



Foundation for Alcohol  
Research & Education



# Breaking down barriers

Community involvement in liquor licensing  
decisions in NSW

FOUNDATION FOR ALCOHOL RESEARCH AND EDUCATION

OCTOBER 2013

## About the Foundation for Alcohol Research and Education

The Foundation for Alcohol Research and Education (FARE) is an independent charitable organisation working to prevent the harmful use of alcohol in Australia. Our mission is to help Australia change the way it drinks by:

- helping communities to prevent and reduce alcohol-related harms;
- building the case for alcohol policy reform; and
- engaging Australians in conversations about our drinking culture.

Over the last ten years FARE has have invested more than \$115 million, helped 750 organisations and funded over 1,400 projects addressing the harms caused by alcohol misuse.

FARE is guided by the World Health Organization's *Global Strategy to Reduce the Harmful Use of Alcohol*<sup>[i]</sup> for addressing alcohol-related harms through population-based strategies, problem-directed policies, and direct interventions.

If you would like to contribute to FARE's important work, call us on (02) 6122 8600 or email [fare@fare.org.au](mailto:fare@fare.org.au). All donations to FARE over \$2 are tax deductible.

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[i] World Health Organization (2010). *Global strategy to reduce the harmful use of alcohol*. Geneva: World Health Organization.

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## Summary

Alcohol is no ordinary commodity. On the one hand, alcohol is recognised as a product widely used ‘as a means of socialisation and enjoyment, as instruments of hospitality, and as intoxicants’;<sup>1</sup> on the other hand, alcohol is a legal drug in Australia whose consumption over the short and long term is related to increased risks of harm to the consumer and to others.<sup>2</sup> Alcohol-related problems are preventable, and can be reduced with the introduction of effective regulatory measures.<sup>3,4</sup>

Communities are affected by alcohol in a number of ways. They endure the noise and disruption from licensed venues, they avoid areas where alcohol use and misuse has led them to feel unsafe, and they live alongside and are affected by alcohol-related violence. These impacts have led communities to engage in liquor licensing processes to try to influence the way that alcohol is made available in their local areas.

Community engagement, participation and input in liquor licensing matters is important for the responsiveness and accountability of licensing decisions to the public interest. Communities engage in a range of licensing matters, and do so for a variety of reasons. Across all motives for participation, there are three common imperatives for community action in licensing matters:

- an awareness of pre-existing alcohol-related problems in their local area;
- a common perception that these harms are at unacceptable levels and compromise the welfare of the local community and others; and
- a sense of injustice from inaction by authorities to prevent future harms or reduce existing levels of harms.<sup>5</sup>

The *2013 Annual Alcohol Poll Snapshot* on NSW found that the majority of NSW adults believe that Australia has a problem with excess drinking or alcohol abuse (75 per cent). The majority (77 per cent) also believe that alcohol-related problems will remain the same or worsen over the next five to ten years, and 76 per cent believe that more needs to be done to reduce the harms caused by alcohol-related illness, injury, death and related issues.<sup>6</sup>

Put simply communities across NSW have had enough.

It is a real concern for many communities in NSW that future licence approvals will introduce alcohol-related problems to their locality, or exacerbate pre-existing problems. The concerns of communities in NSW are underscored by the latest available data, which shows that in 2011-12 there were 50,950 alcohol-attributable hospitalisations<sup>7</sup> and 26,038 alcohol-related assaults.<sup>8</sup>

The *2013 NSW Alcohol Summit*, held on 14 March 2013 at NSW Parliament House, examined alcohol policy developments since the *2003 NSW Alcohol Summit* a decade earlier. Over 180 people attended the 2013 Summit, including health professionals, community representatives, law enforcement officials, researchers, frontline workers, and state politicians. The key themes of the 2013 Summit were the need for consistent application of effective harm minimisation policies and the importance of community input and engagement in licensing matters. These themes were

reflected in the 2013 Summit *Communiqué*, which called on the NSW Government to:

*... ensure that the general public and people working in areas directly impacted by the dangerous oversupply of alcohol are given a real voice and have the opportunity to comment on and raise concerns regarding applications for new premises or variations to existing licences...<sup>9</sup>*

Community participation in licensing matters is a function of democratic governance and procedural fairness. It enables local autonomy and informed community choice in the direction of local health, safety and amenity issues related to alcohol and alcohol-related problems. Informing the public of licence applications, and supporting them to exercise their rights to object or submit complaints, underpins regulatory decision-making to best serve the 'public interest' and is consistent with the Objects of the *Liquor Act 2007* (NSW).

Where their submissions are evidence-based, compelling, and follow the protocols for decision-making by regulatory authorities, communities may be successful in their pursuit of tighter regulatory solutions to local alcohol-related harms. This is, however, a tall order for communities.

This paper examines how communities can presently engage in liquor licensing matters in NSW, and recommends areas for improvement to service delivery and regulatory support for communities.

This paper examines four questions specifically concerning community participation and engagement in licensing matters:

- What is the current liquor legislative and regulatory landscape for community participation?
- In what ways can communities navigate the liquor licensing and regulatory landscape?
- What are the challenges for communities in navigating the current liquor licensing and regulatory landscape?
- How can communities overcome these challenges to influence the liquor licensing decisions?

The paper concludes by proposing that communities can be assisted through the development of a Community Defenders Office (CDO) which would have two functions:

- a central information service or 'Knowledge Bank'; and
- an advisory service that provides communities with access to skilled personnel.

Community members would be assisted by the CDO to overcome the legislative, regulatory and resource-based barriers and challenges they face. The CDO would support concerned community groups to meet their needs for research assistance, representation, education and advocacy in liquor licensing matters. In doing so, a CDO serves to:

- facilitate greater community engagement and participation in licensing matters;
- support better-informed decision-making by licensing authorities in relation to objections, complaints and disciplinary matters; and
- contribute to the development of policies that would better protect communities across NSW that are currently affected by alcohol-related harms.

The CDO should be supported by the NSW Government through funding attained by licensees through the introduction of annual liquor licensing fees.

# The liquor licensing and regulatory landscape for community participation

In Australia, regulation of the liquor trade falls under the legislative responsibility of the states and territories. The NSW liquor licensing regime serves, in part, to minimise alcohol-related harms by imposing special controls on the production, promotion and availability of alcohol in the state. The regulatory landscape is complex and can be difficult for community members to navigate. This chapter provides an overview of the current licensing and regulatory landscape in NSW including the:

1. Legislation and regulations; and
2. Regulatory bodies.

## 1. Legislation and regulations

The sale and supply of liquor and the granting of liquor licences in NSW are regulated by the *Liquor Act 2007* (the 'Liquor Act') and the *Liquor Regulation 2008* (the 'Liquor Regulations'). Commonwealth and State Government initiatives for market deregulation since 2004 have directly shaped these articles of legislation. Consequently, community members have since faced particular challenges that have arisen from the deregulation of liquor licensing in NSW.

### The Liquor Act

The Liquor Act defines the rules and conditions that regulate the sale and supply of liquor in NSW and the use of premises in which liquor is sold or supplied.<sup>10</sup> The 'Objects' under section 3(1) of the Liquor Act guide the interpretation of the Act and set the 'tone' of the legislation. They relate to the general interests of communities and the commercial interests of liquor and liquor-related industries. The Objects are as follows:

- a) To regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community;
- b) To facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality; and
- c) To contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.<sup>11</sup>

Harm minimisation is included in section 3(2) of the Liquor Act as a supplementary requirement to 'secure' the Objects. Section 3(2) instructs regulators and those who exercise functions under the Liquor Act to ensure that the Objects are upheld with particular regard to:

- a) The need to minimize harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour);
- b) The need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor; and
- c) The need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.<sup>12</sup>

The general 'suitability' tests for approval of liquor licenses in NSW are included under section 45(3) of the Liquor Act. These tests included that:

- the applicant is a fit and proper person;
- responsible service of alcohol will be practised; and
- development consent has been granted.

The Liquor Act also contains a specific test concerning the social impact of granting a liquor licence<sup>13</sup> and allows for public submissions regarding licence applications and licensed premises.<sup>14</sup> The consideration of social impact is embodied in section 48(5) of the Liquor Act, which directs the Independent Liquor and Gaming Authority (ILGA) not to grant a licence application unless:

*[ILGA is satisfied] that the overall social impact of the licence, authorisation or approval being granted will not be detrimental to the well-being of the local or broader community.*<sup>15</sup>

Under section 46 of the Liquor Act, NSW liquor licences are granted in perpetuity. That is, they are in force:

*... until such time as it is surrendered to the Authority, cancelled or otherwise ceases to be in force or, in the case of a licence that is granted for a specified term, when that term expires.*<sup>16</sup>

While there is no expiry date for a liquor licence, licence conditions may be changed as a penalty for breaches of the Liquor Act. Evidence provided to authorities through public consultations, objections or complaints can justify regulatory intervention in localised liquor markets at the precinct level<sup>17</sup> as well as the conduct and operations of individual licensed premises.<sup>18</sup> Such interventions may include the imposition of:

- Licence conditions on individual licensed premises by ILGA or the Director General of the NSW Office of Liquor Gaming and Racing (OLGR);<sup>19</sup>
- Precinct-wide changes to licence conditions by the Director General of OLGR for premises whose operations unduly disturb the quiet and good order of the neighbourhood;<sup>20</sup> or
- Penalties against individual licensees by ILGA or the Director General of OLGR for particular breaches of the Liquor Act.<sup>21</sup>

Precinct-wide measures can include, but are not limited to:

- noise abatement;
- prohibition of the sale or supply of liquor before 10 am and after 11 pm;
- prohibition of, or restriction on, activities (e.g. promotions or discounting) that could encourage misuse or abuse of liquor (e.g. binge drinking or excessive consumption);
- restricting the trading hours of, and public access to, the licensed premises; and/or
- requiring the licensee to participate in, and to comply with, a liquor accord.<sup>22</sup>

Penalties against licensees can include the imposition, variation or revocation of licence conditions or licence ownership, and may also extend to further disciplinary action against the subject of a complaint (e.g. a licensee, the manager of a particular licensed premises, or an associate of a licensee).<sup>23</sup>

## The Liquor Regulations

The Liquor Regulations prescribe additional rules and conditions that supplement those contained in the Liquor Act. Specifically in the interest of the public, the Liquor Regulations define the policies for public notification of a licence application,<sup>24</sup> the development of Community Impact Statements (CIS) by liquor licence applicants<sup>25</sup> and for the submission of written statements by members of the public in relation to licence applications.<sup>26</sup>

The role of CIS in licensing matters is ‘to gauge potential impacts of liquor outlets on local communities as well as ascertaining popular sentiment’.<sup>27</sup> CIS are reports submitted to ILGA that include information on the applicant’s assessment of existing alcohol-related harms, outcomes of consultations with interested parties, and details on the socio-demographic characteristics of the local area. ILGA may refuse to grant a licence, or may grant a licence with added harm-minimisation conditions, based on the information presented in CIS and public submissions.

The extent of information required in a CIS is determined by the licence type, with two separate CIS applications in place:

- ‘Category A’ CIS apply to applicants for on-premises licences such as restaurants, and are less onerous and require consultation with fewer stakeholders than a ‘Category B’ CIS.<sup>28</sup>
- ‘Category B’ CIS apply to premises such as hotel and club licences, and require consultation with more stakeholders than a ‘Category A’ CIS.<sup>29</sup>

## Planning laws

There are other legislative requirements under the *Environmental Planning and Assessment Act 1979* (NSW) that applicants must adhere to as part of the application process. Purpose-built or renovated premises applying for liquor licences are required to prepare and submit a development application (DA) and social impact report to the local government.<sup>30</sup> The local government then determines whether to grant or refuse development consent, and the outcome of DA consideration by the local government is submitted to ILGA.<sup>31</sup> If development consent is not granted, a liquor licence cannot be approved.<sup>32</sup> However, the business in question may challenge the DA decision by the local government in the Land and Environment Court (LEC).<sup>33</sup>

## 2. Regulatory Bodies

The functions of the liquor regulation system are divided between three regulatory bodies:

- OLGR – a branch within the NSW Department of Trade and Investment;
- ILGA – an independent decision-making and review body; and
- Local governments.

In NSW the regulation of liquor licensing and trading conditions for alcohol products and services is conducted through administrative channels. The regulatory bodies, OLGR and ILGA, are responsible for determining, based on the evidence before them, whether it is appropriate to intervene in licensing matters on the basis of the harm minimisation principle under the Liquor Act.



## Office of Liquor, Gaming and Racing

OLGR is responsible for compliance issues in liquor licensing matters and the provision of overall policy direction and advice to the NSW Government. Compliance issues dealt with by OLGR include investigating, prosecuting or taking administrative action in response to breaches of the Liquor Act. The policy functions of OLGR include advising the government on legislative change, regulatory activities, early intervention strategies, education programs and co-ordination of licensing, compliance and enforcement functions.<sup>34</sup> The NSW Police Force is also able to prosecute breaches of the Liquor Act.


## Independent Liquor and Gaming Authority

ILGA is responsible for ‘performing casino, liquor and gaming machine regulatory and other decision-making functions on behalf of [the NSW] government’.<sup>35</sup> This includes determining applications for liquor and gaming licences and other authorisations; determining applications for review involving certain decisions of the Director General of OLGR; and determining Disciplinary Complaints against participants in the liquor and gaming industry.<sup>36</sup> Both ILGA and OLGR must determine the ‘public interest’ in licensing matters put before them based on the liquor legislation and the guiding principles in the objects of the Liquor Act.

When evidence is provided to ILGA concerning a licence application, ILGA is directed by the Liquor Act to determine the potential impact of a licence approval ‘on the papers’. That is, ILGA judges whether it is in the public interest to grant or refuse a licence application based on the information put before it. Decisions made by ILGA must take into account the Objects of the Liquor Act, and how claims of benefits and risks associated with a licence approval affect the integrity of the Objects of the Liquor Act.

There are ‘benefits’ recognised by ILGA that liquor outlets are considered to provide to a local community and economy. These ‘benefits’ include increased social and recreational opportunities, increased opportunities for live music and other artists, and increased employment and economic activity.<sup>37</sup> With regard to alcohol-related risks, ILGA considers the interest in the health, safety and amenity of the local community. The alcohol-related risks recognised by ILGA include:

- undue disturbance to the neighbourhood of the proposed licensed premises caused by the operation of the premises and/or the conduct of patrons;
- alcohol-related anti-social behaviour or crime;
- alcohol-related hospitalisations and health problems;
- increases in pedestrian and motor traffic numbers;
- drink driving and drink walking;
- increase in domestic violence associated with alcohol consumption; and
- litter and other pollution associated with the operation of the premises.<sup>38</sup>



ILGA recognises that particular demographics, facilities and areas are vulnerable to alcohol-related harms, or are culturally sensitive to being in close proximity to a liquor outlet. These sensitive demographics, facilities and areas include:

- alcohol-free zones;
- local Indigenous populations;
- facilities for persons who are experiencing homelessness;
- facilities for persons with alcohol-related problems;
- areas known for public drinking problems;
- hospitals or other health facilities;
- places of worship;
- educational facilities; and
- public parks and sporting grounds.<sup>39 40</sup>


Where social impact information provided to ILGA does not justify an application refusal, ILGA does not have the jurisdiction to refuse the grant of a licence application. Such a decision would deny procedural fairness to the licence applicant. To justify an application refusal, objectors' submissions must meet the test under section 48(5) of the Liquor Act that the overall social impact of the licence, authorisation or approval being granted will be detrimental to the well-being of the community.<sup>41</sup>

Where there is evidence that substantiates the claims that a licence approval is likely to result in harms to the community, emphasis is given to the public interest in how the licence should be regulated with conditions (if approved at all) to mitigate the impact of these harms. If ILGA determines that such harm minimisation measures are likely to fail the standards outlined in section 3(2) of the Liquor Act, ILGA is not in a position to grant the licence.

## Local Government

Local governments act as the 'local consent authorities' in licensing matters that concern licence applications, changes to the licence conditions of licensed premises, and development consent for prospective licence applicants.<sup>42</sup> Local governments play a key role in the determination of development applications, licence applications and in the initiation of complaints against licensees. As local consent authorities, local government are:

- to be notified by the applicant of their liquor licence application;<sup>43</sup>
- to be consulted by the licence applicant for the completion of the applicant's CIS;<sup>44</sup>
- allowed to initiate Disturbance Complaints against a licensed premises or several licensed premises;<sup>45</sup>
- to receive written notice from the Director General of OLGR of a proposed late hour entry declaration, or the variation or revocation of a late hour entry declaration ('lock outs');<sup>46</sup>
- allowed to initiate a Disciplinary Complaint in relation to section 139(1)(c) of the Liquor Act;<sup>47</sup> and
- 'development consent authorities' for prospective licence applicants.<sup>48</sup>



As ‘development consent authorities’ local governments have special roles and responsibilities in the regulation of newly-built or refurbished licensed premises. These include that:

- A licence application may not be granted by ILGA without development consent from the relevant local government where development consent is required for a proposed premises;<sup>49</sup>
- Local governments are to be notified<sup>50</sup> and consulted<sup>51</sup> as part of a licence applicant’s CIS that is submitted with their application; and
- Local governments, as well as local police and the Director General of OLGR, are one of the few stakeholders that must be consulted by an applicant in relation to Small Bar licences under the *Small Bars Bill 2013 (NSW)*.<sup>52</sup>

## Navigating the liquor licensing and regulatory landscape

The Liquor Act and Liquor Regulations contain provisions for communities to participate in licensing matters. Community participation in licensing matters is conditional on the type of licence application, the grounds for particular complaints, and the timeframes for participation. These provisions serve to ensure decision-making is informed by and is responsive to community opinion and its relevance to the Objects of the Liquor Act. Participation can take the form of:

- representations to prospective licensees through the CIS;
- objections to a licence application made directly to ILGA or to the prospective licence applicant as part of their CIS consultation;<sup>53 54</sup>
- disturbance complaints made to the Director General of OLGR, who may convene a conference to hear submissions from the public regarding a licence or number of licensees;<sup>55 56</sup>
- disciplinary complaints made to the Director General of OLGR or ILGA regarding a particular licensed premises, licensee, manager or associate of a licensee.<sup>57</sup>

There are also avenues for review of licensing decisions through submissions to ILGA requesting that decisions made by ILGA or OLGR be examined.<sup>58 59</sup>

A summary of the options for community participation in liquor licensing matters and the bodies involved is provided in the table below. These options for community participation are discussed in greater detail in the following sections.

Options for participation	Who is this submission directed to?	Who can make submissions?
Representation to prospective licensees through CIS	Liquor licence applicant	<ul style="list-style-type: none"> <li>Local consent authorities</li> <li>Local police</li> <li>NSW Department of Health</li> <li>NSW Department of Community Services</li> <li>NSW Roads and Traffic Authority</li> <li>Recognised leaders or representatives of the local Aboriginal community in the area</li> <li>Occupier(s) of any neighbouring premises</li> <li>Other special interest groups or individuals identified or referred to the applicant by ILGA.</li> </ul>
Objection to a licence application	ILGA	Anyone
Disturbance complaint	Director General of OLGR	<ul style="list-style-type: none"> <li>Particular residents of the neighbourhood</li> <li>NSW Police</li> <li>A person authorised by the local council (as the local consent authority)</li> <li>Other people whose 'interests, financial or other, are adversely affected by the undue disturbance to which the person's complaint relates'</li> </ul>
Disciplinary complaint	ILGA and Director General of OLGR	<ul style="list-style-type: none"> <li>The Commissioner of Police</li> <li>The Director General of OLGR</li> <li>The local consent authority (understood to be the local government)</li> <li>ILGA itself</li> </ul> <p>Community members cannot initiate disciplinary complaints. However they may make submissions to the authorities listed above who may initiate a disciplinary complaint on their behalf.</p>

## Representation to prospective licensees through CIS

Through CIS requirements, the following authorities (depending on the type of licence) are notified by the licence applicant and may consult with the applicant directly as a component of CIS requirements:

- local consent authorities ('Category A' and 'Category B' CIS);
- local police ('Category A' and 'Category B' CIS);
- NSW Department of Health ('Category B' CIS);
- NSW Department of Community Services ('Category B' CIS);

- NSW Roads and Traffic Authority ('Category B' CIS);
- recognised leaders or representatives of the local Aboriginal community in the area ('Category B' CIS);
- occupier(s) of any neighbouring premises ('Category A' and 'Category B' CIS); and
- other special interest groups or individuals identified or referred to the applicant by ILGA as being stakeholders for the purposes of the relevant application ('Category A' and 'Category B' CIS).<sup>60</sup>

Members of the public are notified of new licence applications through posters affixed to the proposed premises, or through direct consultation with the applicant. Under the repealed *Liquor Act 1982* (NSW), licence applicants were required to give notice of their impact statements in local and state-wide newspapers.<sup>61</sup> This requirement was removed when licensing laws were changed, and a similar requirement does not feature in the *Liquor Act* or *Liquor Regulations*.

ILGA, in determining licence applications, recognises various benefits and harms associated with the operation of licensed premises. Particular community facilities and groups are recognised by ILGA as requiring special protections from alcohol-related harms. CIS and general submissions are the primary means of collecting such information for ILGA to support its decision-making and determination of the 'public interest'.

## Objection to a licence application made to ILGA

Communities are allowed to make submissions to ILGA in relation to licence applications.<sup>62</sup> This right is protected under section 44 of the *Liquor Act*, which states that

*Any person may, subject to and in accordance with the regulations, make a submission to the Authority in relation to an application for a licence.*<sup>63</sup>

Further, if members of the public make a submission in relation to a licence application, 'the Authority is to take the submission into consideration before deciding whether or not to grant the licence'.<sup>64</sup> Under regulation 12 of the *Liquor Regulations*, the submission must 'specify details of the application to which the submission relates.'<sup>65</sup> Public submissions should 'be made within 30 days of the date on which the application was made.'<sup>66</sup> ILGA does, however, have the discretion to consider submissions of consequence received outside of the 30 day period and before a decision has been made.<sup>67</sup>

## A disturbance complaint made to the Director General of OLGR

Local community members can initiate a Disturbance Complaint with the Director General of OLGR on the grounds that the quiet and good order of the neighbourhood of licensed premises are being unduly disturbed because of:

*The manner in which the business of the licensed premises is conducted, or the behaviour of persons after they leave the licensed premises (including, but not limited to, the incidence of anti-social behaviour or alcohol-related violence).*<sup>68</sup>

Only certain people have standing to make disturbance complaints to OLGR.<sup>69</sup> They are:

- particular residents of the neighbourhood;<sup>70</sup>
- NSW Police;
- a person authorised by the local government (as the local consent authority); or
- certain other people whose 'interests, financial or other, are adversely affected by the undue disturbance to which the person's complaint relates'.<sup>71</sup>

## Disciplinary complaint made to the Director General of OLGR or ILGA

Disciplinary complaints may be made by particular authorities in relation to severe contravention of the Liquor Act by a licensee, their associate or the manager of licensed premises.<sup>72</sup> The following complaint authorities may initiate disciplinary complaints:

- Commissioner of Police;
- Director General of OLGR;
- local consent authority (understood to be the local government); and
- ILGA itself.

Communities cannot directly participate in disciplinary complaints.<sup>73</sup> There is, however, the alternative option of indirect participation. It has been noted by the Chairperson of ILGA, Chris Sidoti, that:

*[Concerned parties] may provide information to an agency that is capable of making a complaint, but it will be a matter for that eligible complainant to proceed with a complaint.*<sup>74</sup>

Community members seeking such regulatory interventions must substantiate their case with evidence of local alcohol-related harms or of a licensed premises' conduct contravening provisions in the Liquor Act. For example, under section 139(3)(h) of the Liquor Act, evidence can substantiate a disciplinary complaint on the grounds that:

*... acts of violence against persons or damage to property have frequently been committed on or near the licensed premises by persons who have been on the licensed premises.*<sup>75</sup>

However, as indicated by the Chairperson of ILGA, Chris Sidoti, there is no legislated obligation for a complaint authority to take up a community's issue and initiate a request for regulatory intervention.

# Challenges for communities in navigating the current liquor licensing and regulatory landscape

The complexity of the legislative and regulatory environment for liquor in NSW poses a range of barriers to community members who seek to navigate this legislative and regulatory landscape. The hurdles that community stakeholder are confronted with are threefold, and concern the legislative, regulatory and resource challenges. The table below provides an overview of these challenges.

Legislative challenges	Regulatory challenges	Resource challenges
<ul style="list-style-type: none"> <li>• Continuing moves towards market deregulation</li> <li>• Bias in the onus of proof weighted in favour of deregulation</li> <li>• Imbalance in the Liquor Act's Objects</li> <li>• Granting licences in perpetuity</li> <li>• Inconsistency between licensing and planning legislation</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of training and support for local governments in liquor venue decisions</li> <li>• Reliance on applicant as primary source of social impact evidence</li> <li>• Questionable compliance of applicants with CIS requirements</li> <li>• Lack of common law remedies</li> </ul>	<ul style="list-style-type: none"> <li>• Onerous research and data collection requirements</li> <li>• Burdensome communications and networking requirements</li> <li>• Time taken to appropriately address legislative and regulatory requirements</li> <li>• Cost of engaging in legislative and regulatory requirements</li> <li>• Lack of independent advice options available</li> </ul>

## Legislative challenges

The entry level challenge for community members is that the legislation for liquor licensing and planning is difficult to interpret, understand and use in relation to licensing submissions. The array of professional services firms that specialise in licensing matters indicates that the legislation is too complicated even for individual licensees and licence applicants, let alone members of the community. The legislative challenges facing communities in interacting with the liquor licensing system are outlined below.

### The continuing move towards market deregulation

The deregulation of liquor laws has primarily benefited liquor and associated industries, and has seen an expansion of the liquor trade in NSW. Between 1995 and 2005 the Commonwealth Government coerced state and territory governments (on the threat of financial penalties) to liberalise markets across all jurisdictions in line with the National Competition Policy (NCP).<sup>76 77</sup> The NCP review of the NSW liquor and club management laws concluded that 'NSW liquor and club management laws contain significant barriers to entry and restrictions on competition.'<sup>78</sup> The processes involved in



licensing matters under the Liquor Act and Liquor Regulations were subsequently designed to have minimal ‘formality and technicality’<sup>79</sup> and to ‘remove complexity and cost for the industry.’<sup>80 81</sup>

Liberalisation of liquor laws has made it easier to attain a liquor licence in NSW, thereby enabling licensees to sell, promote and supply liquor in NSW more freely than ever before.<sup>82</sup> This loosening of liquor regulations has seen a significant increase in the number of liquor licence applications and approvals in NSW over recent years. For example, the total number of active licences in NSW has increased by 13 per cent between 2008-09 and 2011-12 (see below), representing a nine per cent increase in the number of active liquor licences per capita. The table below provides an overview of the changes in licence numbers between 2008-09 and 2011-12.

	2008-09	2011-12	Percentage change (%)
Number of active liquor licences in NSW (total numbers) <sup>83 84</sup>	13,889	15,686	13% increase
Number of active liquor licences in NSW (per 100,000 population) <sup>85 86</sup>	195.65	215.17	9% increase

### Bias in the onus of proof in favouring deregulation

There are two specific outcomes from the NCP reforms and deregulation that directly affect community engagement and input in licensing matters. First, the traditional onus of proof was reversed for those seeking restrictions on licence application approvals to protect other interests. Consequently, the onus of proof was placed on objectors and complainants to demonstrate that the social harm they may bear from a licence approval outweighed the public interest in greater market competition.<sup>87</sup> The second outcome was the replacement of the ‘needs-based’ test with the broader ‘public interest’ test of social impact. The NCP deemed the ‘needs-based’ test to be anticompetitive, and was removed as it ‘allowed existing licensees to object to new licenses being granted on the basis of the public’s demand for alcohol already being met’.<sup>88</sup>

These two outcomes of deregulation have alleviated licensees and licence applicants of the responsibility to convince authorities that the operation of their premises will bear minimal adverse impacts on the local community. This has made it more onerous for communities to incite ILGA and OLGR to act on alcohol-related harms.

The current social impact test under section 48(5) of the Liquor Act has been described by the Chairperson of ILGA, Chris Sidoti, as ‘broad’ and ‘difficult’ to use.<sup>89</sup> Arguments for the limitation of the liquor industry’s growth and free operation run the risk of being dismissed as ‘anticompetitive’; and the calculation of foreseeable alcohol-related harms from granting a liquor licence is often too speculative an activity for ILGA to undertake based on the evidence at hand.<sup>90</sup> By extension, the current social impact test is also too ‘broad’ and ‘difficult’ for complainants and objectors to use in protection of their interests in licensing matters. Warranted objections or complaints can be overlooked if submissions are neither substantiated with acceptable evidence nor framed within acceptable, market-friendly ‘public interest’ arguments.

## The current imbalance in the Liquor Act's Objects

The imbalance in the Objects of the Liquor Act indicates the impact of market deregulation on the regulation of liquor in NSW. Two of the three Objects concern industry interests, while harm minimisation is excluded from the Objects and relegated in status to being a supplementary decision-making consideration. The legislation and regulatory processes relevant to licensing matters accommodate conflicting public interests in harm minimisation (which requires limits to the availability, promotion and pricing of liquor in order for harm minimisation measures to be effective) and an open and competitive liquor market (which naturally prefers no limits to the availability, promotion or pricing of liquor).

The legislation and regulatory processes were revised in the context of broad-brush deregulation. The NCP and the revised liquor laws assume alcohol to be an 'ordinary' consumer commodity, and fail to acknowledge the special qualities of alcohol as a legal drug that contributes to a range of harms to the consumer and to others. In all, this makes it difficult for the licensing system to be sufficiently responsive to alcohol-related harms and community concerns, or to operate in a preventive capacity.

## The granting of licences in perpetuity

The granting of liquor licenses in perpetuity further demonstrates the weighting of the legislation in favour of the liquor and related industries. In effect, a licence to sell liquor and provisions for extended trading are treated as commercial 'rights' rather than as 'privileges'.<sup>91</sup> This results in the imposition of an unreasonable evidence burden on objectors and complainants. In another dimension of the problem, licenses being granted in perpetuity hinder the capacity of authorities to utilise licensing controls to remedy breaches of the Liquor Act or minimise incidence of alcohol-related harms. This was noted by NSW Police as an on-going challenge and a key limitation of the Liquor Act:


*... once a liquor licence was granted in NSW there were few grounds or opportunities for it to be rescinded. This created a perception that licensees had a free hand and that breaches could only be dealt with by the imposition of additional conditions.<sup>92</sup>*

This raises questions of how liquor licensing legislation and regulatory processes in NSW:

- constrain the activities of authorities to minimise alcohol-related harms and regulate the number and density of licences in the NSW liquor market; and
- affect the capacity of authorities to evaluate the conduct of licensed premises and appropriately impose effective penalties for breaches of the Liquor Act.

## The inconsistency between liquor licensing and planning legislation

Liquor licensing matters are further complicated by an apparent inconsistency between licensing laws and planning laws in NSW. Communities are concerned by this administrative barrier tying the hands of local governments who seek to refuse development applications for licensed premises.<sup>93</sup>



In 2011, Shoalhaven City Council rejected a development application for a new large liquor outlet in Nowra on the basis that the foreseeable social impact of the proposed premises was unacceptable.<sup>94</sup> The Council's decision was overturned by an appeal to the LEC in 2012 on the grounds that any negative social impact of the proposed premises could be mitigated.<sup>95</sup>

In Byron Bay, the local government granted development consent for a new large liquor outlet because they assumed that their decision to reject the development application would be overturned in the LEC. However, the licence application was later rejected by ILGA on the grounds that the foreseeable social impact of the proposed premises would be unacceptable and could not be mitigated.<sup>96</sup>

The conflicting legislation heightens the local community's reliance on ILGA to make the best decision. There are concerns as to how the approval of development consent affects a community's ability to prevent a licence from being approved. Development consent is a key test in ILGA's consideration of liquor licence applications.<sup>97</sup> There remains the question of whether a licence application may be subsequently approved in light of development consent suggesting that the premises' social impact is 'manageable' or 'negligible'.<sup>98</sup>

The apparent discrepancy between the LEC's and ILGA's considerations of alcohol-related harms causes further barriers to communities engaging with liquor licensing decisions. This situation creates a significant burden on local governments in facing appeals (and their associated legal costs) in the LEC and in the preparation of licence objections to ILGA as a second line of defence.

## Regulatory challenges

The operation of the regulatory system for liquor licensing itself also presents particular challenges and barriers to community members. The different bodies involved in liquor licensing and their varied roles make it difficult for community members to determine what their first avenue is for interacting with liquor licensing decisions. The regulatory challenges facing communities in interacting with the liquor licensing system are outlined below.

### The lack of training and support for local governments in liquor venue decisions

Local governments are often not experts in the field of liquor licensing or how to minimise alcohol-related harms through licensing controls. However they are frequently called upon to assess DAs that relate to the sale and service of alcohol. Their role is often in looking at DAs for development consent, which do not necessarily contain information regarding the foreseeable social impact of the proposed premises' alcohol availability and sales.

Communities have indicated that they are sometimes concerned that local government is not actively advocating for the community's interests in minimizing harms from licensed premises.

A representative for a Mount Hutton community group referred to this by stating that:

*[Local council] staff and the majority of councilors were uninterested [in our concerns] They failed to understand where we were coming from ... A couple of them I think thought we were Temperance-type people who were out for Prohibition. It struck me throughout this whole process that people who don't have a problem with alcohol don't see the problem at all.<sup>99</sup>*

Local government support and representation is important in licensing matters – especially where development consent is involved or disciplinary action is warranted. If a concerned community lacks local government support, it has limited access to particular complaint channels or avenues for representation in licensing decisions.

The responsibility that local governments bear for licensing decisions is not supported with sufficient guidance or training by OLGR or ILGA. Further, local government decisions to reject DAs based on foreseeable alcohol-related harms and outlet density are not supported by the LEC. This issue has been highlighted by the Lord Mayor of Sydney, Clover Moore, who said:

*Our biggest problem is the lack of power to say no to development applications because the area is at capacity in terms of venues and late night trading. When we've refused an application [for a premises also applying for a liquor licence] we've been overturned by the Land and Environment Court.<sup>100</sup>*

Consequently, development consent requirements do not allow local governments to intervene at the DA stage to minimise alcohol-related harms. Arguably, local governments are caught between the need to make objective decisions based on their remit in licensing and planning matters, on the one hand; and on the other hand, their interest in responding to community concerns that ultimately draw them toward making a moral judgement (which is beyond their remit as a consent authority).

## Reliance on applicant as primary source of social impact evidence

Under Section 48(5) of the Liquor Act, ILGA relies on the applicant as the primary reporter of social impact – assuming no independent complaints or objecting submissions are made to ILGA. Relying on the licence applicant as the primary source of social impact evidence for CIS raises two issues:

- the potential for information presented in CIS to be biased in favour of the applicant to avoid undermining their application and commercial interests; and
- supplementary evidence from stakeholders to ILGA is not guaranteed, and consequently does not provide for well-informed and balanced decision-making by ILGA.

OLGR and ILGA are allowed to conduct their own lines of inquiry into an objection, complaint or CIS. However, there are no provisions requiring ILGA to:

- review factual basis of statements submitted;
- take into consideration precedents set by other decisions;
- follow-up with CIS stakeholders as to whether they have been notified of the licence application and whether or not they assent to the application.

According to section 48(1) the Liquor Act:

*The object of [CIS] is to facilitate the consideration by [ILGA] of the impact that the granting of certain licences, authorisations or approvals will have on the local community.*

The present CIS system does not actually estimate or evaluate the impact of a licence approval. Rather, CIS collect feedback from stakeholders (if any is provided) who may or may not take issue with a licence application.<sup>101</sup> To inform their consideration of the foreseeable impact of a licence approval, ILGA relies on voluntary submissions from stakeholders that contain evidence of local alcohol-related issues. Being voluntary inputs, submissions concerning licence applications – and the body of information on which ILGA bases its decisions – are variable in quality and quantity. As a result, regulatory decisions on applications with similar circumstances can bear different outcomes.

### Questionable compliance with CIS requirements

It is apparent that liquor legislation in NSW takes a passive approach to enabling community input and consultation. This undermines the legislation's guiding principles of harm minimisation (as outlined in the Objects of the Liquor Act).<sup>102</sup>


The CIS system has weak consultation and investigation requirements which raise doubts as to the quality of information on which OLGR and ILGA base their decision-making. There is the presumption that, all other things being equal, a lack of objections submitted in relation to an application constitute a passive endorsement of the application; that the absence of criticism is equivalent to there being no apparent grounds for critique or cause for concern. This is particularly consequential where there is an absence of responses or helpful feedback from busy government agencies (i.e. health, roads and transport, and police) whom applicants are required to notify as part of CIS consultations. This issue was reflected in a recent decision by ILGA to approve a General Bar licence in Surry Hills (an area already densely populated with liquor outlets) on the basis that:

*... in light of the lack of opposition to or adverse social impact analysis of the application by Police, Council and the Director general [of OLGR], and noting in particular the conditions of the [development application] that will mitigate harm occurring on or in the vicinity of the Premises, the Authority is satisfied that those adverse impacts that are likely to occur on or close to this premises will be relative constrained by those conditions.*<sup>103</sup>

There are serious concerns as to the degree of compliance with notification requirements for CIS, and the broader implications regarding procedural fairness of the CIS system for concerned communities, government agencies and community members. It was revealed by the Chairperson of ILGA, Chris Sidoti, that this year ILGA conducted random 'spot checks' of licence applicants' compliance with public notice requirements. The investigations discovered that:

*[In Balmain,] of the seven premises inspected, three new applicants apparently did not comply with the site notice. A further spot inspection within the Sydney CBD earlier this month indicated that of six premises inspected, three apparently did not comply.*<sup>104</sup>

As it appears, a substantial proportion of licence applicants subject to the random spot checks failed to comply with public notice requirements. These spot checks were conducted in light of ILGA



reviewing a decision to approve a licence. In that case, a member of the community discovered that a licence had been approved despite not being notified by the licensee in accordance with the Liquor Regulations.<sup>105</sup>

This outcome is unsurprising given that the regulatory system leaves compliance to the goodwill of the licensee and leaves monitoring and notification of non-compliance to the attentiveness of community members. This is additionally unsurprising in light of NSW Police observing in 2010 that the CIS process had serious flaws:

*There was concern... about the processes for completing [CIS]... Police reported that they were not always informed by the CLGCA [now known as ILGA] when a [CIS]... was being prepared, and even when they were advised, their submissions were not always given full consideration.<sup>106</sup>*

Public notification is a key mechanism that serves to ensure that decision-making in licensing matters best serves the public interest. As noted in a decision by ILGA in 2012:

*The requirement to advertise and notify neighbouring premises of an application at the commencement of the application process is, in [ILGA]'s view, a fundamental underpinning of the right to make submissions in respect of applications that is provided by section 44 of the Act. This right would be rendered largely ineffectual if persons were not made aware of the existence of applications through compliance with advertising requirements.<sup>107</sup>*


Communities are inadequately notified and not provided sufficient opportunities or support to submit evidence and testimony. Warranted concerns from the public are too often overlooked or never submitted to ILGA or OLGR for these reasons.

## Lack of common law solutions

Community members bear damages caused by the conduct of some licensed premises and their service of alcohol to patrons. Community members' experience of such damages can persist even when OLGR or ILGA rule that they are not in a position to act based on the evidence before them. The lack of supportive common law remedies for community members further restricts their legal options to seek redress for alcohol-related damages. This limitation heightens their reliance on OLGR and ILGA's complaint channels to address alcohol-related problems that arise from local licensed premises.

The precedent set by the High Court decision *C.A.L. No 14 Pty Ltd t/as Tandara Motor Inn & Anor v Motor Accidents Insurance Board; C.A.L. No 14 Pty Ltd t/as Tandara Motor Inn & Anor v Sandra Scott* [2009] HCA 47 ('Tandara Motor Inn') makes it particularly challenging for communities to pursue compensation for alcohol-related damages from the conduct and operation of licensed premises. The majority of justices in the Tandara Motor Inn case concluded that:

*... persons in the position of the Proprietor and the Licensee, while bound by important statutory duties in relation to the service of alcohol and the conduct of the premises in which it is served, owe no general duty of care at common law to customers which requires them to monitor and minimise the service of alcohol or to protect customers from the consequence of the alcohol they choose to consume.<sup>108</sup>*



Consequently, the administrative route is the only feasible avenue of redress for alcohol-related problems borne by community members. This is why it is critical to ensure that the administrative options available are accessible and ‘user friendly’ to all members of the public.

Communities may not be successful in their pursuit of an administrative solution to such problems. For all intents and purposes, communities have to place all their resources and efforts in the one place in the hope for redress. Having such limited options for redress raises the stakes in community activism. This highlights the need to enhance community representation and social impact evaluation in the administration of licensing matters.

## Resource challenges

There are also practical resource challenges for communities who seek to influence liquor licensing matters. Community complainants and objectors are at a substantial disadvantage in comparison to licence applicants and licensees. Such businesses are more likely to be able to afford to employ expert consultants whose services alleviate applicants’ and licensees’ time, cost, research and communication burdens. Resource burdens discourage community engagement and hinder their participation in licensing matters. The resource challenges facing communities in interacting with the liquor licensing system are outlined below.

### Burdensome research and data collection requirements

Community advocates do not necessarily have the capacity and ability to meet the research and resource burden (in terms of time, money, and research experience) that accompanies the onus of proof. Research requirements for evidence-based submissions are very time-consuming for community members who cannot afford to outsource such activities to professional service firms.

ILGA and OLGR are not in a position to allow a submission to influence their decision-making if the submission’s claims are not substantiated with evidence.<sup>109</sup> Nor are they inclined to allow a submission to influence their decision-making if the arguments are not presented in an acceptable format (i.e. in writing).<sup>110 111</sup>

It was noted by a community representative from Mount Hutton that the educational background of an individual affects their ability to conduct research and prepare submissions. The level of education attained by a complainant or objector in turn affects their ability to influence licensing matters:

*If you’ve done any kind of tertiary study then you know how to access [relevant information].... What would have made it difficult is if I didn’t have those research skills.<sup>112</sup>*

Community members without such research and analytical skills or high levels of education may still bear legitimate and warranted concerns that deserve investigation by ILGA. However, their cause may be overlooked due to their inability to meet the onus of proof that rests on objectors and complainants.

## Burdensome communications and networking requirements

Activities relating to public communications and networking are important to supporting community influence in, and public awareness of, local liquor licensing matters. However, as noted by a community representative in Sydney:

*... we shy away from [public communications] to some extent because we're not experienced and it takes a lot of time to prepare a press release and prepare for an interview... we do [all of] that but it's difficult.<sup>113</sup>*

Community complainants and objectors need to communicate and network for a range of reasons to support their submissions to licensing authorities. These reasons include the need to:

- widely inform other stakeholders of licence application notices;
- communicate with authorities;
- communicate with the local community to coordinate action and submissions; and
- communicate with local media to raise the profile of the issues at hand.

Under the repealed *Liquor Act 1982* (NSW), liquor licence applicants were required to advertise in newspapers their application and consultation details.<sup>114</sup> This requirement was removed when the current Liquor Act was enacted in 2007. Raising public awareness of liquor licensing matters has since been limited to CIS and the initiative of interested parties. Concerned community groups, for example, raise community awareness of licensing issues by engaging with the local media, supportive not-for-profit organisations and public representatives. However, as indicated by a representative for a Sydney community group, community complainants and objectors may lack the experience and resources to expend on public relations, networking and media.<sup>115</sup> As a result they have a limited capacity to raise public awareness and engage communities in licensing matters. These communication and networking activities are important but costly (in terms of time and other resources) for voluntary groups seeking to influence liquor licensing decisions.

## Time taken to appropriately address legislative and regulatory requirements

Time availability directly affects the capacity of community members to influence decision-making in liquor licensing. Community members spend time consulting with others, preparing and researching submissions, as well as coordinating community action and the collection of local testimony. As noted by a community representative from Byron Bay (who opposed the introduction of a new Dan Murphy's packaged liquor outlet to the area in 2012):

*Most of [the information] is on the internet, it's just the time required to find it... [which is] Pretty time consuming for a busy [community services] crew.<sup>116</sup>*

Community objectors and complainants volunteer their own time away from their families, work and other personal commitments in order to support their activism on liquor licensing matters.<sup>117</sup> Reducing the time-consuming research and resource burdens on community complainants and objectors would enable them to more easily participate and focus their efforts as advocates for their community in liquor licensing matters.



## Cost of engaging in legislative and regulatory requirements

The costs involved in submitting complaints and objections are twofold, and include:

- time, finances and effort expended on preparation of evidence-based submissions and advocacy activities; and
- damages and risks to the personal reputation of the objector or complainant.

Community complainants volunteer their time, which is taken out of paid work and other personal commitments in order to participate and be engaged in local licensing matters. This burden of time is particularly discouraging for community complainants and objectors who do not have the flexibility to allocate time away from paid work and other commitments. The legislative and regulatory complexities that community objectors and complainants face require access to analytical skills and legal expertise. This is necessary for their submissions to be evidence-based and to carry some weight in decision-making by authorities. There are also considerable costs involved in outsourcing these skills through the employment of professional services to assist with the preparation of submissions.

There are also considerable personal risks that community members take when challenging the interests of local liquor businesses and related industries. Community members can be vilified as ‘wowsers’ and ‘nanny statists’ by those who oppose their activities in relation to licensing matters. In the experience of one community activist in Newcastle, Tony Brown, his efforts to influence licensing matters led to him being subjected to acts of vandalism, threats to his security and life, and hate campaigns waged against him over social media.<sup>118</sup>


## Lack of independent advice options

The lack of community access to affordable and independent advisory services affects the ability of community members to influence licensing matters in their local area. Warranted complaints may be overlooked or never submitted, due to the lack of accessibility to independent advice in licensing matters. This compounds the weight of the resource burden on community members.

It is a real challenge for community complainants and objectors to find appropriate and independent advice and support that they can afford. Communities must rely on the charity of others to provide them with access to such services. As noted by a community representative from Mount Hutton,

*We were fortunate that we had the tavern there [that had] the money to spend on solicitors and social researchers [for us] – if we didn't have that resource, we certainly as a small bunch of residents would not have been able to come up with those things.*<sup>119</sup>

Communities desperate for access to supportive legal services and social research assistance are vulnerable and may be exploited by those who provide them assistance. Accepting financial assistance from local businesses may lead to their cause being used by businesses as a front for eliminating competition. Under such circumstances, ILGA and OLGR are not inclined to accept submissions where they are endorsed and funded by conflicting commercial interests.<sup>120 121</sup>



There is the alternative option for community complainants and objectors to seek pro bono advisory services from community legal centres. There are, however, limitations and complex processes they must undergo in order to access these services. Legal Aid NSW deals with personal legal matters that relate to criminal, civil and family law.<sup>122</sup> Liquor laws are administrative, and services in this field are not available from Legal Aid NSW. The delivery of assistance and advice from community legal centres (CLCs) varies greatly from centre to centre, depending on available resources, experience and where individual CLCs are located. The availability of appropriate legal aid to community members is further constrained by reduced government funding to community legal centres.<sup>123</sup>

In the alternative, there are other community legal centres that may be able to assist or advise community objectors and complainants. Such organisations include the Public Interest Law Clearing House (PILCH),<sup>124</sup> the Public Interest Advocacy Centre (PIAC)<sup>125</sup> and the Law Society of NSW Pro Bono Scheme.<sup>126</sup> The process of seeking assistance from these organisations is, however, complicated and time-consuming. The Law Society of NSW Pro Bono Scheme requires applicants for assistance to demonstrate their ineligibility for Legal Aid by:

- applying for support from Legal Aid NSW – knowing that it will be refused due to administrative legal matters being beyond the scope of Legal Aid services;
- receiving a letter of Legal Aid ineligibility; and
- submitting the letter of Legal Aid ineligibility along with an application for pro bono assistance to the Law Society NSW.<sup>127</sup>

In the case of PILCH and PIAC, complainants and objectors do not need to demonstrate their ineligibility for Legal Aid. However there are additional public interest criteria that complainants' and objectors' cases must meet. The particulars of their case must have a considerable public interest element that indicates their eligibility for pro bono services from PILCH or PIAC.<sup>128 129</sup>

These processes are almost inevitably too time-consuming for complainants and objectors to gain access to pro bono assistance and advice. There are tight timeframes for public input that apply to decision reviews and licence applications, and it is at ILGA's discretion that they consider submissions received outside of these time frames.<sup>130</sup> The selection processes of advisory bodies such as PILCH, PIAC and the Law Society of NSW are not suited to liquor licensing matters. Timeliness in the submission of complaints and objections is crucial to ensure that warranted community concerns are received in time by ILGA. As there are no existing advisory bodies that meet the needs of community members in licensing matters, there is the need for such an organisation to be established.

## Overcoming these challenges to influence liquor licensing decisions

The complexity of the regulatory environment for liquor licensing and its apparent bias in favour of licensees suggests that changes are needed to remove the barriers stakeholders face in engaging with liquor licensing systems. The NSW Government is currently conducting a five year statutory review of the *Liquor Act 2007* and the *Gaming and Liquor Administration Act 2007* which should consider such changes.

There are also resource-based solutions to the challenges faced by community members. In order to identify appropriate solutions for community members, it is important to consider:

- What do community members need in order to overcome the legislative, regulatory and resource challenges they face in liquor licensing matters?
- What service and resource delivery models are most appropriate for stakeholders seeking to influence liquor licensing matters?

### Community members' needs in licensing matters

There are three 'needs' of community members that, if fulfilled and supported, can facilitate and improve community participation and engagement in licensing matters. These needs are:

1. Access to information and advice;
2. Communications and networks; and
3. Human resources.


Information, communications and networks are the elementary 'needs' of community complainants and objectors that can be fulfilled with low resource implications at a low cost. Addressing 'higher level' needs, such as human resources requires further planning and support at greater cost. Addressing these 'needs' will deliver three core benefits to the community and liquor licensing system:

- informing and empowering communities to take charge of the future health, safety and amenity of their local community in relation to alcohol-related harms;
- improving the body of information on which regulatory bodies determine the public interest in licensing matters; and
- enhancing the responsiveness of licensing decisions to the public interest.

Each of the identified community 'needs' are elaborated upon in the sections below.

#### 1. Access to information and advice

Community advocates do not necessarily have the capacity or ability to meet the research and evidence requirements that accompany the onus of proof. ILGA and OLGR are not in a position to allow a submission to influence their decision-making if the submission's claims are not substantiated with evidence. Therefore, the information needs of community members must be



supported to empower and facilitate community participation in licensing matters. Community members seeking to submit objections or complaints in relation to licensing matters need guidance on where to source information resources. Information and guidance is needed for communities on:

- data on local population demographics, alcohol-related local health (e.g. hospitalisations) and safety (i.e. crime) incidents and the number of existing liquor outlets and their trading conditions;
- preparing and collecting of affidavits or statutory declarations from members of the community in relation to local alcohol-related harms and liquor outlets;
- news sources and archived media reports in relation to alcohol-related harms in the local area;
- how to use and interpret the legislation and regulatory system;
- preparing letters and submissions relating to complaints, objections, requests for decision review by ILGA, and requests for complaint initiation by authorities;
- case studies on precedents and lessons for complainants and objectors from previous decisions by ILGA; and
- communication and networking, including preparing media releases and communicating with other like-minded or experienced community members.


## 2. Communications and networks

While communication and networking activities are important to raising community awareness and participation in licensing matters, such activities are time consuming and resource intensive. Community members need communications and networking resources and services to communicate licence application notices to others and in learning from the experience of other community members who have engaged in the process previously. These resources will also assist with communicating with authorities, the community, government agencies and local representatives to coordinate action and support. Communication with local media is also important in order to raise the profile of the issues at hand, as well as and networking with supportive entities. In order to communicate and network effectively in licensing matters, community members would benefit from access to:

- an alert service notifying communities of licence applications and CIS consultations in their local area;
- email-based networking and advisory services with other community members that have engaged in liquor licensing processes;
- directories of relevant and supportive community groups, institutions, facilities and community legal centres; and
- on-line and event-based forums for information-sharing and networking.

## 3. Human resources

Research and preparation of effective and evidence-based submissions is very time-consuming for community members. Objectors and complainants do not necessarily possess the relevant skills required to prepare submissions and are not necessarily in a position to afford the outsourcing of such activities to professional service providers. Communities without such skills and expertise may hold warranted concerns that deserve further investigation. However their cause may be overlooked



due to them not having access to the human resources needed to overcome the onus of proof. Communities seeking to submit objections or complaints in relation to licensing matters need support from people with the following skills:

- critical thinking abilities;
- writing skills;
- research skills;
- legal knowledge;
- well-informed and articulate leader/local advocate;
- public communications skills;
- political awareness; and
- managerial skills.

## Proposed service delivery model for communities participating in liquor licensing decisions

In light of the present context of liquor licensing and community consultation, there is a need to provide further support to communities engaging with the liquor licensing system. The proposed service and resource delivery model for this is a public interest advisory group, or Community Defenders Office (CDO).

To address the information, advice and resource needs of community members, a CDO would have two primary functions:

1. A central information service, or 'Knowledge Bank'; and
2. An advisory service that provides communities with access to skilled personnel.

A CDO with these two functions would support concerned community groups to meet their needs for research assistance, representation, education and advocacy in liquor licensing matters. Such an organisation that specialises in licensing legislation and regulation could be based on the model used by the Environmental Defenders Office NSW (EDO NSW). This model has the potential to accumulate first-hand knowledge, experience and data from dealing with 'grassroots' community action in licensing matters. Subsequently, a CDO has the potential to provide valuable contributions to community advocacy for systemic change in how liquor licensing authorities allow for community input in licensing matters.

The two functions of the CDO are explored in further detail in the following sections.

## A central information service or 'Knowledge Bank'

The Knowledge Bank service of the CDO would operate to enhance community objectors and complainants' access to information and capacity to use networks and communications. The Knowledge Bank has the capacity to support community input and advocacy in liquor licensing matters through its three primary functions:

- acting as a central repository of information;
- providing an e-mail alert service on licence applications and CIS consultations; and
- operating as a central networking hub that enables community groups to contact and communicate with other groups, supportive organisations and public representatives.

Community members currently source the majority of their evidence from the Internet, and most of their network communications take place via e-mail.<sup>131</sup> However, the relevant information and contacts they seek are dispersed across various websites, media, and geographical locations. This scattered information makes the task of collecting information and networking particularly time-consuming.<sup>132</sup>

Specific resources and contacts that may be included were outlined in the previous section concerning community needs. These resources could assist communities with overcoming challenges raised in this report, such as onerous research and data collection requirements and burdensome communications and networking requirements.

The value of the Knowledge Bank lies with its capacity to provide information resources and supportive networks in an easy to understand and accessible format. The Knowledge Bank would support fragmented and geographically dispersed community groups across NSW to better manage the challenges they face by:

- reducing the burden of research due to lack of resources (time, money, experience in research);
- providing information and network support for community group leaders; and
- enhancing knowledge and confidence through supportive networks and public communications.

The information, communications and network support that the Knowledge Bank can deliver can be presented on a web-based platform for electronic media. An e-mail service and/or web-site, for example, presents easy information dissemination and access at any time and from any electronic device with internet capability. The Knowledge Bank may also provide guidance on how members of the community seeking to participate in licensing matters should engage with the following entities and populations to garner information or support for a licence objection or complaint:

- Local government; and
- Government agencies (i.e. Police, NSW Government departments, OLGR and ILGA).

The Knowledge Bank alone is, however, limited in its capacity to address all of the needs of community members in licensing matters. The web-based resources cannot provide more than general advice; specialist advice enters a different realm of human resources, costs and responsibilities for the organisation.<sup>133</sup> In addition, the Knowledge Bank is not in a position to

alleviate the costs associated with community action in licensing matters. That is, costs in terms of professional services to assist in preparation of submissions, and in terms of time taken out of paid work to participate in licensing matters. The table below outlines the benefits and limitations of the information service or 'Knowledge Bank'.

Benefits	Limitations
<ul style="list-style-type: none"> <li>• Reducing the burden of research</li> <li>• Providing information and network support</li> <li>• Connecting dispersed groups</li> <li>• Enhancing knowledge and confidence</li> </ul>	<ul style="list-style-type: none"> <li>• Cannot provide more than general advice</li> <li>• Not in a position to alleviate the costs associated with community action in licensing matters</li> </ul>

**An advisory service that provides communities with access to skilled personnel**

The advisory service function of the CDO would provide further support to supplement the information available through the web-based platforms. Specific supports that may be provided by the CDO include, but are not limited to: developing the public profile of the issues and public engagement options within the community; and the provision of in-house legal advice, communications and researchers.<sup>134</sup> CDO would assist communities with three challenges identified in this report: the time taken to appropriately address legislative and regulatory requirements; the costs of participating in licensing matters; and the lack of independent advice options available.

Two primary functions of EDO NSW may apply to the context of CDO. These functions involve taking a leadership role in educating communities about their rights and options when dealing with local alcohol policies and licensed premises, as well as representing concerned communities in liquor licensing challenges. The EDO NSW strategic pillars of early engagement are multidisciplinary case management, accessibility to areas of demand, and a focus on merits-based solutions. These pillars would apply to the advisory service of CDO in the context of liquor licensing. It is foreseeable that CDO may have a capacity similar to that of EDO NSW to accumulate knowledge, experience and data from their work at the 'coalface' of community engagement in liquor licensing. Collection of this information may provide valuable contributions to future policy reform.

EDO NSW is a public interest law organisation that specialises in environmental law and has a wide diversity of stakeholders. It uses a multidisciplinary approach that incorporates scientific advice into its legal work, engages in policy work, provides a range of educational activities, and also undertakes media work and capacity building in communities. EDO NSW was established in 1985 from an apparent need for a body to coordinate public interest matters pertaining to environmental law. This was in light of a legal structure being set up in the late 1970s to moderate environmental matters and the lack of specialist lawyers available to advise community clients.

A lesson to learn from the experience of EDO NSW is that the community is empowered by professionals going out to communities and informing them of what their rights are, and how they can be effectively involved in the issue at hand. Early and informed engagement in the decision-making process is important as it increases the chances of a better outcome for community objectors

and complainants. Otherwise, concerned individuals may approach the organisation when it is too late to act.

The value of the advisory service lies in its capacity to provide specialist information resources and supportive human resources. Such resources would alleviate the time, financial and research burdens that communities face when acting to influence liquor licensing matters. This service would be capable of dedicating more time to keep abreast of licence applications, open CIS consultations, and ILGA licensing decisions. In addition, this service would play a key role in assisting communities with submissions to ILGA, representing communities in review proceedings, and preparing communities for consultation by applicants and local government.

The key advantage of the advisory service is that it would be composed of a body of skilled, experienced and highly-educated staff. These human resources would serve the highly valuable purpose of performing the ‘heavy lifting’ by providing community members with pro bono access to skilled individuals and experienced advocates. The table below outlines the benefits and limitations of the advisory service.

Benefits	Limitations
<ul style="list-style-type: none"> <li>• Alleviate research burden</li> <li>• Enhance community engagement, awareness, communications and networking</li> <li>• Alleviates cost burden</li> <li>• Alleviates time burden</li> <li>• May feed in to advocacy for policy change</li> </ul>	<ul style="list-style-type: none"> <li>• Expensive and requires strategic planning and risk evaluation</li> <li>• Lack of financial security</li> <li>• Vulnerable to marginalisation by liquor industry</li> </ul>

## The need for a Community Defenders Office (CDO)


In order to deliver the services and resources that community members need, it is recommended that a public interest advisory group, or CDO be established.

The information service or ‘Knowledge Bank’ would have the capacity to make information collection easier for community members. The Knowledge Bank’s contribution to enhancing public knowledge, networking and communications may also feed into grassroots advocacy for alcohol policy reform.

The advisory office within the CDO would have the capacity to dedicate time to external networking that in turn would inform stakeholders and community groups who wish to network with like-minded parties. The central and independent role of the advisory service, and the CDO overall, would also support community members by reducing the personal risks they take to act on a licensing issue. In this capacity, it could raise more public awareness of licensing processes in particular localities, and ensure that more community members are able to provide evidence-based input into licensing matters. The accumulated knowledge of the CDO may feed in to advocacy for policy change by the NSW Government.

A CDO would provide high quality services and expertise in liquor licensing matters that cannot be accessed from other existing sources. The CDO would support communities to overcome the existing barriers to engaging with the liquor licensing systems that prohibit involvement. The CDO would also





have the capacity to act as a key vehicle for encouraging evidence-based government policy developments in relation to liquor licensing. It cannot be expected that community members take on the resource burdens associated with engaging with the liquor licensing system. Nor can it be taken for granted the real concern of communities that exists relating to alcohol-related disturbances and harms. A CDO would provide the support that the community requires to have a greater say about the access and availability to alcohol in the neighbourhoods in which they live.

### Funding the CDO

The CDO is a public interest service that performs a valuable function of supporting informed regulatory decision-making by facilitating community engagement and participation in licensing matters. As such, the CDO should be indirectly funded by the NSW Government. Funding from the Government could be sourced from a licensing fee paid by licensees on an annual basis.

In NSW liquor licensees pay a one off liquor licence application fee which is levied according to licence type, but they are not required to pay an annual licensing fee. The recent Auditor General's report estimated that alcohol abuse costs the NSW Government \$1.029 billion per annum.<sup>135</sup> The costs incurred by government to regulate the liquor market and enforce the laws and regulations – as well as the costs incurred for cleaning up the mess created by alcohol use and misuse – are far from being recovered by the existing licensing fees system. A licensing fee paid by licensees and licence applicants could in part go towards supporting representation of community interests in licensing matters. In turn, supporting community representation in licensing matters would go some way to preventing and minimising alcohol-related harms in NSW communities through licensing controls.

## Conclusion

In NSW the bodies responsible for regulating the liquor trade rely on community participation and input to inform their decision-making. This input serves to check the consistency of their decision-making regarding the public interest and the objects of the Liquor Act. The Liquor Act and Liquor Regulations contain provisions for communities to make submissions to regulatory authorities in relation to a licensee or licence application. However, members of the general public face considerable legislative, regulatory and resource-based challenges in the process that hinder their capacity to participate in (let alone influence) liquor licensing matters. These challenges discourage community participation; limit the ability of stakeholders to present consequential objections or complaints; and exclude some stakeholders from the process altogether. The concern here is that warranted complaints and objections may be overlooked, or never made to the regulatory authorities.

It is apparent that there is the need to assist community complainants and objectors in overcoming these challenges. Access to relevant information and skilled human resources would go some way to reduce the time and cost burdens communities bear when seeking to participate in licensing matters. This report proposes an appropriate service and resource delivery model that would achieve such goals: a public interest advisory group, or Community Defenders Office (CDO). This CDO would have two functions: a central information service or 'Knowledge Bank', and an advisory service. The Knowledge Bank would operate to enhance the access community members have to information, networks and communications that are relevant to licensing matters. On the other hand, the advisory service would provide communities with access to specialist human resources that assist with submission research and preparation, as well as representation of communities in licensing matters. In all, the CDO serves to empower communities to participate and engage in licensing matter with confidence, and alleviate some of the resource burdens community groups face.

A CDO is not a silver bullet. The functions of a CDO do not release the government from setting and administering systems, processes and frameworks that regulate the liquor industry in the public interest and pursuant to harm minimisation. The government needs to take control of the macro-level settings, including the number of licences, outlet density and precinct saturation. However, even with such controls, there will always be a need for an organisation such as a CDO that assists community members with participation in the legislative and regulatory landscape of liquor licensing.

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