



# Policy

## Club Constitutions - Club and Club Restricted Licences

### Disclaimer

This Policy is designed to provide information in regard to the subject matter covered, and with the understanding that the Director of Liquor Licensing is not passing legal opinion or interpretation or other professional advice. The information is provided on the understanding that all persons undertake responsibility for assessing the relevance and accuracy of its contents.

## Introduction

Section 49(1)(c) of the *Liquor Control Act 1988* ("the Act") provides that the licensing authority shall not grant a club or club restricted licence unless satisfied that –

*...the constitution and rules of the club are of a kind appropriate for the purposes of a club seeking to be licensed, having regard to the terms and conditions of the licence sought...*

This document provides guidance to applicants for, and licensees of, club and club restricted licences on the development of club constitutions, rules and by-laws. Further, it identifies the key issues that are considered by the licensing authority when determining whether constitutions and rules are consistent with the intent of sections 48 and 49 of the Act.

## Legislative Provisions

Section 49(3) of the Act provides that the licensing authority shall not approve of a constitution or the rules of a club unless satisfied that –

- proper provision is made for the management of the affairs of the club by a committee of management elected by the general body of members and for the appointment of a Secretary; and
- provision is made for regular meetings of the general body of members and of the committee of management; and
- appropriate conditions governing admission to membership of the club exist and, in particular-
  - that a person may not become an ordinary member of the club unless duly nominated on proper notice being given to the ordinary members of the club, and subsequently elected by the general body of members or by a committee in accordance with the constitution and rules; and
  - that the number of persons who may be admitted to membership, or to a particular class of membership, does not exceed any limit imposed by the licensing authority having regard to the nature of the club or the accommodation in respect of which the licence is sought; and
  - where provision is made for honorary or temporary membership — that the number of persons who may be admitted to such membership does not exceed any limit that the licensing authority, having regard to the nature of the club, may impose; and
  - that any provision for membership of the club by reason of reciprocal arrangements with another club is made in accordance with the regulations;

- provision is made for payment in advance of a defined annual, half-yearly, quarterly or monthly subscription by the ordinary members of the club; and
- provision is made —
  - for proper records to be kept of the proceedings of the club and of the committee of management; and
  - for proper accounts to be kept of the financial affairs of the club; and
  - in the case of an unincorporated club, for the appointment of a person as trustee to hold the licence for the club.

Once a constitution and the rules have been approved, section 48(4) requires that —

- as soon as is practicable after making any proposal for a change —
  - in the appointment of a person as trustee to hold the licence for the club; or
  - to the constitution or rules of the club,the Secretary of the club is required to provide the Director with certified particulars of the proposed change. Effect is not given to the change without the prior approval of the Director;
- provide the Director with an up to date register of members, in respect of each class of membership, is continually available for inspection at the club premises; and
- the club ensures that its constitution and rules, as approved by the Director, are not contravened.

### **Guidance for developing constitutions**

In the context of the intent and purpose of the Act as it relates to club and club restricted licences, the following clauses are considered appropriate and should be included in the club constitutions and/or rules:

#### ***Objects***

A club licence is granted for the purpose of enabling the club to provide an additional service to its members. This liquor service is **ancillary** to the principal purpose of that club. Therefore, the objects specified in the constitution of the club must accurately and genuinely reflect that particular club and its purpose.

#### ***Subscription Fees***

A defined annual, half yearly, quarterly or monthly subscription fee shall be payable in advance - [section 49(3)(d) refers].

#### ***Applications for Club Membership***

All applications for membership shall be posted on the noticeboard of the club for a period of not less than seven days before election, provided also that an interval of not less than two weeks shall elapse between nomination and election – [section 49(3)(c) refers].

#### ***Register of Members***

The Club shall keep an up to date register of members in respect of each class of membership. This register must be continually available for inspection at the club premises – [section 48(4)(e) refers].

### ***Changes to the Constitution or Rules***

As soon as is practicable after the making any proposal for a change to the Constitution or Rules of the Club, the Secretary shall provide to the Director of Liquor Licensing, certified particulars of the change proposed. No effect will be given to the change without the prior approval of the Director - [section 48(4)(d) refers].

### ***Guests***

The maximum number of guests per member per day for the purposes of section 48(4)(b) of the Act is five (5) or such lesser number as may be permitted by the Director.

Applicants for club licences should note that the licensing authority has the discretion to require that changes be made to the constitution, so as to ensure that the club operates in a manner that is acceptable to the majority of members of the club or intended by the legislation. For example, one of those changes *may* be that a lesser number of guests per member per day is necessary to ensure that the club operates in a responsible manner or a manner which is consistent with the Club's objects.

### ***Temporary Membership***

Subject to the Act, a person who is on any day visiting a club (the "**host club**") as a member or an official of another club (which includes people who are assisting a visiting club) —

- that is to engage in a pre-arranged event with the host club conducted for the purposes of one of the host club's principal objects; or
- that is to hold a pre-arranged function at the host club involving the use of the host club's sporting facilities,

may, for the purposes of this Act, be taken to be a person who is accorded temporary membership of the host club on that day in accordance with rules approved by the Director – [section 48(5) refers].

### ***Corporate Membership***

The Act determines that appropriate conditions governing admission to membership of a club exist and in particular, that the number of members elected to a particular class of membership does not exceed any limit imposed by the licensing authority. A Corporate Membership category will be considered, however, such a class of membership will generally be required to comply with the following conditions:

- the maximum number of persons admitted membership to a Corporate Member class should not exceed approximately 5% of the total club membership, unless there are special circumstances;
- generally, the club must nominate the individual persons of corporations or companies who will be covered by such a class of membership. That is, approval will only be given to identified positions within that member corporation such as Chief Executive Officer, Managing Director etc. The entire staff body will not be given consideration; and
- nominations for election to Corporate Membership must be considered in a manner similar to that undertaken for election of ordinary members. That is, all applications should be posted on the noticeboard of the club for a period of not less than seven days before election, provided also that an interval of not less than two weeks elapses between nomination and election.

If the Club wishes to proceed with such a class of membership, provision for these conditions or rules must be made in the club constitution.

### ***Reciprocal Membership (or Provisional or Affiliate members)***

For the purposes of reciprocal memberships in section 49(3)(c)(iv), the following arrangements are prescribed in the *Liquor Control Regulations 1989*:

- at an intrastate level, reciprocal arrangements may be offered to like clubs (eg. bowling clubs with other bowling clubs, that is, clubs with the same primary club objects); and
- at an interstate and New Zealand level, reciprocal arrangements may be offered to any person who is a member of any bona fide club outside of WA.

Licensees must be aware that the number of persons granted membership under a reciprocal membership arrangement can not exceed any limit that may be imposed by the licensing authority. In imposing a limit, the licensing authority *may* decide to limit the membership category so as to ensure that the genuine intent of the club is maintained. Specific controls could include:

- a register of reciprocal members must be maintained whenever visiting the club;
- restrictions on advertising of reciprocal membership arrangements;
- a membership ceiling; and/or
- a clarification on the admission process and the membership fees applicable.

The legislative provisions for licensed clubs in Western Australia are quite different to those in other States, such as Queensland, New South Wales and Victoria.

It is also important to emphasise that a club licence is not a hotel, a tavern or a similar commercial licence. The provisions of section 49(1)(a), read in conjunction with section 37(1)(c)(i), requires that the sale of liquor is incidental to, and not the primary purpose of, members associating in a club. To this end, the Director of Liquor Licensing has a statutory responsibility to approve club constitutions and to ensure that they reflect the intent of the legislation.

### ***Club Management***

Pursuant to section 49(3)(e)(i) of the Act, the club constitution must have provision for:

- the management of the affairs of the club by a committee of management which is elected by the general body of members;
- the appointment of a secretary;
- regular meetings of the general body of members and of the committee of management;
- proper records to be kept of the proceedings of the club and the committee of management; and
- proper accounts to be kept of the financial affairs of the club.

### ***Appointment of Trustee***

Pursuant to section 49(1)(a) of the Act, the licensing authority shall not grant a club licence unless the applicant satisfies the licensing authority that they are a society, club, institution or other body of persons which is incorporated or is a body of such a size and nature that it is appropriate that the body should be licensed subject to the licence being held for the club by a trustee. Therefore, where the club is not an incorporated body, the following clause must be included in the constitution:

- The club committee is to appoint a trustee to hold the licence on behalf of the Club. The trustee must be approved by the liquor licensing authority prior to the appointment.

### *Juveniles*

Pursuant to section 120 of the Act, unaccompanied juveniles are generally prohibited from entering or remaining on licensed premises unless, in the case of a club, the presence of the juvenile –

- does not contravene the constitution and rules of the club;
- is permitted by the committee of the club; and
- does not contravene a condition of the licence.

From experience, the control over juveniles on club premises usually raises questions and concerns. For this reason, it is recommended that clubs consider making specific provision in the constitution or rules for juveniles on the licensed premises.

### *General*

In addition, clubs may wish to include the following provisions in the constitution or rules:

- No liquor shall be sold or supplied for consumption elsewhere than on the club premises unless such liquor is removed from the licensed premises by or on the instructions of the member purchasing the liquor.
- No payment or part payment to any secretary, treasurer, manager or other officer or servant of the club shall be made by way of commission or allowance from or upon the receipts of the club for liquor.
- No liquor shall be sold or supplied to any juvenile (i.e. any person under the age of 18).
- No stranger shall be permitted to use the club premises and no member or other person shall admit any stranger to use the club premises.
- Members may introduce guests to the club at any time provided that:
  - No member may introduce more than five (5) guests to the club at any one time.
  - A guest shall not be supplied with liquor in the club premises except on the invitation and in the company of that member.
  - A guest shall be supplied with liquor to be consumed on the club premises only.
  - The member introducing the guest shall be responsible for the proper conduct of that guest whilst on the club premises.
  - A member may, at their expense, and with the approval of the club committee, supply liquor to guests, without limitation as to number, at a function held by or on behalf of that member, at the club premises.
- Any person who has been refused membership of the club or who is under suspension or expulsion from the club, shall not be admitted as a guest of any member of the club.

There is no requirement under the Act for guests to sign a visitors' register, nevertheless, this is a sensible management control and clubs are encouraged to consider whether such a requirement should be included in their club constitution. Such a requirement reflects favourably on the clubs ability to control guests and member activities.

Finally, section 33 of the Act requires that each application must be dealt with on its own merits. Therefore, each applicant for a club licence will be required to submit its own constitution for consideration and approval.

Application kits can be obtained by downloading from the Department's website at [www.rgl.wa.gov.au](http://www.rgl.wa.gov.au) or contacting the Department on (08) 6551 4888.

**DIRECTOR OF LIQUOR LICENSING**