



PRODUCER'S LICENCE

PRODUCER'S LICENCE APPLICATIONS

Liquor Control Act 1988

Information Bulletin No. 15 (Effective May 2007)

WHAT IS A PRODUCER'S LICENCE?

A producer's licence authorises the licensee to sell liquor that has actually been produced by, or under the control or direction of, that person.

The holder of a producer's licence can only sell and supply liquor on and from its licensed premises and not otherwise. If the producer wishes to sell its product at another venue (eg: at a show, festival, conference, function, wine tasting etc), then the licensee must lodge an application with the licensing authority for either an Extended Trading Permit or an Occasional Liquor Licence.

For further information regarding Extended Trading Permits and Occasional Liquor Licences please refer to the policy guideline available on our website or upon request.

WHAT LICENCE CONDITIONS WOULD APPLY?

The Act provides for the following licence conditions and trading options, depending on whether you are a producer of wine, beer or spirits [section 55(1)(a)]. In the case of —

- *Wine or spirits made from grapes*, liquor may be sold or supplied for consumption on a part of the licensed premises that has been specifically approved for on-premises consumption by the Director and/or in sealed containers for consumption off the premises.
- *Spirits not made from grapes*, liquor may be sold or supplied in sealed containers for consumption off the licensed premises.
- *Beer*, in sealed containers for consumption off the licensed premises.

Trading Hours

Generally, a licensee is authorised by a producer's licence to trade at any time except on Anzac Day where trading cannot occur between 3am and midday.

On Christmas Day and Good Friday, however, the licensee is authorised to trade between 12 midday and 10pm ancillary to a meal being provided by the licensee.

*A "meal" is defined under the Act as "..... food that -

- is eaten by a person sitting at a table, or fixed structure used as a table, with ^cutlery provided for the purpose of eating the food;
- is of sufficient substance as to be ordinarily accepted as a meal; and
- is taken to comprise of such courses as would ordinarily be accepted as forming part of a meal."

^ Cutlery also includes eating utensils such as chop sticks.

REQUIREMENTS TO BE MET IN ORDER TO OBTAIN A LICENCE

The Act specifies that a person is taken to have produced liquor if:

- the wine made from grapes was fermented by or under the licensee's control or direction and if blended, the wine was fermented from produce grown or produced in Australia;
- the wine, where not made from grapes, was made from produce grown, produced or obtained by the licensee;
- the spirits were distilled by the licensee; or
- the beer was brewed by the licensee.

The provisions of the Act empower the licensing authority to only grant a producer's licence where the Director is satisfied that the applicant for a licence will harvest sufficient produce to be a genuine producer of liquor. To assist in assessing this, the following guidelines are considered to be the minimum requirements:

1. the applicant must be the sole occupier of the vineyard to which the application relates and this vineyard must yield sufficient produce, and continue to yield sufficient produce, to enable the applicant to be considered a genuine producer of liquor for the duration of the licence;
2. the minimum size of the vineyard should be no less than 1.5 hectares of vines in full bearing or it must be able to produce tonnage for approximately 5000 bottles of wine per year;
3. if there are no production facilities on the proposed licensed premises, the applicant must have access to such facilities; and
4. where the producer proposes to operate a cellar door, that cellar door facility must be in reasonable proximity to the vineyard/production location.

Producer's cannot rely on another licensee's licence to sell their liquor.

The ongoing validity of a producer's licence requires that the licensee continues to meet the above minimum requirements. If it appears to the Director that the licensee has ceased to carry on the business of being a genuine producer, section 92(a) of the Act empowers the Director to suspend the operation of a licence.

CONSUMPTION ON THE PREMISES

The licensing authority may approve a part of the licensed premises for consumption on the premises, including the provision of tastings where the applicant has provided –

- plans of the premises, in accordance with the requirements of regulation 11 of the *Liquor Control Regulations 1989*;
- appropriate toilet facilities;
- Local Health and Planning Authority approval for the consumption of liquor on the premises (i.e. section 39 and 40 certificates); and
- met any other lawful requirements of the Director, taking into account the nature of the application.

Tasting Sample

The sample amounts that can be offered by licensees when conducting tastings (whether by way of free sample or not) is as follows -

- Wine - 50 mls
- Beer - 100 mls
- Spirits - 15 mls

In all other cases, the licence will be conditioned to only allow the sale of packaged liquor for consumption off the licensed premises.

WHAT IS CONSIDERED TO BE A "GENUINE PRODUCER" UNDER THE ACT?

There is no specific restriction with regard to harvest size for a producer's licence under the Act.



However, the Regulations require that the licensing authority be satisfied that the vineyard, orchard or apiary is able to yield sufficient produce to enable the applicant to be regarded as a genuine producer of liquor.

Based on discussions with the Department of Agriculture and members of the wine industry, it was determined that to be commercially viable, tonnage sufficient to produce 5000 bottles per year would be a reasonable guideline for determining what is a "genuine producer". However, this principle is only a general policy guideline for decision-makers and is not fixed. Each application is considered on its merits and applications have, in the past, been approved in respect of producers with less annual tonnage. In these cases, the licences are conditioned

such that the licensee is only authorised to sell and supply liquor produced from produce grown by the licensee in its own vineyard, orchard or apiary.

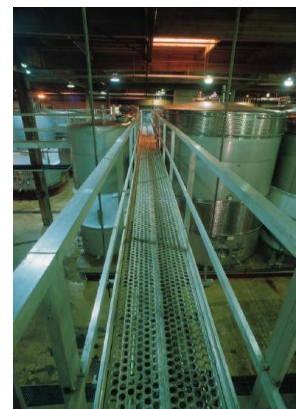
Local Government Approvals

You will need to provide certificates from the relevant local government authority demonstrating health and planning approval of the premises in accordance with sections 39 & 40 of the Act.

CONDITIONS RELATING TO BLENDING AND CLEANSKINS

The holder of a producer's licence cannot lawfully purchase wine that has been produced by another person and then label or re-label that wine for subsequent sale, as the wine would not constitute liquor that has genuinely been produced by that person.

Where a person trading under a wine producer's licence purchases wine, that wine can only be resold under the licence if it has been blended with at least 50 per cent of wine that has been fermented by or under the direction of the holder of that producer's licence, so that the resulting wine is uniquely that person's own produce. Similarly, if the holder of a producer's licence buys wine already bottled (i.e. "clean skins") and then allows it to mature in the bottle, this is not considered to be production of wine, and the person cannot sell that wine under a producer's licence.



GENERAL REQUIREMENTS RELATING TO LICENCES

Every producer's licence is subject to the condition that the licensee occupies, and retains a right to occupy, the licensed premises to the exclusion of others. If the licensee ceases to occupy the licensed premises, whether or not to the exclusion of others, then the interest of the licensee in the licence terminates [section 37(5)].

A producer's right to occupy the licensed premises is usually by way of leasehold or freehold ownership. This means that the holder of a producer's licence cannot sell or assign the right to occupy the licensed premises; or the right to carry on the business under the licence, to any other person or entity, without first obtaining the approval of the licensing authority.

In order to sell the business, the licence must be transferred to the buyer before settlement [section 84].

Where a producer's licence is transferred, the Act provides that the person who purchased the business may lawfully sell liquor that was produced by the transferor or a previous licensee or occupier of the licensed premises before the date of the transfer as if it had been produced by the transferee. [section 85(3)].

EXTENDED TRADING PERMITS

The licensee of a producer's licence may apply for an extended trading permit in accordance with **section 60** of the Act to authorise any of the following –



- the sale and supply of liquor ancillary to a meal supplied at the premises by the licensee outside permitted trading hours. The area must be operated by the licensee and not a third party;
- the sale of local wine or beer at a Wine and Food Festival or a Regional Agricultural Show within the same locality where the producer's licensed premises is situated. The permit would authorise tastings, consumption on the permit premises, as well as the sale of packaged liquor for consumption off the permit premises; or
- the sale of wine or beer at a Wine and Food Festival or a Regional Agricultural Show located outside of the locality where the producer's licensed premises is situated. The permit would authorise tastings only.

WHO MAY APPLY FOR THE GRANT OF A LICENCE?

Section 35 of the Act sets out who can make application for a liquor licence. An application can be made by –

- an individual person;
- two or more individual persons
- a company; or
- an association.



In respect of an applicant consisting of a company, any person who will occupy a position of authority as a **director** or **shareholder** in any shareholding company with an interest in the business under the licence, is required to be approved and must be stated on the application.



PLANS AND SPECIFICATIONS

Plans of the proposed premises are required to be lodged with the application in order for the licensing authority to define the area in which the sale, supply and in some cases, the consumption of liquor will occur if the licence is granted (**section 66**). Please refer to Bulletin No. 25 “Plans and Specifications” for further information.



Taking of Fingerprints

Please note that during the processing of the application, applicants may be required to have their fingerprints taken at their nearest Police Station in order to determine their probity.

Important Information

Applications can not be granted if the applicant is -

- bankrupt or has assigned his/her estate for the benefit of his/her creditors;
- incapable of managing his/her affairs because of mental disorder;
- under sentence of imprisonment;
- under receivership or official management, or is in liquidation (companies only);
- disqualified from holding a licence, or holds a licence which has been suspended, as a result of previous disciplinary proceedings;
- a juvenile (ie: less than 18 years of age); and
- a Commonwealth or State public servant (including employees of Crown instrumentalities), unless the licensing authority is satisfied that there is no conflict of interest between the applicant's employment and the operation of the licence.

Section 34

PUBLIC INTEREST TEST

In the case of an application for the grant of a producer's licence, the applicant will be required to demonstrate that the application is in the public interest, having regard to the likely health and social impacts on the community and sub-groups within the community.

The public interest test will require that the applicant satisfy the licensing authority by way of a public interest assessment that it is in the public interest for the application to be granted. For more details on the public interest test, refer to policy guideline “Public Interest Assessment” available upon request or on our website at www.rgl.wa.gov.au.

ADVERTISING

In respect of applications for the grant of a producer's licence, the applicant will be required to:

Advertising Period

The advertising dates will be specified by the licensing authority at the time of lodging the application.

- Undertake a letter drop to residents and businesses within a 200 metre radius of the proposed premises, giving notice of the application and the intended manner of trade. This letter must be delivered on the first day of the advertising period and must identify the last date by which objections may be lodged with the licensing authority. The advertising period will be 28 days.
- Serve notice of the application and intended manner of trade on all: schools and educational institutions; hospitals; hospices; aged care facilities; any drug and alcohol treatment centres; any short term accommodation or refuges for young people; child care centres; churches; any local government authority; and any local police stations, which may be situated in the specified locality of the proposed premises. This notice must be served on the first day of the advertising period and must identify the last date by which objections may be lodged with the licensing authority.
- Serve notice of the application and intended manner of trade on any local aboriginal community, and where applicable, on a Regional Office of the Department of Indigenous Affairs. This notice must be served on the first day of the advertising period and must identify the last date by which objections may be lodged with the licensing authority.
- Advertise the application in *The West Australian* and on the site of the premises for a 28 day period.
- Make a copy of the Public Interest Assessment submission available for public inspection at the place that has been identified in the letter drop and notice served to the parties in point 2 and 3 above.

OBJECTIONS

Objections may be lodged in respect of an application for the grant of a producer's licence.

Where an objection is lodged against an application, it may be determined by a formal hearing before the Director or alternatively, the Commission.



MANDATORY TRAINING REQUIREMENTS

Prior to the grant of an application for a producer's licence, all new applicants (including proposed managers) will, unless otherwise determined by the licensing authority, have to undertake an examination or complete an approved course of instruction in managing licensed premises and in the responsible service of alcohol (ie *Short Course in Liquor Licensing*).

In addition, within four (4) weeks of commencing employment at the premises, or as otherwise determined by the licensing authority, any person who will be engaged in the sale, supply and service of liquor on proposed licensed premises, senior staff, and any other person required to do so by the Director, will be required to undertake an examination or complete an approved course of instruction in the responsible service of alcohol.

In order to demonstrate compliance with the training of staff, licensees will be required to maintain a register detailing each staff member's name and date of training, and retain a copy of the relevant training certificate(s).

For more details on the training requirements, refer to policy guideline "Mandatory Training" available upon request or on our website at www.rgl.wa.gov.au.

RECORD KEEPING REQUIREMENTS

The Act requires the holder of a producer's licence to maintain a record of all transactions entered into by or on behalf of the licensee involving the sale or purchase or other disposal or acquisition of liquor. A return of all liquor transactions made during the previous financial year (1 July to 30 June) is due by 31 July each year.

Please note that penalty provisions apply to any person that does not comply with the requirements of the Act.

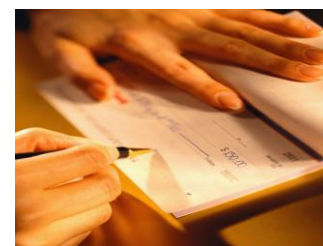
LOGGING THE APPLICATION

Dept. staff will be available at any time during office hours to assess your application so that it meets the legislative requirements prior to lodgement.

Applicants must lodge *completed* applications at the Department of Racing, Gaming and Liquor. An application for a producer's licence should be made using the forms provided in the *application kit* available upon request or on our website. A Lodgement Guide is also provided in this kit that identifies all documentation which should accompany the application.

APPLICATION FEES

The application fee must be lodged with the application. Please refer to the fee schedule available upon request or on our website. Please note that the application cannot be examined until the fee is received. Generally, the application fee is not refundable, even if the application is refused or withdrawn.



LICENCE FEES

An annual licence fee is payable prior to the grant of the licence and on 1 January each year. The licence fee is based on the licence type and any extended trading permits of an on-going nature that are attached to the licence.

Disclaimer

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The information is provided on the understanding that all persons undertake responsibility for assessing the relevance and accuracy of its contents.