive Council of the Baptist Union of Victoria, do not seem to be supported by the evidence. First, as the literature review suggests, there is no simple relationship between the availability of liquor and harm. Second, the application of the criterion seems to have had little impact on the success of the licence applications, except for some packaged liquor licence applications.

The submission of Mr J.F. Larkins claims that the provision is useful in assisting the Commissioners in dealing with a plethora of issues involving community interest. This suggests that the process is being misused as community interest is covered elsewhere in the Act.

The submission of the Liquor Stores Association of Victoria suggests that use of the provision reduces the waste of economic resources, however this appears to be in conflict with the NCP guidelines. The submission of Mr P.J. Nolan that it prevents domination of the market raises an issue that should be dealt with under the *Trade Practices Act*.

The *Public Bodies Review Committee* found that

The Commission can exercise its discretion to make economic judgements, particularly when an application is contested. Many applications for a licence are contested by other licensees on thinly disguised economic grounds, and evidence to the Committee supported that view. [p 60, 4.252]

If a proliferation of licensed premises presents a problem for local areas, Section 74(1) provides an avenue for objections based on the concerns of individuals and councils who may consider that the grant of a licence or permit is 'not in the interest of the community in the neighbourhood where the premises to which the application relates are situated'.

Finally, although the criterion could be used to limit the number of licences in an area, recent experience in Victoria suggests that a substantial increase in the number of licences has not led to an increase in the per capita consumption of alcohol. It is doubtful, therefore, that the 'needs' criterion can be supported on the basis of harm minimisation in local areas by limiting the availability of liquor.

Whatever the merits of the criterion as a grounds for a genuine community interest objections, in practice it has often been used by licensees to delay or prevent the grant of new licences. It is most commonly used as a basis for objection in applications for packaged liquor licences, and it appears to be interpreted more restrictively by the Commission in these applications.

In discussing the effect of the 'needs' criterion on competition, the KPMG analysis argues that it:

has been applied in a restrictive way by the Commission in numerous cases, primarily those affecting packaged liquor licences. In these cases it has acted as a significant restraint on competition and consumer choice. The major beneficiaries have been existing licensees, the losers have been consumers who have less convenience, higher prices and less responsive service from the suppliers. There is no benefit for the community as a whole, particularly where sales are for off-premise consumption. There appear to be no other cases involving

consumption on licensed premises where significant community benefits can be claimed by denying a licence on the basis of the 'needs' criterion.

It is expected removal of the 'needs' criterion would allow suppliers to better respond to the real needs of consumers. Continued viability of suppliers would depend on their continuing to satisfy the needs of consumers, rather than surviving in business because they are protected from competition by the licensing system. The medium to long run effects of greater competition are difficult to judge because they will depend to a large degree on the competitive responses that are made. It would seem likely, however, that there would be a growth in supermarket sales relative to specialist bottle shop sales given strong consumer preference, especially of women, for one-stop shopping and more appealing shopping environments.

It could be anticipated that an increase in the number of licensed premises would only occur under circumstances where consumer demand indicated a need for more outlets. Removing the 'needs' criterion in conjunction with removal of other restrictions on new entry is an important step to ensuring effective competition. [p 161]

It is unlikely that a growth of licence numbers in itself would have much impact on consumption. It would primarily change the pattern of sales between outlets, reflecting customer demand and convenience. Lower prices and better service may encourage greater consumption, but the effect is not likely to be dramatic. Even if consumption were to increase, it cannot be assumed that problems of misuse will increase. It is assumed that other controls that address problems more directly will remain in place. More direct policy instruments also include initiatives such as the *Responsible Serving of Alcohol* workshops run by the Commission across Victoria.

The survey of the research literature suggests that an increase in the availability of liquor brought about by removing the 'needs' criterion would be unlikely to have a significant impact on total consumption and harm. Inelastic demand overall would mean that any price reduction, that would probably be small, would cause less than a proportionate increase in consumption.

The Review recommends that the 'needs' criterion be removed from the Act.

6.2 INTEREST OF THE COMMUNITY

Section 76(2)(c) requires the Chief Executive Officer of the Commission to make a recommendation, taking into account objections on the grounds that 'the application is likely to have an adverse effect on the interest of the community in that area'.

It may prevent the grant of a licence in an area where an applicant perceives there to be a demand for the service proposed to be offered. This restriction addresses the 'adequate controls' object.

The main stakeholders are as follows.

Positive impact

- Local amenity may be improved through successful objections to applications, or by causing conditions to be attached to licences, that might prevent harm of various kinds occurring in local areas.

Negative impact

- Applicants may be denied the opportunity to establish a business in a potentially profitable area, or delayed in the process of becoming licensed.
- Consumers may have fewer licensed premises to choose from.

6.2.1 Submissions

The were no submissions that suggested that this restriction was not justified.

6.2.2 Evaluation

There can be no question that residents and others in the local area in which an application for a licence is made, should be able to put before the Commission or the local planning authority concerns for the impact of a licensed premises on the local area.

Comparatively few applications are ultimately rejected, and those that are often occur because of likely detriment to the local area. When objections are made, the costs and delays are often great because objections occur first at local planning, then before the Administrative Appeals Tribunal, and finally at the Commission. The same basis for objections may be raised in all three forums. This is essentially costly, productive of delays and anti-competitive.

The Review argues in the next section that issues of amenity in a local area are essentially planning issues and should be dealt with in the planning context. This context provides adequate opportunity for local residents to have these issues resolved. In these circumstances consideration of community interest in the liquor licensing process should be confined to matters directly concerning the sale and disposal of liquor. The Review's recommendations on these matters are set out in the next section.

6.3 LICENSING, PLANNING AND ADJUDICATION

The *Public Bodies Review Committee* and others have suggested that community, and in particular local amenity, should be a matter for local planning. The Committee states:

The Committee believes that the town planning approval process should determine the primary purpose of a business or activity because local community bodies decide the planning and amenity controls under which they live, and the Commission should not attempt to duplicate or override this procedure. ... (and) ... Conditions such as noise, hours of operation, parking and signage are clearly matters to be addressed within the town planning process. Alternatively, matters concerning acceptable trading processes, alcohol promotions and under age drinking relate to the function of liquor licensing. [p 79]

Evidence before the Review suggests that planning and amenity issues are presently raised on both planning and liquor licence applications leading to much duplication of effort, delay and cost. Of course, local residents face the prospect of loss of amenity if a business opens up near them, and this may be particularly so if the business involves the sale and disposal, and possibly consumption of liquor. This is a cost to local residents and it is appropriate that they have the opportunity of objecting and having their objections heard. However, it is a question of land use, and should be dealt with in a land use context. If it is properly dealt with in that context, it should not be able to be reopened in another context.

In the past in Victoria there was a diversity of planning schemes with differing definitions, and this might have caused problems when it came to planning applications

involving the sale and disposal of liquor. Recent developments in planning in Victoria appear to have overcome any such problems.

From the point of view of the community, the essential need is to have an opportunity of objecting to the establishment of a business involving the sale and disposal of liquor that might affect the amenity of the neighbourhood. For this purpose it is necessary to know how the applicant proposes to use the business. The recent developments in planning appear to meet this need.

Every municipality in Victoria is in the process of developing a planning scheme. The Victorian Government has issued the Victoria Planning Provisions that provides a clear and consistent framework within which decisions about the use and development of land can be made.

The Victorian Planning Provisions provide that a planning permit is required to use land to sell or consume liquor if a licence is required under the *Liquor Control Act 1987*, or a different licence is required or trading hours are to be extended. There are then standard definitions to be used in all planning schemes in Victoria. These include such items as bottle shops, hotels, restaurants and taverns.

The *User's Guide to the new Standard Terms and Conditions* issued in 1996 point out that the definitions do not use definitions based on whether or not premises are licensed under the *Liquor Control Act*, but focus on the use of the premises (p.13). This is entirely consistent with the opinion of this Review that the critical issue in liquor licensing should be how the premises are to be used. This is reinforced elsewhere in the User's Guide where it is stated that 'It is important for a person making an application in accordance with Clause 6-12, to use land to sell or consume liquor, to be quite precise about what the permit is required for.'

In the Review's opinion, this means that matters of local amenity and land use can be dealt with satisfactorily under the State's planning laws. Where a planning permit is required, the applicant will have to state how it is intended to use the premises, not by reference to a type of liquor licence, but by reference to the intended use of the premises. People who believe their amenity would be affected by that use will be able to object. Where no planning permit is required it will be because it is deemed to be an appropriate use in that area.

In these circumstances the Review believes there is no reason why these issues should be considered again in the liquor licensing process. To allow this is to impose an unnecessary cost on the system. The Commission should restrict its deliberations to matters directly concerning the sale and disposal of liquor, and land use issues should be left to local planning. Consideration of the community interest in the liquor licensing process should not include planning issues.

The Review recommends that the Act be amended to exclude from consideration in liquor licensing applications matters that have or could have been raised in relation to land planning approval.

This recommendation would exclude provisions such as section 74(6)(b) that allows consideration of the opinion of a local council on any matter relating to the amenity of an area. As well, the recommendation is couched as it is because the Act allows objections to applications based on the 'interest of the community in the neighbourhood', and this is used as a vehicle for raising what are essentially planning issues. To clarify the Review's opinion that this should not continue the Review also makes the following recommendation.

The Review further recommends that the Act be amended to provide that consideration of community interest in liquor licensing applications does not include local amenity planning issues.

It is generally recognised that many objections based on amenity, (as well as on 'needs' already being satisfied in an area), are attempts by other licensees to prevent or delay entry to the market. If, as the Review recommends, planning issues (as well as the 'needs' criterion) are removed from consideration in relation to licensing applications, the opportunity for this will be lessened. However, it is not inconceivable that other licensees would attempt to achieve the same end by objecting on community interest grounds. Given that there is ample opportunity for local residents to object on these grounds, and that objections from existing licensees essentially opposing competition are costly and anti-competitive, it is desirable to prevent this happening.

These issues have arisen in the planning field, and they have been dealt with in the *Planning and Environment Act 1987* (Section 57) by providing that:

- only affected persons may object;
- an objection must state the reasons for the objection and how the objector is affected; and
- the responsible authority may reject an objection considered to have been made for a commercial advantage for the objector.

The Review believes that similar provisions in the Liquor Control Act would overcome the problems described. Objections based on fear of competition, or which are frivolous, mischievous or ill-informed may pose high barriers to entry, but little cost to the objector.

The Review recommends that objections to licence applications on community interest grounds be subject to the following rules:

- **only affected persons may object;**
- **an objection must state the reasons for the objection and how the objector is affected; and**
- **an objection considered to have been made for the commercial advantage of the objector may be rejected.**

Elsewhere, in dealing with application costs, the Review argues for a more streamlined process for dealing with licence applications including the ability to make applications simultaneously to the Commission and local planning authorities, and for appeals against either or both to occur before a single tribunal and at the same time.

7 APPLICATION COSTS

The cost of applying for a licence varies between \$562 and \$624 depending on the type of license (excluding limited licences, \$23), that few would regard as a high barrier to entry. The annual fee for all licences is \$150, except that it is \$37 for limited licensees with liquor purchases of less than \$2,000 per annum. (As of 8 August 1997, the fee of 11% of purchases, has been replaced by a uniform 15% wholesale tax levied by the Commonwealth.)

Although the fee structure suggests that barriers to entry are low, the Act requires that applicants comply with certain conditions imposed by other Acts although these, presumably, have to be met before the applicant can trade, irrespective of the provisions of the *Liquor Control Act*. Section 63 specifies, amongst other matters, that applicants must present evidence to the Commission that they have complied with relevant planning laws, fire authority requirements and the *Health Act*.

The Act requires that applicants advertise and display plans of proposals (Section 72), specifies statutory waiting times to allow objections (Sections 75 and 76), calls for police checks of applicants (Section 71), and requires public hearings if objections are made (Sections 78 and 79).

The application process is legalistic in several ways, especially when objections are made. The Tribunal room has the appearance of a court, evidence is presented, witnesses are sworn, examined and cross-examined, and the procedure is similar to that in a judicial setting. See Sections 24 to 34.

None of these requirements, in isolation, appear to be unreasonable or a major barrier to entry to the market, but taken together, and in conjunction with the quasi-legal application process, the barriers may be high.

These costs form a barrier to entry to the liquor market and may fall relatively more heavily on smaller businesses. The objects addressed are 'proper development' and 'adequate controls'.

The Main stakeholders are as follows.

Positive impact

- Current licence holders may benefit if these costs deter or hinder potential competition.
- Local amenity may be enhanced because the provisions make it more certain that applicants meet their obligations under other Acts and allows objections to be taken into account.
- Consumers have some measure of guarantee that licensed premises satisfy community health and safety standards.

Negative impact

- Applicants may face higher entry costs than new businesses in other markets.
- Consumers may have fewer licensed premises to choose from.

7.1 SUBMISSIONS

Mr J. Chalker argued that licensing should be an administrative procedure to ensure compliance with statutory obligations, that licensees are fit and proper persons with appropriate training [p 11]. Mr D.J. Dickinson argued that all food premises have to be

approved and inspected by their local health authority so there is no justification for the requirement of a permit for their customers to bring their own liquor [p 1]. The Restaurant and Catering Association of Victoria noted that the application costs of their members is higher than those of general licensees, and they face an additional fee if they wish to sell liquor without food in a designated area [p 4]. Carlton and United Breweries Limited note that the application and objection processes impose significant costs on existing and potential licensees, and that there is an element of duplication between the functions of the Commission and local councils [p 22].

Mr J.P. Nolan [p 5-7] and the Australian Hotels & Hospitality Association Inc. [p 38] proposed, in essence, that scrutiny by the Commission beyond the requirements of other authorities is justified to protect community interests.

7.2 EVALUATION

The Government's policy of full cost recovery requires that application fees should cover the cost of processing licence applications. From a commercial perspective it is likely that the application fees are less of a concern than the delays due to the application process particularly when objections are made, all of which occurs after the planning process is concluded.

Comparatively few applications are ultimately rejected, and those that fail are frequently because of likely detriment to the local area. It may be possible to reduce entry costs, without putting at risk the protection of areas surrounding licensed premises and ensuring that the requirements of other Acts have been met.

Many industry representatives and the Chief Executive Officer of the Commission itself have alluded to the weight of regulation. The Act imposes significant barriers to the entry of new businesses caused by the process that must be followed in order to obtain a liquor licence. The complexity of the regulation that has grown around the licensing process may deter some businesses from establishing themselves in the industry so limiting investment, growth, diversity and development. This applies both at the point of entry and at any time when even a minor change in the conditions of a licence is sought. Although few licence applications are ultimately rejected, there is no means of determining how many businesses would seek a licence if the application process was less intimidating and less costly.

The lack of flexibility present in the application process requires simple, straightforward applications to go through the same complicated and rigorous procedure as large-scale high-risk applications.

Although changes to particular sections of the Act may reduce some of the complexity and costs of the procedure, there is a need to view such reforms in a wider context that seeks to deal with broader and less obvious problems.

Some example cited by the Chief Executive Officer of the Commission are:

- Australian Securities Commission, planning, fire safety, Health Act, tenancy rights, building permission, business name registration must all be satisfied before the licence is granted. Whilst being a trading instrument in itself, the licence serves as a guarantee that all these requirements of other authorities have been met. An alternate approach is that the licence be but one of the enabling provisions for the business. A mid-way approach is that the licence could be granted without the existence of all the specified authorities, but not have effect until they are in place!

- An applicant for the transfer of a licence must, notwithstanding that the premises proposed to be licensed may have been trading for many years, still be exposed to objections against the transfer of the licence on community interest grounds, including the built-in 28 day delay period. A check that the incoming party is a suitable person to hold a licence should suffice.
- An intended very limited sale of liquor e.g. Bed and Breakfast, must still meet application requirements equivalent to those of a 500 room entertainment hotel. A stream-lined and simplified licensing approach where the licence applied to a business of very limited scale and scope could be introduced.
- While some delegations are in place to allow licences for very limited purposes (school open days etc) to be processed swiftly, all such delegations cease if there is any objection made and the full Commission hearing process with all its costs and delays becomes the only avenue for resolving the matter.
- Licensing applications dealt with administratively are processed within days; a single objection, that automatically involved the hearing process, extends this period to months. It should also be remembered that the overwhelming number of applications are approved even after the hearings process.
- Applicants seeking to produce and/or distribute liquor to retail licensees, with no intention of selling direct to the public, must meet application requirements identical to those of the biggest liquor retailers in the State. A stream-lined and simplified licensing system should suffice.
- Applicants must display a notice of intention on the premises and place advertisement in newspaper. How relevant is the expensive requirement of a newspaper advertisement?
- Requirements to produce accurate plans at application and transfer and for licensees to inform the Commission of all changes to layout comes from the rigid notion of a licensed area within the site. Plans may be necessary in multipurpose establishments, but in many situations a whole of site licence would suffice. The task of keeping 8,000 plans up to date borders on impossible and adds little value. A selective approach where plans are relevant would assist.
- Licensed clubs are involved in complex licensing processes involving assessment of club rules, establishment of bona-fides of the club and a test of primary purpose related to conduct of the business of a club. Options to stream-line should be identified.
- The variation to a relatively minor condition on a liquor licence is required to satisfy the same requirements as a proposal to, say, double the size of the licensed area.
- The licence objection and public hearing processes have the potential to be misused by objectors, including those with existing industry interests, to frustrate the business intentions of new entrants.

The Review was not required to examine the administrative operations of the Commission or the issue of the appellate role of the Commission, as these are the subject of separate consideration. However, it is clear that the examples cited by the CEO of the Commission indicate high entry costs to the industry that renders it anti-competitive. The recommendations of the Review will rectify many of these concerns, but there may still be some administrative arrangements or sections of the Act that impose unnecessary cost burdens on the industry. These should be examined in the context of the Review's recommendations.

In discussing amenity issues, the Review noted the costs and delays caused by similar objections occurring first at local planning, then before the Administrative Appeals Tribunal, and then at the Commission. It is also clear from the examples cited by the CEO of the Commission that costs and delays can be incurred at the initial application stage. The Review has considered this matter in the context of the recommendations it has already made about removing planning and 'needs' considerations from the liquor licensing process. A consequence of these recommendations is that many of the matters raised by objectors would no longer be raised or considered by the Commission. The grounds for objections would be reduced and clarified and the principles upon which a licence would be granted would be simplified. Most of the remaining matters are capable of being resolved administratively.

The Review believes that in these circumstances the application process could be streamlined by restricting the judicial process to appeals and disciplinary proceedings. This could be achieved by providing that the initial decision on the licence application be made administratively and that there be no hearing except upon appeal.

The Review recommends that the initial decision whether to grant or refuse a licence, with or without conditions, be made administratively without a hearing, but that any aggrieved party, including objectors, should have a right of appeal to an appropriate appeals tribunal.

In order to avoid duplication and costly delays, a rationalisation of the application process is desirable in most cases the applicant will be seeking both a planning permit and a liquor licence. Elsewhere the Review argues that criteria be established to differentiate between local planning considerations focussed on land use and amenity issues, and licensing issues that are directly related to the proper sale and disposal of liquor. Further, it argues that the objection process should be limited to persons whose welfare would be materially affected by a proposed licensed premises, and that objections of an economic nature by competitors should be able to be rejected. Nonetheless, there may be objections to both the planning permit and the liquor licence, and possibly from the same people. The most satisfactory way to reduce cost and delay in these circumstances would be to allow both applications to be processed at the same time, and to provide that if there are appeals in relation to both applications, they should be heard at the same time by the same tribunal or by the relevant tribunals sitting together. The Review recognises the desirability of the appeals tribunal having on-going access to expertise in matters relating to the sale and disposal of liquor.

The Review recognises that it is a matter of policy going beyond the scope of this review to determine what type of appellate or tribunal structure should be established, but it believes that if its recommendation can be implemented it will reduce costs and delays in this area.

The Review recommends that applications for planning permits and liquor licenses be able to be made simultaneously to the Commission and local planning authorities, and that appeals arising out of either or both applications occur before a single tribunal and at the same time.

8 PROHIBITED BUSINESSES

Section 61(1) prohibits drive-in cinemas, petrol stations, milk bars, convenience stores and mixed businesses from obtaining a licence, except in special circumstances.

This provision is anti-competitive because it places an absolute ban on certain businesses, some of whom may satisfy the normal conditions and obligations of a licensee.

The restriction addresses the object of providing 'adequate controls'. The prohibition on drive-in cinemas and petrol stations appears to be designed to discourage drink-driving and the prohibition on convenience stores and the like may be intended to limit under-age drinking and prevent offence to non-drinkers.

The main stakeholders are as follows.

Positive impact

- Current licence holders are protected from potential competition from a large number of other businesses currently prohibited from entering the liquor market.
- Local amenity may be improved through containment of under-age drinking, public nuisance and accidents because of fewer licensed premises close to residential areas.

Negative impact

- Prohibited businesses are denied the opportunity to sell liquor.
- Consumers have fewer licensed premises to choose from. They are restricted in their opportunities for the convenience of 'one-stop' shopping.

8.1 SUBMISSIONS

Submissions supporting the removal of the prohibition against convenience stores on the grounds that the prohibition is anti-competitive, were received from the Australasian Association of Convenience Stores Incorporated, Mr J. Chalker (The Owl & the Pussycat), Mr J.P. Nolan and 7-Eleven Stores Pty Ltd. Those supporting its retention were the Australian Hotels & Hospitality Association Inc. (because it ensures that alcohol is not generally available so as to minimise the risk that it is consumed at inappropriate times, for example when driving, or by minors [p 20]), the Liquor Stores Association of Victoria (because convenience stores and milk bars would stock only popular lines with the possibility of the packaged liquor sector becoming marginal and perhaps resulting in some retailers taking risks in trading practices [p 12]), and Mr D. Perrin MP (because its abolition would drive many small businesses whose sole product line is liquor out of business [p 4]). Carlton United Breweries Limited argued that general relaxation of licensing requirements should include the removal of the prohibition on convenience stores to respond to increasingly diverse community requirements [Attachment].

8.2 KPMG ANALYSIS

The conclusion of the analysis of prohibited businesses is:

The restrictions on granting licences to drive-in cinemas, petrol stations, milk bars, convenience stores and mixed businesses are a significant barrier to entry. Inevitably, many anomalies are created by such restrictions. Removing these restrictions could lead to an increase in the competitiveness of the packaged liquor market and increased physical availability of packaged liquor products. This would benefit consumers by enabling better substitution possibilities

between sources of supply and improvements to price-product-service combinations in the market. [p 1]

8.3 EVALUATION

The KPMG analysis notes that removing the prohibitions raises issues related to public interest, barriers to entry, and the consequences of increased access to liquor. It states:

Removal would enable a greater diversity and mix of services to be offered from a broader cross section of outlets ... this would have a positive effect on consumer welfare. Because (the restriction) creates barriers to entry for a certain class of applicant, its removal will enable a greater variety of outlets to provide liquor. Removing the restriction (in conjunction with the primary purpose provisions) could also allow competitive neutrality between petrol stations, convenience stores, liquor stores and supermarkets, some of which already supply both liquor and petrol [p 163].

The survey of the research literature suggests that a general increase in the availability of liquor brought about by allowing prohibited businesses access to the market would be unlikely to have a significant impact on total consumption and harm. However the survey also urges caution regarding ease of access to liquor for young and very young drinkers. It notes:

As these drinkers do not usually frequent on-licence premises there are important implications here for the provision of alcohol through off-licence premises (such as supermarkets, convenience stores and petrol stations). As such, there is a good basis for curtailing sale of alcohol through these outlets, or at the very least, requiring sales staff to be of legal drinking age and registered and trained to sell alcohol. This would necessitate acquisition of specific skills in service refusal. This is seen as a strong but important measure to safe guard young people [p 103].

In the Review's opinion the prohibitions are anti-competitive so that the issues become whether the costs of removing them outweigh the benefits and whether there is some alternative way of achieving the same objects.

The Public Bodies Review Committee argued that:

The community expects that certain types of business will not sell alcohol. In particular, sites and businesses used primarily by people under the legal drinking age of 18 have in the past been disqualified from gaining a liquor licence. [p 136, 2.121] and

Parents of children and teenagers need to be assured that their children are not in areas where alcohol is freely available without them or another adult known to the family being in effective control [p 136, 2.123].

Although there may be common factors attaching to the prohibited businesses, there are some different considerations that should be noted.

The Act allows cinemas to be licensed but it prohibits drive-in cinemas. The clear distinction is that drive-in cinemas are associated with driving, and the legislature is signalling that it is undesirable for people who will be driving away from the premises to be exposed to the temptation to drink alcohol. An associated factor may be that many people who attend drive-ins are young people. Given the community's concern with drink driving, the harm associated with removing this restriction would seem to outweigh any benefits.

The next prohibition relates to petrol stations, and similar considerations apply. The Review is not fully convinced that the licensing of petrol stations, subject to the same conditions imposed on other businesses, would lead to a significant increase in drink-driving. It notes that general licensees and packaged liquor licensees are not prevented by the Act from operating drive-in bottle shops where there is a similar association between liquor and driving. The Review considered the possibility of an increased likelihood of impulse purchases of liquor when the principal reason for the stop was to purchase fuel, although no specific evidence of this was produced. It is unclear that this prohibition has any practical impact on drink-driving, except that irresponsible drivers have to make liquor purchases from other businesses. Nevertheless the Review is cognisant of the Government's efforts to reduce the road toll and believes that the licensing of petrol stations may send the wrong messages to the community. Given the ready availability of liquor from other sources, the Review believes the benefits from removing this prohibition do not outweigh the costs.

The next category of prohibited businesses fall within a spectrum of businesses whose main purpose is the sale of food and other common household products; at one end are supermarkets who may be licensed and at the other small milk bars that are not able to be licensed. Somewhere on the spectrum fall convenience stores and mixed businesses that also are not able to be licensed. The Act does not define any of these terms and it is arguable that convenience stores are little different from some of the smaller supermarkets that have been able to obtain licences and ought to be treated similarly. Indeed, Commissioner Slattery determined in 1993 that Green Meadows Licences P/L was in fact a small supermarket and granted a licence, overturning the decision of the Chief Executive Officer of the Commission that the business was a convenience store and should not be granted a licence.

It should be noted that the prohibition is not absolute. The Act allows the Commission with the approval of the Minister to grant a licence to a milk bar, convenience store or mixed business if it is in a tourist area or an area with special needs and there are not adequate existing facilities. In the Green Meadows Licences P/L case note above, it was argued that the Lygon Street area is a tourist area that allowed it to be considered for approval. Like the term convenience store, 'tourist area' is not defined and it is arguable that many metropolitan areas attract tourists, such as Chapel Street, South Yarra and Nelson Place, Williamstown.

The prohibition on milk bars and mixed businesses may be justified by a concern for the potential impact on local amenity by a proliferation of stores selling liquor in, or close to, residential areas. Further, there is evidence that some of these businesses have a poor record on sales of cigarettes to minors, and the licensing of these businesses may pose risks of the sale of liquor to minors. The first of these arguments is less cogent because the grant of a licence of any type requires a planning permit, and the Commission must give due weight to objections based on the likely impact on the local area.

However, there appears to be little support for enabling milk bars to be licensed. They tend to be small stores, often run by families, with no particular expertise in the sale of liquor or the requirements for responsible serving of alcohol. They are often frequented by children and they are often staffed by under 18 year olds. The attendant risks associated with allowing them to sell alcohol would seem to exceed the benefits.

The Review found that the question of mixed businesses and convenience stores raised much more difficult questions. It is difficult to know where the line can be drawn

between mixed businesses, convenience stores and supermarkets. It appears that in practice the Commission decides this question on the facts of the particular case before it.

No evidence has been presented to the Review to show that well run convenience stores would be more likely to sell liquor to under-age persons than other licensees but, if they did, they would be subject to the same severe penalties under the Act. If licensed, convenience stores would face the same restrictions and conditions as other businesses. This would include the same application process that involves an examination of the impact on the local area, the requirement that the staff who sell liquor are over eighteen years old, that a particular area is licensed and that the sale of liquor should take place only in hours prescribed under the Act.

In the ACT, businesses of this type are permitted to sell liquor, and there is little evidence that this has led to additional harm. 7-Eleven Stores operate in many countries and are permitted to sell liquor in most. The Australasian Association of Convenience Stores Incorporated claim that their members do not generally employ minors, and staff undertake training programs that could extend to the responsible sale of liquor.

It is difficult to assess precisely the impact of removing this provision given that the Commission could still take a quite restrictive approach to the grant of licences for such premises. It would, for example, have to insist on separate licensed areas. The flexibility to operate licences in ways that fitted in with these businesses and did not require large set-up costs would be crucial in many cases.

The KPMG analysis states:

We assume, however, that the policies adopted are not so restrictive as to deny new businesses in these categories the opportunity to obtain licences. The likely impacts would be new entry into the industry, greater innovation and product differentiation and this would stimulate competition and promote competitive responses from incumbent firms. There would be a transition period when some firms would benefit and some would lose, but the industry overall should be boosted by the new prospects. In the longer term, a more settled situation would prevail. Convenience stores could become quite significant in relation to purchases for off-licence consumption, with specialist bottleshops declining in relative importance. There is nothing wrong with this. It would merely reflect the benefit consumers would obtain as a result of increased convenience.

It is important to see removal of Section 60 constraints as complementing the removal of the 8% rule. Any concerns that the latter may allow firms to obtain and exercise market power could be easily addressed by enhancing ease of entry to the industry by the removal of the restriction. It is possible that the likely losers, the specialist liquor outlets would protest about predatory pricing, but these complaints could and should be considered carefully and dealt with under the Trade Practices Act 1974. Competition is not about protecting competitors.

A consequence of increased physical availability is that consumers would be better able to substitute between different sources of supply rather than simply increase their average consumption of liquor. Consumption on-premises is less affected by these restrictions but could be impacted in different ways. If packaged liquor prices were to decline as a result of enhanced competition, there could be some further boost to off-premises consumption. However, if more attractive on-premise consumption opportunities emerge, that are associated

with venues and events like cinemas, there may be a slowing down of these trends. Neither effect could be likely to be very significant [p 164].

These arguments reinforce the view that the prohibition on convenience stores is anti-competitive, but the issue still remains as to whether the benefits of retaining it offsets the costs.

The primary objection relates to the nature of these stores. They are seen as stores that families resort to. Unaccompanied minors frequently visit them, as with milk bars, and there is a general expectation that any person visiting them would not encounter liquor there. In addition, many convenience stores have petrol pumps, and, indeed, many petrol stations now have what amount to convenience stores associated with them. The arguments against licensing petrol stations apply also to convenience stores.

On balance, the Review believes that the harm that could be caused by licensing convenience stores outweighs the benefits. In this, it concurs with the *Public Bodies Review Committee*.

The Review recommends that the restriction on the licensing of drive-in cinemas, petrol stations, milk bars, convenience stores and mixed businesses remain.

The Review is unable to identify any reasonable alternative non-regulatory means of achieving the 'adequate controls' object that the prohibition seeks to address.

The Review notes that its objection to the licensing of convenience stores rests mainly on the presence of minors and, to a lesser extent, on their sale of petrol. A case might be made for an exemption if it could be shown that comparatively few minors frequent a particular convenience store and that sales of petrol are not a major part of its business.

9 THE 8% RULE

Section 61 limits the total number of general licences or packaged licences held by a person or corporation (including those held by related corporations) to no more than 8% of all such licences.

This provision is anti-competitive because larger businesses are prevented from increasing their numbers of licences beyond the 8% limit.

It is not entirely clear which object is addressed by this restriction, however it could be argued that because it limits the ownership of licences, it is directed towards the 'proper development' and 'diversity' objects.

The main stakeholders are as follows.

Positive impact

- Smaller licence holders face limited competition from Liquorland and Safeway.
- Licensees belonging to buying and marketing groups face limited competition from Liquorland and Safeway.

Negative impact

- Liquorland and Safeway are denied the opportunity to increase their numbers of licences beyond the 8% limit.
- Consumers have fewer licensed premises to choose from and, in particular, are less able to do 'one-stop' shopping.

9.1 SUBMISSIONS

Submissions supporting the abolition of the rule were received from Australian Safeway Stores Pty. Ltd./Woolworths (Victoria) Pty Ltd, Liquor Stores Association of Victoria, Liquorland (Australia) Pty Ltd and Mr J.P. Nolan, who argued, in essence, that it is discriminatory and serves no useful purpose. Those received from the Australian Hotels and Hospitality Association Inc. [p 22], Mr D. Perrin MP [p 4] and the Victorian Wine Industry Association Inc. [p 8], saw merit in retaining the rule as a means of promoting diversity. Carlton and United Breweries Limited [Attachment] proposed the removal of the rule concurrently with a general relaxation of licensing requirements including the removal of the prohibition on convenience stores.

9.2 KPMG ANALYSIS

The conclusion of the analysis of 8% rule is:

The 8% rule is highly discriminatory, especially against large supermarket chains. We would expect that if the 8% rule were removed it would lead to the achievement of greater economies of scale for supermarkets, the benefits of which is likely to be passed on the consumers. Relaxation of other licensing restrictions affecting new entry would be important to prevent undue concentration in the market. [p 1]

9.3 EVALUATION

Debate concerning the 8% rule has focused almost exclusively on its impact on packaged liquor licensees and large supermarket chains in particular. The rule also applies to general licences however this has received little attention because the largest holding of general licences is 47 or 2.7% of all licences of this type.

The restriction is not necessary to limit monopolisation which is an implied aim of the 'proper development' and 'diversity' objects. It is evident that, in the last decade, the industry has developed in the sense of a substantial increase in the number of licensed premises, and few have suggested that this has not been 'proper'; certainly diversity has increased. There is little evidence that this has been contributed to by the 8% rule.

Restrictions on the ownership of general and packaged liquor licences could, perhaps, be supported because they tend to reduce the potential for monopolisation or market dominance. In this instance, however, the case seems weak for the following reasons:

- 8% is not a credible threshold for monopolisation;
- the degree of monopolisation should turn on shares of sales, not shares of licences; and
- the restriction takes no account of the buying and marketing groups that exceed the limit placed on persons and corporations.

At the time of their submissions, Liquorland held 89 packaged licences in Victoria and Safeway held 86. According to the Safeway submission, several buying and marketing groups represented more than 8% of the packaged liquor licences; Cheers 150 (13.5%), Liquor for Less 98 (8.8%) (in addition to 74 general licences), and Festival 92 (8.3%).

NCP takes the position that if monopolisation is a threat, it is better handled via the *Trade Practices Act*, than through industry-specific legalisation. Section 46 of the Act deals with the misuse of market power and Section 50 deals with mergers that would be likely to substantially lessen competition. The *Public Bodies Review Committee* in referring to this matter stated:

the segmentation of the retail industry into buying groups makes a mockery of the current legislation, and supports Liquorland's contention that it is discriminated against in the market place. [p 72, 4.313]

The Review notes that Victoria is the only state that has a restriction on the number of licences of any one type that may be held by an individual or corporation. Although there are some differences in the types of licences between states, it seems clear that policy makers elsewhere see no reason to impose this sort of restriction on competition to serve the public interest. Carlton and United Breweries Limited sources indicate that in New South Wales Woolworths hold 8.2% and Liquorland hold 14.6% of the off licences. Limits on ownership of this sort are rare in Australian legislation, both commonwealth and state, that governs the conduct of other industries.

It seems clear that the removal of this rule would result in Liquorland and Safeway holding more licences than they do at present. Greater competitive pressure would inevitably be placed on other licensees, including those packaged liquor licensees belonging to buying and marketing groups of which many independent liquor stores are members.

It has been suggested that the removal of the restriction would cause more businesses to become 'marginal' and some may, as a consequence, resort to irresponsible selling practices. However it is not clear whether the number of marginal businesses would in fact increase because some that are now marginal might leave the industry. On the other hand, Liquorland and Safeway are acknowledged by the Victoria Police as being amongst the overwhelming majority of packaged liquor licensees who are responsible sellers of liquor.

It has also been suggested that the removal of the restriction, if it were to occur, should be phased in to allow businesses who have made an investment in the industry time to adjust. Setting the limit at a minimal increase of, say, 10% for a two year period, would allow Liquorland and Safeway to increase their numbers of licences by 25% immediately, which both enterprises argue would be beyond their capabilities in the short term. In other words, a small increase in the limit would have the same impact on these enterprises as the complete removal of the restriction, at least in the short term.

There is, at best, only a weak case for delaying the removal of the 8% rule. In the deregulatory mood of the 1990s, it is not reasonable to claim that businesses have made investment decisions in recent years based on the assumption that the rule would remain in the Act permanently. Clearly its removal would adversely affect some businesses, however they should have anticipated this change for some time and adjusted their business plans accordingly.

It has also been suggested in several submissions and elsewhere, that the 8% rule serves the 'diversity' object in two ways: first, it guarantees that there are more independent licensees; and second, and more contentious, a wider range of packaged liquor is made available to consumers. On the second point, many of the 'marginal' business that might fail do not offer a wide range of liquor products, whereas Liquorland and Safeway generally offer substantial selections of liquor products and are seeking to expand their ranges. The argument, therefore, that the 8% rule increases diversity seems unconvincing.

It is possible that the removal of the restriction would permit Liquorland and Safeway to hold more licences and lower their costs by taking advantage of economies of scale. The KPMG analysis argues that the economies might take several forms. It states:

Internal economies of scale may accrue to individual firms regardless of the size of the industry. They can result from technological factors (or the optimal size of the firm) or non-technological factors such as obtaining discounts from suppliers by buying inputs in bulk. Suppliers are usually willing to pass on discounts because of internal economies of scale in distributing the supplies. External economies of scale arise where the development of the industry leads to development of related services to the benefit of all firms. For example, a labour force skilled in the safe and responsible delivery of liquor products and associated services.

It is also possible to distinguish between economies at the outlet level and multi-outlet economies. For instance, a firm may obtain cost savings by increasing the size and scale of an individual outlet. Beyond this, it might achieve further cost advantages by increasing the number of outlets it operates. These advantages might include the spreading of corporate overheads and better management and training [p 158].

The KPMG analysis further argues that:

Removal of the 8% rule would enable Safeway and Liquorland to expand their liquor retail networks to achieve minimum efficient scale, or least-cost supply for their product mix.

The 8% rule denies the major supermarket operators the opportunity to expand their networks to particular locations in the State. It thus inhibits competition particularly in these markets. Abolition of the rule would place specialist bottleshops and hotelbottleshops under increased competitive pressure. They

would lose sales to the supermarkets. It has been suggested that this may erode the ability of hotels to continue cross-subsidising their general operations from bottleshop sales. Whether in fact such cross-subsidisation is occurring is a matter that is difficult to test. Cross-subsidisation is not in any event something that is necessarily good to promote. It is only possible when competition is limited and its impact is detrimental to the efficiency of resource allocation. There is no strong liquor control rationale for such cross-subsidisation.

Since liquor retailing overall is likely to be more competitive in the absence of the 8% rule, it is expected cost savings would be passed on to consumers. A reduction in average costs then is likely to lead to a fall in the price of packaged liquor products. That is, the price of packaged liquor in the industry with the 8% rule would be higher relative to the price of packaged liquor without the 8% rule.

A fall in the price of packaged liquor at certain outlets could lead to an increase in total off-premise consumption. This may cause some reduction in on-premises consumption, but the effect would not be significant [p 159].

The Review concurs with the view of the KPMG analysis that consumers would benefit from abolition of the rule as a result of the increased convenience of one-stop shopping. Indeed, the Review believes that convenience may be the greatest benefit.

The survey of the research literature suggests that an increase in the general availability of liquor brought about by removing the 8% rule would be unlikely to have a significant impact on total consumption and harm. Inelastic demand overall would mean that any price reduction that would probably be small, would cause less than a proportionate increase in consumption.

The Review recommends that the 8% rule for general and packaged liquor licences be removed from the Act.

10 THE 'DRY AREAS'

Section 172 requires that in designated 'dry areas, applications for general, residential, on-premises or club licences must be approved by a poll of residents in the neighbourhood of the proposed licence premises.

The object addressed is the provision of adequate controls. Concern for matters of local amenity through this provision is limited to two suburban areas in Melbourne (Box Hill and Camberwell).

The main stakeholders are as follows.

Positive impact

- Local amenity may be improved through containment of public nuisance, accidents and the like.
- Licensees in surrounding areas may receive demand diverted from 'dry areas'.

Negative impact

- Potential licensees, in particular BYO permit holders, who forgo net revenue from potential sales in 'dry areas'.
- Consumers who reside in 'dry areas' have a limited choice of licensed premises and face higher transaction costs by having to travel to other areas.
- Consumers generally have a more restricted range of licensed premises to choose from.

10.1 SUBMISSIONS

The Review received submissions opposing the removal of the 'dry area' provision from Mr R. Clark MP, Mr N. Lee, Mr C.J. Lock, People Against Drink Driving, Mr D. Perrin MP, Dry Area Quality of Life Movement, Mr R. Pitt, and Mr P.G. and Ms R. Worssam. These submissions argued, in essence, that the restriction protected local amenity in the area. Most pointed out that the provision has been in place for many years and ought not be removed unless approved by a poll of 'dry area' residents. The Whitehorse City Council and the Boroondara City Council endorsed some relaxation of the provision as it applies to licensed restaurants based, in part, on resident opinion surveys. Mr P. Hawkins and Ms C. D'Mello argued for removal of the provision.

10.2 EVALUATION

The Review notes that the 'dry area' provision is anti-competitive. It is not an absolute barrier to entry for those wishing to conduct businesses under general, residential, on-premises or club licences as they may be approved by a vote of electors in the neighbourhood of the proposed licensed premises. In practice, however, the barrier is sufficiently high so as to prevent the grant of general and restaurant licences in these areas. Although the provision may add a special character to the amenity of the 'dry areas', and so serve the 'adequate control' object, licence applications do not face this barrier elsewhere. Local amenity must be considered in all licences applications, regardless of area, and is a basis for objections under the general heading of community interest (Section 76(2)(c)) and residents are given an opportunity to object to an application under Section 74(1). Further, applications for licences may be opposed on amenity grounds at local planning and at the Administrative Appeals Tribunal. Both councils contend that they could deal with amenity questions under planning provisions.

The 'dry areas' have many BYO restaurants and packaged liquor stores which are not subject to this restriction. The qualitative difference between a licensed restaurant and a BYO restaurant, so far as local amenity is concerned, seems small. If there is a difference, it is likely that consumption levels are greater in BYOs, and the obligations of permittees for responsible serving are less. The restriction, therefore, is discriminatory against those wishing to operate a licensed restaurant in these areas and may be inconsistent with harm minimisation. Evidence presented by both councils suggests that community views have changed and that they do not support the provision as it applies to licensed restaurants. On the other hand, there is strong support for its retention in relation to hotels.

In these circumstances the provision appears to be anti-competitive. Mr Clark argued to the contrary because the provision applies to all licensed premises in the 'dry area'. However, the Review considered it to be clearly anti-competitive because it restricts competition with businesses outside the area, and even within the area there is discrimination between different types of licences (for example between general licences and packaged liquor licences). Further, the Review does not believe there are countervailing social reasons to justify the retention of the provision. If the restriction was removed, licence applications would be subject to all the same restrictions that apply in other parts of the State.

The Review, however, does recognise that there is a special consideration that applies only to these areas. The 'dry areas' in Boroondara and Whitehorse have been in place for almost eighty years and were established by a poll of residents. The community has existed and developed with the knowledge that it is a 'dry area', and with the reasonable expectation that residents would have a say in relation to licensed premises coming into the area. In these circumstances it is reasonable to say that the 'dry area' provision should not be removed without a referendum of residents in these areas.

The Review stresses that such a referendum should be of all the electors in the 'dry areas' unlike the polls under the Act that are limited to electors in the neighbourhood of proposed licensed premises. Further, the poll should provide an opportunity for electors to vote on particular categories of licences. In light of the changes recommended by the Review, this would refer to on-premises licences, on and off-premises licences and club licences. Hotels would be covered by on and off-premises licences and restaurants by on-premises licences. There would be no need for a poll for off-premises licences as these are not covered by the 'dry area' provision.

The Review recommends that a poll be taken of all electors in the 'dry areas' to determine whether they wish to retain the provision for each of on-premises licences, on and off-premises licences and club licences. Removal of the provision in whole or in part should be determined by the poll.

11 RESTRICTIONS AFFECTING MINORS

11.1 PREVENTION OF SALE TO MINORS

Section 127(1) prohibits a licensee from the sale or the supply of liquor to a person under the age of eighteen years.

This provision is anti-competitive because it restricts the opportunity of licensees to sell liquor to minors. The object addressed is 'adequate controls' and is a response to a community perception that under age drinking ought to be discouraged.

The main stakeholders are as follows.

Positive impact

- Under age persons who may not always understand their own best interests, are discouraged from drinking without proper supervision.
- Local amenity is protected by the containment of public nuisance, accidents and the like that may result from unrestricted consumption by minors.

Negative impact

- Licensees forego revenue from sales to under age persons.

11.1.1 Submissions

The Centre for Adolescent Health proposed that the minimum age should be raised to twenty one to reduce the incidence of road trauma amongst young people. No other submission recommended that the minimum age should be changed.

11.1.2 Evaluation

There appears to be a strong community view that the restriction on the sale of liquor to minors is fair and reasonable, and the Review shares this view. It seems clear that the special nature of liquor requires some degree of monitoring in its handling. Whilst it is appropriate for education as to the effects and use of alcohol be provided to young people, there should be an age below which liquor should not be sold to them personally.

It is arguable that there is an unfortunate coincidence between the age at which young persons may drink in licensed premises and the age at which they may obtain a driver's licence, however the 'zero alcohol' requirement in the *Road Safety Act* for probationary drivers seems to be a fairly powerful deterrent to drink-driving amongst young people. A reduction of the minimum age to, say, seventeen is not advocated because this might be taken by many as a public endorsement of drinking by young people.

Whilst there may be argument for raising the age to twenty-one, and this does exist in some countries, the age has been fixed at eighteen for so long and is so well established that there would need to be strong community support before any increase could be considered. No evidence has been placed before the Review to suggest such support.

Although there is some evidence that minors find ways of acquiring liquor, the Act has provisions that make it illegal, and specifies penalties for the supply to minors by persons other than licensees (excluding parents, guardians or spouses). Section 127(3) prevents any person supplying liquor to a minor (20 penalty units), and Section 131(1) prevents a minor purchasing or receiving liquor (5 penalty units). **The Review recommends that the restriction on the sale or supply of liquor to minors be retained in the Act.**

The Review notes the difficulty of enforcing the restriction on the sale and supply of liquor to minors. It believes that the use of ID cards assists police and the staff of licensed premises in implementing this restriction. It is important, therefore, that minors are prevented from fraudulently acquiring ID cards.

11.2 PRESENCE OF MINORS ON LICENSED PREMISES

Section 128 prohibits the presence of minors on licensed premises except, in certain circumstances.

This restriction is anti-competitive because it limits the opportunity of licensees to sell products, other than liquor, to minors. The object addressed is 'adequate controls' and is a response to a community perception that the presence of minors on licensed premises ought to be discouraged.

The main stakeholders are as follows.

Positive impact

- Under age persons who may not always understand their own best interests, are discouraged from being in licensed premises without proper supervision.

Negative impact

- Licensees forego revenue from sales to under age persons.
- Minors are inconvenienced by not being able to purchase non-liquor products from licensed premises.

11.2.1 Submissions

There were no submissions regarding this restriction.

11.2.2 Evaluation

The rationale for this rule is probably the view that young people should not be exposed to liquor in case they somehow succumb to temptation. There might be some justification for this view, but there seems little evidence to justify it. The reality is that young people are exposed to liquor in so many ways now that the prohibition seems of little purpose. Young people can freely walk past bottle shops in supermarkets and shopping centres and, indeed, streets, and see liquor displayed.

In addition, the Act sets out many exceptions to the rule. Under Section 128, it is not an offence for a minor to be on licensed premises for the purposes of a meal, or with a parent guardian or spouse, or if a resident of the premises, or for entertainment if liquor is not served in that part of the premises, or for the purpose of a training program, or if employed on the premises otherwise than for the sale or disposal of liquor.

In these circumstances, the Review is of the opinion that there are no strong reasons why minors unaccompanied by adults should be prevented from, say, buying soft drink in a bottle shop or a meal in a licensed restaurant. However, the Review recognises that the atmosphere in some hotels and bars may be unsuitable for minors and believes that access by minors should be restricted in these cases subject to the already recognised exceptions. In the light of the Review's recommendations as to licence categories, this would mean that the exclusion should apply only to premises with an on-licence or an off and on-licence, and then only to the part of the premises that is used exclusively as a bar.

The Review recommends that the restriction that prohibits the presence of minors on licensed premises (for example, restaurants, cafes, packaged liquor outlets and

similar) be removed, except for bar areas in premises with on-licences or on and off-licences (for example, hotels, nightclubs and similar).

11.3 PREVENTION OF SALE BY MINORS

Section 130 prohibits a licensee from allowing a person under the age of eighteen years to sell or dispose of liquor. This does not apply in training programs approved by the Minister.

This restriction denies licensees the opportunity to employ persons under the age of eighteen and, as a consequence, employers may face higher labour costs than would otherwise be possible. Further, young people have more restricted employment opportunities in the hospitality industry. The object addressed is the provision of 'adequate controls'.

The main stakeholders are as follows.

Positive impact

- Under age persons may not have sufficient maturity or experience to make judgements about the possible intoxication of customers, and may be less capable of refusing service to minors and intoxicated persons.
- Persons over the age of eighteen who seek employment as bar staff and the like do not face competition from minors.

Negative impact

- Licensees face higher costs because they are unable to employ low wage under age persons.
- Young persons have fewer employment opportunities in the hospitality industry.

11.3.1 Submissions

No submissions argued that this restriction should be removed from the Act.

11.3.2 Evaluation

The restriction prevents young people from being employed to sell or dispose of liquor, however Section 128 (c) allows them to be employed for other purposes on licensed premises. As a consequence, the impact on teenage employment is probably not very large, nor is the overall level of employment in the hospitality industry.

The restriction is based on the view that under age persons may not be qualified to make judgements about the possible intoxication of customers, and may have difficulty in refusing service to minors and intoxicated persons. **The Review agrees with this view and recommends that the restriction that prevents a person under the age of eighteen years selling or disposing of liquor be retained in the Act.**

The requirement that the Minister, rather than the Commission, approve training programs seems an unwarranted obstacle to the training of young people for careers in the hospitality industry. **The Review recommends that the provision for the approval of training programs that involve the serving of liquor by minors by the Minister be removed from the Act. Approval should be granted by the Chief Executive Officer of the Commission.**

The Review is unable to identify any reasonable alternative non-regulatory means of fully achieving the 'adequate controls' object of preventing harm by restricting sales of liquor by minors.

12 SUITABLE PERSONS

12.1 SUITABLE PERSON AND ADEQUATE KNOWLEDGE

Section 75(1) requires that an applicant for a licence must be a suitable person and Section 75(5) requires that an applicant must have an adequate knowledge of the Act.

The suitable person provision requires that the Commission to make judgements about applicants without any clear guidelines. Tests of adequate knowledge are not applied to all applicants and, therefore, could be regarded as discriminatory.

The object addressed is 'adequate controls' and is a response to the obvious harms that might result if irresponsible persons, or persons who are ignorant of the obligations of licensees are permitted to obtain licenses.

The main stakeholders are as follows.

Positive impact

- Current licence holders may gain because the reputation of the industry is enhanced by excluding undesirable persons.
- Local amenity may be enhanced if the provision makes it more likely that licensees pay due regard to their obligations under the Act.
- Consumers are likely to have a greater range of properly run licensed premises.

Negative impact

- Applicants who are denied entry to the liquor industry.

12.1.1 Submissions

No submissions supported the removal of these provisions, however several suggested that tests of 'adequate knowledge' should be applied more widely than at present.

12.1.2 Evaluation

The Review notes that the Act does not clearly define the meaning of 'suitable person' and 'adequate knowledge'.

In practice, it appears that applicants who may be deemed to be 'unsuitable', are deterred from applying by Section 71 that requires the Chief Commissioner of Police indicate whether the application should be opposed. Further, tests to determine whether the applicant has an adequate knowledge of the Act are not given to all applicants, and are sometimes used to reject applicants whose *bona fides* are in doubt. It is difficult to see how a serious case could be made for the removal of these provisions. They are an important safeguard to the community.

The Review recommends that the restrictions requiring licence applicants to be suitable persons and to have adequate knowledge of the Act be retained.

12.2 SUB-LETTING AND OTHER PERSONS OPERATING BUSINESSES

Section 120 and Section 121 prohibit licensees from sub-letting, or allowing other businesses to operate on, any part of the premises, or permitting other persons to sell or dispose of liquor on the licensed premises, except with the consent of the Commission.

These restrictions may limit the ability of licensees to offer a broader range of services by sub-letting or allowing other businesses to operate on the premises, and could restrict competition between licensees, and between licensed and unlicensed businesses.

Although these restrictions apply to both liquor and non-liquor sales in licensed premises, the restriction is consistent with the principle that all sellers of liquor should be licensed. These restrictions, therefore, serve the 'adequate controls' object.

The main stakeholders are as follows.

Positive impact

- The Commission has a clear and direct relationship with the principals of the business carried on in the licensed premises.

Negative impact

- Licensees may forgo net revenues by not being able to take advantages of cost savings from sub-letting, by forgoing the opportunity to earn rents from lessees, and by having a more restricted range of services on the premises.
- Consumers may be offered a more restricted range of services on licensed premises or face higher prices.
- Other businesses are denied the opportunity to seek to sub-let part of a licensed premises, or to operate a business within it.

12.2.1 Submissions

The Australian Hotels & Hospitality Association Inc. argued that the restriction, as it applies to the provision of food, serves no useful purpose, however in the case of the provision of liquor, the licensee is ultimately responsible for the conduct of business on the premises whether it is carried out by employees or sub-tenants [p 34-35]. The Victoria Police, on the other hand, argue that the provision should be retained because it prevents the *de facto* transfer of a licence without the usual requirements [p 7].

12.2.2 Evaluation

The practice of the Commission is to reject any application to sub-let or to allow other persons to operate businesses for the purpose of the sale or disposal of liquor except in an approved management agreement. In such an arrangement the ultimate responsibility for the conduct of the business rests with the licensee. The Commission will generally approve applications to sub-let or to allow other persons to operate businesses for the purpose of the sale of food or the supply of gaming facilities.

The Review recommends that the restriction be amended so that it refers only to sub-letting and allowing other persons operating business on the premises for the purpose of selling or disposing of liquor. The restriction serves no useful purpose when applied to activities other than the sale of liquor.

The Review is unable to identify any reasonable alternative non-regulatory means of achieving the 'adequate controls' object that requires that the licensee should be ultimately responsible for all aspects of the sale and supply of liquor on the premises.

13 RESTRICTIONS ON TRADING HOURS

The hours in which licensees may trade are prescribed in the Act, however the Commission may grant extended hours permits to all types of licences.

General licences (Section 47(1)(a) and 47(3)(a)), producer's or distributor's licences (Section 49(1)(a)) and on-premises licences (Section 50(1)(a)) are generally limited to ordinary trading hours. These are defined in Section 3 as 7 a.m. to 11 p.m. from Monday to Saturday, 10 a.m. to 11 p.m. on Sunday, and 12 noon to 11 p.m. for Anzac Day and Good Friday.

Full club licences (Section 48(1)(a)) allow unrestricted trading hours Monday to Saturday, 10 a.m. to 11 p.m. on Sunday, and 12 noon to 11 p.m. for Anzac Day and Good Friday. Trading hours for packaged liquor licences (Section 51(1)) are 9 a.m. to 9 p.m. from Monday to Saturday, 10 a.m. to 5 p.m. on Sunday, and 12 noon to 11 p.m. for Anzac Day and Good Friday. The trading hours of restricted clubs are limited to those determined by the Commission (Section 48(1)(b)).

The provisions of the Act specifying trading hours are not competitively neutral because some licensees may trade for longer periods than others when undertaking essentially the same activity. This imbalance may be an important impediment to competition between hotels and clubs for on premises sales, and between hotel bottle shops and packaged liquor licensees for off premises sales. On the other hand, when concern for the local area is not an issue, the availability of extended hours permits may allow greater equality.

A further barrier to competition is that maximum trading hours may be less than those that some licensees might choose, based on commercial considerations, if unconstrained.

These provisions address the object of providing 'adequate controls'.

The main stakeholders are as follows.

Positive impact

- General licence holders are permitted longer trading hours than packaged liquor licence holders.
- Full clubs are permitted longer trading hours than hotels.
- Local amenity is protected by the containment of public nuisance and the like.

Negative impact

- Consumers are offered a restricted range of purchasing times generally, and there is imbalance between shopping times for liquor and other products.
- Packaged liquor licence holders have shorter trading hours than general licence holders.
- Hotels have shorter trading hours than full clubs.

13.1 SUBMISSIONS

The Liquor Stores Association of Victoria Inc. [p 19] and Australian Safeway Stores [p 19] argued that packaged liquor licence trading hours should be the same as those of general licences to eliminate the competitive advantage. The Licensed Freeholders' Association Inc. proposed that there should be no restrictions on trading hours [p 5].

Carlton and United Breweries Ltd [p 20] and the Licensed Clubs Association of Victoria [p 9] argued, in essence, that liquor trading hours should mirror general shop trading hours, and that amenity issues should be treated on a case by case basis.

The Australian Hotels & Hospitality Association Inc. proposed that trading hours restrictions are important for the protection of local amenity [p 32]. The Victoria Police argued that, in the interests of the minimisation of harm, the sale of packaged liquor should not be permitted between midnight and 7 a.m. [p 4]. The Australian Drug Foundation urged the Review to consider the negative impact of removing restrictions on trading hours [p 4].

13.2 EVALUATION

Restrictions on trading hours, *prima facie*, are a useful means of protecting local amenity. Although trading hours may be varied through the grant of extended hours permits, these permits require an additional application and annual fee. Although permit fees may be only a comparatively small part of the costs of many licensees, the application procedure may involve quite considerable costs if there are objections.

The impact of the presence of licensed premises on local amenity depends largely on the character of the local area, and on the conditions attached by the Commission to licences. In some localities more liberal trading hours than those specified as 'normal' would have a minimal impact on amenity. Where amenity is at risk, objections based on the community interest (Section 76) may disallow an application, or cause conditions to be attached to minimise the impact on amenity.

In her survey of the research literature, Dr Roche summarises the broad view on harm and the question of trading hours as:

The number of outlets and hours of trading are not strong and consistent predictors of problems, with some important exceptions such as remote and geographically isolated areas or in concert with certain socio-economic circumstances (eg high unemployment levels, lack of social restraints). [p 102]

This suggests that, as a general principle, limiting the normal trading hours of licensed premises may have little impact on the minimisation of harm, ignoring amenity questions. Where there is evidence of risk, adequate controls should be undertaken on an individual basis.

Although the community has accepted unrestricted retail trading hours, the Review is of the opinion that unrestricted hours for all licensed premises would have serious consequences for local amenity. On the other hand, there is a strong case for competitive neutrality between hotels and packaged liquor licences due to the similarity of their bottleshop operations.

The Review recommends that all licensed businesses that retail liquor have the same normal trading hours. Extended hours permits should be available to all licensees but subject to the same conditions that presently apply.

The Review has noted that unrestricted trading hours would have implications for areas surrounding licensed premises. An extension of normal trading hours beyond the presently prescribed 7 a.m. to 11 p.m. may pose the same problem. The Review, however, believes that that the community would no longer regard 11 p.m. as an appropriate closing time for most licensed premises. There is no convincing argument why the close should be 12 mid-night or 1 a.m., however the Review believes that 1 a.m. is more reasonable.

Normal trading hours are not an absolute restriction on trading hours because extended hours permits may be applied for by all licensees. Nor are they a requirement that businesses remain open for the whole of the specified times. **The Review recommends that normal trading hours for all licensees be 7 a.m. to 1 a.m. on all days except Good Friday and Anzac Day.**

The Review believes that Anzac Day is a special day of remembrance for the nation and that unrestricted trade may be seen by many Australians as showing a lack of due respect. Further, the Review believes that Good Friday is also a day of special cultural and religious significance, and there is a community expectation that the trading hours of licensed premises should be restricted on that day. On the question of Sunday trading, the *Public Bodies Review Committee* argued that:

the community attitude to Sunday as a day exclusively of religious observance has changed and that the rationale for restricting the hours of licensed premises has gone. [p 145, 2.171]

The Review recommends that trading hours on Anzac Day and Good Friday be 12 noon to 1 a.m. on the following day.

The present general licence (class 1) and residential licence allows liquor to be served to residents and guests at any time. To require otherwise would serve no useful purpose and be extremely detrimental to the Victorian tourist industry.

The Review recommends that all licensed premises that have residents and *bona fide* guests be permitted to sell or supply liquor to them at any time.

The Review notes that full club licences have unrestricted trading hours, except on Sunday, Good Friday and Anzac Day. The effect of the Review's recommendation on normal trading hours would restrict the existing hours of full clubs. In order to overcome this problem, existing full clubs should be given automatic extended hours permits to enable the same trading hours presently available to them. Because new applications by clubs may have implications for local amenity, they should not automatically be granted unrestricted hours.

The Review rejects any argument that this is not competitively neutral between new and old club licences. Existing licences would not have been granted if they had an adverse effect on local amenity. Conversely, new licences could obtain an extended hours permit as a matter of course if there are no adverse consequences for local amenity.

The Review recommends that whilst licensed clubs should have the same normal trading hours as other retail outlets, existing full clubs under the 1987 Act should automatically be given extended hours permits to ensure that they retain their present trading hour entitlements.

The business of licensees who do not sell to the public and who are normally located in commercial or industrial areas are unlikely to have any adverse impact on local amenity. Nor is it likely that their activity of selling to other licensees could contribute directly to harm. In this the Review concurs with Dr Nieuwenhuysen who stated that:

Wholesaling, which can be defined as sales made to another licensed person, should be allowed at any time, subject to appropriate planning approval. [p 504]

Elsewhere the Review has argued the businesses that sell exclusively to other licensees should be able to obtain a pre-retail licence with fewer conditions than other licences. The restriction of the hours of trade of these licensees seems not to serve any object of the Act. **The Review recommends that there be no restriction on the trading hours of licensees whose licences do not permit them to sell to the public.**

14 MISCELLANEOUS ISSUES

14.1 SUPPLY TO INTOXICATED PERSONS

Section 122(1) prohibits licensees from supplying liquor to persons in a state of intoxication, or persons who are drunk or disorderly to be on the licensed premises.

This restriction is anti-competitive because it prevents sales by licensees to customers who, albeit intoxicated, wish to consume more liquor.

The object addressed is 'adequate controls' and is a response to the obvious harm that further drinking by those persons already intoxicated might cause to themselves or others.

The main stakeholders are as follows.

Positive impact

- Intoxicated persons may not be aware of their own best interests, and the curtailment of further drinking reduces the risk of the harms of mortality and morbidity.
- The associates of intoxicated persons have a reduced risk of experiencing unpleasant or dangerous outcomes including violence.
- Other drinkers are afforded more congenial drinking conditions.
- Licensees are provided with a justification for not serving intoxicated persons whose absence may increase the attractiveness of the premises to other patrons.
- Local amenity is protected by the containment of public nuisance, road trauma, accidents and the like.

Negative impact

- Licensees forgo revenue from sales to intoxicated persons.

14.1.1 Submissions

None of the submissions suggested that these restrictions ought not be retained. The Women's Christian Temperance Union of Victoria argued that a clear definition of 'intoxication' and 'drunkenness' is required [p 4].

14.1.2 Evaluation

The evidence in the research literature outlined in Appendix 4 regarding the association between very high levels of consumption and harm, indicates that the benefits of this restriction far outweigh its cost. Indeed, even in the absence of scientific research, few would deny the importance of this restriction. It has the very important purpose of placing the onus on the licensee to be responsible for not supplying liquor to intoxicated persons and is an appropriate obligation to place on licensees.

The Review notes that the Act does not define the terms 'intoxicated' and 'drunk and disorderly'. The application of these terms is described in *Bourke's Liquor Laws, Victoria* as follows:

The words 'state of intoxication' mean that state in which through intoxicating liquor a person has lost the normal control of his bodily and mental faculties ... (and) ... The decision must rest on the evidence of impartial men of common sense who are themselves sober. The words 'drunk and incapable' are not an exact equivalent of 'in a state of intoxication'. These latter words signify some degree less than absolute incapacity from drunkenness ... (and) ... A person is intoxicated within the meaning of the section when either his mental or his

bodily faculties are so far disturbed by the influence of liquor that an average man who is neither a publican nor a prohibitionist would say that it was improper for him to be supplied with more liquor. [p 572]

This is the general thrust of the Commission's interpretation and is the approach taken in Responsible Serving of Alcohol programs.

The Review has considered whether there is an appropriate definition of 'intoxication' or 'drunkenness' that could be set out in the Act, but has concluded that the terms are well known and that it is appropriate to leave the matter of their application to the adjudicating body in particular cases.

The Review recommends that the restriction on the sale or supply to intoxicated persons be retained in the Act.

The Review is unable to identify any reasonable alternative non-regulatory means of fully achieving the 'adequate controls' object of preventing harm to intoxicated persons and others. In reaching this conclusion, the Review does not wish to denigrate the fine achievements of the voluntary Responsible Serving of Alcohol programs, however the restriction provides a means of disciplining those licensees who fail to behave responsibly in this regard. The Review notes that it may be desirable to disseminate information about this restriction.

14.2 RESIDENTIAL LICENCES — THE 20 BEDROOM RULE

Section 46(2)(b) requires the holders of residential licences to have at least 20 bedrooms.

The restriction is not competitively neutral because small accommodation establishments are denied the opportunity to obtain this type of licence even though they meet the primary purpose requirement.

It is arguable that this provision serves the 'proper development' object by limiting the ability of smaller accommodation businesses to sell liquor.

The main stakeholders are as follows.

Positive impact

- Larger accommodation establishments are able to supply liquor under this licence.

Negative impact

- Small accommodation establishments are unable to supply liquor unless they obtain a limited licence.
- Consumers may have a more restricted range of services provided by accommodation establishments.

14.2.1 Evaluation

It is doubtful that this requirement serves any useful purpose. If the Review's recommendations regarding licence categories are adopted, the residential licence category would disappear.

If the residential licence is retained, the Review recommends that the reference to 20 bedrooms should be removed from the Act.

14.3 THE 25% DESIGNATED AREA FOR RESTAURANTS

Section 50(3) states:

If the business carried on on-premises which form part of the licensed premises under an on-premises licence is primarily the business of a restaurant or other place where meals are prepared and served for consumption on the premises, the on-premises licence may, if the Commission so determines and specifies in the licence and on payment of \$800, also authorise the licensee to sell or dispose of liquor (otherwise than in association with the serving of meals) for consumption on part of the licensed premises that -

- (a) comprise not more than 25 per centum of the total area of the licensed premises of which liquor is sold and disposed of; and*
- (b) is set apart, in accordance with any conditions specified in the licence, for the supply of liquor otherwise than in association with the serving of meals.*

This restricts restaurateurs in their ability to provide bar services or to provide liquor without meals except in a designated area and subject to an additional fee. Although a restaurateur is free to apply for a general (class 2) licence that would be free of this restriction, such a licence application may be more costly due to objections and less likely to succeed.

The objects addressed are 'proper development' and 'adequate controls'. In parliamentary debates on the Bill, considerable concern was expressed for the possibility of a proliferation of restaurants operating as *de facto* small hotels if there was not a restriction of this kind. On the other hand, the restriction seems contrary to the 'diversity' object.

The main stakeholders are as follows.

Positive impact

- Licensees who are able to offer bar services face less competition from licensed restaurants.
- Local amenity may be protected by limiting the number of bars in an area.

Negative impact

- Licensed restaurants must pay an additional fee to provide bar services. The 25% area must be set aside from the rest of the area so limiting the flexible use of floor space in the restaurant.
- Consumers are limited in their access to bar facilities and to be served liquor without meals in licensed restaurants.

14.3.1 Submissions

Submissions proposing that the restriction be removed from the Act were received from Mr J. Chalker (because the restriction is not competitively neutral [p 9]), the Hotel Motel & Accommodation Association of Victoria Inc. (because it is anti-competitive [p2]), Mr J.P. Nolan (because it is cumbersome and in most cases unworkable [p 16]), and the Restaurant and Catering Association of Victoria (because it disenfranchises the restaurant sector from an ability to service its clients [p 4]).

14.3.2 Evaluation

The 25% rule, together with the application of primary purpose, gives restaurateurs, in effect, three choices. First, they may refuse to serve liquor without meals; second, they may incur the costs and inflexibility of a designated bar area; or third, undergo the costs and risks of obtaining a general licence. None of these alternatives seems reasonable. Since liquor is often more expensive in restaurants than in other licensed premises, it is probable that sales of liquor without meals would form only a small part of a restaurant's business. It is unlikely, therefore, that the supply of liquor without meals in restaurants would be in conflict with the 'proper development' and 'adequate controls' object. The removal of the restriction would be in accord with the 'diversity' object.

If the Review's recommendation as to licence categories is adopted, restaurants would hold an on-premises licence. There would be no 25% rule applying to these licences, and therefore the rule would disappear. However, even if the present type of on-licence category was maintained, the Review believes that the 25% rule should be removed for the reasons given. **The Review recommends the removal of the 25% rule.**

14.4 RE-APPLICATION WAITING TIME

Section 62 prohibits an applicant for a licence or permit who is unsuccessful or withdraws the application, from re-applying within one year of the refusal or withdrawal, except with consent of the Commission.

The restriction poses a barrier to entry for one year to those applicants who may otherwise be able to satisfy the Commission that the grant of a licence should be allowed.

The provision is not mandatory and is rarely used. It may, however, be used as a means of discouraging wealthy applicants making repeated applications and withdrawals, to exhaust the resources of objectors. To the extent that this protects the interests of legitimate objectors, the provision serves the 'proper development' object.

The main stakeholders are as follows.

Positive impact

- The Commission's costs of processing multiple applications from the same applicant are reduced.
- Objectors to licence applications are less likely to have their funds exhausted by repeated applications from wealthy applicants.

Negative impact

- Applicants may be delayed obtaining a licence.
- Consumers may have fewer licensed premises to choose from in the short term.

14.4.1 Submissions

The Australian Hotels & Hospitality Association Inc. argued that the restriction has no real cost and is important in discouraging applicants from seeking to out-finance the opposition [p 24].

14.4.2 Evaluation

The Review concurs with the submission of the Australian Hotels & Hospitality Association Inc. that the restriction has no real cost and is important in discouraging applicants from seeking to out-finance the opposition.

Although the Provision may seem anti-competitive, its application is not. Re-submissions and re-applications whose intent is not tactical are proceeded with by the Commission without undue delay. To the extent that it deters misuse of the objections process, it may be a worthwhile provision. **In Chapter 6, the Review recommends a system that would simplify the objection process and make this provision redundant.**



APPENDIX 1

The Panel and Secretariat

The Minister for Small Business Victoria, Hon Louise Asher MP, has established a three person independent panel to conduct the Review. The members are:

- Hon Haddon Storey QC, Professorial Associate in the Public Sector Research Unit, Victoria University of Technology, (Chair);
- Associate Professor Margaret Hamilton, Director Turning Point Alcohol and Drug Centre, Department of Public Health and Community Medicine, University of Melbourne; and
- Mr Gordon Broderick, Secretary of the Liquor Industry Consultative Council of Victoria.

The Secretariat is:

- Dr Alan Morris, Senior Lecturer, Department of Applied Economics, Victoria University of Technology, (Executive Officer);
- Ms Joanne Bradford, Department of Applied Economics, Victoria University of Technology, (Research Officer); and
- Ms Penelope Gallagher, Department of State Development, (Executive Assistant).

APPENDIX 2

Submissions Received

Alcohol Concern Ltd.
 Australasian Association of Convenience Stores Incorporated
 Australian Drug Foundation
 Australian Hotels & Hospitality Association Inc.
 Australian Safeway Stores Pty. Ltd./Woolworths (Victoria) Pty. Ltd.
 Boots, Mr K.
 Boroondara City Council
 Bridge Programme (Salvation Army)
 Carlton United Breweries Limited
 Centre for Adolescent Health
 Chalker, Mr J. (The Owl & the Pussycat)
 Clark, Mr R., Member for Box Hill
 Collins Street Baptist Church and Executive Council of the Baptist Union of Victoria
 Dickinson, Mr D. J. (Lunch ... on Bank)
 D'Mello, Ms C. (Eden Cafe)
 Dry Area Quality of Life Movement
 Harrow-Balmoral Football/Netball Club
 Hawkins, Mr P.
 Hotel Motel & Accommodation Association of Victoria
 Larkins, Mr J. F. M.
 Lee, Mr N.
 Licensed Clubs Association of Victoria Inc.
 Licensed Freeholders' Association Inc.
 Liquor Stores Association of Victoria
 Liquorland (Australia) Pty. Ltd.
 Lock, Mr C. J.
 McGrath, Hon. B., Minister for Police and Emergency Services
 Nightclub Owners Association
 Nolan, Mr J. P.
 People Against Drink Driving
 Perrin, Mr. D., Member for Bulleen
 Pitt, Mr R.
 Restaurant and Catering Association of Victoria
 Royal Automobile Club of Victoria (RACV) Ltd.
 Seward, Mr S. (Hayes & Seward)
 Society Without Alcoholic Trauma
 Stockwell, Professor T.
 Turning Point Alcohol & Drug Centre Inc.
 Victoria Police Centre
 Victorian Alcohol and Drug Association (VAADA)
 Victorian Community Council Against Violence
 Victorian Wine Industry Association Inc.
 Whitehorse City Council
 Wolstenholme, Mr P. F., Neighbourhood Watch Co-ordinator Area C25
 Women's Christian Temperance Union of Victoria
 Worssam, Mr P. G. and Ms R.
 7-Eleven Stores Pty. Ltd.

APPENDIX 3**Meetings with Industry, Community and Government Groups**

Australasian Association of Convenience Stores Incorporated
Australian Hotels and Hospitality Association
Australian Safeway Stores Pty. Ltd./Woolworths (Victoria) Pty. Ltd.
Baptist Union of Victoria
Boroondara City Council
Carlton and United Breweries
Clarke, Mr R., Member for Box Hill
Licensed Clubs Association of Victoria
Licensed Freeholders Association
Liquorland (Australia) Pty. Ltd.
Liquor Licensing Commission
Licensed Stores Association
McGrath, Hon. B., Minister for Police and Emergency Services
Nightclub Owners Association
Perrin, Mr D., Member for Bulleen
Restaurant and Catering Association
Salvation Army — Bridge Programme
Santamaria, Dr J.
Victoria Police Centre
Whitehorse City Council

APPENDIX 4

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APPENDIX 5

LITERATURE SURVEY

EXECUTIVE SUMMARY

Controversial Premises

- Alcohol control policies have traditionally been predicated on the view that increased availability equals increased consumption; and that increased consumption equals increased alcohol-related problems. Hence, most research work in this area has been undertaken to determine the veracity of this underpinning premise.
- In more recent years, an alternative and perhaps complementary view has developed. That is, that the harms associated with consumption should be the focus of attention not consumption per se. Excellent examples now exist of strategies which have significantly reduced harms associated with alcohol use but have not altered the amount of alcohol consumed. Random breath testing and road trauma is one of the best examples of this approach.
- Another important development has been the shift in emphasis away from mean consumption levels to patterns of use. Patterns of use entails the where, when and how of consumption and not just the volume. This has important implications for control policies as there is now good evidence to indicate that different patterns of consumption, and especially more appropriate drinking environments, are conducive to reduced levels of harms. Again, such improvements in health consequences have been achieved without a focus on reducing mean consumption levels.
- There is now good evidence from recent developments in countries such as New Zealand that stands in stark contrast to the traditional alcohol available theories. Since the late 1980s, New Zealand nearly doubled its number of licensed liquor outlets without a proportional increase in associated problems. Such findings raise important questions about the complex nature of the supply-problem relationship and indicate the need for careful consideration of a wider range of factors which may impact on public health.

Free Market Imperatives

- Alcohol control policies are currently being revised in the context of an international shift toward free markets, open competition and general deregulation.
- In such a context it becomes even more important to weigh up other considerations, such as health and social concerns, against economic imperatives.

Alcohol and Harm

- In assessing the contribution of alcohol use to harms experienced either individually or collectively it is essential to differentiate between the types of potential harms with which alcohol has been associated. Different types of harms have different policy implications.

- A broad and comprehensive coverage of the range of possible harms is essential. This includes the traditional focus on chronic harms, stemming from heavy use over a long period of time (such as cirrhosis of the liver, brain damage and/or peripheral neuritis), to acute harms, stemming from possible occasional use but at a level which is hazardous for a given individual in a given context or setting (which can result in injuries, road trauma etc). Other types of harms are more social in nature and include violence, domestic disruption, and safety issues.

Patterns of Use and Prevalence of Problems

To fully gauge the potential impact of alcohol consumption and any associated harms it is essential to determine population prevalence levels and patterns of use. (The following are summary data from the Australian National Household Survey (1996).)

- 76% of Australians aged over 14 years are current drinkers. Among 14–19 year olds, 63% (males) and 61% (females) were drinkers. Of these 14–19 year old drinkers 48% (males) and 69% (females) reported that they usually drank at a hazardous or harmful levels. Hazardous and harmful consumption was more common in the under age group than in any other age group.
- Among drinkers who consumed alcohol at very harmful levels (i.e. more than 8 standard drinks for females and 12 for males), 57% had intended to get drunk. Those aged 14–19 had the highest rates of intention to get drunk at 72%, followed by 20–24 year olds at 68%. Males were no more likely to get deliberately drunk than females.
- Type of alcohol consumed varied by age and sex of the drinker. Spirits were the preferred beverage of 70% of the 14–19 year olds followed by a preference for beer by 47%. Wine was the most preferred beverage among older (>35 year old) females.
- Drinking venues: Most (79%) over 35 year olds preferred to drink at home. While the most preferred venue for 20–24 year olds was pubs, clubs and winebars (65%). Pubs and clubs were preferred by more males than females. Younger drinkers (14–19 year olds) most preferred to drink at parties (77%) or friends' homes (57%).
- Nearly half (49%) of all drinkers reported attempts to reduce their alcohol consumption over the past 12 months. This was attempted either by reducing the amount of alcohol consumed on any one occasion (attempted by 27% of all current drinkers), reducing the number of occasions when alcohol is consumed (25%), and switching to more low alcohol drinks (16%).
- More than one third of the population aged 14 or more reported that they had been verbally abused in the last 12 months by someone affected by alcohol, more than a quarter had been put in fear by someone so affected, while 9% had been physically abused. With respect to property crime, 13% had property damaged by someone affected by alcohol, and 5% had property stolen. Males and regular drinkers were more likely to have experienced alcohol-related crimes than females.

Which Control Strategies?

Drinking behaviour is complex and is influenced by a multitude of factors. The complex array of factors which may impinge on whether an individual drinks, how much they drink and where they choose to drink is influenced by factors such as:

- price, promotion, access;
- law enforcement;
- public health pressures (e.g. anti drink driving messages);
- cultural norms;
- religiosity and religious persuasion;
- individual factors (including socio-economic status);
- psycho-social factors (such as drinking expectancies); and
- economic factors.

Community Support and Compliance Essential

Regardless of the perspective held about alcohol control policies there is widespread agreement that for any policy to be successful there must be a reasonable level of community acceptance of it. It is well recognised that Australia has very tolerant views about alcohol consumption and also intoxication. However, in recent years there has been growing concern in many quarters of the community about (1) under age drinking and (2) alcohol-related violence and social problems.

Summary of Overall Findings

In general terms, the following findings are supported by the literature:

- Overall availability is too gross and insensitive a measure to be used in isolation to determine or to guide the development of alcohol policies.
- The number of outlets and hours of trading are not strong and consistent predictors of problems, with some important exceptions such as remote and geographically isolated areas or in concert with certain socio-economic circumstances (e.g. high unemployment levels, lack of social restraints).
- Price remains one of the consistent measures and predictors of alcohol consumption in general terms. At specific points in time, pricing and other strategies (free drinks, cheap drinks) which encourage excessive consumption and intoxication, with the potential for obvious harmful consequences, are strongly contraindicated.
- The nature of the licensed environment is highly predictive of problems. Recent studies in Australia and overseas have demonstrated the extent to which such environments are amenable to problem-reduction. A wide range of problem-reduction and problem-containment strategies now exist which are highly supported through empirical evidence. Substantial scope therefore exists to more fully utilise the potential in the licensed environment to minimise harms associated with alcohol use. Emphasis should therefore be placed on the nature of the licensed premise and enforcement of the regulations, rather than number of outlets.
- Improved controls to prevent sales to under aged drinkers and intoxicated patrons are of increasing importance, with evidence of need to improve compliance in this area. Use of improved training of managers and staff and compulsory training of licensees is supported.

- Ease of access to alcohol for young and very young drinkers is highly predictive of problems. As these drinkers do not usually frequent on-license premises there are important implications here for the provision of alcohol through off-license premises (such as supermarkets, convenience stores and petrol stations). As such, there is a good basis for curtailing sale of alcohol through these outlets, or at the very least, requiring sales staff to be of legal drinking age and registered and trained to sell alcohol. This would necessitate acquisition of specific skills in service refusal. This is seen as a strong but important measure to safe guard young people.
- Enforcement strategies have been demonstrated to have great potency but are generally underutilised. Greater use of enforcement strategies is supported. Lack of enforcement needs to be treated seriously and addressed in a systematic manner at a structural level.
- Scope exists for an educational and facilitative role for liquor licensing authorities. It is evident that many licensees are unaware of many aspects of the liquor licensing legislation. The likelihood of achieving compliance is therefore substantially compromised. This can be easily remedied and the licensing authorities provide an obvious vehicle through which this could be achieved.
- Clearer and simpler liquor laws are needed both for ready comprehension by the general public and also to facilitate enforcement. To-date, confusing and convoluted laws serve only to befuddle the public and impede enforcement. Public acceptance of strategies has been repeatedly found to be essential for the successful implementation of and compliance with liquor laws and especially for their public health implications. Consultation with the general public is seen as essential in any revision of the legislation.
- Given the highly variable and situation specific nature of much of the evidence about alcohol availability and harms, it is recommended that any changes be implemented in an incremental and step-wise fashion. In this way, major changes are not introduced which later prove to be both unsatisfactory and difficult to amend or revoke.

1. Health, Harm and Alcohol Controls — Overview

The inclusion of health objectives in liquor licensing legislation is a relatively recent phenomenon. Previously, liquor legislation was intended to safeguard the interests of the alcohol and hospitality industries. In many instances, it primarily operated as a mechanism for increasing government revenue via indirect taxation. However, in more recent years there has been a growing recognition of the association between alcohol consumption and its availability and a wide range of health and social problems. More recently developed epidemiological tools and statistical analysis techniques have allowed this relationship to be examined more closely and more accurately.

It is increasingly recognised that alcohol consumption does play an important role in the overall health and wellbeing of the community (as complex as this relationship may be). Concomitantly, there is also the need to recognise the ways in which alcohol differs from other consumer products and to determine what appropriate safeguards need to be in place to ensure maximum enjoyment and benefit from its use.

It has been argued that alcohol is not a beverage like others and should be regulated differently from liquid beverages such as milk, orange juice and tea. Some maintain that if it were the case that there was no differences between these classes of beverages (i.e. alcohol and others) then where are the milk-related car accident statistics, the police reports of orange-crazed youths running amuck outside fruit stands, and the data on tea-related hospital costs? (Solomon, 1994). Solomon holds that 'unfortunately, alcohol is not a beverage like all others and it is folly to regulate it as if it were'.

This paper will examine the evidence in support of this position. Further, it will explore the policy implications of such a perspective and it will present a considered position on policy options which are supported in light of evidence of their efficacy in reducing harms associated with alcohol use. In exploring these issues the complex arena of the health benefits, as well as harms associated with alcohol use will be touched on, together with broader community and economic considerations.

2. Alcohol Consumption Patterns in Australia

To place alcohol policy development into context it is essential to accurately gauge the cultural and drinking milieu in which such policies would be located. In part, this necessitates information about the level and patterns of alcohol use in the community at large. In Australia, various sources of data are available, but the National Household Survey conducted under the auspices of the National Drug Strategy provides the most recent and comprehensive overview of alcohol use across all segments of the community. The key relevant findings from the National Household Survey are shown below.

The most recent National Drug Strategy Household Survey (1996) reported that 76% of Australians aged over 14 years are current drinkers with just over half of these being current weekly drinkers. Two thirds of drinkers report that they usually drink at low risk levels, that is no more than two standard drinks for women and four standard drinks for men. Only 28% of drinkers reported that they had never exceeded the low risk levels over the past twelve months.

63% of males aged 14–19 years were drinkers and 61% of females in this age group. Of these 22% (males) and 18% (females) were current regular drinkers. Of drinkers in the 14–19 age group 48% of males and 69% of females reported that they usually drank at a hazardous or harmful level. Hazardous and harmful consumption was more common in this under age group than in any other age group.

Males and females aged 14–24 years are more likely to be drinking to excess than males and females in other age groups. 38% of male drinkers ages 14–24 years, 35% of female drinkers aged 20–24 years, had lost memory at least once after drinking in the past year. This compares with 18% of all current drinkers.

Within the two weeks prior to the National Household Survey, 8% of males drinkers and 5% of female drinkers had consumed alcohol at very harmful levels (i.e. more than 8 standard drinks for females and 12 for males). Of those who had consumed at such levels 57% had intended to get drunk. Males were no more likely to get deliberately drunk than females. However, those aged 14–19 had the highest rates of intention to get drunk at 72%, followed by 20–24 year olds at 68%.

Type of Alcohol Consumed

Type of alcohol consumed varied by age and sex of the drinker. Spirits were the clearly preferred beverage of 14–19 year olds nominated by 70% of this age group followed by a preference for beer by 47%. Wine was the most preferred beverage among older (>35 year old) females.

Drinking Venues

Most (79%) over 35 year olds preferred to drink at home. While the most preferred venue for 20–24 year olds was pubs, clubs and winebars (65%). Pubs and clubs were preferred by more males than females. Younger drinkers (14–19 year olds) most preferred to drink at parties (77%) or friends' homes (57%). This latter preference by very young drinkers necessitates off-premise purchases and travel to a particular destination. Drinking in locations such as pubs and clubs have also been identified as a predictor of violence, drink driving and other alcohol-related harms (Casswell *et al.*, 1993; Stockwell *et al.*, 1991).

Reducing Consumption

Nearly half (49%) of all drinkers reported attempts to reduce their alcohol consumption over the past 12 months. This was attempted either by reducing the amount of alcohol consumed on any one occasion (attempted by 27% of all current drinkers), reducing the number of occasions when alcohol is consumed (25%), and switching to more low alcohol drinks (16%).

Community Concerns

In the National Household Survey excessive alcohol use was nominated by 30% of respondents as the drug causing most concern. Excessive alcohol use was ranked highest above tobacco and all illicit.

Reasons cited for concern included the following:

- road safety/drink driving (nominated by 47%);
- too socially acceptable or widespread (33%);
- caused problems within families (26%);
- innocent people may be harmed (22%);
- unpleasant or irresponsible behaviour, of for people to lose control (19%);
- violence, aggression or fights (19%);
- domestic violence or child abuse (18%);

- addiction or dependency (14%);
- affects young people, or that young people were targeted (14%);
- generally bad for the community, or was a high cost to the community (11%); and
- causes health problems (10%).

Alcohol-related Impacts and Behaviours

The National Strategy Household Survey also reported that more than one third of the population aged 14 or more have been verbally abused in the last 12 months by someone affected by alcohol, more than a quarter had been put in fear by someone so affected, while 9% had been physically abused. With respect to property crime, 13% had property damaged by someone affected by alcohol, and 5% had property stolen. Males and regular drinkers were more likely to have experienced alcohol-related crimes than females.

In terms of involvement in crime, 10% had driven a motor vehicle after drinking too much alcohol and 8% had verbally abused someone, less than 3% had reported physically abusing someone, damaging property, or stealing.

3. Alcohol-related Harms

Traditionally alcohol-related harms have been perceived as those types of problems resulting from long-term chronic heavy alcohol use. Not unexpectedly, much of the alcohol control research literature has also focussed on strategies designed to protect heavy drinkers or those who are alcohol dependent. Scant attention had been focussed on other drinkers until relatively recently.

In very recent years greater attention has been directed toward acute problems experienced by light to moderate drinkers. In particular, there is now growing awareness of the types of problems experienced by light to moderate drinkers who occasionally binge drink and a better understanding exists of the types of harms they are likely to incur from infrequent bouts of immoderate drinking (Stockwell *et al.*, 1996).

The possible array of types of problems that can fall under the rubric of 'alcohol-related harms' may include the following:

- ***Acute and Chronic Problems***

Not all alcohol-related problems are chronic in nature — many (indeed, most) are acute. Acute problems result from ingestion of a specific dose (usually large, but not always) on a given occasion or in a particular context or circumstance. Acute problems could include falls due to impaired balance or risky behaviours (e.g. unprotected sex, violence) as a result of drinking. Chronic problems result from longer term use. Cirrhosis of the liver is the most well known problem resulting from high level long-term use, and, of course, alcohol dependence.

- ***Harmful Patterns?***

Different patterns of consumption confer different types of harms and hold different types of risks. For example, two people may consume exactly the same volume of alcohol over a given time period, but one may consume it in small daily amounts, accompanied by food and in a socially conducive setting, while the other may drink less regularly but consume very large amounts at each drinking session. The latter pattern of consumption is now well recognised to be associated with a range of health and social problems with which the former is not burdened. Indeed, the

former pattern of consumption is the very pattern of use which has been identified as conveying most cardio-vascular health benefit for older males (Doll, 1997).

- ***Drunken Comportment***

The way one learns to behave when intoxicated is socially and culturally determined (MacAndrew and Edgerton, 1969; Goldman *et al*, 1987) and has important implications for drinking in a social context and in terms of defining what is considered to constitute problematic or harmful behaviour.

- ***Problems for the Drinker or Other/s***

Many problems stemming from alcohol use are not experienced by the drinker themselves. Rather, the alcohol-related problem is sustained by other members of the community. This may occur through drunk driving where other non-intoxicated road users (vehicular or pedestrian) sustain injury. Or, where alcohol contributes to domestic, work and social problems related to specific acts (eg violence) or omissions (absenteeism).

- ***Social Responses***

Personal health consequences of drinking (cancer, cirrhosis etc) do not usually entail a social response. However, other consequences can do: for instance; loss of job, marital breakdown, and child abuse. Similarly, the social acceptability of public drunkenness is an important factor. Hence, the wider social implications of alcohol use is essential in consideration of controls and availability.

Physical Alcohol-related Harms

Alcohol can cause damage to nearly every tissue and body system and if consumed at high enough levels over a sufficient exposure period can result in long-term disability or chronic disease, excess mortality and expensive health care demands (Lieber, 1982).

Physical problems include damage to:

- the nervous system;
- brain damage and peripheral neuritis (Victor et al., 1989);
- high blood pressure;
- heart disease, and stroke (Preedy and Richardson, 1994);
- abdominal complications such as pancreatitis (Sherman and Williams, 1994); and
- cancers of the oropharynx, larynx, oesophagus, stomach, liver, rectum, and female breast (International Agency on Research for Cancer, 1988).

Alcohol-related Cirrhosis

The classic measure of alcohol problems within any community has been the prevalence of cirrhosis of the liver.¹ Mean consumption levels and associated problems were usually measured against levels of cirrhosis of the liver. Before the 1970's, cirrhosis in the alcoholic was believed to arise from nutritional deficiencies rather than from alcohol itself. Studies showed that chronic administration of alcohol to animals in the presence of adequate nutrition can lead to signs of cirrhosis (Lieber, 1989). It was estimated that about 30 % of alcoholics develop cirrhosis, and that the prevalence of cirrhosis is related to the duration of heavy drinking (Lelbach, 1976). By revealing the link between

¹ The aetiological fraction for alcohol consumption and cirrhosis of the liver has been established as approximately 1 (one) until the recent emergence of Hepatitis C. That is, nearly all cases of cirrhosis were the result of heavy drinking.

alcohol and cirrhosis, science paved the way for policies aimed at cirrhosis treatment and prevention. For example, the U.S. Public Health Service's goals for the year 2000 include a reduction of cirrhosis deaths by approximately one third. To achieve this goal, the Public Health Service suggested a policy of intensifying efforts to reduce heavy drinking patterns (Public Health Service, 1991).

Alcohol control policies were based on the prevention of the development of dependence and other long term harms of consumption, such as cirrhosis of the liver. However, in more recent times there has been a growing awareness of the range of other types of problems associated with alcohol use that are acute, or short-term in nature. Many of these types of problems may involve the individual drinker or others in their lives or members of the wider community.

There is very wide range of alcohol-related harms which include road trauma, accidents, drownings, fight injuries, falls and acute medical complications. Alcohol can also cause death by overdose (Poikolainen, 1997) this is of particular concern among young drinkers. This concern stems from several factors. Firstly, a young drinker of say 14 or 15 years of age is generally of a smaller physique and can consequently metabolise substantially lower quantities of alcohol over the same time period as a person of larger build. Young women are further disadvantaged in this regard as women metabolise alcohol much less efficiently than males, due to their higher fat: water ratio (alcohol metabolises in water). Young Australian drinkers are known to prefer spirits as their alcoholic beverage (see section on patterns of consumption in Australia) and because of the higher alcohol concentration in spirits they can induce intoxication much more quickly than through more dilute forms of alcoholic beverages. This combination of factors creates a particular concern for the risks of overdose with young people and suggests that special safeguards are needed.

Types of problems associated with alcohol use have been characterised as those relating to:

<i>Category of Problem</i>	<i>Example of Problems Experienced</i>
• Dependence	• withdrawal symptoms, • loss of control, • social disintegration etc
• Regular use	• cirrhosis of the liver, • cognitive impairment • pancreas damage • heart and blood disorders • ulcers etc
• Intoxication	• alcohol-related violence, • risky behaviours, • road trauma, • falls etc

The appropriate forms of control and prevention strategies that are most effective for these three categories of alcohol-related problems are potentially different. For instance, strategies to minimise intoxication (e.g. service refusal, server liability) may be quite different to strategies to minimise problems of dependence (e.g. early opening hours and hours of extended trading).

Increasing interest has been directed to the issue of intoxication as a major contributor to public health problems and to overall levels of community safety. It was not previously recognised that occasional intoxication, by persons who usually drank at very modest levels, contributed markedly to the burden of illness and other harms associated with alcohol use (Stockwell *et al.*, 1996). A key public health message today is to avoid intoxication and when at risk of intoxication to take extra safety precautions (Roche, 1997). This emphasis on intoxication represents a significant departure from previous health concerns which tended to focus almost exclusively on either the dependent drinker (ie the 'alcoholic') or on very heavy drinkers, who were attributed with responsibility for most harms related to alcohol.

A further typology of harms associated with alcohol use has been offered by Rehm and Fischer (1997). They compare problems experienced as a result of a single occasion of use versus problems resulting from long-term use. In doing this, they cover various types of harm which may be sustained including physiological, psycho-physiological/mental, personal and social, wider social and cultural reactions.

The conceptual schema of Rehm and Fischer's (1997) is presented in the table below:

	Single-Occasion Use	Long-Term Use
<i>Physiological</i>	Overdose	Mortality (e.g. liver cirrhosis), morbidity (e.g. gastritis, pancreatitis)
<i>Psycho-physiological and mental</i>	Changed consciousness and control (hangover/suicide) injury to drinker	Dependence, depression
<i>Immediate Personal and Social Environmental (behavioural aspect)</i>	Workplace disruption, injury to others, and severe family and violence	Disruption of social and economic relations
<i>Wider Social and Cultural Level (determined by societal reaction)</i>	Criminal and informal sanctions	Stigmatisation; coercion to change; treatment; criminalisation of alcohol-related behaviour

Quantifying Alcohol-related Harms

Australian scientists have undertaken one of the most comprehensive analyses of alcohol-related harms carried anywhere in the developed world. The work referred to here is 'The Quantification of Drug Caused Morbidity and Mortality in Australia' (English and Holman *et al.*, 1995). This study entailed an examination of all available evidence to ascertain the number of alcohol-related deaths, hospital episodes, bed days and years of life lost (i.e. through premature death). All causes of illness and death were examined and an aetiological fraction (or the attributable risk) calculated. The aetiological fraction indicated, on the basis of best currently available evidence, what proportion of those illnesses or deaths were attributable to alcohol use. Note that the calculations used for alcohol as a risk factor used three levels of consumption. These levels correspond to the specified NHMRC levels of low, hazardous and harmful consumption for males and females and only the hazardous and harmful consumption levels were taken as contributors of risk of harm.

On the basis of these extensive calculations the following aetiological fractions (expressed below as percentages) were determined: that is, the following proportion of injury or illness are attributed to alcohol use at a hazardous or harmful levels.²

Harm	Aetiological Fraction (%)
Road injuries	37% (males) 18% (females)
Fall injuries	34% (males) 34% (females)
Fire injuries	44% (males) 44% (females)
Drowning	34% (males) 34% (males)
Suicide	12% (males) 8% (females)
Assault	47% (males) 47% (females)
Child abuse	16% (males) 16% (females)

Police Data

Other data sources include police data. Although such data are often criticised for their lack of reliability, subjective assessment and insufficient use of hard measurement, it nonetheless provides some indication of the potential dimension of alcohol-related offences. Such data sources are useful when alternative sources are consistent and confirmatory.

One study of New South Wales Police data (Ireland, 1993) identified the following levels of alcohol-related incidents:

- offensive behaviour (70%);
- offensive language (70%);
- street offences (77%); and
- assaults (73%).

Sexual Behaviour

Surveys of adolescents suggest that alcohol use is associated with risky sexual behaviour and increased vulnerability to coercive sexual activity. Among adolescents surveyed in New Zealand, alcohol misuse was significantly associated with unprotected intercourse and sexual activity before age 16 (Fergusson and Lynsky, 1996). 44% of sexually active Massachusetts teenagers said they were more likely to have sexual intercourse if they had been drinking, and 17% said they were less likely to use condoms after drinking (Strunin, 1992).

² When originally estimated (in the late 1980s) calculations of aetiological fractions included any alcohol consumption as a risk factor. The estimates were subsequently revised to differentiate for low risk, hazardous and harmful consumption levels. This was undertaken partly in light of the potential health benefits to be derived from consumption at low levels.

As findings have important public health implications, especially in Australia where alcohol consumption levels among teenagers is particularly high and also given their propensity and overt intentions of drinking to achieve intoxication.

Expectancies

Positive alcohol-related expectancies³ have also been identified as risk factors for adolescent drinking. Positive expectancies about alcohol have been found to increase with age (Miller, 1990) and to predict the onset of drinking and problem drinking among adolescents (Christiansen *et al.*, 1989; Smith *et al.*, 1995; Smith and Goldman, 1994). Expectancies are not only related to earlier and more frequent drinking but also to the potential for violence (see below).

Alcohol, Violence, and Aggression

Scientists and non-scientists alike have long recognised a two-way association between alcohol consumption and violent or aggressive behaviour (Reiss and Roth, 1994). Not only may alcohol consumption promote aggressiveness, but victimisation may lead to excessive alcohol consumption. Violence may be defined as behaviour that intentionally inflicts, or attempts to inflict, physical harm. Violence falls within the broader category of aggression, which also includes behaviours that are threatening, hostile, or damaging in a non-physical way (Moss and Tarter, 1993).

In a review of the north American literature, Roizen (1997) summarised the percentages of violent offenders who were drinking at the time of the offence as follows:

- up to 86% of homicide offenders;
- 37% of assault offenders;
- 60% of sexual offenders;
- up to 57% of men;
- 27% of women involved in marital violence; and
- 13% of child abusers.

These figures are the upper limits of a wide range of estimates and are comparable to the Australian figures cited above by Ireland (1993). In a community-based study, Pernanen (1991) found that 42% of violent crimes reported to the police involved alcohol, although 51% of the victims interviewed believed that their assailants had been drinking.

Several models have been proposed to explain the complex relationships between violence or aggression and alcohol consumption. One explanation is that alcohol may encourage aggression or violence by disrupting normal brain function. According to the disinhibition hypothesis, for example, alcohol weakens brain mechanisms that normally restrain impulsive behaviours, including inappropriate aggression (Gustafson, 1994). By impairing information processing, alcohol can also lead a person to misjudge social cues, thereby overreacting to a perceived threat (Miczek *et al.*, 1997). Simultaneously, a narrowing of attention may lead to an inaccurate assessment of the future risks of acting on an immediate violent impulse (Cook, 1997).

³ Alcohol expectancies are essentially the beliefs that individuals hold about the effects of alcohol on their behaviour, moods and emotions. They are seen to be an important factor in the early motivations that underlie drinking behaviour.

Research results are also consistent with the real-world observation that intoxication alone does not cause violence (Pernanen, 1997). Alcohol consumption may promote aggression because people expect it to (Gustafson, 1994). For example, research using real and mock alcoholic beverages shows that people who believe they have consumed alcohol begin to act more aggressively, regardless of which beverage they actually consumed (Bushman, 1997). Alcohol-related expectancies that promote male aggressiveness, combined with the widespread perception of intoxicated women as sexually receptive and less able to defend themselves, could account for the association between drinking and date rape (Lang, 1993).

In addition, a person who intends to engage in a violent act may drink to bolster his or her courage or in hopes of evading punishment or censure (Collins, 1989; Fagan 1990). The motive of drinking to avoid censure is encouraged by the popular view of intoxication as a 'time-out' during which one may not be subject to the same rules of conduct as when sober (MacAndrew and Edgerton, 1969; Zack and Vogel-Sprott, 1997).

Spurious associations between alcohol consumption and violence may also arise by chance or coincidence, with no direct or common cause. For example, drinking is a common social activity for many adult Australians, especially those most likely to commit violent acts. Therefore, drinking and violence may occur together by chance (Gustafson, 1994). In addition, violent criminals who drink heavily are more likely than less intoxicated offenders to be caught and consequently are over represented in samples of convicts or arrestees (Cook, 1993).

No one model can account for all individuals or types of violence. Alcohol apparently may increase the risk of violent behaviour only for certain individuals or subpopulations and only under some situations and social/cultural influences (Pernanen, 1994; Lipsey *et al.*, 1997). Both alcohol use and violence are common in our society, and there are many associations between the two. Understanding the nature of these associations, including the environmental and biological antecedents of each and the ways in which they may be related, is essential to developing effective strategies to prevent alcohol-related violence as well as other social problems, such as domestic violence, sexual assault, and childhood abuse and neglect. Fortunately, in relation to the licensed drinking environment much more is now known understood about the features of such environments which are conducive to violence and about strategies which can effectively be employed to reduce or minimise alcohol-related violence (Homel *et al.*, 1997; Stockwell *et al.*, 1997).

The Policy Implications of Alcohol-related Harms

The harms outlined above represent only some of the better known harms associated with alcohol use. Not included (due to limitations of time and space) were many other areas of known harm including: drink-driving; domestic violence; marital problems; and economic problems.

In spite of the increasing recognition of the substantial role that alcohol plays in a wide range of individual and social harms it is more frequently argued that alcohol beverages should be treated differently to other products or retail goods. Although some may consider, or wish to treat, alcoholic beverages like milk, candy or bread, alcoholic beverages are in a different league when it comes to the potential for damages and disruption (Giesbrecht, 1995). Giesbrecht (1995) further argues that with the possible exception of tobacco, alcohol is the single substance that is directly responsible for and implicated in more disruption of families, friendships, household income, workplace efficiency, road and waterway safety than any other substance.

Although it is noted by numerous public health commentators that to-date the public health and safety concerns related to the availability and use of alcohol have tended not be central to the debates on policy positions, nor has the public health case been fully articulated, according to Giesbrecht (1995). Various alcohol control strategies have been devised to achieve this end. These strategies and approaches are discussed in the next sections of this document.

4. Available Theory

Most alcohol policies in developed countries over the past two to three decades have been predicated on the 'availability theory' of consumption. This theory in essence holds that:

1. increased availability results in increased consumption; and
2. increased consumption results in increased alcohol-related problems.

The corollary of this position is that to reduce alcohol-related problems in a community control policies are required which reduce access to and consumption of alcohol. This orientation toward alcohol has driven alcohol control policies and most prevention strategies for the last several decades, although there are now alternative models and growing opposition to overly simplistic availability theories and their uncritical application in policy.

The former position was reflected in a recent international review of the literature on alcohol policy by Edwards *et al.* (1994). These authors concluded that:

'A large number of studies have been undertaken which examine the basic premise that restrictions on alcohol availability can have significant effects on alcohol consumption and on associated problems. Those studies which address the availability of alcohol have usually found that when alcohol is less available, less convenient to purchase, or less accessible, consumption and alcohol-related problems are lower The weight of the empirical evidence has supported the argument that limitation on the availability of alcohol, can be an effective part of a public health approach to reduce alcohol consumption, and thus to alleviate problems associated with alcohol. While many of these policies are established at state and national levels, others can be established at the community level.'

The authors of the above review, which has been widely discussed and debated around the world and is extensively cited to support alcohol control positions, included the following summary statement:

i. Form of Retail Availability

Wine has become an increasingly popular beverage in non-wine growing countries and has been shown to be quite sensitive to the form of retail availability. When wine stores are opened or wine retail monopolies eliminated, wine consumption increases. Some countries have developed a national or regional policy to increase wine consumption, in order to reduce spirits consumption. However, in general the increased retail availability of wine appears to produce an overall net increase in alcohol consumption, even though some substitution can occur. Changes in spirit availability either from off-premise retail sales or in retail sale for on-premise consumption, increase consumption.

ii. Alcohol Content of Beverages

The introduction of medium strength or high alcohol content beer in countries such as Sweden, Norway, and Finland appears to be related to an increase in beer consumption.

iii. Density of Alcohol Outlets

Early studies of density suggested that this factor had little effect (or mixed effects), on alcohol consumption. However, more recent studies have demonstrated that geographical density does have a significant positive effect on alcohol sales.

iv. Minimum Drinking Age

Uniformly, studies have found that lowered age produced more alcohol-involved traffic crashes for the age-groups affected by the change, while increased age limits reduced such crashes.

v. Responsible Beverage Service

Such interventions have been shown to reduce the alcohol impairment levels of customers leaving bars and restaurants, and the number of alcohol-involved traffic crashes.

vi. Server Liability

The civil liability of alcohol retail establishments established in a few countries has been primarily reactive, as a means of redress after service to an intoxicated person results in a personal loss or injury. However, more recently it has been proposed as a preventative policy to encourage (and reward) safer beverage serving practices. One study has found lower incidence of crashes after increased liability.

vii. Hours and Days of Sale

Most of the studies of changes in hours of sale and opening days for alcohol outlets have demonstrated increased drinking associated with increased number of hours, and increased drinking with elimination of days of sale together with associated changes in alcohol problems.

Edwards *et al.* (1994) then conclude that:

'relationship between alcohol availability and alcohol-involved problems which are confirmed for more than one country, certainly support the conclusion that such findings are not culturally based. Standing back from all this detail, what can one broadly conclude? Research findings on the culturally unique — they are generalisable'. [pp 143-145]

The conclusions drawn by Edwards *et al.* (1994) will be examined in greater detail below. In addition, alternative approaches and perspectives on alcohol control will be explored.

Holder and Edwards (1995) have described how public policy has been used as a tool to reduce problems involving alcohol. Governments in most industrialised societies have outlawed or limited private production of alcohol and thus have made alcohol a legal product that must either be supervised by government or actually produced and distributed by government.

As a result, alcohol products have probably been the most regulated legal commodity in most industrialised countries today. Questions arise as to whether this degree of regulation is appropriate or excessive. Further, what is to be gained or what benefits are to be derived for the community overall from such forms of regulation. It is also important to note the degree to which such regulation is actually enforced. There is strong

evidence to indicate, for instance, that there is extreme reluctance on the part of police or liquor licensing authorities to enforce compliance with the relevant legislation. Hence, while many control strategies are successful revenue-generating techniques they frequently fail to act as adequate public health strategies due to lack of enforcement at the point of delivery.

The basic tenets of traditional alcohol policy include the following:

- Alcohol problems are highly correlated with per capita consumption. This relationship appears to hold over time and across space.
- Decreases in per capita consumption produce reductions in alcohol problems, whether those decreases result from purposeful action — for example, from an alcohol tax increase — or from a non-public policy action, for example, a strike by alcohol workers.
- The greatest amount of evidence concerning public policy has been accumulated on the price-sensitivity of alcohol sales. It suggests that the demand for alcohol, as for other products, is responsive to changes in price and that as price increases, demand declines, and *vice versa*.
- Heavy drinkers have been shown to be affected by policy measures including price and availability. Contrary to popular views, such drinkers also respond to alcohol regulation.
- The range of potential public policies to reduce alcohol-involved problems is broad. A large number of possibilities have been proposed and scientifically examined and their efficacy varies according to the cultural and economic setting in which they are located.

Drinking behaviour is complex and is influenced by a multitude of factors. The complex array of factors which may impinge on whether an individual drinks, how much they drink and where they choose to drink is influenced by factors such as:

- price, promotion, access;
- law enforcement;
- public health pressures (eg anti drink driving messages);
- cultural norms;
- religiosity and religious persuasion;
- individual factors (including socio-economic status);
- psycho-social factors (such as drinking expectancies);
- elements of the drinking environment; and
- economic factors.

Traditional alcohol control theory has been limited in its focus and has not widely addressed the full range of issues which impact on alcohol use and alcohol-related harms and potential strategies for minimising such harms.

Control Policies vs Harm Minimisation Approaches

In recent years, there have been a number of challenges to the traditional precepts underpinning alcohol control theories. One argument is that reduced alcohol consumption is not necessarily required to reduce problems associated with alcohol use. Empirical evidence to support this position is found in the data on the reduction of alcohol-related road trauma and random breath testing (RBT) in Australia. The evidence of the efficacy of RBT is probably the most persuasive of any form of community invention and prevention approaches (Homel, 1993). Significant improvements were achieved with respect to alcohol-related road trauma, including both morbidity and mortality, without changing (or even attempting to change) the overall level of alcohol consumption among the targeted communities.

RBT stands as an exemplar of both a successful community intervention and also as a challenge to the notion of a blanket reduction in consumption as the preferred and only option to achieved reduced alcohol-related problems. Various other forms of interventions have subsequently been successfully undertaken from a harm minimisation perspective and these will be compared below with traditional control approaches which necessitate reduced consumption.

5. Prohibition, Bans and Strikes

Most alcohol control approaches have been based on strategies to limit access to alcohol to prevent any subsequent harms. Some critics of this approach maintain that efforts to limit access are largely unsuccessful and that if consumers want a particular product they will devise ways to access it. Similarly, total prohibition, as the most extreme form of limiting or curtailing access to alcohol is commonly held to be an unsuccessful policy position to adopt. In this light, it is useful to consider various forms of prohibition and limited access to alcohol (e.g. strikes and bans) and compare their resultant effects in different domains.

Tyrrell (1997), a social historian, writes that 'Prohibition of alcohol in the United States ended more than 60 year ago, yet the lessons of *'the noble experiment'* between 1919 and 1933 are still invoked today as part of contemporary policy. The defeat of prohibition has been widely remembered as a victory for the forces of drink and debauchery, but nothing could be further from the truth. Alcohol consumption figures remained below pre-World War I levels, and demonstrated that an historical shift to lower alcohol consumption accompanied the rise of national prohibition.

Current conventional wisdom has it that drug prohibition of any kind is not a possibility, and the experience of alcohol prohibition in the United States is frequently marshalled in support of this generalisation. Historians of temperance and prohibition greet this modern view with a sense of frustration and failure. A strong view existed that the result of prohibition was greater crime⁴, more drinking, widespread flouting of prohibition laws and inevitably, repeal and the associated pillorying of anti-drink crusaders was often merciless. However, over more recent decades, the prohibition movement was seen to be akin to other social reform movements of the early part of this century known as Progressivism. In the mid to late 1920s a younger generation of 'flaming youth' took the opportunity to flaunt convention and drank more than before. But this was seen as part of the larger adjustment of manners and morals of that time, and the freer sexuality for women in the 1920s that was also accompanied by the rise of the media, advertis-

⁴ Social historians have shown widespread political corruption, gang warfare and the existence of crime syndicates in the cities of America's north existed prior to 1910 and were not an exclusive product of prohibition.

ing and mass consumption of that decade. Fashion, the avant garde and drinking became linked, and as the older codes of conduct gave way, alcohol served as a convenient symbol and target of rebellion. Tyrrell (1997) holds that the activities of the 1920s represented not something new but continuity in the consolidation of these forces, albeit augmented by the possibility of illicit gains in alcohol.

Prohibition also affected the distribution of consumption between different types of liquor. Beer suffered most because of its bulk and ease of detection in production and distribution, higher prices for distilled spirits made access for the working class much more restricted, and wine sales in the form of legal grape concentrate boomed. Nevertheless, American drinking patterns continued to differ markedly from southern Europe where wine consumption was so important. Spirits, as the most easily concealed and valuable form of alcohol in an illicit trade, strengthened its hold on American palates. Wine drinking rose but did not gain a cultural preference for drinking it with meals — arguably a less dangerous form of alcohol consumption than the use of spirits or beer at a speak-easy or party. Temperance and prohibition had a powerful effect over the political system and in shaping American drinking preferences.

The years immediately after the introduction of prohibition saw a drop in liquor consumption to an historic low point; this was most noticeable among the ethnic groups and other lower classes, precisely the chief targets of temperance reforms. Liquor consumption dropped to about 30% of pre-prohibition levels in the early 1920s, but then rose by the late 1920s to around 60% to 70%. Prohibition is also attributed with wiping out old-time saloons linked to a macho culture.

Strikes and Other Imposed forms of Supply Curtailment

Other examples of prohibition or rationing of alcohol are also frequently cited. Edwards *et al.* (1994) describe how the rapid response in mortality to a dramatic change in aggregate alcohol consumption levels was illustrated most convincingly in data from Paris during the Second World War. In 1942, rationing was introduced because of an extreme shortage of alcoholic beverages, and consequently there was a dramatic reduction in alcohol consumption that lasted until 1947. Rations were 0.5 litres of wine per week, and per capita consumption may have been reduced by 80% or more during the war. The effect on cirrhosis was dramatic. After one year, cirrhosis mortality was reduced by more than 50%, and after five years it was more than 80% below the 1941 level. These authors say nothing however of the possibility of war-time mortality as a confounder or of the lack of the usual lead time for data to reveal a drop in cirrhosis rates following a fall in consumption.

Privatisation

Studies in Nordic countries, the USA and elsewhere have generally shown that when there are major changes in the direction of privatisation, that consumption increases (Nordlund, 1981; Holder, 1988; Wagenaar and Holder, 1995). More recently, the transformation of the Polish state in the 1980s included a dramatic increase in access to alcohol. These changes in access, in turn, are reported to have lead to higher rates of death, morbidity, and drinking-related harms in a wide range of health and lifestyle areas (Moskalewicz, 1994).

In Russia, considerable concern has been expressed of late over a dramatic rise in alcohol abuse and cirrhosis of the liver (Grechanaia and Koshkina, 1995). The current situation in Russia is particularly interesting as it is seen, in part, as a backlash against the

efforts of Gorbachov to reduce excessive drinking levels in the mid-1980's. These efforts, which were perceived by many as repressive and punitive, were believed to trigger a strong community back-lash and unprecedented levels of black-market trading, home-brewing and illegal trade in alcohol. The heavy alcohol controls imposed in the mid-1980s were subsequently removed and inadequate controls replaced them. In combination with the extreme social destabilisation that Russia has experienced over the past decade, and the associated economic and cultural turmoil, a potential breeding ground for alcohol problems existed.

Prohibition in Remote Settings

There are a number of recent examples where other forms of prohibition or bans on alcohol have been introduced into specific communities. Two studies were recently undertaken in a remote part of Alaska which reported that a total ban on the sale of alcohol was reflected in lower rates of hospital visits for health problems caused by excessive drinking, and of deaths due to injuries associated with alcohol use (Chiu *et al.*, 1997; Landen *et al.*, 1997). While these findings may seem unremarkable, these studies represent exceptional examples of such data being collected in an isolated area where alternative alcohol policies have been introduced over a short period of time.

Barrow, is a village of some 400 people in the most isolated northerly part of the USA. There are no roads into Barrow. It is accessible only by air. The village has a long history of heavy whisky drinking dating from the arrival of whalers and heightened with the discovery of oil. A liquor store opened in 1973 and was closed three years later in response to concern stemming from alcohol problems. In 1976, following a local election, the sale of alcohol was made illegal and in 1994 this restriction was augmented by a ban on the importation and possession of alcohol. The ban was repealed in the following year, but then re-imposed in 1996. The reported study covered the period 1993 –1996. Hospital records were reviewed and most patients seen for alcohol-related problems had been acutely intoxicated with other conditions such as seizures, delirium tremens, hypertension, acute indigestion, gastrointestinal bleeding, domestic violence, road accidents and other types of trauma. The number of such hospital visits declined significantly when the alcohol ban came into force. Chiu *et al.* (1997) concluded that in a geographically isolated community where concern about alcohol problems and their prevention is significant, banning alcohol can be an effective public health intervention. These investigators suggest that similarly isolated communities may also benefit from such an approach to dealing with extreme problems with alcohol.

Such proposals, however, need to be weighed up against alternative harms, such as bootlegging and potentially hazardous potent home brews that can have their own particular forms of harms. Similarly, in other remote, but not totally isolated communities the imposition of bans or restrictions on access to alcohol has resulted in unexpected harms. In one case in remote, rural Australia a local community introduced severe restrictions on alcohol availability, in an attempt to curtail extreme problems associated with excessive alcohol use. While the strategy was successful in many respects it had the unanticipated consequence of increasing alcohol-related road trauma as locals drove to the next town, some hours drive away, to buy and consume alcohol and then drive back in an intoxicated state.

Anomalies and Inconsistencies

In contrast to the general view that increased availability results in increase consumption, which in turn results in increased harms (and *vice-versa*) there are a number of notable exceptions to this traditional tenet of alcohol availability policy which need further exploration. If the above theoretical model of alcohol availability held true and was consistently reliable there would not exist some important anomalies in the research literature.

For example, countries like Australia and Canada, and indeed a number of other countries in the developed world have experienced a general downward trend in mean per capita consumption levels since the late 1970's. This wave of decreased consumption has been occurring at a time when there has generally been considerable deregulation of the alcohol industry, generally greater availability of alcoholic beverages, and increased numbers of outlets. How can this apparent anomaly be explained?

In part the explanation lies at a demographic level, and also with an inherent weakness with traditional alcohol epidemiological approaches. With respect to the first, most developed countries have aging populations. Older aged persons are known to consume less alcohol than younger people (although whether this is cohort effect or a true decline is still a moot point). So, some of the decreased consumption can be attributed to an age effect in the population. Another factor is the impact of community education campaigns about safe and low risk drinking levels. Australia, together with many other countries has engaged in active safe drinking campaigns and some of the decline in consumption can be attributed to the success of these programs.

However, another important factor is the way alcohol epidemiological data is collected and how many of the conclusions of the studies described in the present document are determined. Alcohol consumption levels for any given population (whether they be for a whole country or a community) are usually assessed in terms of overall mean consumption levels. That is, of the total amount of consumed alcohol which can be measured, an average consumption figure for all members of that population over a specified age (sometimes 15 years of age) is calculated. This mean per capita consumption level is then used as the basis for many other calculations and extrapolations about alcohol use and associated problems.

Using data in this undifferentiated way has major limitations and been criticised in some quarters (Rehm and Fischer, 1997; Roche, 1997). In the present context it is especially important as it fails to differentiate between levels of consumption for key segments of the community. It fails to indicate, for instance, that while overall consumption may be decreasing (for whatever reasons) the level of alcohol use among the young, and sometimes the very young, is increasing. Further, that levels of binge drinking and episodes of intentional drunkenness are increasingly common among young drinkers. Similarly, the patterns and levels of use among women, and again especially young women, have also changed substantially over the past decade.

So, while global generalisations drawn from previous alcohol policy experience may often hold true, there are important exceptions that need to be explained and adequately accounted for within any new policy developments.

New Zealand — An Illustration of an Anomalous Case

In April 1990, New Zealand amended its liquor act and implemented the revised *Sale of Liquor Act*. The revised Act allowed for greater availability of liquor outlets and a general liberalisation of alcohol availability. The number of liquor licences increased from 6,247 in 1988 to 11,048 in 1996. However, since the introduction of the Act, aggregate alcohol consumption levels have steadily declined (a total of 17.9% decrease in consumption over 10 years), a continuation of a downward trend which commenced in the early 1980s. In part, this decline has been attributed to an increase in the real price of alcohol. However, major efforts were also directed toward significant improvements to drinking environments. There is no clear evidence that overall levels of harms associated with alcohol have increased as a result of the changes to the Act. Hence, New Zealand's revised Act stands in contrast to the availability control theory. Nonetheless, there are indications for ways to further improve the Act from a public health perspective. These include greater vigilance with respect to enforcement of the Act, community education programs for healthier drinking patterns, targeting of heavy drinkers, and training of bar staff.

6. Alcohol Control Strategies and Public Health Issues

'In many countries, public emphasis regarding responses to the alcohol question has come to be laid more and more on education, information, and treatment, in recent decades. In addition, market forces and economic considerations have increasingly overshadowed preventive policies, and in some countries a strengthening of liberal attitudes has led to a stress on individual responsibility and a denial of the justification of any control measures. Accordingly, limiting the physical availability of alcoholic beverages or imposing high taxation as a means to control consumption and related harmful effects, are nowadays regarded by an increasing number of people as an archaic patchwork of laws and as irrelevant to contemporary life.' (Osterberg, 1995)

Therein lies the current dilemma. Contemporary trends are in the direction of deregulation, free markets and individual responsibility of consumers. However, such trends run contrary to a substantial body of evidence with regard to control strategies and alcohol consumption and harm.

Numerous studies, going back to the turn of the century, have examined the relationships between access to alcohol, per capita consumption and alcohol-related harm. Much of it is based on experiences in Europe and North America since World War 2 (see Bruun *et al.*, 1975; Makela *et al.*, 1981; Single *et al.*, 1981; Moore and Gerstein, 1980; Moskovitz, 1989; Edwards *et al.*, 1984; and Holder and Edwards, 1995), and more recently there has been a substantial body of work undertaken in Australia (see Stockwell, 1997).

While it is not at all unequivocal that increased availability will result in increased consumption which in turn will result in increased harm, there is substantial evidence that increased availability may have an impact on public health, all other considerations being held constant. As noted above, evidence comes from changes in consumption and cirrhosis deaths following price changes and drinking and driving fatalities; the impact of wine rationing during World War 2 in Paris reducing liver cirrhosis mortality; and the impact of price increases for spirits in Denmark during World War 1 in curtailing alcoholic psychosis (Bruun *et al.*, 1975; Giesbrecht, 1995).

However, underlying contemporary public policy is a much broader view of alcohol-involved problems. Alcohol problems are now described by most countries and the World Health Organisation (WHO) as public health concerns. The mid-1970s saw major shift in focus away from an exclusive orientation toward the problems of the relatively few alcohol dependent individuals towards an emphasis and concern for the population overall. Kettil Bruun *et al.* (1975) seminal work in the mid seventies marked a significant change in thinking from that which had preceded it for several decades. Previously, emphasis had been placed on the alcoholic and the need to provide treatment services to the exclusion of discussion of policies affecting the availability of alcohol. In contrast, Bruun and colleagues maintained that 'changes in the overall consumption of alcoholic beverages have a bearing on the health of the people in any society.' Further, they argued that 'Alcohol control measures can be used to limit consumption: thus, control of alcohol availability becomes a public health issue' (Bruun *et al.*, 1975, p.90). Perception of the alcohol environment as an important contributor to alcohol-related problems and of public policies as effective prevention strategies was also seen to fit well with the public health model (Mosher and Jernigan, 1989; Ashley and Rankin, 1984; Room, 1984; Bennett *et al.*, 1992).

Hence, there has been increasing attention paid to public health issues and alcohol use and closer consideration has been directed to strategies that may impact on health concerns. Some of the key areas of consideration are detailed below with supporting evidence for their efficacy.

Price and Alcohol Consumption Control

Price of alcohol products has been examined for some decades as a potential mechanism by which to control consumption. Over this time period, the legitimacy of pricing policy as a means to affect alcohol problems is argued to have increased (Osterberg, 1995). And the conclusion reached by Bruun *et al.* in 1975 that in many respects, alcohol beverages behave like other commodities on the market, so that their consumption is affected by the price level, continues to be supported. Research generally finds that alcohol taxes and prices affect alcohol consumption and associated consequences (Leung and Phelps, 1993).

There is some evidence that supports the contention that it was only, or mainly, heavy or problem drinkers that would be affected by price changes. Some research suggests that the heaviest-drinking 5% of drinkers do not reduce their consumption significantly in response to price increases, unlike drinkers who consume alcohol at lower levels (Manning *et al.*, 1995). In one study, heavy drinkers who were unaware of the adverse health consequences of their drinking were less responsive to price changes than either moderate drinkers or better informed heavy drinkers (Kenkel, 1996). However, more recent work with improved methodologies suggest that both moderate and heavy drinkers are affected by price changes. Nonetheless, it is also important to bear in mind that there is a very wide range of elasticity values for alcohol across different countries and cultural settings (Godfrey and Maynard, 1995). Similarly, price elasticities also vary according to beverage type.

Some studies have demonstrated that increased beer prices lead to reductions in the levels and frequency of drinking and heavy drinking among youth (Coate and Grossman, 1988; Grossman *et al.*, 1987). Higher taxes on beer have also been found to be associated with lower traffic crash fatality rates, especially among young drivers (Ruhm, in press; Saffer and Grossman, 1987), and with reduced incidence of some

types of crime (Cook and Moore, 1993). Research on price by Grossman and colleagues (Grossman *et al.*, 1987) and Coate and Grossman (1988) examined whether the young heaviest drinkers would be affected by price policies that target the population as a whole. They analysed factors affecting beer consumption by youths based on data from nationwide health surveys. They found that higher prices for beer were associated with a lower frequency of beer consumption among youth and that the difference was more pronounced for heavier consumers (one to seven drinks per week) than for lighter consumers (less than one drink per week). Research by Laixuthai and Chaloupka (1992), using computer simulation techniques, produced results consistent with these findings. These findings are significant for policy development because they provide scientific data for evaluating the effect of a policy option.

Cook (1981) studied the impact of 39 changes in State taxes on distilled spirits between 1960 and 1975. In 30 of the 39 instances, sales of distilled spirits fell after the tax increase. Reduced sales were accompanied by reduced traffic fatalities. Work is currently underway in both Australia and overseas to studying the implications of such policy options as equalising the taxes on beer, wine, and distilled spirits based on their alcohol content; setting alcohol taxes high enough to match the social costs incurred as a result of alcohol abuse; and raising taxes to offset the effects of inflation (Saffer and Grossman, 1992; Chaloupka, in press).

Hours and Days of Sale

Changes in alcohol availability have been monitored in many countries over long periods of time. Significant changes, such as the shift to the introduction of alcohol sales on a Sunday in various localities has been repeatedly found to result in increases in road deaths and injuries and/or violence (Smith, 1988; Peberdy 1991). Such increases were also previously found in New South Wales, even though alcohol had previously been available on Sundays through clubs.

More recently, extended trading hours have been investigated in Western Australia to examine the impact of even minor changes of one to two hours for closing (Chikritzhs and Stockwell, 1998). Results indicated a shift in the peak time for intoxicated drivers on the road to after midnight and also an increased blood alcohol level of drivers involved in crashes who had last drunk at licensed premises. This shift in peak risk times also coincides with lower levels of police activity on the roads (i.e. after midnight).

As part of the Surfers Paradise Safety Action Project (Homel, 1997) closing times for nightclubs in a concentrated vicinity of Surfers Paradise was trialed. The rationale for extended and staggered closing times was to prevent the simultaneous disgorging of large numbers of intoxicated young men (primarily) onto the streets at 3 a.m. Some degree of success was achieved through extended and staggered closing times. However, there was a subsequent community reaction, largely from elderly retirees who were early risers and who were discomfited by encountering intoxicated young men at 5 a.m. and 6 a.m. in the local shopping malls and on the beaches. Community pressure was subsequently exerted to revert to the previous earlier closing times.

Warning Labels

The USA have mandated warning labels on containers of alcoholic beverages which aim to inform and remind drinkers that alcohol consumption can result in birth defects, impaired ability to drive a car or operate machinery, and health problems. Research indicates that public support for warning labels is extremely high; that awareness of the

label's content has increased substantially over time (MacKinnon, 1995); that perception of the described risks was high before the label appeared and has not generally increased (Hilton, 1993); and that the label has not had important effects on hazardous behaviour, although certain effects may be indicative of the early stages of behavioural change (MacKinnon, 1995).

Some alcohol-related behaviour, as opposed to attitudes about drinking, may have changed coincidentally with the introduction of the warning labels. In recent studies, the proportion of respondents reporting that they had decided not to drive because they had too much to drink increased from 35% in 1989 to 43% in 1991 (Graves, 1992; Greenfield *et al.*, 1992). Among women of childbearing age, the proportion who reported limiting their drinking because of concern about health problems rose from 18% in 1989 to 25% in 1990 and 28% in 1991. However, other risky behaviours related to the warning labels had not changed during this period (Graves, 1992; Greenfield *et al.*, 1992).

In a recent review of progress on US mandatory warning labels, Greenfield (1997) describes the strategy as having taken four to five years for exposure levels to flatten out. He reports that the label is reaching its intended audience: by 1994 about half of drinkers were aware of the labels and over four-fifths of the heaviest drinking males were being reached by the messages. He notes that 90% of survey populations were in favour of the labels and believed that they were effective. Greenfield (1997) further notes that the warning labels also stand as a counterbalance to the overly enthusiastic assertions of health benefits that some in the alcohol industry are keen to include in the labelling.

Legal Age of Consumption

The legal age for consumption of alcohol varies considerably from country to country. The rationale underlying a legal drinking age is the view that younger people are neither physically nor emotionally ready for the use of a psychoactive substance such as alcohol and that they generally will not have developed the necessary internal controls needed to minimise any harmful consequences stemming from its use.

It is well recognised that high risk behaviours generally (Strunin and Hingson, 1992), and drinking to intoxication, are more common among young people, and especially among young males (Wyllie, Millard, Zhang, 1996; National Drug Strategy, 1996). Recent Australian data indicate that young people are drinking more at an earlier age and that more of them are drinking at hazardous or harmful levels (National Drug Strategy, 1996) as defined by the NHMRC (Pols and Hawks, 1992). There is also substantial evidence that younger drinkers are more likely to sustain acute alcohol-related harms than older drinkers (Casswell *et al.*, 1993).

Surveys from the United States undertaken prior to the enactment of uniform drinking age law showed that adolescents from states with higher drinking ages were more likely to abstain from drinking and less likely to be heavy drinkers (Maisto and Rachal, 1980). They also reported fewer incidents of drinking and driving and less frequent intoxication. Other studies have also shown a significant relationship between early drinking and later heavy drinking and alcohol-related problems (Fillmore *et al.*, 1991; Chou and Pickering, 1992).

Studies on the effects of changes in drinking age laws have substantiated these findings. Such studies have routinely found that lowering the drinking age increases adolescent drinking and driving whereas raising the drinking age decreases adolescent drinking

and driving (e.g. Cook and Tauchen, 1984; Smith *et al.*, 1984; Arnold, 1985; Wagenaar, 1986a, 1986b; Saffer and Grossman, 1987). Similarly, studies show significant decreases in self-reported drinking and purchases of alcoholic beverages by adolescents when drinking age is raised (Williams and Lillis, 1986; Coate and Grossman, 1988; Smith and Burvill, 1986; Chaloupka, 1993).

Research examined the effects of increases in the minimum legal drinking age (MLDA) within individual States before the MLDA was raised to 21 in all States. Most studies found that laws raising the MLDA led to declines in teenage night fatal crashes, those most likely to involve alcohol (DuMouchel *et al.*, 1987). These and other research results were cited in support of passage of the *Federal Uniform Drinking Age Act* in 1984, which encouraged all States to raise the MLDA to 21. This law was subsequently upheld by the U.S. Supreme Court based in part on scientific evidence.

A recent evaluation of the uniform MLDA by O'Malley and Wagenaar (1991), using the National High School Senior Survey, found that raising the legal drinking age reduced alcohol consumption and lowered involvement in alcohol-related fatal crashes for persons under the age of 21. Moreover, lower levels of consumption persisted into the early twenties, after all respondents were of legal drinking age. These studies suggest that raising the MLDA is an effective policy in helping to prevent traffic crashes.

Studies of under age purchasing consistently confirm the ease with which young people can buy alcohol (Hingson *et al.*, 1983; Preusser and Williams, 1992; Wagenaar *et al.*, 1996). In a number of studies in the United States nearly 50% of alcohol sales in off-sale outlets were sold to apparent minors (Forster *et al.*, 1994; 1995). Off-license, winemarkets and supermarkets have been found to be principal sources of alcohol supply for youth aged 14–17 years (Wyllie, *et al.*, 1996). Given the increased levels of consumption among younger teenagers, and their increased propensity to drink to intoxication, this is an area warranting close attention, especially as enforcement of sales to minors is commonly very lax (Wagenaar and Wolfson, 1995)

Compliance and Enforcement of Laws

Many liquor laws suffer from inadequate enforcement. In some instances, this is held to be because the laws themselves are overly complex (note, for example, caveats that exist for legal drinking age) and open to subject interpretation (for example, the assessment of intoxication). As a result the laws are frequently inadequately enforced. This has especially been found to be the case for off-license premises, an important source of supply for young drinkers.

In an effort to simplify, and thereby improve the probability of effective enforcement, some jurisdictions are opting for simplified liquor laws. In New Zealand it has recently been proposed that the legal age for drinking be based solely on the criterion of age. In contrast to the overly complex, confusing and difficult to enforce laws previously governing legal consumption.

Research also indicates that compliance with legislation can be achieved through greater threat and expectation of prosecution. Strategies that have demonstrated improved compliance with the legislation have included increased police visibility and successful local prosecutions (Jeffs and Saunders, 1983; Stockwell, 1993). Some argue that licenses should be easier to obtain, but also vastly easier to lose than they are at present.

Alcohol servers are also increasingly held liable for injuries and deaths from traffic crashes following the irresponsible selling and serving of alcohol. Researchers assessed the effect of potential server liability on the rates of alcohol-related fatal crashes in Texas (Wagenaar and Holder, 1991). Fatal traffic crashes decreased 6.5% after the filing of a major server-liability court case in 1983 and decreased an additional 5.3% after a 1984 case was filed. However, before concluding that server liability is effective, these results need replication (Wagenaar and Holder, 1991).

Civil law suits are very seldom used against licensees in Australia (Hauritz *et al.*, in press). This removes one of the major incentives for licensees to introduce harm minimisation strategies such as server training. It also makes it even more important to scrutinise the extent to which liquor licensing laws are enforced on a routine basis (Homel and Tomsen, 1991; Stockwell, 1994).

7. Characteristics of Licensed Environments and Harm

Taking a harm minimisation approach, as opposed to an availability control approach, a variety of new strategies have taken on greater significance in recent years. Extensive research has now identified a range of features of the physical and social environments of bars and other drinking environments that may help to reduce the rates of aggression, or limit the harm caused by aggressive incidents that are often associated with them (Hauritz *et al.*, in press). Identified features include: attractive, nicely furnished, well-maintained bars, comfortable, uncrowded surroundings that promote enjoyment and do not irritate or frustrate people; a social atmosphere with clear rules and limits; practices that discourage drinking to intoxication and foster a positive social atmosphere; and the employment of trained, peace-loving barworkers and security staff (Hauritz *et al.*, in press). Crowding has also been identified as one among a number of key factors which acts as a major contributor to violence on licensed premises (MacIntyre and Homel, 1997).

Other practical harm minimisation considerations involve elements of the drinking environment. The use of tempered (toughened) glass, for instance, in place of conventional annealed glass in bars and pubs is increasingly being urged (McClellan *et al.*, 1997). Most injuries with glasses in bars are caused not by glasses deliberately broken to be used as weapons but by intact glasses smashing on contact with the victim's face or head. Tempered glass has been found to be six times more resistant to impact than the more commonly used annealed type and that they disintegrate into blunt-edged fragments rather than sharp-edged shards.

Responsible Server Programs

Host responsibility and responsible management practices are increasingly seen as the key to improving the drinking environment (Saltz, 1987; Single, 1994). Bar staff continuing to serve 'obviously intoxicated' patrons has also been identified as a predictor of harm (Stockwell *et al.*, 1993). As such on-license premises offer important opportunities for effective prevention and enforcement efforts (Room, 1984; McKnight and Streff, 1994). Responsible server programs have become a common way to reduce alcohol-related harms over the past decade. Such approaches have been found to be quite effective especially if combined with enforcement (Stockwell, 1997; Saltz, 1987; Putnam *et al.*, 1993).

Server training, now mandatory in some states in the USA, educates alcohol-servers to alter their serving practices, particularly with under age customers and those who show

obvious signs of intoxication. Server training explains the effects of alcohol, applicable laws, how to refuse service to obviously intoxicated patrons, and how to assist customers in obtaining transportation as an alternative to driving. Some, but not all, studies report more interventions with customers after server training than before. One evaluation of the effects of Oregon's mandatory server-training policy indicates that it had a statistically significant effect on reducing the incidence of traffic crashes in that State (Holder and Wagenaar, 1994).

Licensed premises are complex environments. Numerous factors intertwine to produce negative consequences from alcohol consumption. The patterns, and therefore recommendations, are also complex. No simple single dimension or set of principles exists. Even similar alcohol policies may yield different results in different societies because of the different economic, cultural, political, and social circumstances (Osterberg, 1995).

It has been argued that prevention involves a shift from thinking in terms of offenders and their motivations to offences and their settings, which in the case of licensed premises implies a focus on management practices that give rise to unsafe environments (Hauritz *et al.*, in press).

Aspects of safe environments include:

- alcohol-serving practices;
- physical design;
- selection and training of security staff;
- the permissiveness of the social climate in venues; and
- hidden deals between managers and police.

Situational theory has been applied to the drinking environment and includes:

- rule setting (*through Codes of Practice*);
- stimulating conscience (*by encouraging managers to regard themselves as responsible businessmen*);
- controlling disinhibitors (*by controlling alcohol through server intervention*); and
- facilitating compliance (*by creating a regulatory environment in which it is financially worthwhile for licensees to adhere to the Code of Practice*). (Hauritz *et al.*, in press)

Local Initiatives and Community Actions

Achieving compliance with existing liquor licensing legislation has mostly proved challenging. A number of projects have been undertaken both in Australia and overseas to determine ways to facilitate compliance. One such project was Queensland's Surfers Paradise Safety Action project which was conducted over several years from the early 1990's and was based on self-regulation informally monitored by the local community. Homel (1997) reports that this approach worked well in the short term, with a marked reduction in violence in and around licensed premises. But success was followed by a return within two years to pre-project levels of alcohol-related violence and aggression.

It has been suggested (Hauritz *et al.*, in press) that perhaps in response to a vacuum created by inadequate legal regulation of licensed environments that community action projects have proliferated across Australia over the past five to seven years (e.g. Fisher,

1993; Lander 1995; Melbourne City Council Westend Forum Project, 1991; Walsh, 1993). The most wide-ranging and well-resourced attempt to date to reduce alcohol-related accidental injuries and deaths through community-based methods has been the work of Holder *et al.* in California (Holder *et al.*, 1997). Holder and colleagues conducted a five-year project in three experimental communities which consisted of five mutually reinforcing components: community mobilisation; promotion of responsible beverage service for bar staff and managers/licenseses of on-premise alcohol outlets; deterrence of drinking and driving through local enforcement; reduction in retail availability of alcohol to minors; and reductions in the number and density of alcohol outlets to limit general access to alcohol (Holder *et al.*, 1997). The project was not targeting specific groups, but rather it was based on the assumption that changes to the social and structural contexts of alcohol use can alter individual behaviour.

Holder's project demonstrated a 10% reduction in alcohol involved traffic accidents, a significant reduction in under age sales of alcohol, and increased adoption of local ordinances and regulations to reduce concentrations of alcohol outlets. A general principle of the project was to offer both incentives and disincentives that would encourage compliance with harm reducing strategies, such as server training and dealing appropriately with intoxicated patrons. However, voluntary RBS training did not result in significant improvements in this area and it has since been argued that this illustrates the need to ensure that such training is mandatory (Saltz and Stanghetta, 1997).

In contrast, very recent work on a similar community action project in Fremantle, Western Australia has found disappointing results. On all key indicators relating to alcohol problems and licensed premises significant improvements were not achieved or sustained through the co-operative components of accords (Hawks, 1998). Such discouraging findings were contrary to expectations and give even greater weight to the potential role that can be played by appropriate legislation and the enforcement of such legislation.

A similar community safety action project has recently been completed in three North Queensland cities in Australia (Hauritz *et al.*, in press). This project was essentially a replication of the Surfers Paradise Safety Action project that had been undertaken earlier this decade (Graham and Homel, 1997; Homel and Clark, 1994). Results of this replication study reported that all forms of aggression, violence, verbal abuse and male drunkenness in licensed premises declined, with physical violence recording the greatest reduction (Hauritz *et al.*, in press). There are alternative and counter arguments about displacement effects (Clarke, 1997), where the problems simply go elsewhere, and possible diffusion of benefits effects, where the benefits go beyond the places originally targeted (Homel *et al.*, 1997). Nonetheless these studies represent persuasive arguments in support of a) the capacity and need for interventions and b) the untapped potential which exists within legislative powers to prevent and minimise alcohol-related harm.

Policies Can Make Problems As Well As Alleviate Them

It has also been argued that alcohol-related problems associated with licensed drinking environments not only exist because of the inherent nature of many such environs and because of the psychoactive properties of alcohol but that this potentially volatile mix can be further exacerbated. Hauritz *et al.* (in press) hold that certain antecedent conditions, such as a political environment emphasising deregulation of liquor licensing, leads to problem behaviours, such as cut throat competition between venues and

irresponsible drinks promotion. That is, that the existence of certain types of policy positions, or the perception of certain policy positions, can actually create alcohol-related problems. Such extreme circumstances are held to have contributed to the ground swell of interest in community mobilisation and community development as alternative strategies to enforcement to address out-of-hand situations, as the Surfers Paradise situation was seen to be.

8. Community Views and Acceptance of Alcohol Policies

Beyond the question of the efficacy of various strategies to reduce alcohol-related harms associated with licensed premises and the general question of alcohol availability is the question of community attitudes and values.

There tends to be widespread agreement, regardless of the perspective held about alcohol control policies, that for any policy to be successful there must be a reasonable level of community acceptance. Public support and compliance is essential to prevent policies from being circumvented (Edwards *et al.*, 1994). Many known efficacious interventions have low community acceptance. An example of this would be raising the drink driving age in Australia to 21, as exists in the USA. The use of alcohol by young adults and adolescents generally is a well established, tolerated and integral part of the Australian way-of-life. Attempts to increase the drink driving age above its current level would predicably receive strong community opprobrium.

National Drug Strategy Household Survey of 1995 (1996) reported there to be general support for a range of policy initiatives designed to increase the harm caused by alcohol. The most frequently supported (by more than 90% of the population) were policies aimed directly at drunk persons including the stricter enforcement of the law against serving customers who are already drunk, and more severe penalties for drink drivers. The least popular policy, not unexpectedly, was increasing the price of alcohol which was only supported by 33% of respondents. It is interesting to note that as one of the more effective methods to restrict use of alcohol it is least preferred by the general public (National Drug Strategy, 1996; Jeff and Saunders, 1983).

It is important to note that in successful community interventions projects such as that undertaken by Holder *et al.* (1997) in the United States that there is speculation that at least some of the success of the project was attributable to increased levels of community awareness and community debate about strategies such as Responsible Beverage Service (Saltz and Stanghetta, 1997).

9. The Role of Evidence and Alcohol Research

Alcohol research can play an important role in policy development and decision-making as shown in the examples provided above. Science by itself, however, is rarely the sole basis for policy decisions. A mix of economic, ethical, and political points also are involved alcohol policy development and, in some cases, these other factors can be more influential than the best scientific evidence. Whether alcohol policies result from science alone or some mix of other factors, it is important that their outcome be subjected to scientific scrutiny. By doing so we can determine where policies are successful in achieving a desired outcome and deserving of replication, where modifications may be needed to improve the success of a policy, or where policies should be discarded.

APPENDIX A

The following recommendations have recently been made for a modern alcohol control system in Canada (Giesbrecht, 1995). Given the similarities between our two countries these recommendations may also find resonance in Australia.

Alcohol controls should function:

- To facilitate the distribution and sale of alcoholic beverages in a manner that does not increase the risk of social, health or safety to consumers or other citizens;
- To provide a wide range of alcohol in a convenient and a responsible manner to legitimate customers, with information available to the customers about the products as well as the risks of inappropriate or excessive consumption;
- To display and sell these products in safe and pleasant venues;
- To ensure quality control of the products sold so that the products do not contain poisons or toxins (other than alcohol), or at levels below acceptable public health standards;
- To provide a pricing structure and support for or implementation of other control measures that ensures that consumption rates and risky use patterns do not increase;
- To prevent the sale of alcoholic products to persons who are below the legal drinking age, or are under the influence of alcohol;
- In collaboration with police, liquor inspectors, customs officials and others, monitor and curtail the smuggling of alcoholic products from elsewhere, the bootlegging of alcoholic products, or the illegal production and sale of alcoholic products;
- To provide the state with revenues in a cost-effective manner;
- To continually be aware of the need for balancing multiple agenda and demands: revenue generation, retail distribution and sales, customer service, and public health and safety concerns; and
- To work collaboratively with a number of agencies and institutions in achieving revenue generating, retail/commercial, consumer service and public health and safety agenda, and to ensure that there is a balanced, diverse and arm's length arrangement in contacts with agencies, interest groups and organisations representing a wide range of perspectives and agenda.

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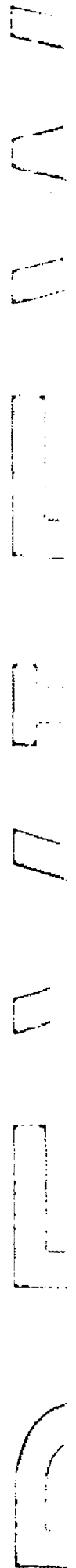
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APPENDIX 6**Economic Analysis of certain Restrictions on the Sale of
Liquor in Victoria****MANAGEMENT CONSULTING
KPMG Consulting Pty. Ltd.**

A.C.N. 065 410 862

Liquor Control Act 1987 Review Panel

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EXECUTIVE SUMMARY

This report has been commissioned by the *Liquor Control Act 1987* Review Panel to provide a succinct indicative economic analysis of the impact of removing certain provisions contained in the *Liquor Control Act 1987* (the Act) on market structure, consumption and consumption patterns.

Specifically, the provisions are:

- primary purpose provisions, ss.46-52;
- 8% rule, s.61;
- needs criterion, s.76(2)(b); and
- the prohibition on licences for drive-in cinemas, petrol stations, milk bars, convenience stores, and mixed businesses, s.60(1).

In considering the impact on demand of the legislative provisions we have looked at the determinants of demand; in particular the impact of availability of liquor on demand. The evidence suggests that it is wrong to assume a simple relationship exists between the number or density of licences and consumption of liquor.

Primary Purpose Provisions

The primary purpose provisions constrain business in ways which have little to do with controlling liquor abuse. They restrict the flexibility of business in responding to demand and they inhibit competition. Removing the primary purpose requirement would allow a greater variety of outlets, new entry and increased competition. The impact on consumption cannot be determined but is unlikely to be significant given inelastic demand and switching between outlets.

The 8% Rule

The 8% rule is highly discriminatory, especially against large supermarket chains. We would expect that if the 8% rule were removed it would lead to the achievement of greater economies of scale for supermarkets, the benefits of which is likely to be passed on to consumers. Relaxation of other licensing restrictions affecting new entry would be important to prevent undue concentration in the market.

The Needs Criterion

The application of the needs criterion inevitably impacts on the economic interests of existing licensees or potential licensees. It unduly restricts competition in the industry and reduces convenience for consumers, especially where sales for off-premise consumption are concerned. Abolition of the needs criterion might be expected to lead to a greater number of applications for packaged liquor licenses in cases where there is a sufficient consumer demand.

Section 60 (1)

The restrictions on granting licences to drive-in cinemas, petrol stations, milk bars, convenience stores and mixed businesses are a significant barrier to entry. Inevitably, many anomalies are created by such restrictions. Removing these restrictions could lead to an increase in the competitiveness of the packaged liquor market and increased physical availability of packaged liquor products. This would benefit consumers by enabling better substitution possibilities between sources of supply and improvements to price-product-service combinations in the market.

Conclusion

Our review of these restrictions indicates that removal would increase competition and benefit consumers, in particular by providing greater convenience of choice and an increased variety of liquor outlets. The impact of these changes on total consumption is largely indeterminate but is not expected to increase consumption substantially.

This report's consideration of the competitive effects on industry structure and the likely impact on consumption and consumption patterns of some of the possible changes to the Act will provide input to the Review Panel's assessment of the case for legislative reform. The Review Panel's assessment is in accordance with National Competition Policy review of legislative restrictions on competition.

A summary of this report is provided in a table in paragraph 3.5

1 INTRODUCTION

1.1 TERMS OF REFERENCE

KPMG Management Consulting has been commissioned by the *Liquor Control Act 1987* Review Panel to provide a succinct indicative economic analysis of the impact on the Victorian liquor industry of removing specific provisions contained in the *Liquor Control Act 1987* (the Act). This report will provide input into the National Competition Policy (NCP) Review of the Act. The provisions chosen by the Review Panel to be considered are the:

- primary purpose provisions, ss. 46-52;
- 8% rule, s.61;
- needs criterion, s.76(2)(b); and
- prohibition on licences for drive-in cinemas, petrol stations, milk bars, convenience stores, and mixed businesses, s.60(1).

This report is required to consider the impact of removal of these restrictions on:

- industry structure in the medium to long term, including impacts on the main stakeholders from removing certain restrictions;
- overall liquor consumption in Victoria; and
- consumption patterns of particular groups in the community.

The focus of the report is the application of microeconomic principles using the market structure, conduct, performance framework. The Review Panel requested that no surveys of consumers or business be undertaken. This report does not directly apply any statistical or econometric analysis, but where necessary it refers to previous work of this nature.

1.2 BACKGROUND TO NATIONAL COMPETITION POLICY AND RELATIONSHIP TO THE REVIEW OF THE *LIQUOR CONTROL ACT 1987*

Restrictions on competition contained in the Act can have detrimental effects on market performance by restricting output, increasing prices and/or reducing quality and service.

The Hilmer report noted that the greatest impediment to enhancing competition in many key sectors of the economy are the restrictions imposed through government regulation¹.

It is important to remember that competition policy is not about the promotion of competition as an end in itself but rather, it is a means by which social efficiency and public benefits may be enhanced. In this regard, there may at times be other social objectives that override the promotion of competition.

The ability of the liquor industry in Victoria to continue to make a significant contribution to the economic and social welfare of Victorians may be inhibited by several elements of the Act. The legislative review process seeks to identify all potential restrictions and assess whether the benefits of retaining them are outweighed by the cost of restricting competition.

¹ Hilmer Report, Report by the Independent Committee of Inquiry into National Competition Policy, 1993.

1.3 STRUCTURE OF REPORT

Chapter 2 provides a brief overview of the structure of markets in the liquor industry in Victoria. The market structure, conduct and performance analysis of this section provides the framework used in chapter 3 for assessing the impact of removing certain restrictions on the industry.

Chapter 3 considers the potential impact on market structure of removing each of the restrictions mentioned above while assuming other elements of the Act remain unchanged. Changes in market structure are likely to impact on market conduct and performance. We also consider how structural changes might impact on overall liquor consumption and on patterns of consumption for particular groups in the community.

1.4 DISCLAIMER

Please note, in accordance with our Company's policy, we are obliged to advise that neither the Company nor any employee undertakes responsibility in any way whatsoever to any person or organisation (other than the *Liquor Control Act 1987* Review Panel) in respect of information set out in this report, including any errors or omission therein, arising through negligence or otherwise however caused.

2 STRUCTURE OF THE LIQUOR INDUSTRY

2.1 FRAMEWORK FOR ANALYSIS

The structure, conduct, performance schema is a framework for analysis which underpins the assessment of competition and business practices by industrial economists and competition authorities. The schema builds on traditional price theory and practical industry experience.

Structure refers to the underlying market conditions which influence competitive conduct, for example, price setting, product development and promotion. Conduct in turn influences market performance. The key element of market performance is efficiency. Efficiency has both static and dynamic elements. In essence efficiency refers to whether consumers are able to obtain the kind of goods and services they desire, including their quality, variety and service characteristics, at least cost.

Competition is best understood as a process of independent rivalry between firms. It relies very much on industry structure as outlined by the Trade Practices Tribunal in the QCMA case:

'Competition is a process rather than a situation. Nevertheless, whether firms compete is very much a matter of the structure of the markets in which they operate. The elements of market structure which we would stress as needing to be scanned in any case are these:

- *the number, size and distribution of independent sellers, especially the degree of market concentration;*
- *the height of barriers to entry that is, the ease with which new firms may enter and secure a viable market;*
- *the extent to which the products of the industry are characterised by extreme product differentiation and sales promotion;*
- *the character of 'vertical relationships' with customers and with suppliers and the extent of vertical integration; and*
- *the nature of any formal, stable and fundamental arrangements between firms which restrict their ability to function as independent entities.*

Of all these elements of market structure, no doubt the most important is (2), the condition of entry. For it is the ease with which firms may enter which establishes the possibilities of market concentration over time; and it is the threat of the entry of a new firm or a new plant into a market which operates as the ultimate regulator of competitive conduct².

In the liquor industry, the licensing system can be considered to be an additional element of market structure. It has a significant influence on who is able to operate in the industry, where they can operate and the nature of the facilities they can provide. Licensing can, therefore, create barriers to entry to the industry and thus have a major impact on competition.

² Re Queensland Co-Operative Milling Association; Re Defiance Holdings Ltd (1976) 25 FLR 169 at 190.

2.2 THE LICENSING SYSTEM

Liquor outlets have been subject to licensing laws in Victoria virtually since the beginning of European settlement. Licensing arrangements have frequently changed in line with the perceived requirements of the time. Governments have viewed licensing as a means of minimising the harms associated with the consumption of liquor. Operators in the industry have seen licensing as a means of restricting competition. Others, the temperance movement for example, has seen licensing as a way to reduce the availability of liquor. The licensing system, which has sought to balance these requirements, has had significant impact on the development of the industry.

The current licensing system is governed by the *Liquor Control Act 1987* and Regulations and is administered by the Liquor Licensing Commission. Prior to the 1987 Act, the licensing system was governed by the *Liquor Control Act 1968*. This law and its administration was significantly changed following a major review by Dr. John Niewenhuysen in 1985–86³. The Niewenhuysen review proposed a fundamental change to the approach to licensing. The approach suggested significant relaxation of licensing laws in respect of their restriction on competition and stronger, better targeted policy instruments to deal with problems of consumption abuse. Many of the recommendations of the review were implemented in the 1987 Act. However, significant restrictions on competition were retained, including the restrictions which are the subject of this report.

Licensing covers the sale, disposal and consumption of liquor. It therefore affects all levels of the industry including manufacturers, distributors and wholesalers and retailers. Under the Act there are a number of different licence categories. These are listed in Table 2.1.

In addition to the seven licence categories, there are two categories of permit:

- the BYO permit which allows consumption on the premises and is available to restaurants and clubs; and
- an extended hours permit.

³ Niewenhuysen J, *Review of Liquor Control Act 1968*, January 1986.

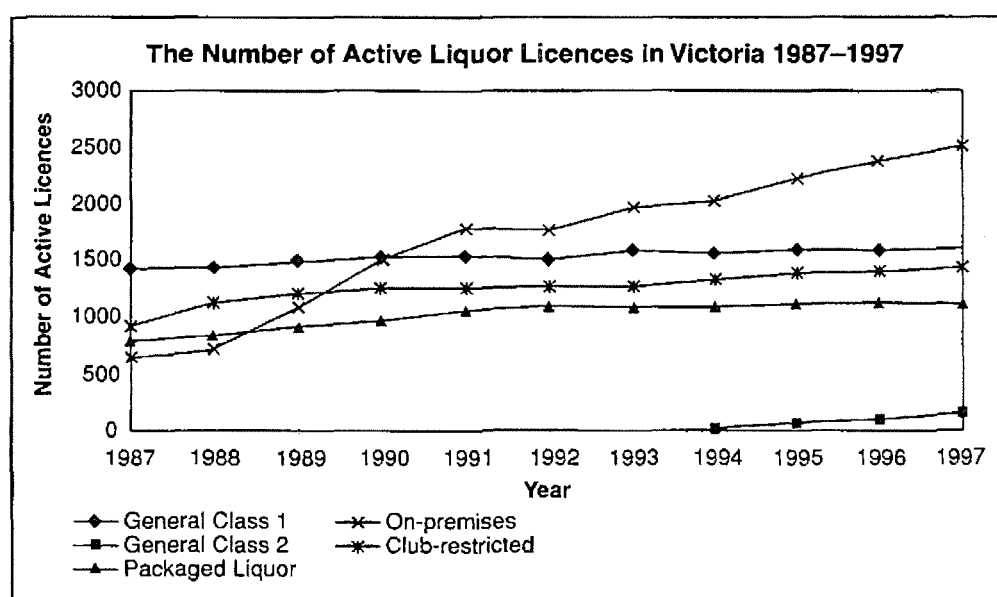
Table 2.1

Current Liquor Licence Categories in Victoria	
Licence Type	Description
1a. General Licence (Class 1)	Where the primary purpose of the business is to sell liquor for on and off-premises consumption, for example hotels.
1b. General Licence (Class 2)	Where the primary purpose of the business is to sell liquor for consumption on the premises, for example bars and restaurants with bars.
2. Residential licence	Where the primary purpose of the business is the provision of accommodation with at least 20 bedrooms, for example motels. Covers on-premises consumption for residents and guests and possibly on and off-premises consumption for any person.
3a. Club (full)	Where the primary purpose of the licensed premises is the business of a club for consumption by members on and off the premises, and for authorised gaming visitors or guests of members for on-premises consumption.
3b. Club (restricted)	Where the primary purpose of the licensed premises is the business of a club for consumption on the premises by a member, authorised gaming visitor or guest. Liquor must be purchased from holders of general licences or packaged liquor licences.
4. Producer's or Distributor's Licence	Where the primary purpose of the business is the production or distribution of liquor for producers for consumption off the premises; vigneron for consumption on and off the premises; and distributors for off-premises consumption.
5. On-premises Licence	Where the primary purpose of the business at the premises is: catering for social functions; live entertainment; conferences, conventions or meetings; a restaurant; sporting or cultural activities; goods or services for tourists; educational and training programs relating to food or beverages; or other activities approved by the Minister, for on-premises consumption.
6. Packaged Liquor Licence	Where the primary purpose of the business is the sale by retail of liquor in sealed containers, bottles or cans for consumption off the premises, for example retail liquor shops and supermarkets.
7. Limited Licence	Where there is a limited purpose and another licence is not appropriate for consumption on terms and conditions specified.

Prior to the Nieuwenhuysen review the legislative approach had been to try to satisfy new or different needs of business by creating additional categories of licence or permit -with tight restrictions attached to them. Consequently existing licence categories, especially hotel and bottle shop owners, were not substantially threatened by competition. The current structure is considerably simplified from the 29 licence and 36 permit types which previously existed. It is still significantly more complex than the one licence system, proposed by the Nieuwenhuysen review as the long-term goal.

Since the 1987 Act was passed there has been substantial growth in the number of liquor licenses in Victoria as shown by Figure 2.1. The most interesting aspect of this, however, is that the growth has been predominantly in the on-premises licence category and recently the general (class 2) category. There has not been a substantial increase in general (class 1) and packaged liquor licences.

Figure 2.1



Source: Liquor Licensing Commission Victoria, Annual Report, 1987-1996/97.

Based on the estimates from Figure 2.1, in the period between 1991 and 1997, the number of general licenses grew by 14.2%, on-premises licences grew by 40.9%. However, packaged liquor licences have only grown by 6.3% and club licenses grew by 16%.

Most liquor purchases are from hotels holding general licences class 1 (GL1) and retailers holding packaged liquor licences (PLL). In 1996-7 these accounted for 39.62% and 48.41% of total purchases respectively (LLC, 1997). The next largest share was the on-premises category at 6.45%.

2.3 THE NATURE OF MARKETS IN THE LIQUOR INDUSTRY

Markets are defined for the purpose of competition analysis in terms of substitution possibilities. Where products are regarded as close substitutes by consumers they can be considered to be in the same market. Sometimes it is possible for suppliers to readily change their product mix so that the area of close product substitution can be considered broader than demand substitution alone would suggest. Supply substitution will generally take time and the market definition will reflect this time dimension.

In the liquor industry a number of product markets and sub-markets can be identified, extending across the different licence categories. A differentiation may be made between on-premises and off-premises consumption. It is likely that these are reasonably close substitutes. For example, if prices charged by hotels for liquor consumed on-premises were to rise sharply relative to prices for off-premises consumption, there is likely to be significant substitution towards off-premises purchases.

Close substitution is likely to extend across licence categories. Hotel bottleshops and ordinary retail (packaged liquor licences) bottleshops and supermarkets compete in the same markets. In relation to on-premises consumption, substitution is more complicated as the products being supplied may be quite different. In many cases liquor may not be the main element of the product. For example, it may not be sensible to regard a theatre which provides patrons with the opportunity to purchase liquor at interval as being in the same market as the hotel around the corner catering exclusively for drinkers.

Two other dimensions of a market are its spatial dimension and its functional dimension. The spatial dimension refers to the geographic area over which close substitution occurs. In the liquor industry markets will generally have a local geographic market boundary since consumers are often not willing to travel large distances to obtain their purchases. Many country towns can therefore be considered to be separate markets. When markets are defined this narrowly it is necessary to recognise the potential competition from other sources which may exist if consumers regularly travel to other towns or if they have access to mail order sales. Similarly, in the metropolitan area, markets will largely be local although these markets can be considered to be linked, as in a chain. Where significant numbers of consumers travel across the city and are able to purchase liquor from diverse locations it may be sensible to consider the relevant market as covering the whole metropolitan area.

The functional market dimension refers to the level of the supply chain over which competition occurs. In relation to liquor licensing this mainly relates to retail, but for some purposes it may be relevant to consider the wholesale/distribution and manufacturer functional market dimensions. For example, if there is vertical integration between breweries and hotels, a restriction on competition at either level may impact on the other level.

2.4 MARKET CONCENTRATION

Market concentration is the extent to which a market, appropriately defined, is dominated by a few sellers (or buyers). Market concentration can be an important influence on competition although it cannot be assumed that higher levels of concentration necessarily mean less competition. Where concentration is high, and only a few firms compete with one another, those firms will then be closely interdependent and may be guarded in their competitive moves. It is still possible, however, to have vigorous competition in such circumstances depending on how firms perceive the likelihood of success in pursuing independent strategies. Similarly, it cannot necessarily be assumed that if there is a large number of firms in a market that strong competition will exist although this is more likely to be the case. If firms were able to collude, or alternatively enlist the coercive power of government to regulate against competition as occurred in the 1980s when a minimum price was fixed for packaged beer, competition may be limited.

Market concentration can be measured in terms of the market share held by the largest four to eight firms. More sophisticated measures are also commonly employed to take account of the distribution of market shares between firms in the market.

In small local markets, the level of concentration is likely to be high. In many cases firms will be able to reduce unit costs as their size increases. If these cost reductions (economies of scale) are significant there may only be scope for a few firms to operate in a local liquor market and achieve reasonable levels of efficiency. Competition is then likely to be constrained as seems to be the case in many country town liquor markets in Victoria. In the larger provincial cities such as Geelong, Ballarat and Bendigo, the larger market areas are conducive to lower concentration levels and greater competition. This tendency is even more evident in the metropolitan area where even lower levels of concentration occur.

Historically licences for hotels and bottleshops have been issued on a restrictive geographic basis. Licensing authorities were often required to consider whether there was a need for a new licence when an application was received. This often entailed taking into account the economic impact of a potential new licence on existing firms, which invariably was detrimental. This meant that a new entrant was not able to obtain a licence and competition was accordingly restricted. The legacy of this approach is that in many local areas competition is not as intense as it would otherwise be. The current licensing system retains elements of this restrictive approach as the discussion below indicates.

Whatever the level of concentration in a market, if there is easy entry and exit to the market it is unlikely that firms will have significant market power.

2.5 BARRIERS TO ENTRY

There is agreement among competition policy analysts that barriers to entry are the crucial determinant of competition, but there is some disagreement over what constitutes a barrier to entry. Some argue that the only barriers are those created by government policy or regulation⁴. We are more inclined to take the view that a barrier is:

*'anything that requires an expenditure by a new entrant into an industry, but imposes no equivalent cost on an incumbent.'*⁵

There are two broad classes of entry barrier: structural and strategic. Structural barriers relate to industry characteristics such as technology, costs and demand. They can arise from product differentiation, absolute cost advantages of incumbents and economies of scale. Strategic barriers result from market behaviour of incumbents.⁶

The most significant barrier to entry to liquor retailing is the licensing scheme. This is particularly the case where entry is restricted on the basis of need. The costs of obtaining a licence can also be significant, especially for small business. There are costly legal processes still operating which govern the grant, removal, transfer or variation of licences. Contrary to the preferred approach, espoused by the Nieuwenhuysen review, existing licensees are able to object to the grant of new licences and economic factors are given considerable weight by the Commissioners. The practice of requiring demand witnesses to appear at a hearing before the Licensing Commission which resembles a court in its operation, still continues.

⁴ Harbord D., 'The Analysis of Barriers to Entry and Exit in the UK Competition Policy', *European Competition Law Review*, Vol. 14, No. 5, 1995.

⁵ Baumol W., Panzar J. and R. Willig, *Contestable Markets and the Theory of Industrial Organisation*, 1982, p. 282.

⁶ Prices Surveillance Authority, *Inquiry in the Beer Declaration*, 1994, p. 52.

2.6 PRODUCT DIFFERENTIATION

'Product differentiation occurs when consumers perceive that a product differs from its competition on any physical or non-physical characteristic, including its price'.

There is a high degree of product differentiation and market segmentation within the liquor industry. At the brewing level, for example, whilst there are only two major firms, there are many varieties of beer including super-premium, premium, lights, and there are also many brands available including imports. Advertising and product promotion are features of the brewing segment of the liquor industry.

Product differentiation is also a feature of distribution and retail supply. For example, an outlet may differentiate its product by the level of service, the style and ambience of its facilities and the location it offers consumers. The primary use restrictions, which operate in connection with the licensing system, both reflect the differences present in the industry and constrain these differences to the extent that they impose standard requirements on the nature of premises and its service offering in each licence category.

2.7 VERTICAL RELATIONSHIPS

The liquor industry comprises a number of functional levels including manufacturing (brewers and vignerons), distributors and wholesalers and retailers which include hotels, bottle shops, restaurants, clubs and other outlets.

There is some vertical integration in the industry, but this is less than in the past, in part because of the action taken by the former Trade Practices Commission against the tied hotel agreements. The tying agreements operating in the context of restrictive retail licensing significantly reduced competition.

Many of the firms operating in retail liquor markets are relatively small and do not have strong vertical links with manufacturers and distributors/wholesalers. Vertical relationships are not a major element of the structure of the liquor industry.

2.8 ARRANGEMENTS BETWEEN FIRMS

Whilst there is a past history of restrictive practices in the liquor industry and there are strong trade associations representing the major industry groups, especially the hotels and bottle shops, there is no suggestion that such practices occur today. The *Trade Practices Act 1974* applies to the industry and most firms are likely to be well aware of the conduct which would breach this Act. The Hotels Association has published recommended bar prices to its members and these have had some influence on conduct. However, hotels have faced significant competitive pressures with the long-term relative decline in on-premises consumption in favour of packaged sales and the decline in beer sales relative to wine.

2.9 THE DEMAND FOR LIQUOR

The demand for liquor overall depends on many factors, including:

- prices charged, which are now heavily influenced by taxation;
- levels of income in the community;
- the size of the population and its characteristics including age, sex and ethnic mix;

⁷ Dickson P R., and J. L. Ginter, 'Market Segmentation, Product Differentiation, and Marketing Strategy', *Journal of Marketing*, 1987, p. 4.

- prices of substitute products including non-alcoholic drinks;
- advertising and product differentiation;
- availability, in a physical sense, in terms of the density of outlets and hours when outlets are open and, in a legal sense, in terms of the minimum drinking age;
- climate; and
- tastes and cultural traditions.

Most of these consumption drivers can be distinguished when looking at the demand for particular categories of liquor. The main categories of liquor normally identified are beer, wine and spirits with a distinction also made between low alcohol and higher alcohol content beer. The relative prices between these categories and their movements over time then become important.

The demand for liquor at particular outlets can also be distinguished. Relative prices will again be important, but so will be factors like convenience, style and ambience and the availability of entertainment and other complementary products.

The importance of specific demand influences will vary over time and space. Econometric modelling is necessary to isolate particular factors. Even then caution is needed in interpreting results given that modelling techniques generally rely on particular assumptions and require data that may not be readily available. There can be problems in inferring too much from econometric work undertaken in different market contexts from those currently under consideration.

In the course of this study we have examined various econometric studies relating to the demand for liquor⁸. These studies were all undertaken at a relatively high aggregate level. They suggest that price is a significant influence on demand with lower prices resulting in higher demand. Demand is inelastic, however, such that demand will increase less than proportionately than the fall in price. For beer, this relationship has probably been changing somewhat over time as heavy taxes have increased the rate of substitution towards wine.

Income levels and liquor consumption are positively correlated overall, but the nature of the relationship appears to change as income grows. It is not necessarily the case that just the *volume* of consumption rises with income; the *value* of consumption may also rise. That is, higher value products may be consumed as income grows.

Availability is often discussed as an influence on demand. In this respect a distinction can be made between economic availability and physical availability. Generally, a fall in the price of liquor may provide greater access to differentiated products and services. For instance, consumers in a low-income group may gain access to products and services that were previously only available to consumers in a relatively higher income group. This might include certain categories of wine or varieties of imported beers. If consumers are better able to substitute between different products (and sources of supply) this will have a positive impact on their welfare.

The relationship between physical availability and demand or consumption is more problematic. There is firstly the problem of causation. Does availability drive consumption or consumption drive availability? Secondly, even assuming it was possible to

⁸ See, for example, Gruenewald, P., Poniki, W., and Holder, H., 'The relationship of outlet densities to alcohol consumption: a time series cross-sectional analysis', *Alcoholism: Clinical and Experimental Research*, 17, pp. 591-597, 1993.

isolate all the relevant variables influencing demand in a particular situation, it would be incorrect to assume that any observed relationship necessarily translated to a different situation.

In any event, there is no consensus among researchers as to the impact of the density of outlets and consumption⁹. Some suggest that the more sophisticated studies support the existence of such a relationship, but no definite conclusion can be reached on the matter¹⁰.

Whatever the overall relationship, it seems intuitively obvious that there will be some people in the community whose consumption will be increased with wider availability. This does not necessarily mean that problems associated with consumption will be greater.

It also should not be concluded that greater aggregate consumption generally implies increased problems of mis-use. The literature on liquor consumption now places greater focus on patterns of consumption rather than average consumption levels¹¹. It is possible to increase the level of consumption without increasing the level of associated problems¹². For instance, Roche (1998) explains:

'to illustrate this point, if patterns of use changed from heavy episodic drinking (eg weekend 'binge' drinking) involving intoxication to daily, or almost daily, consumption of small amounts of alcohol consumed with meals the overall mean weekly amount consumed could increase but the propensity for incurring difficulties (at least of an acute nature and some chronic nature) would decrease'.

We are not aware of specific studies that would enable us to assess accurately the impact of changes in licensing laws on consumption of different groups in the community. Some associations may be inferred. For example, younger people may be more likely to attend nightclubs, cinemas and hotels where there is entertainment. Older people in higher income groups are more likely to frequent restaurants. Women are more likely to shop at supermarkets. However, this sort of analysis seems of limited benefit especially given the more dynamic nature of competitive markets where outlet stereotyping will become increasingly difficult. Moreover, individuals themselves are continuously changing, in age, income status, attitudes and so on.

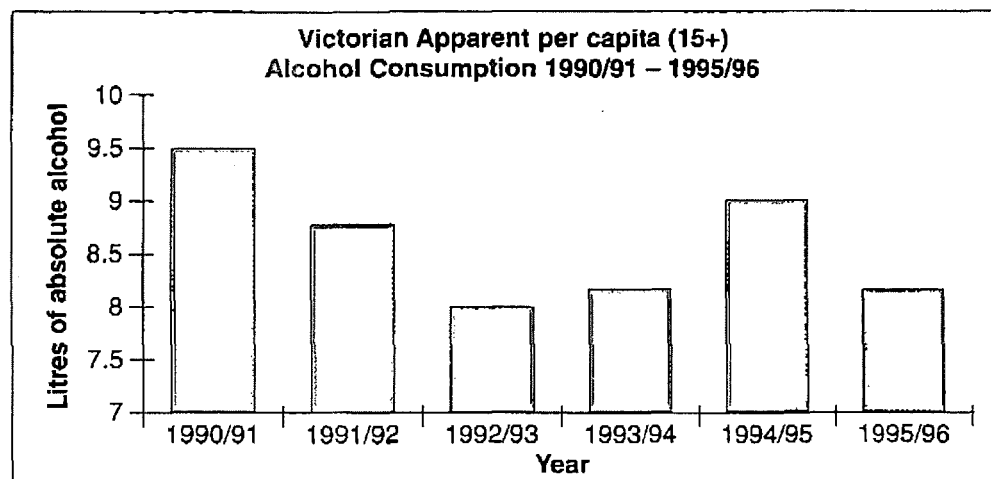
The Victorian experience following the passing of the 1987 Act has been quoted as supporting the view that increased availability does not necessarily result in greater consumption. This experience is indeed highly supportive of the fundamental approach of the Nieuwehuysen review in that, despite a sharp increase in the number of licences after 1987, there has been a reduction in consumption per head of the drinking age population. Figure 2.2 shows the decline in the per capita consumption of absolute alcohol levels for Victorians in the age group of fifteen and over.

9 Stockwell, T. (Ed.), *Alcohol Misuse and Violence — An Examination of the Appropriateness and Efficacy of Liquor Licensing Laws across Australia*, 1994.

10 See, for example, Nieuwehuysen J, 'Liquor control policy and alcohol availability-consumption relationships: reflections on the Victorian debate', *Australian Drug and Alcohol Review*, 1988,7, pp. 264-266.

11 See, for example, Roche A. M., 'The shifting sands of alcohol prevention', *Australia and New Zealand Journal of Public Health*, 1997, 21; 621-625 and Stockwell T., Hawks D., Lang E., Rydon P., 'Unravelling the preventative paradox for acute alcohol problems', *Drug and Alcohol Review*, 1996, 15:7-15.

12 Roche A. M., *Availability of Liquor and Incidence of Harm: A Literature Survey*, 1998.

Figure 2.2**Per Capita Consumption of Alcohol in Victoria 1990/91–1995/96**

Source: Turning Point Epicentre Bulletin No. 1, April 1997.

Notes: Data used in this graph was obtained from the Liquor Licensing Commission Victoria and the Australian Bureau of Statistics. Estimates are based on the amount of liquor purchased from particular licence categories in a particular year and adjusted for absolute volumes of alcohol and population estimates. The fifteen and over age group was used due to the incidence of alcohol use and harm in the 15-18 year category despite the higher legal age and is based on information from surveys used by Turning Point Alcohol and Drug Centre Inc.

Some caution, however, is needed in reaching conclusions on the basis of this data alone. Many other factors, including for example prices and incomes, have also changed since 1987 to influence consumption trends. Moreover, the degree of liberalisation of the Victorian licensing laws cannot be gleaned just from total licence number trends. In fact, it seems most of the increase in licences has been in the on-premises licence and restricted club categories which account for relatively small shares of the market. In the main, there has been much smaller growth in traditional licence categories covering hotels and bottleshops. A probable reason for this, in the case of hotels, has been their relative decline in importance in the industry and their excess capacity. In the case of bottleshops, it seems that the approach to licensing has been quite restrictive, as evidenced by the number of licence applications which have been refused.

Whilst the evidence is encouraging, far more persuasive is the intuitive logic on which the Nieuwenhuysen review was based. This is that if people are more able to drink in 'civilised' establishments where liquor consumption is not the primary purpose, it should not be surprising that consumption overall could decline. Further, if there are problems associated with excessive consumption, these are better addressed by more direct and potent policy weapons, including higher taxation.

3 THE IMPACT OF REMOVING ANTI-COMPETITIVE RESTRICTIONS

This chapter analyses the potential impact on the industry of removing the identified restrictions, outlined in section 1.1. It aims to assess the likely impact of the changes while, at the same time, assuming other related provisions in the Act remain the same. It also assumes that there are no changes to the local planning laws.

3.1 PRIMARY PURPOSE PROVISIONS

The primary purpose provisions are contained in Sections 46 to 52 of the Act. These provisions ensure that businesses have to be configured in a certain way to obtain a particular licence. In order to obtain the most flexible licence — the general licence class 1 — it is necessary to have as the primary purpose of the establishment the provision of liquor. This seems to have little logic from the perspective of controlling problems of mis-use of liquor. Rather it is simply a measure aimed at protecting established hotels.

The primary purpose provisions raise many issues. For example, how can the Commission determine primary purpose and be assured that this purpose remains primary? A business wanting to respond to changing market conditions may find it is unable to do so while holding its existing licence. The difficulties associated with obtaining a new licence may then dissuade it from making the desirable changes. At the very least, uncertainty will be created as to whether a new licence can be obtained.

A simple example may illustrate the point. Section 51 authorises the holder of a packaged liquor licence (PPL) to sell and dispose of liquor on the licensed premises in sealed containers, bottles or cans for consumption off the licensed premises between specified hours and on any terms and conditions specified by the Commission. A PPL holder can not provide wine by the glass under this licence. It would be necessary to obtain an additional (Limited) licence for this purpose. However, for this, the activity could not be a regular one since a Limited licence would not be available. It may be possible, but this is doubtful, for the business to also obtain an on-premises licence. If not, there is probably nothing else that it can do.

In an effort to constrain the activities of the licensees in the different licence categories some extraordinary restrictions have been imposed by the legislation. These include the following:

- small hotels or motels of less than 20 bedrooms whose primary purpose is accommodation seem unable to obtain a residential licence and may have difficulty qualifying for an on-licence;
- a club is unable to operate a facility, under a club licence, where members of the public (other than guests and authorised gaming visitors) can obtain liquor for on or off-premises consumption¹³;
- a club holding a restricted club licence is required to purchase its supplies of liquor from a holder of a general licence or a packaged liquor licence. There is no clear distinction between full and restricted club licences in the Act and the Commission has had to make policy in this respect;

¹³ A club may apply for a General Licence (Class 1) only in circumstances where the primary purpose of the business is to sell liquor for on and off premise consumption. However, there may be a conflict where this is not consistent with the primary purpose of the business of a club.

- a vigneron cannot obtain a producer's or distributor's licence unless wine, cider, brandy or perry produced by him is made from fruit grown in Australia and at least 70% of the wine is made from fruit grown or pressed by him; at least 25% of the cider or perry is made from fruit grown by him; and at least 70% of the brandy is made from wine distilled by him; and
- a restaurant cannot have more than 25% of its area set aside as an area for the consumption of liquor separate to the consumption of meals. Moreover, to obtain this privilege the licensee is required to pay a discriminatory fee of \$800.00.

The primary purpose requirements thus act to constrain business in ways that have little to do with controlling liquor abuse. They reduce the ability of licensees to respond in an efficient manner to the changing demands of the market place. In doing so they are likely to substantially restrict competition.

Changes to the licensing scheme

We are asked to comment on the potential impact of reducing the current number of licence categories from seven to four. The four categories are listed in Table 3.1.

Table 3.1

Proposed Simplified Licensing Scheme	
Licence Type	Description
1. On and off-premises licence	Would replace the current general class 1 and 2, residential, producer's (including vigneron), and on-premises licence categories.
2. Off-premises licence	Would replace the distributor's and packaged liquor licence categories.
3. Club Licence	Unchanged
4. Limited Licence	Unchanged

The impact on competition

By themselves, reducing the number of licence categories would seem to provide some enhanced flexibility for licensees to configure their businesses in ways which better match market demand. However, some significant areas of restriction are not addressed, for example those relating to clubs. It is not just the number of licence categories which is the concern from a competition policy perspective, but rather the terms and conditions that may be attached to them. Within a reduced number of licence categories the Act could still differentiate between sub-categories of licence as it does now in relation to the general and club licences. Furthermore, the licensing authority could still use its discretion to impose restrictive terms and conditions on particular licences. Little change may result.

On the assumption, however, that a reduction in licence categories does represent a real liberalisation, it is likely that competition would be significantly enhanced. Firms would find they have more flexibility to respond to market demand. Undoubtedly hotels, in particular, would come under renewed pressure to better meet the current needs of consumers. A greater variety of outlets is likely to develop and new entry would be easier to achieve, assuming no other changes occurred to inhibit entry. Consumers would benefit from a greater mix of services at the point of sale.

Fewer obstacles to competition between licensees may lead to lower prices for particular liquor products over time. However, firms may be required to undertake significant new investment which will have to be funded. An outcome of increased competition may be greater emphasis on non-price competition, especially improved quality and service. Consumers may well be prepared to pay a price.

Whilst we are of the view that greater competition will expose less efficient outlets and trigger improved standards of performance, there will no doubt be those who will have concerns that some firms will reduce standards in trying to cut costs. There may well be some problems of this kind, but they should be seen as transitional. It has been assumed that existing restrictions preventing the serving of under age and intoxicated people remain in place and it will be important that these continue to be rigorously enforced.

The impact on consumption and patterns of consumption

For reasons previously discussed in chapter 2 and because of the inherent uncertainty of market outcomes where competition is allowed to prevail, it is not possible to be definite about the impacts of greater licence flexibility on consumption and consumption patterns. However, we doubt the impact on total consumption would be significant. Inelastic demand overall would mean that any price reductions would cause less than proportionate increase in consumption. Switching between outlets would be more important than the overall impact on consumption levels. The impact of a simplified licensing scheme on the consumption patterns of particular consumer groups cannot, we consider, be assessed in the absence of some detailed survey work of existing consumption patterns.

3.2 THE 8% RULE

Section 61 restricts the total number of PLLs or GLs held by a person or corporation to no more than 8% of all such licences. The background to this provision was that in 1982, the then Liquor Control Commission (LCC) refused an application to transfer a licence to S.E. Dickens Pty. Ltd. (Coles). Coles already held 61 retail bottled liquor licences (RBLs) or approximately 8% of the total number of active RBLs at that time. Transfer of the 62nd licence was refused. This was because the LCC believed:

'the applicant company ... is in such a position by virtue of the number and turnover of the retail bottled liquor licences it holds ...' that it would not be in the public interest to grant a further RBL, in the context of '(a) an orderly and continuous improvement in the development of facilities and arrangements for the supply of liquor to the public or (b) a stable and ordered industry'¹⁴.

In May 1983 the 8% rule became law. The Minister commented that it was a safeguard:

'... to prevent domination of the liquor industry in the long term by hotel chains and supermarket chains.'¹⁵

Although the decision is fundamentally based on concerns about industry concentration, there was no apparent regard for the provisions of the *Trade Practices Act 1974*, including those provisions relating to asset acquisitions, mergers and mis-use of market power, which apply generally in the economy.

¹⁴ Niewenhuysen J, *Review of Liquor Control Act 1968*, January 1986, p. 335.

¹⁵ Minister's notes on Second Reading Speech of the Bill, p.7.

Related to this were three key issues raised in the Nieuwenhuysen view:

- Coles was the only firm affected by the legislation, whereas large retail and hotel groups (many covering greater than 8% of RBLs) were excluded;
- ownership should not be considered important especially when buying and selling groups could exploit economies of scale; and
- action to prevent dominance would otherwise fall under the jurisdiction of the TPA¹⁶.

These issues are still relevant in 1998. The 8% rule does not enable a level playing field. It favours large marketing and buying groups — who are unaffected by this provision — over larger businesses. Its main impact appears to be on Liquorland and Safeway.

Packaged liquor can be supplied by two main types of licence: a PLL or GL1. As at June 1997, the total number of active PLLs equalled 1113 and GL1s equalled 1587 — a total of 2700. Safeway holds 86 PLLs which means it has 7.7% of the PLL total and 3.2% of the combined total. This represents 1% of the total number of active liquor licences in Victoria. Liquorland has a similar proportion. This suggests that neither dominate the market in terms of the share of licences held in the industry. In particular markets in Victoria, their share of packaged liquor sales would be greater.

In contrast, three large buying groups each cover more than 8% of PLL licenses: Liquor for Less having 8.8%; Cheers 13.5%; and Festival 8.3% (Safeway submission, 1997). However, because these groups generally consist of stores that are individually owned and franchised they escape the provisions of the Act.

Safeway and Liquorland are currently unable to proceed with applications for PLL unless they dispose of existing licences.

The second issue raised in the Nieuwenhuysen view relates to economies of scale which exist when the average cost of providing a product or service falls as the size of the firm increases.

There are two types of economies of scale — internal and external. Internal economies of scale accrue to individual firms regardless of the size of the industry. They can result from technological factors (or the optimal size of the firm) or non-technological factors such as obtaining discounts from suppliers by buying inputs in bulk. Suppliers are usually willing to pass on discounts because of internal economies of scale in distributing the supplies. External economies of scale arise where the development of the industry leads to development of related services to the benefit of all firms. For example, a labour force skilled in the safe and responsible delivery of liquor products and associated services.

It is also possible to distinguish between economies at the outlet level and multi-outlet economies. For instance, a firm may obtain cost savings by increasing the size and scale of an individual outlet. Beyond this it might achieve further cost advantages by increasing the number of outlets it operates. These advantages might include the spreading of corporate overheads and better management and training.

The third issue raised by Nieuwenhuysen related to the adoption of the industry specific regulatory approach to dealing with concentration rather than reliance on the general *Trade Practices Act 1974*. There is no substantive case to support a different approach in the liquor industry. In any event, as a control measure the restriction on licence num-

¹⁶ Nieuwenhuysen J, Review of Liquor Control Act 1968, January 1986, pp. 335-338.

bers is of limited effect since there is no restriction on the firms concerned developing very large outlets and obtaining larger than 8% market shares. This in fact is precisely what both Safeway and Liquorland have been able to do. We understand their shares of packaged liquor sales in Victoria as a whole are substantially higher than their share of licences.

Dominance by a few firms in packaged liquor is unlikely to occur given the size of the industry and its geographic spread. Moreover, it is wrong to equate higher concentration with greater market power and less competition. Removing unnecessary licensing barriers to entry, especially associated with the denial of licences to convenience stores and petrol stations under s.60 of the Act, is the way to ensure effective competition.

The impact on competition

Removal of the 8% rule would enable Safeway and Liquorland to expand their liquor retail networks to achieve *minimum efficient scale*, or least cost supply for their product mix.

If corporate overheads, advertising and marketing plus the associated research and development, staff hiring and training, packaging and distribution costs are allocated over a larger distribution network (or scale), then the average cost of providing packaged liquor can be reduced. Larger volume sales associated with a larger network may also mean that lower input prices can be obtained from suppliers.

The 8% rule denies the major supermarket operators the opportunity to expand their networks to particular locations in the State. It thus inhibits competition particularly in these markets.

Abolition of the rule would place specialist bottleshops and hotel bottleshops under increased competitive pressure. They would lose sales to the supermarkets. It has been suggested that this may erode the ability of hotels to continue cross-subsidising their general operations from bottleshop sales. Whether in fact such cross-subsidisation is occurring is a matter we are unable to test. Cross-subsidisation is not in any event something that is necessarily good to promote. It is only possible when competition is limited and its impact is detrimental to the efficiency of resource allocation. There is no strong liquor control rationale for such cross-subsidisation.

Large buying groups may feel a significant impact. Without the 8% rule, Safeway and Liquorland would be better able to compete on a level playing field with the large buying groups. Less fragmentation, or small scale operation, within the industry may flow from this.

Since liquor retailing overall is likely to be more competitive in the absence of the 8% rule, we would expect cost savings to be passed on to consumers. A reduction in average costs then is likely to lead to a fall in the price of packaged liquor products. That is, the price of packaged liquor in the industry with the 8% rule would be higher relative to the price of packaged liquor without the 8% rule.

The impact on consumption and patterns of consumption

A fall in the price of packaged liquor at certain outlets could lead to an increase in total off-premise consumption. This may cause some reduction in on-premises consumption, but we would not expect the effect to be significant.

We would expect consumers to benefit from abolition of the rule as a result of the increased convenience of one-stop shopping.

3.3 NEEDS CRITERION

The needs criterion is contained in s.76(2)(b) of the Act. It requires the Chief Executive Officer of the Liquor Licensing Commission, who must provide a recommendation to the Commission as to whether a licence application 'would be in the interest of the community in the neighbourhood where the premises to which the application relates are situated' to 'have regard to the extent to which businesses ... in the area to which the application relates are satisfying the need intended to be satisfied by the applicant'.

The Chief Executive Officer in making a recommendation, however, must not have regard to whether other licensed businesses would be adversely affected or whether the proposed business seeking a licence would be successful (section 76(2)(d) and (e)). These qualifications were added to avoid the situation of the past where the decision on a licence application was often primarily made on the basis of a judgement of economic considerations rather than more fundamental considerations relating to matters such as impact on amenity. In effect, Commissioners in the past had usurped the market place in making these judgments. They did so on the basis of highly imperfect information, use of demand witnesses, and a lack of real expertise in the relevant disciplines. In addition, they often became captured by existing industry interests who, in order to protect their own economic interests, were the loudest in opposing new licences.

In reality, any consideration of need must impact on the economic interests of the potential licensee or the existing licensees. If the Commission refuses to grant a licence, for example, on the basis of a view that the market is adequately catered for, it is, in effect, making a judgement that the firm is either incorrectly reading the market or that it does not like the impacts on existing firms. From the consumer perspective, it is saying that demand does not signal need. Intervention here seems misplaced, when there are other rules to prevent undesirable practices, for example, selling to under-age customers. This seems especially out of place in relation to liquor sales for off-premise consumption, which raises no concerns about drinking behaviour in licensed premises. In relation to licensed premises selling liquor for off-premises consumption, the only issue of relevance seems to be that of convenience for the customer.

The difficulties of applying the need criterion became evident in the early years of the Act. In the first reported case in *Bourke's Liquor Laws* (James Artis and Effie Laghou) the Commissioner lamented the structured opposition by other licensees to many licence applications:

'In most of these cases of pro forma opposition by liquor interests it is difficult to identify a genuine community interest ground for opposing the application, which is not connected with or specifically based on a claim that existing licences and permits in the area to which the application relates are satisfying the need intended to be satisfied by the applicant.'

In a later case (Liquor Mart Pty. Ltd.) the Commissioner refused a packaged liquor licence for a new discount supermarket in Traralgon, which was expected to increase competition in the market, on what seemed to be a strange view of diversity and economic growth in the industry:

'I do not accept that a slightly lower price in some or most lines, even if it were to occur on a regular basis, would of itself constitute such a diversity of facilities as to warrant a licence in community interest terms on that basis alone. Even if such diversity was to occur via the applicant, most or even all of that diversity, such as it might be, must be balanced against the fact that the liquor services

would be essentially the same as those provided by the existing outlets, especially the most competitive of them Coles and Tuckerbag.'

'Furthermore, if discounting is to be regarded as some form of diversity, such as might be, must be balanced against the potential, or lack of potential, for economic or social growth encouraging the proper development of the liquor, hospitality and related industries.'

The Commissioner in this case and other Commissioners in later cases sought to examine detailed financial records and forecasts of the firms involved not, it was said, to have regard to their individual economic interests, but rather because of a regard for the broader community interest implications. This fine distinction provides little comfort against the feeling that the Commission had slipped back into practices which were strongly criticised in the Nieuwenhuysen review.

The needs criterion has been the basis for the Commission refusing to grant a significant number of licences, especially packaged liquor licences. Its inclusion of economic considerations seems to have been upheld by the Supreme Court¹⁷. No doubt potential applicants who may have been dissuaded from making applications have noted the actions of the Commission.

In 1990 the Commission flagged that it expected there would be an increasing role for the needs criterion to be satisfied that applicants would be required to provide *'further and better'* information regarding the needs intended to be satisfied (Annual Report 1990).

Consideration of the:

- nature of the licence sought;
- location and size of the business of the applicant and other licence holders;
- price, competition, stock, range, hours, service, convenience; and
- general demography of the area has played an important part in forming a conclusion under the needs criterion¹⁸.

Impact on competition

The needs criterion has been applied in a restrictive way by the Liquor Licensing Commission in numerous cases, primarily those affecting packaged liquor licences. In these cases it has acted as a significant restraint on competition and consumer choice. The major beneficiaries have been existing licensees, the losers have been consumers who have less convenience, higher prices and less responsive service from the suppliers. We see no benefit for the community as a whole, particularly where sales are for off-premise consumption. We are not aware of other cases involving consumption on licensed premises where significant community benefits can be claimed by denying a licence on the basis of the needs criterion.

¹⁷ See *Weir Family Supermarket (Warracknabeal) Pty Ltd v Liquor Licensing Commission* (1991) 1 VLD 5016 at 5026, which establishes (inter alia) that the interests of the community go beyond 'amenity in an area' and 'pleasantness'; that it includes availability and price which are at the forefront of community interests in liquor. Other cases include *Liquor Mart Pty Ltd* (1991) VLD 22, in which application for grant of a packaged liquor licence was refused based on careful analysis of the negative impact on the trading figures of existing licensees; *Katalia and Associates Pty Ltd* (1993) 1 VLD 99, in which criteria for considering representations of community interest were established and included many economic matters related to existing licensees; *San Remo Vintage Cellars Pty Ltd* (1992) VLD relating to an application for a packaged liquor licence for premises situated at Shop G, 35 Quayside Shopping Centre, Frankston, p. 31.

¹⁸ Bourke B., *Bourke's Liquor Laws Australia*, 1995, p. 421

We would expect removal of the needs criterion would allow suppliers to better respond to the real needs of consumers. Continued viability of suppliers would depend on their continuing to satisfy the needs of consumers, rather than surviving in business because they are protected from competition by the licensing system. The medium to long run effects of greater competition are difficult to judge because they will depend to a large degree on the competitive responses that are made. It would seem likely, however, that there would be a growth in supermarket sales relative to specialist bottleshop sales given strong consumer preference, especially of women, for one-stop shopping and more appealing shopping environments.

It could be anticipated that an increase in the number of licensed premises would only occur under circumstances where consumer demand indicated a need for more outlets. We consider removing the needs criterion in conjunction with removal of other restrictions on new entry is an important step to ensuring effective competition.

Impact on consumption and consumption patterns

Removing the needs criterion may lead to an increase in the number of applications for licences. However, in many areas the expansion in licence numbers, which has occurred over the last decade, will mitigate this effect. We doubt that a growth of licence numbers in itself would have much impact on consumption. It would primarily change the pattern of sales between outlets, reflecting customer demand and convenience. Lower prices and better service may encourage greater consumption, but the effect is not likely to be dramatic. Even if consumption were to increase, it cannot be assumed that problems of mis-use will increase. It is assumed that other controls which address problems more directly will remain in place. More direct policy instruments also include initiatives such as the *Responsible Serving of Alcohol*¹⁹ workshops run by the Commission across Victoria.

3.4 SECTION 60(1)

Section 60 prevents certain premises from obtaining a licence. The Commission must not grant a licence or permit in respect of premises used primarily as a drive-in cinema, petrol station, milk bar, convenience store or mixed business. Exceptions are possible, with the permission of the Minister, in cases where it can be established that the particular premises is in a tourist area or an area with special needs, and there are not adequate existing facilities.

These restrictions were inserted in the Act primarily in response to expressed public opinion at the time which showed a concern about under-age drinking. They were drawn much wider, however, than was intended by the Nieuwenhuysen review.

The restrictions raise numerous issues in application and anomalies are inevitable in relation to them. The Act does not define premises that are used primarily as a milk bar, a convenience store or a mixed business, nor does it distinguish between them. Related planning regulations, however, distinguish between various land uses by defining an amount of 'floor area' (of no more than 240 square meters used for selling food, drink and other convenience goods) as that which determines a 'convenience shop'²⁰. But is it practical to discern the difference between a convenience shop or mixed business and a supermarket by the physical size in which they operate? If it is, then consideration should be given to the possible impediments to innovation and differentiation between outlets.

¹⁹ Details are contained in Liquor Licensing Commission, Annual Report, 1996/97, p. 30.

²⁰ See Victorian Planning Provisions: Land Use Definitions, p. 74.

There appears to be significant discretion in relation to the interpretation of a tourist area (contrast the decisions made by the Commission in *J C and M A Neve* (1 March 1989) and *Ceranalto Pty. Ltd.* (6 December 1994) reported in *Bourke's Liquor Laws*). From the practical perspective of liquor control, it is hard to discern the logic of allowing licensed supermarkets to establish petrol facilities, but not allowing petrol stations to obtain a licence to complement other convenience store type items. There are anomalies also associated with 'grandfathering' arrangements for existing cinema licences. The Commission has not objected to the transfer of these licences, despite the legislative presumption that they had harmful consequences.

Although the prohibition on cinemas was removed in November 1995, the absurdity of restricting them from obtaining licences led one Commissioner to comment in the following terms:

'There are many cinemas in existence which enjoy the advantage of a licensed area obtained under the previous Act. There are others such as the one granted close by but not adjacent to a cinema at Dandenong [Roman Tavern] that have been granted under the current Act because they were able to demonstrate that the premises had a primary purpose beyond that of a cinema — in that case a large suburban shopping centre. A similar result occurred at Forest Hill Shopping Centre. There is nothing to preclude the granting of a licence to live theatres, sporting events or to rock concerts — all places where younger people gather. Nor I should add has this Commission ever experienced any breaches of the Act or any difficulties whatsoever with those licensed facilities that are close to cinema outlets. The applicant before me today has designed a delightful venue. I have no doubt it would be well operated. The legislation alone takes the view that its mere situation would mean a licence would be adverse to the community interest. Whatever the original purpose of the section it seems to me anachronistic and unsuccessful. Young people are exposed to alcohol through advertising, the proliferation of liquor outlets and the example of their elders long before they are 18. It is in their interests and that of society that they be educated in its use by observing adults properly and moderately enjoying its benefits in a civilised and controlled setting such as this venue would offer. It is to be hoped that parliament will reconsider the whole of the section and its unfortunate repercussions and discriminatory application'²¹.

We agree with the sentiments expressed by the Commissioner and believe they extend beyond cinemas to drive-in cinemas, as well as petrol stations, milk bars, convenience shops and mixed businesses. There is a distinct possibility that allowing drive-in cinemas to obtain a licence may invigorate these businesses and promote increased growth and diversity within that sector. There is no reason to suppose that the premises would be any more associated with irresponsible mixing of drinking and driving behaviour than would other on-premise consumption outlets.

Removing s.60 raises issues related to public interest, barriers to entry, and the consequences of increased access to liquor.

Removal would enable a greater diversity and mix of services to be offered from a broader cross section of outlets. For instance, petrol stations would be able to supply liquor. One advantage of buying liquor from a petrol station over buying liquor from a

²¹ Victorian Licensing Decisions, Euro Cafe Pty. Ltd., Application for a general (class 2) licence, Decision of Commissioner Bond, 3 March 1995.

bottle shop is the additional convenience of only having to travel to a single location to purchase both products. This would have a positive effect on consumer welfare.

Because s.60 creates barriers to entry for a certain class of applicant, its removal will enable a greater variety of outlets to provide liquor. Removing s.60 (in conjunction with the primary purpose provisions) could also allow competitive neutrality between petrol stations, convenience stores, liquor stores and supermarkets, some of which already supply both liquor and petrol.

Impact on competition

It is difficult to assess precisely the impact of removing these provisions given that the Commission could still take a quite restrictive approach to the grant of licences for such premises. It probably would, for example, insist on separate licensed areas. Would, for example, the Commission allow a petrol station to have a refrigerated cabinet for liquor along side its other refrigerated cabinets, or would it insist on a quite separate area being established similar to a specialist liquor outlet? The flexibility to operate licences in ways that fitted in with these businesses and did not require large set-up costs would be crucial in many cases.

We assume, however, that the policies adopted are not so restrictive as to deny new businesses in these categories the opportunity to obtain licences. The impacts we would see then are new entry into the industry, greater innovation and product differentiation. We would expect this to stimulate competition and promote competitive responses from incumbent firms. There would be a transition period when some firms would benefit and some would lose, but the industry overall should be boosted by the new prospects. In the longer term, we would expect a more settled situation to prevail. It is our view that convenience stores and petrol stations could become quite significant in relation to purchases for off-licence consumption, with specialist bottleshops declining in relative importance. We see nothing wrong with this. It would merely reflect the benefit consumers would obtain as a result of increased convenience.

No doubt there will be concerns in relation to petrol stations about drink-driving. We see no difference however, in driving to a specialist bottleshop to obtain liquor and calling into a petrol station to obtain liquor at the same time as petrol is obtained. Again we would assume all the normal restraints preventing sales to under age customers and are in place and are properly enforced.

It is important to see removal of the s.60 restraints as complementing the removal of the 8% rule. Any concerns that the latter may allow firms to obtain and exercise market power can be easily addressed by enhancing ease of entry to the industry by the removal of the s.60 restraints. It is possible that the likely losers, the specialist liquor outlets may protest about predatory pricing, but these complaints can and should be considered carefully and dealt with under the *Trade Practices Act 1974*. Competition is not about protecting competitors.

Impact on consumption and consumption patterns

A consequence of increased physical availability is that consumers will be better able to substitute between different sources of supply rather than simply increase their average consumption of liquor. Consumption on-premises is less affected by these restrictions but could be impacted in different ways. If packaged liquor prices were to decline as a result of enhanced competition, there could be some further boost to off-premises consumption. However, if more attractive on-premise consumption opportunities emerge, which are associated with venues and events like cinemas, there may be a slowing down of these trends. Neither effect is considered likely to be very significant.

We are unable to say anything definitive about the impact on particular groups in the community. In the absence of detailed research, any comments would be speculative and not particularly helpful. Even if the research was available, it is not clear that it would be helpful in deciding the policy issues involved.

Table 3.5

Summary – This table summarises the key impacts analysed in this report.

Restriction	Impact on industry structure	Impact on overall consumption	Impact on particular groups
Primary Purpose	<ul style="list-style-type: none"> • A simplified licensing scheme would mean fewer licence categories; • This would lead to more variety of outlets and less restrictive entry. • But restrictions on clubs are not addressed — little change may result. • More competition between licence groups leads to fall in prices. • Hotels to face increased competitive pressure. • Greater consumer amenity: from more product differentiation; increased diversity and mix of services. 	<ul style="list-style-type: none"> • Many factors influence demand for liquor, such as price, disposable income and tastes • A fall in price is suggestive of greater aggregate consumption, but • Impact not significant because. • The percentage change in price may only result in a less than proportionate fall in consumption • No corresponding increase in mis-use due to changing patterns of consumption. 	<ul style="list-style-type: none"> • More variety of outlets leads to increased access to liquor for all groups. • But offence provisions remain. • Low-income groups gain greater access to differentiated products and services previously only available to higher income groups
8%	<ul style="list-style-type: none"> • Removal would establish competitive neutrality for buying inputs between supermarkets and large buying groups • Less fragmentation in the industry. • Greater (input) buying power leads to lower input prices and greater economies of scale for supermarkets, allowing average costs to fall. 	<ul style="list-style-type: none"> • A fall in price of packaged liquor may lead to greater off-premise consumption. 	<ul style="list-style-type: none"> • Communities and consumers at supermarkets excluded by the 8% rule gain improved convenience of access to one-stop shopping/package liquor products.

Restriction	Impact on industry structure	Impact on overall consumption	Impact on particular groups
8%	<ul style="list-style-type: none"> • Lower average cost leads to a fall in packaged liquor price. • Specialist and Hotel bottleshops under increased competitive pressure. • If market power is exerted then actions are overseen by the Trade Practices Act. • Relaxing barriers to entry to other outlets is important to preventing market power. 	<ul style="list-style-type: none"> • Possible small relative increase in sales for off-premises consumption. 	<ul style="list-style-type: none"> • Increased convenience for all consumer groups.
'Needs'	<ul style="list-style-type: none"> • Economic decisions are left to the market which leads to a more efficient allocation of resources. • Greater potential for continued development of a diversity of licence facilities in circumstances where consumer demand indicates a need for more outlets. 	<ul style="list-style-type: none"> • Increase in number of licence applications, but • No significant impact on aggregate consumption. • May see changes to the pattern of sales between different types of outlets, reflecting consumer demand and convenience. 	<ul style="list-style-type: none"> • All groups remain subject to offence provisions. • Greater use of directly targeted policy instruments such as the Responsible Serving of Alcohol workshop program.
Petrol stations etc	<ul style="list-style-type: none"> • Competitive bias toward particular firms lifted. • Lower barriers to entry will increase competitive pressures. • Increased diversity and mix of outlets. 	<ul style="list-style-type: none"> • If prices fall then off-premises consumption may rise. • Greater (consumption) opportunities for substitution between source of liquor outlet. • Greater convenience of access to liquor outlets. 	<ul style="list-style-type: none"> • Indeterminate and ambiguous effect on all groups • All groups remain subject to offence provisions.

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