

# Licensing Commission 2005-06 Annual Report

## The Commission

The Northern Territory Licensing Commission is an independent statutory authority with extensive powers to regulate and enforce Territory racing, gaming, liquor and related licensing legislation.

The Commission was established on 14 February 2000 by the *Northern Territory Licensing Commission Act* (the Act) and replaced several statutory authorities, namely the Liquor Commission, Gaming Machine Commission, Gaming Control Commission, Private Security Licensing Authority and the Escort Agency Licensing Board. The Chairperson and four Members of the Commission comprise the full membership of the Racing Commission.

The Commission operates as an independent tribunal with responsibility for licensing and related matters covering liquor control, kava management, private security, totalisators, escort agencies and gaming machines.

Racing, Gaming and Licensing in Northern Territory Treasury works closely with the Commission, bringing matters to its attention and giving advice associated with licence applications, variations and breaches.

Although located within Treasury, the Commission is an independent statutory authority separate from Treasury and its Racing, Gaming and Licensing area. Nonetheless, the Commission is serviced in the exercise of its functions by Racing, Gaming and Licensing through its investigations, monitoring, record keeping, enforcement and reporting and policy advice. The Director of Licensing is a statutory officer, appointed pursuant to the Act. The Director is subject to the formal directions of the Commission.

The Act requires the Commission to prepare a report to the Minister at the end of each financial year on its operations during that year under each Act that confers powers or imposes functions on it.

## Members of the Commission

Members are appointed by the Minister. Although the Act limits terms of appointment to three years, members are eligible for reappointment.

Members as at 30 June 2006:

Mr John Flynn (Chairperson)\*

Ms Elizabeth Morris\*

Mr Paul Costigan \*

Mr John Brears\*

Ms Helen Kilgariff\*

Ms Brenda Monaghan (Legal Member)

Mr Ian O'Reilly

Ms Jane Large

Ms Veronica McClintic

Ms Morris and Ms Monaghan are Northern Territory Public Sector employees. All other members receive sitting fees and allowances in accordance with rates determined by the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act*.

\*Denotes membership of the Racing Commission pursuant to the *Racing and Betting Act*.

### Chairperson's Biography

John Flynn was appointed Chairperson of the Commission in February 2005. He is also the Chairman of the Territory Insurance Office. He was with the Commonwealth Attorney General's Department during the 1960s and held various statutory positions including Clerk of Courts, Sheriff and Clerk of the Licensing Court. He was employed by Nabalco from 1971 to 1978 as the Nhulunbuy Town Administrator and later as commercial manager. He was appointed the Public Trustee for 17 years and retired from the public service after serving as CEO of the Office of Courts Administration.

### Legislation

The Commission is a body corporate that operates as an administrative authority and quasi-judicial tribunal, with responsibility for licensing and related matters in accordance with the requirements of the following legislation:

- *Northern Territory Licensing Commission Act*
- *Liquor Act*
- *Kava Management Act*
- *Private Security Act*
- *Totalisator Licensing and Regulation Act*
- *Gaming Control Act*
- *Gaming Machine Act*
- *Prostitution Regulation Act*
- *Racing and Betting Act* (as the Racing Commission)
- *Tobacco Control Act*

The *Northern Territory Licensing Commission Act* established the Commission and defines the functions and powers of the Commission, its Chairperson and the Director of Licensing.

### Functions and Powers of the Commission and its Chairperson

The Commission is required to perform functions as mandated by section 5 of the Act, which sets out the Commission's powers as follows.

1. The Commission must perform the functions imposed on it under this Act or another Act and do any other thing that is necessary or convenient to be done for the proper performance of those functions.
2. The Commission has the power to do all things that are necessary or convenient to be done for or incidental to the performance of its functions.

The role, functions and powers of the Chairperson are set out at section 7 of the Act as follows.

1. The Chairperson:
  - a) administers the affairs of the Commission; and
  - b) must perform the functions imposed on him or her under this Act or another Act.
2. The Chairperson has the power to do all things that are necessary or convenient to be done for or are incidental to the proper administration of the affairs of the Commission and the proper performance of his or her functions.

## Commission Procedures

During the year, in response to the recommendations of the alcohol framework, the Commission, with assistance from Racing, Gaming and Licensing, made substantial changes to its procedures and practices. These changes included the appointment of the Executive Director as a member of the Commission, employing a full-time legal counsel member, increasing the number of delegations, decreasing the number of full Commission meetings and increasing the number of matters determined between meetings. These changes have served to decrease the length of time taken to determine applications and complaints, improve the quality of decision making and better assist the Commission in the determination and application of Government policy.

The majority of matters considered by the Commission arise from reports submitted by the Director of Licensing. The Director of Licensing investigates all applications, complaints and objections made under any of the Acts listed previously and provides appropriate reports to the Commission. The Director of Licensing has considerable individual powers, most notably under the gaming legislation, and many delegated powers from the Commission. The major determinative decisions under the legislation, however, are made by the Commission, by a full corporate meeting or a meeting of a quorum selected by the Chairperson.

The Commission is legislatively required to conduct hearings in

certain circumstances, for example where an objection to an advertised application under the *Liquor Act* is ruled to comply with the relevant legislated formalities.

The Commission maintains records and minutes of all meetings and publishes full written reasons for the majority of its decisions arising from hearings. The Commission's decisions are published at [www.nt.gov.au/ntt/commission/decisions.shtml](http://www.nt.gov.au/ntt/commission/decisions.shtml)

Government agencies frequently appear before the Commission, often as objectors in their own right, to make submissions or to give evidence on licensing and related matters. Such agencies include the Northern Territory Police, Fire and Emergency Services and the Department of Health and Community Services. Local government authorities, non-government organisations and members of the community frequently appear before the Commission.

Many of the functions are delegated by the Commission at its discretion. Delegates include the Chairperson, the Director of Licensing, Deputy Directors of Licensing, the Manager Racing, designated staff of Racing, Gaming and Licensing, and sometimes individual Commission members. All decisions made by delegates are decisions of the Commission, for which it bears ultimate responsibility.

The Commission has regular contact with town and community councils, the Northern Territory Police, regional tourist associations, the Australian Hotels Association, ClubsNT and the Liquor Stores Association, land councils and other Indigenous

organisations, health service providers and executives of major liquor, gaming and security organisations

## Commission Hearings and Meetings

The Commission conducts monthly business meetings at which issues from across the broad range of its legislative responsibilities are determined. In addition, special meetings of membership quorums and other groupings of members are conducted on a needs basis in relation to specific and often urgent matters, and average several per month. Meetings regularly take place in Darwin and from time to time in other Territory communities.

Hearings are conducted by panels of members selected by the Chairperson. Under the *Liquor Act*, hearing panels may comprise one or three members. Because a party to a hearing who is disaffected by a decision of a single member may ask for a re-hearing before a panel of three members, liquor hearings are normally conducted by a quorum of three members.

The Commission attempts to conduct all hearings at or near the location of the matter or issue which engendered the hearing. Hearings regularly take place in all the Territory's major towns, and often in smaller communities.

The nature and number of hearings and meetings, and the number of days devoted to them, are shown in Table 17.

Table 17: Hearings and Meetings, Year Ended 30 June

Type of Hearing / Meeting	Number of Hearings and Meetings			Days of Hearings and Meetings		
	2004	2005	2006	2004	2005	2006
Scheduled monthly Commission meetings	11	12	9	23	24	9
Special Commission meetings	26	13	7	26	13	7
Community liaison	5	6	3	2	8	5
Escort agency meetings	9	5	0	7	5	0
Conferences attended	5	2	1	9	6	4
Hearings	72	71	67	85	97	105
Total	128	109	87	152	153	130

## Liquor Licensing

The *Liquor Act* requires the Commission to conduct hearings in a range of circumstances including contested applications for liquor licences (ie. where there are objections) for variations to licence conditions and unresolved complaints about operational aspects of existing licences. Generally, any applicant whose application is refused without a hearing may demand a hearing before the Commission. Table 18 summarises the nature of hearings conducted during 2005-06 and compares them with those conducted in the previous four years.

Table 18: Liquor-Related Hearings, Year Ended 30 June

Nature of Hearings	2002	2003	2004	2005	2006
Application for a restricted area	1	0	2	5	2
Application for the grant of a liquor licence	3	15	9	2	4
Complaint pursuant to section 48 – breach of <i>Liquor Act</i>	7	8	7	7	14
Complaint pursuant to section 48 – other (eg, alleged breach of licence conditions)	14	15	18	5	13
Application to cancel liquor licence	5	7	9	3	0
Application to vary conditions of liquor licence	8	12	8	6	4
Application to substitute premises	1	2	0	0	0
Transfer of liquor licence			2	0	0
Requests by licensees for review of licence conditions			3	1	6
Seized vehicle hearings <sup>1</sup>					11
Seized vehicle reviews <sup>1</sup>					11
Other	16				2
Total <sup>2</sup>	55	59	58	29	67

1. Seized vehicle hearings and seized vehicle reviews are a new inclusion previously not reported in this format.

2. The anomaly in the number of liquor related hearings since 2004-05 is due in part to the Commission having to deal with a surge in restricted areas and seized vehicle matters, and matters being deferred as a result of the then Chairman and legal member being ill.

## Complaints Against Licensed Premises

Section 48 of the *Liquor Act* provides that “a person may make a complaint arising out of the conduct of the business at licensed premises or the conduct of the licensee in relation to the business of a licence, or that the licensee is not a fit and proper person”. The *Liquor Act* requires all complaints to be in writing, to be lodged with the Director of Licensing and to be signed by the person lodging the complaint. The Director of Licensing is then required to investigate all complaints and to provide licensees with the opportunity to respond to the complaint prior to a report being placed before the Commission. Although there is opportunity for the licensee and the Director of Licensing to informally mediate the complaint, most proceed to a hearing. Table 19 shows the number of complaints received and actions taken during 2005-06 and compares them with the complaints received and actions taken the previous four years.

**Table 19: Liquor Complaints Received through Director of Licensing and Action Taken, Year Ended 30 June**

Liquor Complaints Received and Action Taken	2002	2003	2004	2005	2006
Complaints investigated, but no further action warranted	17	8	7	6	6
Licences surrendered following complaint	0	0	0	0	0
Licences suspended due to breaches of licence conditions (section 66(1)(b))	5	13	4	3	7
Complaints heard and finalised without licence suspension	0	10	21	9	20
Complaints awaiting decision	0	3	2	3	1
Complaints withdrawn	0	1	0	3	1
<b>Total</b>	<b>22</b>	<b>35</b>	<b>34</b>	<b>24</b>	<b>35</b>

## Suspension of Licence

Liquor licences may be suspended as penalty for breaches of the *Liquor Act* or licence conditions, or for non-compliance with directions issued by the Commission. The Commission can only suspend the licence when it is satisfied that the breach is of sufficient gravity to justify suspension or when the premises are not open for the sale or supply of liquor (section 66(1)(c)). In the latter case, a suspension may be at the request of a licensee undertaking building renovations

or similar, but is normally upon the recommendation of the Director of Licensing pending an application to cancel the licence. Section 48A allows for the immediate suspension of a licence in an emergency, or pending investigation of a complaint. Such suspensions would normally be at the request of the Police during a cyclone, major flood or civil disturbance. Table 20 shows the licences suspended during 2005-06 and the basis for the suspensions.

Table 20: Liquor Licences Suspended 2006, Year Ended 30 June

Date	Premises	Reason for Suspension
25/07/2005	Sultan's Kebabs	Not trading for 90 days
05/08/2005	Desert Rose Inn	Not trading for 90 days
17/09/2005	Casuarina All Sports Club	Breach of Act – sale to non members
30/09/2005	The Date Farm Outdoor Restaurant and Café	Pending licence transfer
12/11/2005	Adelaide River Post Office Store	Breach of Act and conditions of licence – liquor book up
14/11/2005	Regent Court Restaurant	Not trading for 90 days
03/01/2006	So'nsie Restaurant	Not trading for 90 days
05/01/2006	Speakers Corner Café	Not trading for 90 days
18/01/2006	Bogarts 25's	Pending substitution of licence
08/04/2006 10/04/2006	All Katherine venues	In emergency suspension due to flooding of town
24/11/2006	Elders Pastoral – Katherine	Did not comply with licence condition – no nominee
22/02/2006	Borrooloola Bulk Discounts	Emergency suspension – riots in town
22/02/2006	Borrooloola Inn	Emergency suspension – riots in town
28/02/2006	Frontier Camel Tours	Pending licence transfer
14/03/2006 21/03/2006	Casuarina All Sports Club	Breach of Act – sale to non members
04/04/2006 11/04/2006	Casuarina All Sports Club	Breach of Act – sale to non members
17/03/2006	Jungle Drum Bungalows	Did not comply with licence conditions – no nominee
12/05/2006	Lasseters Casino	Breach of Act – serving a minor
12/05/2006	Lasseters Casino	Breach of Alice Springs liquor restrictions – sale of heavy beer outside hours
13/05/2006	Alice Springs Memorial Club	Breach of Act – serving a minor
11/05/2006	Passage to India	Not trading for 90 days
12/05/2006	Naiyu Club Daly River	Self suspended
23/06/2006	Elke's Backpacker Resort	Pending licence transfer

## Cancellation of Licence

Cancellation of a liquor licence usually occurs as a consequence of the premises not having been used for the sale or supply of liquor for a period of 90 days. Cancellation can also occur on the grounds that:

- the licensee is no longer a fit and proper person to hold the licence;
- the licensee has been found guilty of an offence against the *Liquor Act*;
- the licensee is serving a term of imprisonment; or
- the licensee has failed to comply with a condition of his or her licence.

The Commission may also cancel a licence on the grounds that the premises no longer meets the needs or wishes of the community, but cancellation on this ground is subject to the payment of compensation.

The Commission is required to conduct a hearing before cancelling a licence on any ground.

The only licence cancellation during 2005-06 was that of So'nsie Restaurant as it had not been used for the sale or supply of liquor for periods in excess of 90 days.

## Surrender of Licence

The *Liquor Act* enables a licensee to voluntarily surrender a licence by lodging the licence with the Director of Licensing. The surrender has no effect until accepted by the Commission, which must first satisfy itself that all persons who have an interest in the licensed premises to which the licence relates have been given at least two weeks' notice of the licensee's intention to surrender the licence. The person whose licence is surrendered remains liable for an act or omission done, caused, permitted or made by him or her prior to the surrender, and for any liability incurred prior to the surrender. Licences for the premises listed in Table 21 were surrendered during 2005-06.

Table 21: Liquor Licences Surrendered, Year Ended 30 June 2006

Date	Premises
03/01/2006	The Date Farm Outdoor Restaurant and Café
09/01/2006	Sultan's Kebabs
19/01/2006	Speakers Corner Café

## New Criteria for Applications: Public Interest

The *Liquor Amendment Act 2004* shifted the Commission's focus in the assessment of liquor applications from community needs and wishes to the newly defined "public interest". Consequently, the *Liquor Act* requires the Commission, when considering a range of applications in respect of a licence or licensed premises, to take into account relevant legislatively detailed public interest criteria.

The extensive criteria are not exhaustive in that they include a requirement for the Commission to take into account any other matter it believes to be relevant to the public interest in the individual circumstances.

## Objections to Liquor Licence Applications

There are two grounds of objection to liquor licence applications. They are any adverse effect upon the amenity of the neighbourhood and adverse effects on health, education, public safety and social conditions.

The statutory grounds of objection are also available against applications to vary licence conditions, to substitute premises and to make material alterations to premises.

Additionally, only certain persons, organisations and groups may object to the grant of a licence.

Objections are lodged with the Director of Licensing, who advises the applicant of the substance of the objections and invites a written response. Objections and the responses are then forwarded to the Chairperson of the Commission, who must nominate a member of the Commission to, in effect, check the objections for prima facie compliance with the requirements of the *Liquor Act* in relation to objections. If an objection is judged to be a complying objection by the inquiring Commission member and not frivolous, irrelevant or malicious, the member must determine that the Commission conducts a hearing in relation to the objection and the Commission must conduct such a hearing.

Where an objection is dismissed by the inquiring member at the preliminary stage, the affected objector has the right to apply to the Commission for a review of the decision.

The Commission will normally hear the application, and any surviving objections, in one proceeding. The Commission publishes its rulings, which provide the Commission's opinion of the respective rights of applicants and objectors in relation to evidence and the cross-examination of persons giving evidence.

## Restricted Areas

The *Liquor Act* empowers the Commission, upon application, to declare an area a restricted area and thus prohibit the sale, possession and consumption of liquor within that area. When considering applications, the Commission is required to ascertain the opinions of residents, licensees and community government councils. There are 101 restricted or 'dry' areas in the Territory.

It is often thought that the restricted area provisions of the *Liquor Act* apply only in respect of isolated Aboriginal communities. In fact, any person may apply for any area to be declared a restricted area. In practice, applications for the declaration of a restricted area are made by persons residing in the relevant area and/or by a community government council or regional association.

## Permits

The Commission may grant permits to residents of restricted areas that authorise the holder to possess, control and consume liquor within the restricted area. Permits are regularly restricted to a class, category or amount of liquor. The Commission regularly delegates initial assessment of permit applications to a local permit committee with a Constitution approved by the Commission. The Commission may revoke a permit at its discretion. Permit revocation is normally at the request of police, either in relation to individual permits or by way of a blanket revocation across an area to meet an emergency situation. Generally, permits are current for one year and need to be renewed annually. Table 22 provides details of liquor permit activity for restricted areas during 2005-06 and compares this to the previous four years.

Table 22: Liquor Permits for Restricted Areas, Year Ended 30 June

Liquor Permits	2002	2003	2004	2005	2006
Permits issued <sup>1</sup>	1 586	1 377	1 394	1 565	3 401
Permits revoked	165	15	57	43	167
Permits cancelled	165	105	16	47	130

1. The increase in permits issued is the result of a new general restricted area being declared.

## Restricted Premises

In June 2006 amendments to the *Liquor Act* came into force allowing a person to apply for private premises such as homes, schools, churches and shopping centres to be declared restricted. No applications were received before 30 June 2006.

## Regional Restrictions, Regional Management Plans

Other than the restricted area provisions, the *Liquor Act* does not readily lend itself to the Commission adopting any regional community harm-minimisation initiatives that cannot be accommodated by a restricted area hearing. Historically, the Commission addresses various regional concerns by variation of the trading conditions of individual liquor licences in the relevant area. More recently however, the Office of Alcohol Policy and Coordination in Racing, Gaming and Licensing has worked closely with stakeholders to introduce alcohol management plans in areas where liquor supply plans are implemented.

Liquor supply plans form one part of the strategy for dealing with local alcohol issues, by putting in place mechanisms to control the supply of liquor.

Currently, there is reduced liquor trading ('liquor supply plans') in Alice Springs, Tennant Creek, Katherine, Nhulunbuy, Groote Eylandt and the Tiwi Islands.

Changes to liquor supply plans are only made after consideration, consultation and hearings (as required). Each plan is particularly designed to meet the needs of the individual community.

The Licensing Commission has been active in responding to requests from communities that are endeavouring to address unacceptable behaviours arising from liquor misuse. Clubs on the Tiwi Islands, for example, are working with the Commission to try to minimise the alcohol-related harm experienced in their communities.

## Seized Vehicles

The *Liquor Act* provides licensing inspectors, including all Northern Territory police, with powers to “seize, take, detain, remove and secure any vehicle, vessel or aircraft” upon reasonable grounds for suspecting that the conveyance has been involved in illegally bringing liquor into a restricted area or in possessing or consuming liquor in a restricted area.

Seized conveyances are ‘delivered’ to the Chairperson, although in practice they are held and stored by police on behalf of the Chairperson. Upon any person (not just the owner or driver) being found guilty by a court of any offence in relation to which the conveyance was seized, the seized equipment is automatically forfeited to the Government. Sections 98 to 101 of the *Liquor Act* describe the manner and circumstances in which claims for the return of seized vehicles or other conveyances can be made to the Chairperson and the Minister. After forfeiture, conveyances may be disposed of by the Chairperson as he sees fit, with the provision that a decision by the Chairperson to return the conveyance to a previous owner requires the approval of the Minister, who needs to be satisfied the applicant was not knowingly involved in the unlawful carriage of liquor that triggered the seizure and had no reasonable grounds to suspect that such an offence might be committed with the vehicle. Table 23 provides a summary of the seized vehicle situation as at 30 June 2006.

Table 23: Seized Vehicles – Liquor

Seized Vehicles	2005-06
Vehicles on hand at beginning of year	135
Vehicles seized during the year	94
Vehicles returned to owners	49
Vehicles disposed by the Chairman	60
Vehicles on hand at year end	120

## Kava Licensing

### History

Kava is a mood-altering drink prepared from the crushed root of the pepper plant. Widely used in South Pacific countries in a ceremonial context, it was first introduced into the Arnhem Land area of the Territory in the early 1980s and was readily adopted in most coastal and island communities across the Top End.

Within a decade, over-use of kava in Aboriginal communities was causing concern amongst health professionals and others. Kava acts as a sedative, and its long-term heavy use was linked to emerging community apathy and dysfunction.

### Legislation

The *Kava Management Act* came into effect in 1998. A number of minor amendments to the Act during 2003-04 were the result of a combination of a National Competition Policy review and recommendations made by the Commission.

The stated purpose of the *Kava Management Act* is to “prohibit and regulate the cultivation, manufacture, production, possession and supply of kava, and to encourage responsible practices and procedures in relation to the possession, supply and consumption of kava and related purposes”.

The *Kava Management Act* prohibits the possession of kava outside a declared licence area except in accordance with a licence.

### Kava Licence Areas

Ten or more residents of an area may apply to the Minister to have an area declared a kava licence area in which kava may be legally sold and consumed. A community government council may apply to have the council area, or part thereof, declared a kava licence area. Applicants are required to prepare a kava management plan that details the intended practices and procedures relating to the possession, supply and consumption of kava within the designated area. Also required are details of how profits will be applied to the benefit of the community and measures to be implemented by the community to minimise harm to residents and the amenity of the community. A plan is required for each declared area and applies only to that specific area.

Kava management plans require Commission approval. Following an investigation of the needs and opinions of the community, and on receipt of the Commission's approval of a plan, the Minister may declare the area as one where kava may be sold for consumption.

### Kava Licences

Any person over the age of 18 or a body corporate can apply to the Commission for the grant of a wholesale or retail kava licence. Regulations limit the number of wholesale licences to one presently held by the Laynhapuy Homelands Association Inc.

Once the Minister has declared a kava licence area, the Commission may grant a retail licence for that area. Only one retail licence can be granted for each area. To date, four retail licences have been granted. Holders are incorporated bodies on behalf of the Laynhapuy Homelands, Yirrkala, Ramingining and Warruwi communities.

Licences are renewable annually.

## Enforcement

The enforcement of the kava regulatory regime differs from liquor enforcement as the key element is that the mere possession of kava except as permitted by the *Kava Management Act* is illegal, with heavy penalties provided by that Act. The *Northern Territory News* frequently carries reports of police apprehending a vehicle well away from any kava licence area and seizing both a quantity of unlawful kava and the vehicle in which it was being carried.

The *Kava Management Act* contains provisions similar to the *Liquor Act* that enable the seizure of any conveyance used in the commission of an offence under the *Kava Management Act*, and its delivery to and disposal by the Chairperson. Table 24 provides information regarding vehicles and amounts of kava seized from 2002 to 2006 pursuant to the *Kava Management Act*.

Table 24: Seized Kava and Seized Vehicles, Year Ended 30 June

Seizures	2002	2003	2004	2005	2006
Kava seizures	26	11	16	12	21
Amount seized (kg)	861	1 098	1 749	454	>790 <sup>1</sup>
Vehicles seized	1	2	5	3	1

Note: Data supplied courtesy of Northern Territory Police, who caution that although information for 2006 has been carefully compiled, the amount of seized kava specified may vary when continuing investigations have been completed.

1. Another 52 deal bags were seized but not weighed by police.

## Gaming Machine Licensing

### Legislation

The principal functions of the Commission arising under the *Gaming Machine Act* are to:

- determine applications for all gaming machine licences;
- determine the number of gaming machines for each licensed premises, and licence conditions;
- issue directions to licensees in relation to the conduct of gaming and the administration of licensed premises; and
- conduct disciplinary action against licensees, including the power to suspend or cancel a licence, and to appoint an administrator.

The *Gaming Machine Act* does not apply to casinos.

Section 21(1A) of the *Northern Territory Licensing Commission Act* requires the Licensing Commission to report to the Minister the extent to which the objectives of the *Gaming Machine Act* have been met during the financial year.

The stated objectives of the *Gaming Machine Act* are to promote the responsible operation and use of gaming machines, ensure the probity and integrity of participants in the gaming industry, ensure the fairness of games, the integrity of gaming systems and the delivery of quality services to game players, and ensure that clubs holding gaming licences will improve the amenity of their neighbourhoods in order to maximise the welfare of the community as a whole.

## Responsible Operation and Use of Gaming Machines

A Code of Practice for Responsible Gaming was developed by a working party consisting of government, industry and social intervention service providers as a measure to promote the responsible operation and use of gambling products. Adoption of the code began on a voluntary basis and was gazetted and became mandatory in June 2006.

### Probity and Integrity of Industry Participants

In order to ensure the probity and integrity of the gaming machine industry, the Director of Licensing conducts extensive probity checks and financial assessments of all applicants for gaming machine licences. The Commission must be satisfied as to the suitability of every applicant. Probity checks include a fingerprint search and criminal history check. All persons employed in the industry, including machine managers and repairers of gaming machines, require licences.

## Fairness and Integrity of Gaming Systems

The Director of Licensing adopts a range of strategies to ensure the fairness and integrity of gambling-related computer and control systems operating in the Territory and the continued compliance of those systems with national, Northern Territory and industry standards. Risk management strategies ensure all systems are properly evaluated before being approved for operation. Independent evaluation of systems and hardware may also be undertaken by approved evaluators.

From 1 July 2001, all gaming machines operating within Northern Territory clubs and hotels transferred from the previously Northern Territory Government-owned monitoring system to the NT TAB monitoring system, now part of the UNiTAB operation. The conversion of the Northern Territory community gaming machines to the new regime increased the quality of services delivered to the Territory's community gaming industry.

In October 1999, the Northern Territory adopted the National Standard for Gaming Machines, which provides a consistent technical benchmark for the Australian gaming industry in relation to the fairness of games and the integrity of gaming machines. Most community (club and hotel) gaming machines comply with the National Standard, with some older models complying with an earlier Queensland standard. All new gaming machines purchased by clubs and hotels comply with the National Standard. During 2005-06, 65 games and equipment for hotels and clubs were approved by the Commission.

## Community Impact

Amendments to *Gaming Machine Act* in September 2004 provided a greater focus on harm minimization and introduced the need for applicants to submit a community impact analysis with their gaming machine licence application.

The Act requires that the community impact analysis must enable the Commission to assess:

- the suitability of the premises in relation to the size, layout and facilities for the proposal;
- the suitability of the premises in relation to whether or not the primary activity of the premises is that of a hotel or club;
- the suitability of the proposed location, having regard to the population of the area, the proximity to other gaming venues and the proximity to sensitive areas;
- the appropriateness of problem gambling risk management and responsible gambling strategies; and
- the economic impact of the proposal.

When assessing the community impact, the Commission must also take into account any submissions made by the community.

## Community Contribution

Clubs with gaming machines are required to contribute to their neighbourhood amenity and report thereon to the Director of Licensing. Contributions towards the development of a club's neighbourhood may take various forms including improvements to the club's facilities and services, and donations to community, recreational or service organisations operating in the club's neighbourhood.

Gaming machine licensees holding a liquor licence other than a club licence are subject to a community benefit levy, assessed on the basis of a prescribed percentage of gross profit. The Community Benefit Fund receives the levy and funds are disbursed by the Community Benefit Committee (reported earlier in this publication))

## Gaming Machine Licences

Gaming machine licences remain in effect until cancelled, revoked or ceased. Licences are not transferable, and therefore a new licence is required for a change of owner. A change to the *Gaming Machine Act* in 2004-05 allowed hotels without takeaway liquor conditions to apply for a gaming licence.

The Commission approvals of new gaming machine venue licences for the past five years are shown in Table 25.

Table 25: New Gaming Machine Venue Licence Approvals, Year Ended 30 June

Gaming Machine Licences	2002	2003	2004	2005	2006
Hotels	3	11	5	12	4
Clubs	0	0	0	0	0

## Distribution of Gaming Machines

Historically, the distribution of gaming machines is reported on a regional basis. The southern region refers to all gaming machine licensed venues in the Alice Springs and Tennant Creek areas. All other venues are included in the northern region. Table 26 shows that at 30 June 2006, 70 premises were operating 1050 gaming machines. There was an increase of 65 machines (7 per cent) across the Territory from 30 June 2005, which is associated with new venues becoming operational and variations to approved gaming machine numbers in several existing clubs and hotels.

Table 26: Gaming Machine Distribution, as at 30 June

Gaming Machine Distribution	2004			2005			2006		
	Northern Region	Southern Region	Total	Northern Region	Southern Region	Total	Northern Region	Southern Region	Total
<b>Venues</b>									
Clubs	25	9	34	25	8	33	24	8	32
Hotels	26	8	34	27	8	35	29	9	38
Total	51	17	68	52	16	68	53	17	70
<b>Machines</b>									
In clubs	516	145	661	523	164	687	534	172	706
In hotels	228	63	291	235	63	298	273	71	344
Total	744	208	952	758	227	985	807	243	1 050

### Gaming Machine Density

The density of gaming machines as a factor of population in all states and territories is compared in the chart below. Based on the number of gaming machines as at 30 June 2006, there were seven gaming machines per 1000 adults in the Territory's clubs and hotels compared to the national average of 11 gaming machines per 1000 adults.

### Gaming Machine Industry Performance

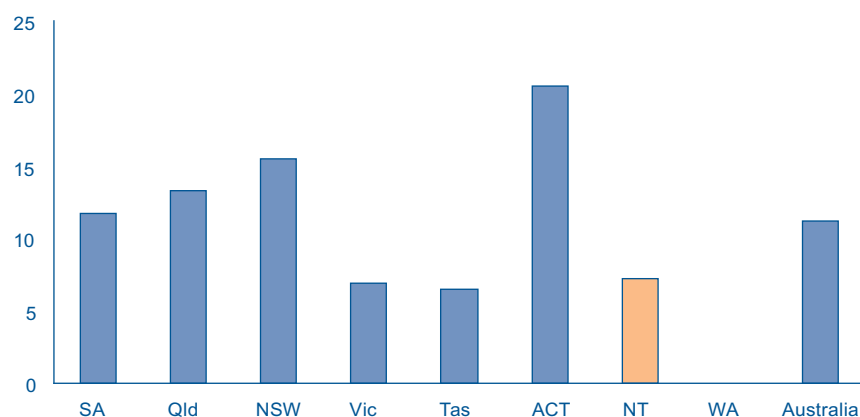
The performance of community-based gaming machines has been monitored on a monthly basis since the introduction of cash-paying gaming machines in 1996.

Appendix B shows gaming machine numbers, gross profits and tax paid by clubs in 2005-06; gaming machine numbers, gross profits, tax paid by hotels and community benefit levy contributions in 2005-06; and a summary for 2005-06.

During 2005-06, the average gross profit per machine per day was \$148 compared to \$139 in 2004-05 and \$129 in 2003-04. Gaming machine gross profit has risen by 14 per cent to \$56.8 million in 2005-06, up from \$49.8 million in 2004-05.

The reason for the increase in popularity is not clear, however research funded through the Community Benefit Fund should provide some insight into gambling patterns in the Territory and provide some evidence-based reasoning. The research is expected to be completed in 2006-07.

Figure 2: Estimated Number of Gaming Machines in Clubs and Hotels, Per 1000 Adults, 2005-06



Source: ABS publication 3222.0 and state and territory gaming authorities.

## Private Security Licensing

The *Private Security Act* provides for the regulation of security providers. There are three categories of security providers, and three corresponding types of security licences: crowd controller, security officer and security firm. A person may hold both a crowd controller's licence and a security officer's licence. Although a crowd controller includes any person screening or monitoring persons seeking entry to any public place or any event or function at all, licensed crowd controllers are more usually employed at licensed premises, places of entertainment, and sporting events and concerts. Private security officers are employed to care for property, such as performing the duties of bank guards, payroll escorts and the like, and undertaking security patrols of buildings such as offices, shops, car yards and shopping centres.

Most licence approval decisions required by the *Private Security Act* are delegated to the Director of Licensing who may grant a licence subject to the probity of the applicant, but cannot refuse a licence unless the applicant has been found guilty of a disqualifying offence. Applications lodged by persons who are not automatically disqualified, but who nevertheless may be inappropriate to hold a licence, are referred to the Commission for decision.

Refusal of applications is usually based on the criminal history of the applicant. Refusal is automatic for applicants with disqualifying offences and is usual for all applicants who have committed crimes of violence at any level or drug-related offences. The Commission has broad powers to impose conditions on licences and from time to time imposes reporting, training or employment requirements.

Licences may be granted for as long as three years. A licence renewal may not be refused without the applicant being given an opportunity to show cause against the refusal. The Commission includes in every show cause notice, an opportunity for the applicant to personally appear before the Commission at a hearing, and most recipients of show cause notices take advantage of that opportunity. The Commission also issues a show cause notice where it intends to refuse an application for a new licence.

The *Private Security Act* allows an applicant to appeal to the local court within 28 days of being notified of the Commission's refusal to grant a licence. Six appeals against decisions to refuse licence applications were lodged during 2005-06; five were found in favour of the appellant and one was dismissed. The same number of appeals were lodged in 2004-05. On an appeal, the *Private Security Act* allows a magistrate to grant a licence even where the applicant has been convicted of a disqualifying offence.

### Provision for Complaints

Historically, the Commission has considered complaints against licensed service providers by initiating enquiries into the provider's suitability to continue to hold a licence. During 2003-04, the *Private Security Act* was amended to provide a formal complaint process, clarifying the right of any person to lodge a complaint against a security provider and the duty of the Commission to determine such complaints, with penalties ranging from a reprimand or fine to cancellation of licence. From time to time, the Commission has also varied a liquor licensee's licence conditions to render the liquor licence vulnerable for breaches of the *Private Security Act* by an employed or contracted security provider at the licensed premises.

### Licence Suspension and Cancellation

The Commission may suspend or cancel licences issued under the *Private Security Act* in a range of other circumstances, including the licensee ceasing to be an appropriate person within the criteria provided by that Act. Suspension or cancellation other than as an outcome of a complaint proceeding cannot be imposed without the licensee being afforded an opportunity to show cause against the proposed action, unless the Commission is satisfied that immediate suspension is required in the public interest. If a licensee is charged with a disqualifying offence, the Commission may immediately suspend their licence, pending determination of the charge by the appropriate court.

### Licence Numbers

There is a Crowd Controllers' Register and a Security Officers' Register which list full licence and provisional licence holders. A full licence holder will have completed an approved training course. Provisional licence holders generally obtain the qualification required to become a fully licensed officer during the provisional period of three months.

No licence is issued prior to an applicant undergoing a detailed criminal record check. A provisional licence may be issued to an applicant on the basis that he or she attends an approved training course and on the condition that they are supervised at all times while on duty.

The number of crowd controller, security officer and dual licences current as at 30 June 2006 is provided in the Operational Data section of this publication.

## Mutual Recognition

Section 17 of the *Mutual Recognition Act (Commonwealth)* requires the Commission to recognise the registration of a person in another state or territory as a security officer or crowd controller by issuing that person with the equivalent Northern Territory licence. Issues sometimes arise when an applicant for mutual recognition would not otherwise qualify for a licence under the Territory legislation, particularly where such an applicant would be automatically disqualified from obtaining a licence under the *Private Security Act* on the basis of an unacceptable criminal record. In the latter cases, the Commission has issued the licence as required by the *Mutual Recognition Act*, then taken appropriate show cause action under the *Private Security Act* to what is then a local licence. It is acknowledged, however, that in such situations the Commission must be cautious and no decision has yet been the subject of an appeal to the Local Court.

Table 27 provides details of licences issued by the Commission pursuant to its obligations under the *Mutual Recognition Act* in 2003-04 through to 2005-06.

**Table 27: Licences Issued under Mutual Recognition, year ended 30 June**

Type of Licence	Issuing Jurisdiction	2002	2003	2004	2005	2006
Crowd Controller	NSW	2	11	8	12	5
	Vic	11	14	12	21	13
	Qld	29	14	10	23	21
	WA	6	16	0	13	7
	SA	13	15	10	6	11
	Tas		1	0	0	1
	ACT		1	0	1	3
Sub Total		61	72	40	76	61
Security Officer	WA	8	13	5	14	17
	NSW	26	11	11	16	8
	Qld	38	18	15	24	24
	SA	14	30	14	6	13
	Vic	7	12	13	19	14
	Tas		1	0	1	1
	ACT		1	0	0	3
Sub Total			86	58	80	80
Total		154	158	98	156	141

## Escort Agency Licensing

The statutory role of the Commission is to determine applications for operators' and managers' licences for escort agencies, and to set licence conditions, with power to suspend or cancel a licence upon breach of licence conditions, or the licensee ceasing to be a suitable person or the business being conducted in such a way as to make the practice undesirable.

No complaint process is provided by the *Prostitution Regulation Act*, but historically the Commission enquires into a complaint by a show cause notice and an invitation to the affected licensee to attend a hearing conducted in furtherance of such enquiry.

The Commission interviews all applicants for new licences in order to assess their suitability to hold a licence. A person found guilty of one of a range of sexual, violent or drug-related offences may be ineligible to hold a licence or held to be unsuitable by the Commission, depending on the offence.

Licences are renewable annually. Prior to the commencement of the *Northern Territory Licensing Commission Act*, responsibility for licensing lay with the Escort Agents' Licensing Board. At that time, the legislation required the Board to consist of a legal practitioner, a medical doctor and a psychologist, social worker or person of similar qualifications and experience. Although this requirement did not transfer to the Commission, the Chairperson generally continues the practice whenever possible of selecting Commission members with any of the above qualifications for a panel to determine escort agency matters.

Tables 28 and 29 provide details of escort agency licensing activity for 2001-02 through 2005-06.

Table 28: Escort Agency Operator Licences, year ended 30 June

Operator Licences	2002	2003	2004	2005	2006
New applications received	7	1	4	2	1
Renewal applications received	6	7	6	5	5
Applications withdrawn	1	0	0	1	0
Applications rejected	2	1	1	0	0
Licences cancelled	0	0	0	0	1
Licences as at 30 June	10	7	9	6	5

Table 29: Escort Agency Manager Licences, year ended 30 June

Operator Licences	2002	2003	2004	2005	2006
New applications received	5	5	2	2	0
Renewal applications received	0	0	0	2	0
Applications withdrawn	1	1	0	1	0
Applications rejected	0	0	0	0	0
Licences cancelled	0	0	0	1	0
Licences as at 30 June	4	4	2	2	0

## Totalisator Licensing

There is only one totalisator licence in operation, and ongoing Commission activity in relation to this licence has been minimal.

From time to time the Commission approves additional or substituted totalisator agencies.

The *Totalisator Licensing and Regulation Act* provides a public complaint mechanism in relation to the conduct of a totalisator licensee, with complaints to be investigated and determined by the Commission. The Commission has a range of penal powers ranging from a reprimand or fine, to cancellation of the licence.

No complaints were received during 2005-06.

## Tobacco Licensing

The Commission's role under the *Tobacco Control Act* is limited to reviewing refusals of the Director of Licensing to grant, transfer or vary a licence, and decisions of the Director of Licensing suspending or cancelling a licence. Section 41 of the *Tobacco Control Act* requires reviews to be conducted in accordance with Part 4 of the *Northern Territory Licensing Commission Act*, which mandates a fair and expeditious manner of hearing and proper consideration of the issues.

No applications for review were lodged with the Commission in the reporting period.

Brenda Monaghan  
Acting Chairperson  
30 September 2006

Mr John Flynn, the Chairperson of the Licensing Commission for the reporting period, has compiled this report on behalf of the Licensing Commission. However, Mr Flynn resigned for family reasons prior to presenting this report to the Minister. Ms Brenda Monaghan has been appointed as Acting Chairperson by the Minister and presents this report.