



# Policy

## Extended Trading Permits - Sunday Trading for Non-Metropolitan Liquor Stores

### 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 60 of the *Liquor Control Act 1988* (“the Act”) provides for the Director of Liquor Licensing (the Director) to grant an extended trading permit (ETP) to authorise a licensee to sell and supply liquor under the licence, according to the tenor of a permit, in circumstances and at times, in which the licence would not otherwise apply.

Section 60(4)(g) of the Act specifically identifies that one of the reasons for which an ETP may be granted is extended trading hours. These ETPs can be approved for a period of up to five years.

This policy provides guidance on the Director’s requirements for liquor stores located outside of the Perth metropolitan area to trade on Sundays under an ETP.

### Information on How to Apply

Application kits containing a lodgement guide, the required application forms and information on the lodgement fee can be downloaded from the Department’s website [www.dlgsc.wa.gov.au](http://www.dlgsc.wa.gov.au) or by telephoning the Local Government, Liquor and Gambling Division on (08) 6551 4888.

### Factors Involved in Assessing Applications

In considering an ETP for extended trading hours, the Director will take into account the permitted trading hours specified in Division 1 of Part 4 of the Act, the matters specified in sections 60 and 76 of the Act, the overall merits of the particular application and most importantly, the objects of the Act as set out in section 5.

Additionally, in accordance with section 38(1)(b) of the Act and regulation 9F of the *Liquor Control Regulations 1989*, where an ETP is sought for a period exceeding three weeks, the Director will also need to consider whether the grant of the permit is in the public interest.

The following factors are relevant for Sunday trading for liquor stores located outside of the Perth metropolitan area for both on-going trade and special occasions:

## **1. Ongoing Extended Trading Permits**

In support of an application for ongoing Sunday trading (for a period exceeding three weeks), licensees will need to demonstrate that the grant of the ETP is in the public interest. Further guidance on what may constitute the public interest can be found in the objects of the Act, section 38 of the Act and the Director's *Public Interest Assessment* policy guideline.

Importantly, section 33(1) of the Act provides that the licensing authority has the absolute discretion to grant or refuse an application under the Act, on any ground or for any reason that it considers to be in the public interest.

Given that Government policy, as reflected in section 98D of the Act, is to prohibit liquor stores located outside of the Perth metropolitan area from trading on Sundays, the following additional factors will also be considered relevant:

- a) the Supreme Court's finding that the Act's ETP provisions do not require the Director to treat Sunday in the same way as other days of the week<sup>1</sup>;
- b) section 5(1)(c) of the Act, which requires consideration to be given to whether the application "caters for the requirements of consumers for liquor and related services" and in this context, it is considered that the public interest associated with an application for an ETP for a non-metropolitan liquor store to trade on Sundays:
  - i. is less likely to cater for the broader requirements of liquor consumers and related services, where the relevant liquor store is located within reasonable proximity to existing licensed premises that may already be authorised to sell packaged liquor on a Sunday;
  - ii. would only offer a limited benefit, since consumer requirements in the locality are already being met by the existing licensed premises, the only additional benefit the public would enjoy upon the grant of an ETP would be a potential increase in convenience and the benefit of this is far less significant than meeting a previously unmet consumer requirement; and
  - iii. as country communities may already have access to packaged liquor on Sundays from other licensed premises, travelling time to the nearest outlet will be a relevant matter and the mere inconvenience of consumers having to travel a reasonable distance to purchase liquor on a Sunday would also not normally be considered as sufficient justification or reason to grant an ETP<sup>2</sup>;
- c) whether trading on Sunday will provide consumers with access to additional services in conjunction with packaged liquor sales (although it should be noted that the added convenience to local shoppers at a local supermarket has not been considered by the Liquor Commission as a sufficient reason to grant an ETP in the public interest, which involves much broader considerations<sup>3</sup>); and
- d) whether the licensee has previously been granted an ETP to authorise trading on Sundays at the relevant liquor store.

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<sup>1</sup> See the comments of McLure J in *Re Romato; Ex Parte Mitchell James Holdings Pty Ltd* [2001] WASCA 28.

<sup>2</sup> See the observations of the Liquor Commission in *Redport Enterprises Pty Ltd v Executive Director of Public Health & Others* (LC 01/2016).

<sup>3</sup> See also *Redport Enterprises Pty Ltd*, supra.

## **2. Festive Season Permits**

The Christmas/New Year shopping hours and the requirements of the public for packaged liquor during the festive season, are circumstances that can justify the granting of ETPs for liquor stores to trade on the two Sundays preceding Christmas and the Sunday before New Year's Day.

## **3. Easter Permits**

In considering applications for ETPs from licensees of liquor stores located in a country townsite to trade on the Sunday of Easter, one of the circumstances of particular relevance to an application will be whether the liquor store is located in a holiday/tourist area which traditionally has a large influx of visitors over the Easter weekend.

## **4. Permits for Other Special Occasions or Events**

A licensee that wishes to apply to trade on a Sunday for a special occasion or event, such as a festival, must lodge submissions in support of their application that include the nature of the event, the additional number of people expected to visit the area or location, and the reasons why they believe that the demand for packaged liquor cannot be met by existing licensees in the area.

## **Non-compliance**

If a licensee fails to comply with the conditions of the permit, the licensing authority may decide to:

1. cancel the permit under section 60(8a) of the Act. Permits may be cancelled, at the absolute discretion of the licensing authority, if it is satisfied that the permit is no longer appropriate and in the public interest. Further, the decision to cancel a permit is not open to appeal, other than to the Supreme Court and only then on a question of law;
2. issue an infringement under section 167 of the Act to the licensee and approved manager;
3. require the licensee to show cause why more restrictive conditions should not be imposed on the licence;
4. lodge a complaint, pursuant to section 95 of the Act, for disciplinary action against the licensee. Under section 96 of the Act, if such a complaint was upheld by the Liquor Commission, a range of disciplinary actions could be imposed including: a reprimand and a fine of up to \$60,000. However, the penalty sought could also include the suspension of the licence for a specified period or cancellation of the licence.

**DIRECTOR OF LIQUOR LICENSING**