

Policy

Extended Trading Permits - Restaurants to Sell/Supply Liquor Without a Meal

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 50 of the *Liquor Control Act 1988* ('the Act') authorises a restaurant licence to sell and supply liquor for consumption on the licensed premises only ancillary to a meal supplied by the licensee and eaten by the patron on the licensed premises.

A '**meal**' is defined by the Act as food:-

- (a) that is eaten by a person sitting at a table, or a fixed structure used as a table, with cutlery provided for the purpose of eating the food; and
- (b) that is of sufficient substance as to be ordinarily accepted as a meal; and
- (c) that may consist of one or more courses;

but does not include any food prescribed by the *Liquor Control Regulations 1989* not to be a meal.

When read as a whole, the provisions of the Act in relation to restaurants (that is; sections 50 to 53) mean that the business conducted under a restaurant licence must consist **primarily and predominantly** of the regular supply to customers of meals to be eaten on the premises, by patrons seated at a dining table or fixed structure used for dining.

The Act provides flexibility, by way of an extended trading permit, for a restaurant licensee to also sell liquor without a meal, in certain circumstances. In this regard, however, section 50(1a) specifically provides that the consumption of liquor without a meal can only occur where an extended trading permit has been issued under section 60(4)(ca) of the Act, and only where the patron is sitting at a table, or at a fixed structure used as a table.

Further, section 53 of the Act provides that the authority conferred by section 50 or by an extended trading permit may be conditioned such that:

1. trading can be restricted to specified hours;
2. liquor may only be served and consumed at a dining table and not elsewhere;
3. furniture or fittings be provided or arranged in a specific manner;
4. no charge is levied;
5. the premises is maintained to a specified standard;
6. specified records are kept and made available for inspection; or

any other condition which the Director of Liquor Licensing thinks desirable to prevent improper arrangements or practices.

This publication provides guidance as to the legislative requirements associated with these “liquor without a meal” permits and the matters that the licensing authority may have regard to when considering such applications.

Legislative Provisions

Section 60(4)(ca) of the Act provides that an extended trading permit may be issued to a licensee of a restaurant, authorising the licensee to sell liquor for consumption on the premises, without a meal, during the hours which are permitted hours under a hotel licence and as set out in section 98. These permits are an addition to the licence and complement the authority granted under that particular licence; that is, permits do not alter the primary and predominant purpose of a licence type.

In essence, extended trading permits are a privilege and are not an automatic right.

In considering applications for “liquor without a meal” permits (which are not restricted to having a maximum of 120 persons on the premises at any one time), section 38 requires that the applicant demonstrate that the application is in the public interest, having regard to the following principal factors:

- a) the harm, or ill-health that may be caused to people, or any group of people due to the use of liquor; and
- b) the impact on the amenity of the locality within which the licensed premises, or proposed licensed premises, are to be situated; and
- c) whether offence, annoyance, disturbance or inconvenience might be caused to people who reside, or work in the vicinity of the licensed premises, or proposed licensed premises; and
- d) any other matter that may be prescribed (*Note: no other matter prescribed at this time*).

Application requirements and procedures

A licensee seeking the grant of “liquor without a meal” permit will be required to submit the documentation identified in the Department’s lodgement guide applicable to the application type. Application kits containing the lodgement guides and all the required forms can be downloaded from the Department’s website at www.dlgsc.wa.gov.au or by contacting the Department on (08) 6551 4888.

For restaurants that are restricted to a maximum of 120 persons on the premises at any one time: Lodgement Guide titled “*Extended Trading Permit – Restaurant Supply Liquor Without a Meal (Restricted to 120 Persons or Less)*”.

For restaurants with more than 120 persons on the premises at any one time: Lodgement Guide titled “*Extended Trading Permit – Restaurants Supply Liquor Without a Meal (Not Restricted to 120 Persons)*”.

It is important to note that for restaurants with more than 120 persons on the premises at any one time, the licensee must be able to *demonstrate how the grant of the application is in the public interest*. In this regard, as a minimum, licensees must satisfy the licensing authority that the grant of the application will not result in:

- a) increased harm or ill-health due to the use of liquor;
- b) a lessening of the amenity of the locality of the licensed premises; or
- c) undue offence, annoyance, disturbance or inconvenience to people who reside, or work in the vicinity of the licensed premises.

This can be achieved by: outlining the nature of the business at the restaurant; providing details about the nature of the clientele and how that may change through the duration of the day and evening; and by describing the interaction of the restaurant with the community around it.

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Further, the licensee will be required to identify how the conduct of business, consistent with the predominant purpose of the licence, will be managed; that is, what strategies will be implemented so that the premises continues to be operated as a restaurant and that at all times, proper facilities and services are in place for the sale, supply and consumption of genuine meals.

Applications for *renewal of existing Extended Trading Permits* are only required to be accompanied by a brief submission addressing why the permit will cater for the requirement of consumers.

The applicant will be advised of the advertising requirements specific to their application. (Forms in this regard will be provided by the Department).

Standard conditions

To ensure that restaurants do not become de-facto bars, conditions will be imposed so as to maintain the predominant purpose of a restaurant – that is, the regular supply of meals.

In this regard, where an application for a “liquor without a meal” permit is granted, in accordance with the powers given by section 53 and section 64 of the Act, the licence will be conditioned so that liquor may only be consumed by patrons while seated at a table, or a fixed structure used as a table for the eating of food, and not elsewhere and the sale and supply of liquor to patrons will be restricted to table service by staff of the licensee.

Further, conditions that *may* be imposed on the permit include, but are not limited to, the following:

1. Pursuant to section 50 of the Act, the purpose of the business carried on at the licensed premises must consist primarily and predominantly of the regular supply of meals (as defined by section 3 of the Act) to customers.

The licensee must determine what criteria are adopted to ensure compliance with this condition. For example, whether or not, for the previous financial year, that 60 per cent of the business turnover during the operation of the permit is derived from the supply of meals (as opposed to liquor) to customers. In this regard, only meals consumed at the licensed premises should be taken into account – the licensee should not include turnover derived from the sale of take-away meals when using this method.

2. For the purposes of establishing the primary purpose of the business under the licence, the licensee shall, if required to do so, provide to the Director of Liquor Licensing, for the previous financial year, a record of all transactions entered into by or on behalf of the licensee involving the sale or other disposal of liquor and food.
3. The kitchen situated on the licensed premises, together with kitchen and food service staff, must be open and operating with the restaurant’s regular full menu being available at all times liquor is sold and supplied to patrons. *The regular full menu refers to the menu that the restaurant would normally offer at a particular time of day (eg: breakfast, lunch, or dinner) to customers. It does not mean a reduced version of the menu that offers only finger foods or snack type options. Patrons must be able to order a genuine meal (as defined in section 3 of the Act) at any time during the permit hours.*
4. The premises must always be set up and presented for dining and tables cannot be removed or shifted in order to create dance floors or function areas.
5. The permit does not apply to any bar/servery area identified in the approved plans or, unless the relevant local government authority otherwise consents, to any external trading area that currently trades under an *al fresco* extended trading permit (i.e. over a local government controlled footpath area).
6. The licensee is prohibited from promoting and/or advertising the licensed premises as anything other than a restaurant.

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7. The maximum permitted trading hours in respect of the permit are:
 - Monday to Saturday between the hours of 6am and 12 midnight; and
 - Sunday from 10 am to 12 midnight;
 - No trading under the permit is authorised on Christmas Day, Good Friday or before noon on ANZAC Day.

Applicants for a “liquor without a meal” permit for restaurants not restricted to a maximum of 120 persons on the premises at any one time, will be expected to confirm that they have read and understood these standard conditions prior to a determination on the application being made. Further, licensees will be expected to confirm what menus are available for patrons to order from throughout the permit hours.

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). 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 (including when the premises no longer has as its predominant purpose the supply of meals). The cancellation of 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 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 section 95 complaint 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 action could be imposed including: a reprimand and a fine of up to a maximum of \$30,000. However, the Penalty sought could also include the suspension of the licence for a specified period of time or the cancellation of the licence.

DIRECTOR OF LIQUOR LICENSING