



LATE NIGHT VENUE ASSOCIATION OF SA INCORPORATED



**Submission to the
SA Liquor Licensing Review**

29 January 2016

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Late Night Venue Association of SA Incorporated
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Introduction

ABOUT THE LATE NIGHT VENUE ASSOCIATION OF SA INCORPORATED

The Late Night Venue Association of SA Incorporated (**LNVA SA**) is the representative body for South Australian businesses operating late night licensed venues.

The LNVA SA's objectives are to:

- provide a collective industry voice by championing the causes of its members;
- promote, protect and develop the interests of its members; and
- foster communication and knowledge sharing amongst late night venue licensees through training, seminars, publications and social events.

ABOUT THIS SUBMISSION

The LNVA SA has prepared this submission by reference to liquor licensing matters affecting or potentially affecting South Australian late night venue licensees.

While the LNVA SA has had regard to the Liquor Licensing Discussion Paper and the Terms of Reference of the review, the LNVA SA seeks to raise in this submission additional issues not raised in those publications.

The LNVA SA has purposely kept this submission a succinct summary of its position, as requested by the independent reviewer.

The LNVA SA would be pleased to meet with the independent reviewer to elaborate on this submission and/or to provide further written submissions, if necessary.

State of the South Australian Economy

CURRENT STATUS

The South Australian economy is currently one of Australia's worst performing economies.¹ In December 2015, South Australia's unemployment rate was 7.3%, the highest unemployment rate in the nation by a clear margin and well above the Australian average (5.8%).² Over the last three years, employment growth in South Australia has flatlined, whereas in Australia as a whole employment growth was 5%. Future economic growth forecasts for South Australia continue the trend. In 2015-16, employment growth in South Australia is expected to be only 0.25%, with a marginal increase to 0.75% in 2016-17 and 2017-18.³

IMPORTANCE OF ADELAIDE NIGHT TIME ECONOMY

The Adelaide night time economy is an important part of South Australia's economy. Adelaide's night time economy accounts for more than 10 per cent of all employment in the city. The Adelaide night time economy provides approximately 10,060 direct jobs in services and many more indirect jobs. Those potentially affected by adverse liquor licensing changes include bar tenders, taxi drivers, musicians, DJs, bar and club managers, security, entertainers, dancers and, of course, small business owners.

On average, over 50,000 people attend Adelaide's late night entertainment precinct every Friday and Saturday night. Adelaide's late night entertainment precinct has long been recognized as a tourist attraction, attracting international, interstate and intrastate visitors. If the State Government is to achieve its ambitious plan of growing tourism revenue to \$8 billion by 2020⁴, Adelaide's late night entertainment precinct must be the subject of real growth.

ADELAIDE NIGHT TIME ECONOMY STATISTICS

For the period 2009 to 2013, there was no real growth in Adelaide's night time economy. In its report on the Australian night-time economy released in February 2015, the National Local Government Drug and Alcohol Committee found that in Adelaide's night time economy for the period 2009 to 2013:

- revenue grew by only 7.1 per cent, which was the second-weakest among Australia's capital cities;
- liquor and hotel sales decreased by \$18 million; and
- employment in alcohol sales dropped by nearly 10 per cent (i.e. more than 200 jobs lost).⁵

1

https://www.commsec.com.au/content/dam/EN/Campaigns_Native/stateofstates/january2016/CommSec_State_of_the_States_January2016.pdf

2

<http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/6202.0Main%20Features2Dec%202015?opendocument&tabname=Summary&prodno=6202.0&issue=Dec%202015&num=&view=>

³ http://143.216.32.80/Mid-Year%20Budget%20Review%202015_16.pdf

⁴ <http://www.tourism.sa.gov.au/assets/documents/About%20SATC/satc-sa-tourism-plan-2014.pdf>

⁵ http://lordmayors.org/site/wp-content/uploads/2015/02/PN041230_TheAustralianNTE_vFinal.pdf

Late Night Venues in South Australia

WHAT IS A LATE NIGHT VENUE?

The LNVA SA does not define late night venues by liquor licence class. Instead, the LNVA SA defines a late night venue as any licensed premises that are permitted to trade beyond midnight.

Based on the LNVA SA's definition of a late night venue, a late night venue in South Australia can potentially operate under any of the following liquor licence classes:

- a Special Circumstances Licence;
- a Hotel Licence;
- an Entertainment Venue Licence;
- a Small Venue Licence (with extended trading authorisation);
- a Limited Licence; or
- a Restaurant Licence.

Arguably, the State Government, through introduction of the Late Night Trading Code of Practice (**Late Night Code**) on 1 October 2013, defines a late night venue as licensed premises permitted to trade at some point between 3.01am and 7.00am. This is because the most high-profile and high-impact measure of the Late Night Code has been the lockout which prevents people from entering licensed premises in the Adelaide CBD between 3.01am and 7.00am (**Lockout**).

LATE NIGHT VENUE STATISTICS

The current number of South Australian late night venues depends on the trading hours and locality that is adopted.

If a late night venue is one that trades at some point between 3am and 7am in the Adelaide CBD, the LNVA SA estimates that, as at November 2015, there were 34 late night venues in the Adelaide CBD or 0.5% (i.e. 1 in 200) of all licensees in South Australia (see Appendix A to this submission).

If a late night venue is one that trades beyond 2am irrespective of location, this captures approximately 80 Adelaide CBD and suburban hotels that are currently not the subject of the Late Night Code.

If a late night venue is one that trades beyond midnight irrespective of location (as is the position of the LNVA SA), then in addition to the Adelaide CBD and suburban hotels that are currently not the subject of the Late Night Code, small bars in the Adelaide CBD currently trading under a small venue licence with an extended trading authorisation would also be captured. The total figure would be approximately 150 licensed premises.

LATE NIGHT VENUE COMPLIANCE COSTS

Over the last 10 years, Adelaide late night venues have incurred the most compliance costs of any licensed premises. Recent mandatory compliance with the Late Night Code, including the introduction of metal detectors, digital CCTV at all entry and exit points and tempered or polycarbonate glassware, has been estimated to cost up to approximately \$40,000.⁶ To date, these compliance costs have only been incurred by late night venues that trade at some point between 3am and 7am in the Adelaide CBD.

ADELAIDE CASINO IS THE LARGEST LATE NIGHT VENUE

The Skycity Adelaide Casino (**Adelaide Casino**) is a late night venue. It has a maximum licensed capacity of 6,725 people, making it easily the largest late night venue in the Adelaide CBD by licensed capacity. Upon completion of the redevelopment of the Adelaide Casino, it is anticipated that the Adelaide Casino's licensed capacity will be over 10,000 people, making it one of the largest late night venues in Australia.

Currently, the Lockout does not apply to the Adelaide Casino. Given the obligations of the Late Night Code, there is only negligible difference between the operations and management of the Adelaide Casino and Adelaide late night venues.

LATE NIGHT VENUES NOT A NEW PHENOMENON

Late night venues that trade at some point between 3.01am and 7.00am in the Adelaide CBD are not a new phenomenon. As can be seen in Appendix A, only 3 of the current 34 late night venues were granted a new liquor licence within the last 10 years.

What is a recent phenomenon is the explosion of small bars in the Adelaide CBD. Since April 2013, there have been approximately 53 new small bars in the Adelaide CBD. This has significantly increased the density of liquor outlets in the Adelaide CBD, commensurate to doubling the licensed capacity of the Adelaide Casino.

ADELAIDE LIQUOR LICENSING ACCORD

The LNVA SA and its members are members of the Adelaide Liquor Licensing Accord (**Accord**). The Accord's other members are licensees within the Adelaide City Council Local Government Area, SA police, the licensing authority, Adelaide City Council and trader and precinct groups and associations.

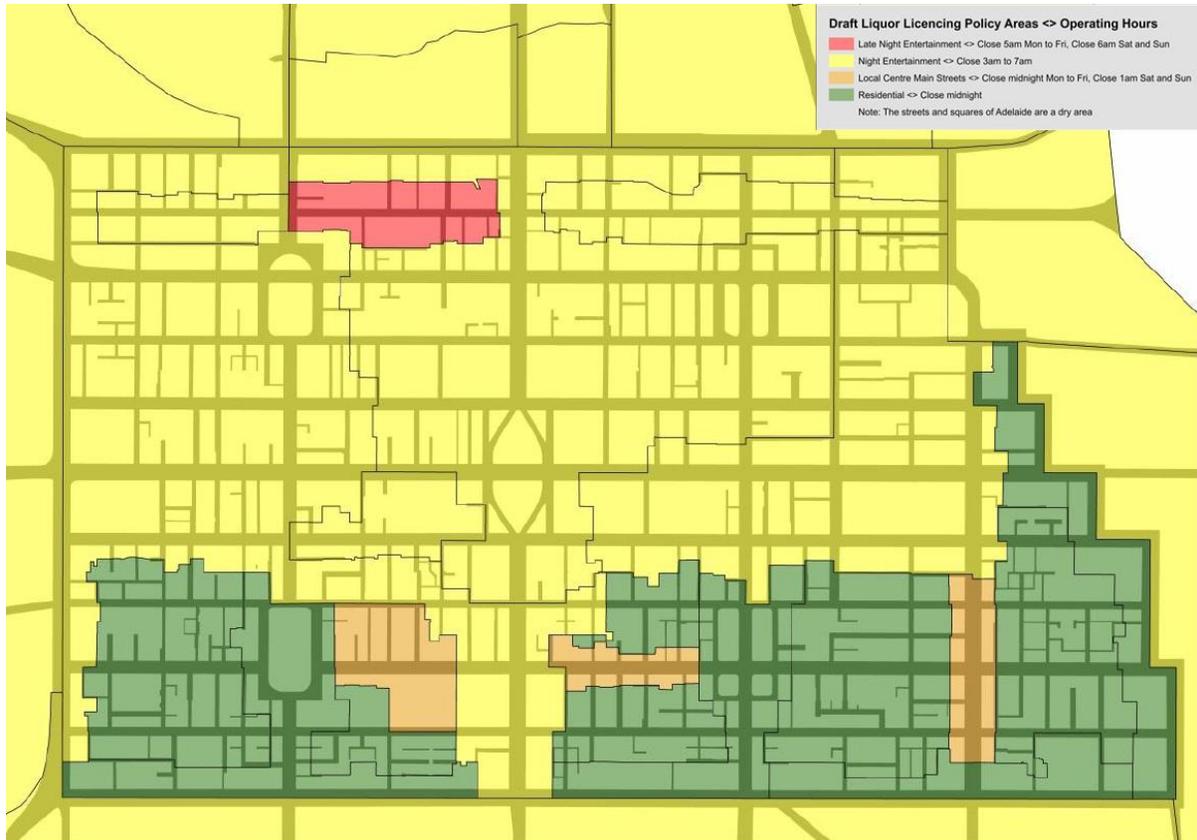
The Accord was established in 1996 to address issues in the Hindley Street late night entertainment precinct but has now been expanded to cover the Adelaide CBD and North Adelaide. The Accord meets regularly to share information, intelligence and ideas to reduce crime and disorder in and around licensed premises, particularly late night entertainment venues.

The Accord provides both plain language descriptions of certain requirements under the Act and voluntary undertakings by licensees, which increase safety and the ambience of late night entertainment venues.

⁶ <http://www.heraldsun.com.au/news/national/suburban-adelaide-pubs-face-up-to-40000-cost-to-implement-tough-liquor-law-changes/news-story/3f84cfd659b3dccb871e5f918c41a9c?sv=da3f61b9e1a63a496c7ea723e316e2be>.

FUTURE DEVELOPMENT OF LATE NIGHT VENUES

Over time, the LNVA SA expects a majority of South Australian late night venues to continue to operate within Adelaide City Council's Late Night Entertainment Policy Area, being Hindley Street east only (shaded in pink in the map below). This policy area is subject to 5am close Monday to Friday and 6am close Saturday and Sunday.



Recent Themes and Trends

The LNVA SA notes the following themes and trends in the night time economy and liquor licensing including late night liquor licensing which have emerged in recent years:

- **individuals are responsible for their own behavior.** Why should the majority of responsible, law-abiding people effectively be punished because of the actions of a very small minority?
- **increasing demand for late night entertainment** due to the advent of a “24/7 economy” and flexible working arrangements.
- **increasingly complex, onerous and costly liquor licensing obligations on late night venues.** Late night venues must comply with the *Liquor Licensing Act 1997* (SA) (**Act**), the *Liquor Licensing (General) Regulations 2012* (SA) and the *Liquor Licensing (Declared Criminal Organisations) Regulations 2015* (SA) (**Regulations**), the General Code of Practice and the Late Night Code.
- **patron safety and welfare is of paramount importance.** The LNVA SA supports a “zero tolerance” policy of violence, particularly late at night.
- **State Government pre-occupation with “liveable cities” rankings.** In August 2015, the Economist Intelligence Unit ranked Adelaide the equal 5th most liveable city in the world, while Melbourne was ranked the most liveable city in the world.⁷
- **progressive cities value the night-time economy.** Some European cities have appointed a Night Mayor to promote the benefits of the night-time economy⁸, while Melbourne is actively taking steps to become a 24-hour city.⁹
- **large-scale (1,000 people or more) temporary events held outdoors, often in the Adelaide parklands, pursuant to a limited licence.** Large scale, “pop-up” events usually comprise a combination of amplified music (especially DJs), the extensive sale of liquor via numerous bars and late night trade beyond midnight.
- **introduction of substantial late night venue annual licence fees in 2011.** The annual licence fee for a late night venue trading past 4am with a capacity over 400 people is currently \$7,934¹⁰, which is less than the previous fee in 2012 of up to \$10,700¹¹ but still exorbitant.
- **tougher penalties for those who commit acts of violence or anti-social behavior.** Over recent years, expiation fees for those who have behaved in an offensive or disorderly manner in (or in the vicinity of) licensed premises have been increased.

⁷ <http://media.heraldsun.com.au/files/liveability.pdf>.

⁸ <http://fortune.com/2015/11/23/london-night-mayor/>.

⁹ <https://www.broadsheet.com.au/melbourne/nightlife/article/what-will-it-take-turn-melbourne-24-hour-city>.

¹⁰ <http://www.cbs.sa.gov.au/assets/files/Annual%20Liquor%20fees.pdf>.

¹¹ <http://www.cbs.sa.gov.au/assets/medicomms/Newliquorlicensingfees.pdf>.

LNVA SA Position

The LNVA SA and its members work hard to ensure a safe and secure late night entertainment culture in Adelaide. Late night venues are significant contributors to a vibrant night time economy.

Our members are at the forefront of developments in the Adelaide late night economy and they work cooperatively with the licensing authorities.

The LNVA SA is supportive of evidence-based late night liquor licensing initiatives which provide tangible community benefits in terms of patron safety in and around licensed premises and alcohol harm minimisation.

The LNVA SA does not support unproven initiatives which have detrimental economic or social impacts on late night venue licensees or the Adelaide night time economy, particularly initiatives which are arguably discriminatory as between Adelaide licensed premises.

One such unproven initiative is the Lockout. Since October 2013, the Lockout has had detrimental social and economic impacts on the Adelaide late night economy and Adelaide late night venues. In terms of economic impacts, the LNVA SA estimates that since October 2013 the Lockout has caused or contributed to:

\$50m loss to the Adelaide late night economy

1,000 South Australian jobs lost

1/3 Adelaide late night venues closed

LNVA SA Proposals

LNVA SA APPROACH

The LNVA SA's proposals below are framed in terms of the three themes contained in the Liquor Licensing Discussion Paper and the Terms of Reference of the review, namely:

- red tape reduction;
- promoting a safer drinking culture; and
- vibrancy.

TENSION BETWEEN THEMES

Clearly, there is an inherent tension between the theme of red tape reduction (i.e. minimising the administrative and compliance burden of the liquor licensing system) and the theme of promoting a safer drinking culture (i.e. introducing additional practices or measures with which licensees must comply). The red tape that is sought to be reduced is arguably the same red tape that is sought to be introduced to promote a safe drinking culture.

WHAT IS “VIBRANCY”?

The theme of “vibrancy” in the context of the liquor licensing system is intriguing. Vibrancy is not an object of the Act, although furthering the interests of the liquor industry and industries with which it is closely associated—such as the live music industry, tourism and the hospitality industry—within the context of appropriate regulation and controls is an object of the Act.¹² The Macquarie Dictionary defines “vibrant” to mean “pulsating with energy”, “full of vigor; energetic; powerful; forceful” and “exciting; producing a thrill.” It is on this basis that the LNVA SA interprets the term “vibrancy”.

RED TAPE REDUCTION

By reference to red tape reduction, the LNVA SA proposes that:

- The Act, the Regulations, the General Code of Practice and the Late Night Code be merged to simplify the regulatory regime for licensees. The introduction of amendments to or new regulations should be the product of bi-partisan support from both sides of government.
- The Adelaide City Council no longer require licensees to obtain a Queuing Permit. The management of queues should be the province of the Act.
- Local Council liquor licensing policies and guidelines solely deal with matters of planning and development. Too many local Council policies and guidelines merely duplicate conditions which would otherwise be imposed by the licensing authority and there are no standard conditions.

¹² Section 3(1)(b) of the *Liquor Licensing Act 1997* (SA).

- The annual liquor licence fee payable by late night venues trading past 4am with a capacity over 400 people licensees be reduced significantly. The current fee is excessive and a significant disincentive in terms of private investment.
- The licensing authorities enforce substantial breaches of the Act rather than trivial matters.
- Costs be introduced into the liquor licensing jurisdiction on the basis that they should follow the event.

PROMOTING A SAFER DRINKING CULTURE

By reference to promoting a safer drinking culture, the LNVA SA proposes that:

- The SA police be properly resourced to police Adelaide's late night entertainment zones and in particular Adelaide City Council's Late Night Entertainment Policy Area.
- An expiation fee of \$1,250 be introduced for failure to leave licensed premises on request. Section 131A of the Act creates the offence of failing to leave a licensed premise on request but there is no on-the-spot fine, rather there is a maximum penalty of \$1,250. A substantial on-the-spot fine would be of far greater future deterrence.
- The licensed area of the premises be extended around the perimeter of the premises and across any public space (e.g. footpaths, laneways) for, say, 10 metres from the perimeter of the premises so that licensees have the power to move on patrons away from the vicinity of licensed premises. Liquor would not be sold or supplied in these areas.
- SA police collect data recording alcohol-related assaults in the Adelaide CBD including the location of the incident and whether the assault occurred in a licensed premises or not, and those statistics be published publicly, similar to the NSW Bureau of Crime Statistics and Research.¹³
- The Late Night Code apply to all licensed premises that trade past midnight, irrespective of their location, licence class, capacity or the nature of their offering. Late night venues that trade at some point between 3.01am and 7.00am have already incurred the costs of compliance with the Late Night Code. Little, if any, consideration of the compliance burden was ever given.
- Limited liquor licences which permit the sale and supply of liquor at large-scale, temporary events should cease by midnight. After midnight, the risks of causing noise disturbance in an outdoor area are significantly higher and the safer licensed premises for patrons to congregate in are late night bricks and mortar venues, which operate all year round.
- If limited licences licenses for outdoor-pop up events continue to permit trade after midnight then licensees should be subject to the same compliance burden as late night venue operators e.g. security ratio, metal detectors, queue management, drink marshals, first aid officer on duty and digital CCTV recording at all entry and exit points.
- No glassware (including bottles of wine and champagne, and jugs of alcohol) be permitted at outdoor events operated under a limited liquor licence.
- Tempered or polycarbonate glass be introduced from midnight at all other licensed premises.

¹³ http://www.bocsar.nsw.gov.au/Pages/bocsar_pages/Alcohol_Related_Violence.aspx.

VIBRANCY

By reference to vibrancy, the LNVA SA proposes that:

- The Lockout be removed immediately. Melbourne is the world's most liveable city but it has no lockout. In April 2015, the Review of Codes Established under the Act found that lockouts are too weak to control alcohol supply and availability and therefore are easily washed over by other economic and social factors.¹⁴
- There be no introduction of prescribed times for "last drinks" and closing times. Adelaide should be, and should be seen to be, "open for business", even at night. Prescribed closing times in international cities are irrelevant as they do not reflect South Australia's population size, lifestyle and culture. Dramatic changes in trading hours will harm the livelihoods of many people employed in the night time economy.
- "Shots" not be included in the list of banned drinks or at least exemptions be granted for doubles of neat spirits and cocktails.
- Noise complaints under s106 of the Act be vetted by the licensing authority to ensure that those complaining about noise comprise 10 or more persons and their particular interests are also in the broader community interest.
- The "agent of change" principle be introduced to effectively put the onus for soundproofing on developers or residents that move within the vicinity of established licensed premises, as introduced in Melbourne in September 2014.
- There be a continuing focus on more and better street lighting, and cleaner streets.
- Late night public transport options be expanded to run later and more frequently.

¹⁴ *Review of the Codes Established under the Liquor Licensing Act 1997*, 30 April 2015, at page 40.

Conclusion

In the context of a weak South Australian economy and an ambitious tourism drive, the future development of the South Australian night time economy is crucial to this State's economic prosperity. Adelaide late night venues play a pivotal role in the South Australian late night economy.

Late night venues have been the subject of onerous, complex and costly regulation predominantly under the guise of late night safety and alcohol harm minimisation. Debate is invariably about the control and regulation of late night venues and rarely about the long standing economic contribution of the night time economy.

While the LNVA SA is supportive of evidence-based initiatives that promote late night safety and alcohol harm minimisation, the economic impacts of such measures should not be ignored. A vibrant Adelaide night time economy is in the community's best interest. Adelaide's late night entertainment zone has been, and still is, a significant tourism attraction.

There is significant unrealized potential in the Adelaide night time economy, which the review has the potential of unlocking. South Australia could do far worse than take its cues from Melbourne, which was recently rated the world's most liveable city. Melbourne has no lockouts and it is actively taking steps to become a 24-hour city. Given the perilous state of South Australia's economy, any liquor licensing measures which are likely to dampen business confidence and private investment will be felt especially hard.

Appendix A

34 LATE NIGHT VENUES IN THE ADELAIDE CBD

As at November 2015, the LNVA SA estimates that there were 34 late night venues in the Adelaide CBD trading at some point between 3.01am and 7.00am (not including the Adelaide Casino) as follows:

Late Night Venue	Type of Licence	Date Licence First Issued	Capacity of Venue
Newmarket Hotel (HQ)	Special Circumstances Licence	21 July 1999	2,452
Bye Bye Birdie	Special Circumstances Licence	1 June 1999	228
West End Tavern	Hotel Licence	30 August 1999	130
Enigma Bar	Special Circumstances Licence	28 September 1999	575
Jive Productions	Special Circumstances Licence	20 April 2001	300
Rosemont Hotel	Special Circumstances Licence	28 September 1999	373
Red Square / The Palace	Special Circumstances Licence	29 September 1999	1400
Crazy Horse	Special Circumstances Licence	21 September 1999	300
Electric Circus	Entertainment Venue Licence	21 March 2001	822
Stats Total Entertainment	Special Circumstances Licence	30 August 1999	250
Dog and Duck	Special Circumstances Licence	27 September 1999	400
K-Illusion Karaoke Lounge	Entertainment Venue Licence	19 February 2004	220
Woolshed on Hindley	Special Circumstances Licence	9 September 1999	1,278
Black Bull Hotel	Special Circumstances Licence	9 September 1999	1,000
Melody Karaoke	Entertainment Venue Licence	31 January 2006	226
XL Nightclub	Entertainment Venue Licence	8 August 2002	700
Zhivago	Entertainment Venue Licence	28 September 2001	450
Duke of York Hotel	Hotel Licence	17 October 1849	590
The Firm	Special Circumstances Licence	26 July 1999	115
Strathmore Hotel	Special Circumstances Licence	21 July 1999	729
London Tavern	Hotel Licence	19 April 1983	605
Edinburgh Castle	Hotel Licence	24 September 2007	350
Jackpots on Pulteney	Hotel Licence	31 March 1858	126
Talbot Hotel	Hotel Licence	20 September 1848	398
Mars Bar	Entertainment Venue Licence	3 April 1990	519
Casablaba	Entertainment Venue Licence	15 September 2009	200
Lotus Lounge	Entertainment Venue Licence	3 March 2005	175
Shotz Pool Lounge	Special Circumstances Licence	2 December 1997	300
Sugar	Special Circumstances Licence	16 March 1999	225
Apple Nightclub	Special Circumstances Licence	15 June 1999	470
The Playford	Special Circumstances Licence	6 May 1998	1,115
Stamford Plaza	Special Circumstances Licence	12 May 1999	1,978
Empire Pool Lounge	Special Circumstances Licence	22 November 2001	420
TOTAL CAPACITY			19,219