



Policy

Exemptions to the Liquor Control Act 1988

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 6(1)(o) of the *Liquor Control Act 1988* ('the Act') states that the Act does not apply:

"where the sale or supply of liquor is to, or the consumption of liquor is by, a person who is at least 18 years of age and that sale, supply or consumption is exempted by the regulations from the application of this Act".

This document provides guidance on the specific circumstances whereby the sale, supply and consumption of liquor is exempt from the application of the Act under the *Liquor Control Regulations 1989* ('the regulations').

Legislative Basis

The definition of 'sell' under section 3 of the Act includes:

- a) Agree or attempt to sell;
- b) Offer or expose for the purpose of selling;
- c) Send, forward or deliver for sale or on sale;
- d) Barter or exchange;
- e) Dispose, by lot or chance or by auction;
- f) Supply, or offer, agree or attempt to supply-
 - i. In circumstances in which the supplier derives, or would be likely to derive, a direct or indirect pecuniary benefit; or
 - ii. Gratuitously, but with a view to gaining or maintaining custom or other commercial advantage; or
- g) Authorise, direct, cause or permit to be done any act referred to in this definition.

Regulations 8, 8B, 8C, 8D and 8E of the regulations prescribe the situations whereby the sale of liquor (as per the above definition) is exempt from the Act. Regulations 8A and 8F prescribe the situations where the consumption of liquor (brought to the premises by the customer) is exempt from the Act.

Sales/Consumption Exempt from the Act

The Act regulates the sale, supply and consumption of liquor. However, there are a number of situations where the sale, supply and consumption of liquor is specifically exempted from the application of the Act. Such situations involve small amounts of liquor supplied in controlled environments and social situations where relatively few people are in attendance. These prescribed situations are only considered to be exempt from the Act when the exact conditions of the exemptions, as stated in the regulations, are met. The prescribed exemptions and the conditions of each are summarised below:

Live Entertainment Venues

This exemption applies only when BYO liquor is consumed at a live entertainment venue.

“Live entertainment” is defined in regulation 8A for the purposes of this exemption only. Live entertainment is musical, theatrical, dance or comic entertainment provided by one or more persons present at the venue. Live entertainment does NOT include:

- sporting contests;
- recorded music;
- DJs; and
- live broadcasts or transmissions.

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

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

- No more than 200 patrons are permitted on the premises at any one time;
- Juveniles must be accompanied by a responsible adult at all times (unless the juvenile is employed at the premises or providing entertainment);
- A drunk person is not allowed to consume liquor on the premises;
- X18+, R18+ or RC classified films are not permitted to be shown on the premises;
- RC, Category 1 or Category 2 restricted publications are not permitted to be shown on the premises;
- RC classified computer games are not permitted to be shown on the premises;
- No person on the premises can be indecently dressed or take part in indecent activities;
- Free drinking water must be provided to patrons at all times;
- The person in charge of the premises must notify the Director of Liquor Licensing, in writing, of their intention to allow the consumption of BYO liquor in their venue, at least 14 days prior to this occurring (a notification template *Notice of Intention to Allow Consumption of Liquor at a Live Entertainment Venue*, which can be used for this purpose, is available from www.dlgsc.wa.gov.au);
- The person/s in charge of operating the premises, employees, agents and contractors providing services can not:
 - be the subject of a prohibition order; or
 - have previously been found ‘not fit and proper’ (by the Licensing Authority) to have an interest in any licence or permit under any section of the Act.

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

Whilst the consumption of BYO liquor is exempt from the Act in many circumstances, it is important to note that section 119(7) of the Act prohibits allowing unlicensed premises “*to be kept or used as a place of resort for the consumption of liquor*”. The exemption relating to live entertainment venues therefore clarifies that this type of BYO consumption is not a breach of section 119(7).

Small Functions

The 'small functions' exemption:

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

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

- the total number of attendees over the entire course of the function does not exceed 100 and the service of liquor lasts a maximum of 2 hours (continuous), commencing no earlier than 6 a.m. and finishing no later than 10 p.m. on the same day; or
- the total number of attendees over the entire course of the function does not exceed 75 and the service of liquor lasts a maximum of 4 hours (continuous), commencing no earlier than 6 a.m. and finishing no later than 10 p.m. on the same day.

An "attendee" does not include a person who is:

- managing or supervising the function;
- providing services at the function (such as serving food or liquor; security etc);
- providing entertainment at the function or assisting a person who is providing entertainment.

Additionally, a drunk person is not allowed to consume liquor at the function, nor is liquor to be supplied to a drunk person.

For the purposes of this exemption, a function is defined under section 3(1) of the Act as:

"a gathering, occasion or event (including a sporting contest, show, exhibition, trade or other fair, or reception) at which it is proposed that liquor be sold or supplied to those present."

Where liquor is sold or supplied at a small function, the premises on which the function takes place is deemed to be 'regulated premises' under section 122 of the Act. Offence provisions under section 122 and section 115 therefore apply to the supply of liquor to juveniles and drunk persons, the consumption and possession of liquor by juveniles and the consumption of liquor by drunk persons on these premises.

Complimentary Supply by Business

Relevant only to the gratuitous supply of liquor when it is provided ancillary to the purpose of a customer's attendance at a business.

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

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

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

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

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

Tourism Operators

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

- the business must be accredited under the Australian Tourism Accreditation Program;
- the supply of liquor must be ancillary to the purpose of the business;
- the supply of liquor must not take place on a premises that is licensed under the Act;
- the supply and consumption of liquor must not take place on a public road;
- liquor can only be supplied or consumed with the permission of the person or authority in charge of the land or premises where this takes place;
- liquor must not be supplied to a juvenile or a drunk person;
- the supply and consumption of liquor must not take place in an area that has been declared as a liquor restricted area under section 175(1a) of the Act¹; and
- the person who supplies the liquor to the customer has successfully completed the 'Provide Responsible Service of Alcohol' course².

For the purpose of the regulations, the person who supplies the liquor to the customer is taken to mean the person in charge of the business such as the owner/manager and the tour leader. Staff that are involved in serving liquor (such as pouring glasses of wine for guests) will also require training, however staff who simply place liquor in a room or on a table for example, do not require training.

The 'Provide Responsible Service of Alcohol' course (SITHFAB002) is a nationally accredited course of training in responsible practices in the sale, supply and service of liquor which covers topics such as refusal of service, juveniles, identifying intoxication and refusal of service. Whilst parts of the course will not be relevant (as staff are not selling liquor), it is important that staff are aware of responsible practices so that liquor is not supplied to a juvenile or a drunk person in contravention of the exemption conditions.

Bed and Breakfast Guests

The supply of liquor by a person who conducts, supervises or manages a bed and breakfast facility (with a maximum capacity of 8 guests at any one time) is exempt from the Act provided that all of these conditions are met:

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

The operator of a bed and breakfast facility may instead elect to rely on the tourism operator exemption, if they meet the requirements of that exemption category (see above).

¹ A map showing the relevant restricted areas is available on the department's website: www.rgl.wa.gov.au

² This requirement comes into effect on 11 October 2017.

Farmers' Markets

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

“*Sample sizes*” are prescribed in regulation 5A and can not be greater than 100ml for beer, 50ml for wine and 15ml for spirits.

“*Farmers' markets*” are those markets where primary producers display and sell their products directly to the public. “*Primary producers*” include agriculture, pastoral pursuits, horticulture, grazing, dairy farming, bee-keeping, orcharding, viticulture, silviculture or other similar farming activities.

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

Organisers of Functions on Licensed Premises

Where the organiser of a function enters into an arrangement with a licensee of an appropriately licensed premises and:

- 1) the licensee provides the venue, food and liquor for the function, at a set price; and
- 2) the organiser arranges for the function to be advertised to the public and for the sale of tickets to the function,

then, the sale or supply of liquor by the function organiser is exempt from the Act, provided that:

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

Charter Vehicles

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

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

A 'responsible adult' is defined in section 125(2)(b) as:

"...an adult who is a parent, step-parent, spouse, de facto partner or legal guardian of the juvenile, or other person in loco parentis to the juvenile".

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

Warehouse

Where a premises is licensed as a warehouse (under the *Customs Act 1901*) and the sale of liquor in bond by the proprietor occurs with a person who proposes to personally take the liquor outside of Australia, this sale is exempt from the Act.

Transport Services

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

- on an interstate rail passenger service to or from Perth;
- on an aircraft during the course of a flight;
- on a commercial vessel in the course of an inter-State or overseas voyage;
- to the master of a ship as ship's stores, for consumption on that ship once it has passed outside of WA territorial seas; and
- on an intra-State cruise:
 - during the course of a scheduled deep water³ cruise; and
 - where the vessel has a minimum capacity of 100 passenger berths; and
 - that continues at least over one night; and
 - where liquor is sold to a fare-paying passenger or crew member who is over 18 years of age and is not drunk.

Delivery of Gifts

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

- the gift must be delivered between 7am and 7pm; and
- the person to whom the gift is delivered must be at least 18 years of age; and
- the quantity of the liquor sold or supplied can not be more than two litres; and
- the business of the vendor or supplier must be genuinely marketed as a service for the sale and delivery of gifts; and
- the gift must be packaged so that the person to whom it is delivered would be likely to know that it was intended as a gift; and
- the vendor or supplier must have purchased the liquor from the holder of a hotel or liquor store licence; and
- the value of the liquor and its container can not be more than half of the purchase price of the gift.

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

³ Deep water is characterised by water of considerable depth, especially able to accommodate oceangoing vessels.

Lottery Prize

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

Food Essence

The retail sale of an alcohol based food essence is exempt from the Act. This is defined as a flavour substance in liquid form, with a concentration of ethanol exceeding 1.15% by volume in a container that has a volume exceeding:

- 100 millilitres in the case of vanilla essence; or
- 50 millilitres in any other case.

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

Health Care Services

The sale or supply of liquor is exempt from the Act where it is to a patient or resident at a:

- nursing home;
- hospital;
- private psychiatric hostel; or
- residential facility operated by an approved provider of residential care.

The sale or supply is authorised by the person who conducts or manages the premises or is the approved provider of residential care.

Offence Provisions

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

Section 3A of the Act states that a person is 'drunk' for the purposes of the Act if:

- a) the person is on licensed or regulated premises; and*
- b) the person's speech, balance, coordination or behaviour appears to be noticeably impaired; and*
- c) it is reasonable in the circumstances to believe that that impairment results from the consumption of liquor.*

Business owners, managers and function organisers are advised to implement strategies to ensure that liquor is not consumed by juveniles or drunk persons on their premises.

The nationally accredited training unit on providing responsible service of alcohol covers topics such as duty of care, harm minimisation, refusal of service, affects of alcohol, juveniles, identifying intoxication and conflict resolution. Whilst this is not compulsory, training may assist with ensuring that liquor is not supplied to or consumed by juveniles and drunk persons, in breach of the Act. Further details regarding the course can be found in the Director's Policy titled *Mandatory Training*.

DIRECTOR OF LIQUOR LICENSING