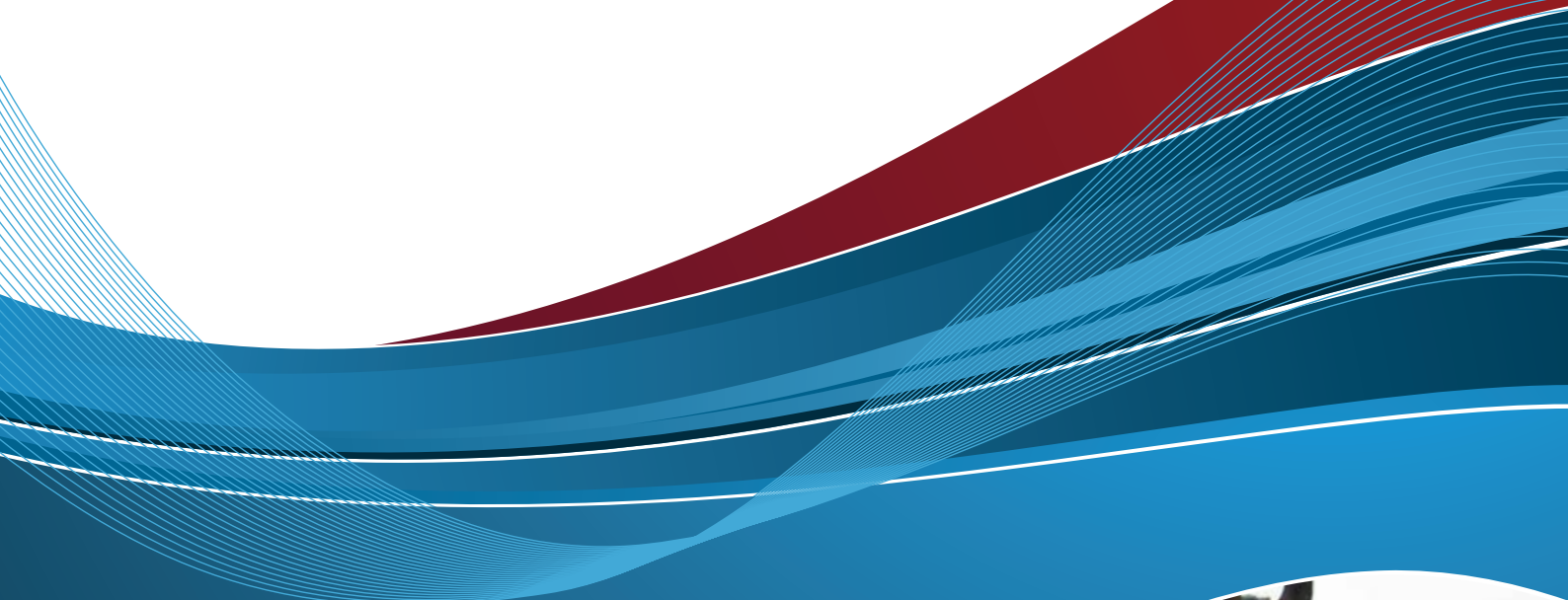




DEPARTMENT OF RACING,
GAMING AND LIQUOR

RGL FORM



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Fees set to increase on January 1

The fees associated with liquor licences are set to increase on January 1, 2010.

As with the delivery of all public services, liquor licensing fees are subject to regular reviews to ensure they meet a number of criteria.

These include:

- Being reflective of movements in the inflation rate;
- Being able to achieve, or make adequate progress towards achieving, full cost recovery;
- Being fair and equitable; and
- Being competitive in comparison to service providers locally and in other jurisdictions.

As part of the cost recovery process endorsed by the Economic and Expenditure Reform Committee and Cabinet, the WA Police Service is now passing on the cost of carrying out integrity checks which are required under the Liquor Control Act 1988.

This has put an increased pressure of approximately \$700,000 on the Department's annual budget.

The Department's move towards full cost recovery means it is necessary to pass more costs on to licensees.

It is envisaged that the increased fee structure will raise approximately \$1.7 million for the Department.

Once the additional integrity check cost is incorporated, the current Consolidated Revenue Fund commitment to the Department of \$3.8 million per annum should be reduced to about \$2.8 million.

As part of the above process, the fee structure for applying for the approval of a person in a position of authority will also change.

Currently, approval for a person in a position of authority is given, once probity checks have been carried out, as part of the application, and no separate fee is applicable.

After the grant of a licence, a separate application fee applies for further persons of authority to be approved.

For example, a company undergoes a change in its directors after a licence has been granted. To be considered a person in a position of authority, each new director must make a separate application and pay the appropriate fee.

From January 1, 2010 individuals seeking approval to become a person of authority will be required to pay an application fee of \$140, either before or after the licence is issued. This is in addition to the licence application fee.

The change in the fee structure will also have an effect on Extended Trading Permits (ETPs) that are sought for a period of 21 days or less (these days are not required to be consecutive).

Currently, the application fee for each day to which the ETP applies is \$65 up to a maximum of \$500.

As of January 1, 2010 this fee will increase to \$100 for each day up to a maximum of \$1000.

In addition to the daily fee of \$100, an additional fee of \$100 will apply for each occasion within the 21-day period that includes times extending beyond midnight on a Saturday, or beyond 10pm on a Sunday.

For example, a licensee applying for an ETP on a Sunday to trade until 11pm will be required to pay a total application fee of \$200.

RGL FORM



There are strict laws governing the employment of juveniles on licensed premises.

Tavern fined for employing juveniles sends reminder to industry

A \$6000 fine recently handed down to a Karratha licensee serves as a timely reminder to other licensees about the laws governing the employment of juveniles on licensed premises.

The charges relate to a tavern which was fined in the Perth Industrial Magistrate's Court for employing two boys aged 14 years.

The boys' duties included collecting cutlery, crockery and empty glasses inside and outside the tavern.

Under the Children and Community Services Act 2004, it is illegal for children under the age of 15 to be employed on licensed premises.

Juveniles aged between 15 and 18 can be employed on licensed premises, however their duties must not be liquor-related.

Duties that are deemed to be liquor-related include the service of alcohol, the removal of glasses that have contained alcohol and the changing of beer barrels.

However, with the permission of the Director of Liquor Licensing a juvenile 16 years or over may be employed in the service of liquor ancillary to a meal as long as they are enrolled in a recognised hospitality course.

Furthermore, they must be supervised at all times and their work must be assessed for the purposes of the training course.

For more information on juveniles and licensed premises, visit <http://www.rgl.wa.gov.au/Default.aspx?Nodeld=155&DocId=432>

New seminars proposed for existing licensees

The Department of Racing, Gaming and Liquor is considering the introduction of information seminars for existing licensees.

To run alongside the Customer Service Team's regular information seminars for prospective licensees, the sessions for existing licensees will cover a number of topics that affect a licensee's daily business.

For instance, licensees will be able to re-familiarise themselves with topics such as:

- What constitutes the licensing authority;
- Selling liquor in accordance with licence conditions and the Liquor Control Act 1988;
- Licensees' obligations and responsibilities;
- Licence fees; and
- The powers and obligations of the licensing authority.

Customer Service Coordinator Richard Gregor said the seminars would also cover a number of areas of the Act that licensees may not be overly familiar with.

"You can't expect everyone to know the Act inside out so these seminars will draw licensees' attentions to lesser known areas of the Act," he said.

"That way, there should be less confusion when it comes to knowing their rights and responsibilities as far as operating licensed premises is concerned."

Other topics to be covered in the seminars include various offences under the Act, how to handle complaints and where to get further information on issues such as liquor accords and other areas associated with liquor licensing.



The new seminars are intended to provide information to licensees to assist them in meeting their rights and responsibilities under the Act.

RGL FORM

Prohibition orders: how they work and what they are used for

There has recently been significant media attention regarding the issue of prohibition orders and how they are being implemented.

Currently, there have been four prohibition orders made by either the Director of Liquor Licensing (DLL) or the Liquor Commission.

Essentially, a prohibition order can mean:

- A person is prohibited from being employed by a licensee at a specified licensed premises, licensed premises of a particular class or any licensed premises; or
- A person is prohibited from entering a specified licensed premises, licensed premises of a specified class or any licensed premises.

The Liquor Control Act 1988 states that the Commissioner of Police may apply to the Director of Liquor Licensing for a prohibition order to be made against a particular person.

Under section 24 of the Act, the Director can refer the matter directly to the Liquor Commission for determination.

Prohibition orders can be issued to people who are proven to be involved in repeat anti-social behaviour in or around licensed premises, or whose employment in licensed premises is deemed to be problematic due to their involvement in serious or organised crime.

An application for a prohibition order under section 152B of the Act must set out the reasons why a person should be prohibited and any other information that is relevant to the issue.

This can include details of any criminal convictions and any information regarding the person's involvement in serious and/or organised crime.

The DLL must give the person who is the subject of the application written notice that states that the application has been made and explains the proposed effect of the order.

The person must also be informed of the information and documents provided in support of the application, and be given reasonable opportunity to make submissions or be heard in relation to the matter. However, the Act states that the Director of Liquor Licensing must not disclose information that is classified as confidential by the Commissioner of Police.

The Director of Liquor Licensing may impose a prohibition order only if he/she is satisfied it is in the public interest to do so.

A prohibition order can be issued for a maximum of five years, or two years for a juvenile.

A \$10,000 penalty applies to a person who is given a prohibition order and fails to comply with that order. Any person given a copy of the prohibition order but continues to employ the person who is subject to the order also commits an offence. The penalty for this offence is \$10,000.

A list of people to whom prohibition orders have been issued is available on the Department's website.

Disclaimer: The information provided in this fact sheet is general in nature – for full details, reference should be made to the Liquor Control Act 1988.



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Commission affirms Director's decision to refuse tavern licence

A decision by the Director of Liquor Licensing (DLL) to refuse an application for a tavern licence in Carramar was recently affirmed by the Liquor Commission of Western Australia.

In making his decision to refuse the licence for the Carramar Family Pub, the DLL considered a significant amount of objections which, among other issues, referred to the "offence, annoyance and disturbance" to residents if the licence was granted.

Objections were also lodged on the grounds that the grant of the licence would not be in the public interest and that it would cause harm or ill-health to people due to the use of alcohol.

Other concerns raised by objectors included a lack of demand for the services provided by the applicant, inadequate parking facilities and the potential for anti-social behaviour.

In considering the matter, the Liquor Commission was "not satisfied that the applicant had demonstrated that circumstances exist whereby it would be in the public interest to approve the conditional grant of a liquor licence".

Among its reasons for affirming the DLL's decision, the Commission determined that the lack of a designated "tavern" use for the site in the associated planning documents had created a public perception of other potential commercial uses.

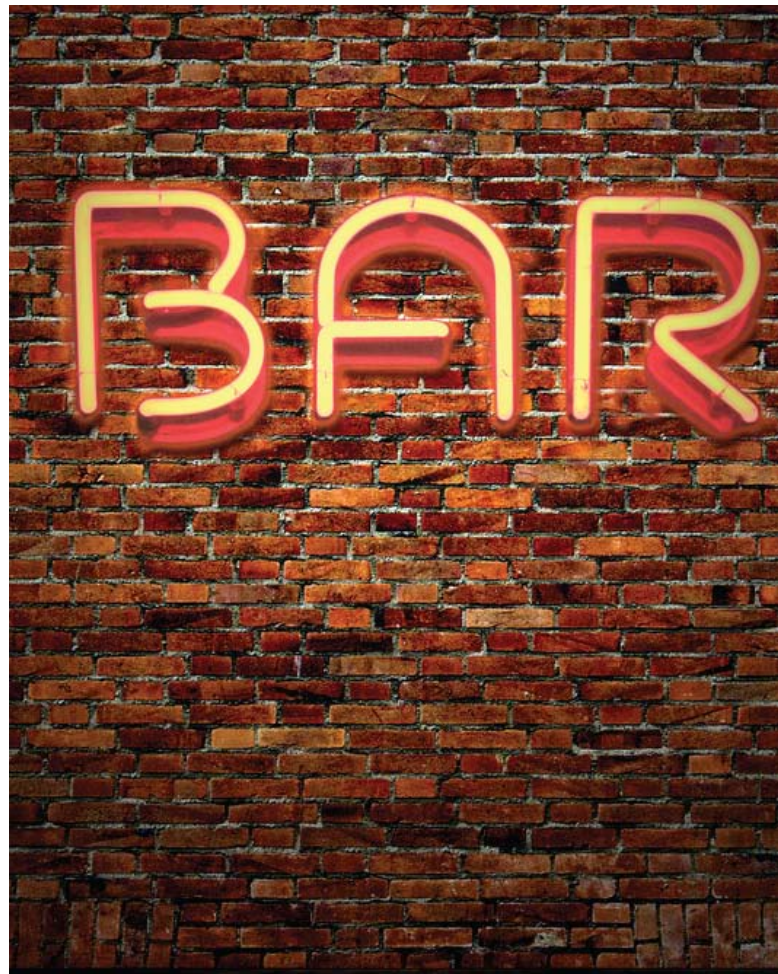
This perception was fuelled by the property developer originally issuing a brochure that showed the site as a potential "service station".

The Commission noted that residential objectors had stated their decision to purchase land in the area was influenced by the information contained in the brochure, and they would not have bought in the area had they known the site was to be used for a tavern.

In reaching its decisions, the Commission balanced the competing interests between the right of the applicant (under planning regulations) to develop a tavern on the site and the rights of residents to live in an environment they expected to be available to them in a residential location.

The Commission also referred to the fact that the nearest residential site to the proposed tavern was just 25m away, and that there was a greater potential for impact on the amenity of the area through the establishment of a licensed premises than a service station.

The Director's decision in relation to this matter can be viewed at www.rgl.wa.gov.au while the Commission's decision can be seen at www.liquorcommission.wa.gov.au



There have been some changes in the application process for ETPs, including liquor without a meal permits.

RGL FORM

Race fields legislation should provide a more even track

In the last edition of RGL Form it was reported that legislation requiring all licensed betting operators to pay a fee for using Western Australian race fields was to be introduced later this year.

That legislation has now been passed by Parliament to provide the legislative framework authorising the collection and disbursement of the racing bets levy payable by domestic and offshore betting operators – it is expected to come into operation in January 2010.

The introduction of the race fields legislation follows a similar move by a number of eastern states governments which has seen the introduction of a fee for bookmakers who accept bets on race fields in those states.

Essentially, the legislation authorises wagering operators licensed in Australia to engage in or conduct betting on Western Australian race fields subject to:

- The payment of a levy to the Gaming and Wagering Commission for the use of the information (that will be distributed to racing clubs registered with RWWA); and
- Wagering operators complying with information requirements in relation to matters concerning the integrity and reputation of the racing industry.

Offshore wagering operators will have to apply to the Gaming and Wagering Commission for approval to use the race fields, and will be subject to the same conditions as those operators licensed in Australia.

Due to the abolishment of the bookmakers' two percent betting levy payable on turnover, transitional provisions have been made for local bookmakers to be credited amounts paid to the racing clubs against any amount the bookmaker is liable to pay under the Racing Bets Levy Act.

If licensed betting operators pay the product fee and provide the appropriate information to maintain integrity in the industry, they will not be required to obtain permission to use WA race fields.



Legislation has now been passed that requires all licensed betting operators to pay a fee for using WA race fields.



The restrictions relate to the sale of packaged liquor in a number of northern Goldfields towns.

Restrictions announced on sale of packaged liquor in northern Goldfields

The Director of Liquor Licensing (DLL) recently announced restrictions on the sale of packaged liquor in a number of northern Goldfields towns.

Earlier this year, the DLL received a request from the Executive Director Public Health and the Acting Commissioner of Police in relation to the level of alcohol-related harm being experienced in the northern Goldfields.

Information provided to the DLL included a summary of health and police statistics which demonstrated the level of alcohol-related harm being experienced in Laverton, Leonora, Leinster, Kookyne, Agnew and Menzies.

On considering the information provided to him and submissions by licensees in the affected towns, the DLL imposed the following restrictions:

- Packaged liquor may only be sold on or from the licensed premises between 12 noon and 9pm, except to a lodger;
- The sale of packaged liquor with an alcohol content of six or more percent in containers of more than one litre is prohibited, except to a lodger or liquor merchant; and
- The sale of packaged beer in glass containers of more than 400ml is prohibited, except to a lodger or liquor merchant.

The restrictions were introduced under section 64 of the Liquor Control Act 1988 which permits the licensing authority to impose conditions that minimise the harm or ill health caused by the use of liquor.

RGL FORM

Commission overturns ETP decision on Mandurah liquor store

Further in this instance the proposed Sunday trading hours being sought by the applicant are consistent with the established and approved Sunday trading hours of the centre which restricts the number of Sunday trading days to be in accordance with the recognised market demand.

- The Commission thus finds that the applicant has met the requirements of section 38(2) of the Act and it follows that on this ground alone the application should be allowed and the ETP granted.”

All decisions made by the Liquor Commission can be viewed at <http://www.liquorcommission.wa.gov.au>

Act clear on issues surrounding selling or supplying liquor outside permitted hours

Licensees are reminded that the Liquor Control Act 1988 is clear on the rules governing the sale and/or supply of liquor on licensed premises.

The relevant sections of the Act are quoted below:

(1) Where a licensee, except during permitted trading hours –

- (a) On or from licensed premises sells or otherwise makes available, whether personally or by an employee or agent, any liquor to any other person, whether consumed or to be consumed on or off the premises; or
- (b) Whether personally or by an employee or agent, permits liquor to be consumed on the licensed premises.

that licensee, and the employee or agent concerned, commits an offence, unless section 112 applies.

Penalty: In the case of the licensee or manager \$10,000, in the case of an employee or agent \$4000.

(2) Subject to this Division, where at a particular time a licensee is not authorised to sell liquor to a particular person if that person then –

- (a) Purchases or consumes liquor, or is in possession of liquor, on the licensed premises; or
- (b) Takes liquor from the licensed premises.

That person commits an offence.

Penalty: \$2000

(2a) To avoid doubt, an act referred to in this section constitutes an offence if done while a licence is suspended.

(3) For the purposes of this Act, evidence that a person was on licensed premises or took liquor from licensed premises at a time when the licensee was not authorised to sell liquor to that person shall, in any proceedings relating to an offence under this Act, be evidence that the person was there for the purpose of purchasing or consuming liquor without proof of actual purchase or consumption and the burden of proving that this section was not contravened shall be upon that person.

Section 112 states that the above does not include:

- (a) Where any liquor was sold on licensed premises during the permitted hours –
 - (i) During the first 15 minutes after the end of those hours, or of any period forming part of those hours, the possession or consumption of that liquor on the premises, or, the taking away of that liquor if it is packaged liquor;
 - (ii) During the first 30 minutes after the end of those hours, or of any period forming part of those hours, the possession and consumption of the liquor supplied as an ancillary to the meal, by persons taking a meal there.
- (b) The possession or consumption by any person of liquor on premises where the person resides;
- (c) The consumption, on licensed premises by a guest of a lodger, of liquor supplied in the presence, and at the expense, of the lodger; or
- (d) As regards licensed premises –
 - (i) The taking of liquor from the premises by a person who resides there;
 - (ii) The supply of liquor to a person (not being a lodger) who resides, or carries on or is in charge of the business, there, or the possession or consumption of liquor supplied at the expense of that person in a private room reserved for the personal use of that person by any members of the family or private guests of that person; or
 - (iii) The supply of liquor for consumption there, to persons employed for the purpose of the business carried on under the licence, at the expense of their employer or a person carrying on or in charge of the business there, or the possession or consumption of the liquor so supplied.

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The Liquor Control Act 1988 is clear on the rules governing the sale and supply of liquor on licensed premises.

Act clear on issues surrounding selling or supplying liquor outside permitted hours

(continued from page 7)

But the burden of proving that this paragraph applies lies on the person charged with the offence.

(2) It is a defence to a charge of an offence that liquor was sold or supplied to a person in contravention of section 109, 110 or 111, in circumstances in which the sale or supply would have been authorised had the liquor been consumed ancillary to a meal, that the person selling or supplying the liquor concerned reasonably

believed that the person to whom the liquor was sold or supplied was to be supplied by the licensee with, and would eat, a meal.

There are certain exemptions to the above that relate to lodgers. The Act defines a "lodger" as "a person residing, whether casually or permanently, on the premises".

Sections 105 and 106 of the Act deal with the issues of lodgers.

NB: Legislation quoted in the above article may be subject to factual/typographical error. Reference should be made to the Liquor Control Act 1988.

Reminder to update your details with the Department

As part of the Department's plan to reduce the amount of paper-based correspondence, most future communication with licensees and other stakeholders will be done electronically.

It is imperative that the Department has your current contact email address as this will lead to a more immediate and efficient communication system. Similarly, all licensees are encouraged to regularly check the Department's website for the latest news on issues that affect liquor licensees.

The website also includes a number of fact sheets that explore the more common areas of the Act. These will be added to as the need arises.

Licensees and other stakeholders are urged to check that the email address they have registered with the Department is current, and is one that is checked regularly. For more information please call the Department's customer service team on 9425 1888.