

**Report on the  
statutory review  
of the**

***Liquor Act 2007***

**and the**

***Gaming and***

***Liquor Administration***

***Act 2007***

**November 2013**

26 November 2013

The Hon George Souris MP  
Minister for Tourism, Major Events, Hospitality and Racing  
Minister for the Arts  
Parliament House  
Macquarie Street  
**SYDNEY NSW 2000**

Dear Minister Souris,

As chairman of the five-year statutory reviews of the Liquor Act 2007 and the Gaming and Liquor Administration Act 2007, I submit the attached report for your consideration.

I would like to thank the individuals, community and advocacy groups, government departments, local councils, the health sector, and the liquor industry for making over 100 submissions totalling more than 1500 pages to the review. The views expressed and the details contained in these submissions added significantly to the outcome of the review.

I would also like to thank the NSW Office of Liquor, Gaming and Racing for its assistance.

Sincerely yours,

A handwritten signature in black ink that reads "Michael Foggo". The signature is written in a cursive style with a large, stylized 'F'.

Michael Foggo

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# 1 EXECUTIVE SUMMARY

The *Liquor Act 2007* and the *Gaming and Liquor Administration Act 2007* were assented to on 13 December 2007 and commenced on 1 July 2008.

The Liquor Act regulates and controls the sale and supply of liquor and the use of premises on which liquor is sold or supplied. The Gaming and Liquor Administration Act constitutes the Independent Liquor and Gaming Authority and specifies its functions, provides for the probity of officials under the gaming and liquor legislation, and confers investigation and enforcement powers for the purposes of that legislation. Both Acts also have other, ancillary purposes.

Statutory review provisions exist in both Acts requiring consideration (within a 12 month period after the 5 year anniversary of the assent date) of the policy objectives and the terms of the Acts. This report provides details of the review of both Acts which has been undertaken to comply with the statutory review requirements. It sets out the issues to be addressed, gives an overview of the submissions received, provides policy discussion and makes recommendations.

This report is provided to the Hon George Souris MP, Minister for Tourism, Major Events, Hospitality and Racing, and Minister for the Arts, to enable the statutory requirement for a report on the outcome of the review to be tabled in the NSW Parliament.

The review was greatly assisted by over 100 submissions from the community, Government agencies, local councils, industry and the health sector. Those submissions included over 1,500 pages of comments, research material and discussion.

Generally speaking, most submissions supported the strategic framework introduced by the *Liquor Act 2007*. However, many sought changes to the Act that would, in their view, better achieve its broader objectives.

Following consideration of the submissions made and other available material, the review supports continued regulation of the sale, supply and consumption of alcohol to reduce and prevent the significant harm that is associated with its consumption. The review also recognises that alcohol is widely enjoyed within society, can be consumed in a responsible manner, and the liquor and associated industries make a significant contribution to the social and economic fabric of New South Wales.

In this context, the review finds that the policy objectives of the *Liquor Act 2007*, as stated in section 3 of that Act, remain valid and should continue. The review also finds that the *Gaming and Liquor Administration Act 2007* should include specific objects to facilitate access by stakeholders, efficiency, transparency and effectiveness in proceedings, and fairness in decision making.

The review has made a significant number of recommendations relating to the terms of both Acts that would assist in better achieving statutory objectives. Some of those recommendations relate to specific amendments to the Acts, while others will require further consideration of the appropriate legislative arrangements that should operate under both Acts into the future.

The review considers that these recommendations will:

- improve access to and participation in the liquor regulatory system for stakeholders, including the community,
- reduce unnecessary costs and red tape,
- promote informality, timeliness and transparency in decision making,
- provide effective regulatory tools to prevent and respond to alcohol-related harm,
- address technical issues with the current law which impede its operation, and
- provide a better grounding for future liquor regulatory and policy decisions.

There are separate reviews and significant legislative change either proposed or underway in a number of related areas – e.g. the new Environment and Planning legislation and a review of the Environment and Venue Assessment Tool used for certain liquor licensing decisions. The recommendations made by this review should be considered in the context of those proposals or reviews.

The proposals contained in this report are recommendations only, and the Government and others will determine whether action will be taken.

The review thanks those who provided submissions and committed their time and effort to assist in achieving better outcomes for the regulation of the sale and supply of alcohol in New South Wales.



## 2 LIST OF RECOMMENDATIONS

### **Recommendation 1:**

The existing policy objectives of the *Liquor Act 2007* remain valid and should continue unamended.

### **Recommendation 2:**

Specific objects should be inserted into the *Gaming and Liquor Administration Act 2007* which are similar to those included in comparable statutes to:

- facilitate access by stakeholders,
- require regulators and decision makers to adopt efficient and effective proceedings which are informal, expeditious and inexpensive, and
- promote fair decision making.

### **Recommendation 3:**

The Government should create a 'one-stop-shop' website for liquor and gaming which aggregates information from relevant sources, is simple to use and understand, and is structured so that the starting point for persons accessing the website is what that person wants to achieve, rather than who they should approach to achieve it.

### **Recommendation 4:**

Consideration should be given to including geo-coded licence type information on the website that could be available to the public, and to local councils to consider when determining planning applications, and to regulators to consider where a community impact statement is required.

### **Recommendation 5:**

The liquor laws should require mandatory publication of brief written reasons for decisions on contentious and high impact licensing applications and regulatory interventions (including enforcement action taken), and should include reasons for decisions and outcomes as part of an enforcement report card.

### **Recommendation 6:**

Consideration should be given to how information relating to decision and enforcement outcomes can be widely distributed, including through the media.

### **Recommendation 7:**

Applicants and other interested parties should be able to request brief written reasons for the Authority's decision in respect of applications not included in the mandatory publication decisions.

### **Recommendation 8:**

All decisions of the Director General should be reviewable by the Authority, with the available review rights explained to stakeholders.

### **Recommendation 9:**

The probity standards required for all liquor and gaming inspector positions located within the OLGR should be determined by the Department as the employer.

**Recommendation 10:**

A statutory position of the Director of Licensing should be introduced to determine low risk or non-contentious liquor licence applications under the *Liquor Act* and *Registered Clubs Act 1976*, including the:

- approval of changes to licensees or managers,
- redefinition of the boundaries of licensed premises,
- approval of restricted areas in licensed premises, and
- extension of trading hours for special occasions.

**Recommendation 11:**

All decisions of the Director of Licensing should be reviewable by the Authority.

**Recommendation 12:**

The Authority should remain responsible for:

- granting all liquor licence applications,
- extension of trading hours on a permanent basis,
- the determination of disciplinary proceedings as currently provided, and
- its current role in relation to casino-related matters.

**Recommendation 13:**

The Authority should be able to delegate functions to the Chief Executive of the Authority, and Authority members.

**Recommendation 14:**

The current provisions regarding determination of fitness from a criminality perspective allow sufficient flexibility to consider the range of probity issues and should therefore remain unchanged subject to the application of a 'risk based' approach to assessments within particular categories to facilitate greater expedition and transparency.

**Recommendation 15:**

The *Liquor Act* should make it clear that the concept of "fit and proper" includes the competency (including honesty, knowledge and ability) of the proposed licensee.

**Recommendation 16:**

A tiered approach to training should be developed that extends to mandated licensee training, and tailored RSA training for other industry workers, and allow for refresher training to be undertaken when competency cards expire.

**Recommendation 17:**

Initially, mandated licensee training should be focused on and trialled for higher risk venues (such as hotels, bars, clubs, late trading venues) or venues located in high risk precincts.

**Recommendation 18:**

Competency training should be introduced for high risk venues and the Authority should be given the ability to refuse applications where the competency of the individual (training and experience) is disproportionate to the risk profile of the licensed venue.

**Recommendation 19:**

The administration of industry training should rest with a single decision maker within OLGR to avoid confusion and inconsistencies.

**Recommendation 20:**

The Environment and Venue Assessment Tool and the intent of its supporting research have merit, and its ongoing development should be supported by further research.

**Recommendation 21:**

The Environment and Venue Assessment Tool should be subject to rigorous and independent evaluation and that a summary of that evaluation is available for public review.

**Recommendation 22:**

A standardised tool, based on the available research in regard to cumulative harms, should be utilised for liquor licensing matters.

**Recommendation 23:**

The types of issues to be considered by the tool should be prescribed as matters that need to be taken into account in an application for a higher risk liquor licence or permanent extension of trading hours to enable trading past midnight.

**Recommendation 24:**

The Environment and Venue Assessment Tool should be used to inform input into the modified planning process as recommended by this review.

**Recommendation 25:**

Data regarding the density of liquor outlets should be considered when granting a new liquor outlet, and be one of the relevant data sets taken into consideration in the determination of the impact of an additional liquor outlet in a particular area.

**Recommendation 26:**

The issues raised in submissions to the review should inform consideration by the Government of the future of the liquor licence freeze.

**Recommendation 27:**

All liquor application fees prescribed under Schedule 1 of the *Liquor Regulation 2008* should be revised to align those fees as far as practical with the actual business cost of processing licence applications as part of the administration of the Liquor Act.

**Recommendation 28:**

An indexation clause should be applied which allows licence application fees to be aligned with increases in the Australian Consumer Price Index every four years.

**Recommendation 29:**

A contemporary periodic risk based licensing scheme – including periodic fees and risk based fee loadings as discussed in this review – should be introduced.

**Recommendation 30:**

The current strategy of applying a targeted approach to reducing alcohol-related problems associated with licensed premises is supported and should continue.

**Recommendation 31:**

The adoption of a standard set of conditions to be applied to all existing late trading venues is not supported.

**Recommendation 32:**

The existing wide-ranging powers to control liquor trading hours and apply restrictions to licensed venues under the Liquor Act should be better communicated and explained to the community and local government, including via the proposed new 'one-stop-shop' liquor and gaming website.

**Recommendation 33:**

Following the grant of a liquor licence, the Authority and the Director General through the disciplinary process should have sole responsibility for the variation of trading hours for a licensed venue.

**Recommendation 34:**

Local councils should be able to make submissions to the Authority for the liquor trading hours of an existing licensed venue to be varied.

**Recommendation 35:**

The current standard trading hours for packaged licences should remain unchanged.

**Recommendation 36:**

If the Environment and Venue Assessment Tool process remains in place, the data contained in the Tool should be reviewed to ensure a better mix of indicators, similar to those adopted by the Authority, which are relevant to the type and risk of the application sought.

**Recommendation 37:**

The indicators used in the Environment and Venue Assessment Tool should include the current density of packaged liquor outlets and domestic violence rates.

**Recommendation 38:**

The possibility of including information in the Environment and Venue Assessment Tool relating to underage drinking, public drinking and pre-fuelling be explored.

**Recommendation 39:**

If the Environment and Venue Assessment Tool process is not adopted, the present framework should remain in place.

**Recommendation 40:**

The framework for producer/wholesaler licences, as it applies to wine producers, should be extended to the producers of beer and spirits to enable them to apply for a drink on-premises authorisation and to conduct tastings and takeaway sales of their products at a producer's market or fair.

**Recommendation 41:**

The definition of a producer's market or fair should be amended to provide that a minimum of 10 stall holders of any kind is required, rather than a minimum of 10 farmers or producers.

**Recommendation 42:**

Non-profit organisations should be exempted from having to acquire a liquor licence for up to six events a year for fundraising activities that will be of benefit to the organisation or the local community.

**Recommendation 43:**

The exemption should only apply if the sale and supply of liquor is ancillary to an event and the following conditions are complied with:

- food and free water must be available,
- liquor may only be sold and supplied between 6am and midnight,
- all persons selling and serving liquor at the event must have completed responsible service of alcohol training,
- adequate adult supervision is maintained at any time when minors are present, and
- police and liquor inspectors must be permitted access to the premises.

**Recommendation 44:**

The exemption should be subject to requirements prohibiting the sale and supply of liquor to an intoxicated person.

**Recommendation 45:**

A non-profit organisation should be required to provide details of the function to local police 28 days prior to the event, and also to the local council in the case of an event that is proposed to be held on council owned and/or managed property.

**Recommendation 46:**

Holders of a multi-function limited licence should not be required to obtain approval for each function held under the licence subject to notification to the local police and local council.

**Recommendation 47:**

The Good Sports program should be promoted to sporting clubs that apply for a multi-function limited licence, and it should be a factor to be taken into account when considering whether a licence should be approved.

**Recommendation 48:**

There should be further discussions between the City of Sydney, OLGR and NSW Police to agree a suitable way forward to the imposition of appropriate licence conditions on vessels with existing licences and those applying to new market entrants.

**Recommendation 49:**

There should be discussions with vessel operators prior to appropriate licence conditions being finalised.

**Recommendation 50:**

The 'reasonable steps' provisions in section 73(4)(a) of the Liquor Act should be removed, or alternatively, the Liquor Act should be strengthened to confirm that a licensee has permitted intoxication on a licensed premises unless reasonable steps to be defined in the legislation can be demonstrated to have been implemented prior to regulatory intervention.

**Recommendation 51:**

The Government, in responding to the Social Policy Committee of the NSW Legislative Assembly inquiry into the provision of alcohol to minors, should consider the introduction of a responsible supervision test in the Liquor Act to ensure any liquor supplied to a minor by a parent or guardian, or with the consent of a parent or guardian, in a private setting is done responsibly.

**Recommendation 52:**

The Government should consider conducting compliance operations using young looking adults to assess behaviour by licensees when serving persons and there is uncertainty as to their age, with the outcomes to inform industry education and enforcement strategies.

**Recommendation 53:**

The Liquor Act should be amended to ensure that the sale of liquor should at all times (subject to the recommendation below) be subject to the primary purpose test that applies to an on-premises licence.

**Recommendation 54:**

Consideration should be given to allowing the Authority to grant a period of grace when the primary purpose concludes so as to, for example, allow liquor to be sold for an hour after the provision of the product or service which is the primary purpose of the business has been concluded.

**Recommendation 55:**

Clause 19(1) of the *Liquor Regulation 2008* should be revisited in light of the amendment proposed at recommendation 53.

**Recommendation 56:**

The existing provisions relating to licence transfers, removals and ownership should be reviewed to remove red tape, reduce processing times, and increase financial certainty for lenders.

**Recommendation 57:**

The transfer owner-in-possession provisions should be revised to make it clear that the licence either reverts to the original licensee where an application is not lodged within 28 days, or where an application is lodged and is refused or the 28 day period expires, the licence is suspended until a new licensee is approved by the Authority.

**Recommendation 58:**

Consideration should be given to removing liquor licences from the realm of “personal property” under the *Commonwealth Personal Property Securities Act 2009*.

**Recommendation 59:**

A co-ordinated and consistent risk-based approach to regulatory enforcement should be pursued, supported by the extensive regulatory tools already available in the Liquor Act.

**Recommendation 60:**

Venue capacity limits should be incorporated into liquor licence conditions following determination by local councils.

**Recommendation 61:**

The Government should closely monitor the outcomes of liquor sales data collection in Kings Cross to inform consideration of future data collection requirements in Kings Cross and/or other precincts.

**Recommendation 62:**

Changes to the Criminal Procedures Regulation should be referred to the Attorney General for consideration.

**Recommendation 63:**

The provisions of Part 9 of the Liquor Act should be amended to make it clear that it is necessary to have some element of fault or culpability (but not necessarily intention) in finding disciplinary actions proven.

**Recommendation 64:**

OLGR and industry associations should promote education initiatives to inform the public about their responsibilities when attending licensed premises.

**Recommendation 65:**

The Liquor Act should be amended to provide that accords must have terms and be registered, and do not require approval by the Director General or the Commissioner of Police.

**Recommendation 66:**

The potential membership of local liquor accords should be broadened to include late night businesses that operate in close proximity to licensed premises, and the providers of security services.

**Recommendation 67:**

The approval of precinct liquor accords and community event liquor accords should be simplified under one umbrella as Alcohol Management Plans, with flexibility to determine those licensees and the arrangements that are captured by such plans.

**Recommendation 68:**

The updated liquor promotion guidelines should be evaluated 12 months after their commencement (i.e. after July 2014) through an open call for submissions, and consideration should be given to the issues raised in submissions to this review.

**Recommendation 69:**

The tests in section 101(3) and (4) should be revised to ensure rapid and/or strategic action on undesirable liquor products, while ensuring the manufacturer of a product proposed to be restricted or prohibited is given an opportunity (where possible) to make submissions should action be proposed that would impact on more than one licensed premises.

**Recommendation 70:**

Consideration should be given to introducing a co-ordinated planning and liquor licensing model (as detailed in this report) as part of the planning reforms that are currently being progressed by the Government so as to provide one forum for consideration of social impact and local neighbourhood issues associated with a liquor licensing proposal.

**Recommendation 71:**

Consideration should be given to how this new model might be implemented quickly having regard to existing liquor licensing applications that are underway at the time of its introduction.

**Recommendation 72:**

If the proposals to merge the DA process and the CIS process are not adopted, the CIS process should be reviewed having regard to the issues raised in this review.

**Recommendation 73:**

The CIS process should be reviewed to ensure it accurately reflects community issues relating to a licensing proposal, with consideration given to requiring full copies of the CIS to be served on local police and local councils; how the CIS process can facilitate the provision of independently sourced data to the Authority; ensuring the community and relevant stakeholders are properly notified of liquor applications; and whether certain licence types should continue to be excluded.

**Recommendation 74:**

The use of a mediation process should be promoted where possible and appropriate to deal with community disturbance issues in an informal and expeditious manner.

**Recommendation 75:**

The availability and operation of this mediation process should be explained in simple terms to stakeholders.

**Recommendation 76:**

The disturbance complaint process should allow submissions by the community to OLGR, and the immediate commencement of mediation between parties with agreed outcomes in writing.

**Recommendation 77:**

The Liquor Act should be amended to allow agreed resolutions to be imposed on the licensee (rather than the licensed premises) and be subject to disciplinary action, if breached.

**Recommendation 78:**

Access to information and assistance relating to intervention measures (such as licence conditions, directions, and disturbance complaints) should be significantly improved for local government and the community through measures such as an enhanced website with supporting resources.

**Recommendation 79:**

Publication of decisions and action taken on regulatory interventions should be mandated, and should include reasons for decisions and outcomes so as to better explain the processes adopted to assist in reducing community harms and to implement regulatory interventions.

**Recommendation 80:**

The Government should consider mechanisms to fund an independent alcohol-related research program in New South Wales modelled (as appropriate) on the Gambling Research Australia program.

**Recommendation 81:**

The regulation making powers under sections 17(4) and 27 of the Liquor Act should be utilised to prescribe requirements in relation to the nature and quality of food that must be made available when liquor is sold or supplied for consumption on licensed premises.

**Recommendation 82:**

The Liquor Act should be amended to compel a person refused entry or removed for any reason authorised by the Liquor Act to leave the vicinity of the licensed premises and not attempt to re-enter the premises.

**Recommendation 83:**

The Liquor Act should be amended to clarify that it is not an offence for a:

- a. hotelier to keep a bar area open when required by the Act to cease liquor sales for a period of time during authorised trading hours, and
- b. patron to remain in a bar area of a hotel when it is required to cease liquor sales for a period of time during authorised trading hours.

**Recommendation 84:**

The form of incident registers should be approved by the OLGR and licensees should be required to produce them immediately to police and OLGR inspectors.

**Recommendation 85:**

The law should be amended to provide clarity around the amount of time that information in a register is required to be kept, and should include controls on the subsequent alteration of register entries.

**Recommendation 86:**

OLGR should investigate the establishment of an on-line incident register to be trialled in high risk precincts and /or for licensed premises that are subject to special conditions under schedule 4 of the Liquor Act or have incurred a strike under the Three Strikes disciplinary regime.

**Recommendation 87:**

The Liquor Act should be amended to enable the Authority to, with the consent of the licensee, suspend the operation of a licence for a fixed period of time.

**Recommendation 88:**

The definition of gaming and liquor legislation in the Gaming and Liquor Administration Act should be amended to include a reference to the *Gaming Machines Tax Act 2001*.

**Recommendation 89:**

Section 46 of the Gaming and Liquor Administration Act should be utilised to prescribe the offences under section 34 as offences for which a penalty notice may be issued.

**Recommendation 90:**

The investigation powers under section 21 of the Gaming and Liquor Administration Act should not be altered.

**Recommendation 91:**

Local councils and other consent authorities should be considered for inclusion in the list of exempt bodies under Section 17 of the *Gaming and Liquor Administration Act 2007*.



# 3 GLOSSARY OF TERMS AND ACRONYMS

<b>Term or Acronym</b>	<b>Definition</b>
<b>Liquor Act</b>	<i>Liquor Act 2007</i>
<b>Gaming and Liquor Administration Act</b>	<i>Gaming and Liquor Administration Act 2007</i>
<b>Minister</b>	Minister for Tourism, Major Events, Hospitality and Racing, and Minister for the Arts
<b>Authority</b>	Independent Liquor and Gaming Authority
<b>Director General</b>	Director General, Department of Trade and Investment, Regional Infrastructure and Services
<b>OLGR</b>	Office of Liquor, Gaming and Racing
<b>Chairperson</b>	Mr Michael Foggo
<b>EVAT</b>	Environment and Venue Assessment Tool
<b>CIS</b>	Community Impact Statement (as defined by section 48 of the <i>Liquor Act 2007</i> )
<b>ABS</b>	Australian Bureau of Statistics
<b>BOCSAR</b>	NSW Bureau of Crime Statistics and Research
<b>AHA (NSW)</b>	Australian Hotels Association (NSW)
<b>NAAPA</b>	NSW-ACT Alcohol Policy Alliance
<b>FARE</b>	Foundation for Alcohol Research and Education
<b>NDARC</b>	National Drug and Alcohol Research Centre

## 4 THE REVIEW PROCESS

### 4.1 Statutory review provisions

Section 162 of the *Liquor Act 2007* and section 50 of the *Gaming and Liquor Administration Act 2007* provide that the responsible Minister is to:

---

*review the Acts to determine whether the policy objectives of the Acts remain valid and whether the terms of the Acts remain appropriate for securing those objectives.*

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A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years from the date of assent (i.e. by 13 December 2013).

Accordingly, the questions for the review to consider are:

- Do the policy objectives of the *Liquor Act 2007* and the *Gaming and Liquor Administration Act 2007* remain valid?; and
- Do the terms of the Acts remain appropriate for securing those objectives?

### 4.2 Announcement of the review

On 5 July 2013, the Minister for Tourism, Major Events, Hospitality and Racing, and Minister for the Arts announced the statutory review and called for public submissions from interested parties and persons, including industry, regulators, community and advocacy groups, and the health sector. The closing date for submissions was 30 August 2013.

Advertisements were placed in the *Sydney Morning Herald* and the *Daily Telegraph* on 10 and 13 July 2013 calling for public submissions to the review. Information was also published on the OLGR's website.

An Explanatory Paper was released in conjunction with the Minister's announcement to facilitate the making of submissions to the review. The Explanatory Paper detailed the policy objectives of the *Liquor Act* and provided a high level overview of the framework for liquor licensing in New South Wales. It also provided information about the terms of the *Liquor Act* and the *Gaming and Liquor Administration Act*.

Submission makers were informed that all submissions received would be published on the OLGR's website and may be specifically referred to in this review report, unless it was considered appropriate for a submission to be treated as confidential.

Requests for submissions to be treated as confidential were required to be accompanied by supporting reasons, and were considered in light of Government principles and requirements relevant to the public release of, and access to, information, including those established by the *Government Information (Public Access) Act 2009*.

### 4.3 Stakeholder meetings with the Chairperson

Key stakeholders were invited to attend meetings with the Chairperson following the commencement of the submission period. The meetings provided an overview of the review process and the submissions framework, and gave stakeholders the opportunity to discuss central issues.

The meetings were held at the NSW Trade and Investment Centre, Martin Place, Sydney, on 30-31 July and 2 August 2013 with representatives from Government, industry, local government and the community. Stakeholders that were invited to attend the meetings are listed in **Appendix 1**. Stakeholders that were represented at the meetings are listed below.

#### Government

- Aboriginal Affairs, Office of Communities
- Department of Attorney General and Justice
- Department of Planning and Infrastructure
- Destination NSW
- Independent Liquor and Gaming Authority
- NSW Ministry of Health
- NSW Police Force
- Office of the NSW Small Business Commissioner
- Transport for NSW

#### Local Government

- Albury City Council
- Byron Shire Council
- City of Sydney Council
- Dubbo City Council
- Local Government NSW
- Newcastle City Council
- Orange City Council
- Randwick City Council

#### Industry

- Australian Hotels Association (NSW)
- Brewers Association of Australia and New Zealand
- ClubsNSW
- Distilled Spirits Industry Council of Australia
- Echo Entertainment Group Ltd
- Liquor Stores Association NSW
- NSW Wine Industry Association
- Restaurant and Catering Association NSW/ACT
- The Accommodation Association of Australia

#### Community

- 2011 Residents Association
- Australian Medical Association NSW
- Darlinghurst Resident Action Group
- Foundation for Alcohol Research and Education
- NSW/ACT Alcohol Policy Alliance
- Police Association of NSW
- The Royal Australasian College of Surgeons
- The Thomas Kelly Youth Foundation

## 5 ENVIRONMENTAL SCAN

The *Liquor Act 2007*, which commenced on 1 July 2008, introduced a number of reforms to the regulation of the liquor industry. It introduced key objectives to:

- regulate and control the sale, supply and consumption of alcohol in a way that is consistent with the expectations, needs and aspirations of the community
- facilitate the balanced development, in the public interest, of the liquor industry through a flexible and practical system of regulation with minimal formality and technicality
- contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries
- minimise alcohol-related harm, and
- cut red tape.

Principally, it replaced the Licensing Court of NSW and the Liquor Administration Board with an administrative body, now known as the Independent Liquor and Gaming Authority, as the decision maker in liquor licensing applications and in determining disciplinary complaints against licensees.

It also prescribed certain regulatory powers to the now Director General, Department of Trade and Investment, Regional Infrastructure and Services, including the power to determine noise disturbance complaints against licensed venues. It enabled the Director General to place conditions on liquor licences, give directions to licensees, make late hour entry declarations (lockouts), take action against undesirable promotions or products, etc.

The *Liquor Act 2007* also consolidated 21 liquor licences that existed under the former *Liquor Act 1982*, to six broad categories of liquor licences, with transitional arrangements enabling existing liquor licences to be converted to an appropriate licence under the new Act. The categories of liquor licences that were prescribed by the *Liquor Act 2007* were:

- a hotel licence,
- a club licence,
- a packaged liquor licence,
- an on-premises licence,
- a producer/wholesaler licence, and
- a limited licence.

The Act introduced a Community Impact Statement process so that proponents of certain high risk proposals, such as hotel licence applications and extended trading approvals, are required to provide notification of applications to local stakeholders (including community) and detail of responses received from those stakeholders.

Since then, the provisions of the Liquor Act have been constantly reviewed as a result of changing community attitudes and Government action to minimise alcohol-related harm associated with the consumption of alcohol. Significant amendments that have been made to the *Liquor Act 2007* are outlined below.

The *Liquor Legislation Amendment Act 2008*, which commenced in December 2008, introduced a mandatory six hour closure period in respect of all liquor licences granted from 30 October 2008, or in respect of existing venues obtaining extended trading hours approval from that date.

The *Liquor Amendment (Special Licence Conditions) Act 2008* also commenced in December 2008 and introduced the legislative framework for the violent venues scheme under Schedule 4 of the Liquor Act.

**Table 1** outlines the number of violent venues that have been subject to Schedule 4 conditions under each round of the scheme since its inception in December 2008. It also shows the total number of incidents that were attributed to those venues in each round.

	Level 1	Level 2	Number of violent incidents recorded
<b>Round 1</b> <i>December 2008</i>	48	-	1270
<b>Round 2</b> <i>December 2009</i>	19	47	1105
<b>Round 3</b> <i>June 2010</i>	10	47	941
<b>Round 4</b> <i>December 2010</i>	8	34	749
<b>Round 5</b> <i>June 2011</i>	9	35	761
<b>Round 6</b> <i>December 2011</i>	10	23	555
<b>Round 7</b> <i>June 2012</i>	7	24	519
<b>Round 8</b> <i>December 2012</i>	4	14	284
<b>Round 9</b> <i>June 2013</i>	1	15	224

**Table 1.** Violent venues subject to Schedule 4 conditions since the scheme's inception

The *Liquor Amendment (Temporary Licence Freeze) Act 2009* commenced in September 2009 and introduced a liquor licence freeze for parts of the City of Sydney. The freeze, which captured George Street South, Oxford Street, Darlinghurst and Kings Cross, prevents impact licence proposals, including applications for hotel licences and extended trading from being granted under the liquor laws.

The *Liquor Legislation Amendment Act 2010* commenced in June 2010 and introduced special measures that can be applied to licensed premises in high risk entertainment precincts.

The *Liquor Amendment (3 Strikes) Act 2011 (No 2)* commenced in January 2012 and introduced a new disciplinary scheme whereby a strike is incurred for serious offences committed under the liquor laws, including supplying liquor to an intoxicated person or a minor.

As at 1 November 2013, a total of 60 licensed venues had incurred strikes under the scheme for the following offences:

- 29 strikes for trading outside authorised hours.
- 26 strikes for intoxication offences.
- 3 strikes for allowing liquor to be sold to a minor.
- 1 strike for a breach of condition imposed under Schedule 4, and
- 1 strike for permitting violent conduct.

Of the 60 licensed venues that had incurred strikes, three venues had incurred a second strike.

The *Liquor Amendment (Kings Cross Plan of Management) Act 2012*, which commenced in November 2012, established a consolidated Kings Cross precinct under the liquor laws, and introduced regulation making powers to enable special conditions to be imposed on Kings Cross licensed premises to improve safety.

The *Liquor Amendment (Small Bars) Bill 2013*, which commenced in July 2013, introduced a new type of liquor licence specifically for small bars with a capacity of up to 60 patrons. As at 15 October 2013, four small bar licences had been granted by the Independent Liquor and Gaming Authority.

The *Liquor Amendment (Kings Cross Plan of Management) Bill 2013* was passed by the Parliament in October 2013. The Bill introduces short and long term banning orders to prevent entry by banned persons into Kings Cross licensed venues, and requires high risk venues to operate ID scanners to support those orders.

## 5.1 Liquor licences

As at 1 July 2013, the total number of liquor licences in New South Wales was 17,870, which consisted of:

- 2,196 hotel licences
- 1,413 club licences
- 8,490 on-premises licences
- 2,295 packaged licences
- 2,005 producer/wholesaler licences, and
- 1,471 limited licences.

A comparison of liquor licence numbers as at 1 July 2008, when the *Liquor Act 2007* commenced, and 1 July 2013 is outlined in **Table 2**.

Licence type	1 July 2008	1 July 2013	Percentage change
Hotel	2,083	2,196	5.4%
Club	1,529	1,413	-7.6%
On premises*	6,398	8,490	32.7%
Packaged liquor	1,660	2,295	38.3%
Producer/wholesaler	1,612	2,005	24.4%
Limited	1,149	1,471	28%
Total	14,431	17,870	23.8%

**Table 2.** *Liquor licences when the Liquor Act 2007 commenced, compared with five years later*

As shown above, there was an overall increase of 23.8 per cent (n=3,439) in the total number of liquor licences granted between 1 July 2008 and 1 July 2013.

The largest percentage increase applied to packaged liquor licences at 38.3 per cent. Other significant increases were also recorded for on-premises, producer/wholesaler, and limited licences which are not perpetual in nature.

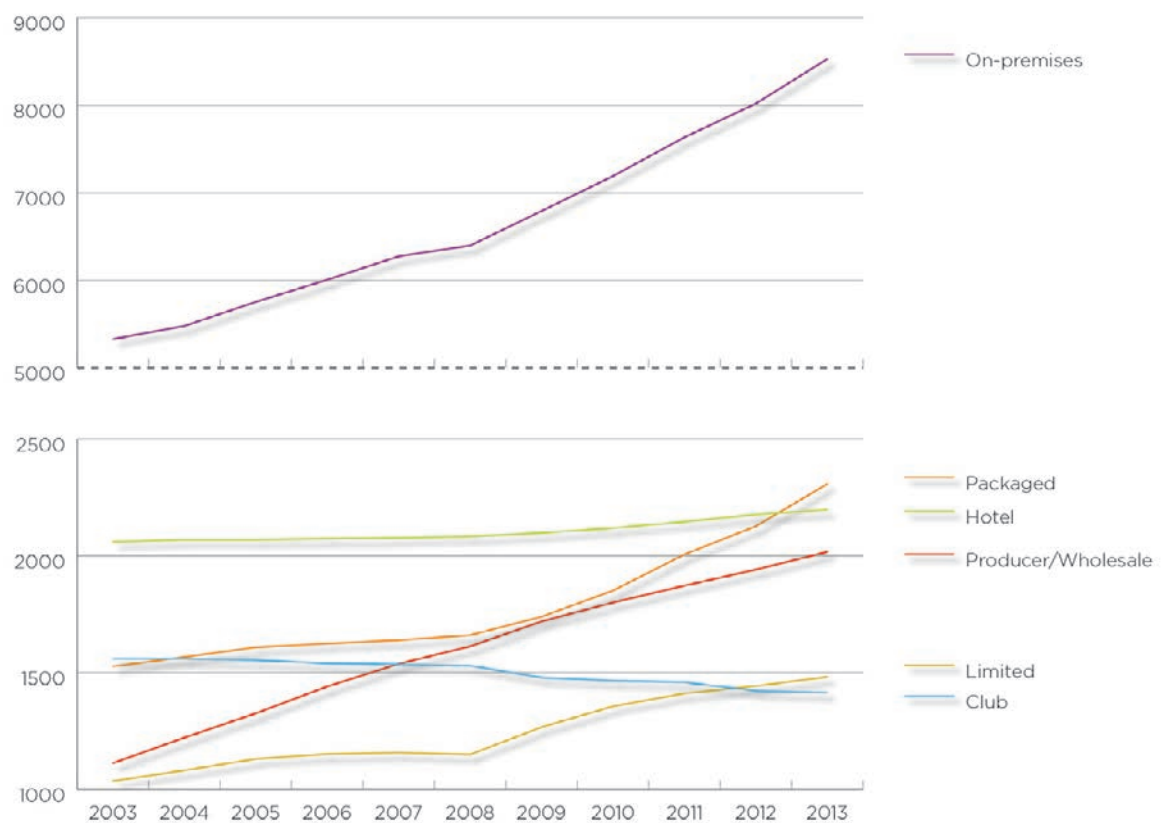
**Table 3** shows the number of new liquor licences granted each year by licence type from 2008.

Licence type	2008	2009	2010	2011	2012	2013
Hotel*	6	16	22	28	32	21
Club	4	3	1	2	0	2
On premises	123	395	399	442	386	470
Packaged liquor	20	80	115	166	125	179
Producer / wholesaler	75	107	81	72	69	64
Limited	N/A	59	51	31	29	34
Total	228	660	669	741	641	770

\* Includes sub-category of general bar hotel licence.

**Table 3.** New liquor licences granted in each year of operation of the Liquor Act 2007

**Graph 1** shows the trend in licence type numbers from 1 July 2003 to 1 July 2013, which consists of a five year period before and after the commencement of the *Liquor Act 2007* on 1 July 2008.



**Graph 1.** Trend in liquor licence numbers from 1 July 2003 to 1 July 2013

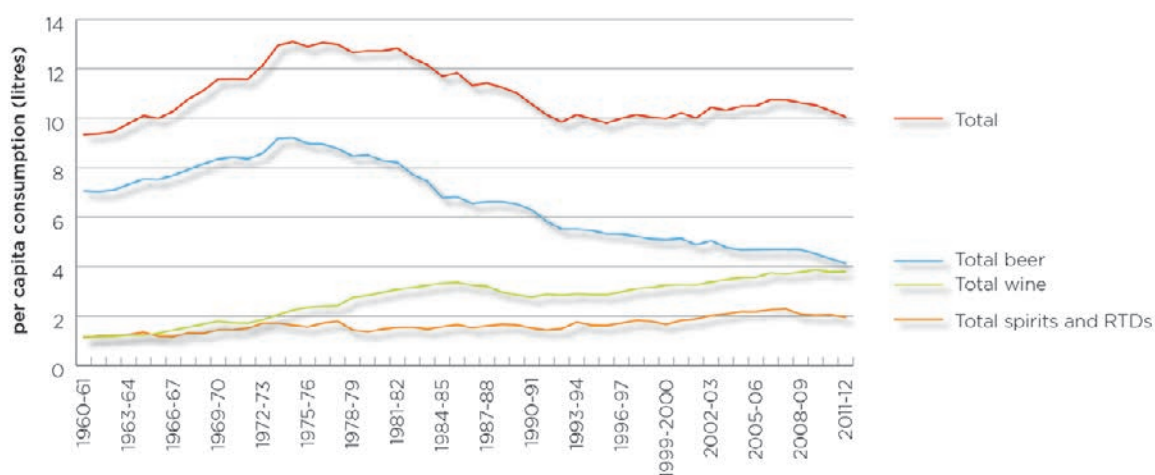
With the exception of hotel licences and club licences (which have declined marginally), the graph clearly shows the substantial growth in most licence types since the commencement of the Liquor Act. Although, the graph also shows that there has been a consistent growth in the number of producer / wholesaler licences since 1 July 2003.

## 5.2 Alcohol-related statistics

### Alcohol consumption

The Australian Bureau of Statistics has noted that the apparent total consumption of alcohol has fluctuated in Australia over the past 50 years. From the early 1960s onwards apparent per capita consumption increased steadily, peaking at 13.1 litres of pure alcohol per person aged 15 years and over in 1974-75.

Apparent per capita consumption remained relatively steady for the next 5-10 years, then declined over the following decade, reaching 9.8 litres per person in 1995-96. Apparent consumption then gradually increased to 10.8 litres in both 2006-07 and 2007-08, before declining over the past 4 years to 10.1 litres of pure alcohol per person in 2011-12.



**Graph 2.** Apparent Consumption of Alcohol, Per capita (a)

Footnote: (a) Litres per person aged 15 years and over

Source: Apparent Consumption of Alcohol, Australia, 2011-12. Australian Bureau of Statistics

### Alcohol-related violence

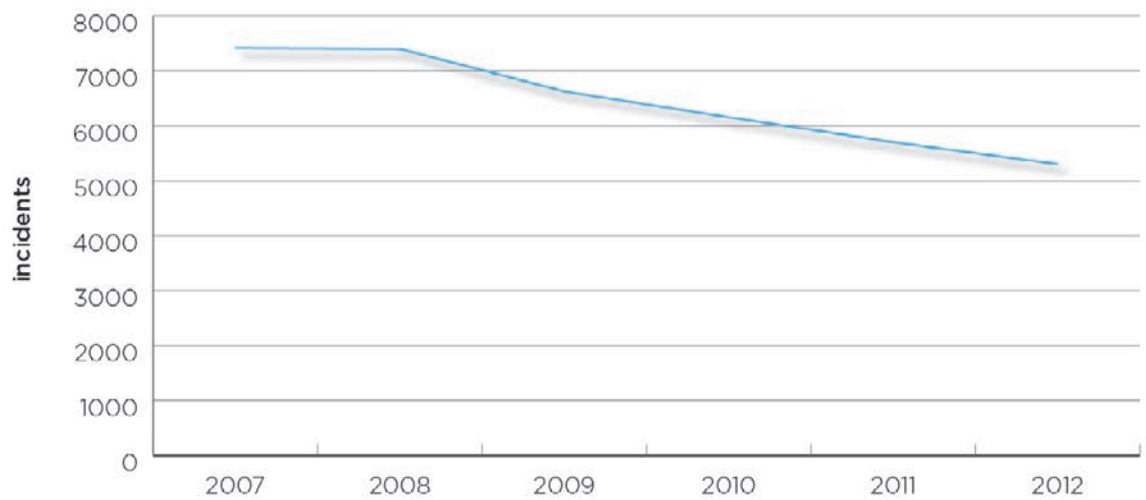
As part of its function of maintaining statistical databases on crime and criminal justice in New South Wales, the NSW Bureau of Crime Statistics and Research (BOCSAR) reports on violent incidents that are recorded by the NSW Police Force as being alcohol-related or non alcohol-related.

Alcohol-related violence statistics inform policy development and regulatory activity undertaken by the OLGR. The categorisation of violent venues under the scheme to regulate licensed premises with high levels of assault and other violent incidents is also based on these statistics.

Since 2008, levels of alcohol-related violence have been in steady decline.



**Graph 3** shows the decline in violent incidents on licensed premises in New South Wales from 2008 to 2012.

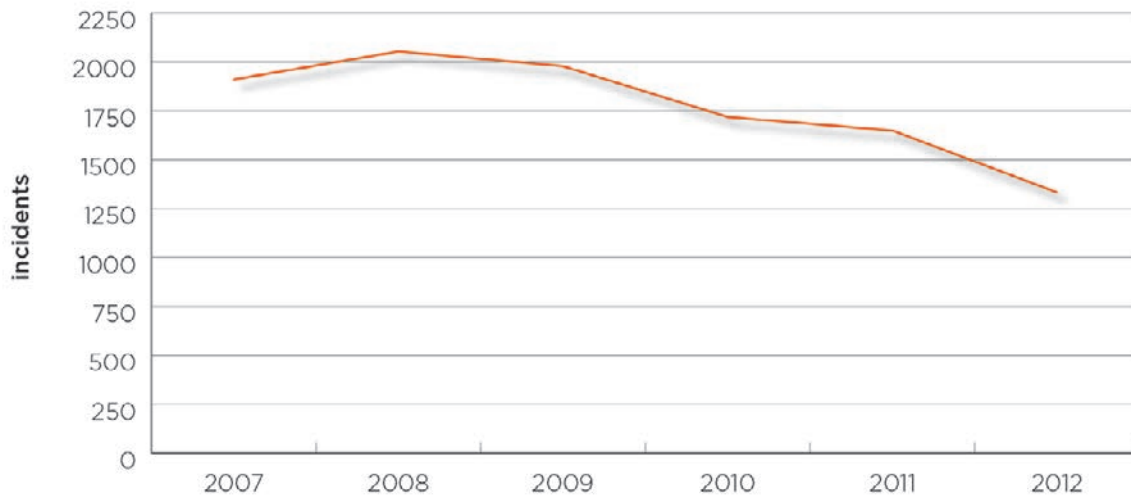


**Graph 3.** Violent incidents on licensed premises from 2007 to 2013  
Source: NSW Bureau of Crime Statistics and Research

Year	2007	2008	2009	2010	2011	2012	% change 2008 to 2012
Incidents	7,415	7,400	6,623	6,153	5,704	5,304	28% decrease

**Table 4.** Data points for Graph 3

**Graph 4** shows the decline in alcohol-related assaults on police in New South Wales from 2008 to 2012.

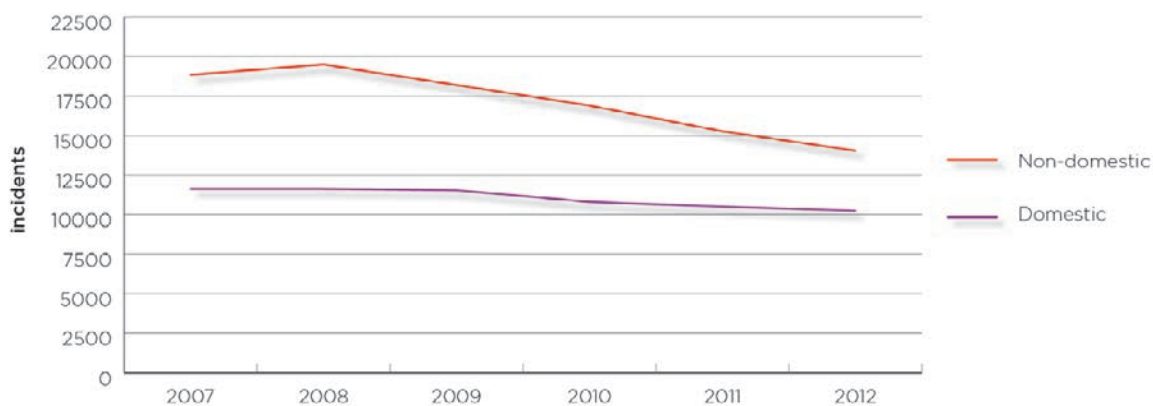


**Graph 4.** *Alcohol-related assaults on Police from 2007 to 2012*  
 Source: NSW Bureau of Crime Statistics and Research

Year	2007	2008	2009	2010	2011	2012	% change 2008 to 2012
Incidents	1,910	2,053	1,978	1,718	1,649	1,333	35% decrease

**Table 5.** *Data points for Graph 4*

**Graph 5** shows a decline the alcohol-related domestic and non-domestic assaults in New South Wales from 2008 to 2012.



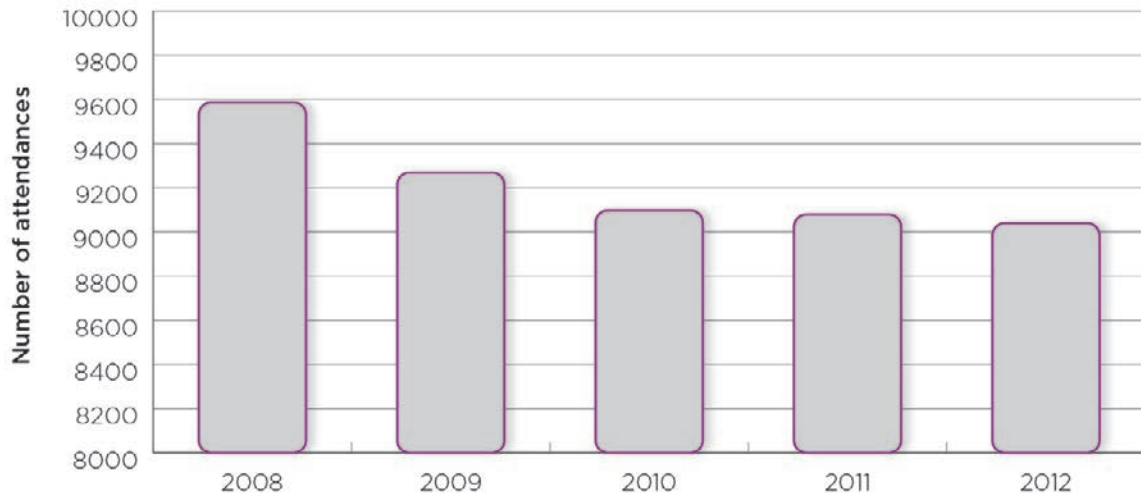
**Graph 5.** Alcohol-related domestic and non-domestic assaults from 2007 to 2012  
 Source: NSW Bureau of Crime Statistics and Research

Year	2007	2008	2009	2010	2011	2012	% change 2008 to 2012
Domestic	11,638	11,630	11,533	10,797	10,500	10,230	12% decrease
Non-domestic	18,855	19,486	18,210	16,904	15,274	14,041	28% decrease

**Table 6.** Data points for Graph 5

### Hospital presentations

According to the NSW Ministry of Health, from 2003 to 2007, the attendance rate per 100,000 people for acute alcohol problems in 39 NSW hospital emergency departments for all adults increased by 44%. However, from 2008 to 2012, the attendance rate decreased by 9% as shown in **Graph 6**.

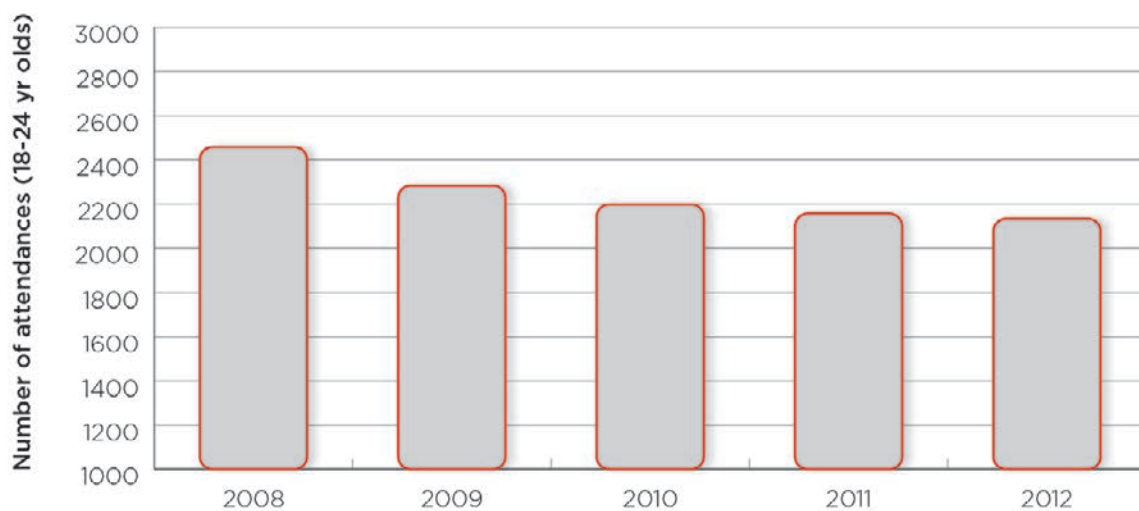


**Graph 6.** Attendances for acute alcohol problems in 39 NSW emergency departments from 2008 to 2012  
 This data is copyright NSW Ministry of Health, 2011

Year	Number	Rate per 100,000 population
2008	9,587	159.5
2009	9,269	152.4
2010	9,098	148.6
2011	9,079	147.2
2012	9,039	145.2
<b>% change from 2008 to 2012</b>	<b>6% decrease</b>	<b>9% decrease</b>

**Table 7.** Data points for Graph 6, including rate per 100,000 in the population

From 2003 to 2007, the attendance rate per 100,000 people for acute alcohol problems in 39 NSW hospital emergency departments for individuals aged 18 to 24 years increased by 80%. However, from 2008 to 2012, the attendance rate decreased by 15%.



**Graph 7.** Attendances for acute alcohol problems in 39 NSW emergency departments by 18 to 24 year olds from 2008 to 2012  
 This data is copyright NSW Ministry of Health, 2011

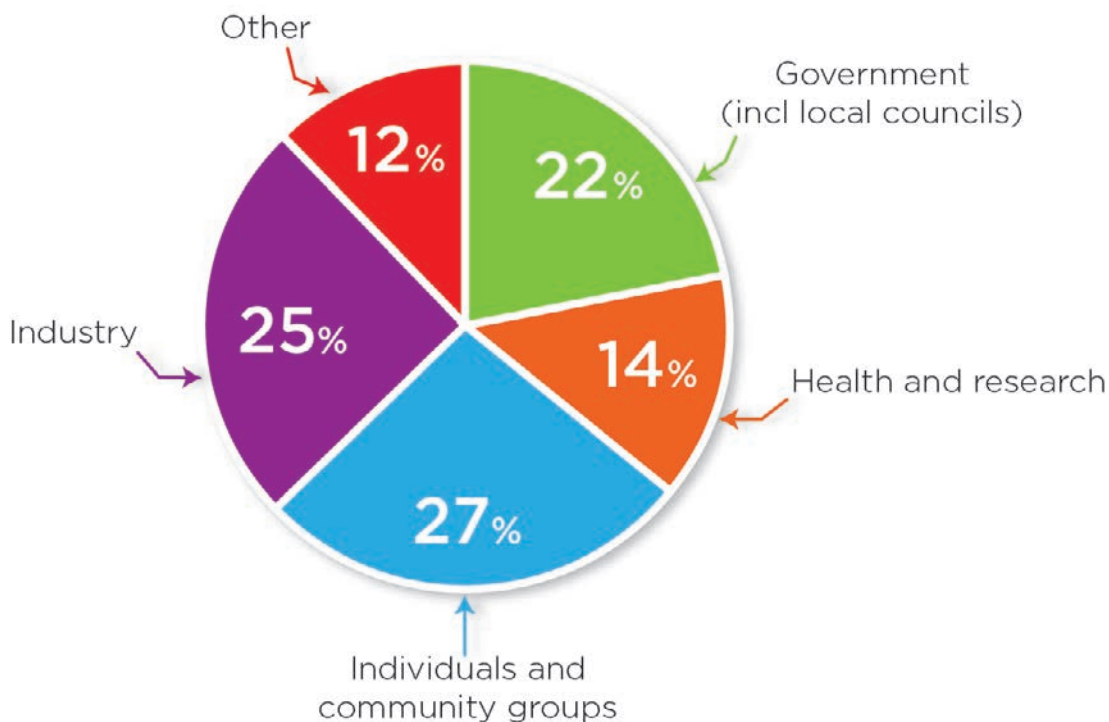
Year	Number	Rate per 100,000 population
2008	2,458	362.7
2009	2,284	330.1
2010	2,199	318.5
2011	2,156	314.2
2012	2,133	307.2
<b>% change from 2008 to 2012</b>	<b>13% decrease</b>	<b>15% decrease</b>

**Table 8.** Data points for Graph 7, including rate per 100,000 in the population

## 6 OVERVIEW OF SUBMISSIONS

A total of 107 submissions were received in response to the release of the Explanatory Paper and call for submissions. The submissions reflected the expected spectrum of interested parties and persons, including industry, Government, community and advocacy groups, and the health sector.

A list of respondents who made a submission to the review is listed at **Appendix 2**.



*Figure 1. Submissions by group*

The overall number of submissions however was relatively low in absolute terms. While at first glance this may suggest that the broader NSW community considers that the current regulatory regime, including the Acts, is working effectively, it could also suggest that interest in liquor regulation is essentially confined to industry participants and those that advocate for action to reduce alcohol-related harm.

It is also noted that a number of submissions were from peak bodies or other parties that represent, or made submissions on behalf of, larger groups. This being the case for industry representation (e.g. AHA (NSW), ClubsNSW and Restaurant and Catering Australia), local councils (Local Government NSW), and the community/health sector (NSW-ACT Alcohol Policy Alliance (NAAPA)).

It is further noted that the main purpose of 18 individual submissions was to record their support to the NAAPA submission.

## 6.1 Quality of submissions

Overall, many of the submissions were comprehensive, raising a suite of issues that would warrant consideration by the Government. However, it would be inappropriate to infer that the number of submissions on any particular issue or the relative balance in relation to policy change is indicative of the relative strength of support for a change.

Some submissions were clearly very well researched and provided data to inform policy positions. The expression of views has not been assumed to provide an evidence base for change. In general, the review considers that issues raised in public consultation are informative of justifying a need for government consideration, but are not of themselves conclusive of the best approach.

## 6.2 Key themes in submissions

There was a clear consensus from most respondents that excessive and irresponsible alcohol consumption leads to undesirable outcomes for individuals, and has a real social and economic cost to the community. This is supported by evidence. However, there were a range of different views on the causes and the best solutions.

In the vast majority of cases, the submissions suggest that the legislation required amendment in order to achieve better outcomes. As expected, the outcomes sought varied depending on whether the respondents were industry participants, regulators, or those advocating stronger action to reduce alcohol-related harm in the community.

For industry based submissions, respondents predominantly sought minor legislative changes that were technical in nature in order to facilitate further development, reduce costs or remove red tape.

Common views expressed by those in the community and health sectors included the elevation of harm minimisation as the sole objective of the Liquor Act, the need for controls on alcohol pricing and taxation reforms, alcohol marketing and promotion issues and controls on the availability of alcohol. A significant proportion of submissions from individuals were critical of a lack of community engagement and/or support mechanisms following the lodgement of complaints (proposed and existing premises), and a pro-industry bias.

While this report does not specifically refer to every respondent or proposal, consideration was given to each of the submissions to the review in preparing this report.

Some of the content in submissions dealt with administrative procedures and related matters determined by regulators in fulfilling their responsibilities under the relevant legislation.

These included:

- timeliness of application processes and decision making,
- process and opportunity costs and the impact on business and stakeholders,
- transparency in decision making, and
- complexity and integrity of process.

These issues are discussed in this report in relation to the objects of the Liquor Act and the Gaming and Liquor Administration Act, and in specific sections dealing with related matters.

## 6.3 Relevant research and data referred to in submissions

A number of submissions to the review included relevant research and data since the commencement of the *Liquor Act 2007* in July 2008 to support the views expressed in the respective submissions of a number of industry groups and community advocates.

For instance, ClubsNSW noted that the Bureau of Crime Statistics and Research (BOCSAR) had recorded a 46 per cent reduction in assaults in registered clubs between 2008-2012, while there had been a 31 per cent reduction in assaults on all premises and a 30 per cent reduction in assaults on police during that period.

ClubsNSW also referred to BOCSAR data that showed a 28 per cent reduction in alcohol-related non domestic assaults between 2008-2012.

The ClubsNSW submission noted that while a 37 per cent reduction in assaults was recorded in the first year (2009) following the imposition of late trading conditions on a number of Newcastle CBD hotels in March 2008, a 21 per cent increase was recorded in 2010, which was followed by subsequent decreases in 2011 and 2012.

ClubsNSW also referred to BOCSAR data that showed other regions of the state recorded significant reductions in assaults on licensed premises between 2008 and 2012. For instance, the Penrith and Gosford local government areas (LGA) recorded a 46 per cent reduction, while the Sutherland LGA recorded a 45 per cent drop, with the Campbelltown LGA recorded a 43 per cent reduction.

The AHA (NSW) referred to similar BOCSAR studies, noting that despite certain perceptions, assaults in and around licensed premises in NSW had fallen to an 11 year low since 1999.

The NSW-ACT Alcohol Policy Alliance (NAAPA) referred to data from the NSW Ministry of Health that showed that in 2011-12, there were 50,950 alcohol-related hospitalisations.

NAAPA also referred to the 37 per cent reduction in alcohol-related assaults in Newcastle in 2009 following the imposition of conditions on Newcastle's late trading hotels. The Alliance referred to a study that found that three years after the conditions were imposed, a 35 per cent reduction in night time non domestic assaults requiring police attention was recorded, along with a 50 per cent reduction in night time street offences in the City of Newcastle.

NAAPA referred to BOCSAR research that found that the incidence of alcohol-related assaults increase significantly between 6pm and 3am, with the highest rates of alcohol-related assaults occurring between midnight and 3am, and with 40 per cent of assaults on licensed premises occurring after midnight.

NAAPA also referred to the 2013 report of the NSW Auditor General that found alcohol abuse costs the NSW Government \$1.029 billion per annum, with the NSW community incurring costs of \$3.7 billion annually, including costs for government services, as well as the social costs of alcohol abuse, such as lost productivity in the workplace and home, and the loss of life.



# 7 POLICY OBJECTIVES

The policy objectives of the *Liquor Act 2007* are to:

- a. 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. 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. contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.

In securing these objectives, the Act requires that each person who exercises functions under the Act (including a licensee) is required to have due regard to the need to:

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

The policy objectives provide guidance to regulators, licensees, persons selling and supplying liquor, and the community on the purpose and application of the liquor laws. They recognise the importance of a properly regulated liquor industry that is able to develop in a way that is consistent with the public interest whereby the risk of and actual harm arising from the sale, supply and consumption of alcohol is minimised. They also recognise that the manufacture, sale and supply of alcohol and the operation of licensed premises contributes significantly to the economy and to society.

While the *Gaming and Liquor Administration Act 2007* does not contain specific policy objectives, it supports the operation of the Liquor Act by providing a legislative basis for constituting the Authority and establishing its role and functions. The Gaming and Liquor Administration Act also establishes secrecy and probity requirements for regulatory staff and sets out enforcement powers for the Director General, Department of Trade and Investment, Regional Infrastructure and Services, licensing inspectors and the NSW Police Force.

## SUBMISSIONS

Approximately a quarter of the review's respondents commented directly on the policy objectives of the Liquor Act. An overview of the issues raised by respondents on the validity or otherwise of the objects of the Liquor Act is set out below. As with many of the discussion points, there was a divergence of views.

Industry generally held the view that the existing policy objectives remain valid and the current legislative framework has been successful in securing those objectives. However, C.inc Hotels and Bulford Legal argued that the objectives should also have regard to the economic contribution of the hospitality industry. Bulford Legal and the AHA (NSW) also supported the inclusion of a principle of personal responsibility being included in the objectives.

A common view held among those advocating for stronger action to reduce alcohol-related harm, including the NAAPA, the FARE, the National Alliance for Action on Alcohol, the Alcohol and other Drugs Council of Australia, and the Cancer Council NSW, was that harm minimisation should be elevated as the sole objective of the Liquor Act.

The Cancer Council NSW also suggested that the definition of harm minimisation should be broadened to recognise both the short and long-term effects of excessive alcohol consumption,

including chronic disease and cancer caused or exacerbated by long-term consumption of alcohol. The NSW Police Force recommended that there be an objective directed at the protection and promotion of public health.

While not commenting directly on the policy objectives of the Liquor Act, the Outer West Domestic Violence Network suggested that the review take into account the link between alcohol misuse and domestic violence. The network represented that domestic violence be considered when evaluating the roles, functions and purposes of all levels of liquor regulation.

## POLICY DISCUSSION

When introducing the *Liquor Act 2007* into the NSW Parliament, the responsible Minister stated:

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*Reforms in the Liquor Bill 2007 support the Government's program to reduce harm associated with alcohol abuse, and promote a culture of responsible service and consumption of alcohol. They help to promote industry sustainability and enhance access to the liquor licensing system for all stakeholders. These bills have been developed from exposure drafts that were released for public consultation in November 2005. The Government received more than 900 submissions in response to those drafts from the community, local councils, business and government agencies. Their views are strongly represented in this reform package. These new liquor laws strike a balance between community and industry needs, now and into the future.*

*I will now outline some of the principles of the bills and the new regulatory framework they establish. The objects of the Liquor Bill 2007 in particular have been enhanced compared to the current liquor laws. The new objects reflect the needs I have identified. In securing these objectives persons who have functions under the new laws will be required to have due regard to the need to minimise alcohol-related harm and encourage responsible attitudes and practices. The objects recognise the importance of a properly regulated liquor industry that is able to develop in a way that is consistent with the public interest. The objects also recognise that the manufacture, sale and supply of alcohol and the operation of licensed premises contribute to the economy and to society. These newly expanded objects will provide better guidance to regulators, licensees and the community on the purpose of the liquor laws.*

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Specifically, section 3(2) of the Liquor Act requires each person who exercises functions under the Act (including a licensee) to have due regard to:

- a. the need to minimise 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,
- 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.

This requirement ensures that any matter under the Liquor Act must be considered through the lens of harm minimisation, responsible service and consumption, and the positive role that licensed premises can have on community life.

Additionally, section 48 of the Liquor Act facilitates consideration by the Authority of the social impact that the granting of certain licences, authorisations or approvals will have on the local community by requiring that the Authority must not grant the application unless satisfied that the overall social impact will not be detrimental to the well-being of the local or broader community. A review of the decisions of interest on the Authority's website demonstrates that the Authority takes these provisions very seriously.

The review notes that few submissions questioned the overall validity of the current objectives and their focus on minimising harm arising from the misuse and abuse of liquor, particularly harm arising from alcohol-related violence and other anti-social behaviour.

As noted previously, the objectives recognise the importance of a properly regulated liquor industry that is able to develop in a way that is consistent with the public interest given the significant contribution the industry makes to the economy and to society. All decisions made under the Act by regulators, enforcement personnel and licensees must have due regard to harm minimisation requirements.

Whilst the review appreciates representations in regard to a call for a further reduction in alcohol-related violence, it does not consider that this will necessarily be achieved by elevating harm minimisation as the sole primary objective of the Act. It is noted that there have been significant reductions in levels of non-domestic related violence under the operation of the Liquor Act since its introduction in 2008 (refer to the Environmental Scan earlier in this report).

The recent trend of reductions in alcohol-related violence support the notion that the current inclusion of harm minimisation in the objectives and the application of regulatory controls and interventions enabled by the objectives and other controls in the Act is positively impacting on liquor service and consumption practices in New South Wales. Nevertheless this does not discount the need for continue vigilance and reform particularly for those harms which are proving more resistant to harm reduction interventions.

The review acknowledges and supports the view that further reductions in alcohol-related harm can be achieved, but finds the existing policy objectives are such that they well represent this intent and are able to facilitate further actions and outcomes. The question then becomes what legislative and regulatory changes can support a further reduction, whilst acknowledging that the liquor laws are only one way in which responsible alcohol service and consumption can be influenced. The matter of reducing overall harms from alcohol is also influenced by individual decisions, industry practices, community attitudes and the availability of other services, including policing and health interventions.

The review considers that the policy objectives should continue to include recognition of economic or commercial contribution. Whilst economic contribution may well be an outcome of the activity regulated by the Act, the contribution of varied types of businesses to the economy and society is intrinsically recognised in having a system which facilitates the establishment of a range of licence types and therefore business models.

The review also considers that the objectives should not include a reference to individual responsibility or the protection and promotion of public health, as these matters are not directly regulated or facilitated by the Act, and those who have legal responsibilities under the Act do not have expertise in this field and may not be able to effect outcomes. While the liquor laws can contribute to health focussed outcomes, and related issues can be raised in matters under consideration by virtue of the Act, the *Public Health Act 2010* is the appropriate legislation to promote and protect public health.

The review finds that the existing policy objectives strike a balance between the need to facilitate social benefit and industry development, as well as economic activity, and the need for proper oversight of the industry to promote responsible practices in order to help minimise the harm associated with the misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour).

On the issue of domestic violence, the review considers that this issue falls within the scope of the existing harm minimisation requirements in the objectives, but agrees that the link between alcohol, including availability, and domestic violence should be considered by decision makers and regulators when exercising functions under the Liquor Act.

With respect to the Gaming and Liquor Administration Act, it is noted that no submissions called for policy objectives to be specified in this Act, and that the Act does not contain specific policy objectives. The Act is administrative in nature, with its primary function being to constitute the Authority, its role, functions and powers, and to facilitate its operations under the Liquor Act, the *Casino Control Act 1992*, the *Gaming Machines Act 2001* and the *Registered Clubs Act 1976*.

Submissions from industry and the community expressed concerns about a range of administrative issues including the timeliness of application processes and decision making, process and

opportunity costs, transparency, and the complexity and integrity of licensing processes adopted by regulators.

It is noted that statutes which establish tribunals similar to the Independent Liquor and Gaming Authority – such as the *Administrative Decisions Tribunal Act 1997* and the *Consumer, Trader and Tenancy Tribunal Act 2001* – include specific objects to facilitate access by stakeholders, efficiency and effectiveness in proceedings, and fairness in decision making.

Having considered these other statutes and the submissions made, the review concludes that the Gaming and Liquor Administration Act would benefit from similar policy objectives, which would be consistent with and support objects in the *Liquor Act 2007*.

## RECOMMENDATIONS

### **Recommendation 1:**

The existing policy objectives of the *Liquor Act 2007* remain valid and should continue unamended.

### **Recommendation 2:**

Specific objects should be inserted into the *Gaming and Liquor Administration Act 2007* which are similar to those included in comparable statutes to:

- facilitate access by stakeholders,
- require regulators and decision makers to adopt efficient and effective proceedings which are informal, expeditious and inexpensive, and
- promote fair decision making.

## 8

## STRUCTURE OF THE LIQUOR REGULATORY FRAMEWORK

The NSW liquor and gaming regulatory systems provide industry with a legal framework under which they can operate in a manner that is consistent with community expectations, whilst being provided with regulatory certainty, as well as guidance and support to implement best practice arrangements and thereby reduce the risk of harm. The regulatory systems help to protect industry integrity and ensure that the management of liquor and gaming operations is free from criminal influence and exploitation.

The regulatory framework for liquor licensing in New South Wales is principally contained in the *Liquor Act 2007* and its subordinate legislation, the *Liquor Regulation 2008*.

The liquor regulatory framework is structured around a perpetual licensing system which separates licensing operations (undertaken by the Authority) from policy, compliance and enforcement operations (undertaken by the Director General, Department of Trade and Investment, Regional Infrastructure and Services and, in the case of compliance and enforcement functions, the NSW Police Force).

#### Independent, Liquor and Gaming Authority

Part 2 of the *Gaming and Liquor Administration Act 2007* establishes the Authority. The Authority sits as a determinative board. The Authority is not subject to the direction or control of the responsible Minister, except to the limited extent provided for in the *Casino Control Act 1992* and the *Gaming Machines Act 2001*. At least one member of the Authority must be a person who is or has been a Judge, or has been an Australian Lawyer for at least seven years.

Licence applications and disciplinary matters are considered by the Authority, usually without the need for public hearings or personal appearance by parties with reviews undertaken by the Administrative Decisions Tribunal. The Authority manages the licensing process for all liquor and gaming matters, with Departmental staff assigned exclusively to the Authority to undertake all administrative functions and act under delegation, provided by the Authority in respect of its legislative functions. A large number of delegations are currently in place to facilitate this arrangement.

The Authority's responsibilities under the Liquor Act range from administrative to determinative functions and include:

- determining applications for new liquor licences, authorisations and for alterations of existing liquor licences,
- approval of licensees and managers, and probity assessment of Departmental staff, licensees and managers,
- determining disciplinary complaints against licensees, managers, close associates, non-proprietary associations and others,
- recommending that an area be declared a restricted alcohol area, and
- approving a range of procedures and forms (including application forms) required to facilitate the operation of the Liquor Act.

Director General, Department of Trade and Investment, Regional Infrastructure and Services

The Director General has a range of business operations, enforcement and compliance responsibilities under the Liquor Act and the Gaming and Liquor Administration Act.

These include:

- determining complaints relating to undue disturbance to the quiet and good order of the neighbourhood of licensed premises,
- imposing conditions on licences and giving directions to licensees (and employees) where necessary to reduce risk or take action on irresponsible or unacceptable behaviour,
- declaring restrictions on late hour entry to licensed premises,
- restricting or prohibiting the sale of undesirable liquor products and the conduct of undesirable liquor promotions,
- approving and varying (with the Commissioner of Police) local liquor accords,
- approving training courses (and training providers) for the responsible service of alcohol and responsible conduct of gaming

The Director General's powers are generally subject to due process requirements – either explicitly provided for in the legislation or as a general principle of law. Most of the Director General's decisions are subject to review by the Authority under section 36A of the Gaming and Liquor Administration Act.

NSW Office of Liquor, Gaming and Racing

The OLGR is responsible for providing licensing, policy, compliance and industry engagement functions, including information and assistance to applicants and the public. The OLGR adopts a strategic approach, focusing on compliance activities on high risk venues and precincts, and assisting licensees and venue operators to ensure good management practice.

The Gaming and Liquor Administration Act provides that the Director General can appoint inspectors to undertake a range of gaming and liquor enforcement related functions, including issuing a search warrant in certain circumstances, the inspection of premises and seizure of records and items, and issuing of penalty notices for breaches of the legislation. However, the Authority determines the standard of probity required for Departmental employees.

The OLGR facilitates the operation of a strategic compliance and enforcement program by the Director General, together with a strategic engagement function to promote compliance by all industry representatives. The role of the OLGR also includes the development of integrated policy advice to government including advising government on legislative programs, whole of government strategies and monitoring regulatory performance and social impacts associated with liquor.

The OLGR also supports the Authority in its functions, primarily in regard to policy matters.

## NSW Police Force

The NSW Police Force, through the Commissioner of Police, is responsible (with the Director General) for enforcement of the liquor laws. The Commissioner also has certain powers and responsibilities, including:

- investigating and reporting to the Director General on matters (including certain applications) referred to the Commissioner of Police,
- making complaints to the Director General relating to undue disturbance to the quiet and good order of the neighbourhood of licensed premises,
- approving and varying (with the Director General) local liquor accords, and
- making disciplinary complaints to the Authority.

The Gaming and Liquor Administration Act provides for police to undertake a range of enforcement related functions, and the major day-to-day enforcement action under the Liquor Act is carried out by police officers.

## SUBMISSIONS

Submissions expressed strong interest in relation to the structure of the liquor regulatory framework. Respondents provided a wide range of views with respect to the roles, responsibilities and expectations of each entity involved in the regulation of the liquor industry. As with the policy objectives of the Liquor Act, there was a divergence of views between the industry, regulators and those from the community and health sectors.

The Police Association NSW called for the abolition of the Authority and the OLGR, and the establishment of another independent body. A few submissions called for the re-establishment of the former Licensing Court. However, the consensus supported the current administrative approach to decision making and regulation, with support from some submissions for operational changes.

A number of respondents, including the NSW Police Force, were of the view that the existing administrative-based system required structural reform to improve efficiencies and consistency.

The Authority indicated that its interaction with licensees, the NSW Police Force and the Director General leads it to believe that the system is generally working effectively, and that few of the concerns they have heard from stakeholders are about the structure of the regulatory framework. However, the Authority also suggested that Government could improve compliance with the Liquor Act by establishing a specialist statutory officer responsible for compliance and some enforcement related coordination functions.

Further, the Authority recommended that it be empowered to make delegations to the Chief Executive and to other members of the Authority. It suggests that the smooth and efficient operations of the Authority and its ability to reduce processing times and application costs would be improved if the Authority could make these delegations.

The issue of efficiency and consistency was also raised by Bulford Legal, asserting that the Government should properly resource the existing decision-making regime or substantially change it. In the latter case, Bulford Legal proposed that the Director General should be the decision maker under the liquor and gaming legislation, and that the Land and Environment Court should be the relevant appellant body to which merit reviews can be taken against the Director General's decisions.

Some respondents, including the NAAPA and the National Alliance for Action on Alcohol, considered that there were risks of regulatory capture and conflicts of interest in the existing structure. It appears that this view, at least in part, arises from concerns that the OLGR resides within the NSW Trade & Investment portfolio, and that the Director General of that department has a range of statutory responsibilities under the Liquor Act. The Director General's other responsibilities may conflict with decisions under the Liquor Act. As a result, the view was expressed that liquor regulation should be moved out of what was considered an industry-focused portfolio.

A view that was also reflected in a number of submissions was that there was a perceived lack of clarity and transparency around both the licensing decision-making process and the relationship between the OLGR and the Authority. To facilitate greater transparency, there were calls for the Authority to publish all decisions and for all decisions by the Director General to be reviewable by the Authority.

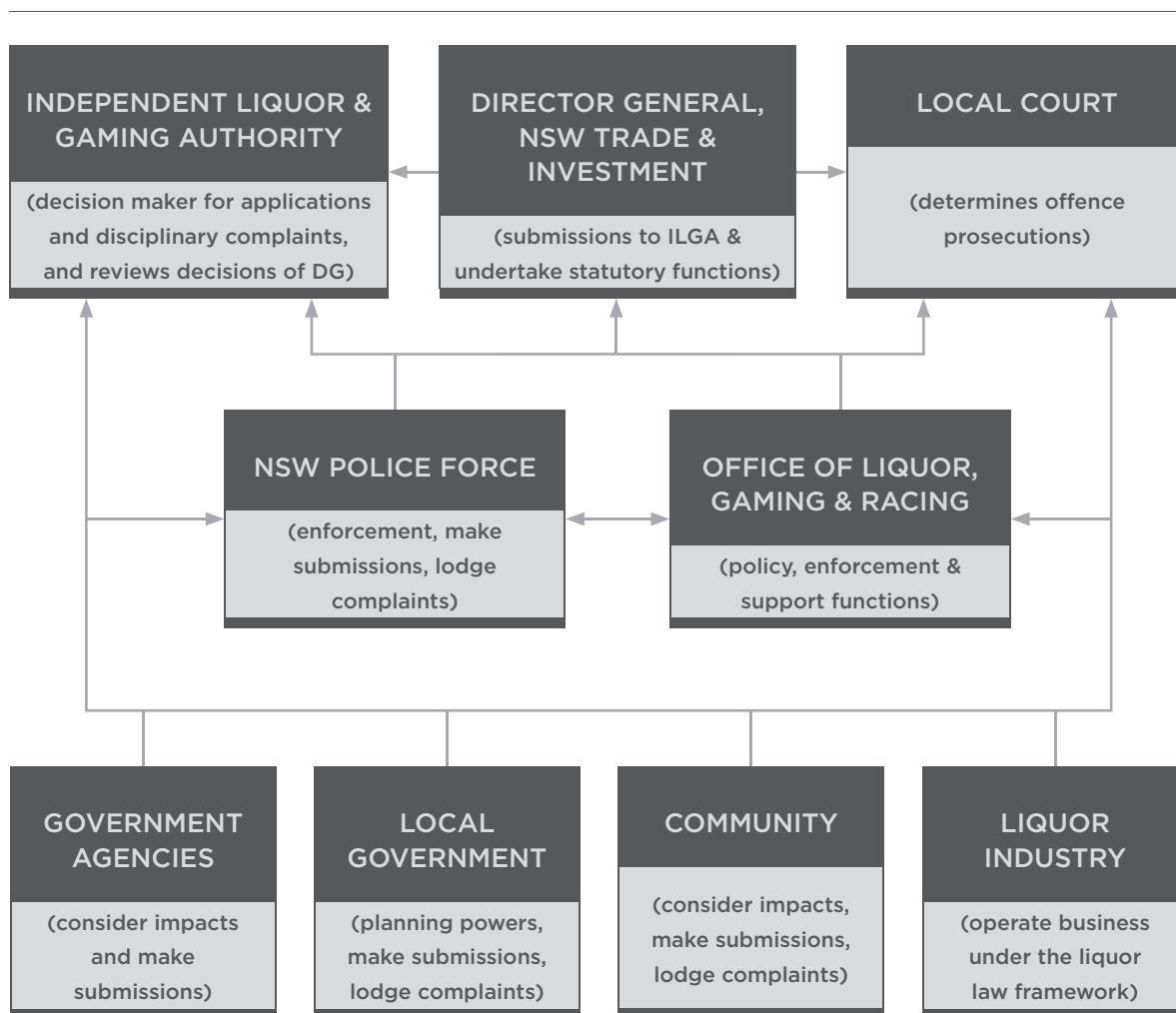
A number of submissions were made concerning the issue of reviews of determinations by the Authority or the Director General of the Department of Trade and Investment. The AHA (NSW) and Design Collaborate recommended that a right of appeal against all Authority decisions be introduced, while Byron Shire Council recommended that a 'third party appeal' process be established. Bulford Legal and Byron Shire Council recommended that the Land and Environment Court should be the appellant body for licensing determinations, while the Police Association NSW recommended the establishment of a new appellant body.

Woolworths, the Liquor Stores Association, and the Distilled Spirits Industry Council of Australia recommended that licensees be allowed the opportunity to appear before the decision maker when it is proposed to refuse an application or impose a restrictive condition on a liquor licence.

Back Schwartz Vaughan, Bulford Legal and Coles Liquor recommended that all the decisions of the Director General be reviewable.

## POLICY DISCUSSION

The existing structure of the regulatory framework is set out in **Figure 2**. As noted in the diagram, liquor regulation in New South Wales is achieved with input from the State government, local government, the community, and industry.



**Figure 2.** Structure of the regulatory framework



The review supports the continuation of the current administrative approach to regulating the sale and supply of liquor in New South Wales, as well as the continuation of the Authority in its role as a determinative mechanism under the *Liquor Act 2007*, *Casino Control Act 1992*, *Gaming Machines Act 2001*, and *Registered Clubs Act 1976*.

The review does not consider there are significant flaws in the current structure. However, the number of operational issues raised in submissions highlights the need to ensure a more efficient and effective decision-making environment. In particular, the review considers that the following issues require attention:

- greater clarification of the roles and responsibilities of each regulator (the Authority and the Director General),
- some inconsistencies in the regulatory approaches adopted by the Authority, the OLGR and the NSW Police Force,
- greater transparency in relation to decision making processes and decisions themselves,
- ensuring appropriate review rights from regulatory determinations,
- the Director General's role in determining the probity requirements for staff employed by the Department undertaking functions on behalf of the Director General or central to Departmental responsibilities,
- the perceived conflict of interest of decision makers, and
- inefficiencies in application and disciplinary processes, which are viewed as unnecessarily costly and time consuming.

It is clear that there is a lack of understanding of the respective roles and responsibilities of the Authority, the OLGR, the Director General, the NSW Police Force and local councils. Many respondents indicated that there was even some confusion among staff within those agencies.

Discussions with stakeholder groups during the submission period revealed that the community was confused about the identity of the appropriate agency or authority it needed to approach when, for example, it wanted to:

- make a complaint against a licensed premises about disturbance of the quiet and good order of the neighbourhood, or
- make a submission in relation to a liquor licence application.

Dubbo City Council indicated that it was the initial contact point for community complaints about the operation of licensed premises, whereas in other circumstances, complainants were referred to OLGR. Some Government agencies also revealed a level of confusion about roles and responsibilities, both internally and within other agencies.

The review considers that part of the problem results from the delegation of functions by the Authority and the Director General to officers within the OLGR for lower order decision-making. This has subsequently been addressed to some extent in recent months through structural reforms involving the relocation of licensing staff from OLGR to the Authority and clarification of reporting lines. However, licensing transactions should be streamlined and clear processes and timelines should be articulated.

While the review supports the delegation of functions, there is no available information on what functions are delegated and to whom. This information should be provided on OLGR's website, together with conditions and policies that relate to the delegated functions. This approach would add transparency and better inform the community.

Part of the problem also arises from inadequate information available to stakeholders (particularly local government and the community) which primarily stems from the poor state of the OLGR's website. The review considers this vital public interface is in need of modernising to assist with navigation and to ensure information is current and accurate.

The current state of the website means there is a lack of information readily available to the community to assist the public who wish to intervene in a liquor application or to report problems

associated with the operation of a liquor licence. A better communication strategy is required, and the review notes that action is underway within the OLGR to update and modernise its website.

The review considers that the overlapping of roles of various regulatory entities, state agencies and local government in controlling the operation of licensed premises – particularly in relation to social and environmental impact, trading hours, and business practices – has caused some confusion and created opportunities for inconsistent regulatory approaches as well as unnecessary duplication. Even within regulatory agencies, the review acknowledges that there are sometimes different interpretations and approaches applied when undertaking duties in accordance with legislative provisions.

For the community, an approach to one of the regulators – the Authority, the Director General, the OLGR, the NSW Police Force and local councils – often also requires an approach to others. In some circumstances, the community approaches multiple regulators who commence action independently from one another.

Most submissions from industry participants agreed that a multi-faceted approach with targeted interventions for local issues was the most effective approach to industry regulation and addressing alcohol-related problems in the community. While the review agrees with this approach, the review also supports the view in the community and health sectors that a better co-ordinated approach with more robust action against problem venues would increase the effectiveness of this strategy and contribute even further to the harm minimisation outcomes sought to be achieved by the Government.

The review finds that structural issues fall generally into three areas:

1. the accessibility of the regulatory process for stakeholders who may be seeking to enter the industry, modify existing approvals, or intervene in a new or existing licence,
2. the process through which applications and interventions are considered by regulators, including transparency, consistency, complexity and costs, and
3. the outcomes of an application or intervention, which must be fair, transparent and consistent with the objects and requirements of the legislation.

In terms of accessibility, the review considers that the creation of a simple 'one-stop-shop' website should be considered for the community and industry to be provided with information and assistance in relation to liquor (and gaming) matters, and to initiate intervention action on applications and problems relevant to alcohol (and gambling) regulatory matters.

This destination could aggregate information from the Authority, OLGR, police and local government (including geo-coded information relevant to liquor licensing). It could be structured so that the starting point for persons accessing the website is what that person (whether they be a business person, member of the public, local government representative, community organisation, etc) wants to achieve in terms of liquor or gaming matters, rather than who they should approach to achieve it. Such an information portal could assist in providing clearer articulation of the respective roles and responsibilities of regulators.

The review has considered the process through which applications and interventions are considered by regulators. It appreciates the concerns raised by stakeholders from various sectors relating to the (perceived and real) complexities and costs associated with liquor licensing matters. It does not support the re-introduction of court-based processes (as suggested in some submissions) given the increased costs and complexity that is likely to result for stakeholders.

There are several mechanisms discussed in this report through which cost and complexity should be addressed, and transparency should be enhanced.

The introduction of specific objects into the *Gaming and Liquor Administration Act 2007* (as discussed earlier) focusing on access to the regulatory system by stakeholders, requiring the adoption of efficient and effective proceedings which are informal, expeditious and inexpensive, and the promotion of fair decision making, should result in improvements in this area.

Chapter 11 of this report discusses reforms to the process by which regulators consider the social impact of licensed premises, including through the planning laws and the community

impact statement process. These reforms present an opportunity to remove duplication (and its associated costs and complexities), and to better involve local community representatives in a structured regulatory process by providing one forum for consideration of social impact and local neighbourhood issues associated with a liquor licensing proposal.

The Environment and Venue Assessment Tool discussed in Chapter 9 should be used to inform input into this modified planning process. In this regard, Chapter 9 discusses the types of issues to be considered by the tool as matters that need to be taken into account in higher risk applications to improve transparency and consistency of decision making.

Chapter 11 also discusses reforms to enhance understanding by community and industry stakeholders – for example, through mediation processes and the explanation of existing regulatory tools and requirements by OLGR. This is also a means by which transparency and community confidence in the regulatory system can be improved.

Licensees and other stakeholders are provided with a statutory right to make written submissions prior to a decision in most licensing matters, and any submissions must be taken into account by the decision maker. Section 36B of the Gaming and Liquor Administration Act allows for the Authority or the Director General to hold a conference to hear from the licensee or other stakeholders where appropriate. It is therefore considered that the existing system provides sufficient ability for applicants, licensees and others to make submissions and personal appearances, and that no statutory changes in this regard are necessary.

To deal with the matter of lengthy decision making timeframes and make better use of resources, consideration could be given to divesting some low risk or non-contentious liquor licence determinations to a statutory position holder. This position, Director of Licensing would be introduced to make non-contentious decisions under the *Liquor Act*, *Registered Clubs Act 1976* and the *Gaming Machines Act 2001*, such as:

- approval of changes to licensees or managers,
- redefinition of the boundaries of licensed premises,
- approval of restricted areas in licensed premises, and
- extension of trading hours for special occasions, etc.

The Director of Licensing would report to the Executive Director of the OLGR, and decisions would be reviewable by the Authority. This approach would help clarify review rights, and decrease red tape and processing times.

The Authority should remain responsible for:

- granting all liquor licence applications,
- extension of trading hours on a permanent basis,
- the determination of disciplinary proceedings as currently provided, and
- its current role in relation to casino-related matters.

To enhance processing flexibility, the Authority should also have the flexibility to delegate functions to the Chief Executive of the Authority and to other designated staff of the Authority.

The review notes that dealing with issues raised by the community is often a difficult process. There can be unrealistic expectations that matters can be dealt with in an impractical timeframe or that draconian measures are the optimal outcome. There needs to be a balanced approach to the issues raised, but unless there is appropriate consultation and engagement (on both sides), accusations of bias can surface.

In regard to process outcomes, the review acknowledges that the legislative role given to the position of Director General could be seen as inconsistent with the wide-ranging responsibilities of the head of a large Department, where the remit and considerations of a Director General are broader than those of a regulatory decision maker alone.

However, it is important to note that decisions made by the Director General must be made in accordance with the objects of the Act which require (as previously stated) the application of a harm minimisation lens. Further, these decisions are generally reviewable by the Authority.

Under previous legislation, appeals to the Supreme Court could be made on questions of law from determinations of the Licensing Court, and this principle remains in the current system. Appeals could also be made from a decision of one Licensing Magistrate to the Full Bench of Licensing Magistrates (comprising three magistrates), although the Full Bench would often hear contentious matters in the first instance to limit the numbers of appeals.

The review notes that in introducing the *Liquor Act 2007*, the Parliament's intention was to reduce formality and cost for stakeholders through an administrative decision maker that replaced the former Licensing Court. Court decisions were often the subject of lengthy and costly appeals, particularly for new hotel and packaged liquor applications. This approach was generally considered to favour those parties (often larger industry participants) who have significant resources and could afford the time and costs associated with an appeal.

This policy is reflected in one of the *Liquor Act's* objectives which provides for a flexible and practical regulatory system with minimal formality and technicality. Under this administrative model, features of a judicial based licensing system, such as the cross examination of witnesses, the need for sworn evidence and decisions being appealed on prescribed grounds, were replaced with more informal processes such as written submissions that can be made by any person, along with processes which encourage a timely and efficient use of stakeholder resources. This more flexible approach could be further advanced to secure accessibility, transparency and timeliness in the decision making process.

Reviews of Authority decisions are available under section 144 of the *Liquor Act* in relation to disciplinary matters only. Such reviews are determined by the Administrative Decisions Tribunal.

Introducing a review mechanism for other liquor licensing decisions made by the Authority would be inconsistent with the policy objective of a practical regulatory system with minimal technicality.

If an alternative approach was adopted, consideration would need to be given as to who would be responsible for reviewing the Authority's decisions – whether it should be a judicial body, or another administrative body. Consideration of the basis for seeking a review would also be needed:

- should there be prescribed grounds for seeking a review, and who should be able to seek a review, and
- should reviews be limited to the applicant, to those who made a submission to the application, or should they be open to any person or organisation.

Introducing a review mechanism could add significant cost and uncertainty for applicants and other stakeholders, and could favour those with the greatest resources who are more able to undertake the review process. For others, such a review process could represent a significant barrier to market entry or to ensuring community views are considered in an application.

People in the local community who oppose an application that is refused by the Authority could be required to provide further material as part of the review process, including the potential to be required to provide written or oral evidence that could be tested in a court environment. This could prove to be a disincentive for people to make a submission to an application in the first instance, and could potentially result in less community engagement in the application process. Introducing a review mechanism could lead to a large number of reviews of decisions made by the Authority, which would have significant resource implications for Government, industry and those in the community that make a submission to an application.

The *Liquor Act* currently provides a suite of powerful regulatory tools including licence conditions, directions, notices, closure orders, disturbance complaints and disciplinary action. Other recommendations in this report suggest reforms to those tools to improve their operation, particularly in regard to community access. Those tools function as a check on licence operations, and can be used to take swift action should a licensing decision lead to adverse outcomes for the community.

The review considers that existing arrangements in relation to reviews of the Authority's decisions should not be altered. However, it is clear from submissions that some regulatory enhancements to improve transparency in the decision making process are needed. This could be achieved by mandating a requirement for the Authority to publish brief reasons, consistent with the accessible, informal approach to the provision of written reasons adopted by other independent determinative bodies. Certain types of applications – such as applications for a hotel licence, packaged liquor licence, an on premises licence relating to a public entertainment venue (i.e. a nightclub) and applications for extended trading should be mandated for the provision of brief reasons by the Authority. Additionally technological advances developed to facilitate the provision of brief reasons on the date of hearing and determination should be considered.

This would provide applicants and those who make a submission with greater transparency, clarity and have the added value of informing prospective applicants and stakeholders on the issues taken into consideration by the Authority in determining particular applications.

Applicants and other interested parties should be able to request the reasons for the Authority's decision in respect of applications not included in the mandatory publication decisions. These requests would be considered by the Authority, and it is noted that this process currently exists for certain applications.

Some submissions called for a restoration of the ability for decisions of the Director General to be reviewed. This power currently exists in section 36A of the Gaming and Liquor Administration Act for almost all of the Director General's decisions. The exceptions are decisions under section 102A and 136B of the Liquor Act which are not reviewable. It is considered that these should also be reviewable, as this helps to ensure independence and consistency (as required by the legislation's objects) in decision making. The available review rights could also be better explained to the public.

The review also considers that community understanding and transparency would be enhanced by requiring mandatory publication of decisions on regulatory interventions (including enforcement action taken by the Director General and liquor inspectors). The information published should include reasons for decisions and outcomes, and include an enforcement report card so as to inform the community about behaviours that warrant regulatory intervention.

Consideration should be given to how this information can be widely distributed, including through the media.

## RECOMMENDATIONS

### **Recommendation 3:**

The Government should create a 'one-stop-shop' website for liquor and gaming which aggregates information from relevant sources, is simple to use and understand, and is structured so that the starting point for persons accessing the website is what that person wants to achieve, rather than who they should approach to achieve it.

### **Recommendation 4:**

Consideration should be given to including geo-coded licence type information on the website that could be available to the public, to local councils to consider when determining planning applications, and to regulators to consider where a community impact statement is required.

### **Recommendation 5:**

The liquor laws should require mandatory publication of brief written reasons for decisions on contentious and high impact licensing applications and regulatory interventions (including enforcement action taken), and should include reasons for decisions and outcomes as part of an enforcement report card.

### **Recommendation 6:**

Consideration should be given to how information relating to decision and enforcement outcomes can be widely distributed, including through the media.

**Recommendation 7:**

Applicants and other interested parties should be able to request brief written reasons for the Authority's decision in respect of applications not included in the mandatory publication decisions.

**Recommendation 8:**

All decisions of the Director General should be reviewable by the Authority, with the available review rights explained to stakeholders.

**Recommendation 9:**

The probity standards required for all liquor and gaming inspector positions located within the OLGR should be determined by the Department as the employer.

**Recommendation 10:**

A statutory position of the Director of Licensing should be introduced to determine low risk or non-contentious liquor licence applications under the Liquor Act and Registered Clubs Act, including the:

- approval of changes to licensees or managers,
- redefinition of the boundaries of licensed premises,
- approval of restricted areas in licensed premises, and
- extension of trading hours for special occasions.

**Recommendation 11:**

All decisions of the Director of Licensing should be reviewable by the Authority.

**Recommendation 12:**

The Authority should remain responsible for:

- granting all liquor licence applications,
- extension of trading hours on a permanent basis,
- the determination of disciplinary proceedings as currently provided, and
- its current role in relation to casino-related matters.

**Recommendation 13:**

The Authority should be able to delegate functions to the Chief Executive of the Authority, and Authority members.

# 9 REGULATING MARKET ENTRY AND BUSINESS OPERATIONS

In New South Wales, market entry is regulated through a number of mechanisms and statutory requirements. These include:

- probity of individuals and organisations,
- requirements relating to the qualifications of licensees, and
- consideration of social impact of licence operations on the well-being of the local or broader community.

The liquor licensing system recognises:

- the degree of risk associated with the sale and supply of liquor and operation of a licensed premises,
- the needs of different business types, and
- the demands of efficient regulation

by categorising business operations and applying different rules and restrictions.

This is achieved through separate licence categories for hotel, club, on-premises, packaged liquor, producer / wholesaler, limited, and more recently, small bars, as well as supplementary authorisations for different business activities (such as extended trading hours).

Licences and authorisations are perpetual in nature, except where they apply to time limited functions and events. Flexibility is provided for different types of licensed businesses to operate through the application of common standards and tailored conditions and restrictions.

## 9.1 Probity of individuals and organisations

The Liquor Act mandates a licence cannot be granted unless the Authority is satisfied that the applicant is a fit and proper person. The Authority is able to make enquiries about individual and corporate applicants for licences, as well as any close associates or parties interested in the licence. This includes requesting a National Police Certificate for individuals, and an Australian Securities and Investment Commission (ASIC) report for corporate applicants, and seeking information from NSW Police and the Director General.

### SUBMISSIONS

The Star, run by the Echo Entertainment Group drew on its experience of responsible for venues in NSW and Queensland, suggests that efforts should be made to harmonise state legislation in relation to probity and licence approvals thresholds.

Accommodation Australia suggested that the application process by companies or individuals that already hold NSW liquor licence should be expedited to avoid duplication.

The NSW Police Force advocated for a more rigorous approach to probity processes for individuals and organisations. The factors raised relate to risk of criminal activity associated with a venue rather than the particular regulation of alcohol-related harms at venues. These matters warrant more detailed consideration within a context of addressing crime.

Police recommend that the fit and proper persons framework contained in the *Security Industry Act 1997* should be adopted. Police contend that it is appropriate that prospective licensees and approved managers adhere to the same rigorous standards as those which apply for a licence in the security industry, as they occupy positions of trust within the liquor industry and have specific powers under the Liquor Act.

In its submission, the Authority suggests that a person is fit and proper to hold a licence subject to various tests that include a person having requisite knowledge of the Act under which he or she is licensed and the obligations and duties thereby imposed. It is the Authority's view that being fit and proper should comprise three characteristics:

- honesty,
- knowledge, and
- ability.

A number of submissions identified the need for licensee training to be strengthened and indeed mandated. A common view held among those advocating for licensee training, including Tourism Training Australia, the AHA (NSW) and Mr Tony Brown, was the introduction of a training program targeting licensees either on entry to the liquor industry, or alternatively licensee training specific to the category of licence being sought/approved.

## POLICY DISCUSSION

Under section 45(3) of the Act, the Authority must be satisfied that the applicant for a liquor licence is a fit and proper person to carry on the business or activity to which the licence relates. The Authority is able to make enquiries about individual and corporate applicants for licences, as well as any close associates or parties interested in the licence. This includes requesting a National Police Certificate for individuals and an ASIC report for corporate applicants and seeking information and comment from NSW Police and the Director General.

The NSW Police Force represented the position of aligning the provisions of the *Security Industry Act 1997* with the Liquor Act for the determination of "fit and proper". That suggestion has merit. However, under the Security Industry Act, the Commissioner of Police determines applications for security licences, and it is the Police Force that holds the information and intelligence and makes recommendations to the Commissioner. From a public interest perspective, there needs to be a strong framework surrounding the use of the Commissioner's discretion in determining licence applications under the Security Industry Act.

On the other hand, the Authority is an independent body with responsibilities under the Casino Control Act which require it to determine the "general reputation" of the applicant for a casino employee's licence or in the case of a casino operator, "good repute". The investigations and probity standards for these types of licences are much higher than those under the Securities Act or the Liquor Act.

However, it is noted that the Liquor Act does contain strong safeguards so that a person who is a member/close associate of, or regularly associates with one or more members of, a declared organisation under the *Crimes (Criminal Organisations Control) Act 2012* is considered not to be fit and proper if the criminal activities of the declared organisation are likely to be furthered by the grant of a liquor licence.

As indicated by the Authority, it has been long held by Courts that the definition of "fit and proper" includes elements of honesty, knowledge and ability and not just simply whether the applicant is free from a criminal record. Ensuring licensees possess appropriate skills and knowledge diminishes potential risk as new licences are approved and helps to manage emergent risks.

However, such a requirement should not be applied to all applicants for a liquor licence. Rather, mandatory licensee training should be required for prospective licensees of a hotel or club licence. This issue is explored in further detail under the industry training section of this report.



## RECOMMENDATIONS

### **Recommendation 14:**

The current provisions regarding determination of fitness from a criminality perspective allow sufficient flexibility to consider the range of probity issues and should therefore remain unchanged subject to the application of a 'risk based' approach to assessments within particular categories to facilitate greater expedition and transparency.

### **Recommendation 15:**

The Liquor Act should make it clear that the concept of "fit and proper" includes the competency (including honesty, knowledge and ability) of the proposed licensee.

## 9.2 Industry training

Responsible service of alcohol (RSA) training is a key requirement that supports the NSW responsible serving laws. RSA training seeks to reduce excessive alcohol consumption and risky drinking practices in licensed venues by equipping staff with skills and knowledge to better manage compliance with the liquor laws and adopt responsible serving strategies. The RSA training framework is prescribed under the *Liquor Regulation 2008*.

In 2011, the Liquor and Gaming Machines Regulations were amended to facilitate the introduction of a competency card for students undertaking approved RSA and responsible conduct of gambling (RCG) training that replaced a certificate as evidence of training. Unlike RSA and RCG certificates, the competency card expires five years after the first competency has been obtained, requiring further training to be undertaken.

In 2012, a trial of online RSA training commenced to provide an option to classroom training. This online trial also introduced a bridging course to make it easier for interstate personnel to obtain a NSW RSA competency.

Approval of training providers and courses, and the administration of the competency card, is undertaken by the OLGR. Approval functions are conducted under delegation from the Director General.

Under section 58 of the *Liquor Act 2007*, the Authority can require prospective and current licensees to undertake training it has approved. The Authority currently does not require liquor licensees to undertake training beyond the mandated RSA and RCG training programs, although the Authority has expressed the view that the need for additional licensee training needs to be examined.

## SUBMISSIONS

A number of submissions commented on a range of industry training issues.

While the competency card can include both RSA and RCG competencies, the card has only one expiry date. This expiry date falls five years after the first competency is gained. For example, a person who undertakes RSA training on 1 July 2012 will have their competency card expire of 30 June 2017. However, if that person subsequently undertakes RCG training on 1 July 2013, their RCG competency would still only be valid until 30 June 2017.

Two respondents (Ms Johnson and Ms Martin) requested that the competency card expiry date be fixed at five years, regardless of how many competencies it includes, to ensure that training undertaken at any time is valid for a full five year period.

The City of Sydney suggested that all staff employed by licensed premises be required to possess an RSA competency card. The City of Sydney also suggested that the Authority should have the power to suspend or revoke a competency card where an RSA offence has been committed.

It was also suggested that the “Safer Bars”<sup>1</sup> or similar training be required for all staff working in licensed premises after 1am. With the exception of the safer bars proposal, the City of Sydney’s proposals are consistent with the requirements applying under the Kings Cross Plan of Management.

The Kings Cross Liquor Accord advocated that provisions applying elsewhere in the State, whereby a person can work in licensed premises with an interim RSA certificate for up to three months, should be extended to Kings Cross (where interim certificates are not recognised).

Coles Liquor, the Liquor Stores Association, and Accommodation Association of Australia recommended that the competency card process be reviewed and improved to reduce the administrative burden on industry. These suggestions included removing the physical requirement to attend Australia Post, by allowing training providers to issue competency cards and recognising interstate RSA qualifications without the need for further training.

A number of submissions also identified the need for licensee training to be strengthened and mandated. A common view held among those advocating for licensee training, including Tourism Training Australia, the AHA (NSW), Mr Tony Brown, and the Authority, was the introduction of a training program targeting prospective licensees entering the liquor industry, or for licensee training relevant to the category of licence.

## *POLICY DISCUSSION*

Responsible service of alcohol training has been mandatory for licensees, serving staff and security working in licensed venues since 2004. While this training seeks to provide students with broad knowledge of RSA principles and obligations under the liquor laws, it does not necessarily address specific issues that can apply to security, RSA marshals, bar managers, venue managers and licensees. It does not currently address the matter of refresher training when their competency card expires.

The Authority supported “the use of appropriate skill requirements as both a mechanism to diminish potential risk as new licences are approved and as a mechanism to manage emergent risk when licensees fail to comply with the Act”, while the AHA (NSW) recommended that the liquor laws be amended to “allow for a formal training requirement for licensees relevant to the category of licence to be held”.

Currently, the Director General is responsible for approving RSA training, while the Authority is responsible for approving licensee training. This division of responsibility may not be ideal as it can lead to inconsistencies in the training framework and course content. Training reforms should therefore consider aligning the approval of RSA and licensee training under the liquor laws so that there is one decision maker responsible for approving training for the liquor industry. This issue is one of administrative policy, and best sits within OLGR.

The City of Sydney suggested that all staff employed by licensed premises be required to possess an RSA competency card. If this was adopted, it would be optimal to retain the current approach whereby staff who complete training are issued with an interim certificate which allows them to work for up to 90 days until they receive their competency card. This is an important feature of the competency card scheme, as it can take up to three weeks after a person has completed training for their card to arrive.

The suggestion that the Authority be given the power to suspend or revoke a competency card where an RSA offence has been committed has some merit and may assist in strengthening the regime. Careful consideration would need to be given as to how this would be made operational where the suspended competency belongs to the licensee. If a licensee’s card is suspended, it would effectively mean that venue would be closed until a new licensee was appointed.

Licensees can already face significant sanctions through disciplinary complaint action under the liquor laws, including the suspension or cancellation of the liquor licence.

<sup>1</sup> Bar Guardians Pty Ltd, in 2009, was licensed by the Centre for Addiction and Mental Health (CAMH) in Toronto, Canada to deliver the Safer Bars program in Australia. The Safer Bars training program helps staff develop techniques for preventing & managing aggression & other problem behaviour.

The capacity to revoke a person's competency card is contained in the *Liquor Amendment (Kings Cross Plan of Management) Act 2013* for serious RSA breaches in the Kings Cross precinct that was passed by the Parliament in October 2013. It would be appropriate for the operation of these provisions to be monitored and evaluated in Kings Cross prior to any state-wide rollout.

A tiered approach to RSA training, whereby training is tailored to various industry sectors, is considered an appropriate vehicle to provide the industry with necessary skills. For instance, this approach could be used to add value for the security sector by focussing on best practices to prevent alcohol-related violence and aggression.

There are now over 150 Australia Post outlets that can process an application for an RSA competency card. This has addressed initial concerns regarding availability of this service. Further, it is noted that contractual arrangements with Australia Post for processing competency cards expire in 2014, and this may provide an opportunity to consider whether existing arrangements for obtaining a competency card are appropriate.

A trial of online RSA training commenced in July 2012. The online option provided an opportunity to introduce an online RSA bridging course for people with training qualifications obtained in other Australian jurisdictions to work in NSW. The online bridging course comprises a sub-set of the online RSA course, and allows people with interstate qualifications to undertake RSA training in NSW without having to do the full course or attend classroom training in NSW.

In regard to the expiry date on competency cards, the competency card system was designed so that it can accommodate more than one competency on a single card. This has the advantage of requiring a person to carry only one card. However, Government Licensing System technical requirements presently result in all competencies needing to have a common expiry date.

While this is not an issue for the majority people (who usually undertake RSA and RCG training at the same time), it does present an issue for those people who have undertaken RSA and RCG training at different times. The review considers that erring on the side of early re-training, rather than extended periods between training, is preferable.

## RECOMMENDATIONS

### **Recommendation 16:**

A tiered approach to training should be developed that extends to mandated licensee training, and tailored RSA training for other industry workers, and allow for refresher training to be undertaken when competency cards expire.

### **Recommendation 17:**

Initially mandated licensee training should be focused on and trialled for higher risk venues (such as hotels, bars, clubs, late trading venues) or venues located in high risk precincts.

### **Recommendation 18:**

Competency training should be introduced for high risk venues and the Authority should be given the ability to refuse applications where the competency of the individual (training and experience) is disproportionate to the risk profile of the licensed venue.

### **Recommendation 19:**

The administration of industry training should rest with a single decision maker within OLGR to avoid confusion and inconsistencies.

## 9.3 Environment and Venue Assessment Tool (EVAT)

The Liquor Act provides that the Authority must consider the overall social impact of the grant of a higher risk licence or authorisation on the well-being of the local or broader community.

An EVAT is being trailed in the Sydney and Newcastle local government areas to assist in informing community impacts. The EVAT was developed to provide a consistent and transparent basis to inform licensing decisions.

The EVAT provides two weighted risk assessments - one for location, and one for venue - based on several individual risk factors. The risk assessments form part of the decision making process and considers liquor licence density (i.e. the clustering of licensed premises within a geographic area).

It does not provide a definitive outcome of an application. Rather, it is a semi-actuarial tool which assists in making an assessment of some key risk factors, and gives an indication of the effect of granting a new licence in a particular location. Community Impact Statements and submissions also form a critical part of the decision-making process.

Location risk consists of both external and market risk factors. External risk factors are those that are beyond the control of either venue operators or the market (e.g. infrastructure and socio-demographic features). The external risk factors included in the EVAT are:

- rate of alcohol-related assaults,
- rate of offensive behaviour,
- presence or absence of late night transport,
- police risk assessment, and
- council risk assessment.

Market risk factors are those that are related to the liquor sector but are not necessarily the consequence of an individual operator (e.g. a large concentration of premises with extended trading hours). The market risk factors included in the EVAT are:

- radial estimate of liquor licence density (i.e. average number of liquor licences within a 1km radius),
- proportion of high risk venues (i.e. hotel licences),
- proportion of diversifying venues (e.g. on-premises licences without primary service authorisations), and
- proportion of venues with late night trading.

Venue risk factors are those that are specifically related to an individual liquor licence application. The venue risk factors included in the EVAT are:

- licence type,
- patron capacity,
- extended trading,
- liquor accord membership, and
- other mitigation strategies.

## SUBMISSIONS

Most of the respondents who commented on the EVAT were generally supportive of the tool, although a few submissions expressed some doubt, with Design Collaborative and Mr Tony Brown questioning the lack of available information on which the tool was developed and the relative weighting of the risk factors used. They asked for greater transparency on the mechanics of the tool and also questioned the ability of the EVAT to meet the policy objectives of the Liquor Act.

Willoughby City Council supported the introduction of the EVAT, but recommended that it include a local risk assessment factor that takes account of proximity to high-risk groups such as schoolchildren and areas with social housing. Similarly, Marrickville Council considered that the rating system does not allow for a sensitive analysis of local factors, such as the demographics of disadvantage and vulnerable communities, and local needs. They advocated that more sensitive benchmarks need to be considered.

Ms Di Woods noted the EVAT does not include identification of increased risk factors such as effects of alcohol advertising or exposure to children, or population subgroups at higher risk of alcohol-related harm. Ms Woods also suggested that the EVAT should not be a tool that is used to replace more effective measures in addressing immediate alcohol-related harm, such as the current liquor freeze in Sydney CBD.

The City of Newcastle recommended that should the EVAT be implemented following evaluation, changes are made to provide for factors relating to community health and wellbeing. It also recommended that the outcomes of individual EVAT assessment for licences be made public, as well as any controls placed on licences to mitigate alcohol-related harm.

Local Government NSW recommended that local councils be given access to EVAT (if adopted beyond trial phase) to assist with assessment of liquor-related development applications. This was also supported by several local councils, including the Tamworth Regional Council.

The National Live Music Office and Raise the Bar recommended that the evaluation of the EVAT's trial should be made public and that consultation should be conducted before this method is applied.

A number of submissions related to the control of density of licensed premises in any given area.

These included suggestions to introduce a mechanism to restrict density of licensed premises (Mr Pate, Albury City Council, NDARC, Ms Woods), introduce a limit on off-licences within an area (Manly Council Community Safety), introduce high risk locations based on levels of alcohol-related assault and density of licensed venues (Manly Council Community Safety), provide a definition of "cumulative impact" within the Liquor Act (City of Sydney), and set a cap on number of liquor licences (Local Government NSW).

NAAPA called for saturation zones in areas identified as already having too many licensed premises and/or a high rate of associated alcohol-related problems (within which a moratorium should be placed on all new licences, and in the interim, the operation of current freeze precincts should be extended beyond their current expiry dates.

FARE also called for the introduction of appropriate transport and crowd management options in high density areas, proposing that the NSW Government examine locations with a high density of outlets and develop late night transport and crowd management plans, and that consideration be given to public transport operating times when issuing liquor licences. FARE proposed that the NSW Government introduce cumulative impact and cluster control policies for the determination of new liquor licences.

## *POLICY DISCUSSION*

As noted above, most respondents generally supported the use of EVAT pending the outcome of the trial and further explanations of the factors to be taken into consideration by the tool, as well as the weightings afforded to those factors.

The review supports the use of EVAT, but suggests that the factors and weightings should be subject to independent research and public comment before its formal adoption. If adopted, the OLGR should consult with the Authority, Local Government NSW and the NSW Police Force annually to ensure the EVAT is working efficiently and achieves appropriate outcomes.

Into the future, should the Government adopt the recommendations for merging the CIS process with the local council's DA process as detailed in this report, a more uniform approach to community consultation and decision making would be possible.

While there is inconclusive research that links liquor outlet density with increased alcohol consumption, longitudinal and cross-sectional research suggests that there is a link between alcohol-related assaults and liquor outlet density.

However, the research also acknowledges that there are certain qualifications to some findings. Some of these are that increased density results in increased patronage which concentrates assault risks, and that transport interfaces, entertainment venues and other attractions are often located in or around densely populated liquor outlets.

Most of this research has focused on the nexus between assaults and licensed premises, rather than the definition of what constitutes the threshold level of liquor outlet density at which assaults become problematic.

None of the submissions offered a definition of “liquor outlet density” – that is, what are the minimum numbers and types of licensed premises within a spatial area that constitutes “saturation”, and thus triggers limitations on further liquor outlets.

It is understood that the current “freeze zones” under the Liquor Act were established based on total assault rates, rather than a detailed analysis of the numbers and types of liquor outlets in the particular areas. The freeze prohibits the granting of the following types of licences:

- hotels,
- clubs,
- on-premises relating to entertainment,
- packaged, and
- wholesalers.

It also restricts the extension of trading hours, and a number of other restrictions were placed on licensed restaurants (on-premises licences).

Assault rates in the freeze areas were all declining prior to the freeze and have continued to decline since – even in areas where the freeze was lifted.

A simple definition of the numbers and types of licensed premises that constitute “saturation” in a spatial context is problematic. Different environments are often defined by the amount and time of alcohol consumption, patron numbers, patron demographics, trading hours, etc.

Arbitrary settings of a “saturation level” without adequate analysis could result in decreased economic activity and employment and a possible impact on vibrancy and social amenity of some areas.

While this review considers that density of liquor outlets should be taken into account when applications for liquor licences are determined, it should be one of a number of factors. The EVAT, if continued and expanded, would facilitate this by including information on the number and type of licensed premises, their hours of trade and risk profiles.

This, combined with other relevant data (alcohol-related assault rates - both domestic and non-domestic, health alcohol-related hospital admissions, patron numbers, demographics, etc) would provide a more objective approach to the consideration of the overall impact of granting an additional licensed outlet in any particular area. Prescribing these types of issues and data as requiring consideration via the EVAT (or other means) would improve transparency and consistency of decision making.

## RECOMMENDATIONS

### **Recommendation 20:**

The Environment and Venue Assessment Tool and the intent of its supporting research have merit, and its ongoing development should be supported by further research.

### **Recommendation 21:**

The Environment and Venue Assessment Tool should be subject to rigorous and independent evaluation and that a summary of that evaluation is available for public review.

### **Recommendation 22:**

A standardised tool, based on the available research in regard to cumulative harms, should be utilised for liquor licensing matters.

### **Recommendation 23:**

The types of issues to be considered by the tool should be prescribed as matters that need to be taken into account in an application for a higher risk liquor licence or permanent extension of trading hours to enable trading past midnight.

### **Recommendation 24:**

The Environment and Venue Assessment Tool should be used to inform input into the modified planning process as recommended by this review.

### **Recommendation 25:**

Data regarding the density of liquor outlets should be considered when granting a new liquor outlet, and be one of the relevant data sets taken into consideration in the determination of the impact of an additional liquor outlet in a particular area.

## 9.4 Licence freeze

A liquor licence freeze was introduced in the Kings Cross, Oxford St/Darlinghurst, and CBD South precincts of the City of Sydney local government area on 25 June 2009. The freeze prevents the establishment of most types of new licensed venues, as well as extended trading and business alterations that would result in additional patrons coming into the precinct to consume liquor or additional patron capacity.

The freeze was extended in June 2011 and again in June 2012 to allow time for research into the cumulative impact of licensed premises in NSW to be completed.

In November 2012, the *Liquor Amendment (Kings Cross Plan of Management) Act 2012* was passed. This Act included a range of measures to address alcohol-related crime and anti-social behaviour in the Kings Cross precinct, including a geographical extension of the Kings Cross precinct to include additional licensed premises, and an extension of the Kings Cross precinct freeze for three years until 24 December 2015. Small bar licence applications are exempt from the freeze provisions.

On 17 December 2012, the NSW Government extended the liquor licence freeze in the Oxford St/Darlinghurst precinct for 12 months to 24 December 2013. The CBD South precinct freeze expired on 24 December 2012.

## SUBMISSIONS

A number of submissions identified impacts from the freeze on existing licensed premises. The Surry Hills Liquor Accord, Courthouse Hotel, Bulford Legal, C.inc Hotels and AHA (NSW) called for amendments to enable refurbishments and redevelopments of existing premises. The National Live Music Office requested an exemption for new live performance venues, while Raise the Bar supported the creation of clear, evidence-based criteria for the application or extension of any freeze.

The City of Sydney suggested measures to ensure a comprehensive approach to density of liquor outlets, including establishment of new Saturation Zone Provisions for three years, and that some of the key provisions applied to licensed premises in the Kings Cross Precinct could be applied to those premises within a proposed “saturation zone”. The Kings Cross Liquor Accord suggested the introduction of a new freeze test to permit certain applications to be granted that would not breach the underlying principle of the freeze.

## POLICY DISCUSSION

The Government has indicated that a comprehensive review of the future of the freeze is underway and will be determined before the Oxford Street Darlinghurst freeze expires in December 2013. Given that process, this Liquor Act review will not make specific recommendations in relation to the freeze. However, it is recommended that the issues raised in submissions to the review should inform consideration of the future of the freeze.

## RECOMMENDATION

### **Recommendation 26:**

The issues raised in submissions to the review should inform consideration by the Government of the future of the liquor licence freeze.

## 9.5 Licence fees and duration

Most application fees under the Liquor Act are specified in Schedule 1 of the *Liquor Regulation 2008* and range from \$50 to \$2,000. Application fees generally contain two components; a fixed component and a processing component.

The requirement to pay an application processing fee is consistent with the ‘user pays’ principles that underpin the *Licensing and Registration (Uniform Procedures) Act 2002*. The requirement to pay a fixed fee recognises some small contribution to the ongoing costs to Government in maintaining a liquor licensing regime.

While a fee is payable for the grant of a liquor licence, no ongoing or periodic fee is payable. Liquor licences are perpetual in nature and are not renewed.

## SUBMISSIONS

Few submissions commented directly on the issue of application fees. Woolworths raised concerns about costs and delays in processing licence applications and advocated for the introduction of an electronic licensee transfer system and a reduction in transfer fees.

The OLGR advised that an activity-based costing exercise on the regulatory and administrative activities and functions undertaken by the OLGR and the Authority relevant to the liquor, gaming machine and casino industry segments was undertaken in 2013. A subsequent analysis of data concerning the liquor industry segment shows that in the majority of cases, existing application fees fail to offset processing costs.

Some submissions (including the Alcohol and other Drugs Council of Australia, City of Sydney and Byron Shire Council) supported a move away from perpetual licences to a time-limited licence. These submissions recommended that licence renewals be considered with regard to risk and a licensee’s compliance with the terms and conditions of their licence.

There were strong representations on the matter of perpetual licensing and one off application fees, rather than a periodic fee. Two options were raised, with the first being an annual renewal (or other timeframes, with the City of Sydney suggesting three years), and the second being a perpetual licence with an annual fee. The argument was made that perpetual licensing with a one



off application fee does not permit the state to recover fees in accordance with regulatory effort. Ultimately, this causes a misallocation of economic resources whereby some submissions claimed that the NSW community provides a subsidy to liquor licensees.

Submissions by FARE and the National Alliance for Action on Alcohol suggested the introduction of annual risk-based liquor licence fees which adequately contribute to the substantial costs of regulating, policing and preventing alcohol-related harms in NSW;

Other community submissions pointed out that annual licensing based on cost-recovery principles would permit regulatory costs to be collected from the beneficiaries of licensing, while funds collected from licensees could be utilised to fulfil the objects of the Liquor Act. Annual licensing or an annual fee would permit a robust system of risk-based enforcement to be introduced, and enable late night licensed premises to contribute to the costs of alcohol-related harms.

## POLICY DISCUSSION

The issues of application fees, perpetual licensing and periodic fees are discussed below:

### Application fees

Current fees payable by the liquor and gaming industries for specific licence applications in NSW are not set on a 'user pays' cost recovery basis and are not CPI indexed. There are also a number of applications and notifications which incur regulatory costs but are fee-exempt.

This is different to the approach used in other Australian jurisdictions. Comparable application fees in other jurisdictions are higher, subject to regular review and maintained at sustainable levels.

Existing fees do not represent a total recovery of processing and maintenance costs. The fee for almost half of the liquor applications only contains a processing component which is currently \$50; which has not changed since it was first set in the 1982 Liquor Act. Other application fees remain unchanged since the commencement of the current Liquor Act in 2008.

OLGR's activity-based costing exercise demonstrated that existing application fees cover only a small proportion of the regulator's costs associated with processing applications. Approximately 28 per cent of the cost of the fee paying activities performed is recovered. To achieve full cost recovery, existing fees would need to increase by around 245 per cent.

It is considered that application fees should be maintained on a user-charge basis and annually reviewed. The cost of the OLGR and the Authority dealing with an application should be borne by the applicant.

### Perpetual licensing

The issue of cost recovery within the context of adequately resourcing regulators, including the Authority and the OLGR, was raised in submissions from the community, research and health sectors. While those submissions generally called for an end to perpetual licensing and the introduction of periodic or risk-based licence fees, the overall outcome sought to be achieved, in part, is the recovery of costs borne as a result of the administration of the Liquor Act.

Prior to the 1982 Liquor Act, licensees were required to make an annual renewal application to the then Licensing Court and pay an annual licence fee based on a percentage of the amount of liquor purchased for sale. Objections to the renewal of the liquor licence could be lodged by NSW Police. Few objections were lodged, and the introduction of the *Liquor Act 1982* saw the move to perpetual licensing subject to the payment of annual licence fees. If fees were not paid, the licence was suspended and if payment was not made within two months, the licence was irrevocably cancelled. This significantly reduced red tape, as each licensee was no longer required to make an application to the Licensing Court for renewal.

Annual licence fees, based on the value of liquor purchased by a licensee, were payable for liquor licences until the August 1997 decision of the High Court in *Ha v New South Wales*. That decision led to the abolition of State-based business franchise fees, including those applied to liquor.

Annual fees of \$2,500 were also payable under the former *Liquor Act 1982* for hotel and liquor store licences granted between August 2004 and June 2008. Those fees were abolished with the commencement of the *Liquor Act 2007* from 1 July 2008.

Perpetual licensing without annual fees and cancellations has caused a major degradation of the OLGR's database. Many licensees have closed their businesses without applying for a surrender of their liquor licence (which is a requirement under the *Liquor Act*). This has particularly been the case with on-licences relating to restaurants.

The only way that these dormant licences can be cancelled is for OLGR to take complaint action before the Authority where it is known that a licence is no longer operating and required. This involves OLGR obtaining evidence to support the complaint, and is a time consuming process given the evidentiary requirements adopted by the Authority are significant.

This situation causes a number of problems. The integrity of the OLGR's database is undermined as it does not accurately reflect the true number of licences in existence. This raises issues when considering the nearby environment in licensing applications, particularly with tracking the density of licensed premises in a designated area. It also imposes additional costs and inefficiencies on OLGR operations.

The review does not support a change to perpetual licences that involves a renewal application process and possible review of the operations of each liquor licence. However, the review supports the imposition of an annual fee where non-payment would result in suspension of the licence with ultimate cancellation if the fee remains unpaid for two months. The licence could be restored on application to the Authority during a further six month period.

#### Risk based licensing

Contemporary best practice is also built upon the general principle that costs associated with regulating an industry (such as administration, licensing and enforcement) should be borne by those who directly benefit from being authorised to operate within that industry, rather than by tax payers. Indeed, cost recovery promotes the efficient allocation of limited public resources by sending the appropriate price signals about the value of all the resources being used in conducting regulatory activity.

The liquor laws already contain provisions that regulate more intensively those activities that pose some risk to the well-being, safety or amenity of the community (such as licences which focus on alcohol sales and extended trading hours). This is achieved through the application of higher entry standards and tighter regulatory controls over liquor trading and venue operations, although these provisions might not have been perceived as risk-based provisions.

Two factors have led to the emergence of risk-based fees for liquor licensing. First, the focus on regulatory reform by governments has sought to improve economic efficiency by removing unnecessary administrative burdens and by ensuring that regulation does not result in a misallocation of resources. A key part of this is the application of the 'user pays' principle for government services.

Second, there has been an increased awareness of the harms that alcohol misuse causes individuals and the community. Most governments in Australia have introduced liquor reforms in recent years, along with non-regulatory tools to manage the social costs of alcohol misuse. These changes have seen a move to risk-based annual fees.

In policy terms, risk-based fees for liquor licensing are a very recent development. In this context, it is important to recognise that risk-based fees for liquor licences represent a component of risk management, while licensing itself is a regulatory instrument within a suite of regulatory and non-regulatory tools that can be used to manage risk.

It is relevant to note that studies of risk and regulation have converged, and risk-based regulation has become central to the better regulation agenda and is now regarded as regulatory best-practice.

A contemporary licensing regime would therefore recognise the risks associated with a regulated activity. Such a licensing system would see the costs associated with regulating an industry which sells products that can be associated with harm being borne by those who benefit from being authorised to participate in that industry, and proportionally by those whose operations increase the risk of harm, and the level of actual harm, to the community.

Fee structures would be set at levels to cover administration, licensing, enforcement and compliance costs, while incentivising compliant behaviour and recognising high risks arising from certain types of business operations.

A contemporary licensing scheme would have the potential to encourage industry transformation in a way that supports the harm minimisation objects of the Liquor Act. Lower risk business operations would attract lower fees, thereby encouraging the development of new business models which are not associated with higher risk of alcohol-related harms.

This form of risk-based licensing would promote progress toward a regulatory system which balances compliance and enforcement.

Risk-based regulation offers an evidence-based means of targeting the use of resources and of prioritising attention to the highest risks in accordance with a transparent, systematic and defensible framework. The potential benefits of a risk-based approach to regulation come from a more efficient resource use through resources being applied to the most appropriate risks.

While periodic fee regimes are not new, risk-based fees for liquor licensing are relatively recent developments, with schemes in Victoria, Queensland, the ACT and New Zealand being introduced since 2007.

A number of risk factors have been found to have a link with alcohol-related harms. These include:

- licence type,
- extended trading hours,
- venue capacity,
- compliance history, and
- higher risk locations identified by higher priorities for intervention, density of licensed premises, assaults, anti-social behaviour, etc.

Other jurisdictions have utilised these risk factors in various ways to calculate a risk-based licence fee. Weightings can also be applied to various factors.

On the other hand, regulatory costs need to be closely examined to ensure efficient regulation and that fees do not represent an opportunity for inadequate or poorly focussed compliance regimes to be paid for by industry. A scheme should be constructed to provide the opportunity for licensees to lower their fees by maintaining safer, low-risk operations with strong responsible service of alcohol practices.

Where risk factors decline, so should the fee. This means that risk factors, their weightings and outcomes need to be reviewed on an annual basis.

In formulating a risk-based fee, the review believes that it is necessary to ensure that the structure is based on best evidence, research and consultation, particularly with industry.

## RECOMMENDATIONS

### **Recommendation 27:**

All liquor application fees prescribed under Schedule 1 of the *Liquor Regulation 2008* should be revised to align those fees as far as practical with the actual business cost of processing licence applications as part of the administration of the Liquor Act.

### **Recommendation 28:**

An indexation clause should be applied which allows licence application fees to be aligned with increases in the Australian Consumer Price Index every four years.

### **Recommendation 29:**

A contemporary periodic risk based licensing scheme – including periodic fees and risk based fee loadings as discussed in this review – should be introduced.

## 9.6 Trading hour controls

The Liquor Act adopts a standard liquor trading period for on-premises and take-away sales of 5am to midnight Monday to Saturday, and 10am to 10pm on Sundays. Restrictions apply to hotel and takeaway trading on Good Friday and Christmas Day, no takeaway alcohol sales permitted on these days.

A mandatory six hour closure period applies to all liquor licences or extensions of trading hours granted since 30 October 2008.

Extended trading outside of the standard period can be approved by the Authority. Applications for extended trading hours are subject to a Community Impact Statement (CIS), which requires the applicant to notify and consult with the local community, local police and local council in relation to the application. This requirement helps facilitate the Authority's consideration of the potential impact that extended trading hours would have on the local community.

Trading hours for a specific venue can be reduced by the Director General as a result of noise and disturbance complaints, or by the Authority as a result of disciplinary action. The Liquor Act also empowers the Director General and the Authority to reduce trading hours on their own initiative or on application by the licensee or the Commissioner of Police.

## SUBMISSIONS

The significant community debate that currently exists on the issue of liquor trading hours was reflected in the majority of submissions to the review. There was, however, a divergence of views between industry respondents and the community, health and research sectors.

Industry strongly opposed blanket reductions in trading hours and maintained the view that decisions on trading hours should be risk-based and location-specific, rather than a 'one size fits all' approach. Further, existing powers under the Liquor Act should continue to be used to achieve this.

For example, ClubsNSW argued that blanket reductions are unnecessary given the steady decline in rates of alcohol-related violence in recent years, while the AHA (NSW) asserted that no current study has identified that lockouts or blanket closing times are successful.

Coles Liquor considered the expectations of consumers regarding trading hours have broadened recently to demand increased access, variety and convenience in respect of any product or service. Coles Liquor believes licensed trading hours should reflect these expectations. Coles Liquor also believes the current standard trading hours should be maintained and not restricted in the absence of a compelling reason to do so.

In contrast to the industry's position, the most consistent response from the community, health and research sectors was that 24 hour trading should be abolished and blanket 3am closing be

introduced. There were also several calls for the so-called 'Newcastle solution' (which involves reduced trading hours, late hour entry restrictions or 'lock outs', and restrictions on certain drinks) to be trialled on a statewide basis.

In its submission, which was directly endorsed by a number of respondents, the NAAPA recommended that:

- all existing 24 hour liquor licences should be abolished and the current policy of not granting new 24 hour licences should remain in place,
- opening times for all licensed premises (including packaged licences) across NSW should be no earlier than 10am,
- standard closing times for all on-licence premises across NSW from Monday to Saturday should be midnight, with extended trading venues limited to 3am and lockouts (preventing entry for patrons) no later than 1am. Standard closing time for Sundays should remain at 10pm, and
- closing times for packaged licensed premises across NSW should be no later than 10pm; and existing licensees should be given no more than one year to incorporate these changes to their businesses.

The Australian Medical Association NSW recommended that:

- opening times for all licensed premises (both on- and off-licence) across NSW should be no earlier than 10am,
- closing times for off-licensed premises across NSW should be no later than 10pm,
- standard closing times for all on-licensed premises across NSW from Monday to Saturday should be 12am, with extended trading venues limited to 3am,
- standard closing times for on-licence venues for a Sunday should remain at 10pm, and
- lockouts (preventing entry for patrons) should be introduced for all extended trading on-licensed premises and should be no later than 1am.

The Australian Medical Association NSW considered that all existing 24-hour licences should be phased out over a two-year period, and that a seven hour mandatory closing period should apply to both new and existing licensed premises between 3am and 10am. (For existing licences this should be phased in over a two-year period.)

The Police Association of NSW suggested the imposition of a maximum closing time of 3am for all hotels across the state (unless a current earlier closing time has already been imposed), and a lockout from 1am for all hotels across the state (unless a current earlier lockout has already been imposed).

The NDARC advocated a trial of earlier closing times in precincts other than Newcastle, with a built-in, high quality evaluation to more accurately estimate its impact in reduced alcohol harms. NDARC argued that even modest restrictions on trading hours late at night are associated with significantly fewer alcohol-related crimes, especially violent assault.

In a related matter, the Authority recommended that to confirm a long standing practice of the Authority and its predecessors, section 53 of the Liquor Act should be amended to confirm the Authority's power to make a licence condition about hours of trade which are less than the standard hours.

Related to the issue of extended trading hours were certain recommendations made regarding liquor licence conditions. These included a call for all licensed premises to install CCTV and be subject to minimum noise restrictions. Merivale suggested that the use of incident registers be mandated for all venues at all times.

NAAPA and the Australian Medical Association NSW called for the sale of alcohol to cease 30 minutes prior to closing time, while Local Government NSW suggested mandatory safe late night transport options as a condition for certain venues.

There were also a number of calls for responsible service of alcohol marshals to be required as a mandatory condition for high risk venues (City of Newcastle, City of Sydney), and that a designated manager with appropriate training and skills be on duty after 12am (City of Sydney).

NAAPA also called for the introduction of mandatory RSA-related licence conditions for all new and existing on-premises licensed venues in NSW, including alcoholic drink restrictions (i.e. sale of 'shots', mixed beverages with more than 30mL of alcohol, ready-to-drink beverages with more than five per cent alcohol volume, beverage quantity limitations and time limitations on their sale) and additional RSA actions (i.e. RSA marshals, no drink stockpiling by patrons, ceasing sale and supply of alcohol 30 minutes before closing time).

## POLICY DISCUSSION

The review notes that the Liquor Act currently empowers the Director General and the Authority to reduce the trading hours of specific venues as a result of noise and disturbance complaints, and (in the case of the Authority) as a result of disciplinary action. The Liquor Act also empowers the Director General and the Authority to reduce trading hours on their own initiative or on application by the licensee or the Commissioner of Police.

It is evident that the suggested trading hour restrictions from the community, health and research sectors closely resemble the restrictions imposed on venues within the Newcastle CDB precinct by the former Liquor Administration Board. Specifically, the restrictions imposed a 1am lockout and a 3am closing time for designated venues that traded until 5am, and a 2.30am closing time for designated venues that traded until 3am.

It should be noted that the following other conditions were also imposed:

- a requirement to cease alcohol sales 30 minutes prior to closure,
- a prohibition on shots and mixed drinks with over 30ml of alcohol,
- a prohibition on ready to drink beverages stronger than 5 per cent alcohol/volume after 10pm, and
- a prohibition on the sale of more than 4 drinks to any patron at any one time.

The review notes that research undertaken on the effects of these restrictions point to a 37% reduction in assaults in the 18 months following their introduction in 2008.

In its submission, ClubsNSW highlighted the reduction in alcohol-related assaults in Newcastle is not statistically different from the decline in assaults across NSW where such restrictions were not imposed, noting:

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*In Wollongong, BOCSAR data show that assaults in and around licensed premises has fallen by 37 per cent between 2008 and 2012. In Penrith, they have fallen by 46 per cent, in Sutherland Shire, they have fallen by 45 per cent, and in Campbelltown, they have fallen by 43 per cent. None of these have implemented the 'Newcastle solution', yet each has noticed a larger reduction in alcohol-related assaults.*

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As noted earlier in the Environmental Scan section, alcohol-related assaults have been declining in NSW since the introduction of the current Liquor Act in 2008, with alcohol-related non-domestic violence assaults falling by 28 per cent state-wide over the 2008-12 period. In the same period, alcohol-related domestic violence assaults in NSW fell by 12 per cent, and violent incidents on licensed premises fell by 28 per cent. This is in contrast to the fact that rates of alcohol-related assault increased each year over the 5-year period prior to 2008 according to the NSW Bureau of Crime Statistics and Research.

The violent venues scheme under Schedule 4 of the Liquor Act was introduced late in 2008 to impose special licence conditions on licensed premises with high levels of alcohol-related assault (venues with 19 or more are categorised as Level 1; and venues with 12 to 18 are categorised as Level 2). The range of conditions imposed on those venues included:

- a mandatory 2am lockout (except for members of clubs),
- the cessation of alcohol service 30 minutes prior to close,
- no glass containers to be used after midnight,
- no shots and drink limit restrictions after midnight,
- 10 minute alcohol sales time out every hour after midnight or the active distribution of water and/or food, and
- one or more additional security measures.

Rounds of the scheme are implemented every six months on 1 June and 1 December of each year, when the list of violent venues is updated having regard to the most recently available alcohol-related violent incident data that is compiled by the NSW Bureau of Crime Statistics and Research.

The review notes that since the introduction of the scheme in 2008, there has been a significant reduction in the number of venues captured by the scheme. Over the two years to June 2013, there was a 63 per cent reduction in the number of venues captured by the scheme, while a 70 per cent reduction in the number of violent incidents in those venues was also recorded.

It is also relevant that while the outcome of the 2012 Three Strikes legislation has yet to be assessed, given the level of comment in industry submissions, its consequences and the need to reduce the risk of non-compliance appear to be understood by industry. The review is aware of anecdotal evidence that this is helping to drive behavioural improvements.

While the Authority has responsibility of setting trading hours under the liquor legislation, there is a dual approval process with local government in setting trading hours as part of the development approval process under the planning laws. The result is that where both approvals do not coincide, the more restrictive approvals apply.

In some cases, the liquor licence may contain trading hours that are beyond those approved by local councils. Local councils may impose trading hours that are more restrictive than standard liquor trading hours. This situation can lead to confusion.

Liquor trading hours are not defined in all development approvals. Only more recently have councils imposed trading hour conditions on development consents. Where they are imposed, the licensee must seek approval of both the Authority and the local council. This results in red-tape and can duplicate costs for the community, the licensee and regulators.

Since October 2008, the Liquor Act has imposed a compulsory 6 hour closure period on new licensed premises or those that amend their trading hours. This effectively prohibits those licensed premises from 24 hour trading where that privilege was not approved prior to that date. Some respondents to the review called for the restrictive provisions to be applied more widely to all licensed premises (i.e. pre-October 2008 licence and extended trading approvals).

The present situation means that new licensees can be at a competitive disadvantage compared to those licensees with previously granted extended trading hours. On the other hand, a reduction in extended hours previously granted could impact significantly on the value of the licensed premises.

While there is evidence that a reduction in trading hours can be associated with a reduction in alcohol-related assaults, other interventions also appear to achieve similar results. Often changes to the liquor trading operational environment of venues has meant that a number of conditions have been changed at the same time, and it is difficult to demonstrate that one of these interventions has been more effective than another.

The current multi-faceted regulatory approach with escalating responses in dealing with alcohol-related problems is supported by many of the submissions, and by the review. Provided this is enhanced with a better co-ordinated regulatory system (as detailed elsewhere in this report), and alcohol-related crime and incidents continue to trend downwards, the review supports the current approach.

While many of the submissions supported a 3am closure, (along with other prescribed conditions), there is insufficient research to inform the review that this is the optimal closure hour that would result in an acceleration of the rates of decline in alcohol-related violence evidenced since 2008.

The review also notes that closure of all late trading premises at a particular hour may result in considerable demand for the limited transport available at that time. Resulting queues and frustration experienced by patrons may present significant management problems for licensees, other businesses operating at those times, and law enforcement.

Therefore, the review does not support calls for blanket trading hours or a 'one size fits all' policy. Such a measure would unfairly penalise the vast majority of late trading venues that consistently operate within the law and make a positive contribution to the late night economy. The measure would also have a significant impact on local employment and economic activity.

Respondents also suggested that the Authority has the ability to take action against venues in a designated area following alcohol-related problems. This power is currently available to the Director General as a result of a disturbance complaint or in declaring precinct wide 'lock outs'. Better co-ordination between regulators headed by OLGR officers would assist the community in taking relevant action in these circumstances.

In regard to licensees seeking extensions to existing trading hours, the Authority stated:

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*The Authority is well aware of the data and of the experiences relating to alcohol-related violence. It has therefore been very reluctant to grant extended trading approval after midnight and has done so rarely. For example, over the last three years in the Sydney CBD, the Authority has refused over 40 per cent of all applications for extended trading hours. Outside the Sydney CBD approvals have been very rare.*

*There have been very few instances, in the Sydney CBD or elsewhere, where trading after 2:00am has been approved and those have principally been in situations where the extended hours represented an actual reduction in the hours traded until then.*

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Under section 11A of the Liquor Act, any licensed premises that seek changes to their authorised trading hours must comply with a six hour closure. Given the community consultation required in applications to extend trading hours and the cautious approach taken by the Authority in the approval of extended trading hours, the review does not consider that changes to the availability of extended trading applications are warranted.

It is also noted that the Authority has wide-ranging powers under the Liquor Act to impose conditions on a licence to mitigate risks associated with extended liquor trading, and can take action to restrict liquor trading hours via a licence condition or vary an extended trading authorisation upon application by the Director General or the Commissioner of Police, or on its own initiative.

A number of submissions called for standard conditions to be imposed on venues trading after midnight. These included calls for similar conditions that have been imposed as part of the 'Newcastle' approach and those mandated for premises listed under Schedule 4. Such conditions could be imposed throughout NSW by introducing regulations under the Liquor Act.

It is noted that in December 2012, a suite of conditions were imposed by regulation on all licensed premises in the Kings Cross precinct. This targeted approach followed concerns about alcohol-related violence in Kings Cross, particularly late at night, and the need to improve the safety and compliance of licensed premises in this 24 hour tourist precinct.



A 'one size fits all' approach does not take into account environmental risks or fit well with calls for targeted enforcement action. The current legislative framework is considered sufficient to deal with risk areas through a variety of enforcement initiatives, including:

- disciplinary action on an individual premises or a number of premises within a designated area which can include any or all of the conditions outlined,
- agreed operational changes as part of liquor accords,
- disturbances complaint processes, including precinct based approaches,
- issuing of directions, or
- voluntary actions including operational changes, RSA marshals, etc.

Given the statements by the Authority in relation to the granting of extended trading hours, the focus is on those premises that are already trading after midnight. There are a range of strategies being pursued on a precinct basis and it appears that these actions have resulted in reductions to alcohol-related violence rates.

The review considers that it is appropriate for any regulatory response to be evidence based and tailored to the circumstances, rather than applying a standard set of conditions that may not address specific issues or could result in unintended outcomes.

A number of submissions called for opening times for packaged liquor licences to be limited to 10am opening and 10pm closing. The current standard hours for packaged liquor licences are 5am until midnight Monday to Saturday and 10am to 10pm on Sundays.

On the other hand, larger retailers who have broadened their general trading hours argued that the current takeaway packaged liquor hours should be maintained.

The review is aware of instances where the Authority has granted restricted trading hours in relation to certain packaged licences where the circumstances of the case have justified a limitation. These generally relate to trading prior to 10am.

The Authority's submission called for confirmation of the long standing practice of the Authority and its predecessors to have the power to reduce trading hours of any licence below that of the legislated standard trading hours. It called for suitable amendments to section 53 of the Liquor Act. However, it is noted that section 53 of the Liquor Act already provides the Authority with specific powers to reduce trading hours below the standard trading period.

Despite increased availability of packaged liquor, there has been a reduction in overall alcohol-related violence.

Trading prior to 10am (or any reduction to standard trading hours) should be dependent on the resultant level of harm associated with trading during any period – whether it be prior to 10am or after midnight. The Liquor Act contains a variety of means that regulators and others can use to have restrictions placed on trading hours and other operational conditions to minimise impacts of licensed premises on the community.

## RECOMMENDATIONS

### **Recommendation 30:**

The current strategy of applying a targeted approach to reducing alcohol-related problems associated with licensed premises is supported and should continue.

### **Recommendation 31:**

The adoption of a standard set of conditions to be applied to all existing late trading venues is not supported.

**Recommendation 32:**

The existing wide-ranging powers to control liquor trading hours and apply restrictions to licensed venues under the Liquor Act should be better communicated and explained to the community and local government, including via the proposed new 'one-stop-shop' liquor and gaming website.

**Recommendation 33:**

Following the grant of a liquor licence, the Authority and the Director General through the disciplinary process should have sole responsibility for the variation of trading hours for a licensed venue.

**Recommendation 34:**

Local councils should be able to make submissions to the Authority for the liquor trading hours of an existing licensed venue to be varied.

**Recommendation 35:**

The current standard trading hours for packaged licences should remain unchanged.

## 9.7 Packaged liquor licences

A packaged liquor licence enables a licensee to sell takeaway alcohol on the licensed premises through a bottleshop or via home delivery, mail order or the internet.

A packaged liquor licence is subject to the following regulatory controls:

- packaged liquor may only be sold to the public for consumption off the premises;
- alcohol may be sold to employees and to other persons authorised to sell alcohol, for consumption off the premises; and
- tastings may be conducted on the premises, with or without charge.

Before applying for a packaged liquor licence, the applicant must prepare a community impact statement (CIS). An application for a packaged liquor licence that only sells via internet, mail order, fax or telephone requires a Category A CIS. Other packaged liquor licence applications require a more detailed Category B CIS.

The CIS allows consideration to be given to the likely impact of the proposed licence on the local and broader community, and gauge the level of community support for the proposal.

If a packaged liquor licence is granted in respect to a premises which carries out other business besides the sale of alcohol, then alcohol may only be sold in a separate area of the premises - the alcohol sales area. This area must be adequately separated from the other areas of business. For example in a supermarket, the alcohol sales area, including cash registers etc, must be separate from other parts of the supermarket. The sale or supply of alcohol for takeaway purposes must be the principal activity carried out in the alcohol sales area.

A packaged liquor licence cannot be granted to a general store unless the Authority is satisfied that there is no other take-away liquor service that is reasonably available to the public in the neighbourhood of the general store, and the grant of the licence would not encourage drink-driving or other alcohol-related harm. A general store includes a convenience store, mixed business or milk bar with a retail floor area not more than 240 square metres and is used primarily for the sale of groceries.

Additionally, a packaged liquor licence cannot be granted to a service station or take-away food shop.

## SUBMISSIONS

Apart from proposing a number of reforms aimed at reducing red tape and ensuring efficient regulation, the packaged licence sector, including the Liquor Stores Association, Coles Liquor and Woolworths, were generally supportive of the existing legislative framework that governs the operation of packaged liquor licences.

The Liquor Stores Association did recommend the removal of the mandatory six hour shutdown and offered alternative approaches if this was not adopted. As highlighted earlier, several respondents called for a reduction in trading hours for packaged liquor licences.

These proposals were opposed by the packaged licence sector, including the Liquor Stores Association NSW, Woolworths, and Coles Liquor, which argued that the expectations of consumers have broadened recently to demand increased access, variety and convenience in respect of any product or service they seek. (The issue of trading hours is addressed earlier in the report.)

In its submission, the Authority raised concern about packaged liquor licences, noting that there has been a large increase in the number of packaged liquor licences over the past decade as a result of both the National Competition Policy, that saw the removal of the 'needs' test for liquor licences, and of what it considered, more liberal licensing laws.

The Authority was particularly concerned that the Act, in its current form, might lead to a fairly uncontrolled expansion of mixed businesses selling liquor, which carried specific risks. As a result, the Authority considers that the test for approval of packaged liquor licences associated with mixed businesses might benefit from more clarity and a more rigorous threshold.

The Authority also noted that there is increasingly a link being recognised between takeaway alcohol sales and domestic violence. It further noted that this link should be taken into account when considering applications for new packaged liquor licences, in conjunction with rates of other alcohol-related violence and crime, secondary supply of alcohol to minors and pre-fuelling<sup>2</sup>.

The Outer West Domestic Violence Network highlighted the link between alcohol misuse and domestic violence but did not make any specific recommendations in regard to packaged liquor licences other than to propose that the issue of domestic violence is included as a key consideration under the liquor licensing process.

In a related issue, several respondents, including the NSW-ACT Alcohol Policy Alliance, the Cancer Council NSW, Local Government NSW and the City of Sydney, called for the introduction of saturation zones in areas identified as having too many licensed premises and/or too many associated alcohol-related problems, and a moratorium on the granting of any new liquor licences in those saturation zones, including packaged licences.

## POLICY DISCUSSION

As at 1 October 2013, there were 2,343 packed liquor licences in New South Wales. Of these, approximately 347 (15%) are limited to the sale of liquor only by means of taking orders over the telephone or by facsimile or mail order, or through an internet site.

Since the introduction of the existing Liquor Act on 1 July 2008 to 1 October 2013, 683 packaged licences had been granted and approximately 303 (44%) of these are limited to the sale of liquor only by means of taking orders over the telephone or by facsimile or mail order, or through an internet site.

<sup>2</sup> Pre-fuelling or pre-loading is an informal term which describes the activity of drinking large quantities of alcohol before going out socially

A breakdown of packaged licence numbers as at 1 July each year from 2008 to 2013 is outlined in **Table 9**. The table also shows the number of packaged licences that are held by some of the major liquor store retailers.

Packaged liquor licences	2008	2009	2010	2011	2012	2013
Total number of licences	1660	1739	1851	2006	2127	2295
New licences	20	80	115	166	125	179
Surrendered licences	0	1	2	11	4	11
Dan Murphy's <sup>a</sup>	20	26	33	37	44	50
BWS <sup>a</sup>	80	89	91	102	109	289
Woolworth's liquor <sup>b</sup>	152	152	169	181	178	14
Liquorland	206	207	215	223	229	228
1st Choice	5	8	12	14	17	19
Aldi	0	0	0	22	57	102
IGA	58	66	82	94	106	114

a. Includes 2 hotel licences for Dan Murphy's & 4 hotel licences for BWS in 2013  
 b. Many Woolworths packaged liquor licences changed name to BWS in 2012/13

**Table 9.** Packaged liquor licences at 1 July each year from 2008 to 2013

As noted by the Authority, there has been a significant increase in the number of packaged liquor licences. It is clear that the current regime has allowed there to be substantial growth in packaged licences across the State since 2008.

The review has considered the following questions:

- Do increases in packaged liquor outlets equate to increases in consumption?
- Do increases in packaged liquor outlets increase rates of anti-social behaviour and/or alcohol-related violence – particularly domestic violence?

As noted previously, the per capita consumption of alcohol in Australia remains steady. While there is inconclusive research that links liquor outlet density with increased alcohol consumption, longitudinal and cross-sectional research suggests that there is a link between alcohol-related assaults and liquor outlet density. However, the research also acknowledges that there are certain qualifications to some findings, as discussed earlier in the report.

Submissions also pointed to research that identified a nexus between takeaway liquor sales and alcohol-related domestic violence. However, the Authority stated that it takes this link into account in considering applications for new packaged liquor licences. The mechanism and threshold for this consideration was not articulated in its submission.

BOCSAR data indicates that the rate of domestic assaults has been fairly stable since 2008 with an overall increase of 4 percent per 100,000 population between June 2008 and June 2013. There has been a 38.3 per cent increase in the number of packaged liquor licences in New South Wales over the same period.

Although the rate of domestic violence has been relatively stable, this does not imply the rate is acceptable, but that there does not appear to be a direct correlation between rates of domestic violence overall and the state-wide increase in the number of packaged liquor outlets.

The Authority stated that it also considers the rate of other alcohol-related violence and crime, secondary supply of alcohol to minors and the issue of pre-fuelling. The Authority often encounters the argument that if there is already a significant number of licensed premises in the area, or if the number is proportionally above the state average for licences or for the particular licence type, then granting another licence will affect the distribution of sales but not the total volume of sales. This is not supported by current research.

The review is encouraged by the measured approach that the Authority has taken in determining the social impact of packaged licence applications. Under the Guideline - Consideration of social impact under Section 48(5) of the *Liquor Act 2007*, the Authority states:

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*While the statutory focus has shifted from the question of whether there is a need for a new liquor business, the number of existing liquor businesses in a locality and the cumulative impact of a further liquor outlet may be relevant to the issue of overall social impact. If so, it will be considered by the Authority in determining the Relevant Application. For example, stakeholders may have concerns that a net increase in the availability of liquor services in an area that already has a high density of liquor outlets might exacerbate prevailing levels of alcohol-related harm and disturbance. Alternatively, the lack of licensed venues in a local or broader community or low documented levels of alcohol-related harm or disturbance in a community may be factors identified in support of the proposed licensed premises. These issues should be addressed in submissions to the Authority.*

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An examination of recent decisions shows that the Authority has taken into account data relating to:

- domestic violence rates (alcohol-related and non-alcohol-related),
- alcohol-related non-domestic assault rates,
- alcohol-related offensive behaviour,
- Socio-Economic Indexes for Areas (SEIFA) data,
- unemployment rates, and
- Computerised Operational Policing System (COPS) data.

The Authority has also considered views expressed about contributions to underage drinking, public drinking, and pre-fuelling, as well as mitigation strategies, in determining applications.

This approach has resulted in a number of packaged licence applications being refused.

The review therefore considers that the matters taken into account by the Authority for determining packaged licence applications are appropriate.

However, elsewhere in this Report, the review has recommended that the current liquor CIS process and the development approval process by local councils be merged. If this recommendation is adopted, local councils would approve development applications based, amongst other matters, on the EVAT. With that in mind, the review considers that the EVAT could be reviewed to ensure a better mix of indicators, similar to those considered by the Authority, are included where available.

## RECOMMENDATIONS

### **Recommendation 36:**

If the Environment and Venue Assessment Tool process remains in place, the data contained in the Tool should be reviewed to ensure a better mix of indicators, similar to those adopted by the Authority, which are relevant to the type and risk of the application sought.

### **Recommendation 37:**

The indicators used in the tool should include the current density of packaged liquor outlets and domestic violence rates.

### **Recommendation 38:**

The possibility of including information in the EVAT relating to underage drinking, public drinking and pre-fuelling be explored.

### **Recommendation 39:**

If the Environment and Venue Assessment Tool process is not adopted, the present framework should remain in place.

## 9.8 Small bars

As part of the Government's Kings Cross Plan of Management, amendments were made to the Liquor Act to introduce a small bar licence from 1 July 2013. The licence is limited to a patron capacity of 60 persons, and provides an alternative for patrons who prefer a small, intimate venue and a quiet night out.

The introduction of a small bar licence also recognised that larger venues which attract significant numbers of patrons can contribute to alcohol-related violence and anti-social behaviour.

The Liquor Act requires the Minister to review the small bar provisions to determine whether the policy objectives of those amendments remain valid and whether the terms of the amendments remain appropriate for securing those objectives. The review is to be undertaken in 2016, with a report to be tabled in Parliament before 1 January 2017.

A number of respondents (including City of Sydney, Raise the Bar, Potts Point Partnership, National Live Music Office, Restaurant and Catering Australia) called for patron capacity to be increased to 120 and for small bars to be subjected to the same rules and regulations as other licence types (Waverly Council and NAAPA).

However, given the recent commencement of the small bars legislation and the statutory review noted above, the review does not consider it appropriate to make recommendations on this matter.

## 9.9 Producer/wholesaler licences

Producer/wholesaler licences apply to the producers of wine and wine-related products, beer (brewers), spirits (distillers), and wholesalers.

A producer/wholesaler licence allows wholesalers to sell liquor to other liquor licensees at any time on the licensed premises. The licence allows brewers and distillers to sell the licensee's product by takeaway on the licensed premises on any day during the standard trading period or approved extended trading hours. Brewers and distillers can also sell the licensee's product to conduct tastings on the licensed premises.

The licensee's product for brewers and distillers is defined as a product that has been produced on the licensed premises, and is uniquely the licensee's (or a related corporation of the licensee's) own product.

Wine producers can sell liquor in a variety of settings under a producer/wholesaler licence.

A producer/wholesaler licence enables a wine producer to:

- sell the licensee's product to other licensees on the licensed premises,
- sell the licensee's product to the public on the licensed premises,
- conduct tastings of the licensee's product on the licensed premises, with or without charge,
- operate multiple premises under the one licence in the same wine region, or
- sell any liquor made from fruit grown on the licensee's premises or a related vineyard.

'Licensee's product' for a wine producer is defined as wine that must be uniquely the licensee's (or a related corporation of the licensee's) own product and it must contain at least the following percentage of wine:

- 50%—in the case of wine that has been produced by or under the direction of the licensee (or a related corporation of the licensee) on the wine producer's licensed premises or a vineyard related to the licensed premises, or
- 85%—in the case of wine that has been produced on the licensee's behalf, or under the direction of the licensee or a related corporation of the licensee, from fruit grown on the wine producer's licensed premises or a vineyard related to the licensed premises.

A licensee's product that is not wine must be produced on the wine producer's licensed premises (or a vineyard related to the licensed premises) from fruit grown on the licensed premises or vineyard. Examples of these products include cider and beverages made from citrus and stone fruits.

Wine producers can obtain a drink-on-premises authorisation, which allows any type of liquor to be sold for consumption on the wine producer's licensed premises. Examples include the operation of a bar or the sale of liquor with other products and services such as meals, accommodation, functions and concerts.

Wine producers can also sell the licensee's product to the public at wine shows, and producers' markets and fairs. This enables wine producers to conduct tastings and sell takeaway wine.

Sales can only be made at a wine show if it is held by a recognised wine or vineyard association or industry association. Sales can only be made at a producers' market or fair if the primary reason for the market or fair is to allow farmers or primary producers to display and sell their products directly to the public.

The market or fair must include a minimum of 10 farmers or primary producers displaying their produce for sale directly to the public. The 10 farmers or primary producers need not all be wine producers – they can produce other food and beverage products. The market or fair must also be promoted as a market or fair at which farmers or primary producers display and sell their products directly to the public.

## SUBMISSIONS

Submissions from the producer/wholesaler sector tended to focus on minor amendments and related authorisations to facilitate further development, achieve a level playing field with similar licence types or to reduce red-tape.

For example, the Hunter Distillery, the New England Brewing Company and the Craft Beer Industry Association called for parity for all holders of producer/wholesaler licences, noting their inability to exhibit at farmers' markets and the inability to apply for a drink on-premises authorisation.

Yarralaw Springs Wines and the Merino Country Vignerons' Association argued that the definition of 'farmers markets', which requires a minimum of 10 farmers or producers present, discriminates against smaller NSW towns which cannot meet the requirement and has implications for the viability and competitiveness of producers in those regions.

The Riverina Wine Grapes Board was concerned that the existing legislation provides for persons that are not related to the wine industry in terms of assets (planted vines, processing infrastructure or financial lease arrangements) to participate at the potential expense of existing industry operators.

The NSW Small Business Commissioner suggested that the OLGR consider implementing more rigorous application processes for some licence types, such as the producer/wholesaler licence, so that licences meet the legislated criteria and to achieve a level playing field in that industry sector.

However, the Wine Industry Association indicated that it supported the current licensing arrangements which allow genuine grape growers and winemakers to operate under a producer licence. The Association noted that while it has been suggested that the NSW definition of a producer be expanded to take in the concept of 'virtual wineries' (i.e. where the operator neither owns a vineyard nor a winery), it contends that there is no support for this from the industry generally.

## *POLICY DISCUSSION*

The introduction of the existing Liquor Act resulted in the modernisation of licensing arrangements for wine producers to assist regional tourism and regional economies. The reforms enable wine producers to charge for tastings if desired, make cellar door sales, and operate multiple premises in a wine region under the one licence, and to conduct tastings and sell their wine directly to the public at wine shows and farmers' or producers' markets or fairs.

It also enables wine producers to obtain an authorisation to allow liquor consumption on the premises, such as in a restaurant or motel, or at an event such as a concert in the vineyard. Wine producers can also sell blended wines so long as their wine contained the prescribed minimum percentage of product manufactured by the licensee, as well as sell products that they made from types of fruit other than grapes that are grown on their premises. The previous 45 litre limit on cellar door sales was also abolished.

In contrast to wine producers, the introduction of the producer/wholesaler licence simply allowed brewers and distillers to conduct tastings and sell directly to the public at their licensed premises.

However, the review does not believe there is a valid reason to continue to discriminate against these producers, particularly as the existing framework allows wine producers to sell other forms of liquor on their licensed premises, including beer and spirits under a drink on-premises authorisation.

While it is possible for brewers and distillers to do this, they must apply for a separate liquor licence, such as a restaurant (with a primary service authorisation), small bar or hotel licence. This imposes unnecessary costs and red-tape.

Similar to reforms introduced in Victoria in 2011, the review considers that there should be equity between all producers in the sale of liquor on licensed premises and at promotional events such as farmer's markets.

The review also considers that the requirement for a producers' market or fair to include a minimum of 10 farmers or primary producers should be removed. The inability of event organisers to attract a minimum of 10 farmers or producers should not inhibit a producer's ability to participate in an event.

However, the review agrees that a producer's market or fair should include a minimum of 10 stall holders of any kind. The review also considers that the existing requirement for a market or fair to be promoted as a market or fair at which farmers or primary producers display and sell their products directly to the public should be retained.

## *RECOMMENDATIONS*

### ***Recommendation 40:***

The framework for producer/wholesaler licences, as it applies to wine producers, should be extended to the producers of beer and spirits to enable them to apply for a drink on-premises authorisation and to conduct tastings and takeaway sales of their products at a producer's market or fair.

### ***Recommendation 41:***

The definition of a producer's market or fair should be amended to provide that a minimum of 10 stall holders of any kind is required, rather than a minimum of 10 farmers or producers.



## 9.10 Limited licences

A limited licence allows liquor to be sold at functions held by a non profit organisation (known as a “non-proprietary association”).

A “function” is any dinner, ball, convention, seminar, sporting event, race meeting, exhibition, performance, trade fair or other fair, fete or carnival, or any other event or activity, that is conducted for public amusement or entertainment or to raise funds for any charitable purpose. For a surf life saving club, a “function” includes any gathering of members of the club (and their guests) organised by the club for social purposes.

With the exception of a trade fair (such as a wine or food show), a limited licence only allows liquor to be sold for consumption at the function – it cannot be taken away from the function.

Approval can be sought to sell liquor at a single function or at up to 52 functions in a 12-month period under a limited licence. When applying for a limited licence, notification must be provided to the local council and police within two working days of lodging the application. The Authority is responsible for determining all licensing proposals. It takes into consideration any submissions made by police, the council and other stakeholders.

An application must be received by the Authority at least 28 days before the date of the first function. This allows time to process the application and consider any submissions received from stakeholders.

### *SUBMISSIONS*

Submissions from the Rock Valley Hall, Davidson Volunteer Rural Fire Brigade and the Authority suggested that NSW adopt a similar approach to the one implemented by Queensland in 2013, by exempting not for profit organisations from having to obtain a liquor licence for one-off or infrequent functions. However, the Authority also suggested that such a reform would need some constraints, which might include limits on the size and number of events per year and a requirement that police be notified.

For sporting clubs seeking a multi-function limited licence, the City of Newcastle suggested that they be required to achieve a level one accreditation in the Australian Drug Foundation’s Good Sports program, where this program is available. The City of Newcastle considered that while the role of alcohol in Australian life is acknowledged, there must also be a commitment to the demonstration of safer and healthier drinking practices.

With respect to the grant of a limited licence on council owned and/or managed property where no lease agreement exists to ensure security of tenure and exclusive use, Sutherland Shire Council considered that the land in question is public and therefore, licensees have no authority to request an intoxicated patron to leave the licensed area.

Sutherland Shire Council suggested that this could be rectified by requiring applicants to:

- a. gain consent from the land or building owner,
- b. show documentary evidence via lease or licence indicating that the licensee will have sufficient control over the premises to enforce intoxication provisions, and
- c. for premises not previously licensed, the completion of a statutory declaration stating that:
  - i. the premises does not require development consent, or
  - ii. a valid development consent is held.

## POLICY DISCUSSION

Queensland's recent liquor reforms mean that non-profit organisations are generally not required to apply for a liquor licence if they wish to sell alcohol at a function. However, a range of limitations and conditions apply, including that the event must be less than eight hours in duration and occur during the standard trading period.

Restrictions also apply where the organisation or a licensee has been given a recent non-compliance notice, breached a licence condition regarding alcohol-related disturbances or public disorder, or convicted of a serious liquor offence.

An opportunity exists to adopt similar reforms in New South Wales for infrequent (up to six per year) events to remove red-tape and reduce costs for both non-profit organisations as well as regulators. Such exemptions should also be subject to prescribed constraints to ensure that appropriate events are conducted by bona-fide non-profit organisations, and to promote a high level of confidence that the liquor laws will be complied with.

There should also, as suggested by the Authority, be a limit to the size of a function. In this regard, the review considers that the sale and supply of liquor from a single bar should apply. It is also considered that the following requirements should apply:

- food and free water must be available,
- liquor may only be sold and supplied between 6am (as permitted under the current liquor laws) and midnight, with after midnight functions requiring a licence to be obtained as is currently required,
- all persons selling and serving liquor at the event must have completed responsible service of alcohol training,
- adequate adult supervision must be maintained at any time when minors are present, and
- police and liquor inspectors must be permitted access to the premises.

The sale and supply of liquor should be ancillary to an event and the nature of the event should be limited to fundraising activities that will be of benefit to the organisation or the local community.

The exemption should be subject to requirements prohibiting the sale and supply of liquor to an intoxicated person.

Local police should be notified at least 28 days before the start of the event. This will enable police to liaise with the non-profit organisation and discuss any concerns they may have regarding the event or the organisation's eligibility for an exemption from having to acquire a liquor licence. For similar reasons, and in the case of an event that is proposed to be held on council owned and/or managed property, the local council should also be notified at least 28 days prior to the event.

Events that do not comply with the above requirements should continue to be required to be licensed via a limited licence.

Similar to the new laws in Queensland, an organisation should not be able to access the exemption (and should therefore be required to obtain a limited liquor licence) if the organisation or an executive officer of that organisation has within the previous five years been given a non-compliance notice, breached a licence condition regarding alcohol-related disturbances or public disorder, or been convicted of a serious liquor offence. A range of controls should apply similar to those that have been adopted in Queensland.

Non-profit organisations that conduct in excess of six functions each year should continue to be required to obtain an on-going liquor licence (currently referred to as a multi-function limited licence). This licence should allow the organisation to conduct up to 52 functions each year as is currently provided for under the Liquor Act. However, the need to have each function approved by the Authority should be dispensed with, subject to functions being notified to the local police and the local council.

As identified by the City of Newcastle, Good Sports is a community program of the Australian Drug Foundation<sup>3</sup>. It provides free support to sporting clubs to help change their culture and reduce high risk drinking. A level one accreditation provides guidance to sporting clubs in relation to the liquor laws, bar management strategies and smoke-free environments.

While the review supports the City of Newcastle's proposal in-principle, it does not believe it is appropriate to mandate a requirement which may only be available to some sporting clubs. Therefore, the review suggests that the Good Sports program be promoted to sporting clubs as part of the application process for multi-function limited licences, and it be a factor taken into account when considering whether a licence should be approved.

The review does not strictly agree with the interpretation of the application of the liquor laws as suggested by Sutherland Shire Council. As a result, the Council's proposal is not supported.

## RECOMMENDATIONS

### ***Recommendation 42:***

Non-profit organisations should be exempted from having to acquire a liquor licence for up to six events a year for fundraising activities that will be of benefit to the organisation or the local community.

### ***Recommendation 43:***

The exemption should only apply if the sale and supply of liquor is ancillary to an event and the following conditions are complied with:

- food and free water must be available,
- liquor may only be sold and supplied between 6am and midnight,
- all persons selling and serving liquor at the event must have completed responsible service of alcohol training,
- adequate adult supervision is maintained at any time when minors are present, and
- police and liquor inspectors must be permitted access to the premises.

### ***Recommendation 44:***

The exemption should be subject to requirements prohibiting the sale and supply of liquor to an intoxicated person.

### ***Recommendation 45:***

A non-profit organisation should be required to provide details of the function to local police 28 days prior to the event, and also to the local council in the case of an event that is proposed to be held on council owned and/or managed property.

### ***Recommendation 46:***

Holders of a multi-function limited licence should not be required to obtain approval for each function held under the licence subject to notification to the local police and local council.

### ***Recommendation 47:***

The Good Sports program should be promoted to sporting clubs that apply for a multi-function limited licence, and it should be a factor to be taken into account when considering whether a licence should be approved.

<sup>3</sup> <http://goodsports.com.au/about/the-program/>

## 9.11 Licensed vessels

The Liquor Act enables vessel operators to apply for an on-premises licence to allow liquor to be sold to passengers for consumption on a vessel. Liquor may be sold from one hour before the vessel starts any voyage or passage until 30 minutes after the voyage or passage is completed, or at such other times, or in such other circumstances, as the Authority may authorise.

A number of statutory licence conditions and requirements also apply to licensed vessels, including:

- food and free water must be made available whenever liquor is sold or supplied, and
- an incident register must be maintained at all times if authorised to sell liquor after midnight.

A primary service authorisation can also be granted to allow the licensee to make individual sales of liquor that are not with or ancillary to another product or service eg. a harbour cruise. However, the primary purpose of the business or activity carried out on a licensed vessel cannot be the sale or supply of liquor ie. operating primarily as a floating bar.

### *SUBMISSIONS*

The City of Sydney raised a number of issues concerning the impact of certain licensed vessels (party boats), particularly around disembarkation points. It suggested working with NSW Police and OLGR to draft guidelines for a disembarkation plan of management. Its suggestions included:

- a new provision to impose conditions on licensed motor vessels to deal with the impacts that arise,
- a disembarkation plan of management is added as a retrospective and required condition for all licensed motor vessels,
- a condition for all licensed motor vessels to have disembarkation locations to be authorised by the relevant local authority (e.g. council) and police commander , and
- all motor vessels required to have CCTV, especially at the bar area and to maintain footage for 28 days to confirm compliance with responsible service of alcohol.

### *POLICY DISCUSSION*

There was limited information provided by the City of Sydney on the issues involved. However, the impact of party boats appears to be confined to Sydney Harbour.

There is no doubt that regulators have difficulty in managing vessels. Many vessels are pre booked for private functions and patrons can alight at a number of wharves and cause problems for the surrounding neighbourhood. At night, noise levels from some boats can disturb the amenity of residential areas, and it is often difficult for the community to identify the name or liquor licence number of the vessel.

Additionally, there are unique risks associated with the service and supply of alcohol on vessels and these risks should be mitigated.

The conditions sought by the City of Sydney can be imposed by changes to the Liquor Regulation (all vessels) or imposed by the Authority or the Director General on particular vessels.

## RECOMMENDATION

### **Recommendation 48:**

There should be further discussions between the City of Sydney, OLGR and NSW Police to agree a suitable way forward to the imposition of appropriate licence conditions on vessels with existing licences and those applying to new market entrants.

### **Recommendation 49:**

There should be discussions with vessel operators prior to appropriate licence conditions being finalised.

## 9.12 Intoxication and violent conduct

The Liquor Act mandates the need for licenses and staff of licensed premises to prevent intoxication and violent conduct on those premises. The Act makes it is an offence for:

- a licensee or staff to serve liquor to an intoxicated person,
- a licensee to permit intoxication, or indecent, violent or quarrelsome conduct on licensed premises,
- Intoxicated, violent or quarrelsome persons refuse to leave licensed premises when ordered, and
- such persons to attempt to re-enter the premises or remain in the vicinity without reasonable excuse.

The Liquor Act also provides licensees with the power to indefinitely bar a person who has been directed to leave their premises because they were intoxicated, violent, quarrelsome or disorderly. The Act includes a definition of “intoxicated” to assist licensees, staff and police in complying with and enforcing the law prohibiting entry by intoxicated persons, or the sale or supply of liquor to intoxicated persons.

The Act also requires the Director General to issue guidelines to provide further guidance to industry in determining whether a person is intoxicated.

For the purposes of the Liquor Act, a person is intoxicated if:

- a. the person’s speech, balance, co-ordination or behaviour is noticeably affected, and
- b. it is reasonable in the circumstances to believe that the affected speech, balance, co-ordination or behaviour is the result of the consumption of liquor.

## SUBMISSIONS

Some submissions represented that the current definition of intoxication is subjective and imprecise, and therefore not suitable. For example, the AHA (NSW) argues that the current variables within the definition have led to considerable uncertainty and varying on-the-spot interpretations as to what constitutes ‘approaching intoxication’ and at which point a person must be refused service.

The AHA (NSW) also argues that the definition is too broadly defined, and does not take into account the various potentially contributing factors and the gradual stages of intoxication. Further, it contends the definition does not provide sufficient consistency and guidance for those that need to make an unchallengeable on-the-spot assessment. The AHA (NSW) suggests a new definition of ‘unduly intoxicated’, which is based on a combination of signs of intoxication, as well as a reasonable belief that the signs are due to consumption of liquor.

Restaurant and Catering Australia also suggests adding the word “unduly” in the definition of intoxication.

The Star also advocated for a change in the definition of intoxication to make it more practical by harmonising the definition across all Australian states and territories, and in particular, a definition that requires a minimum of three observable 'signs'.

The NSW Police Force submit that the Liquor Act should be amended to remove a defence that is currently available to licensees that are breached for permitting intoxication on the licensed premises if they can demonstrate that they took 'reasonable steps' to prevent intoxication on the licensed premises.

Police argue that because the "reasonable steps" defence is not expressly defined under the Liquor Act, courts apply the term by giving the words their ordinary meaning. As a result, police contend that a practice has developed whereby licensees rely on their internal policies, staff training and other subjective materials to establish, on the balance of probabilities, that they have not permitted intoxication on their premises.

Police consider this approach does little to address the facts of a matter and effectively allows any intoxication breach to be successfully defended on the basis that they took 'reasonable steps'.

A number of submissions referred to the issue of banning orders against persons that could apply to a precinct or across NSW. For example, the Manly Council Community Safety and Place Management Committee recommended that banning orders for up to six months should be able to be applied to all venues in a precinct or an accord area with the consent of the Police Commander.

Byron Shire Council suggested that NSW-wide systems for reporting and managing individual patrons should be introduced (i.e. NSW-wide lockouts), while C.inc Hotels noted a need for a more flexible regime for licensees and/or local liquor accords to ban problem patrons from not just only the licensed premises or their immediate vicinity, but also from the accord area itself.

## POLICY DISCUSSION

The reasonable steps defence available to licensees is contained in section 73 (4) of the Liquor Act. It provides that if an intoxicated person is on licensed premises, the licensee is taken to have permitted intoxication on the licensed premises unless the licensee proves:

- a. that the licensee, and the licensee's employees or agents, took the steps set out in subsection (5) or all other reasonable steps to prevent intoxication on the licensed premises, or
- b. that the intoxicated person did not consume alcohol on the licensed premises.

Under subsection 73 (5) of the Act, the relevant steps are described the following actions:

- a. asked the intoxicated person to leave the premises,
- b. contacted, or attempted to contact, a police officer for assistance in removing the person from the premises,
- c. refused to serve the person any alcohol after becoming aware that the person was intoxicated.

The review has been provided with numerous examples where the 'reasonable steps' defence has successfully been used in Court to defeat regulatory prosecutions despite concessions from licensees that intoxicated persons were detected on the licensed premises and no action was taking to remove that person until police or OLG inspectors intervened.

Based on the evidence provided by the NSW Police Force, it is apparent that unintended consequences have arisen as a result of the Court's interpretation of the 'reasonable steps' defence.

The review does not consider that a licensee should be able to simply rely upon evidence of internal policies and systems that are meant to be in place to prevent intoxication as a defence to a prosecution of permitting intoxication.

The review is aware that the 'reasonable steps' defence was intended to only be available in circumstances where a licensee or staff member has taken proactive steps to prevent intoxication on the premises and not as a reaction to a regulatory intervention.

It is for this reason that the review agrees that the defence has become an inhibitor to regulators when attempting to redress liquor operations that do not align with the policy objectives of the Liquor Act.

Although intoxication is a risk whenever liquor is sold, the review considers it is important to protect the integrity of the law and to promote diligence in detecting the early signs of intoxication.

The review does not support proposed changes to the definition of intoxication, such as to include a concept of “unduly intoxicated”. Despite what was said in submissions in support of this change, there are concerns that it could weaken the definition of intoxication and add to uncertainty by introducing the concept into the law that a person can be duly intoxicated.

The review accepts that the interpretation of intoxication is subjective. However, the legislation reflects the common behavioural signs associated with being intoxicated, notwithstanding that intoxication levels and the amount of alcohol consumed can vary from person to person. The review notes that the liquor laws also recognise that tolerance to alcohol between people can vary and that it is not appropriate to apply an objective test such as a blood alcohol test, to determine whether a person is intoxicated. For this reason, the review does not consider that the subjectivity of assessment make a valid case for changing the definition.

In relation to banning orders, the review notes that the Government has introduced precinct banning orders into Kings Cross. The review recommends that the outcomes of this initiative should be considered before there is an expansion to other areas.

## RECOMMENDATION

### **Recommendation 50:**

The ‘reasonable steps’ provisions in section 73(4)(a) of the *Liquor Act 2007* should be removed, or alternatively, the Liquor Act should be strengthened to confirm that a licensee has permitted intoxication on a licensed premises unless reasonable steps to be defined in the legislation can be demonstrated to have been implemented prior to regulatory intervention.

## 9.13 Underage drinking

The Liquor Act prohibits the sale and supply of liquor to, and consumption of liquor on licensed premises by, persons under 18 year (minors). The Act makes it an offence to:

- sell liquor to a minor,
- supply liquor to a minor on licensed premises,
- supply liquor to a minor away from licensed premises, unless it is supplied by a parent or guardian, or a person authorised by a parent or guardian, and
- send a minor to licensed premises to obtain liquor.

A number of offence provisions also apply to minors who consume liquor on licensed premises or attempt to obtain liquor from licensed premises.

Away from licensed premises, the law allows a parent or guardian to supply liquor to their child in a private setting, such as the family home.

The law also enables a minor’s parent or guardian to authorise liquor to be supplied to their child by another adult away from licensed premises.

Significant penalties can be imposed where liquor is unlawfully supplied to a minor, with penalties of up to \$11,000 and/or 12 months imprisonment applying. For licensed venues, permitting liquor to be supplied to a minor can also incur a strike under the Three Strikes disciplinary scheme.

It is considered that these significant sanctions are both an appropriate penalty and a deterrent to help prevent liquor being supplied unlawfully to minors.

## SUBMISSIONS

A number of submissions argued for the need to strengthen the Act to prevent underage drinking.

The NDARC pointed to the importance of targeting young people pointing out that they are especially vulnerable to alcohol-related harms, and recommended:

- working collaboratively with the Federal Government to develop and implement legislation to tighten current controls on alcohol price and advertising, especially through a volumetric tax and strengthening advertising codes,
- developing and implementing NSW-based legislation to tighten current controls on alcohol advertising in New South Wales,
- exploring the implementation of the Climate schools program state-wide, as an effective school-based intervention, in co-ordination with the Department of Education and Communities,
- expanding the availability of programs for high-risk young people, especially high-risk Indigenous Australians, that its research is showing to be effective.

NAAPA recommended:

- amendments to the Liquor Act to prohibit the unsafe provisions of alcohol or where there is inadequate supervision of the minor,
- require written permission to be obtained from the minor's parent or guardian consenting to alcohol being supplied, and
- development of a public education campaign that focuses on the legal and health consequences associated with supplying alcohol to minors.

The City of Newcastle recommended that, where possible, underage drinkers should be provided with an opportunity to participate in the Your Choices program conducted by police or other diversionary programs that outline the legal and health consequences of underage drinking.

Mr Douglas Tutt proposed that the Liquor Act be amended to enable controlled operations to be conducted, whereby minors are used to purchase alcohol to test compliance by liquor outlets. Mr Tutt noted that similar controlled operations involving minors have been used to test compliance by tobacco retailers for a number of years.

Mr Tutt also recommended that the law be amended so that a person who has control of private premises must not allow minors to drink alcohol, unless the person is the minor's parent or guardian.

Other measures proposed in submissions included on the spot fines of at least \$500 for minors seeking to enter a premises using fake identification, and that the risk of supply of alcohol to minors through online sales be considered for future enforcement activities.

Noting some apparent inconsistencies in access to licensed premises by minors, the operator of the Crescent Head Tavern suggested removing the current requirement that persons under 18 must be with a responsible adult while in a bar area, to allow persons under 18 in a bar area while dining for a limited period or while in the company of a person 18 years or older for the purpose dining only.



## POLICY DISCUSSION

On 12 September 2013, the Social Policy Committee of the NSW Legislative Assembly reported to the NSW Parliament on its inquiry into the provision of alcohol to minors by parents and guardians. The report specifically considered whether:

- a. provisions in the Liquor Act, which make it illegal for persons to sell or supply alcohol to people under the age of 18 years, including in homes, parks, halls and public places generally, are sufficient,
- b. provisions in the Liquor Act, which provide that a person must not supply liquor to a minor on any premises other than licensed premises unless the person is a parent or guardian of the minor, remain appropriate,
- c. the defence against prosecution for an offence of providing liquor to a minor if it is proved that the defendant was authorised by the minor's parent or guardian to supply liquor to the minor, remains appropriate,
- d. there is broad community understanding of the rights and responsibilities of parents, guardians and responsible adults regarding the provision of alcohol to minors,
- e. New South Wales can benefit from experiences in other jurisdictions in relation to the provision of alcohol to minors by parents, guardians or responsible adults; and
- f. any other related matters.

The inquiry's report made a number of recommendations, including that the liquor laws be strengthened to require responsible supervision where alcohol is supplied to a minor in a private setting.

It also recommended a public education campaign, as well as a dedicated website, to ensure the community is aware of the legal and health consequences of minors being supplied liquor.

However, the inquiry found that an approach is needed that balances the rights of parents to make private decisions on how to educate their children about alcohol, with community expectations that alcohol be supplied responsibly.

The Government is currently considering the Committee's recommendations, and will provide a response by the due date of 12 March 2014.

The liquor laws make a clear distinction between liquor supplied to a minor on licensed premises and liquor supplied to a minor in a private setting by a parent or guardian. The law recognises that while it is unlawful for any person to supply liquor to a minor on licensed premises, it is generally appropriate for parents and guardians to make decisions involving their children in the family home or other private settings.

However, the review considers that the concept of responsible supervision in circumstances where liquor is supplied to a minor should be explored further to provide clear parameters for the community and police in determining whether liquor can be supplied to a minor.

A responsible supervision test, which has been adopted in some other Australian jurisdictions, can take into consideration a number of factors, including:

- the age of the minor,
- the quantity and type of alcohol supplied to the minor,
- whether the responsible adult and/or the minor are intoxicated, and
- whether food is available to the minor.

This Liquor Act review acknowledges that the Government is currently considering the report of the Social Policy Committee of the NSW Legislative Assembly on its inquiry into the provision of alcohol to minors. It is also noted that the Government's response is due to be tabled in Parliament by 12 March 2014.

It is appropriate that the Government's response to that report be informed by this review. Accordingly, the review supports the introduction of a responsible supervision test in the Liquor Act to ensure any liquor supplied to a minor by a parent or guardian, or with the consent of a parent or guardian, in a private setting is done responsibly.

The review also supports an enhancement to Government efforts to improve community awareness around the underage drinking laws, including dedicated websites, the use of social media and multi media advertising.

The review has considered the conduct of controlled operations to test compliance with the underage drinking laws, and considers that there are significant issues in sending minors into licensed premises to deliberately purchase alcohol in a manner that is illegal, given the nature of alcohol and the environment within licensed premises. Testing compliance with best practice behaviour by licensed premises (which is to request proof of age from any person that appears to be under 25 years of age) can be alternatively achieved using young looking adults ie. 18 and 19 year olds.

## RECOMMENDATIONS

### **Recommendation 51:**

The Government, in responding to the Social Policy Committee of the NSW Legislative Assembly inquiry into the provision of alcohol to minors, should consider the introduction of a responsible supervision test in the Liquor Act to ensure any liquor supplied to a minor by a parent or guardian, or with the consent of a parent or guardian, in a private setting is done responsibly.

### **Recommendation 52:**

The Government should consider conducting compliance operations using young looking adults to assess behaviour by licensees when serving persons and there is uncertainty as to their age, with the outcomes to inform industry education and enforcement strategies.

## 9.14 Primary service authorisations

A "primary service authorisation" can be granted for an on-premises liquor licence under section 24(3) of the *Liquor Act 2007*. It allows the licensee to make individual sales of liquor that are not with or ancillary to another product or service (such as meals or entertainment). However, the primary purpose of the business or activity carried out on the licensed premises cannot be the sale or supply of liquor.

The second reading speech introducing the *Liquor Bill 2007* into the NSW Legislative Assembly provided the following outline of a "primary service authorisation":

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*The third licence category is an on-premises licence. This new category of licence will replace existing on-licences under the current liquor laws for restaurants, motels, theatres, universities, public halls, vessels, airports and section 74A licences. It will also replace the existing nightclub, caterers, Governor's and community liquor licences. On-premises licences will be very flexible. Sale of liquor will be permitted for consumption primarily on the premises. Individual licence conditions imposed by the authority will determine the type of business for an on-premises licence, along with alcohol sale, supply and consumption arrangements. The type of business for an on-premises licence will be specified when the licence is granted. An on-premises licence will not be issued where the sale, supply or consumption of alcohol is the primary business or activity carried out on the premises. However, there will be exceptions for some businesses and activities, such as airports and universities.*

*The sale of liquor under an on-premises licence will be with, or ancillary to, another product or service. These new provisions will replace the costly and restrictive dine-or-drink authority for licensed restaurants under the current liquor laws. The application process for*

*this authorisation will be simple. There will be no fee payable other than a minor processing fee. Limits on the number of drinkers and other aspects of the approval will be determined on a case-by-case basis by the authority. However, the “primary purpose” requirement for restaurants and other on-premises licences will ensure the sale or supply of liquor cannot become the primary purpose of the licensed premises.*

*The bill requires that a specific approval be obtained to sell liquor without meals rather than its being an automatic right. A specific approval allows regulators to consider the particular circumstances of a restaurant, and can assist with enforcement. The approval can also be more readily withdrawn if problems occur. Under the Liquor Bill 2007 an on-premises licence will be available to operate live music and public entertainment venues where alcohol is provided to patrons with entertainment. This will replace the current nightclub and theatre licences, and will ensure that an appropriate licence is available for intimate venues providing live entertainment. These venues will be subject to local council requirements relating to the provision of public entertainment. Unnecessary and outdated restrictions on businesses such as accommodation venues, universities, and entertainment venues will be removed.*

## SUBMISSIONS

Only one submission was received in relation to primary service authorisations. The City of Sydney recommended that primary service authorisations be restricted to restaurants and cafes.

## POLICY DISCUSSION

The OLGR has identified situations where venues obtaining primary service authorisations have been operating as restaurants throughout the day, before operating as a bar during the night. The practice results from licensees considering that the primary purpose of being a restaurant has been met when operating in accord with their licence over a long period of time. This was supported in a District Court decision overturning a conviction, which interpreted “at that particular time” as being a month due to the requirements of clause 19(1) of the *Liquor Regulation 2008*, which requires the monthly totals of liquor and other services be recorded.

It has been suggested that the period of time that records kept under clause 19(1) be prescribed. At present, there is no timeframe identified and licensees can argue they have already destroyed the records when sought by licensing inspectors.

The granting of licences where the primary purpose is the sale or supply of liquor requires the applicant to provide heightened mitigating measures to reduce the risks of excessive liquor consumption and its impact on the wider community. There is no similar focus in on-premises licensed venues, and this can increase the likelihood of intoxication and alcohol-related harms. The lower application threshold improves the likelihood of an application being approved.

It should be noted that the previous legislation (*Liquor Act 1982*) had strict limitations on the manner in which liquor could be sold within the meaning of primary purpose and imposed restrictions on patron capacity in which licence operations could be undertaken. These limitations effectively prevented on-premises venues for conducting business in a manner that resembles a small bar or hotel.

The Liquor Act and the 2007 second reading speech clearly contemplate licensed premises with a primary service authorisation ensuring that the sale or supply of liquor does not become the primary purpose of the licensed premises. The Act should be amended to further clarify this issue by ensuring the primary purpose requirement applies at any given time.

Restaurants, theatres, nightclubs, etc that wish to change their operations and become a bar should apply for an appropriate liquor licence (such as a small bar or general bar licence) and be subject to the stricter conditions that might apply in a venue that focuses on alcohol sales. However, the law could provide some flexibility so that venues that wish to wind down the sale of the product or service that liquor is provided with as the end of their trading day approaches could do so while

continuing to serve alcohol until closing. This would ensure that restaurants, for example, would not be expected to continue to have full meals available up until their authorised closing time.

In regard to the period of time that records should be kept under clause 19(1), it is suggested that this clause is reviewed in conjunction with review of the relevant provisions of the Liquor Act.

## RECOMMENDATIONS

### **Recommendation 53:**

The Liquor Act should be amended to ensure that the sale of liquor should at all times (subject to the recommendation below) be subject to the primary purpose test that applies to an on-premises licence.

### **Recommendation 54:**

Consideration should be given to allowing the Authority to grant a period of grace when the primary purpose concludes so as to, for example, allow liquor to be sold for an hour after the provision of the product or service which is the primary purpose of the business has been concluded.

### **Recommendation 55:**

Clause 19(1) of the *Liquor Regulation 2008* should be revisited in light of the amendment proposed at recommendation 53.

## 9.15 Licence transfers and removals

In New South Wales, liquor licences are granted to, and held by an approved person or corporation (the licensee) in respect of a particular premises (the licensed premises). The Liquor Act provides a framework in which a liquor licence can be transferred to another person or corporation (including a registered club), or removed from an existing location to another location.

Upon an application to transfer a liquor licence, the Authority undertakes a probity assessment to determine if the applicant is a fit and proper person to carry on the business or activity to which the licence relates.

Licence transfers may be made by the licensee or the person to whom the licence is proposed to be transferred. In the case of the transfer of a limited licence held by a person on behalf of a non-proprietary association, the application for approval to transfer the licence may be made:

- a. by the secretary or other relevant office holder of the non-proprietary association, or
- b. if the non-proprietary association is a local council – by the general manager of the council, or
- c. if the non-proprietary association is a public authority or community organisation as defined under section 4 (1) of the Act – by the chief executive officer of the authority or organisation.

The Liquor Act also facilitates the transfer of a licence on dispossession of a licensee if:

- a. the licensee is evicted from the licensed premises, or
- b. the owner of the licensed premises comes into, or becomes entitled to, possession of the licensed premises to the exclusion of the licensee, or
- c. the licensee is no longer employed by the owner of the business carried on under the licence (the business owner) or in attendance at the premises in the capacity as licensee.

An application for this type of transfer, commonly referred to as an “owner in possession” transfer, may be made by the owner of the licensed premises or by the business owner. In accordance with section 61 of the Liquor Act, the owner of the licensed premises who comes into, or is entitled to, possession of the premises, or the business owner (as the case requires), is taken to be the licensee of the premises until:

- a. the day that is 28 days after this section becomes applicable, or
  - b. the day on which application is made under subsection (2),
- whichever first occurs.

Upon an application to remove a licence, the Authority deals with the application as if it were an application for the grant of a new licence in respect of the other premises. This requires the application to comply with the advertising and CIS requirements.

The Authority may refuse an application to remove a hotel licence if it is satisfied that the removal of the licence would adversely affect the interest of the owner or a lessee or mortgagee of the premises from which it is proposed to remove the hotel licence, or a sub lessee from a lessee or sub lessee of those premises.

The Authority must refuse an application for approval to remove a licence unless it is satisfied that:

- a. practices will, as soon as the removal of the licence takes effect, be in place at the premises to which the licence is proposed to be removed that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on those premises and that all reasonable steps are taken to prevent intoxication on those premises, and
- b. those practices will remain in place.

Ownership of licences is a complex area. Liquor licences might be the property of the premises owner, the business owner or the licensee. Where a lessor or owner takes possession of licensed premises (for example where the licensee is evicted for rent default), an application can be made to the Authority to transfer the liquor licence to the owner or lessor.

## SUBMISSIONS

Woolworths suggested that the licence transfer system be reformed to allow for the electronic tracking of licensee movements and a reduction in the relevant fee to reflect the actual administrative cost. Woolworths supported this idea because it has an active program that recognises and rewards staff with wider career opportunities which means that store managers are regularly transferred to new locations to assume new responsibilities and develop career opportunities.

Woolworths also suggested that consideration be given to allowing an incoming business owner to have standing to make the owner in possession transfer in their own right, provided they prove they have tenure over the subject licensed premises (e.g. a lease of the premises). This was suggested because of circumstances where the licensee is no longer available to sign the form and the premises owner is unable or unwilling to sign the application or there is considerable delay in obtaining the owner’s signature (e.g. in a typical major shopping centre), the transfer is unable to be processed promptly or at all.

With respect to licence removals, Coles Liquor and Woolworths called for an increase in business certainty by streamlining the process of removing a packaged liquor licence a short distance away to another premises by either requiring the completion of a simpler Category A CIS (as opposed to the more detailed Category B CIS) or by dispensing with the requirement to complete a CIS altogether.

While Coles Liquor did not elaborate, Woolworths considered that these types of removals do not have a social impact and that the above approach should be adopted in circumstances where the intended licensed area is not proposed to be increased to an area larger than a standard liquor store ie. 250 square metres.

Similarly, Bulford Legal was also of the view that licences should be able to be removed within the same general area without the Authority having to address community impact, provided that the operation proposed under the relocated licence is comparable with the operation permitted under the licence in its present location. Bulford Legal argued that there are sufficient checks and balances in the Liquor Act to ensure that licensees who disregard their obligations are appropriately disciplined, or to ensure licensees who cause disturbance to the quiet and good order of the neighbourhood are appropriately dealt with.

Coles Liquor also suggested that the process for varying the mandatory six hour shutdown period should be incorporated into the grant or removal of a packaged licence to remove unnecessary red tape.

In highlighting a number of practical issues and uncertainties surrounding club redevelopments, Thomsons Lawyers concluded that a 'changes of boundary' application could be made instead of a removal application in certain circumstances stating:

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*That the present legislative provisions are likely to require a removal of licence application to be made even in circumstances where a registered club seeks to construct new premises on any other part of its existing land holding or on immediately adjacent land. This adds substantially to the licensing, legal and development costs and adds a degree of uncertainty and difficulty to the process of constructing new premises.*

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ClubsNSW supported the submission from Thomsons Lawyers and agreed that if a change of boundary application could be made instead of a removal in certain circumstances, clubs will have greater ability to construct new premises and redevelop other parts of their land with more certainty and substantially reduced costs.

In related matters, Bulford Legal considered that owners of licensed premises should be able to replace one licence type with another, which would not increase the overall social (and economic) impact to the local area. Bulford Legal also considered that a liquor licence should be recognised as a species of property under the Liquor Act which is capable of being sold and mortgaged, and that the database for liquor licences should include details of the owner and mortgagees.

## **POLICY DISCUSSION**

While technical in detail, the review believes that this is an area where present processes can be streamlined.

Licence transfers can be granted provisionally with the grant being confirmed once the Authority has reviewed the probity and competency of the applicant. The Authority sets a timeframe within which the transfer must be confirmed (or extended by the Authority).

While this process appears appropriate on the sale of licensed business (i.e. there is a new licensee and financially interested parties), in situation where there is no change in financially interested parties, a simplified approach could be taken where the ownership remains constant and only the licensee changes (particularly where the proposed licensee has previously been a licensee in other licensed premises). Such a process would be similar to the transfer process for registered clubs.

As well, Woolworths has requested amendments to enable in-coming business owners (provided they can prove tenure) to make application for transfers as owners in possession. This approach was previously acceptable under the former legislation and should be adopted under the current legislation.

It is noted that the current law provides that the owner of the premises or business can apply for a transfer of the licence where the licensee is dispossessed, or may be dispossessed, and that the application must be lodged within 28 days of the date on which the dispossession did or may have occurred. Once lodged, the applicant is taken to the licensee until the application is determined by the Authority.

However, section 61 does not provide specific guidance on matters regarding the expiry of the 28 days when an application has not been lodged, or where the application is refused by the Authority. This results in uncertainty for regulators as to who retains the legal right to sell liquor, and who is responsible should offences be detected. This uncertainty could be resolved through appropriate amendments to the Liquor Act to make it clear that the licence either reverts to the original licensee where an application is not lodged within 28 days, or where an application is lodged and is refused or the 28 day period expires, the licence is suspended until a new licensee is approved by the Authority.

The issue of licence removals to other premises requires careful consideration as, in some situations, they can result in new premises that are significantly larger with changed business operations that would impact on the local community. On the other hand, some removals relate to premises that are a few metres apart with no change to size or business operations, resulting in no further impact on the local community.

It would be difficult to formulate a range of objective criteria that would achieve an appropriate outcome between the competing interests of ensuring the amenity of the area is not compromised and a more efficient and simplified process where there is no change to the amenity.

For hotels and clubs there is often the added complexity of the impact of removals on gaming machine entitlements, particularly in and around shopping centres.

One possible way forward would be for licensees who wish to remove to nearby premises to make an application to the Authority to determine whether the removal should be subject to the present 'new application' approach, or whether the matter could be determined as a "redefinition" of licensed premises. A redefinition would enable a change of boundaries application to be made instead of a removal application.

The Authority could make a determination based on the likely impact of the changes on the local community, and could tailor the process to meet the individual circumstances of the case. Such an approach would also impact on the determinations of local councils in their development approval processes. In situations where the Authority has determined that a "redefinition" is sufficient, the EVAT would not be required to be considered by local councils. Where a 'new application' approach has been required, then local councils would be required to consider the data from the EVAT.

Ownership of, and financial interests in, licences, licensed businesses and licensed premises are required to be declared on transfer of licensees or when licensed businesses or premises are sold/purchased. While transfer approvals result in updating of the OLGR's database, the same cannot always be said of the sale of businesses or licensed premises when there is no change to the licensee. In those circumstances, unless the legal representatives are familiar with the Liquor Act, notification of changes does not always occur.

It is important for this data to be kept accurate and timely. For example sections 140 and 144G of the Liquor Act require notification of owners and financially interested parties to be notified when disciplinary actions are taken against licensees.

Adding more complexity to the data capture process by recognising mortgagees is not supported. It would add an administrative burden for OLGR that could not ensure accuracy or timelines of information, particularly as once a mortgage is terminated for any reason, there is no impetus for either the mortgagor or mortgagee to advise OLGR.

However, the review supports consideration of taking liquor licences outside the realm of "personal property" under the *Commonwealth Personal Property Securities Act 2009*. This may give greater lending certainty to financiers.

## RECOMMENDATIONS

### **Recommendation 56:**

The existing provisions relating to licence transfers, removals and ownership should be reviewed to remove red tape, reduce processing times, and increase financial certainty for lenders.

### **Recommendation 57:**

The transfer owner-in-possession provisions should be revised to make it clear that the licence either reverts to the original licensee where an application is not lodged within 28 days, or where an application is lodged and is refused, or the 28 day period expires, the licence is suspended until a new licensee is approved by the Authority.

### **Recommendation 58:**

Consideration should be given to removing liquor licences from the realm of “personal property” under the *Commonwealth Personal Property Securities Act 2009*.



# 10 MONITORING AND REGULATORY INTERVENTION

Responsibility for monitoring and intervening in the operation of licensed premises rests with the Director General, Department of Trade and Investment, Regional Infrastructure and Services, and the NSW Police Force. The Director General appoints inspectors to undertake a range of liquor enforcement related functions. Inspectors and police have specific enforcement powers under the Gaming and Liquor Administration Act.

The Liquor Act and Gaming and Liquor Administration Act provide a range of regulatory tools to support the monitoring and intervention responsibilities of the Director General and police. These include powers to request information from licensees and others, give directions and orders to licensees and staff, impose conditions on licences, issue notices to licensees and take action where breaches appear to have been committed.

## *SUBMISSIONS*

Several submissions suggested that there has been inadequate attention given to harm avoidance and mitigation through the statutory and enforcement framework of the Act. Submissions went on to say that regulatory responses have been ad-hoc and that greater rationalisation and coordination would assist to more effectively meet the objectives of the Liquor Act, and that a more proactive approach to enforcement and licensing was warranted.

A common view was that more should be done to suspend or cancel licences where there is evidence of alcohol-related violence or offensive behaviour.

The NDARC considered that there should be more evidence-based conditions for violent venues, arguing there is limited, if any, evidence for the effectiveness of the current sanctions.

A number of submissions suggested that any premises with more than five incidents of violent or anti-social behaviour should have their licence either suspended or revoked for an extended period.

There was strong support for greater risk-based regulation and enforcement, including the introduction of annual risk-based licence fees to ensure licensees contributed to the substantial costs of regulating, policing and preventing alcohol-related harms.

Noting that the prevalence of incidents among restaurants, cafes and the catering sector are low, Restaurant and Catering Australia advocated a reduction in regulation for this low risk area.

Enforcement resourcing and coordination also drew attention. For example, Manly Council recommended that local police commanders be given additional powers under the Act to act on venues that have ongoing breaches. Some councils called for local government to have more control and input into the enforcement of liquor licences in their area.

## *POLICY DISCUSSION*

Most issues raised in submissions can be accommodated in a comprehensive risk-based enforcement framework which is largely developed outside of the Acts. Pro-active risk-based regulation facilitates a graded approach to problems, allowing the identification and resolution of matters before resorting to more drastic action, such as the suspension or cancellation of licences.

The Liquor Act currently provides for the suspension or cancellation of liquor licences as a result of disciplinary action or where three strikes are incurred by a venue within three years under reforms introduced in 2012. However, suspension or cancellation of a licence should be a measure of last resort. The impact on persons that who have little or no opportunity to influence the operation of the licensed premises, e.g. employees, lessors and those with financial interests can be severe. Even suspensions for short periods can impact people's livelihood.

The review supports a risk-based and graded or escalated approach to impacts on the amenity of the community by licensed premises. OLGR advises that it has been progressively focusing on this type of enforcement framework.

The review also supports coordination, communication and consistency of approach between regulators – the OLGR, the NSW Police Force and local councils – that allows a contemporary approach for supporting self-regulation and responsibility but still allowing tough regulatory intervention when needed.

The Liquor Act provides an extensive suite of tools for regulators to deploy in instances where licensed premises are impacting on the community. These include the imposition of conditions, directions, disciplinary action, lock-outs and reduction of trading hours. The challenge is to use these tools in the way that achieves the optimal outcome.

OLGR has refined its approach to many of its compliance and enforcement powers and has applied restrictive conditions to approximately 30 liquor licences since July 2012. These conditions are reviewable by the Authority.

Additionally, OLGR has increased its coordination of regulatory activities with NSW Police in high risk areas such as Kings Cross and has taken a lead role in working with other agencies in implementing a holistic harm minimisation approach in areas such as Byron Bay. These interventions are supported.

Recommendations elsewhere in the report outline changes to assist the community to raise issues about the operation of licensed premises, improve access for the community and enhance a coordinated approach by regulators.

A number of submissions advocated for the reintroduction of venue capacity limits under liquor licences. This is considered an important component in a risk-based regulatory framework.

Changes recommended to the CIS process and an enhanced role for local councils in the development approval process could also be utilised to ensure that venue capacity limits are incorporated into conditions imposed by the Authority on the grant of licence applications. The review agrees that this is an important consideration for fire safety as well as controlling overcrowding that can contribute to violence.

Capacity limits, where they exist, are usually determined by local councils when development applications are approved. However, the information on the limits is not readily accessed by regulators. Incorporation of capacity into licence conditions, which must be displayed, would assist in this regard.

The reduction in rates of alcohol-related violence, the static domestic violence rates and the static per capita consumption of alcohol rates are broad indicators that the regulatory regime and tools available have contributed to an improving situation over the past five years.

The review concludes that steps should be taken to further decrease rates of alcohol-related domestic violence and further decrease alcohol fuelled violence. The Liquor Act probably has very limited role to play in decreasing per capita consumption of alcohol, with health information and promotion having the predominant role.

The complexity of domestic violence is acknowledged, and liquor law interventions are generally not a direct means of addressing this issue. Complex social problems require a coordinated approach across government to be actively pursued so that research and interventions are effective in combating these problems

## RECOMMENDATIONS

### **Recommendation 59:**

A co-ordinated and consistent risk-based approach to regulatory enforcement should be pursued, supported by the extensive regulatory tools already available in the Liquor Act.

### **Recommendation 60:**

Venue capacity limits should be incorporated into liquor licence conditions following determination by local councils.

## 10.1 Three strikes scheme and Schedule 4 of the Liquor Act

The Three Strikes disciplinary scheme commenced on 1 January 2012. The scheme provides for a strike to be incurred by a liquor licence where a licensee is convicted of one of a range of serious offences under the Liquor Act.

Prescribed conditions can be imposed on licensed venues by the Director General through this scheme. A third strike can result in licence conditions, licence suspension for up to 12 months, licence cancellation and a moratorium on a new liquor licence being granted for the same business operators at the venue for up to 12 months, and/or disqualification of a licensee. For registered clubs, a third strike can result in the imposition of licence conditions, disqualification of a club secretary, dismissal of club directors, and/or appointment of an administrator.

The Three Strikes scheme provides regulatory incentives for licensees to continually review their operations to minimise the risk of incurring a strike.

A number of respondents, including the AHA (NSW), Eureka Funds Management, Merivale, Bulford Legal and the City of Newcastle made submissions in relation to the Three Strikes scheme calling for:

- strikes to only be incurred by the licensee and not the business/property owner;
- the service of strike determinations on owners and lenders of affected licences;
- no strike to be incurred if a court applies any of the options under section 10 of the *Crimes (Sentencing Procedure) Act 1999* (i.e. where a court finds a person guilty of an offence but does not record a conviction);
- a review of the scheme's impact on financial arrangements between licensees and financial institutions; and
- the scheme to be evaluated for effectiveness against its objectives and amended or ceased based on the findings.

Section 144K of the Liquor Act mandates a review of the Three Strikes provisions after four years, with a report to NSW Parliament within 12 months (i.e. by 31 December 2016) must be undertaken.

Schedule 4 of the Liquor Act was introduced in 2008 to enable conditions to be applied to the State's most violent venues to improve their safety and reduce the number of alcohol-related violent incidents in those venues. Level 1 venues (19 or more violent incidents in a year) and Level 2 (12-18 violent incidents in a year) are revised every six months in June and December. A range of conditions set out in Schedule 4 are applied to venues prescribed as Level 1 or 2 violent venues, including drink restrictions, timeouts, no glass after midnight and for Level 1 venues, a 2am lockout.

While submissions generally supported the scheme, there were calls from ClubsNSW, the AHA (NSW) and Merivale for the scheme to take into account the size of the licensed premises. While the National Drug and Alcohol Research Centre suggested that more evidence-based conditions be introduced for Level 1 and Level 2 venues.

While both schemes focus on ensuring licensees operate within the principles and requirements established by the liquor legislation, each scheme has different trigger events. The Three Strikes scheme is triggered by a range of breaches under the Liquor Act, while Schedule 4 is triggered solely by alcohol-related violent incidents on licensed premises.

The review considers that it is not appropriate to pre-empt the statutory review of the Three Strikes provisions that will be undertaken in 2016.

It is noted that the Government reviewed the violent venues scheme in 2013, which considered the views of industry and regulators. The Government subsequently adopted several reforms to enhance the operation of the scheme as a result of that review.

Therefore, the review does not consider it is necessary to revisit the operation of the violent venues scheme at this time. The review does consider that it would be appropriate for the Three Strikes review in 2016 to include consideration of merging both schemes to achieve greater coherency in the regulatory approach.

## 10.2 Collection of liquor sales data

### SUBMISSIONS

A number of submissions called for the collection of alcohol sales data, including NAAPA, FARE, Cancer Council NSW, City of Sydney, City of Newcastle, the Authority, and the Alcohol and other Drugs Council of Australia.

FARE recommended that the collection and publication of liquor sales data be resumed, and that this data be made available to the National Alcohol Sales Data Project, which is funded by the Commonwealth Department of Health and Ageing to construct an ongoing, regularly updated, national database of standardised alcohol sales data.

NAAPA went further by recommending that the liquor sales data collection should be mandated under the Liquor Act and that the collection of alcohol-related data should be extended to include other types of data including:

- emergency department presentation,
- ambulance attendances,
- criminal justice data, and
- community services data.

The Cancer Council NSW, which supported NAAPA's submission, also recommended that routine independent collection and publication of alcohol sales data in NSW is conducted alongside self-reported consumption data to allow accurate consumption levels, drinking and sales patterns to be determined.

The City of Sydney recommended that the collection of alcohol volume and wholesale data from all licensed premises be resumed, and that this data be used to inform decision making regarding cumulative impact. It also suggested that the data could also be used to inform research on the positive social and community outcomes generated by live music and performance activity.

The City of Newcastle recommended that alcohol sales data be made available to demonstrate the extent and nature of sales in a local government area and to assist in identifying any potential links to negative community impacts/risks posed by new venues.

As noted earlier, the Authority suggested that collection of liquor sales data would assist in its work to assess liquor supply and assist in assessing a population based level of alcohol availability.

## POLICY DISCUSSION

Alcohol sales data was previously available as part of the scheme that imposed liquor licence fees (State taxes imposed on liquor licensees as a percentage of the value of wholesale liquor purchases) prior to the High Court declaring these fees invalid in 1997.

Data on liquor purchased by liquor licensees from liquor wholesalers for retail sales was collected to calculate the liquor fees (taxes). The data included the value and volume quantity of beer, wine and spirits purchased from liquor wholesalers. Similarly, data was collected from liquor wholesalers and both sets of data were matched to ensure accuracy.

Liquor licensees were required to maintain a record of their purchases. At the end of the financial year, liquor licensees were required to submit this data for tax assessment.

The data related to the wholesale sale price, not the retail sale price, and related to wholesale purchases that were between two months to 14 months old.

That liquor fee process was costly and the data quality (particularly volume and type) was problematic. As a tax regime, inspectors were appointed to review issues raised by tax assessors when the data appeared questionable or was non-existent.

For data on alcohol sales to be useful for regulatory or research purposes, it needs to be of sufficient quality with data interrogating systems that can drill down to lower levels (e.g. time of sale, quantity and type). The cost of obtaining, maintaining and publishing this type of data becomes administratively more expensive as the detail and quality required from the data increases.

The collection of this data is more complex than it first appears. There are a number of issues that require consideration. For example:

- Is the value of liquor sold based on wholesale or retail price?
- What alcoholic content is to be assumed for each litre of beer, wine and spirits?
- In what category are mixed alcoholic drinks to be defined?
- For clubs and hotels, packaged liquor can be sold either for takeaway or consumption on the premises - how is this distinguished?

Liquor is sold by wineries and on-line packaged retailers. If these licensees are located interstate, there is no legislative ability for NSW to obtain this information. Customers of large retailers offering discounted liquor are not always residents of the local area. In tourist areas, the average level of consumption would be higher per local resident than actual consumption. These are some of the issues that present challenges in analysing sales data to determine consumption patterns in local areas.

Given the administrative costs to industry and government, the review does not favour the state-wide periodic collection of this data from each licensee.

However, for those precincts that are found to have significant alcohol-related violence and associated problems, the collection of this data on a time/quantity/type basis may be appropriate to assist regulators in developing strategies to address existing problems through interrogation of information data.

The review notes that the provision of alcohol sales data in Kings Cross will be introduced under the *Kings Cross (Plan of Management) Act 2013*. These provisions require the Director General to obtain from licensees, on a quarterly basis, the amount of liquor sold or supplied for consumption on the premises during each hour:

- a. between 8 pm and the time that the premises are required to cease trading; or
- b. in the case of subject premises that are not required to cease trading—between 8 pm and 5 am on the next day.

The review considers that the outcomes of this reform should inform any consideration of an expansion of this type of requirement to other precincts and/or data sets.

## RECOMMENDATION

### **Recommendation 61:**

The Government should closely monitor the outcomes of liquor sales data collection in Kings Cross to inform consideration of future data collection requirements in Kings Cross and/or other precincts.

## 10.3 Offence and disciplinary provisions

The Liquor Act and *Liquor Regulation 2008* contain a range of offence provisions to secure compliance. Offences relate to matters including:

- non-compliance with licence requirements and conditions,
- supply to, and consumption of, alcohol by minors,
- minors entering licensed premises,
- service of alcohol to intoxicated persons and allowing intoxication on licensed premises,
- permitting violent, quarrelsome and disorderly behaviour on licensed premises,
- refusal to leave licensed premises (“fail to quit”) when required to do so,
- attempting to re-enter licensed premises and remaining in the vicinity of such premises when requested to leave, and
- non-compliance with responsible service of alcohol training requirements.

Penalties can range up to a maximum of \$11,000 or 12 months imprisonment (or both) and include the imposition of conditions on a licence, and suspension or cancellation of a licence. Repeat offenders for certain key offences are subject to higher penalties.

The Liquor Act also contains a range of powerful enforcement and disciplinary tools.

These tools include the imposition of conditions and restrictions by the Director General (under section 54 of the Liquor Act) and the Authority (under sections 52 and 53 of the Liquor Act). Temporary closure orders of up to 72 hours can be made where there is a threat to public health or safety, a risk of substantial damage to property, a significant threat to the environment, or a risk of serious offences being committed on licensed premises. Long term closure orders can be made where a licensed premises is subject to a disciplinary complaint.

Disciplinary action can also be taken by the Authority on a range of grounds following a disciplinary complaint. Complaint action can result in:

- the imposition of licence conditions and restrictions,
- imposition of substantial monetary penalties – up to \$110,000 for corporations and \$44,000 for individuals,
- imposition and variation of licence conditions,
- disqualification of corporations or individuals from holding or being interested in a liquor licence, and
- suspension or cancellation of a liquor licence.

## SUBMISSIONS

Back Schwartz Vaughan recommended removing all Liquor Act and Gaming and Liquor Administration Act offences from the Criminal Procedures Regulation.

For disciplinary complaints, the Authority recommended that it be made clear that it is necessary to have some element of fault or culpability (but not necessarily intention). It does not believe that Parliament intended to expose a licensee, manager or close associate to a serious finding and

penalty in the absence of some element of fault. However, it noted that this argument has been made in the course of disciplinary proceedings.

Coles Liquor submitted that where a licensee receives a penalty for the conduct of its employees, prior to any action being taken against the licensee, it must have the ability to demonstrate that it had in place appropriate processes to prevent any breach occurring.

NAAPA recommended improving the capacity of communities to participate in compliance processes by allowing members of the general public to submit disciplinary complaints on grounds details in Part 9 of the Liquor Act. This would necessitate expanding the capacity of the Authority to investigate complaints against licensees in order to reverse the burden of proof that rests with complainants, and providing information and education to the public.

In its submission, Merivale suggested that the fine for refusing to leave a licensed premises be increased and for the 'Fail to Quit' campaign to be promoted more widely.

The Star submitted that the on-the-spot fine for a minor seeking entry to licensed premises with fake identification should not be less than \$500.

## *POLICY DISCUSSION*

The issues raised relate to offences and disciplinary matters under the Liquor Act.

The provisions of the NSW Criminal Procedure Act require that, where a person pleads not guilty, a prosecutor is to serve a brief of evidence on the defence 14 days prior to the hearing. However, it does not require a prosecutor to serve a brief of evidence in certain proceedings, including situations where a penalty notice can be issued or for a summary offence for which there is a monetary penalty only.

Certain offences under the Liquor Act can result in other implications for a licensee e.g. incurrance of a strike or initiation of disciplinary action. These offences are therefore more likely to be defended, and it would assist the Local Court and the defence if a brief of evidence was provided to the defence when requested. This would save Court time and enable the defence to understand the strength of the prosecution's case which could also lead to efficiencies. The review considers that this matter should be considered by the Attorney.

The next two matters relate to Part 9 (or Disciplinary Proceedings) of the Liquor Act.

The Authority's view, which is supported by the review, is that some element of misconduct, negligence or fault should be present in a licensee's actions (or lack thereof) should be present to sustain an action for disciplinary proceedings.

Coles Liquor represented in its submission that where a licensee receives a penalty for the conduct of its employees, prior to any action being taken against the licensee, it must have the ability to demonstrate that it had in place appropriate processes to prevent any breach occurring. Additionally, penalties should apply to any person who breaches liquor licensing laws, including customers and patrons. A similar policy should apply to these matters.

While the review supports improvements to the community's ability to participate in liquor licensing matters, for example the application process or noise complaints, it does not support enabling community members to instigate disciplinary proceedings against licensees.

The grounds for making disciplinary complaints are generally not within the purview of local communities and their skills in obtaining evidence and taking action before the Authority would be limited. Additionally, failure could result in being liable for significant legal costs.

This does not mean that the community should not have a role to play in disciplinary proceedings. Communities can often assist regulatory authorities by providing evidence that supports a case against licensees.

It is not considered appropriate for the Authority to be involved in the investigation of complaints when it is also responsible for determining them.

The remaining issues raised related to the quantum of fines for refusing to leave licensed premises and for a minor submitting false identification on entering licensed premises.

Generally, the quantum of penalties reflects the gravity of the particular offence commensurate with community and consistency between like offences. Penalties applying to minors under the liquor laws also take into consideration their limited capacity to pay significant penalties when they often have little or no income. It does not follow that higher penalties result in fewer offences and breaches.

The review supports a range of education initiatives that would inform the public about their responsibilities when attending licensed premises.

## RECOMMENDATIONS

### **Recommendation 62:**

Changes to the Criminal Procedures Regulation should be referred to the Attorney General for consideration.

### **Recommendation 63:**

The provisions of Part 9 of the Liquor Act should be amended to make it clear that it is necessary to have some element of fault or culpability (but not necessarily intention) in finding disciplinary actions proven.

### **Recommendation 64:**

OLGR and industry associations should promote education initiatives to inform the public about their responsibilities when attending licensed premises.

## 10.4 Local liquor accords

The Liquor Act provides support for liquor accords, which involve licensees and local stakeholders such as police and local councils working together voluntarily to develop practical solutions local alcohol-related problems. The Liquor Act establishes a framework for the terms and approval of liquor accords, and enables a licensee to be ordered to contribute to the costs of implementing a liquor accord.

The Liquor Act defines a local liquor accord as any code of practice, memorandum of understanding or other arrangement that:

- a. affects the supply of liquor, the opening and closing of licensed premises or other aspects of the management of or conduct of business on licensed premises, and
- b. is entered into for the purpose of eliminating or reducing alcohol-related violence or anti-social behaviour or other alcohol-related harm.

## SUBMISSIONS

There was consistent support for the concept and operation of local liquor accords, particularly from local government and accords themselves. In addition to supporting the concept, there was a significant call for membership of accords to be made mandatory, including a financial contribution to harm minimisation initiatives and public safety measures.

Respondents that supported this approach included, Local Government NSW, City of Sydney, City of Newcastle, Randwick City Council, Tamworth Regional Council, Dubbo City Council, Albury City Council, Muswellbrook Shire Council, Byron Shire Council, Manly Council Community Safety and Place Management Committee, Surry Hills Liquor Accord, Albury Liquor Accord, and the Kings Cross Liquor Accord.



The AHA (NSW) recommended that Liquor Accord membership be mandatory for all licensed premises or, alternatively, that the powers available to the Director General under s136 (1) be expanded to giving direction to not only contribute, but to participate to give effect to the accord when requested to achieve wider representation.

However, the support for mandatory accords was not shared by ClubsNSW, which considered the current framework to be appropriate and highlighted the success of accords.

The Liquor Stores Association of NSW raised concerns about the lack of consistency and adherence to reasonable corporate governance by accords and the potential for competitive advantage to be gained from decisions, and sought clarification of the circumstances under which the Director General can impose a condition requiring membership of, and compliance with, an accord.

The Distilled Spirits Industry Council of Australia shared similar concerns as the Liquor Stores Association of NSW and suggested that accords be required to lodge agendas and minutes electronically with the OLGR, and that these be made public.

Submissions also called for the definition of eligible parties to an accord to be expanded to include late night businesses (City of Newcastle, City of Sydney), and the providers of security services (Surry Hills Liquor Accord and ClubsNSW). While the submission from Last Drinks at 12 suggested that community groups be afforded equal footing on accords.

Whilst it did not submit a firm position in relation to accords, the NDARC indicated that there is increasingly good evidence that attempting to address local issues in the absence of an effective regulatory framework has little impact. It suggested that strategies implemented in local areas to address local problems ought to be carefully evaluated to measure their impacts. To do this, an independent body of researchers could be established who are funded to conduct rigorous evaluations of local interventions and report the outcomes to government and the public and allow a good level of scrutiny.

## *POLICY DISCUSSION*

Over 80 per cent of local liquor accords in NSW operate without funding, or by generating their own funds through membership subscriptions. From time to time, accords may seek to raise funds externally where an initiative needs resources beyond those which can be provided by accord partners. For example, funding a late night transport scheme in holiday season for patrons, or conducting a responsible drinking campaign.

The OLGR works to promote the development of effective and sustainable accords across the state and can help local groups establish an accord or increase the effectiveness of an existing accord through its Liquor Accord Delivery Unit (LADU). The OLGR promotes and supports the development of existing local liquor accords, assists accords to develop effective models and provide resources to aid in accord sustainability and maximise the potential of accords in supporting safer local communities.

While the review acknowledges the significant support for mandating accord membership and financial contribution, experience from the operation of the accords indicates that this would not serve the intent of the accords – that is to encourage and promote self-regulation and responsibility.

That experience indicates that the accords that work best are those that implement terms to prevent and address alcohol-related harm in their community on a voluntary basis. It is not the intention that accords act as a regulatory big stick, with other regulatory tools available where that approach is required.

The review is aware that the Authority mandates ‘membership of an accord’ as a condition on new liquor licences. As such, the review suggests that the Authority adopt a risk-based approach and only impose this condition where there is a compelling reason to do so.

Ultimately, it is the review’s position that there needs to be a mix of legislative, policy, market and community based incentives to develop effective liquor accords that make a positive contribution to alcohol harm in their community.

At present, accords are approved by the Director General and the Commissioner of Police. While it is understood that these responsibilities are delegated, the review suggests that it would be better if one authority had control to ensure consistency.

However, the review would support the simple registration of an accord rather than approval. Some of the OLGR's time in approving, varying and terminating approvals would be better spent providing support and educative activities.

With respect to eligible parties to an accord, the Liquor Act currently provides that the following bodies or persons may be a party to a local liquor accord:

- a. a licensee,
- b. the Director General,
- c. the NSW Police Force (to be represented by a police officer nominated by the Commissioner of Police),
- d. a local council,
- e. any body or organisation (such as a Chamber of Commerce) representing commercial or business interests in the relevant local area,
- f. a community or residents' group with an interest in alcohol-related harm or the amenity of the relevant local area, or
- g. any other person or body (or person or body belonging to a class of persons or bodies) prescribed by the regulations.

The regulations do not currently prescribe any other person or body as an eligible party to an accord.

The review supports the notion of broadening accord membership to include late night businesses that operate in close proximity to licensed premises and the providers of security services. The review sees benefits in this, given they have vested interests in improving public safety and preserving local amenity.

It is possible that the definition of an accord is narrow and restricts broader precinct and public space measures. Defining an accord as a group without referring to a location would allow accords based on different licence types and business models e.g. online retailers' accord or party boats/ party buses accord, thereby delivering a proactive risk-based approach that is meaningful to specialist operators and allow a more targeted approach by OLGR.

Adopting a more holistic definition of a liquor accord that is similar to the terminology of the precinct liquor accord (i.e. exists to minimise or prevent alcohol-related violence or anti-social behaviour, or other alcohol-related harm, and to protect and support the good order or the local area) will provide more formal recognition to measures such as transport, security in public domain, precinct ambassadors, etc.

Further, ensuring accords implement effective action to reduce or prevent alcohol-related harm is more important than working to achieve a large number of accords with the risk that many have no effective strategies and/or little local support. The OLGR advises that it is providing assistance to accords to develop meaningful and effective terms that are consistent with the requirements applying to accords under the Liquor Act.

The review also notes the NDARC's research proposal. The development of a research program is raised elsewhere in this report.

The review considers that the existing provisions surrounding the Director General's approval of precinct liquor accords and community event liquor accords are complex and would benefit from simplification. While utilising the term "accord", they are quite different from traditional accords in that there can be a mandatory element to compliance with requirements determined by the Director General. Reforming these arrangements under one umbrella as Alcohol Management Plans would assist, with greater flexibility to determine which licensees should be included, and whether the Plan is for an event or a designated area.

## RECOMMENDATIONS

### **Recommendation 65:**

The Liquor Act should be amended to provide that accords must have terms and be registered, and do not require approval by the Director General or the Commissioner of Police.

### **Recommendation 66:**

The potential membership of local liquor accords should be broadened to include late night businesses that operate in close proximity to licensed premises, and the providers of security services.

### **Recommendation 67:**

The approval of precinct liquor accords and community event liquor accords should be simplified under one umbrella as Alcohol Management Plans, with flexibility to determine those licensees and the arrangements that are captured by such plans.

## 10.5 Control of undesirable liquor products and promotions

The Liquor Act allows undesirable liquor products and promotions to be restricted or prohibited. Action can be taken by the Director General against products in circumstances where the name, design or packaging is indecent, offensive, or encourages irresponsible consumption.

The Director General can issue orders to licensees to restrict promotions of liquor or activities which are likely to encourage misuse or abuse of liquor (such as binge drinking or excessive consumption).

Liquor promotion guidelines are required to be issued under the Liquor Act by the Director General before action can be taken. The guidelines assist licensees to ensure their liquor promotions are responsible. The guidelines were recently reviewed, with updated guidelines providing information for licensees to assist in identifying types of unacceptable liquor promotions.

## SUBMISSIONS

NAAPA, FARE, Australian Medical Association NSW and the Cancer Council NSW called for the Liquor Act to be strengthened to prohibit the harmful discounting and promotion of alcohol products and to ensure that the measures are enforced. They also submitted that the measures should address both on and off-premises consumption with equal weight.

NAAPA and the Cancer Council NSW also suggested that the NSW Government introduce a policy that prohibits alcohol promotions from being placed on state and local government property, and called for a ban on competitions and promotions that encourage rapid consumption of alcohol and drinking to excess or intoxication.

The Byron Youth Service also called for the Liquor Act to be strengthened to prohibit the harmful promotion of alcohol products, especially to young people at festival, community events, sporting events and through point of sale promotions.

The City of Newcastle recommended that undesirable liquor product provisions be expanded to include the nature of a product that could lead to excessive consumption of alcohol, and the circumstances where the provision of free alcohol as part of a promotion is and is not acceptable.

The City of Newcastle also called for the Government to investigate declaring alcoholic energy drinks as undesirable liquor products. While Ms Di Woods and Mr Geoff Bensley submitted that they should be banned. Similarly, Tamworth Regional Council advocated for brightly coloured high alcoholic premixed drinks to be declared as undesirable.

Ms Di Woods also submitted that the effects of alcohol advertising and promotions require clear guidelines, a more transparent review process and wider consultation from groups such as public health advocates.

On a different point, the Authority called for alcohol-related signage in and around licensed premises to be restricted, similar to the restriction imposed on gaming machine-related signage.

The Brewers Association did not believe there is a need or justification for further bans on the promotion of alcohol beyond existing provisions contained in the Liquor Act.

## POLICY DISCUSSION

Determining what amounts to a harmful promotion is a subjective decision. The existing Liquor Act powers allow each matter to be considered individually within the broader liquor promotions framework established by the guidelines, which cover issues such as the provision of free alcohol, use of non-standard measures, indecent and offensive promotions, and promotions that are attractive to minors and/or encourage rapid or excessive consumption.

The OLGR was active in acting on undesirable liquor promotions in 2012-13, with 42 directions issued to restrict or prohibit undesirable promotions and 79 show cause notices issued. This compares to 4 directions and 6 notices issued in 2011-12.

The Liquor Promotion Guidelines issued under section 102 of the Liquor Act were recently reviewed in response to changes in industry practices since their release in 2008. Updated guidelines were released in July 2013, and address the promotion of alcohol through supermarket vouchers and shopper-dockets and the specific use of interactive technology in alcohol promotions.

The guidelines also include a reference to 'buy one, get one free' offers on discount vouchers, cards or shopper-dockets.

Some submissions to the review expressed concern about the updated guidelines and the process by which they were developed. However, the review finds that a revision is not warranted at this point in time and could result in confusion. It would be appropriate for the new guidelines to remain in place for at least 12 months, with a review of their operation after that period which would include an open call for submissions. Consideration could be given to the issues raised in submissions to this Liquor Act review in that process.

The current undesirable liquor product provisions are wide-ranging and allow action to be taken in a range of circumstances similar to those relating to undesirable liquor promotions.

The Minister can recommend a regulation be made to ban the sale of an undesirable liquor product from all licensed premises in NSW,

Before recommending such a regulation be made the Minister must consult with the manufacturer, where known, and relevant industry bodies, and be satisfied that the product meets one or more of the following statutory tests:

- a. the name of the liquor product, or its design or packaging, is indecent or offensive, or
- b. the name of the liquor product, or its design or packaging, encourages irresponsible, rapid or excessive consumption of the product, or
- c. the name of the liquor product, or its design or packaging, is likely to be attractive to minors, or
- d. the liquor product is likely, for any reason, to be confused with soft drinks or confectionery, or
- e. the liquor product is, for any other reason, likely to have a special appeal to minors, or
- f. it is otherwise in the public interest to declare the liquor product to be an undesirable liquor product.

The Director General can also declare a product to be an undesirable liquor product in respect of a specific licensed premises under section 101 of the Liquor Act. The above statutory tests must also be used by the Director General in determining whether a product should be declared an undesirable liquor product and be banned from sale at specific licensed premises.

Further, under section 101(3), the Director General must be satisfied that the liquor product is being sold on the licensed premises to which the proposed notice relates, and the premises are situated in an area or locality in respect of which there are significant concerns regarding intoxication or underage or irresponsible drinking – is onerous and can prevent intervention where a product is identified as high risk and therefore undesirable.

The test under section 101(4) requires that the Director General provide the licensee with a reasonable opportunity to make submissions in relation to the proposed restriction or prohibition and take any such submissions into consideration when deciding whether to give the notice. These tests can be difficult to meet, particularly in the absence of cooperation from licensees, slowing rapid and/or strategic action on undesirable liquor products.

## RECOMMENDATIONS

### ***Recommendation 68:***

The updated liquor promotion guidelines should be evaluated 12 months after their commencement (i.e. after July 2014) through an open call for submissions, and consideration should be given to the issues raised in submissions to this review.

### ***Recommendation 69:***

The tests in section 101(3) and (4) should be reviewed to ensure rapid and/or strategic action on undesirable liquor products, while ensuring the manufacturer of a product proposed to be restricted or prohibited is given an opportunity (where possible) to make submissions should action be proposed.

## 10.6 Energy drinks

Submissions made by FARE, Newcastle City Council and some community members called for restrictions to be placed on the sale of energy drinks and alcohol within licensed premises, particularly after midnight. Concerns were raised about the health impacts of mixing alcohol and energy drinks, and the impacts on behaviour and perceptions of intoxication.

However, the review considers there was little reliable research submitted on the topic, which is primarily a matter for health agencies and the Commonwealth Government, and is not strictly a regulatory matter to be addressed by the Liquor Act.

The review does not consider it to be appropriate for the Liquor Act to ban non-alcoholic substances (other than illegal drugs) on licensed premises.

It is understood that the NSW Government has commissioned research into this issue, and it would therefore be appropriate for the matter to be considered in the context of that action.

# 11 COMMUNITY STAKEHOLDER INPUT

The Liquor Act includes mechanisms for communities to have input into licensing decisions and operations so that they can express views about the impact of licensed venues on local neighbourhoods.

## 11.1 Social impact and intersection with the planning laws

Under section 45(3) of the Liquor Act, the Authority must not grant a liquor licence unless it is satisfied that any development consent required under the *Environmental Planning and Assessment Act 1979* to use the premises for the purposes of the business or activity to which the proposed licence relates is in force.

This ensures that the operation of new liquor licences (including business type and hours of trading) is consistent with any planning approval and associated conditions. It facilitates an orderly process in relation to new developments or changes of use. Processing both the development application and liquor application at the same time can be problematic, and therefore, this provision recognises that it is more practical for the planning process to precede the liquor application process.

Under the Environmental Planning and Assessment Act (which is currently under review), local councils and consent authorities have responsibility to regulate the environmental and social impacts of licensed premises through the development application process.

Currently, an application for a small bar licence is exempt from notification and CIS requirements under the Liquor Act where development consent is required and notice of a development approval is provided to the police and the Director General in accordance with requirements in the Liquor Act.

This exemption recognises that many of the community impact issues considered in the planning process are similar to those considered as part of the CIS process under the Liquor Act. The approach adopted for small bars seeks to reduce duplication and costs by providing for one community consultation process whilst still allowing for those charged with liquor regulation enforcement responsibilities to intervene.

In addition to the CIS process, the Liquor Act includes other mechanisms for communities to contribute to licensing decisions and operations where they can express views about the impact of licensed venues on local neighbourhoods.

For most applications, notification to occupiers of nearby premises as well as to the local council and police is required to be actioned by the applicant. The licence application noticeboard on the OLG's website is publicly available to check for current liquor licence applications and can be used to lodge an online submission with the Authority.

Any person can make a submission on an application and the Act requires that any submissions made to the Authority must be taken into account when determining an application.

### SUBMISSIONS

Many submissions called for the merging of the CIS process under the Liquor Act and the similar process under the planning laws required for development approvals (DA) from local councils.

For example, Tamworth Regional Council, Bulford Legal, Design Collaborate, Coles Liquor, Accommodation Association of Australia, Woolworths, Randwick City Council, and the National

Live Music Office all called for a streamlining of the planning and liquor licensing processes to improve transparency and community input and to reduce costs for business and the community.

Woolworths recommended that any new DA application and liquor licence processes should include statutory timeframes for decision making, improved risk-based assessment and a transparent end-to-end application process.

The City of Sydney recommended that action be taken to ensure that premises operating with extended trading hours are not doing so in contravention of the Environmental Planning and Assessment Act.

The City of Newcastle recommended that notification of the intended sale of alcohol be made mandatory at the DA stage, if this is known, to ensure there is consideration of issues related to the operation of a licensed premises. Waverley Council suggested that precinct wide management plans be readily available as a tool to identify problems.

Design Collaborative considers that the current processes for community consultation are inefficient. It points to notification requirements that are costly, for which there is generally very limited responses and contends that the OLGR website could be used as a more effective way to coordinate consultation.

Tamworth Regional Council argued for improved communication between the Authority and community stakeholders, including local councils. Waverley Council suggested that the period of community input be extended to 45 days and the radius requirement for notification be doubled.

Lasts Drinks at 12 believes the community finds it very difficult to access timely and impartial advice and assistance from OLGR.

A number of submissions suggested that there should be greater community input into other regulatory decisions. For example, Mr Geoff Bensley suggested that local communities could be given the opportunity to input on proposed closing times of licensed venues.

Byron Shire Council suggested that the lack of clarity about roles and responsibilities of different agencies causes community confusion, and should be addressed. It suggested that OGLR consider developing a Community Consultation Strategy.

Manly Council believed that evidence-based submissions made by councils are not properly considered by OLGR, although it is noted that such submissions are actually considered by the Independent Liquor and Gaming Authority as the decision maker in liquor licence applications. This is an example of confusion on the various statutory roles under the regulatory system.

Tweed Shire Council submitted that, while most liquor licence applications are forwarded to the council, this is not always the case and some further attention to administration in this area is warranted.

Submissions also called for changes to the CIS process. Examples included that a CIS be compiled by an independent authority (Albury City Council) and checked independently (City of Sydney, City of Newcastle), it include consideration of domestic violence (Outer West Domestic Violence), that it be mandated for all liquor licence applications (Ms Ecuyer, NDARC), and it identify potential negative impacts on the surrounding social and physical environment (Tamworth Regional Council).

Further, some submissions called for an increase in the consultation period for stakeholders (Tamworth Regional Council) and improved notification requirements (City of Sydney, Waverley Council, NAAPA), for the CIS process to consider positive and negative economic impact (Bulford Legal), that there to be consideration of alcohol advertising and promotions on young people (Ms Woods) and the impact on the health of the community beyond short term impacts relating to injury, accident and violence (Fairfield City Council).

Finally, there was support for a review of the CIS process to identify how it could be streamlined (NSW Small Business Commissioner, Ms Cathy Griffin, Manly Council, Last Drinks at 12).

## POLICY DISCUSSION

Some of the submissions confuse the role of the OLGR and the Authority in relation to facilitating and considering community input into licensing matters. This issue is discussed earlier in this report, and will be assisted by the proposal for a 'one-stop-shop' website (also discussed earlier in this report) to enhance community stakeholder input in the licensing process.

Merging the CIS process under the Liquor Act and the similar process required for development approvals from local councils would significantly reduce red tape and improve cooperation between the Authority, the OLGR, local councils, police and the community. This approach has the potential to greatly reduce the impact on, and expense for, applicants and the community from undertaking or responding to two similar processes that designed to engender community consultation.

Both processes are similar in that notifications of applications are advertised either on websites or in newspapers (or both) and residents and businesses within the immediate area are notified of the application. Both the Authority and local councils have the power to determine trading hours and can impose conditions on applicants on a wide range of matters (e.g. noise levels, security, etc.)

The CIS process under the Liquor Act was introduced to ensure that the views of local residents and others in the community could be considered via written submission without the need to attend a court hearing and be cross examined. Whatever changes are made to the current processes, they should not diminish the ability for the community to be informed and comment upon liquor licensing applications in a cost effective and efficient manner.

The present legislative framework with its parallel responsibilities of the Authority and local councils, particularly in relation to conditions and trading hours, leads to confusion and frustration due to the potential for contradictory conditions and trading hours that do not align.

To determine whether licensed premises are trading in accordance with the Authority and local government approvals, regulators need to have access to all liquor licence and development consent conditions. If there is conflict between these, the most restrictive or onerous of the requirements usually takes precedence.

While it is possible to outline a way forward, reforms would require evaluation and input by the Department of Planning and Infrastructure, the Department of Local Government, local councils, the Authority, the OLGR and the NSW Police Force. They would also require amendment to a number of Acts.

Although there are complexities in navigating a path, ultimately, a merging of processes would achieve efficiencies and cost savings for all parties. The current review of the Environmental Planning and Assessment Act provides an opportunity to introduce reforms, although it precludes this review from making precise recommendations.

Similarly, the trial of an EVAT is currently underway. The EVAT takes account of external factors such as local demographics, and market factors such as density of existing licensed premises, and comprises two assessments – location risk and venue risk – to assist the Authority is making informed liquor licensing decisions. The EVAT is further discussed elsewhere in this report.

If the trial is successful, it is considered that the EVAT could inform decisions of local councils when determining "liquor" development applications (LDA). That is, those DA applications that relate to new premises, changes to premises or changes to use, where the owner is required to apply for approval to local council and involve or are proposed to involve the sale of liquor.

One option is that prior to making an application for development consent, the applicant be required to obtain an EVAT report and a position on the proposal (informed by the EVAT report) from liquor regulators. An appropriate and reasonable fee could be charged for the report. The data and information contained in the EVAT should be sensitive to type of licence and the risk associated with the introduction of another liquor licence.

LDAs would require applicants to state whether it is proposed to sell liquor on the premises and state the type of liquor licence to be sought as well as providing a copy of the EVAT report.



The applicant would also be required to submit other relevant information required by local council to proceed with the development consent (e.g. plans, environmental statements, storm water management, etc). And the applicant would be required to incorporate information on the proposed business operations, such as patron capacity, trading hours and other relevant factors (e.g. the membership of the local liquor accord and the provision of security staff).

A full copy of the LDA would be served on local police and the OLGR and be subject to the usual process for a development application (advertising, notifying local residents, website publishing, etc).

The data contained in the LDA, including the EVAT report, would be made publicly available through the local council's website - as is the present case with development applications. This would provide further information on a risk assessment of the type of liquor licence - having regard to trading hours, capacity, etc as well as data on alcohol-related assaults, offensive behaviour, current density rates of licensed premises, number of high risk liquor venues in the area, liquor venues with extended trading hours, late night transport options, etc.

Regulation 88(1)(b) of the *Environmental Planning and Assessment Regulation 2000* requires the local council to give written notice to such public authorities (other than relevant concurrence authorities or approval bodies) as, in the opinion of the local council may have an interest in the determination of the application.

This process would enable local police, the OLGR and the local community to be adequately notified of the application and to make submissions to local council on an informed basis.

The local council would also have regard to the usual planning and control matters as well as local police, the OLGR and community views when determining the application.

The present 14 day DA notification period should be extended to 30 days for LDAs to assist the community, local police and the OLGR in making their submissions. This is the same timeframe as presently exists under the Liquor Act for similar liquor licence applications to the Authority, as well as applications for nominated integrated developments and threatened species development under Regulation 89 of the Environmental Planning and Assessment Regulation.

Normal appeal processes would apply to the Land and Environment Court.

If this process is followed, then there would be no CIS process required under the Liquor Act, thus alleviating the necessity for a further community consultation phase before the Authority and reducing red tape for the community, police, the Authority and the OLGR.

The applicant would be required to seek the issue of a liquor licence by the Authority to be authorised to sell and supply alcohol. The Authority would retain its current role to ensure applicants pass relevant probity and competency standards. Relevant conditions, patron numbers and trading hours approved by the local council would form the basis of trading conditions authorised by the Authority.

In situations where a DA approval or change of use is not required, and for applications for extension of trading hours past midnight, a CIS process would be required under the Liquor Act and determined by the Authority in the normal course, although the Authority should consider how the CIS process can be improved to ensure it accurately reflects community issues relating to a licensing proposal. This requirement ensures that a community consultation process would be required in relation to all new liquor licence applications as well as extension of trading hours past midnight.

The process before the Authority or the local council should be as similar as possible. That is, an EVAT report must be obtained prior to application to the Authority, it must be incorporated into the CIS, notification advertised in local press, local residents notified, listed on the OLGR's website, etc. The OLGR's website should be reviewed to ensure that it can be easily accessed and copies of the CIS downloaded.

A copy of the full CIS would need to be served on local councils and local police.

Given that these proposals, if adopted, would require only one community statement, the review proposes that the categories of CIS be abolished, and the new CIS process be based around the category B CIS requirements.

The proposal, if adopted, would also see that the Authority is the determining body for applications to trade past midnight and applications to the local council for changes to development consent conditions would not be required.

If the Authority has not issued a liquor licence within a five year period of the approval of an LDA, a CIS under the Liquor Act would be required unless the Authority determines a longer period should apply. This would overcome situations where developments take a long time to be finalised, but the amenity of the immediate area has changed over the period e.g. increased alcohol-related issues, increase in density of licensed premises etc.

Whether the process is commenced with local council or the Authority, both entities should review their current arrangements in dealing the culturally and linguistically diverse communities to ensure that their views can be encouraged.

The use of the EVAT by both the Authority and local councils will lead to a consistent approach in dealing with applications for liquor licences. The OLGR should consult with Authority, Local Government NSW and the NSW Police Force on at least an annual basis to ensure the EVAT is working efficiently and achieves appropriate outcomes.

Should the process outlined in the merging of the CIS and development approval processes be adopted, a number of the issues raised in relation to the CIS and its present process would be satisfied. For example, the OLGR would provide independent data collection through the EVAT process and it would be publicly available for the community and others to view; all liquor licence applications would be subject to either a CIS or a similar process under the DA process; the EVAT data would be widened to include domestic violence data, liquor licence density, risk associated with high risk environments or venues; there would only be one category of CIS based around the present category B; and notification of the full application would be required to be served on local police, the OLGR and/or local councils.

An increase in timeframes for community consultation beyond 30 days as suggested in some submissions is not supported. The present DA process only allows a 14 day period (other than for nominated integrated developments and threatened species development). The review seeks to extend this to 30 days for liquor licence applications as is the case with present liquor applications.

## RECOMMENDATIONS

### **Recommendation 70:**

Consideration should be given to introducing a coordinated planning and liquor licensing model (as detailed in this report) as part of the planning reforms that are currently being progressed by the Government so as to provide one forum for consideration of social impact and local neighbourhood issues associated with a liquor licensing proposal.

### **Recommendation 71:**

Consideration should be given to how this new model might be implemented quickly having regard to existing liquor licensing applications that are underway at the time of its introduction.

### **Recommendation 72:**

If the proposals to merge the DA process and the CIS process are not adopted, the CIS process should be reviewed having regard to the issues raised in this review.

### **Recommendation 73:**

The CIS process should be reviewed to ensure it accurately reflects community issues relating to a licensing proposal, with consideration given to requiring full copies of the CIS to be served on local police and local councils; how the CIS process can facilitate the provision of independently sourced data to the Authority; ensuring the community and relevant stakeholders are properly notified of liquor applications; and whether certain licence types should continue to be excluded.

## 11.2 Community intervention – complaints regarding local disturbance and harm

Residents, police and local councils can make complaints against existing licensed venues where the operation of the venue or behaviour of patrons unduly disturbs the quiet and good order of the neighbourhood.

The Director General currently determines disturbance complaints given the enforcement nature of these matters, which deal with compliance with the requirements of the law for the responsible operation of licensed premises.

Specifically, the Liquor Act provides that a person may complain to the Director General 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).

A complaint may only be made by:

- a person authorised in writing by 3 or more persons residing in the neighbourhood of the licensed premises or a person who is such a resident and is authorised in writing by 2 or more other such residents,
- the Commissioner of Police,
- a person authorised by the local consent authority in relation to the licensed premises, or
- a person who satisfies the Director General that his or her interests, financial or other, are adversely affected by the undue disturbance to which the person's complaint relates.

The complaint may relate to more than one licensed premises.

After receiving a complaint, the Director General considers the best means of addressing the issues raised by the complainant. This can include:

- encouraging the complainant and licensee(s) to resolve the issues between themselves,
- mediation between the complainant and the licensee(s),
- seeking voluntary undertakings by the licensee(s),
- using other regulatory powers under the Liquor Act to impose conditions on a licence (under section 54) and/or issuing directions to the licensee(s) and/or staff (under section 75),
- dealing with the complaint based on the evidence provided by the complainant and submissions from the licensee(s) involved, or
- convening a conference to obtain further information from the complainant and give the licensee an opportunity to respond.

Other stakeholders, such as police and council representatives, may also be invited to provide their view and contribute to measures to address the issues raised in the complaint. This may include attending a conference or providing relevant data to assist the Director General at the conference.

The complaint process must observe the principles of natural justice and due process. All parties are provided with a fair opportunity to be heard in resolving a complaint.

A conference may deal with more than one complaint and can be extended to involve other licensed premises.

**Table 10** details the number of disturbance complaints dealt with over the past three years (2013/14 figures are to 7 November 2013).

<b>Section 79 Noise Disturbance Complaints Finalised</b>	<b>2010/11</b>	<b>2011/12</b>	<b>2012/13</b>	<b>2013/14</b>
	61	28	21	13

*Table 10. Noise disturbance complaints finalised between 2010 and 7 November 2013*

The Director General can decide to utilise different regulatory tools in resolving a disturbance complaint. This can lead to a range of outcomes which can be tailored to the particular circumstances of the complaint.

Where a complaint is determined under the disturbance complaint provisions of the Liquor Act, the Director General can:

- impose, vary or revoke a condition on the liquor licence
- adjourn a complaint conference (if held) to enable the licensee to implement any undertakings given to the Director General to address the complainant's concerns and to enable the effectiveness of those undertakings to be reviewed
- issue a warning
- take no further action.

The types of conditions that can be imposed on a liquor licence include but are not limited to:

- noise emission restrictions
- trading restrictions including lockouts/curfews
- restrictions on the sale/supply of liquor
- requiring security, or additional security patrols, in and around a licensed premises venue
- requiring a licensee to participate in a local liquor accord.

Complainants and licensees can request that the Independent Liquor and Gaming Authority review a disturbance complaint decision made by the Director General if they are not satisfied with the decision.

## SUBMISSIONS

There was a high level of frustration expressed by several community members about how complaints about venues are heard, including Ms Gaye Walker, Mr Reg T Fisk, and Ms Danielle Ecuyer. A similar position was voiced by NAAPA and the Byron Youth Service, who called for a rationalisation of the current disturbance complaint process.

As previously noted, NAAPA recommended improving the ability of communities to participate in compliance processes, including by expanding the capacity of the Authority to investigate complaints against licensees in order to reverse the burden of proof that rests with complainants, and by providing information on the complaint process through the OLGR and the Authority websites, local government offices, and community legal centres.

The City of Sydney recommended that the disturbance complaint process be clarified and refined to improve efficiency and effectiveness (including allowing mediation), thereby improving public confidence in the system and removing misconceptions in relation to who is the responsible regulatory entity for these matters.

The Surry Hills Liquor Accord raised concern about the involvement of councils in addressing disturbance complaints against licensed premises, proposing that the handling of complaints be dealt with exclusively in accordance with the procedures set out in the Liquor Act.

## *POLICY DISCUSSION*

The review has previously commented on the confusion that surrounds the community's understanding of who to approach to commence complaint actions against licensees, and has provided recommendations in this regard. Those recommendations will assist in providing clarity to the community by creating a 'first port of call'.

As detailed, there are concerns about a time delay in setting up a conference and dealing with matters. The use of mediation, particularly in the first instance, assists better resolution, with regulators able to take the lead to promote and consider options for licensees to change business operations to achieve better outcomes. It is noted that the current law facilitates the use of mediation, and the OLGR provides advice to complainants about the availability of that option.

Over the past two years, the disturbance complaints case management processes have been amended and the majority of disturbance complaints are now resolved within six months. OLGR has implemented an assessment procedure to expedite complaints management and escalate complaints meeting the statutory requirements to investigation and early resolution. This system of case management has assisted in redirecting complaints to appropriate agencies; informed the number of active complaints and resulted in significantly improved timeframes for resolution of disturbance complaints that meet the legislative thresholds.

Agreed resolutions could be imposed on a licensee (rather than the licensed premises) by way of undertakings that would form the basis of complaint action if they were breached.

Dealing with noise complaint matters needs to be addressed according to the range of circumstances: for instance, is it a one-off situation; is it a consistent issue; could physical changes to the building assist; or are there order of occupancy issues.

A quick and efficient resolution on an agreed basis is a good outcome. The use of a mediation process has the potential to assist and should be a speedier process than a formal complaints process that requires lodgement and presentation of evidence, amongst other things.

In other instances, stronger intervention is required and OLGR has implemented requirements for licensees to establish a complaints 'hot-line' to prompt immediate ameliorative action by the licensee in responding to a noise disturbance complaint or to require acoustic testing with the cost borne by the licensee.

## *RECOMMENDATIONS*

### ***Recommendation 74:***

The use of a mediation process should be promoted where possible and appropriate to deal with community disturbance issues in an informal and expeditious manner.

### ***Recommendation 75:***

The availability and operation of this mediation process should be explained in simple terms to stakeholders.

### ***Recommendation 76:***

The disturbance complaint process should allow submissions by the community to OLGR, and the immediate commencement of mediation between parties with agreed outcomes in writing.

### ***Recommendation 77:***

The Liquor Act should be amended to allow agreed resolutions to be imposed on the licensee (rather than the licensed premises) and be subject to disciplinary action, if breached.

### **Recommendation 78:**

Access to information and assistance relating to intervention measures (such as licence conditions, directions, and disturbance complaints) should be significantly improved for local government and the community through measures such as an enhanced website with supporting resources.

### **Recommendation 79:**

Publication of decisions and action taken on regulatory interventions should be mandated, and should include reasons for decisions and outcomes so as to better explain the processes adopted to assist in reducing community harms and to implement regulatory interventions.

## **11.3 Alcohol-related research**

Many submissions quoted or referenced alcohol-related research that had been undertaken both within Australia and overseas. While some research quoted was of variable quality, both in the evidence and research, it provided the review with a substantial amount of information to consider.

Some submissions suggested independent research into a number of issues, including the effectiveness of responsible drinking and underage drinking messages.

The City of Newcastle suggested that research into the development of a minimum set of standard conditions for all licence types, and that opportunities for the development of alternate types of licence conditions and governance models be investigated; The City also suggested that research costs could be met through a state government levy per unit of alcohol sold to be paid by packaged liquor outlets.

FARE proposed that the Government develop an evaluation framework for the assessment of alcohol-related policy reforms and undertake or fund independent evaluations of them as they are implemented.

## **POLICY DISCUSSION**

The review considers that there is no overall strategic focus for the current research agenda. Often the topics chosen for research do not add greatly to the ability of policy makers or the community to make informed, evidence-based decisions.

A better informed industry and community could greatly contribute to the debate about how alcohol-related problems can be addressed and positive outcomes achieved. There is a need for consistency in reporting measures, such as those published by BOCSAR, and to ensure ready access to that information. Enhancement of the OLGR website as detailed previously in this report would facilitate transparency; consistency and accessibility to accurate and timely data.

Questions of bias can arise when vested interests, including industry, government and interest groups commission and fund research. One option is to consider the approach adopted in relation to problem gambling.

Gambling Research Australia (GRA) has been set up as a partnership between the Commonwealth, State and Territory Governments to initiate and manage a national gambling research program structured around the following five research priority areas:

1. helping individuals set their limits including access to cash and pre-commitment,
2. responsible gambling environments,
3. gaming machine standards—developing better consumer protection,
4. a preventative and early intervention strategy targeted at those at risk of problem gambling, and
5. development of harm minimisation measures for interactive gambling.

The Secretariat to GRA is provided by the Office of Liquor, Gaming and Racing, Department of Justice, Victoria. The current, five-year Gambling Research Australia research program (2009-2014) was established via a Memorandum of Understanding signed by all gaming/gambling Ministers in June 2009.

All research is through tender, peer reviewed and the results are publicly available. This has greatly added to an informed debate between policy makers and within the community, and assisted a concerted effort to minimise harm by providing advice on the outcomes of policy initiatives.

Since 2007, the NSW Government has introduced a number of initiatives and made significant amendments, including the commencement of the *Liquor Act 2007*, to address concern about alcohol-related harm in the community. Notably, this has coincided with a steady decline in rates of alcohol-related violence.

However, there is little research to identify the exact causal factors which have contributed to this decline. Questions remain as to which initiatives are the most effective, what other factors may have influenced outcomes, and what the relative impact is of different strategies and in different communities.

Further research, including a focus on specific precinct experiences relative to similar circumstances elsewhere (both within NSW and in other jurisdictions), would help to provide greater clarity to stakeholders and regulators on the most effective strategies to reduce alcohol-related harms and achieve the benefits of a responsible and vibrant hospitality industry. This should be considered in the context of the national research agenda (in conjunction with other States and the Commonwealth) and the work of existing research institutions and programs.

## RECOMMENDATIONS

### ***Recommendation 80:***

The Government should consider mechanisms to fund an independent alcohol-related research program in New South Wales modelled (as appropriate) on the Gambling Research Australia program.

## 12 OTHER MATTERS OF A TECHNICAL NATURE

This section of the report considers a range of technical issues regarding the operation of certain provisions in the *Liquor Act* and the *Gaming and Liquor Administration Act* that have been raised in the context of the review and have not been discussed elsewhere in this report.

The issues raised below do not represent a full list of technical issues requiring consideration. For example, there are a number of provisions in the legislation that are now redundant or that require amendment to reflect current terminology. Those matters should be considered in the context of any legislative amendments that arise from this review.

### 12.1 Provision of food with liquor on licensed premises

Sections 17(4), 20C(4) and 27 of the *Liquor Act* require food of a nature and quantity consistent with the responsible sale, supply and service of alcohol to be available at all times in a hotel, small bar and on on-premises licence when liquor is sold or supplied. It also enables requirements to be prescribed by regulation in relation to the nature and quality of such food.

The requirement is a key harm minimisation measure as it is recognised that eating food when consuming liquor can help to reduce intoxication and assist in the prevention of alcohol-related harm.

However, the *Liquor Act* does not provide specific direction as to the type of food that would be considered consistent with the responsible sale, supply and service of alcohol. As a result, compliance with this requirement can be subject to varying interpretations and causes confusion for industry and regulators.

This has led to circumstances where some licensees have relied upon the provision of snack type foods, such as confectionery, potato crisps, nuts, muffins, cup cakes, crackers and rice bread, to comply with the food requirement. In some instances, the provision of this food is made available through a vending machine, which is located on the licensed premises.

While the provision of these types of snack foods has previously been deemed by the courts to satisfy the existing food requirement in its current form, it is not considered consistent with the spirit or intent of the requirement, particularly during high risk late night trading periods.

It is also noted that advice from the Dieticians Association of Australia<sup>4</sup> indicates that eating certain types of snack foods when drinking alcohol is both unhealthy and can increase the likelihood of a person consuming more alcohol.

Requirements in Queensland mandate the need for the provision of 'prepared food', which is defined as:

- a. a meal, or
- b. other food usually needing preparation before it can be eaten, but not including snacks, or liquor or other beverages.

Examples of prepared food include burgers, falafels, hot potato chips and sandwiches. Snacks such as confectionery, potato crisps and fruit and nuts, where there is no preparation undertaken by the licensee, are not considered to be prepared food.

New South Wales would benefit from considering the approach adopted by Queensland to provide some direction and greater certainty as to the types of food that would or would not be considered consistent with the responsible sale, supply and service of alcohol on licensed premises, particularly during high risk late night trading periods.

<sup>4</sup> <https://www.eatforhealth.gov.au/food-essentials/fat-salt-sugars-and-alcohol/alcohol>



**RECOMMENDATION****Recommendation 81:**

The regulation making powers under sections 17(4) and 27 of the Liquor Act should be utilised to prescribe requirements in relation to the nature and quality of food that must be made available when liquor is sold or supplied for consumption on licensed premises.

## 12.2 Non-voluntary exclusion of persons from licensed premises

Section 77 of the Liquor Act authorises a venue to refuse a person entry to the licensed premises or remove a person from the licensed premises if that person:

- a. is intoxicated, violent, quarrelsome or disorderly,
- b. whose presence on the licensed premises renders the licensee liable to a penalty under the Act,
- c. smokes within a smoke-free area of the licensed premises,
- d. uses or has possession of any substance that is suspected of being a prohibited plant or a prohibited drug, or
- e. is barred from the licensed premises under the conditions of the licence or according to a term of a local liquor accord.

The section also compels a person who is refused entry or removed from the venue for being intoxicated, violent, quarrelsome or disorderly to leave the vicinity of the licensed premises and not attempt to re-enter the premises. Persons that do not comply can be issued with a \$550 penalty notice.

However, the requirement to leave the vicinity and not attempt to re-enter the premises does not apply in other instances when a person is refused entry or removed from the venue under section 77 of the Liquor Act.

For example, a person who is refused entry due to a lock-out (either by condition of licence, term of an accord or schedule 4) or removed for smoking within a smoke-free area, is not required to leave the vicinity of the premises and does not commit an offence if they continue to attempt to enter the premises.

If the person then becomes violent, quarrelsome or disorderly outside the venue, they still cannot be compelled to move away from the vicinity of the licensed premises and that person does not commit an offence under the Liquor Act.

This can have particular consequences for licensees that are required to refuse entry or remove certain persons from the licensed premises as part of a condition on their licence.

**RECOMMENDATION****Recommendation 82:**

The Liquor Act should be amended to compel a person refused entry or removed for any reason authorised by the Liquor Act to leave the vicinity of the licensed premises and not attempt to re-enter the premises.

## 12.3 Cessation of liquor sales for late trading premises in Kings Cross

Concerns have been raised about the special condition applying to Kings Cross hotels trading after 2am to cease liquor sales for an hour prior to closing, or in the case of 24 hour trading hotels, operate a one hour timeout.

Industry has suggested that the requirement to cease liquor sales creates uncertainty as to whether licensees could be committing an offence under the Liquor Act by keeping bar areas open during this period. It has also been suggested that it creates uncertainty as to whether patrons who remain in the hotel during this period may also be committing an offence under the Act.

The offences relate to requirements under section 103 and 104 of the Liquor Act, which provide that a hotelier must close every bar area of a hotel when liquor is not authorised to be sold or supplied, and that a patron must not remain in a bar area of a hotel later than 30 minutes after the commencement of any period when liquor is not authorised to be sold or supplied.

It is understood that advice received by Government has indicated that these offences are only committed when a bar area is not authorised to be open. This advice confirms that the cease liquor sales and timeout provisions require a licensee to cease selling and supplying liquor during these periods and states that a distinction needs to be drawn between these requirements, and the requirements of sections 103 and 104 of the Liquor Act that a bar area be closed and patrons not be in that area when it is not authorised to be open (for the sale/supply of liquor).

The times during which a bar area is authorised to be open are determined by the authorised trading hours of the hotel rather than ancillary licence conditions (such as the cease liquor sales and timeout provisions) that determine what can and cannot be done during those authorised trading hours.

### RECOMMENDATION

#### **Recommendation 83:**

The Liquor Act should be amended to clarify that it is not an offence for a:

- a. hotelier to keep a bar area open when required by the Act to cease liquor sales for a period of time during authorised trading hours, and
- b. patron to remain in a bar area of a hotel when it is required to cease liquor sales for a period of time during authorised trading hours.

## 12.4 Incident registers

Under section 56 of the Liquor Act, licensed premises that trade after midnight must maintain an incident register in the form approved by the Authority. The purpose of the incident register is to record details of incidents that occur on the licensed premises outside of the standard trading period (5am to midnight Monday to Saturday and 10am to 10pm on Sundays) or that occur between midnight and 3 am in the case of a limited licence. The incident register must also record details of any action taken in response to an incident.

Incidents that are required to be recorded in the register include:

- a. any incident involving violence or anti-social behaviour on the licensed premises,
- b. any incident involving violence or anti-social behaviour that occurs in the immediate vicinity of the venue and involves a person who has recently left, or been refused entry to, the premises, or
- c. any incident that results in a person being removed from the licensed premises.

It is considered that incident registers should be approved by the OLGR rather than the Authority to ensure they are practically designed to complement enforcement and intelligence activities.

It would be beneficial to require the recording of other incidents, such as a person being refused entry to the licensed premises, and enable OLGR inspectors and police to require immediate production and remove and copy registers in a way that is consistent with the Kings Cross special conditions relating to incident registers. Clarity around the amount of time that information in a register is required to be kept (e.g. 2 years), and controls on the subsequent alteration of register entries would also be beneficial.

This could be achieved through the establishment of an online incident register system which can be accessed by licensees and regulators in real time. Such a system could be trialled in high risk precincts and/or for licensed premises that are subject to special conditions under schedule 4 of the Liquor Act or have incurred a strike under the Three Strikes disciplinary scheme.

## RECOMMENDATION

### ***Recommendation 84:***

The form of incident registers should be approved by the OLGR and licensees should be required to produce them immediately to police and OLGR inspectors.

### ***Recommendation 85:***

The law should be amended to provide clarity around the amount of time that information in a register is required to be kept, and should include controls on the subsequent alteration of register entries.

### ***Recommendation 86:***

OLGR should investigate the establishment of an online incident register to be trialled in high risk precincts and/or for licensed premises that are subject to special conditions under schedule 4 of the Liquor Act or have incurred a strike under the Three Strikes disciplinary regime.

## 12.5 Voluntary suspension of liquor licence

The Authority has previously requested the ability to, with the consent of the licensee, suspend the operation of a liquor licence for a fixed period of time.

An example of circumstances which may warrant such action includes a request by a local council to suspend the operation of its on-premises licence for a period of time each year because it is not utilised and the premises to which it relates is often licensed through the engagement of licensed caterers during that period.

Suspension of the licence in these circumstances would help to avoid concurrent liability attaching to the council by the operation of its on-premises licence at such times when it is intended that liquor be supplied by licensed caterers engaged by the various third parties who hire the venue.

The Authority has indicated that, as a matter of principle, it saw no difficulty in relieving the local council of concurrent regulatory liability under the Liquor Act while a licensed caterer was responsible for the supervision and supply of liquor at the relevant premises, not the council or its staff.

The power to suspend a licence is currently confined to circumstances where the Authority exercises its disciplinary power under Part 9 or 9A of the Liquor Act.

## RECOMMENDATION

### **Recommendation 87:**

The Liquor Act should be amended to enable the Authority to, with the consent of the licensee, suspend the operation of a licence for a fixed period of time.

## 12.6 Investigation of related matters under the Gaming Machine Tax Act

Section 4 of the Gaming and Liquor Administration Act defines gaming and liquor legislation as the following Acts and regulations and other instruments made under those Acts:

- a. *Gaming and Liquor Administration Act 2007*,
- b. *Casino Control Act 1992*,
- c. *Gaming Machines Act 2001*,
- d. *Liquor Act 2007*, and
- e. *Registered Clubs Act 1976*.

The *Gaming Machines Tax Act 2001* is absent from this definition. As a result, the audit of a registered club's compliance with the ClubGRANTS scheme by OLGR inspectors can be compromised if that club refuses to cooperate with inspectors.

While there is no evidence that this has yet to occur, this anomaly should be addressed to provide regulatory certainty.

## RECOMMENDATION

### **Recommendation 88:**

The definition of gaming and liquor legislation in the *Gaming and Liquor Administration Act 2007* should be amended to include a reference to the *Gaming Machines Tax Act 2001*.

## 12.7 Offences under Part 4 of the Gaming and Liquor Administration Act

Section 34 of the Gaming and Liquor Administration Act contains several offences where a person hinders an investigation or refuses or fails to comply with requirements relating to investigations by regulators. However, it does not allow regulators to issue penalty notices for these offences as they are not currently prescribed as offences for which a penalty notice can be issued.

Currently, OLGR inspectors and police have the choice of commencing costly prosecution action, which is resource intensive and places additional pressure on the judicial system, or they can issue a warning.

Section 46 of the Gaming and Liquor Administration Act enables offences under that Act to be prescribed as offences for which penalty notices can be issued.

## RECOMMENDATION

### **Recommendation 89:**

Section 46 of the *Gaming and Liquor Administration Act 2007* should be utilised to prescribe the offences under section 34 as offences for which a penalty notice may be issued.

## 12.8 Requirement to provide information and records

Under section 21 of the Gaming and Liquor Administration Act, the Authority or an OLGR inspector or police officer may require a person, by notice in writing, to furnish information or records (or both) as the Authority, inspector or officer requires in connection with any matter arising under or in connection with the gaming and liquor legislation.

Any such notice must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.

The AHA (NSW) has proposed that this section be amended so that the written request must also stipulate the relevant section of the legislation which is alleged to have been breached and the location and time of any alleged breach.

It is the Association's view that that this power has regularly been used as a 'fishing expedition' with no actual offence disclosed and as a broad authority to demand copious hours of CCTV footage which it contends has, in several instances, included onerous requests for all footage from all cameras during all trading periods.

It is also the Association's view that the Gaming and Liquor Administration Act should be amended to reinforce that, where a non-exigent matter is being investigated and records are required to be produced, section 21 is the appropriate provision on which to rely, given that section 26 already relates to exigent matters on premises lawfully entered.

In its submission, Bulford Legal also argued that this power should only be used in direct connection with an offence arising under that legislation, which inspectors or police reasonably consider to have occurred. It suggested that section 21 should be similarly constrained as section 26 which provides regulators with the power to inspect and seize things.

These views from industry representatives are understandable, and it is important that there be appropriate checks on investigation powers.

The provisions of section 21 are broad, and should be utilised by regulatory agencies with reasonableness and discretion and not used as a 'fishing expedition'. Section 26 provides the opportunity for regulators to demand, inspect, copy or size documents where there are reasonable grounds for believing that an offence has been committed. These provisions, combined with section 35 that provides that self-incrimination is no excuse to answering questions or providing information, provide regulators with significant powers that are generally not available to enforcement agencies.

Accordingly, they should be used sensitively and not arbitrarily otherwise arguments for the constraint submitted by industry might receive greater support.

However, it is considered that section 21 of the Gaming and Liquor Administration Act remains appropriate in its current form. Given the level of risk associated with the operation of a licensed premises and the lack of specificity in the industry's arguments, it is reasonable that such a power continues to be available to regulators without unnecessary constraints.

In its current form, the provision also sends a message to regulated entities that there are significant powers available to facilitate enforcement action under the liquor and gaming laws.

### RECOMMENDATION

#### **Recommendation 90:**

The investigation powers under section 21 of the *Gaming and Liquor Administration Act 2007* should not be altered.

## 12.9 Secrecy

Section 17 of the Gaming and Liquor Administration Act provides that a person who acquires information in the exercise of functions under the gaming and liquor legislation must not, directly or indirectly:

- a. make a record of the information, or
  - b. divulge the information to another person,
- except in the exercise of functions under the gaming and liquor legislation.

However, an exemption to this requirement exists to enable information to be divulged to:

- a. a particular person or body (or to a particular class of persons or bodies) if the Authority or the Director General certifies that it is necessary in the public interest that the information be divulged to the person or body or class of persons or bodies, or
- b. to a person or body prescribed by the regulations, or
- c. to a person who is expressly or impliedly authorised to obtain it by the person to whom the information relates, or
- d. to the Minister, or to a person who is engaged in the administration of the gaming and liquor legislation and is authorised in writing by the Minister to receive information under this section.

This section also provides that the secrecy provisions do not apply to the divulging of information to, or the production of any document or other thing to, any of the following:

- a. the New South Wales Crime Commission,
- b. the Independent Commission Against Corruption,
- c. the Australian Crime Commission,
- d. the NSW Police Force or the police force of another State or a Territory,
- e. the Australian Federal Police,
- f. any other person or body prescribed for the purposes of this subsection.

As provided for, a list of persons and bodies to whom information may also be divulged is prescribed under Schedule 1 of the *Gaming and Liquor Administration Regulation 2008*.

Section 17 of the Gaming and Liquor Administration Act also contains additional requirements in relation to information obtained under the *Casino Control Act 1992*, the provision of documents or information in court, and access to information under the *Government Information (Public Access) Act 2009*.

In its submission, the NSW Police Force has requested that local councils be prescribed under Schedule 1 of the *Gaming and Liquor Administration Regulation 2008* so that information can be shared given that they have a critical role in working with regulators on a range of liquor licence and development applications, compliance and public health and safety issues.

This proposal was echoed by the City of Sydney which noted the mutual interest it has in ensuring effective and efficient communication of information in relation to development applications, compliance activities and other general issues relating to licensed premises within the City of Sydney's local government area.

## RECOMMENDATION

### **Recommendation 91:**

Local councils and other consent authorities should be considered for inclusion in the list of exempt bodies under Section 17 of the *Gaming and Liquor Administration Act 2007*.

# APPENDIX 1

## STAKEHOLDERS INVITED TO CHAIRPERSON MEETINGS

- Aboriginal Affairs, Office of Communities
- Albury City Council
- Australian Hotels Association (NSW)
- Blacktown City Council
- Bourke Shire Council
- Brewers Association of Australia and New Zealand
- Byron Shire Council
- City of Sydney Council
- ClubsNSW
- Council of Social Service of NSW
- Department of Attorney General and Justice
- Department of Family and Community Services
- Department of Planning and Infrastructure
- Destination NSW
- Distilled Spirits Industry Council of Australia
- Division of Local Government, NSW Department of Premier and Cabinet
- Dubbo City Council
- Echo Entertainment Group Ltd
- Kempsey Shire Council
- Liquor Stores Association NSW
- Local Government NSW
- Newcastle City Council
- NSW / ACT Alcohol Policy Alliance, whose founding members consist of:
  - Foundation for Alcohol Research and Education
  - Network of Alcohol and Drug Agencies
  - Darlinghurst Resident Action Group
  - Newcastle Community Drug Action Team
  - Police Association of NSW
  - Australian Medical Association NSW
  - The Royal Australasian College of Surgeons
  - Public Health Association NSW Branch
  - Cancer Council NSW
  - National Drug and Alcohol Research Centre
  - Centre for Health Initiatives, University of Wollongong
  - Hello Sunday Morning
  - Australasian College of Emergency Medicine
  - Jewish House Limited
  - Inspire Foundation
  - The Asia Pacific Centre for Crime Prevention Griffith University (Sydney)
  - University of Newcastle
  - Ulladulla Community Drug Action Team

- Drug and Alcohol Research and Training Australia
- Bondi Residents Association
- Ted Noffs Foundation (NSW)
- St Vincent's Hospital
- Australian Drug Foundation
- Health Services Union
- Pedestrian Council of Australia
- The Salvation Army NSW
- Awabakal Newcastle Aboriginal Co Operative Ltd
- The Royal Australasian College of Physicians
- Byron Bay Youth Service
- Law Enforcement Against Prohibition
- NSW Nurses and Midwives Association
- 2011 Residents Association
- Karralika Programs Inc.
- Alcohol Tobacco and Other Drugs Association ACT
- Ted Noffs Foundation (ACT)
- NSW Bureau of Crime Statistics and Research
- NSW Council of Social Services (NCOSS)
- NSW Department of Premier and Cabinet
- NSW Ministry of Health
- NSW Police Force
- NSW Wine Industry Association
- Office of the NSW Small Business Commissioner
- Orange City Council
- Parramatta City Council
- Randwick City Council
- Restaurant and Catering Association NSW / ACT
- Small Bars Association
- The Accommodation Association of Australia
- The Drinks Association
- The Thomas Kelly Youth Foundation
- Transport for NSW
- Tweed Shire Council
- Wollongong City Council



## APPENDIX 2

# LIST OF SUBMISSIONS RECEIVED BY THE OLGR

1. Rock Valley Hall
2. Davidson Volunteer Rural Fire Brigade.
3. Willoughby City Council
4. Mr Michael Atherton
5. Ms Roslyn Egan
6. Surry Hills Liquor Accord
7. Ms Gayle Walker
8. Mr John J Howard
9. Merino Country Vignerons' Association Inc.
10. Yarralaw Springs Wines
11. Dubbo City Council
12. Sutherland Shire Council
13. Tourism Training Australia
14. Courthouse Hotel, Darlinghurst
15. Mr Peter Sainsbury, Mr Alexander Voukelatos and Ms Mandy Williams
16. Mr Douglas Tutt
17. Mr Geoff Bensley
18. Ms Mandy Johnson
19. Mr Stephen Pate
20. Thomsons Lawyers
21. Ms Pagan Morgan
22. Back Schwartz Vaughan
23. Mr Reg T Fisk
24. Crescent Head Tavern
25. Albury Liquor Accord
26. Tweed Shire Council
27. Ms Annette Martin
28. Outer West Domestic Violence Network
29. Hunter Distillery
30. Ms Danielle Ecuyer
31. Railway Hotel, Muswellbrook
32. Merivale
33. Albury City Council
34. Eureka Funds Management
35. McCusker Centre for Action on Alcohol and Youth
36. V and J Colman
37. Tamworth Regional Council
38. Cancer Council NSW
39. Dr Peter Miller, Faculty of Health School of Psychology, Deakin University
40. Bulford Legal Pty Limited
41. Manly Council Community Safety and Place Management Committee

42. ClubsNSW
43. Design Collaborative Pty Ltd
44. Ms Di Woods
45. Muswellbrook Shire Council
46. The City of Newcastle
47. The City of Sydney
48. Mr Paul Alexander
49. Australia Street Company
50. Coles Liquor
51. Ms Sarah Yeates
52. New England Brewing Company
53. Byron Shire Council
54. National Drug and Alcohol Research Centre, University of NSW
55. Riverina Wine Grapes Marketing Board
56. Australia Post
57. Dr Peter McGeorge, St Vincent's Hospital, Sydney
58. Australian Medical Association NSW
59. Raise the Bar
60. Australian Beverages Council
61. C.inc Hotels
62. Police Association of NSW
63. Fairfield City Council
64. Byron Youth Service
65. Accommodation Association of Australia
66. Brewers Association of Australia & New Zealand Inc
67. Dr John A Crozier, Royal Australasian College of Surgeons
68. Echo Entertainment Group – The Star
69. NSW-ACT Alcohol Policy Alliance
70. Foundation for Alcohol Research and Education
71. Mr Dan McNamee
72. Craft Beer Industry Association
73. Mr Ray Johnson
74. National Alliance for Action on Alcohol
75. Waverley Council
76. Restaurant and Catering Australia
77. Mr Paul Wagner
78. Ms Violeta Quisora
79. Jo Holder
80. Mr Tony Brown
81. Dr John Kaye MLC, Greens NSW
82. Newcastle Community Drug Action Team
83. Australian Hotels Association NSW
84. Last Drinks at 12
85. Ms Cathy Griffin, Manly Council
86. Retirement Village Residents Association Inc
87. National Live Music Office

88. Randwick City Council
89. Alcohol and other Drugs Council of Australia
90. Assoc Prof Leslie E Bolitho, The Royal Australasian College of Physicians
91. Lion Pty Ltd
92. Local Government NSW
93. Mr Kevin Anderson MP, Member for Tamworth
94. Marrickville Council
95. The Potts Point Partnership
96. Distilled Spirits Industry Council of Australia
97. Kings Cross Liquor Accord
98. Liquor Stores Association
99. NSW Small Business Commissioner
100. NSW Wine Industry Association
101. Woolworths
102. NSW Police Force
103. Department of Planning and Infrastructure
104. Independent Liquor and Gaming Authority
105. Department of Family and Community Services
106. Department of Attorney General and Justice

