

## Fiji Law Reform Commission

### Liquor Act Review 2002

# Issues Paper

*The Fiji Law Reform Commission welcomes your views and comments  
on this paper and seeks your response  
on the issues.*

Comments and Submissions should be forwarded to the  
Fiji Law Reform Commission  
P.O Box 2194,  
Government Buildings, Suva  
Or **E-mailed:** [info@flrc.gov.fj](mailto:info@flrc.gov.fj)  
by 22<sup>nd</sup> November 2002

Comments and Submissions may also be hand delivered  
to the Fiji Law Reform Commission's office  
5<sup>th</sup> Floor, Civic Tower, Suva.

*August 2002*  
Suva, Fiji

The Commission is constituted pursuant to the Fiji Law Reform Commission Act, Cap 26.

**Commissioner in charge of this reference:**

Ms. Emelita Wendt Wilson

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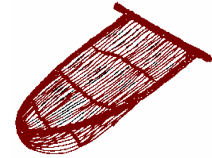
## **Terms of Reference**

To enquire into and report on the laws relating to Liquor with a view:

- To examine and evaluate the current laws and policies relating to the sale, supply and consumption of liquor in Fiji in the context of the need for review of the same. In carrying out these tasks, to also take into consideration the W Cruickshank and Sir Ian Thomson Reports; and
- To report and to recommend ways in which such policies and laws may be improved upon.



FIJI LAW REFORM COMMISSION



18<sup>th</sup> August 2002

Dear Sir/Madam,

Within the context of the Government's decision to review and update the Liquor Act (Cap. 192), the Fiji Law Reform Commission is in the process of examining and evaluating sections of the Act relating to the sale, supply and consumption of liquor in Fiji.

The last comprehensive review of Fiji's liquor laws was in 1992. This was undertaken by a Government-appointed committee headed by Mr. WG Cruickshank.

The Government now wishes to conduct a new review to take account of social development and changed circumstances, with the objective of bringing in new legislation appropriate for the current era and in light of Fiji's social and economic development.

As part of its review, the Fiji Law Reform Commission is seeking the views of the industry, commercial and interested groups, and canvassing public opinion.

Key issues for the review are outlined in this document.

The Commission invites your views and recommendations, and those of your organization, on any of these issues. It also welcomes comment on other matters you may consider relevant to this important exercise.

Written submissions should reach the Commission before November 22<sup>nd</sup>, 2002. A public hearing on the review is scheduled to be held in Suva on 26<sup>th</sup> and 27<sup>th</sup> November 2002. The venue will be advertised in the newspapers sometimes next week.

We look forward to your contribution.

Yours sincerely,

Sotia Coutts (Mr.)  
*for* Emelita Wendt Wilson  
**Commissioner, Liquor Act Review**

## **1.0 Introduction**

On 31<sup>st</sup> May 2002, the Attorney General and Minister for Justice, Hon. Senator Qoroniasi Bale, pursuant to section 5 of the **Fiji Law Reform Commission Act** 1979 CAP 26, directed the Fiji Law Reform Commission to conduct a review of the **Liquor Act** of Fiji CAP 192. The direction was preceded by calls from concerned individuals and sectors of society for changes to the Liquor Act in line with current social and economic developments. Ms. Emelita Wendt-Wilson was appointed under the FLRC Act by the Attorney General as Part-Time Commissioner of the FLRC responsible for this Reference.

Some calls for review were specific, requesting, for instance, either extension of the closing hours of nightclubs and liquor outlets, or total deregulation of the sale of liquor. Further to those calls, the Commission will attempt to review as many provisions of the Act as possible.

## **2.0 Terms of Reference**

The Terms of Reference of the Commission were delivered by the Attorney General on 31<sup>st</sup> May, 2002 as follows:

- a. To examine and evaluate the current laws and policies relating to the sale, supply and consumption of liquor in Fiji in the context of the need for review of the same. In carrying out these tasks, to also take into consideration the Cruickshank and Sir Ian Thomson Reports; and
- b. To report upon its findings and to recommend ways in which such policies and laws may be improved.

**This Paper will identify some of the issues the Commission wishes to receive submissions on. The generality of the Terms of Reference is to enable the Commission to report broadly on issues. Submissions may also be made on matters not covered by this paper.**

## **3.0 Scope of Review**

The scope of the review is limited to provisions of the Act and policies relating to the sale, supply and consumption of liquor within Fiji (see paragraph 1 of the Terms of Reference). This review is necessary to cure deficiencies in the Act and modify policies that are outdated.

## **4.0 Theme of Review**

Since 1975, Fiji has experienced many social and economic changes. The boundaries of towns and cities are expanding, the number of alcohol users has increased enormously, liquor businesses have flourished in the tourism/hospitality industry and around the country, and there has been a substantial rise in the number of alcohol providers.

The **Liquor Act** of 1975, therefore, must be amended to reflect current conditions, and future developments.

## **5.0 Previous Review**

Two reports were compiled after separate reviews of the Liquor Act. They were the:

- (Sir Ian) Thomson Report of 1985; and the
- Cruickshank Report of 1992

Most recommendations in each report are almost identical. Several important issues canvassed in those reports are raised again in this Paper. A copy of any or both Reports can be made available on request to the Commission's office in Suva.

## 6.0 Issues

The Commission welcomes comments on all relevant matters, but specifically invites submissions/opinions on the following:

### 6.1 ISSUE 1 - LICENSING AUTHORITIES – DO WE NEED TO CHANGE THEM?

The Central Liquor Board and the Divisional Liquor Tribunals are the main authorities responsible for the administration of the Act. Their functions are outlined in Part II of the Act (a copy of which is attached to this document). They include: processing and determining all applications for licences, and all matters generally concerning the sale, supply and consumption of liquor. Other authorities, such as the Police, Divisional Commissioners, Local government and Rural government also have specific roles in the administration of the Act, such as approval of plans, inspection of premises, background checks on applicants, and enforcement of terms of licences.

There have been calls, as recorded in the **Thomson and Cruickshank Reports**, for the reorganisation or replacement of the two authorities to make them more effective in administering the Act. Such changes were seen as being necessary to avoid duplication of functions and responsibilities between the Board and Tribunal, and to eliminate delays in the general administration of the Act, particularly with regard to the timely processing and determination of applications.

The **Thomson Report**, for instance, recommended the establishment of an Alcohol Control Commission to control and regulate the manufacture, sale and licensing of alcohol, and an Alcohol Advisory Council, to advise the Government on all matters affecting alcohol manufacture, sale consumption and licensing.

The Commission invites submission on:

- 1) whether or not there is a need to reorganise, or replace the Central Liquor Board and/or Divisional Liquor Tribunals?
- 2) ways in which this might be done?
- 3) ways to improve the involvement or contribution of other authorities currently engaged in the administration of the Act;
- 4) whether time limits should be placed on the authorities in the administration of their duties and functions to ensure timely completion of all applications and related works before the date of hearing of applications?
- 5) measures to cater for any defaults by the authorities.

### 6.2 ISSUE 2 - QUALIFICATION OF APPLICANTS

Our liquor laws presently state that no person shall be granted a liquor licence, or a renewal or a transfer of a licence, if he or she does not satisfy the requirements of section 18. Section 18 describes those who do not qualify for a licence as: anyone under the age of 21 years, a corporate or incorporate body, and anyone who, at the time of granting, renewal or transfer, is in prison, or



insane or an undischarged bankrupt, or who is unable, for any reason, to properly supervise the licensed premises.

The Commission invites submissions on:

- 1) whether the provisions of Section 18 are adequate?
  - 2) whether qualifications/criteria should be expanded, or reduced?
  - 3) whether the Act should provide additional guidelines for the licensing authorities in determining those eligible to hold licences?
  - 4) what some of these guidelines might be?
- should persons earlier found guilty of illegal sale or purchase of alcohol be permitted to hold/operate a liquor licence?

### **6.3 ISSUE 3 - GEOGRAPHICAL DISTRIBUTION OF LICENCES**

A person may be issued with a liquor licence as long as he or she meets the criteria outlined in the Act, and the premises is judged suitable by the relevant inspection authorities, for the sale, supply or consumption of alcohol. The location of the premises is not a consideration for the granting of a licence. In recent years, however, with the proliferation of licences, increasing concern has been expressed by law enforcement authorities and members of the public about the inconvenience and/or danger and disturbance to neighbourhood and village peace, security and property caused by licensed premises located close to residential/school/church areas.

The Commission offers for discussion and opinion, the issue of whether the Act should designate locations and boundaries within which certain types of licences may be allowed to operate.

The Commission requests views and opinions on whether:

- 1) the location of a premises should be a determining factor for granting of a licence under the Act?
- 2) the Act should designate locations and boundaries within which specific types of licence may operate?
- 3) the Act should grant powers to the licensing authorities to determine/designate locations and boundaries for certain types of liquor licences?

### **6.4 ISSUE 4 - CLASSIFICATION OF LICENCES**

6.4.1 There are currently eight (8) different types of licences available under the Act:

1. Publicans Licence;
2. Special Hours Licence;
3. Off Licence;
4. Private Hotel Licence;
5. Packet Licence;
6. Aerodrome Licence;

7. Restaurant Licence (restaurant and Night Club); and
8. Occasional Licence.

The Commission invites submissions on the need, if any, to:

- 1) expand the number and types of licences to cater for current and future developments,
- 2) widen the definitions of current licences to accommodate current and uncovered, or future, developments.
- 3) amend the law to create separate and distinct licences for Nightclub and Restaurant licences. These are currently covered under the same licence (Restaurant Licence).
- 4) allow for the granting of a bar licence to cover public bars and taverns, neither of which should require any accommodation to be attached. The licensee should have the option to operate either a public bar or tavern bar or both.
- 5) create a licence for persons and businesses currently engaged in bootlegging.

6.4.2 The need for simple definitions of each type of licence is apparent from the Act. This would allow persons not versed in legal matters and language, and who may not wish to obtain the services of a lawyer, to read and understand the requirements of each licence, and to properly judge his or her eligibility and suitability as a licensee.

The Commission invites submissions on the need to simplify the language of the Act, as well as the definitions and criteria of the different types of licences, to promote greater understanding of, and better compliance with, the Act and its requirements.

## **6.5 ISSUE 5 - SUSPENSION OF LICENCES**

There is an absence of specific provisions from certain sections of the Act for suspending a licence. Sections 22 and 63, for example, do not outline the grounds upon which a licence may be cancelled.

Cancellation of licences, in the Commission's preliminary opinion, should be the last resort punishment for any breach of the Act or conditions of the licence. Licence holders should be allowed time and opportunity to rectify any breaches to avoid cancellation. In that event, licences may be suspended until such breach is rectified.

The Commission invites submission on the above preliminary suggestion, and, in particular, the grounds and procedures upon which a licence may be suspended, the period of suspension, the procedure for suspending a licence, and of removing the suspension.

## 6.6 ISSUE 6 - DRINK-UP TIME

In one of its recommendations (Recommendation 5) the **Cruickshank Report** stated “drink-up time” in all licensed premises should be extended from 15 minutes to 30 minutes. At present this regulation applies only to public bars.

The Commission invites submissions on the length of 'drink up time' and the types of licences to which this should apply.

**Note:** Drink-up time is the period in which all liquor must be consumed within the licensed premises after the closure of sale, in accordance with the licence.

## 6.7 ISSUE 7 - REMOVING QUOTA RESTRICTIONS

Under the Act, the Central Liquor Board places quota restrictions on the following licences:

1. Off-Licence;
2. Taverns;
3. Restaurants;
4. Night club.

Quotas have been extended following requests and justification by the Board to the Attorney General & Minister for Justice. However, it has been the opinion of successive Boards in recent years that quota restrictions on all licences should be lifted and market forces be allowed to determine the granting of licences. The **Cruickshank Report** also recommended that the quota system be discontinued on the same grounds.

The Commission invites submissions on the above recommendation and, in particular, the guidelines the licensing authorities should adhere to in determining the number of licensed premises for a particular locality or division.

## 6.8 ISSUE 8 - OPENING AND CLOSING HOURS OF LICENSED PREMISES

The number of liquor licences in operation today is a reflection of the rapid growth of the industry within the context of the country's economic development and expansion since the Act came into force 27 years ago. According to many licence holders, and a number of submissions already received by the Commission, it has become overwhelmingly apparent to them that, as a result of outdated restrictions in the Act, the industry and its operators are being prevented from achieving their full business potential and properly meeting growing customer demand. One of the ways, they suggest, that this might be overcome is the extension of opening and closing hours of licensed premises.

The Commission invites submissions on the need or otherwise to extend the opening and closing hours of all or any licensed premises, and any conditions to be imposed on such extensions. Further submissions are requested on the extent of the extension and whether such extensions should include Sundays, and public holidays.

## 6.9 ISSUE 9 - SALE OF LIQUOR TO PERSONS UNDER 18

Sale of liquor to persons under the age of eighteen (18) is prohibited under the law (section 60 **Juveniles Act** CAP 56). A person found guilty of the offence is liable on conviction to a fine not exceeding four hundred dollars (\$400). There are no similar or like provisions in the **Liquor Act**. The **Cruickshank Report** recommended the inclusion of section 60 of the **Juvenile Act** into the **Liquor Act**. This is the case in New Zealand, under the **Sale of Liquor Act 1989** and **Sale of Liquor Amendment Act 1999**.

However, it is anticipated that enforcement of such a law could pose a problem, particularly for licensees, with regard to proper identification of persons under 18. The use of identity cards was suggested, but rejected in the **Cruickshank Report**.

Compared to other countries the fines contained in the Act of persons convicted under section 60 of the **Juvenile Act** are minimal. In New Zealand, for example, fines for licensees range from \$2000 to \$20,000 and may include suspension of licence.

The Commission invites submissions on the issues raised above, as to whether:

- 1) the **Liquor Act** should be amended to include provisions or similar provisions of section 60 of the **Juveniles Act** CAP 56;
- 2) the **Liquor Act** or **Juveniles Act** should make provision for mandatory requirements for a person suspected by the licensee or his servants of being a minor, to produce some form of identification, and what should constitute an identification document;
- 3) the penalties for persons convicted under section 60 of the **Juveniles Act** should be increased.

## 6.10 ISSUE 10 - WOMEN IN PUBLIC BARS

Section 86 of the Act prohibits a female person from entering or remaining in a public bar unless she is over the age of twenty-one (21). There is no similar provision for males in the Act or in any other legislation.

Similarly, section 87 prohibits a publican from employing a female person under the age of 21. Reading the section in another way, it does not prohibit the employment of male persons under the age of 21 years by a publican.

The above provisions of the Act present some constitutional issues, in particular, a female person's right to equal treatment and her right not to be discriminated against on the grounds of age and sex.

The Commission invites discussion and submissions on the above issue: whether restrictions currently contained in the Act and applying to females should be retained or abolished.

## **6.11 ISSUE 11 - OFFENCES AND PENALTIES**

The offences created under the Act were directed primarily at licensees and their employees, while the ensuing penalties were set as far back as 1960. This raises two issues. The first is the inadequacy of the Act to penalise officers and servants of the authorities for any illegal or unlawful dealing or behaviour in their administration of the Act. It is a possibility that servants and employees of any of the authorities may deliberately overlook certain prerequisites for a licence in exchange for personal benefit from the applicant. Similarly, licensees suspected or found contravening the Act or terms of the licence may not be dealt with in accordance with the Act when the enforcers of the Act “turn a blind eye” in exchange for personal benefit from the licensee.

Secondly, the penalties and fines listed in the Act are excessively low compared to other jurisdictions, the present size of the industry and its potential for greater growth.

The Commission invites submissions on:

- 1) whether the Act should create an offence/s for servants or officers of all or any authorities responsible in the administration of the Act who engage in any unlawful or illegal activities in the execution of their duties;
- 2) whether a similar offence should be created for applicants or licensees under the Act;
- 3) what penalties or fines should be imposed on persons convicted of any of the above;
- 4) whether the general penalties and fines under the Act are sufficient.

## **6.12 ISSUE 12 - POLICE ENFORCEMENT**

The enforcement of the provisions of the Act and of the terms of the licence falls under the administration of the Fiji Police Force (see PART XVIII). The Part empowers the Police to enter licensed premises or unlicensed premises storing liquor in excess of reasonable personal requirements, seize liquor, close unlicensed or licensed premises, and make arrests.

Group drinking in vacant private lots and unoccupied places within the urban centres in Fiji is common. This poses a threat for neighbours and pedestrians as well as to properties. The Regulations merely prohibit drinking in public places such as roads, streets or lane, as well as public parks, reserves, playgrounds and gardens (with the permission of persons or authority in control). There is no prohibition of drinking in private vacant lots or properties.

The Commission invites submission on ways to prevent drinking in private vacant lots and properties, in particular:

- 1) should it be made an offence to drink in private vacant lots and properties?

- 2) what penalties should be imposed on persons convicted of the above offence?
- 3) how to provide the police with powers to enter private vacant lots and properties in order to enforce the Act.

### **6.13 ISSUE 13 - OVERCROWDING OF LICENSED PREMISES**

Submissions were made to the **Cruickshank Committee** that a notice made pursuant to section 45(1) of the Act should also include the number of persons a licensed premise should accommodate at any one time. This is to prevent overcrowding, and any danger to life and property that might arise in the event of a fire, sanitation congestion or natural disaster. The Committee felt such an issue should be the concern of the Police, Fire and Health authorities.

The Commission invites submissions on the above and, in particular, ways to ensure the health and safety of customers and patrons in a licensed premise are not compromised.

### **6.14 ISSUE 14 - CODE OF ETHICS**

A recommendation was made in the **Cruickshank Report** for the establishment of a Code of Ethics for Licensees under the Act. This was to be compiled in consultation with the licensees and their relevant Associations.

The Commission invites submissions on:

- 1) whether there is a need for a Code of Ethics for licensees under the Act?
- 2) which authority or association should be responsible for its compilation?

### **6.15 ISSUE 15 LICENCE FEES**

Licence fees are a mandatory requirement under the Act to provide funds to the authorities concerned to process applications, inspect premises etc, as well as provide income for the Government. The fees, which were set in 1975, are relatively small, ranging from \$10 to \$1000. It is now felt that fees must be adjusted to reflect the rapid expansion of the liquor industry and the commercial value of a liquor licence to its holder.

The Commission invites submissions on:

- 1) whether there is a need to increase application fees under the Act for all or any licence?
- 2) what the new fees should be under the Act.

## 6.16 ISSUE 16 - BOOTLEGGING

This is reportedly a thriving business in all major towns, cities and suburbs. It is an illegal activity where people sell liquor without a licence or, licence holders sell alcohol outside the legal hours. While an operator of such a business can be arrested under section 97 of the Act, some law enforcers have reportedly been reluctant to carry out arrests, or, have turned a blind eye in exchange for personal benefit. Calls have been made to stop the carriage of such illegal business.

As the Commission sees it, there are two available alternatives. One is the deregulation of the sale of liquor in Fiji to allow those currently engaged in such activities to become legally licenced operators. The other is the need to effectively enforce the laws to ensure deterrence of such business.

The Commission invites submissions on:

- 1) whether the sale of liquor in Fiji should be deregulated to allow easy access to licences;
- 2) whether there is a need to create new licences for premises that would qualify for licence after deregulation, but would not have qualified now;
- 3) offences and penalties for breach of conditions of the new licence and provisions of the Act relevant to it.
- 4) any other ways the bootlegging business might be controlled and eliminated.

## 6.17 ISSUE 17 - HOMEBREW

The making, selling and consumption of 'homebrew' have long existed in Fiji. Its production is not regulated under the **Liquor Act** or any other legislation.

The Commission invites submissions on:

- 1) whether or not the manufacture, sale and purchase, and consumption of home brew should be declared legal or illegal under the Act;
- 2) the regulation of the manufacture, sale and supply and consumption of home brew (if declared legal).

## 6.18 ISSUE 18 - TERMS AND CONDITIONS OF LICENCES

The Act in its present form does not offer any guidance to the Board or Tribunal on the appropriate terms and conditions upon which a license is granted. This exercise is left entirely to the discretion of the authorities. This is a recipe for abuse of discretion, which could result in imposition of unfair terms and conditions.

The Commission invites submissions on the need to provide a statutory guideline in the Act for the guidance of the relevant authorities in imposing, where relevant, terms and conditions of licences.

## **6.19 ISSUE 19 - LIQUOR SOCIAL AWARENESS PROGRAMMES**

Over the years there have been recommendations/calls for the need for Liquor Social Awareness Programmes to help educate the public, in particular the youth, about the dangers inherent in the abuse of alcohol.

The Commission invites submissions on:

- 1) ways and means of educating the general public about the dangers of alcohol abuse, in particular the need to establish a social programmes primarily for that purpose;
- 2) which departments/organisations should be responsible for this programme;
- 3) financing for such programmes.

## **6.20 ISSUE 20 - GENERAL**

The above issues should not be treated as exhaustive. The Commission welcomes views and opinions on any issue relevant to the review of Fiji's liquor laws.