

*Northern Territory
Licensing Commission*

2004-05
Annual Report



Northern Territory Licensing Commission 2004-05 Annual Report

The Commission The Northern Territory Licensing Commission (the 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 also 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 in 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 by its investigations, monitoring, record keeping, enforcement and reporting. 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 for Racing, Gaming and Licensing at the end of each financial year on the Commission's 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. There were some changes to the membership of the Commission during 2004-05. (Membership of the Racing Commission pursuant to the *Racing and Betting Act* is denoted with * below.)

Members as at 1 July 2004:

Mr John Withnall (Chairperson and Legal Member)*

Ms Jill Huck, Darwin*

Mr Alan Clough, Nhulunbuy*

Mr Paul Costigan, Darwin*

Mr Craig Spencer, Darwin*

Ms Annette Smith, Alice Springs

Members appointed during 2004-05:

Mr John Flynn (Acting Chairperson)*

Ms Brenda Monaghan (Legal Member)

Ms Monaghan is a Northern Territory Public Sector employee. All other members receive sitting fees and allowances in accordance with rates determined by the *Remuneration (Statutory Authorities) Act*.

Chairperson's
Biography

John Flynn
Acting Chairperson of the Licensing Commission

John Flynn was appointed Acting Chairperson of the Licensing Commission in February 2005 and is currently 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.

Obituary

John Withnall
Chairperson of the Licensing Commission

It is with sadness that the Commission notes the passing of the Chairperson and Legal Member, John Withnall in July 2005. John became ill in February and was unable to return to work. He was appointed the Legal Member of the former Liquor Commission, continued as such on the Licensing Commission and was appointed Chairperson in July 2004. He was able, with his vast knowledge in all facets of licensing, to make a considerable and lasting contribution to the work of the Commission. He was personally well regarded by all and his passing leaves a void.

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 incidental to the proper administration of the affairs of the Commission and the proper performance of his or her functions.

Commission Procedures

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 above and provides objections made under any of the Acts listed above and provides appropriate reports to the Commission. Although the Director of Licensing has considerable individual powers, most notably under the gaming legislation, the majority of determinative decisions under the legislation are made by the Commission, by a full corporate meeting or a meeting of a quorum selected by the Chairperson for the purpose, or consequent upon and as an outcome of a hearing.

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

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, the Department of Health and Community Services and the (former) Department of Infrastructure, Planning and Environment. 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 Chamber of Commerce Northern Territory, 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. The Chairperson is occasionally called on to address community groups and service clubs on the role of the Commission in relation to social issues connected with liquor and gaming.

Commission Hearings and Meetings

The Commission conducts monthly business meetings at which issues from across the broad range of its legislative responsibilities are determined. These meetings require a demanding level of preparation and participation on the part of members. 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 Alice Springs and 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 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 1.

Table 1: Hearings and Meetings

Type of Hearing / Meeting	Hearings and Meetings			Hearings and Meetings Days		
	2002-03	2003-04	2004-05	2002-03	2003-04	2004-05
Scheduled monthly Commission meetings	11	11	12	23	23	24
Special Commission meetings	16	26	13	16	26	13
Community liaison	1	5	6	1	2	8
Escort agency meetings	5	9	5	5	7	5
Conferences attended	0	5	2	0	9	6
Hearings	87	72	71	116	85	97
Handing down decisions	14	6	1	14	6	1
Total	134	134	110	175	158	154

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 made of operational aspects of existing licences. Generally, any applicant whose application is refused without a hearing may demand a hearing before the Commission. Table 2 summarises the nature of hearings conducted during 2004-05 and compares them with those conducted in the previous four years.

Table 2: Liquor-Related Hearings

Nature of Hearings	2000-01	2001-02	2002-03	2003-04	2004-05
Application for a restricted area	1	1	0	2	5
Application for the grant of a liquor licence ¹	10	3	15	9	2
Complaint pursuant to section 48 – breach of <i>Liquor Act</i>	10	7	8	7	7
Complaint pursuant to section 48 – other (eg. alleged breach of licence conditions) ¹	4	14	15	18	5
Application to cancel liquor licence ¹	2	5	7	9	3
Application to vary conditions of liquor licence	16	8	12	8	6
Application to substitute premises	1	1	2	0	0
Transfer of liquor licence ²				2	0
Requests by licensees for review of licence conditions ²				3	1
Other ²		16			
Total	44	55	59	58	29

1. The decline in the number of liquor related hearings since 2003-04 is due in part to the Commission having to deal with a surge in restricted areas and seized vehicle matters, a number of matters being deferred as a result of the then Chairman and legal member being ill, and the Commission streamlining its processes by convening a subgroup of the Commission to consider matters and make decisions outside of the hearing process. Hearings in relation to applications are demand driven and are outside the control of Racing, Gaming and Licensing and the Commission.

2. Where data is absent, it is either unavailable, or was previously not reported in this format.

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 3 shows the number of complaints received and actions taken during 2004-05 and compares them with the complaints received and actions taken the previous four years.

Table 3: Liquor Complaints Received through Director of Licensing and Action Taken

Liquor Complaints Received and Action Taken	2000-01	2001-02	2002-03	2003-04	2004-05
Complaints investigated, but no further action warranted	15	17	8	7	6
Licences surrendered following complaint	0	0	0	0	0
Licences suspended due to breaches of licence conditions (section 66(1)(b))	2	5	13	4	3
Complaints heard and finalised without licence suspension	0	0	10	21	9
Complaints awaiting decision	0	0	3	2	3
Complaints withdrawn	1	0	1	0	3
Total ¹	18	22	35	34	24

1. Although the number of complaints has decreased from 2003-04, the level of complaints fluctuates from year to year.

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 4 shows the licences suspended during 2004-05 and the basis for the suspensions.

Table 4: Liquor Licences Suspended 2004-05

Date	Premises	Reason for Suspension
06/07/2004	The Dust Bowl	Breach of Condition s66(1)(b)
07/09/2004	Gapview Resort Hotel	Breach of Condition s66(1)(b)
08/09/2004	Pirlangimpi Community	Complaint s48A
08/09/2004	Nguiu Club	Complaint s48A
08/09/2004	Milikapiti Sports and Social Club	Complaint s48A
08/09/2004	Wurankuwu Aboriginal Corporation	Complaint s48A
07/10/2004	Nguiu Club	Complaint s48A
24/01/2005	Wurankuwu Aboriginal Corporation	Not Trading s66(1)(c)
24/01/2005	Raffles Bar	Not Trading s66(1)(c)
24/03/2005	Tiwi Supermarket	Breach of Condition s66(1)(b)
06/04/2005	Tyeweretye Social Club	Not Trading s66(1)(c)
06/05/2005	Flynn Drive Foodland	Not Trading s66(1)(c)
30/06/2005	Pommerroys Steak and Wine Bar	Not Trading s66(1)(c)

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 ground 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.

Licences for each of the premises described in Table 5 were cancelled during 2004-05 on the ground they had not been used for the sale or supply of liquor for periods in excess of 90 days.

Table 5: Liquor Licences Cancelled 2004-05

Date	Premises
10/12/2004	Stellamaris Seafarers' Centre
21/02/2005	Da Fish
01/04/2005	Emerald Springs

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 described in Table 6 were surrendered during 2004-05.

Table 6: Liquor Licences Surrendered 2004-05

Date	Premises
26/07/2004	Campfire in the Heart
28/07/2004	The Magic Wok
10/08/2004	PINTS Club Alice Springs
10/08/2004	Franz Weber Bonrook Resort
05/11/2004	Pizza Hut Alice Springs
31/01/2005	Raffles Bar
25/02/2005	Wollogorang Roadhouse
07/04/2005	Alice Motor Inn
07/04/2005	Pizza Hut Darwin

New Criteria for Applications: Public Interest

During 2003-04, 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 Application

The *Liquor Amendment Act 2004* also expanded the previously limited grounds of objection to liquor licence applications.

Previously, under the *Liquor Act*, any person could object to any application for a liquor licence on any grounds other than those relating to adverse impact of competition. Over time, so-called 'commercial' objectors became skilled at crafting and presenting self-protective objections cloaked in the altruism of public needs and wishes. Effective from 24 January 2003, the *Liquor Amendment Act 2002* restricted the available grounds of objection to the single ground of apprehension of adverse effect upon the amenity of the neighbourhood in which the licensed premises were or would be situated. Effective from 5 May 2004, the *Liquor Amendment Act 2004* added adverse effects on health, education, public safety and social conditions in the community as available grounds of objection.

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 objection 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, within the 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 98 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.

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 7 provides details of liquor permit activity for restricted areas during 2004-05 and compares them to the previous four years.

Table 7: Number of Liquor Permits for Restricted Areas

Liquor Permits	2000-01	2001-02	2002-03	2003-04	2004-05
Permits issued ¹	1 432	1 586	1 377	1 394	1 565
Permits revoked	403	165	15	57	43
Permits cancelled	14	165	105	16	47

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

Regional Restrictions, Regional Management Plans

Other than the restricted area provisions, the *Liquor Act* does not readily lend itself to the adoption by the Commission of 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. Currently, there is reduced liquor trading ('liquor restrictions') in Alice Springs, Tennant Creek, Katherine and Nhulunbuy. With the exception of Nhulunbuy (where there was no apparent disaffection with the current restrictions when first proposed), extensive hearings have taken place in these towns and licensees have exercised their right to a hearing in the face of notified variations to their licence conditions.

Regional restrictions also apply in some areas by restrictive licence conditions being voluntarily accepted by a licensee or imposed by the Commission to reflect the outcome of a contested hearing after a complaint against an individual licensee (a process also quite common in urban areas).

The Licensing Commission has been active in responding to requests from communities that are endeavouring to address unacceptable behaviours arising from liquor misuse. The Tiwi Islands and Groote Eylandt regions have developed liquor management plans that have been referred to the Commission. The Commission has conducted hearings to gain further community views and has established permit systems to provide controlled access of takeaway liquor. A key feature of both the Tiwi and Groote liquor approaches has been the use of local Permit Assessment Committees that have made recommendations to the Commission concerning the issue, refusal and revocation of liquor permits. The permit system is established in conjunction with the declaration of Melville Island as a restricted area, making liquor restriction applicable to the entire Tiwi Islands.

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.

When 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 8 provides the number of vehicles seized and the number returned to owners from 2000-01 to 2004-05.

Table 8: Seized Vehicles – Liquor

Seized Vehicles	2000-01	2001-02	2002-03	2003-04	2004-05
Vehicles seized	87	58	62	110	116
Vehicles returned to owners	23	13	12	16	22

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 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 minor 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 can apply 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 an area 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, which is 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.

Regulations The Kava Management Regulations limit the number of wholesale licences (to one), require licensees to be signatories to the Code of Kava Management, limit the areas available to be declared as kava licensed areas and specify some core licence conditions, records to be kept by licensees, procedures for packaging and labelling of kava and the signage to be erected at the boundaries of Kava Licensed Areas.

Enforcement The enforcement of the kava regulatory regime differs from liquor enforcement in the key element 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 9 provides information regarding vehicles and amounts of kava seized from 2000-01 to 2004-05 pursuant to the *Kava Management Act*.

Table 9: Seized Kava and Seized Vehicles

Seizures	2000-01	2001-02	2002-03	2003-04	2004-05
Kava seizures	33	26	11	16	12
Amount seized (kg)	1 797	861	1 098	1 749	454
Vehicles seized	6	1	2	5	3

Note: Data supplied courtesy of Northern Territory police, who caution that although information for 2004-05 has been carefully compiled, the amount of seized kava specified may vary when continuing investigations have been completed.

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

To promote the responsible operation and use of gaming machines, the Minister established a joint community and industry working party to develop and implement a Responsible Gambling Code of Practice. The Commission remains represented on the working party that is now addressing industry training and community information strategies.

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 2004-05, 103 games and equipment for hotels and clubs were approved by the Commission.

Community Impact

Amendments to *Gaming Machine Act* made following the National Competition Policy review came into effect during the year. This clarified the objective of the Act, providing a greater focus on harm minimization. The amendments also removed the need for hotels to have take-away liquor conditions to be eligible to apply for a gaming machine licence and introduced the need to applicants for submit a community impact analysis with their 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 the 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 in accordance with the *Gaming Control Act*. (The Community Benefit Committee's 2004-05 Annual Report is published in Part F of the Northern Territory Treasury Annual Report.)

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. The Commission approvals of new gaming machine licences for the past five years are shown in Table 10.

Table 10: New Gaming Machine Licence Approvals

Gaming Machine Licences	2000-01	2001-02	2002-03	2003-04	2004-05
Hotels ¹	20	3	11	5	12
Clubs	12	0	0	0	0

1. The 2000-01 figures include licence transfers and renewals. After 1 July 2001, gaming machine licences became non-transferable and remain in effect until cancelled, revoked or ceased. The issue of a licence following the sale of a licensed venue post 1 July 2001 are considered as new. In 2004-05, there were five new gaming venues introduced and seven changes in the licenses of pre-existing venues. The introduction of new venues is due to changes in the *Gaming Machine Act* allowing hotels without take-away conditions to apply for gaming machines. The five new venues will become active in 2005-06.

During 2004-05, the Commission approved an increase to the number of gaming machines for Jabiru and Noonamah Tavern.

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 11 shows that at 30 June 2005, 68 premises were operating 985 gaming machines. There was an increase of 33 machines (3.5 per cent) across the Territory during 2004-05, which is associated with the introduction of five new venues and marginal variation of approved gaming machine numbers in several clubs and hotels.

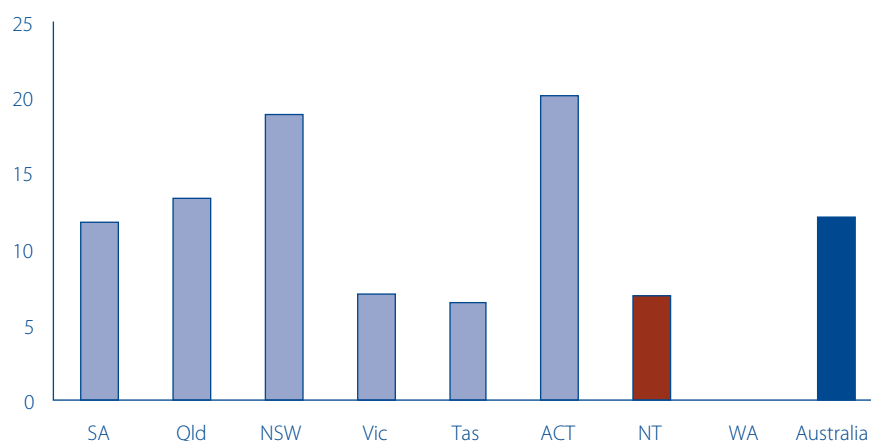
Table 11: Gaming Machine Distribution

Gaming Machine Distribution	2002-03			2003-04			2004-05		
	Northern Region	Southern Region	Total	Northern Region	Southern Region	Total	Northern Region	Southern Region	Total
Venues									
Clubs	25	9	34	25	9	34	25	8	33
Hotels	25	8	33	26	8	34	27	8	35
Total	50	17	67	51	17	68	52	16	68
Machines									
In clubs	510	140	650	516	145	661	523	164	687
In hotels	217	61	278	228	63	291	235	63	298
Total	727	201	928	744	208	952	758	227	985

Gaming Machine Density

The density of gaming machines as a factor of population in all states and territories is shown on a comparative basis in the chart below. Based on the number of gaming machines in states and territories as at 30 June 2005, there were seven gaming machines per 1000 adults in the Territory's clubs and hotels compared to the national average of 12 gaming machines per 1000 adults.

Number of Adults per Gaming Machine in Clubs and Hotels – 2004-05



Note: Estimated population (18 years and over) as at 30 June 2005 sourced from Australian Bureau of Statistics (ABS), Cat. No. 3222.0.

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.

Table 12 shows gaming machine numbers, gross profits and tax paid by clubs in 2004-05.

Table 13 shows gaming machine numbers, gross profits, tax paid by hotels and community benefit levy contributions in 2004-05.

Table 14 provides a summary of Northern Territory gaming machine numbers and performances for 2004-05.

During 2004-05, the average gross profit per machine per day was \$139 compared to \$129 in 2003-04 and \$125 in 2002-03. Gaming machine gross profit has risen by 9.6 per cent to \$49.8 million in 2004-05, up from \$45 million in 2003-04. This is due in part to increased popularity and an increase in number of gaming machines.

Table 12: Northern Territory Community Gaming Machine Performance in Clubs in 2004-05

Club Venue	Number of Machines	Gross Profit (\$)	Northern Territory Tax (\$)
Alice Springs Golf Club	8	95 103	15 838
Alice Springs Memorial Club	40	1 759 876	526 146
Alice Springs RSL	20	574 548	128 536
Alyangula Golf Club	8	61 942	9 933
Alyangula Recreation Club	15	726 586	173 762
Buff Club	16	584 610	131 169
Casuarina All Sports Club	45	5 130 753	1 955 606
Cazalys Palmerston	45	4 331 437	1 612 620
Darwin Bowls and Social Club	3	14 209	1 834
Darwin Golf Club	13	124 367	22 492
Darwin North Sub Branch RSL	6	13 414	1 732
Darwin RSL Club	18	412 192	88 433
Darwin Rugby League Club	2	2 862	369
Darwin Trailer Boat Club	6	67 699	9 941
Federal Sports Club	10	297 157	62 079
Gillen Club	45	1 022 075	275 808
Gove Country Golf Club	7	44 974	6 429
Jabiru Sports and Social Club	10	573 939	127 227
Katherine Club	45	1 998 827	617 146
Katherine Country Club	19	665 697	153 808
Katherine Sports and Recreation Club	16	543 102	119 699
Nightcliff Sports and Social Club	18	569 614	125 702
Palmerston Golf and Country Club	22	365 954	77 840
Palmerston Sports Club	45	4 679 179	1 761 836
PINT Club Darwin	24	545 739	121 192
Sporties Club	12	260 611	53 706
St Mary's Football Club	30	553 912	123 196
Tennant Creek Bowling Club	4	22 548	2 911
Tennant Creek Memorial Club	25	1 285 715	357 129
The Arnhem Club	45	3 713 656	1 347 530
The Darwin Sailing Club	10	47 288	6 528
Tracy Village Social and Sports Club	45	3 730 531	1 354 771
Waratah Sports Club	10	18 280	2 360
Total	687	34 838 396	11 375 308

Table 13: Northern Territory Community Gaming Machine Performance in Hotels in 2004-05

Hotel Venue	Number of Machines	Gross Profit (\$)	Northern Territory Tax (\$)	Community Benefit Levy (\$)
Adelaide River Inn	4	56 384	24 195	5 638
Aileron Roadhouse	4	50 099	21 497	5 010
Airport Hotel	10	466 006	199 963	46 601
Ayers Rock Resort Residents Club	6	54 761	23 498	5 476
Barkly Homestead	5	78 795	33 811	7 879
Beachfront Hotel	10	958 651	411 357	95 865
Crossways Hotel	10	500 872	214 924	50 087
Gapview Resort Hotel Motel	10	101 406	43 513	10 141
Goldfields Hotel	10	315 066	135 195	31 507
Hayes Creek Inn	2	10 159	4 359	1 016
Heavitree Gap Tavern	8	303 449	130 210	30 345
Hibiscus Tavern	10	1 088 339	467 006	108 834
Hidden Valley Tavern	10	454 404	194 985	45 440
Howard Springs Tavern	10	496 720	213 143	49 672
Humpty Doo Hotel	10	665 151	285 416	66 515
Humpty Doo Tavern	10	940 746	403 674	94 075
Katherine Hotel Motel	10	545 884	234 239	54 588
Kitty O'Shea's Irish Bar and Blue Heeler Bar	10	403 049	172 948	40 305
Litchfield Tavern	10	240 706	103 287	24 071
Mandorah Beach Hotel	5	30 625	13 141	3 063
Noonamah Tavern	4	59 276	25 435	5 928
Palmerston Tavern	10	402 514	172 719	40 251
Parap Tavern	10	884 912	379 716	88 491
Pine Creek Hotel	6	78 833	33 827	7 883
Plaza Karama Tavern	10	1 000 373	429 260	100 037
Quality Hotel Frontier Darwin	10	797 490	342 203	79 749
Rum Jungle Motor Inn	10	371 997	159 624	37 200
Tennant Creek Hotel	10	434 676	186 519	43 468
The Cavenagh	10	497 411	213 439	49 741
Timber Creek Wayside Inn	4	79 654	34 180	7 965
Todd Tavern	10	557 748	239 329	55 775
Top End Hotel	10	514 254	220 666	51 425
Victoria Hotel	10	562 202	241 241	56 220
Walkabout Tavern	10	549 159	235 644	54 916
Winnellie Hotel	10	471 266	202 220	47 127
Total	298	15 023 037	6 446 383	1 502 304

Table 14: Northern Territory Community Gaming Machine Performance Total in 2004-05

Venue	Number of Machines	Gross Profit (\$)	Northern Territory Tax (\$)	Community Benefit Levy (\$)
Clubs	687	34 838 396	11 375 308	
Hotels	298	15 023 037	6 446 383	1 502 304
Total	985	49 861 433	17 821 691	1 502 304

Source: Northern Territory Treasury and NTTAB

Note: Figures in Tables 12, 13 and 14 reflect gaming machine activities between 1 July 2004 and 30 June 2005. The Territory tax collected from gaming machine activity does not align with the actual tax receipts for 2004-05 (\$17.7 million as shown in the Racing, Gaming and Licensing operational data table in Part E of the Treasury Annual Report) due to the timing lag between activity and due date for tax payments.

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 other 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. Eight appeals against decisions to refuse licence applications were lodged during 2004-05, seven appeals were upheld and one withdrawn, compared with 2003-04, when six appeals were lodged, four of which were successful. 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 <i>Private Security Act</i> 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 <i>Private Security Act</i> 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 <i>Private Security Act</i> 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 Controller's Register and a Security Officers' Register which lists 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.
Mutual Recognition	Section 17 of the <i>Mutual Recognition Act</i> (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 <i>Private Security Act</i> on the basis of an unacceptable criminal record. In the latter cases, the Commission has issued the licence as required by the <i>Mutual Recognition Act</i> , then taken appropriate show cause action under the <i>Private Security Act</i> 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 15 provides details of licences issued by the Commission pursuant to its obligations under the <i>Mutual Recognition Act</i> during 2003-04 and 2004-05.

Table 15: Licences Issued under Mutual Recognition

Type of Licence	Issuing Jurisdiction	2002-03	2003-04	2004-05
Crowd Controller	WA	16	0	13
	NSW	11	8	12
	Qld	14	10	23
	SA	15	10	6
	Vic	14	12	21
	Tas	1	0	0
	ACT	1	0	1
Sub Total		72	40	76
Security Officer	WA	13	5	14
	NSW	11	11	16
	Qld	18	15	24
	SA	30	14	6
	Vic	12	13	19
	Tas	1	0	1
	ACT	1	0	0
Sub Total		86	58	80
Total		158	98	156

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 16 and 17 provide details of escort agency licensing activity for 2003-04 and 2004-05.

Table 16: Escort Agency Operator Licences

Operator Licences	2000-01	2001-02	2002-03	2003-04	2004-05
New applications received	4	7	1	4	2
Renewal applications received	11	6	7	6	5
Applications withdrawn	2	1	0	0	1
Applications rejected	1	2	1	1	0
Licences cancelled	0	0	0	0	0
Licences as at 30 June	12	10	7	9	6

Table 17: Escort Agency Manager Licences

Operator Licences	2000-01	2001-02	2002-03	2003-04	2004-05
New applications received	2	5	5	2	2
Renewal applications received	1	0	0	0	2
Applications withdrawn	0	1	1	0	1
Applications rejected	0	0	0	0	0
Licences cancelled	0	0	0	0	1
Licences as at 30 June	3	4	4	2	2

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 2004-05.

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 a proper consideration of the issues.

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



John Flynn
ACTING CHAIRPERSON
30 September 2005