

**LIQUOR LICENSING LEGISLATION IN
AUSTRALIA: PART 1**

AN OVERVIEW

**An examination of Liquor Licensing
Legislation in Australia as at
December 2010**

Allan Trifonoff • Rachel Andrew • Tania Steenson • Roger Nicholas • Ann M Roche

Commissioned by the Intergovernmental Committee on Drugs through
the National Drug Strategy Cost Shared Funding Model

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SOUTH AUSTRALIA POLICE
KEEPING SA SAFE



**Government
of South Australia**



NCETA

*Australia's National Research Centre
on AOD Workforce Development*



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Disclaimer

The opinions expressed in this document are those of the authors and do not necessarily represent the views of the police services and other agencies that participated in the study from which this document was derived. In addition, they do not necessarily represent the views of the former Ministerial Council on Drug Strategy, the Intergovernmental Committee on Drugs or South Australia Police.

Please note that legislation is dynamic and may change but was correct at the time of writing this report. Readers are advised to check with their local jurisdiction for any revisions to the relevant liquor licensing legislation subsequent to December 2010. Since this document represents a historical “snap shot in time” of liquor licensing legislation in Australia it has been written in the past tense. Importantly however, the use of past tense should not be taken to imply that the legislation and other arrangements described herein no longer apply.

This document is not a legal interpretation or analysis of the liquor licensing legislation which exists in Australian states and territories. Statutory provisions are broadly provided as a means of comparing the legislative arrangements in each jurisdiction, as well as contextualising the experiences and expectations of the interviewees. To enable comparison across jurisdictions, generic headings have been utilised throughout the document, and in some instances, long statutory sections have been condensed. Readers are advised to seek further advice from the relevant authority in their jurisdiction regarding any liquor licensing matters which may impact them.

Preface

This publication is part of a larger project initiated under the former Ministerial Council on Drug Strategy (MCDS) Cost Shared Funding Model, now administered under the Intergovernmental Committee on Drugs, National Drug Strategy, Cost Shared Funding Model. In April 2009 the MCDS approved South Australia Police as the lead agency to oversee a project to review liquor licensing legislation in each Australian jurisdiction.

South Australia Police contracted the National Centre for Education and Training on Addiction at Flinders University in South Australia to undertake the project.

The project, undertaken between March 2010 and February 2011, involved an extensive literature review, a comprehensive examination of each Australian state and territory's liquor licensing legislation, data collection systems and interviews with key informants. Three publications have been developed from this project.¹

Part 1:

Trifonoff, A., Andrew, R., Steenson, T., Nicholas, R., and Roche, A. (2011). *Liquor Licensing Legislation in Australia: An Overview*. National Centre for Education and Training on Addiction (NCETA), Flinders University, Adelaide, SA.

Part 2:

Trifonoff, A., Andrew, R., Steenson, T., Nicholas, R. and Roche, A.M. (2011). *Liquor Licensing Legislation in Australia: A Jurisdictional Breakdown*. National Centre for Education and Training on Addiction (NCETA). Flinders University, Adelaide, SA.

Part 3:

Trifonoff, A., Andrew, R., Steenson, T., Nicholas, R., and Roche, A. (2011). *Liquor Licensing Legislation in Australia: Police Expectations and Experiences*. National Centre for Education and Training on Addiction (NCETA), Flinders University, Adelaide, SA.

This document, *Liquor Licensing Legislation in Australia: An Overview*, presents the background and introduction to the project, the methodology, findings of the literature review, and a summary of the legislation and associated structures in each Australian jurisdiction.

Part 2 outlines the liquor licensing legislation and arrangements that are in place in all Australian jurisdictions. The major findings from the consultations with police personnel are presented in Part 3. The aim of the project was to review the enforcement provisions in the liquor licensing legislation of all Australian states and territories. A national review was undertaken to identify the key features of Australia's diverse liquor licensing legislation. In addition, these issues were examined from a law enforcement perspective.

The objectives of the project were to:

- identify the key features of liquor licensing legislation in each state and territory
- identify examples of good practice in relation to the drafting and operation of liquor licensing legislation

¹ These three reports are designed to be used as both stand-alone documents, as well as a complementary suite of reports on liquor licensing in Australia.

- identify the perspectives and needs of law enforcement personnel in relation to liquor legislation to ensure that they are able to adequately perform their role in preventing and reducing alcohol-related crime and associated harms
- examine and recommend improvements to liquor licensing legislation across all Australian jurisdictions.

The project was designed to provide an insight into the perspectives of a range of stakeholders, especially police, concerning the capacity of existing liquor licensing legislation and associated administrative and judicial structures to reduce acute harms associated with alcohol consumption in Australia.



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Executive Summary

This document is part of a series of three reports examining liquor licensing legislation in Australia as at December 2010, prepared by the National Centre for Education and Training on Addiction (NCETA) at Flinders University. NCETA conducted an extensive literature review, a comprehensive examination of each Australian state and territory's liquor licensing legislation and data collection systems and interviews with key informants.

This report is the first in the series and it presents the background to the project and an overview of the liquor licensing legislation in Australia. It also outlines the nature and purpose of the project, the context and background of the issues addressed and includes an extensive literature review of key contextual issues, covering alcohol availability, alcohol-related harm, initiatives to curb these harms, public amenity and perception.

The project examined the liquor legislation in each of Australia's eight jurisdictions, together with issues related to its application and enforcement from a policing and enforcement perspective. It involved in-depth interviews with 60 key informants drawn from each jurisdiction, 55 of whom were police officers/personnel with the balance comprising liquor licensing officials and other key stakeholders with an interest in liquor licensing legislation. This is the first time such an examination of these issues has been undertaken largely from a law enforcement perspective.

The second document in the series, *Liquor Licensing in Australia: A Jurisdictional Breakdown*, presents detailed summaries of the legislation and administrative arrangements in each jurisdiction. It includes details of the number of licensed premises, changes over time (where available) and an outline of police alcohol-related data collection systems.

The third document in the series, *Liquor Licensing in Australia: Police Expectations and Experiences*, presents the results of consultations. The legislation and associated strategies that assist police with their efforts to regulate licensed premises, as well as factors that hinder effective enforcement, are outlined in that report.

Taken together, these three reports are intended to provide policy makers with information upon which to base future decisions on liquor licensing-related issues.

General Liquor Licensing Principles

All Australian states and territories contain statutory provisions that regulate:

- who may sell and supply alcohol
- the commercial practices of licensed premises
- offences and duties of licensees
- disciplinary procedures and penalties

- who may consume and access alcohol
- where alcohol may or may not be consumed and/or possessed.

The relevant legislation is described in detail in Chapter 4.

Liquor Licensing in Context

Liquor licensing legislation in Australia is developed independently in each state and territory, and is characterised by a high degree of diversity and variation. In addition, the legislation is continually changing to reflect shifts in commercial and community needs, priorities and concerns.

Australia’s liquor licensing legislation cannot be viewed in isolation. It was assessed in this project in the context of:

- the structures and resources available to implement and enforce it
- the decision-making and review processes
- licensee disciplinary processes, including the degree of specialist knowledge of judicial members involved in the process
- the extent to which its enforcement is a priority

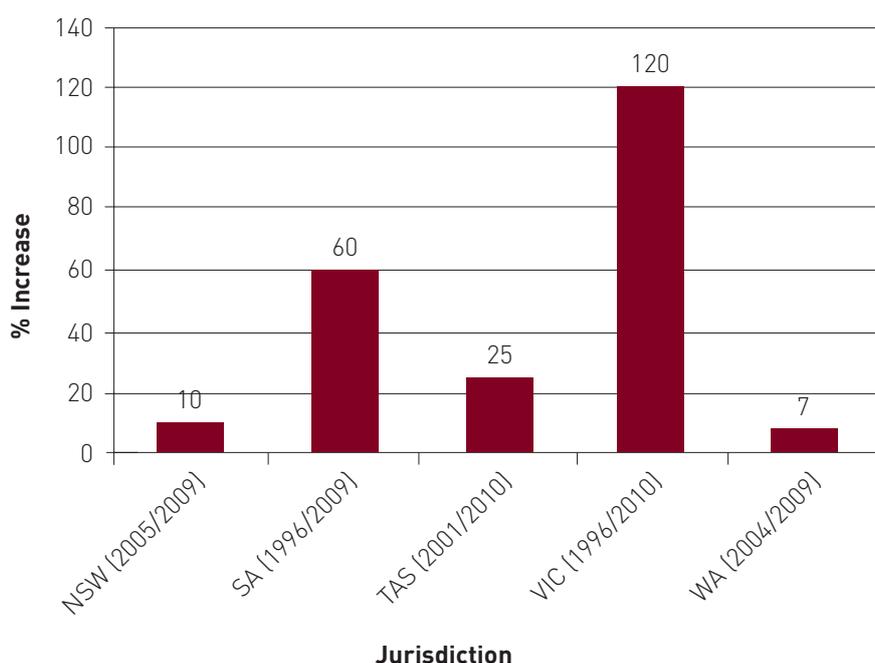
- the ways in which key stakeholders perceive the objectives of the legislation
- the extent and nature of legislative powers that sit outside of liquor licensing legislation that can also be used to reduce alcohol-related harm and
- the degree of influence that key stakeholders have over the nature and implementation of liquor licensing legislation.

Key features of the legislation are displayed in Tables 2, 3 and 4 below.

Availability of Alcohol in Australia

Alcohol availability, as reflected in the number of liquor licences and licensed premises, has consistently increased over the past 10 to 15 years in Australia.

Figure 1 shows the percentage growth in liquor licences or licensed premises in New South Wales, South Australia, Tasmania, Victoria and Western Australia. The increase in the number of liquor licences and licensed premises is indicative of the extent to which alcohol has become more available over the last decade.



Note that:

- reporting time-spans vary across each jurisdiction
- VIC and WA figures show data for licensed premises not liquor licences
- data were not accessible for the other jurisdictions at the time of writing

Figure 1: Percentage growth in liquor licences in NSW, SA and TAS and licensed premises in Vic and WA

Consistent with the growth in numbers of liquor licences, the number of licences per head of population aged over 18 years has also increased. At the time of writing there were approximately 53,533 liquor licences in Australia. The total number of licences/licensed premises in each state is shown in Table 1, together with the ratio of licences per head of population aged 18 years and over.

On 30 June 2010, the Australian population aged 18 years and over was 16,948,232. Across Australia, there was a licensed premise for every 317 persons over 18 years. The highest number of licensed premises per head of population were found in South Australia and Victoria with a liquor licence for every 224 and 229 persons over 18 years, respectively.

Table 1: Number of Australian liquor licences by number of persons aged 18 years and over

Jurisdiction	Number of current liquor licences	Australian Population \geq 18 years old ⁱ	Population \geq 18 years per licensed premises
Australian Capital Territory	650 ⁱⁱ	279,273	430
New South Wales	15,193 ⁱⁱⁱ	5,601,746	369
Northern Territory	622 ^{iv}	166,626	268
Queensland	6,770 ^v	3,428,226	506
South Australia	5,752 ^{vi}	1,288,256	224
Tasmania	1,433 ^{vii}	388,984	271
Victoria	18,872 ^{viii}	4,316,946	229
Western Australia	4,241 ^{ix}	1,757,448	414
TOTAL	53,533^x	16,948,232	317

i Source: Australian Bureau of Statistics. Accessed from: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3201.0Jun%202010?OpenDocument> on 11 January 2011.

ii Source: ACT Office of Regulatory Services. As at 20 December 2010.

iii Source: NSW Department of the Arts, Sport and Recreation (2009). As at 30 June 2009.

iv This is the number of full and special continuing licences (which trade for less than 30 hours per week). This number does not include liquor licences for one-off events. Source: the Northern Territory Licensing Commission Annual Report 2010/2011, pages 9 and 14. The figures refer to the year ending 30 June 2010.

v Source: Queensland Office of Regulatory Policy: Department of Employment, Economic Development and Innovation. As at 30 June 2009.

vi Source: Office of the South Australian Liquor and Gambling Commissioner (as cited in SA Police, 2010). As at 30 June 2009.

vii Source: Tasmania Department of Treasury and Finance: Retrieved 23 November 2010 from: <http://www.tenders.tas.gov.au/domino/dtf/dtf.nsf/fcce52186e9867674a25665500244b46/2a23cfea81a794ca257354001b2152?OpenDocument>. As at 10 August 2010.

viii Source: www.justice.vic.gov.au As at 30 September 2010.

ix Source: Department of Racing, Gaming and Liquor (2009). *Annual Report*. East Perth: Department of Racing, Gaming and Liquor (2009). As at 30 June 2009.

x This figure should be regarded as an approximation because the point in time at which these counts occurred varied between jurisdictions. Also note that this does not include the 1,484 Special Continuing Licences in the Northern Territory. In addition, some of these 53,533 licences may be inactive or only sell alcohol for limited periods of time.

Many licensed premises are not necessarily problematic. Most are well run and operate within the law. However, the increased availability of alcohol in general, especially where associated with cheaper prices and easier access to take-away products, can exacerbate alcohol-related problems in the community. This further highlights the importance of both the role of liquor licensing legislation and its effective and appropriate enforcement.

Summary of the Legislation (Part 1 and Part 2)

This legislative review found that:

- despite the differences that exist in liquor licensing legislation across Australia there were strong common themes across all jurisdictions
- appropriate governance arrangements were pivotal to the administration of liquor licensing legislation in Australia
- trading hours for licensed premises were legislated in all states
- all Australian jurisdictions had provisions in their liquor licensing legislation that allowed licensees, police, courts and government authorities to prohibit certain people from attending licensed premises
- all jurisdictions provided a method by which to instigate disciplinary proceedings against licensees. In some states and territories this was an unlimited right; while in others, the right was invested in designated people and bodies
- serving and supplying an intoxicated and/or drunk person was an offence in every state and territory. There were, however, differences among jurisdictions in regard to how the terms drunk and intoxicated were defined, the context in which those terms were used and the elements needed to prove that an offence had been committed
- lockout conditions had been adopted in some Australian jurisdictions in an attempt to increase community safety by reducing high levels of alcohol-related problems in specific areas.

Summary of Consultation Findings (Part 3)

Despite the diverse legislative, geographical, historical and structural differences that existed in liquor licensing legislation and regulatory mechanisms across Australia, strong common themes emerged from the key informant consultations as summarised below.

Preventing Alcohol-Related Harm

1. Police have become active players and committed stakeholders in relation to alcohol and community safety, and play a central role in the prevention and resolution of alcohol-related harm.
2. Police placed a high priority on addressing alcohol-related community harms associated with licensed premises.

Principles of Liquor Licensing Legislation

3. Harm minimisation was a central tenet² of the relevant legislation and regulatory mechanisms in each of Australia's eight jurisdictions.
4. Police strongly supported harm minimisation principles in relation to the legislation and regulations surrounding licensed premises. This was particularly evident in relation to public amenity and public safety issues.
5. While very supportive of the harm minimisation principles expressed in the legislation, police were not necessarily of the view that the legislation provided the requisite tools or latitude to deliver harm minimisation outcomes.
6. Liquor licensing legislation in Australia was largely viewed by police as unnecessarily complex and challenging to enforce. Police highlighted the complexity of liquor licensing legislation, the associated regulations, codes of practice and other industry standards.

2 Whether stated explicitly within the "black letter" law of the legislation or reflected in its principles.

7. From the perspective of police, most liquor licensing regimes did not offer an adequate balance between empowering police or regulatory authorities to reduce alcohol-related harms and the need to protect the interests of the alcohol industry.

The Challenge of Intoxication

8. Dealing with intoxication at a conceptual and practical level was a priority for police, and one of the most challenging issues that they faced. While serving and supplying an intoxicated and/or drunk person was an offence in every state and territory, jurisdictions defined these terms in different ways and applied different evidentiary burdens in relation to an offence of intoxication.

Liquor Licensing Legislation Review and Reform

9. There was consensus that:
 - in some jurisdictions aspects of the liquor licensing legislation were outdated and needed review and fundamental reform
 - the legislation was complex and continually evolving
 - there was strong support for greater involvement by police in legislative and regulatory reform processes
 - liquor licensing legislation should be written in language that is easily understood by police, liquor licensing authorities, licensees and members of the public
 - liquor licensing legislation should focus more broadly on patterns and levels of supply at the community level.

The Roles of Police and Liquor Licensing Authorities

10. Ambiguity surrounding the respective roles of police and liquor licensing authorities in enforcing liquor licensing legislation was highlighted. A number of police noted that there would be a greater understanding of

all key stakeholders' roles (including police, licensing authorities/regulatory bodies and licensees) if they were clearly outlined in liquor licensing legislation.

11. Across all jurisdictions, the relationship between police and liquor licensing authorities was identified as having improved substantially in recent times, with greater recognition of respective roles and willingness to work together.
12. A need was identified for liquor licensing authorities to be more adequately resourced. From a policing perspective, this would create greater opportunities for joint operations with liquor licensing authorities.
13. Scope was also identified for police to be more fully engaged in liquor licensing decision-making processes, for example raising objections to new licences or changes in existing licences. There was support for improved police training in this area and provision of appropriate resources.

Partnerships

14. Partnerships were identified as crucial for effective implementation and enforcement of liquor licensing legislation. This included partnerships between police, liquor licensing authorities, the alcohol industry, local government and other stakeholders (such as transport, health and welfare agencies).
15. Respondents indicated that partnerships with the alcohol industry (such as through liquor accords) were important but noted that these relationships could not be substituted for strong enforcement of the legislation.

Effective Tools to Reduce Alcohol-Related Harm

16. Banning/barring orders were considered to have merit in reducing problems associated with licensed premises and warranted further attention.

17. Liquor infringement notices were regarded positively by police for their immediate impact and moderate resources requirement.
18. Greater use of lockout provisions was supported, particularly when utilised in conjunction with other measures and strictly enforced.
19. Risk-based licensing fee structures were regarded as a positive initiative because they imposed costs on the licensed premises that were the source of most problems.

Centralised Police Licensing Enforcement Functions

20. Four of the eight police jurisdictions had developed a centralised licensing enforcement function, and a further two had similar models in place or planned.
21. Police organisations that had a centralised licensing enforcement unit, with oversight for matters related to the policing of licensed premises and associated alcohol-related problems, reported that these arrangements worked better than where there was no such centralised function. In the latter case, it was perceived that making “everyone” responsible for the complex area of liquor licensing meant in many cases that “no-one” was responsible.

Alcohol-Related Data Collection (see Table 6)

22. The importance of police continuing to invest in improved alcohol-related data collection was highlighted.
23. An opportunity existed for police agencies to build on recent investments in alcohol-related data collections and use that information to have a greater impact on liquor licensing decisions.
24. An important aspect of any alcohol data collection is wholesale sales data. This was identified as being of considerable potential benefit to police.

Criminal Intelligence

25. Participants expressed concern that licensing authorities were required under administrative law principles to provide applicants with notification about why their application was not granted.
26. Probity information provided by police about an applicant and their associates was sometimes of a classified nature and police did not wish to jeopardise ongoing criminal investigations by providing licensing authorities with this information.

Investing in Data Collection

27. Police indicated that their ability to collect data on alcohol-related crime, public disorder and amenity problems was central to their ability to understand and monitor liquor licensing-related matters and to inform decisions of liquor licensing authorities. Respondents also asserted that having a legislated requirement for jurisdictions to produce and provide wholesale sales data would assist policing efforts in this area.

Recommendations

A range of issues and strategies were identified by police that could improve their effectiveness in this area.

To achieve this, it is recommended that:

1. strategies be put in place to increase role clarity between police and liquor licensing enforcement bodies
2. relevant aspects of current and future legislation and regulations be developed to allow police to be more fully engaged in liquor licensing-related decision-making processes
3. police have greater involvement in legislative and regulatory reform processes
4. more resources, training and support be allocated to police to carry out their roles in relation to liquor licensing
5. a national annual forum be conducted to:
 - a. allow police the opportunity to identify the key features of liquor licensing legislation and its enforcement in their respective jurisdictions, and to share this information across jurisdictions
 - b. progress the implementation of recommendations 1 to 4 in a coordinated manner.

Table 2: Liquor licensing regulatory structures (December 2010)

	ACT	NSW	NT ⁱ	QLD
Legislation	<i>Liquor Act 2010</i>	<i>Liquor Act 2007</i>	<i>Liquor Act Northern Territory Licensing Commission Act</i>	<i>Liquor Act 1992</i>
Regulations	<i>Liquor Regulation 2010</i>	<i>Liquor Regulation 2008</i>	<i>Liquor Regulations</i>	<i>Liquor Regulation 2002</i>
Department	Department of Justice and Community Safety	Office of Liquor, Gaming and Racing, Communities NSW	Department of Justice	Department of Employment, Economic Development and Innovation
Administrative authority	Office of Regulatory Services	Casino Liquor and Gaming Control Authority (CLGCA); Office of Liquor Gaming and Racing ⁱⁱ	Director of Licensing, Licensing, Regulation and Alcohol Strategy Division	Office of Liquor, Gaming, and Racing (OLGR)
Decision-making authority	Commissioner for Fair Trading, Office of Regulatory Services	Casino Liquor and Gaming Control Authority (CLGCA)	Licensing Commission	Chief Executive, Office of Liquor, Gaming, and Racing (OLGR)
Review decisions/ hear appeals from decisions	ACT Civil and Administration Tribunal (ACAT)	Communities NSW; Casino Liquor and Gaming Control Authority (CLGCA)	Licensing Commission	Queensland Civil and Administrative Tribunal (QCAT)
Breaches of conditions/ offences/ complaints	Commissioner (complaints) ACAT (occupational discipline) Magistrates' Court/ Infringement notices (offences)	Local Court (summary offences & breach of conditions) Director-General, Communities NSW (complaints)	Magistrates' Court (summary offences) Licensing Commission (complaints)	Magistrates' Court (summary offences) Chief Executive (disciplinary action)

i Please note that the Northern Territory was also subject to the provisions of the *Northern Territory National Emergency Response Act 2007* (Cth).

ii These bodies shared a dual administrative function.

Table 2 continued: Liquor licensing regulatory structures (December 2010)

	SA	TAS	VIC	WA
Legislation	<i>Liquor Licensing Act 1997</i>	<i>Liquor Licensing Act 1990</i>	<i>Liquor Control Reform Act 1998</i>	<i>Liquor Control Act 1988</i>
Regulations	<i>Liquor Licensing (General) Regulations 1997ⁱⁱⁱ</i>	<i>Liquor Licensing Regulations 2003</i> <i>Liquor Licensing (Fees) Regulations 2005</i> <i>Liquor Licensing (Infringement Notices) Regulations 2008</i>	<i>Liquor Control Reform (Prescribed Class of Premises) Regulations 2008</i> <i>Liquor Control Reform (Prohibited Supply) Regulations 2005</i> <i>Liquor Control Reform Regulations 2009</i>	<i>Liquor Commission Rules 2007</i> <i>Liquor Control Regulations 1989^{iv}</i>
Department	Attorney-General's Department, Financial and Business Services Division	Department of Treasury and Finance	Department of Justice	Department of Racing, Gaming and Liquor (RGL)
Administrative authority	Office of the Liquor and Gambling Commissioner	Liquor and Gaming Branch, Revenue, Gaming and Licensing Division	Responsible Alcohol Victoria	Director-General, Department of Racing, Gaming and Liquor (RGL)
Decision-making authority	Liquor Licensing Commissioner/Licensing Court ^v	Commissioner for Licensing/Licensing Board	Director of Liquor Licensing/Liquor Licensing Panel ^{vi}	Director of Liquor Licensing/The Liquor Commission
Review decisions/hear appeals from decisions	Licensing Court	Licensing Board/Supreme Court of Tasmania	Victorian Civil and Administrative Tribunal (VCAT)	The Liquor Commission
Breaches of conditions/offences/complaints	Licensing Court (disciplinary matters) Magistrates' Court (summary offences)	Liquor and Gaming Branch Magistrates' Court (when prosecution for an offence is required)	VCAT (inquiries and disciplinary matters) Magistrates' Court (summary offences)	Magistrates' Court (summary offences) The Liquor Commission (disciplinary matters)

iii *Liquor Licensing (Dry Areas—Long Term) Regulations 1997; Liquor Licensing (Dry Areas—Short Term) Regulations 1997.*

iv *Liquor Control (Bayulu Restricted Area) Regulations 2010; Liquor Control (Irrungadji Restricted Area) Regulations 2010; Liquor Control (Jigalong Restricted Area) Regulations 2009; Liquor Control (Juwurlinji Restricted Area) Regulations 2009; Liquor Control (Koongie Park Restricted Area) Regulations 2010; Liquor Control (Kundat Djaru Restricted Area) Regulations 2010; Liquor Control (Nicholson Block Restricted Area) Regulations 2010; Liquor Control (Noonkanbah Restricted Area) Regulations 2009; Liquor Control (Oombulgurri Restricted Area) Regulations 2008; Liquor Control (Punmu Restricted Area) Regulations 2010; Liquor Control (Wangkatjungka Restricted Area) Regulations 2008; Liquor Control (Yakanarra Restricted Area) Regulations 2010.*

v The Licensing Court (SA) determined contested applications.

vi The Liquor Licensing Panel considered contested applications and reported its findings (including recommendations) to the Director of Liquor Licensing.

Table 3: Key features of Australian liquor licensing legislation and regulation by jurisdiction

	ACT	NSW	NT ^{iv}	QLD	SA	TAS	VIC	WA
No of licence types	8 + 2 permits	6 ⁱⁱ	3 ^v	5 licences ^{xi} + 5 permits	11	5 licences + 4 permits	8 licences + 2 temporary licences + 1 permit ^x	9
Fee structure	Risk-based	Set fees	Set fees	Risk-based	Set fees	Set fees ^{xvii}	Risk-based	Graduated fees
Harm minimisation objectives in Act	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Accords	No	Yes	Yes ^{vi}	Yes	Yes, voluntary	No	Yes	Yes
Infringement notices	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Barring orders	No	No	Yes	No	Yes	Yes	No	Yes
Banning notices	No	Yes	Prohibition Order Exclusion Order	Civil Banning Orders ^{xiii}	No	No	Yes	Prohibition Orders
Lockouts	Yes	Yes	Yes ^{vii}	Yes	Yes ^{xiv}	No ^{xviii}	Yes	Yes
Secondary supply legislation	Yes ⁱ	Yes	Yes ^{viii}	Yes	Yes ^{xv}	Yes ^{xix}	No	No
Public drunkenness a criminal offence	No	No	No ^{ix}	Yes ^{xiii}	No	No	Yes	No
Mandatory RSA	Yes	Yes	Yes ^x	Yes	No	Yes	Yes ^{xi}	Yes
Licence duration	Expires ⁱⁱ	Continuing	Continuing	Continuing	Not stated ^{xvi}	Continuing	Renewed Annually	Continuing ^{xii}

Table 3: Key features of Australian liquor licensing legislation and regulation by jurisdiction

- i Under Section 204 of the *Liquor Act 2010* (ACT), it was an offence to supply liquor to a child or young person in a public place.
- ii Licences expired on a date determined by the Commissioner and could not be more than three years after issue. Expiry was determined with reference to its trading hour classification and/or occupancy loading. Both young people's events and permits expired on the day stated in the approval. Licensees had to apply to the Commissioner for their licence to be renewed at least 30 days before it expired.
- iii In NSW Community Impact Statements needed to be completed when applying for club, hotel, on-premises and packaged liquor licences.
- iv Since the completion of this report, the *Northern Territory Liquor Act* has been amended by the provisions of the *Alcohol Reform (Liquor Legislation Amendment) Act 2011* (Act No. 17, 2011) and *Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011* (Act No. 19, 2011). These provisions commenced on 1 July 2011. This table does not incorporate these recent amendments.
- v There were only two categories of licence contained within the legislation. However, a third category was issued to social clubs and like organisations. This was a continuing special licence.
- vi Inserted in 2010.
- vii Lockouts were not a statutory provision in the Northern Territory. However, the Northern Territory Licensing Commission had adopted a policy of imposing lockouts on licensed premises as part of its power to determine the conditions of a licence.
- viii In the Northern Territory, secondary supply offences were directed at preventing the sale, supply, and possession of liquor in restricted areas.
- ix In the Northern Territory, Section 128 of the *Police Administration Act* permitted police to hold a person who was intoxicated in a public place in protective custody until they were no longer intoxicated.
- x Even though mandatory Responsible Service of Alcohol was not a statutory provision, the Licensing Commission had adopted a policy mandating that all staff must have responsible service of alcohol training within one month of commencing employment. This was part of the licence conditions.
- xi There were five other sub-categories of licence which could be issued under the Commercial Other Licence category.
- xii Only applicable in declared Drink Safe Precincts.
- xiii Under the *Summary Offences Act 2005*, Section 10.
- xiv There were no provisions for lockouts under the South Australian *Liquor Licensing Act 1997*. However, lockouts could be imposed on individual premises under Section 43 of the Act.
- xv Under Section 117 of the South Australian *Liquor Licensing Act 1997*, it was an offence for a minor to consume or have possession of liquor in a public place, and it was an offence to supply liquor to a minor in a public place, unless the consumption or possession was in the company of an adult, guardian or spouse of a minor.
- xvi The South Australian legislation was unique in that neither the legislation nor the regulations contained any provisions regarding licence renewals and no fees were required to be paid on renewal.
- xvii Fees were paid annually.
- xviii While there were no provisions for lockouts in the *Liquor Licensing Act 1990* (TAS), lockout conditions could be imposed on an out-of-hours permit.
- xix Sale or Supply of Alcohol to Youths (*Police Offences Act 1935*).
- xx These primary licence types were required consistent with Sections 7 & 14 of the *Liquor Control Reform Act 1998*. Further sub-categories of licences were contained within Sections 10, 11A and 14.
- xxi In Victoria, following amendments to the *Liquor Control Reform Act 1998*, as from 1 January 2011, all new applicants and existing licensees and their staff were required to complete an RSA course approved by the Director of Liquor Licensing.
- xxii Licences continued in force unless they were surrendered under Section 94, or cancelled by the Licensing Authority in accordance with the provisions of the Act. A special facility licence expired when it was granted for an express period of time or when the Director determined that it was no longer necessitated. Occasional licences also expired in accordance with their terms, or on a specified date.

Table 4: Powers to remove, exclude, and prevent problem patrons from attending licensed premisesⁱ

State	Order	Behaviour	Authorised	Period	Extent of Prohibition
NSW	Self-exclusion Orders	Not specified.	Licensee. Individual.	Not specified	Specified in form
	Non-voluntary Exclusion Order (Refuse entry, remove from premises)	Intoxicated, violent, quarrelsome or disorderly, or whose presence on the licensed premises renders the licensee liable to a penalty under this Act. Smoking on any part of the licensed premises that is a smoke-free area. Uses or possesses, on the premises, a prohibited plant or a prohibited drug. May refuse access if in accordance with a condition of licence or liquor accord.	Licensee. Employee. Police Officer.	≤24 hours However, authorised person have right to refuse entry at any other time	Single premise
	Banning Orders	Satisfied person has repeatedly been intoxicated, violent, quarrelsome or disorderly on or in the immediate vicinity of licensed premises.	Casino, Liquor, Gaming, and Racing Authority. ⁱⁱ	≤6 months	Specified premises
NT ⁱⁱⁱ	Power to remove or exclude	Intoxicated. Violent. Quarrelsome. Disorderly. Incapable of controlling own behaviour.	Licensees. Employees. Inspectors. Police.	12 hours	Single premise
	Prohibition Orders	Applies to specified offences. Has conditions attached. See <i>Alcohol Court Act</i> .	Alcohol Court.	≤12 months	

i In the Australian Capital Territory it was an offence for people to refuse to leave after they had been requested to do so by the licensee, an employee of the licensee, or a crowd controller. Besides this implied power, there were no express provisions contained within the Act giving the licensee or anyone else a power to ban.

ii May be applied for by the Director-General, Commissioner of Police, a licensee who is a party to a local liquor accord, any other person (or class of persons) prescribed by the regulations.

iii Since the completion of this report, the *Northern Territory Liquor Act* has been amended by the provisions of the *Alcohol Reform (Liquor Legislation Amendment) Act 2011* (Act No. 17, 2011) and *Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011* (Act No. 19, 2011). These provisions commenced on 1 July 2011. This table does not incorporate these recent amendments.

Table 4 continued: Powers to remove, exclude, and prevent problem patrons from attending licensed premises

State	Order	Behaviour	Authorised	Period	Extent of Prohibition
NT	Banning Orders	Specified offence committed.	Police.	48 hours	Designated area All licensed premises in the designated area
	Exclusion Orders	Applies to specified offences. Has conditions attached. See <i>Alcohol Court Act</i> .	Courts of Summary Jurisdiction.	< 12 months	Designated area All licensed premises in the designated area Certain class of licensed premises in the designated area
QLD	Power to refuse entry, remove a person	Unduly intoxicated. Disorderly. Creating a disturbance.	Licensee. Permit-holder. Employees. Agents.	N/A	Single Premise
	Civil Banning Order	Person committed an act of violence, against another person or property, of such a nature that the act of violence would cause a person in the vicinity to reasonably fear bodily harm to any person or damage to property. Act of violence was committed: <ul style="list-style-type: none"> within the previous 12 month period in licensed premises, or in an area in the vicinity of licensed premises, located within a drink safe precinct Person did not have a reasonable excuse for committing the act of violence. 	Court authorised to make order when satisfied that unless the order is made, the person would pose an unacceptable risk to: <ul style="list-style-type: none"> the good order of licensed premises, and areas in the vicinity of licensed premises, located within a drink safe precinct; or the safety and welfare of persons attending licensed premises, and areas in the vicinity of licensed premises, located within a drink safe precinct. 	≤12 months	Declared DrinkSafe Precincts
SA	Power to refuse entry, remove a person	Intoxication. Speech, balance, coordination or behaviour is noticeably impaired due to consumption of liquor. Offensive or disorderly behaviour.	Licensee. Responsible person. Police officer. Approved crowd controller.	≤24 hours	Single premise

Table 4 continued: Powers to remove, exclude, and prevent problem patrons from attending licensed premises

State	Order	Behaviour	Authorised	Period	Extent of Prohibition
SA	Licensee Barring Notices	<ol style="list-style-type: none"> 1. Welfare of the person, or the welfare of a person residing with the person, is seriously at risk due to the consumption of alcohol. 2. Person commits an offence, or behaves in an offensive or disorderly manner, on, or in an area adjacent to, the licensed premises. 3. Any other reasonable ground. 	Licensee. Responsible person.	Indefinite period for reason 1 First barring: ≤ 3 months Second barring: ≤ 6 months Commissioner may approve longer periods Third + barring: indefinite period	Single premise
	Commissioner of Police Barring Notices	On any reasonable grounds.	Commissioner of Police.	Indefinite or specified period	Specified premise Licensed premises of a specified class Licensed premises of a specified class within a specified area All licensed premises within a specified area
	Police Officer Barring Notices	Same reasons as licensee barring orders.	Police officer. ^{iv}	Same periods as licensee barring orders if authorised by an Inspector If authorised by a Sergeant, order applies for a period ≤ 72 hrs	As Above
TAS	Request to leave	Violent, quarrelsome or disorderly behaviour. Disgusting, profane or foul language.	Licensee. Police Officer.	≤24 hrs	Single premise

^{iv} Notices needed to be authorised by an officer of or above the rank of Inspector. In some instances, the officer who authorised the notice could be a Sergeant or any police officer in charge, for the time being, of a police station.

Table 4 continued: Powers to remove, exclude, and prevent problem patrons from attending licensed premises

State	Order	Behaviour	Authorised	Period	Extent of Prohibition
VIC	Banning Notices	Specified offence.	Police.	≤72 hrs	Designated area All licensed premises in the designated area
	Exclusion Orders	Specified offence.	Courts.	≤12 months	Designated area All licensed premises/specified premises in the designated area
	Prohibition Order	Prove order is warranted due to person's actions.	Director of Liquor Licensing.	≤5 yrs	Specified in Order
WA	Barring Orders	Violent, disorderly, indecent behaviour. Contravention of any written law.	Commissioner of Police (power may be delegated to officers above rank of Inspector).	≤12 months	Specified licensed premises Specified class of licensed premises
	Power to refuse entry, sell liquor, and remove from premises	Person is or appears to be drunk. Offensive behaviour. Not conforming with relevant, reasonable, and notified dress standards. Reasonable belief and/or knowledge person: <ul style="list-style-type: none"> cannot or will not pay is quarrelsome or disorderly seeks to obtain liquor by begging is an associate of, a reputed thief, prostitute, supplier of unlawful drugs, or person convicted of an offence involving unlawful drugs or violence that is punishable by a term of imprisonment exceeding 3 years is or appears to be a person whose presence on the licensed premises will occasion the licensee to commit an offence under this Act. 	Licencees. Managers. Employees. Police.	≤24 hours	Single premise

Table 5: Definition of intoxication and drunk, offences and defences

State	Offence	Definition	Offender	Defence
ACT	A person commits an offence if the person supplies liquor to another person; and the other person is intoxicated; and the supply happens at licensed/ permitted premises.	A person is intoxicated if the person's speech, balance, coordination or behaviour is noticeably affected; and it is reasonable in the circumstances to believe that the affected speech, balance, coordination or behaviour is the result of the consumption of liquor.	Licensees Permittees Employees Other persons	See The Criminal Code, chapter 2.
NSW	Licensees must not permit intoxication. Licensees, employees, other persons must not sell or supply liquor to an intoxicated person.	A person is intoxicated if the person's speech, balance, coordination or behaviour is noticeably affected, and it is reasonable in the circumstances to believe that the affected speech, balance, coordination or behaviour is the result of the consumption of liquor. A reference in this Act to "intoxication" in relation to licensed premises is a reference to the presence of intoxicated persons on the licensed premises.	Licensee Employees Other persons	If an intoxicated person is on licensed premises, the licensee is taken to have permitted intoxication on the premises unless they prove: <ul style="list-style-type: none"> the person was asked to leave the premises the person did not consume alcohol on the licensed premises the licensee contacted, or attempted to contact, a police officer for assistance in removing the person from the premises the licensee refused to serve the person any alcohol after becoming aware that the person was intoxicated the licensee had taken all other reasonable steps.
NT	A licensee or a person employed by a licensee shall not sell or supply liquor to a person unless the person to whom it is sold or supplied is not intoxicated at the time (the onus of proof of which lies with the defendant).	N/A	Licensees Employees	Contravention of offence: <ol style="list-style-type: none"> occurred in an emergency and was necessary to preserve life, prevent injury, or protect property authorised by being in obedience to the order of a competent authority whom the defendant was bound by law to obey unless the order is manifestly unlawful (the determination of which is a matter of law).

i After the cut-off date for data collection for this report of December 2010, the Northern Territory Liquor Act was amended by the provisions of the *Alcohol Reform (Liquor Legislation Amendment) Act 2011* (Act No. 17, 2011) and *Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011* (Act No. 19, 2011). These provisions commenced on 1 July 2011. While this table does not incorporate these recent amendments, readers are referred to the current provisions in sections 7 and 102 of the *Liquor Act* (NT) which state that: A person is drunk if: the person's speech, balance, coordination or behaviour appears to be noticeably impaired; and it is reasonable in the circumstances to believe that the impairment results from the person's consumption of liquor.

Table 5 continued: Definition of intoxication and drunk, offences and defences

State	Offence	Definition	Offender	Defence
QLD	Supply, permit or allow liquor to be supplied to; or allow liquor to be consumed by an unduly intoxicated person.	Unduly intoxicated means a state of being in which a person's mental and physical faculties are impaired because of consumption of liquor so as to diminish the person's ability to think and act in a way in which an ordinary prudent person in full possession of his or her faculties, and using reasonable care, would act under like circumstances.	Any person	For licensees: <ol style="list-style-type: none"> the offence happened without the defendant's knowledge or authority; and the defendant had exercised due diligence to avoid the commission of the offence.
SA	Liquor sold or supplied on licensed premises to an intoxicated person; or liquor sold or supplied on licensed premises to a person in circumstances in which the person's speech, balance, coordination or behaviour is noticeably impaired and it is reasonable to believe that the impairment is the result of the consumption of liquor.	N/A	Licensee Responsible person Person who supplied the liquor	Defendant believed on reasonable grounds that the person was not intoxicated and/or that the impairment of the speech, balance, coordination or behaviour of the person was not the result of the consumption of liquor. Manager/responsible person exercised proper care to prevent the sale or supply of liquor in contravention of the Section.
TAS	A person must not sell liquor to a person who appears to be drunk. A person shall not supply liquor to a person who appears to be drunk on licensed or permitted premises.	N/A	Person who sells and/or supplies the alcohol	Infringement notices were given for offences.

Table 5 continued: Definition of intoxication and drunk, offences and defences

State	Offence	Definition	Offender	Defence
VIC	<p>A licensee or permittee must not supply liquor to a person who is in a state of intoxication, or permit drunken or disorderly persons to be on the licensed premises.</p> <p>A person must not, on licensed premises procure liquor for a person in a state of intoxication; or aid or abet a person in a state of intoxication to obtain liquor.</p>	<p>For the purposes of this Act, a person is in a state of intoxication if his or her speech, balance, coordination or behaviour is noticeably affected and there are reasonable grounds for believing that this is the result of the consumption of liquor.</p>	<p>Licensee Permittee Any person</p>	<p>Defendant did not know that drunken or disorderly persons were on the premises; and had taken reasonable steps to ensure that drunken or disorderly persons were not on the premises.</p>
WA	<p>Licensees and employees who permit drunkenness on premises.</p> <p>Persons who sell or supply liquor, or cause or permit liquor to be sold or supplied, to a drunk person; or allow or permit a drunk person to consume liquor, or obtain or attempt to obtain liquor for consumption by a drunk person; or aid a drunk person in obtaining or consuming liquor on licensed premises.</p>	<p>A person is drunk for the purposes of this Act if the person is on licensed premises or regulated premises; and the person's speech, balance, coordination or behaviour appears to be noticeably impaired; and it is reasonable in the circumstances to believe that the impairment results from the consumption of liquor.</p>	<p>Licensee Employee Any person</p>	<p>Persons and employees may prove that they were instructed by the licensee, an approved manager or another person in a position of authority in relation to the person charged to sell or supply the liquor to the drunk person.</p>

Table 6: Jurisdictional data collection systems/source

Jurisdiction	Data Collection Systems/Sources	Summary
ACT Policing	<ul style="list-style-type: none"> Police Realtime Online Management Information System (PROMIS) 	<p>ACT Policing used a mandatory alcohol recording field on the PROMIS case management system to record and extract whether an individual involved in an incident reported to police had consumed alcohol. People in police custody charged with an alcohol-related assault were asked to indicate [voluntarily] if they had consumed alcohol prior to the offence. At time of writing, the alcohol recording field in PROMIS was monitored by ACT Policing.</p>
New South Wales Police	<ul style="list-style-type: none"> Alcohol-Related Crime Information Exchange (ARCIE) 	<p>ARCIE contained significant information across a range of domains representing a combination of intelligence shared between the NSW Police, the NSW Bureau of Crime, Statistics & Research (BOCSAR), the Office of Liquor, Gaming and Racing (OLGR) and the Office of State Revenue (OSR). NSW Police considered the system a “complete” solution for alcohol-related crime queries.</p>
Northern Territory Police	<ul style="list-style-type: none"> NT Integrated Justice Information System (IJIS) Police Realtime Online Management Information System (PROMIS) 	<p>Data collection was related to a specific incident. The PROMIS data collection system collected information on both the offender and victim. IJIS data was offender specific. The data from both databases were used by police when lodging objections or raising concerns about liquor licensing matters with the Northern Territory Liquor Commission. This data could be accessed by outside agencies, subject to appropriate approval.</p>
Queensland Police Service	<ul style="list-style-type: none"> Queensland Police Records and Information Management Exchange (QPRIME) 	<p>The data generated in QPRIME was used by general duties police, local tactical crime squads and the Liquor Enforcement and Proactive Strategy (LEAPS) units throughout the state. It captured police occurrence data across a range of domains. The data had been used to dispel some misconceptions concerning locales and demographic groups often perceived to be problematic.</p>

Table 6 continued: Jurisdictional data collection systems/source

Jurisdiction	Data Collection Systems/Sources	Summary
<p>South Australia Police</p>	<ul style="list-style-type: none"> • Police Information Management System (PIMS – Mainframe system) • Traffic Online (Data warehouse application) • Expiation Database • Alcohol Incident Reporting (AIR) data collection 	<p>South Australia Police collected data on alcohol-related offending from its existing data systems. These systems were accessed or analysed via a web-based application. The AIR data was used to identify problem licensed premises across the state, and to engage management at these venues to improve compliance with licensing regulations.</p>
<p>Tasmania Police</p>	<ul style="list-style-type: none"> • Non-specific 	<p>While Tasmania Police did not have a specific alcohol-related offences database, data was nevertheless collected in relation to a number of alcohol-related matters using multiple data systems. A range of information/data was routinely collected for reporting on a monthly basis. Tasmania Police was moving towards a new information technology platform and will be reviewing existing data collection systems and future needs.</p>
<p>Victoria Police</p>	<ul style="list-style-type: none"> • Law Enforcement Assistance Program (LEAP) • Alcohol & Drug Reporting Incidents for Tasking (ADRIFT) • Interpose <ul style="list-style-type: none"> » Licensed Premises Incident Report (LPIR) • Attendance Register • Traffic Incident System (TIS) • Taskforce RAZON • Divisional Licensing Units (DLU) • Computer Aided Dispatch System 	<p>A variety of data systems incorporating a diverse and comprehensive set of alcohol and non-alcohol specific data were used to monitor alcohol-related crime and disorder. There was potential for the various information sources to be rationalised as a single database. Identity scanning at licensed premises had been identified as a potential new initiative.</p>
<p>Western Australia Police</p>	<ul style="list-style-type: none"> • Incident Management System (IMS) 	<p>The IMS contained a mandatory “alcohol flag” which was recorded against a particular incident. It was examined daily to identify incidents connected to particular licensed venues. The potential existed for the collection of computer aided dispatch (CAD) data for incidents in which alcohol was a factor.</p>



1 Introduction

1.1 Australia's Legislative Processes and Structures

In Australia, liquor licensing legislation is developed in each state and territory independently, often resulting in substantial jurisdictional variation. There are significant geographic, demographic, climatic, historic and structural differences among the jurisdictions that contribute to alcohol-related issues and that impact the resulting legislative approaches.

Australia has a three tiered system of government involving the national government (the Australian Government), eight states and territories and 560 local government agencies or councils. State and territory level legislation formed the subject of this review. Where jurisdictional legislation conflicts with national legislation, the latter takes precedence.

In general, the liquor licensing legislation in each jurisdiction attempt to balance the interests of the alcohol and hospitality industries while aiming to minimise the associated community harms. This can be a difficult balancing act and the legislation may appear to favour the interests of the industry rather than the broader community or the regulatory and enforcement agencies.

1.2 The Changing Nature of Licensed Premises

Over the past fifty years, the defining characteristics of licensed premises in Australia

have changed substantially. Perhaps most significant is the shift from licensed premises being a predominantly male, beer-drinking domain to becoming a more socially mixed setting that accommodates females and young people and offers diversity in terms of food, drinks, music and other entertainment (Roche et al., 2007). Contemporary drinking venues and environments are now designed to cater for diverse age and patron groups and serve a broad array of social functions.

Licensed premises provide unique settings through which images and messages about community norms, standards and values in regard to alcohol are conveyed. They can, in some instances, also provide a vehicle for a wide range of negative behaviours including:

- excessive consumption
- intoxication
- risk-taking behaviours (Roche, Bywood et al., 2009).

Coupled with the changing nature of licensed premises is the emergence of the night-time economy³ which has seen an extension of trading times and an increase in the number of late-night licensed premises (Roche, Bywood et al., 2009).

³ The term "night-time economy" was developed by Professor Richard Hobbs in 2003 and describes the increase in the numbers of bars and clubs with extended trading hours.

1.3 The Broader Context of Liquor Law Enforcement

Clearly, the effective regulation of alcohol supply is dependent upon the availability of appropriate regulatory tools (Nicholas, 2010). Liquor licensing legislation can be a powerful tool in reducing alcohol-related harm and alcohol-related crime but its effectiveness can also be constrained by legislative imprecision and limited enforcement practices (Roche et al., 2007).

Liquor licensing legislation, however, is only one of a range of regulatory approaches that can be used to reduce alcohol-related harm. Local government, for example, also has a range of regulatory powers that can be used to good effect. These include zoning and building regulations that can exclude licensed premises from certain areas and require those that are newly established to comply with measures designed to reduce alcohol-related problems. Local government also has a range of powers that address issues such as:

- excessive noise emanating from licensed premises
- safety in public places
- the use of public spaces and buildings for events
- health issues in public places (such as overcrowding).

A range of powers also resides with other arms of government, including environmental protection laws and laws that impact on building design and public safety. The way in which alcohol is taxed, advertised and labelled further shapes patterns of sales, subsequent consumption and associated harms. Police also have powers that sit outside liquor licensing legislation that can be used to reduce alcohol-related harms. These powers can usually be found in legislation such as the summary offences acts.

Australian liquor licensing legislation is therefore best viewed as a subset of a broad array of legislative and regulatory powers that can be used to address alcohol-related harms. In order to gain a full understanding of the legislative and regulatory powers available to

reduce acute alcohol-related harms, liquor licensing legislation should be considered in terms of how it articulates with other relevant legislation and regulations.

The efficacy of liquor licensing legislation also needs to be considered in the context of the structures and priorities of the agencies that have an enforcement role. Legislation is unlikely to be effective in the absence of appropriate enforcement strategies. Equally, if enforcing the legislation in whole or in part is not a priority it is unlikely to occur effectively, especially in view of the broad-ranging demands and pressures facing law enforcement and regulatory agencies.

1.4 Perspectives of Different Stakeholders

When drafting liquor licensing legislation, governments take into consideration a range of factors and divergent perspectives. Police, liquor licensing authorities and licensees each have unique views about the role and function of liquor licensing legislation. Such divergent views can make it difficult for stakeholders to reach consensus about liquor licensing legislation issues.

Licensees, for example, are likely to see liquor licensing legislation as a means by which to facilitate their ability to sell alcohol and provide protection from competition; and they may view liquor licensing legislation as a potential impediment to free trade and a threat to income. Similarly, those involved in the production and wholesale supply of alcohol may see liquor licensing legislation as having scope to reduce opportunities to expand markets and revenue.

In contrast, police are more likely to view liquor licensing legislation as a means by which the sale of alcohol can be managed to reduce crime and enhance public safety and community amenity. Those with an interest in public health are likely to share a similar perspective to police and regard liquor licensing legislation as a means by which injuries and illnesses associated with alcohol misuse can be minimised.

Liquor licensing legislation also represents a dilemma for governments in general.

Governments recognise the direct and indirect economic value of the retail alcohol industry to the community. This flows from government revenue associated with the sale of alcohol, as well as from employment and other economic activity generated by the industry. However, governments are also concerned about the health, law enforcement and public amenity costs associated with the misuse of alcohol. There is also increasing community disquiet about alcohol-related crime, disorder and public amenity problems.

As liquor licensing legislation is one of the most powerful tools available to reduce this kind of alcohol-related harm, governments have an interest in the application of legislation to achieve this end. The challenge lies in drafting legislation and developing regulatory mechanisms that best serve the needs of many stakeholders.

1.5 The Role of Police in Enforcing Liquor Licensing Legislation

Police have a primary and legislated responsibility in relation to liquor licensing legislation and hence play a crucial role in regard to alcohol-related issues. A central role of police agencies is to prevent and reduce crime, disorder, violence and anti-social behaviour by:

- identifying and implementing a range of initiatives to combat crime and disorder
- effectively responding to offending
- deploying a range of problem-solving techniques, including using intelligence to target crime “hotspots” and persistent offenders (Ministerial Council for Police and Emergency Management, 2008).

Previous studies have identified a number of barriers that may constrain the roles of police in relation to enforcing liquor licensing legislation. Identified barriers include:

- focusing enforcement efforts on legislative breaches committed by individuals (e.g., managers, employees) rather than licensees (Briscoe & Donnelly, 2003a)
- holding licensees accountable for technical breaches of liquor licensing legislation, such as a failure to display adequate signage, rather than for substantive breaches, for example serving underage or intoxicated patrons (Briscoe & Donnelly, 2003a)
- adopting a reactive rather than proactive policing approach (Roche, Bywood et al., 2009)
- moving away from centralised/specialist liquor licensing enforcement functions within policing (Briscoe & Donnelly, 2003a). Although, a shift back to dedicated specialist licensing enforcement units has been noted within some Australian police organisations.

Police roles differ from those of liquor licensing authorities, as highlighted in Table 7. At times these roles are complementary. At other times, they may overlap or appear to be in conflict. While liquor licensing legislation and the powers and functions of police vary between jurisdictions, there are a number of core powers and functions that are generally applicable to police in all jurisdictions. Liquor licensing authorities and associated administrative bodies generally hold responsibilities for the administration and enforcement of liquor licensing legislation that are similar across jurisdictions.

Table 7: Roles and responsibilities: Police vs. liquor licensing authority

Police Roles and Responsibilities	Liquor Licensing Authority Roles and Responsibilities
<p>General powers of arrest.</p> <p>Enter licensed premises to:</p> <ul style="list-style-type: none"> • apprehend people for being drunk and/or engaging in disorderly conduct or behaviour • examine the premises and associated documents and records. <p>Enter and inspect public venues where there is a serious risk of injury or damage due to overcrowding and to take appropriate action to reduce that risk.</p> <p>Require the name, address and identification of people on licensed premises who are suspected of being less than 18 years (Doherty and Roche, 2003).</p>	<p>Balance competing interests in order to achieve outcomes that minimise harms from the sale, supply and consumption of alcohol.</p> <p>Ensure that the commercial interests of the alcohol industry are satisfied and that there are appropriate levels of competition amongst licensed premises/venues.</p> <p>Ensure that licensed premises are managed appropriately and that they do not contribute to increased community harm.</p>

1.6 Police Time Spent Dealing with Alcohol-Related Issues

National studies and crime statistics have demonstrated that operational police spend a large amount of time responding to alcohol-related matters. For example, a 2008 survey of Western Australia Police revealed that, in a usual working week, respondents spent an average of 49% of their time responding to alcohol-related incidents, compared to 22% of their time responding to incidents involving other drugs (Roche, Duraisingam, Trifonoff, & Nicholas, 2009). In many instances, police are the first-line responders called upon when alcohol-related issues arise; e.g., dealing with intoxicated individuals and associated behaviours (Roche, Duraisingam et al., 2009).

It is police, in the main, who deal with many alcohol-related problems (e.g., violence, road trauma and crime) and with the impact of alcohol-related anti-social behaviour and violence, particularly when it occurs in and around licensed premises (Fleming, 2008). This creates both an opportunity and a dilemma for police:

- Opportunity – police can take a leadership role in relation to alcohol-related social harms
- Dilemma – police have to contend with unrealistic public perceptions about what policing (in isolation) can achieve.

The “wicked” problem for police is that alcohol-related problems cut across different policy areas; different stakeholders; different perspectives (Rittel & Webber, 1973). Police can only do so much even though there is a community expectation that police, as problem-solvers, can fix most alcohol-related problems. Hence, fixing the problem is easier said than done and requires a consolidated partnership approach.⁴

1.7 Financial Cost of Alcohol-Related Issues to Police

The total estimated tangible cost to Australian society of alcohol-attributable crime in 2004/05 was \$1.6 billion and the estimated national cost borne by police due to alcohol-attributable crime was \$747 million (Collins & Lapsley, 2008). Donnelly et al. (2007) investigated the time that New South Wales Police spent dealing with alcohol-related issues and quantified this in terms of salary costs. It was estimated that 8.2% of total-person shift time involved dealing with

⁴ During the present study, the NCETA project team were aware that the Australian Institute of Criminology (AIC) and ACT Policing were conducting a collaborative project examining the impact of policing strategies on the management of licensed premises, patron behaviour, alcohol-related harms and public safety. The specific aims of the joint AIC and ACT Policing project were to identify, implement and assess best practice strategies for the prevention and reduction of alcohol-related violence in and around licensed premises in Canberra.

alcohol-related issues. This figure rose to 15% for officers working in the Western Region of New South Wales, and to almost one-fifth of shift time for the special purpose VIKINGS Unit.⁵

Donnelly et al. (2007) also found that police spent more time managing alcohol-related issues at night and on weekends, with a reported 17% to 18% of police time spent dealing with these issues on Friday and Saturday nights. Police time spent dealing with alcohol-related issues was calculated to cost just under \$50 million. This figure, noted by the authors to be a conservative underestimate, was equivalent to the annual salaries of at least 1,000 police constables (Donnelly et al., 2007).

1.8 Liquor Licensing Legislation and National Competition Policy

Liquor licensing legislation represents a further potential dilemma for governments in relation to its interface with Australia's National Competition Policy (NCP). Australia's National Competition Policy arrangements reflect a worldwide trend towards the liberalisation of international trade, which has been occurring since the end of World War II. The fundamental beliefs underpinning these arrangements are that largely unfettered market forces result in the most efficient processes for distributing goods and services to communities; and that governments should seek to minimise their role in the functioning of the economy. The National Competition Policy has been a major factor in the liberalisation of a range of industries, including the alcohol industry, and is developed nationally by the Australian Government.

Liquor licensing legislation has been a focus of attention for the National Competition Policy because of the:

- impact on competition
- restrictions on hours

- number of licensed premises (Roche et al., 2007).

While the National Competition Policy is a Commonwealth matter, liquor licensing legislation is a state or territory issue and much of the cost of responding to alcohol-related harms such as crime, public order problems, amenity issues or associated health costs falls upon states and territories. Thus, tensions can exist between the national push to free-up competitive forces and the state/territory desire to reduce alcohol supply, or at least shape it in ways that are least harmful. There is also a strong financial incentive for jurisdictions to comply with the National Competition Policy to amend liquor licensing legislation and reduce competitive forces in the alcohol industry. States and territories that implement or refuse to change liquor licensing legislation which is deemed anti-competitive by the National Competition Policy can be financially penalised (Roche, Bywood et al., 2009).

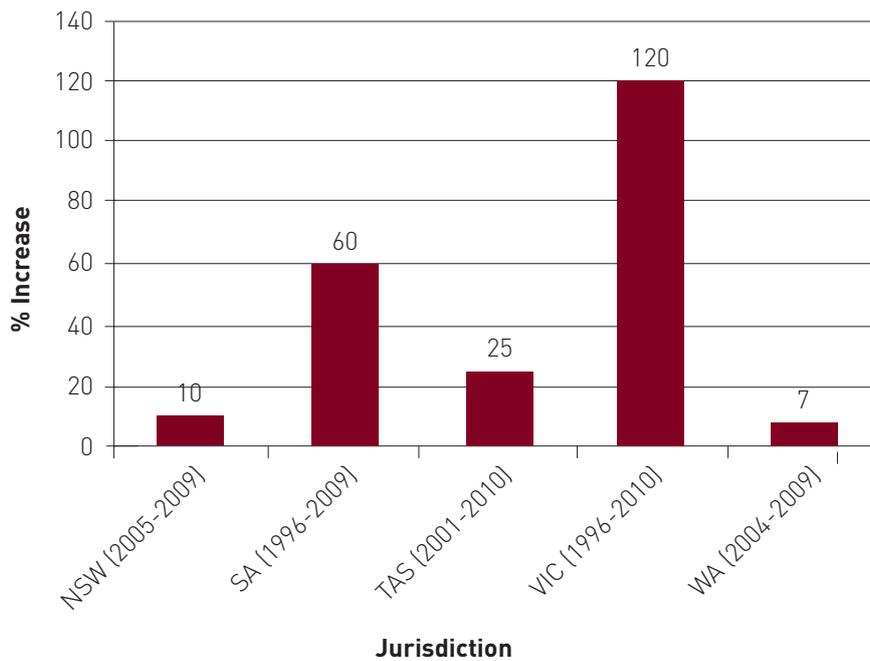
1.9 Number of Liquor Licences/ Licensed Premises in Australia

In recent years there has been unprecedented growth in the availability of alcohol in Australia, in part reflecting an application of National Competition Policy principles. Greater availability of alcohol is evidenced in:

- an increased number of licensed premises
- an increased number of different types of licensed premises and licences
- increased hours of availability
- an increased range of beverage types (South Australia Police, 2010).

The data outlined below displays the growth in numbers of liquor licences and/or the number of licensed premises. For the five jurisdictions where data was available, substantial increases in the number of licensed premises or liquor licences were identified over the past 10 to 15 years. The greatest overall percentage increase in liquor licences was found in Victoria.

⁵ New South Wales Police commenced Operation Vikings in 2002 as a high visibility policing strategy targeting anti-social behaviour, alcohol-related crime, street level drug possession and traffic offences. Source: New South Wales Police website.



Note that:

- a. reporting time-spans vary across each jurisdiction
- b. VIC and WA figures show data for licensed premises not liquor licences
- c. data were not accessible for the other jurisdictions at the time of writing

Figure 2: Percentage growth in liquor licences in NSW, SA and TAS and licensed premises in Vic and WA

Figure 2 shows the percentage growth in liquor licences or licensed premises in New South Wales, South Australia, Tasmania, Victoria and Western Australia.⁶ The consistent increase in the number of liquor licences and licensed premises is indicative of the extent to which alcohol has become more generally available over the last decade.

Figures 3-7 present data on the numbers of licences or licensed premises over time for each of these five jurisdictions.

Liquor licences in New South Wales increased by approximately 11% over a three year period from 2005/06 to 2008/09 (Figure 3). There was a substantial increase in a single year during 2007/08 to 2008/09 when a total of 781 new licences were issued.

⁶ Data is shown for all states where data could be accessed. No comparable data could be accessed for Queensland, Australian Capital Territory and Northern Territory.

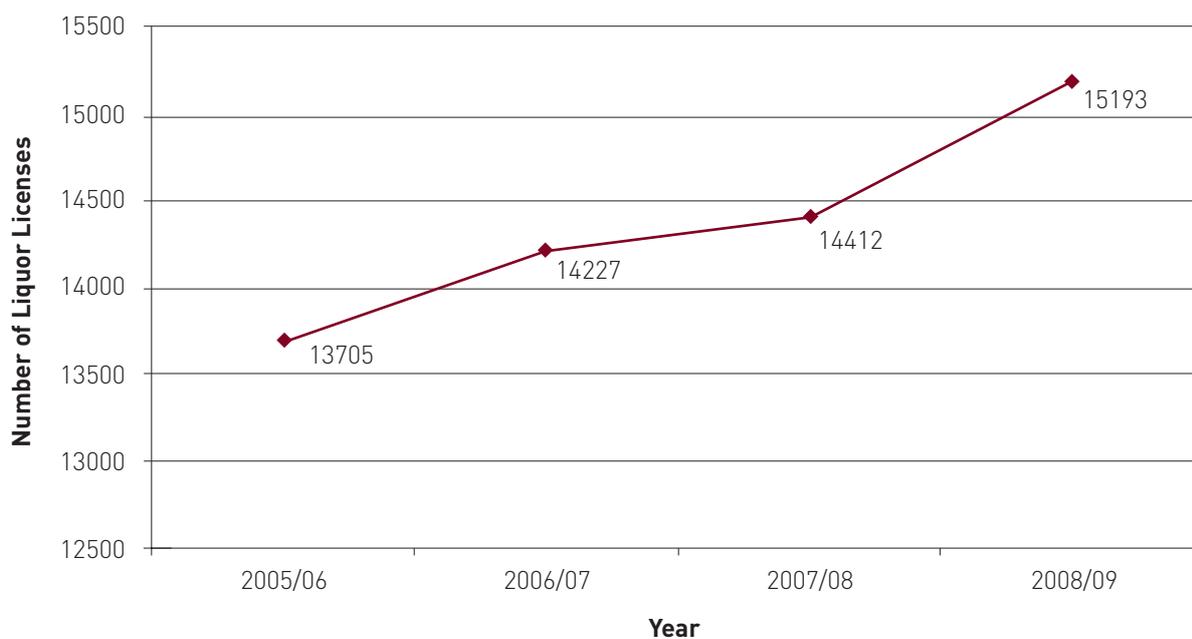


Figure 3: Number of liquor licences in New South Wales from 2005/06 to 2008/09

Source: NSW Department of the Arts, Sport and Recreation (2009).

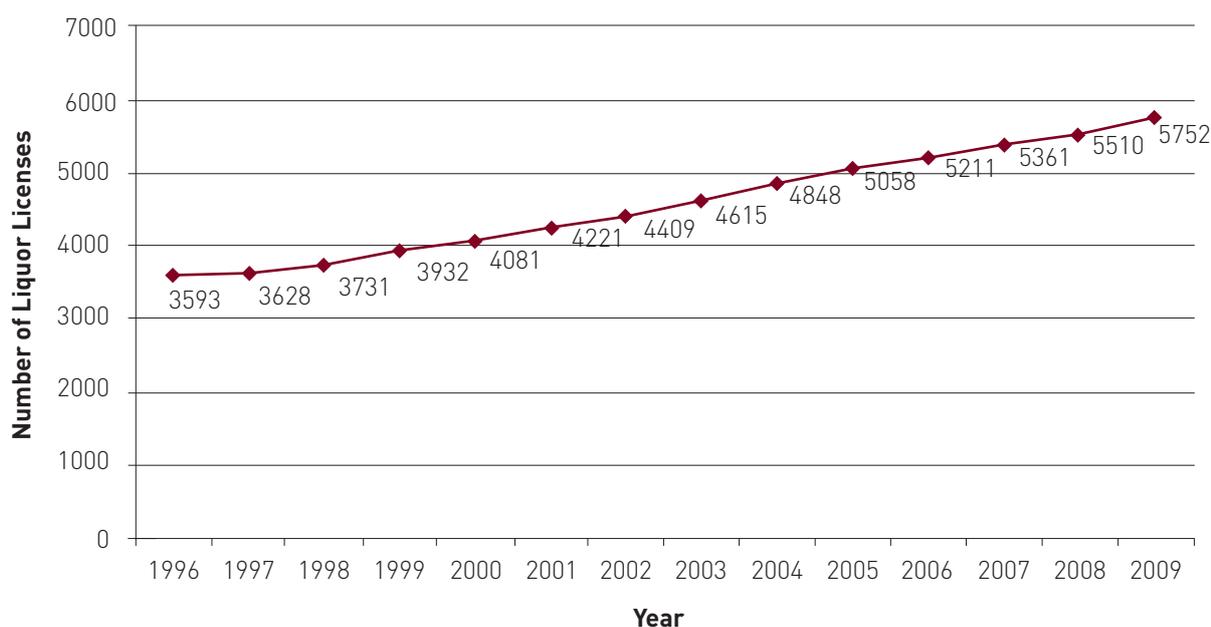


Figure 4: Number of liquor licences in South Australia from 1996 and 2009

Source: Office of the South Australian Liquor and Gambling Commissioner as cited in SA Police (2010).

In South Australia, the total number of liquor licences increased steadily (from 3,593 licences to 5,752 licences - an overall percentage increase of 60%) during a 13 year period from

1996 to 2009 (Figure 4). The largest growth in the number of licences occurred from 2000 to 2009, where the number of licences increased from 4,081 to 5,752 (an increase of 41%).

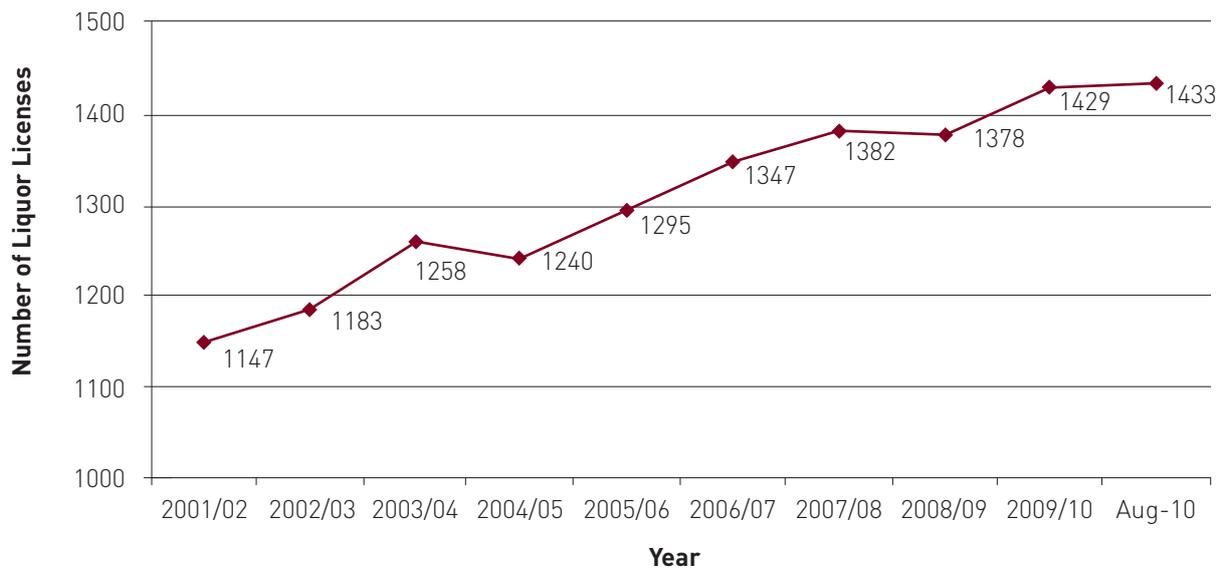


Figure 5: Number of liquor licences in Tasmania from 2001/02 to August 2010

Source: Tasmanian Department of Treasury and Finance. <http://www.treasury.tas.gov.au/domino/dttf/dttf.nsf/6f7ab99ce723e864ca25728a00129307/2a23cfeaac81a794ca257354001b2152?OpenDocument>

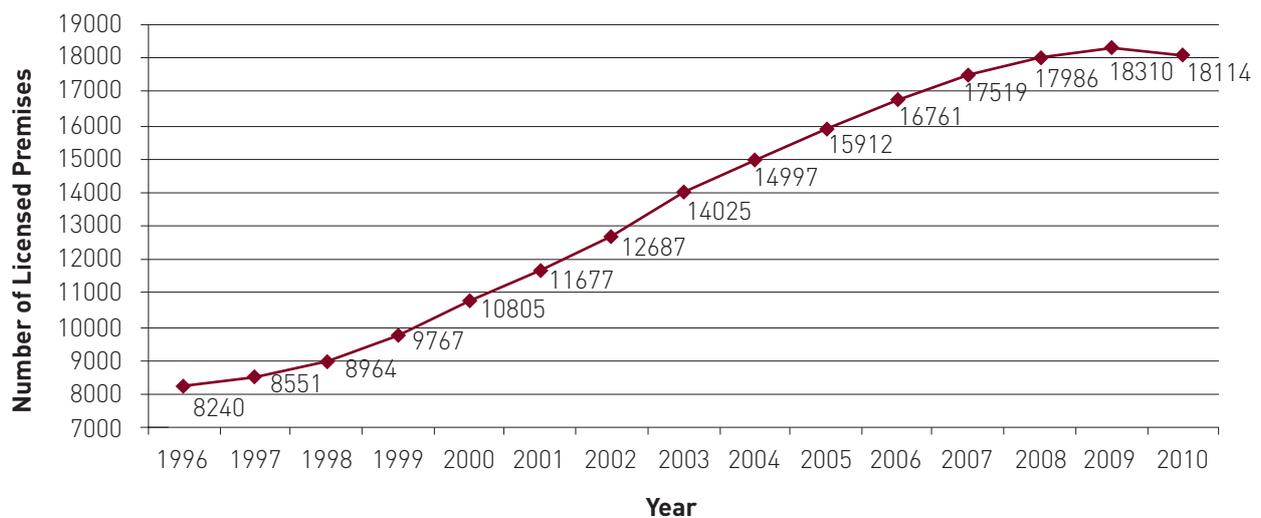


Figure 6: Number of licensed premises in Victoria from 1996 to 2010

Source: Responsible Alcohol Victoria

Over an eight year period from 2001/02 to August 2010, the number of liquor licences in Tasmania increased by 25% (from 1,147 to 1,433) (Figure 5).

Figure 6 shows that the total number of licensed premises in Victoria increased by 120% over a 14 year period from 8,240 licensed premises in 1996 to 18,114 in 2010.

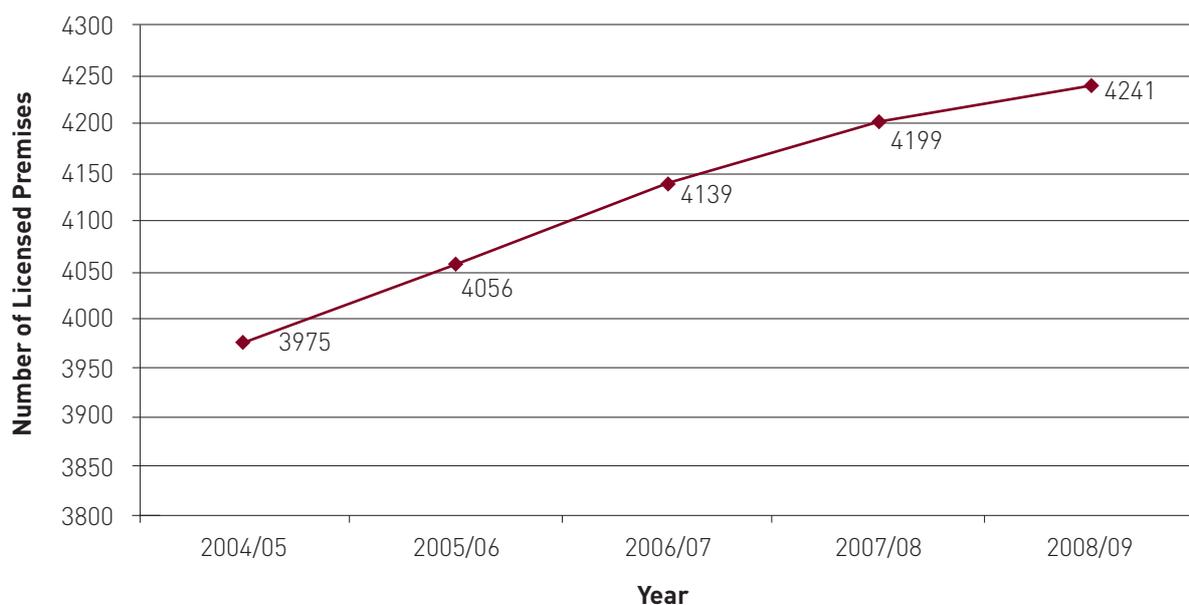


Figure 7: Number of licensed premises in Western Australia from 2004-05 to 2008-09

Source: Department of Racing, Gaming and Licensing Annual Report (2010).

Between 2004/05 and 2008/09 the number of licensed premises in Western Australia increased by 7% (from 3,975 in 2004/05 to 4,241 in 2008/09).

The ratio of licensed premises per head of population aged over 18 years was calculated for each jurisdiction. Table 8 lists the number

of current liquor licences in Australia by jurisdiction and the proportion of licences by persons aged 18 years and over. South Australia and Victoria had more licences per population over 18 years of age than any other state. By contrast, Queensland had fewer licences per population over 18 years than any other state.

Table 8: Number of Australian liquor licences by number of persons aged 18 years and over

Jurisdiction	Number of current liquor licences	Australian Population ≥ 18 years oldⁱ	Population ≥ 18 years per licensed premises
Australian Capital Territory	650 ⁱⁱ	279,273	430
New South Wales	15,193 ⁱⁱⁱ	5,601,746	369
Northern Territory	622 ^{iv}	166,626	268
Queensland	6,770 ^v	3,428,226	506
South Australia	5,752 ^{vi}	1,288,256	224
Tasmania	1,433 ^{vii}	388,984	271
Victoria	18,872 ^{viii}	4,316,946	229
Western Australia	4,241 ^{ix}	1,757,448	414
TOTAL	53,533^x	16,948,232	317

i Source: Australian Bureau of Statistics. Accessed from: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3201.0Jun%202010?OpenDocument> on 11 January 2011.

ii Source: ACT Office of Regulatory Services. As at 20 December 2010.

iii Source: NSW Department of the Arts, Sport and Recreation (2009). As at 30 June 2009.

iv This is the number of full and special continuing licenses (which trade for less than 30 hours per week). This number does not include liquor licenses for one-off events. Source: the Northern Territory Licensing Commission Annual Report 2010/2011, pages 9 and 14. The figures refer to the year ended 30 June 2010.

v Source: Queensland Office of Regulatory Policy: Department of Employment, Economic Development and Innovation. As at 30 June 2009.

vi Source: Office of the South Australian Liquor and Gambling Commissioner (as cited in SA Police, 2010). As at 30 June 2009.

vii Source: Tasmania Department of Treasury and Finance: Retrieved 23 November 2010 from: <http://www.tenders.tas.gov.au/domino/DTF.nsf/fcce52186e9867674a25665500244b46/2a23cfeaac81a794ca257354001b2152?OpenDocument> as at 10 August 2010.

viii Source: www.justice.vic.gov.au As at 30 September 2010.

ix Source: Department of Racing, Gaming and Liquor (2009). Annual Report. East Perth: Department of Racing, Gaming and Liquor (2009). As at 30 June 2009.

x This should be regarded as an approximation because the point in time at which these counts occurred varied between jurisdictions. Also note that this does not include the 1,484 Special Continuing Licences in the Northern Territory. In addition, some of these 53,533 licences may be inactive or only sell alcohol for limited periods of time.

Arguably, one contributory factor to the current level of alcohol-related harm in Australia is the rapid expansion in the availability of alcohol. Increases in alcohol availability are of relevance to the current examination of liquor licensing legislation in several ways.

The manner in which alcohol is sold can promote harm by:

- selling alcohol to already intoxicated people
- on-site promotions that lead to excessive consumption

- extended trading hours
 - criminal elements involved in running of licensed premises
 - tolerating intoxication-fuelled behaviour in and around licensed premises
- (National Drug Research Institute, 2007).

Liquor licensing legislation codifies many of the above features of supply by creating offences and subsequent penalties to reduce the frequency with which they occur. The degree to which this

is successful is dependent on a range of factors, including enforcement. This is a relatively uncontroversial aspect of alcohol supply problems, as premises exhibiting these patterns are recognised and acknowledged as overtly unsafe, acting illegally and are relatively easy to identify (National Drug Research Institute, 2007).

The overall increase in alcohol availability, as seen in the proliferation and concentration of outlets, has resulted in greater opportunities to purchase and consume alcohol. Many licensed premises that have come into existence in Australia over the past two decades are not necessarily problematic. Most are well run and operate entirely within the law. However, increasing the availability of alcohol in general, and especially if also associated with cheaper prices and easier access to take-away products, can exacerbate the level of alcohol-related harm in the community.

1.10 Summary

This project examined the liquor licensing legislation in each Australian jurisdiction within the context of the administrative and supportive structures that underpin that legislation. In undertaking the review, the views of key stakeholders and police in particular were elicited and examined in conjunction with a range of contextual factors, such as the increased availability of alcohol in Australia. Specifically, the project examined the centrality of the police role in enforcing liquor licensing legislation.

The findings from the examination of liquor licensing legislation and associated regulatory structures in the eight Australian states and territories are presented in this report. The report also contains an extensive review of literature around the enforcement of liquor licensing legislation and alcohol-related harm.

The next chapter describes the project methodology. This is followed by a chapter that details the broader context in which this examination of liquor licensing issues was considered. An overview of the key features of the legislative and administrative arrangements is then presented in the final chapter.



2 Methodology

2.1 Project Aims and Objectives

The principal aim of this project was to conduct a national review of existing liquor licensing legislation in each Australian jurisdiction with a particular focus on the enforcement provisions contained in that legislation.

Key objectives of the project were to:

- identify the key features of liquor licensing legislation in each state and territory
- identify examples of good practice in relation to the drafting and operation of liquor licensing legislation
- identify what law enforcement personnel want from liquor legislation to ensure that they are able to adequately perform their role in preventing and reducing alcohol-related crime and associated harms
- examine and recommend improvements to liquor licensing legislation across all Australian jurisdictions.

There were three major components to the project:

- literature review
- legislative review
- interviews with key informants.

This document presents findings from the literature review and key aspects of the legislative review.

2.2 Literature Review

An extensive literature review was undertaken by conducting a series of comprehensive searches of various databases. This included a search of the Flinders University Library catalogue followed by a more detailed search of the following databases:

- Journals@Ovid
- Expanded Academic ASAP
- ProQuest Central
- Sage Journals
- Wiley Online Library
- ScienceDirect
- PubMed
- Google
- Google Scholar
- Informit Search
- Factiva.

A number of specific publication websites were also accessed including:

- Australian Bureau of Statistics
- Australian Institute of Criminology
- South Australia Police
- National Drug Law Enforcement Research Fund
- Australian Government Department of Health and Ageing
- Australian Institute of Health and Welfare
- National Health and Medical Research Council
- National Drug Research Institute
- New South Wales Bureau of Crime Statistics and Research.

Key search terms used included: alcohol availability, trading hours, outlet density, alcohol enforcement, alcohol-related harm, alcohol-related crime, intoxication and public amenity.

2.3 Legislative Review

A comprehensive review of each Australian state and territory's liquor licensing legislation was undertaken by accessing the Australasian Legal Information Institute's (AustLII) databases. All relevant legislation was examined in conjunction with the appropriate regulations that apply in each jurisdiction. In addition, AustLII, Casebase, and FirstPoint databases were used to access the relevant case law and journal articles.

Relevant case law was identified through a mixture of keyword searches along with any cases which had been considered and applied throughout the determination of a case. While key word searches and case law was generally limited to decisions made under liquor licensing legislation, for some issues (e.g., public interest, duty of care) interpretations and application of the law were derived from other legislation and common law principles. This approach was taken because these decisions usually reflected precedents which were either binding or persuasive upon the decision-maker.

In addition, specific case law judgements were explored further when they were identified by interview participants (findings from the interviews undertaken as a part of this project are presented in Part 3 of this series).

Key word searches that were used during the legislative review included: liquor, alcohol, public interest, community amenity, intoxic!, intox*, drunk!, drunk*, harm minimisation, duty of care, and liquor legislation.

The following chapters outline the relevant liquor licensing legislation for each Australian jurisdiction.



3 The Broader Context

3.1 Alcohol-Related Harm

Alcohol plays an important role in Australian society. It is not only popular in a cultural context, but it also has an important role in facilitating interpersonal interactions and acts as a pivotal part of many social occasions (Doherty & Roche, 2003). However, some patterns of alcohol consumption result in negative health, social and economic outcomes (Ministerial Council on Drug Strategy, 2006).

These negative costs associated with the misuse of alcohol are of concern to governments and various stakeholders who aim to strike a balance between minimising harms associated with alcohol consumption and acknowledging the varied contributions made by the liquor industry (Fleming, 2008).

3.1.1 Patterns and Prevalence of Alcohol Consumption and Impacts on Health and the Economy

3.1.1.1 Alcohol Consumption in Australia

Alcohol is the most widely used drug in Australia. The 2007 National Drug Strategy Household Survey (NDSHS) reported that 14.2 million Australians aged 14 years and over (82.9% of the population) consumed alcohol in the previous year (Australian Institute of Health and Welfare, 2008a). This was the highest prevalence of use of any drug, licit or illicit (Australian Institute of Health and Welfare, 2008a).

In 2007, 41.3% of the population aged over 14 drank alcohol weekly and 8.1% daily (Australian Institute of Health and Welfare, 2008a). The pattern of consumption of alcohol in Australia varied by gender (Table 9). Males (10.8%) were almost twice as likely to drink daily as females (5.5%) (Australian Institute of Health and Welfare, 2008a).

Table 9: Alcohol drinking status: proportion of the population aged 14 years or older, by sex, Australia, 2007 (Australian Institute of Health and Welfare, 2008a)

Drinking Status	Males (%)	Females (%)	Persons (%)
Daily	10.8	5.5	8.1
Weekly	46.8	35.9	41.3
Less than weekly	28.3	38.5	33.5
Ex-drinker ⁱ	5.8	8.1	7.0
Never a full glass	8.2	12.1	10.1

i Someone who has consumed at least a full serve of alcohol, but not in the previous 12 months.

The percentage of Australians who drank alcohol daily increased with age (Australian Institute of Health and Welfare, 2008a). Those aged 20 to 29 years were more likely to drink weekly (47.8%) than any other age group, with males aged 20 to 29 years having the highest proportion of weekly drinkers overall (55.7%) (Australian Institute of Health and Welfare, 2008a).

3.1.1.2 Preferred Drinking Locations

The home was the most popular place to consume alcohol (80.5%) for the Australian population (aged 14 years and over), followed by a friend's house (52.6%), then licensed premises (50.3%) and restaurants/cafes (50.3%) (Australian Institute of Health and Welfare, 2008b). Males preferred drinking in the home (81.2%), at licensed premises (53.5%), at friends' houses (51.1%), at restaurants and cafes (46.9%), and at private parties (46.4%) (Australian Institute of Health and Welfare, 2008b). Females preferred to consume alcohol at home (79.7%), at friends' houses (54%), at restaurants or cafes (53.8%), at private parties (49.3%), and at licensed premises (46.9%).

For those aged 20 to 29 years, both males and females indicated a greater preference for drinking in licensed premises compared to other age groups. The most popular place of usual alcohol consumption for males in this age bracket was licensed venues (74.2%), followed by the home (72.5%); and for females the home was most preferred (71.0%) very closely followed by licensed premises (69.6%)

(Australian Institute of Health and Welfare, 2008b). For all other age groups, apart from those aged 14 to 19 years who preferred to drink at private parties (67.6%), the preferred place of alcohol consumption was at home (ranging from 84.9% to 86.5%) (Australian Institute of Health and Welfare, 2008b).

3.1.1.3 Risky Drinking, Intoxication and "Determined Drunkenness"

Australians have long had a reputation for heavy episodic drinking, with this pattern of drinking especially common among some younger Australians (Nicholas, 2008). There is a common misconception that alcoholism or alcohol dependence is the most serious alcohol-related problem facing Australia, however, drinking to intoxication produces far greater and more encompassing effects (Ministerial Council on Drug Strategy, 2006). There has also emerged in recent years a phenomenon termed "determined drunkenness" which refers to a pattern of weekday restraint and actively seeking to reach a desired and expected state of intoxication on weekends (Measham & Brain, 2005).

In 2007, a greater proportion of the population drank at risky or high-risk⁷ levels for short-

⁷ We used the 2001 NHMRC guidelines in this report instead of the 2009 guidelines as the former were utilised by the Australian Institute of Health and Welfare in their analysis of the National Drug Strategy Household Survey 2007: the most recent NDSHS data available at the time this report was compiled.

term harm than for long-term harm (Australian Institute of Health and Welfare, 2008a). In 2007, 10.3% of people over the age of 14 consumed alcohol in a way that put them at risk or high-risk⁸ for alcohol-related harm in the long-term, whereas just over one third (34.6%) of Australians

aged over 14 years placed themselves at risk or high-risk⁹ of acute alcohol-related harm in the previous 12 month period at least once (Australian Institute of Health and Welfare, 2008a). Age and gender differences for short-term harm are shown in Figure 8.

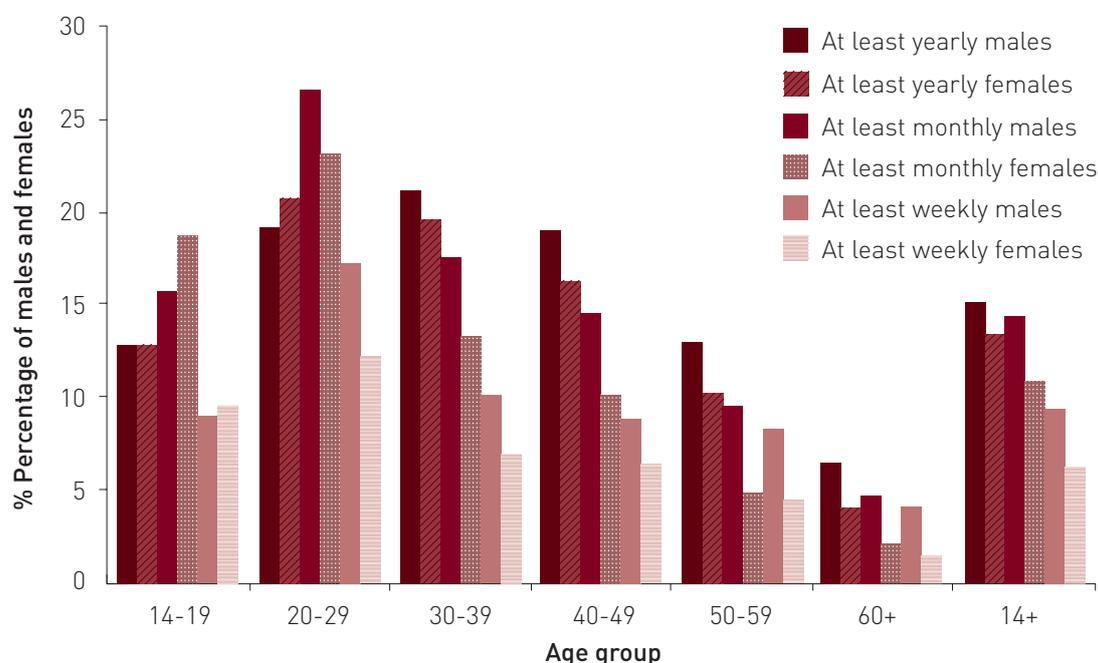


Figure 8: Percentage of risky and high-risk⁹ drinking frequency for male and females by age group (Australian Institute of Health and Welfare, 2008a)

A higher percentage of males than females aged 14 years or over placed themselves at risk and high-risk of acute harm yearly, monthly and weekly in 2007 (Figure 8). The 20 to 29 year old age group were most likely to put themselves at risk or high-risk of acute harm from alcohol consumption on a weekly (M: 17.2%, F: 12.2%) and monthly (M: 26.6%, F: 23.1%) basis (Australian Institute of Health and Welfare, 2008a).

Aboriginal and Torres Strait Islander people were more likely to abstain from drinking alcohol than other Australians (23.4% versus 16.8%), however those who did drink were more likely to do so at risky or high-risk levels for short-term harm (27.4% versus 20.1%)

8 For males, the consumption of 29 to 42 standard drinks per week was considered "risky", and 43 or more per week is "high-risk". For females, the consumption of 15 to 28 standard drinks was considered "risky" and 29 or more per week "high-risk" (National Health and Medical Research Council, 2001).

(Australian Institute of Health and Welfare, 2008b).

A trend related to "determined drunkenness" is the increasing preference for "pre-drinking". This refers to planned heavy consumption of alcohol before going to licensed premises (often bars or clubs). While this is not a new phenomenon it appears to be becoming increasingly common (Wells, Graham, & Purcell, 2009). This trend has important ramifications for the management of licensed

9 Long-term harm was defined as five or more standard drinks for females, and seven or more standard drinks for males consumed on any one day (National Health and Medical Research Council, 2001). This type of risky drinking would be consistent with drinking to the point of intoxication or binge drinking (National Preventative Health Taskforce, 2008).

10 Short-term harm was defined as five or more standard drinks for females, and seven or more standard drinks for males consumed on any one day (National Health and Medical Research Council, 2001).

premises and enforcement of liquor licensing laws. Measures that focus on licensed premises to curb alcohol-related harm do not necessarily address pre-drinking, and may unintentionally displace problem alcohol consumption to pre-drinking environments (Nicholas, 2010).

3.1.1.4 Underage Drinking Patterns and Harms

Although the legal purchasing age for alcohol in Australia is 18 years, alcohol plays a major role in the lives of many young Australians, particularly in their social gatherings (Roche et al., 2007). For many young people, being intoxicated is seen as a necessary social requirement (Borlagdan et al., 2010). Secondary school students' experience with alcohol is significant, with consumption increasing with age (White & Smith, 2009). Around 60% of students who completed the 2008 Australian Secondary Students' Alcohol and Drug Survey (ASSAD) reported consuming alcohol in the previous year, with 37% having consumed

alcohol in the past month and 23% in the previous week (White & Smith, 2009). The rate at which risky drinking¹¹ occurred increased with age, with 1% of 13 year olds and 18% of 17 year olds drinking at risky levels in the past week (White & Smith, 2009).

According to a secondary analysis of NDSHS 2004 data, the age at which alcohol consumption first begins has decreased over time (Roche et al., 2007). Less than 20% of Australia's population aged over 60 reported having consumed a full glass of alcohol before the age of 16, compared with 70% of the 20 to 29 year old cohort (Roche et al., 2007). Underage drinkers' views of their consumption have also been found to be skewed (Figure 9). Most young people who drank at levels for short-term harm at least once a month viewed themselves as "social" or "light" drinkers, with only 3% viewing themselves as "heavy" or "binge" drinkers (Roche et al., 2007).

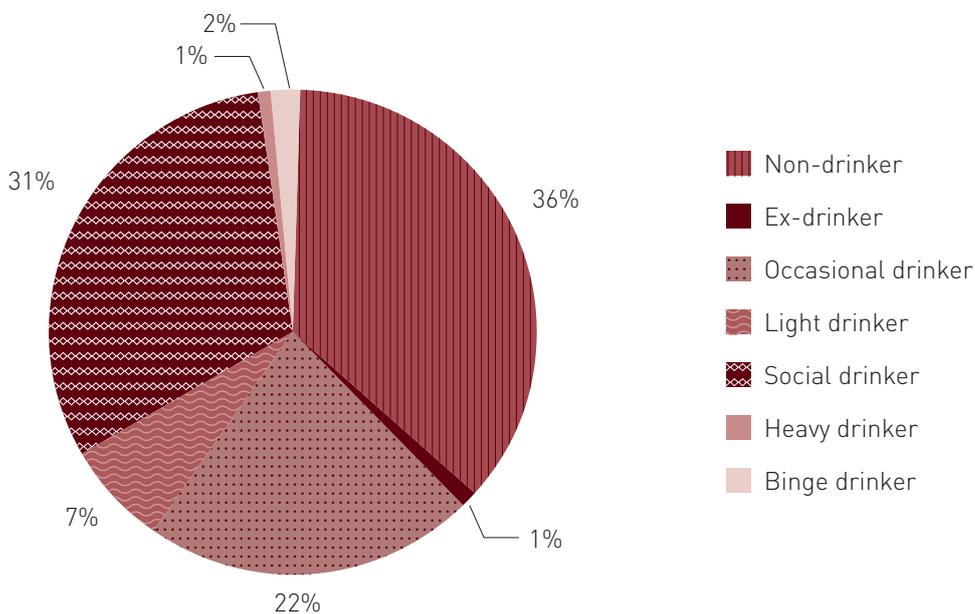


Figure 9: Perceptions of young people aged 12-24 of their own drinking (2004 NDSHS; from Roche et al., 2007)

¹¹ Male students were classed as risky drinkers if they consumed seven or more alcoholic drinks on at least one day in the past week, and five or more alcoholic drinks for female students (White & Smith, 2009).

Negative consequences on the health and well-being of adolescents from alcohol consumption include suicidal ideation and attempts (Swahn & Bossarte, 2007), impacts on the developing brain (Newbury-Birch et al., 2009; Spear, 2002), and negative effects on memory (De Bellis et al., 2000; Spear, 2002). In addition, when alcohol consumption is initiated at a young age, there is a greater risk of developing various mental health and social problems (Brown & Tapert, 2004). As adolescents do not experience drowsiness and loss of motor function to the same extent as adults, this can lead to prolonged exposure to environmental risks whilst consuming alcohol (Newbury-Birch et al., 2009). Furthermore, there is a heightened probability of young people engaging in risky behaviour when alcohol is consumed (Miller, Naimi, Brewer, & Everett Jones, 2007).

3.1.1.5 Health and Anti-Social Implications

At least 40 conditions have been identified which are entirely or partially caused by alcohol consumption and which are potentially fatal (Chikritzhs et al., 2003). In 2003, 3.2% of the total burden of disease and injury in Australia was attributable to alcohol (Begg et al., 2007). In the 10 year period 1992-2001, it is estimated that 31,133 (75% male) Australians died as a result of risky or high-risk alcohol consumption (Chikritzhs et al., 2003). Of these deaths, more occurred as a result of acute alcohol use than from long-term use (16,756 versus 14,377 respectively), with death from acute alcohol use more common in young people: 15 to 29 year olds accounted for almost one-quarter of acute deaths (Chikritzhs et al., 2003). In terms of hospitalisations, in the eight year period 1993/94-2000/01 there were 577,269 completed hospital episodes attributed to risky or high-risk drinking (Chikritzhs et al., 2003). Almost 70% of these hospital episodes were for acute conditions, mostly comprising intoxication-related injuries (Chikritzhs et al., 2003).

Australian research regarding risk of injury from alcohol consumption is relatively limited. However, Stockwell et al. (2002) investigated this using a population-based case-controlled study with Emergency Department attendees suffering injuries and poisoning in Fremantle,

Western Australia. For both males and females, there was a significantly increased risk of injury with increased levels of alcohol consumption¹² (Stockwell et al., 2002). Another population-based case-controlled study of Emergency Department attendees on the Gold Coast, Queensland, also found increased risk of injury with increased alcohol use (Watt, Purdie, Roche, & McClure, 2004). After controlling for demographic and situational variables, consumption of any alcohol in the six hours prior to injury was found to be associated with a significantly increased risk of injury, compared to not having consumed alcohol the previous day (Watt et al., 2004).

The relationship between alcohol consumption and criminal offending is well established (Exum, 2006) (see Section 3.1.2). However, not all incidents of violent or aggressive behaviour and acts of crime involve alcohol, just as not all people who consume alcohol will carry out these behaviours. One meta-analysis reported that alcohol does facilitate aggressive behaviour, and that it affects aggression as much or more than other social and non-social behaviours (Bushman & Cooper, 1990). However, other factors besides alcohol alone need to be considered when examining the alcohol-related aggression association.

Undesirable behaviour, such as violence and aggression, can be facilitated by the interaction of the immediate drinking environment with individual and group behaviour, and by the predisposition towards violence by an individual (Doherty & Roche, 2003). Drinking patterns and perceived levels of intoxication have also been found to play a role in the escalation of aggression (Wells & Graham, 2003). Wells and Graham (2003) found that respondents who reported incidents occurring in bars, late at night and on weekends, between males, with large amounts of people, and between strangers were more inclined to report they (and/or their opponent) had been consuming alcohol. Also, alcohol consumption has

¹² For women, risk of injury increased significantly even at low levels (1 to 30 g), with a dramatic increase in risk for injury with alcohol intake above 60 g. For males, alcohol consumption above 90 g significantly increased the risk for injury (Stockwell et al., 2002).

been shown to alter the ability of people to process facial cues of emotional expression. One study found that after participants had consumed alcohol, there was a higher likelihood of categorising male target faces as angry rather than disgusted (Attwood, Ataya, Benton, Penton-Voak, & Munafò, 2009). This finding suggests that in social situations, non-threatening and ambiguous facial expressions of males can be mistaken for a negative and provoking expression (Attwood et al., 2009).

3.1.1.6 Financial Implications

Excessive alcohol consumption has a substantial impact on Australia's economy, with heavy costs to the healthcare system, businesses and households. Figure 10 outlines the main categories of alcohol use costs for the year 2004/05. In this period, the net cost to health care due to alcohol misuse totalled almost \$2 billion, which included medical (\$540.7 million), hospital (\$662.2 million) and ambulance (\$74.8 million) costs (Collins & Lapsley, 2008).

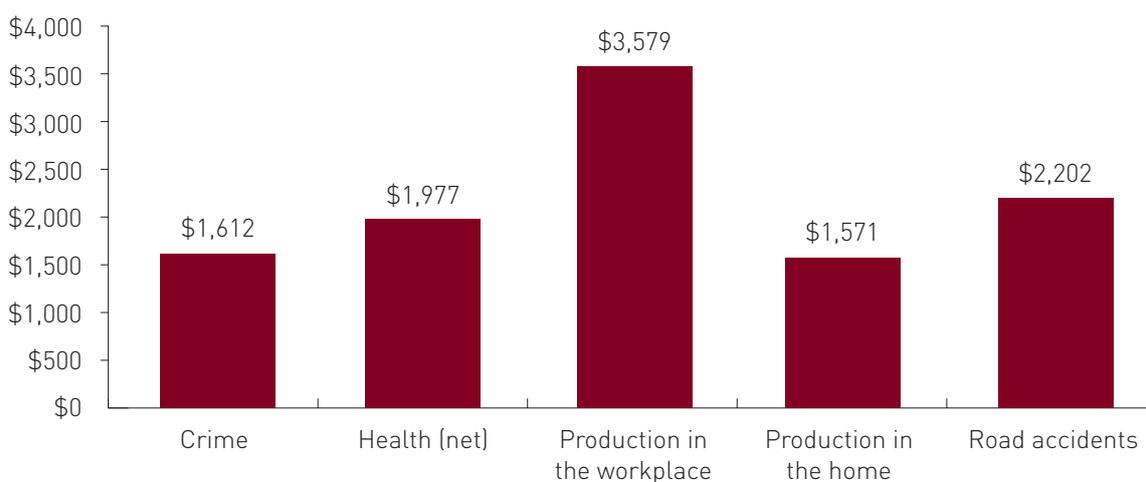


Figure 10: The main categories of alcohol use tangible costs (\$millions) for 2004/05 (Collins & Lapsley, 2008; cited in Roche, Bywood et al., 2009)

Figure 11 demonstrates the ways in which alcohol misuse affects different sections of the community in terms of workforce labour, hospital, and crime costs. Households

share 23.1% of the costs (\$2.558 billion) and governments share 26.4% (\$2.923 billion), with businesses bearing the largest burden with 50.4% (\$5.576 billion) (Collins & Lapsley, 2008).

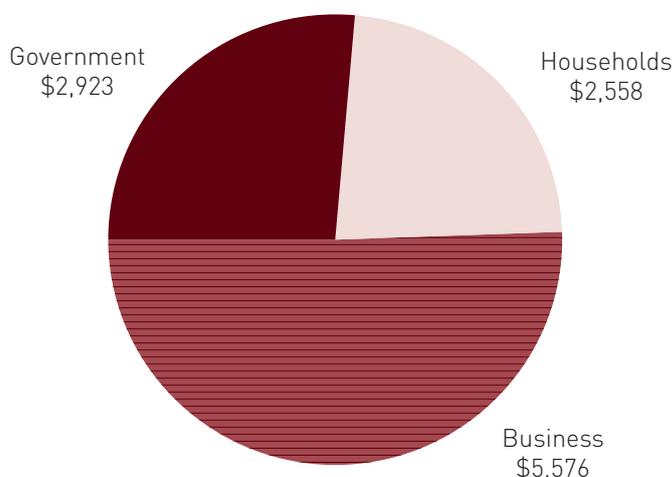


Figure 11: Economic cost (\$millions) of alcohol use in 2004/05 borne by each sector of the community (Collins & Lapsley, 2008; cited in Roche, Bywood et al., 2009)

3.1.2 Crime and Alcohol

The cost of alcohol-related crime in Australia is substantial. For the year 2004/05, the combined tangible and intangible cost of crime associated with alcohol use was approximately \$1.735 billion (Collins & Lapsley, 2008). Understanding the role of alcohol in different crimes is important for curbing offending that can lead to financial and social harms.

A significant number of offenders use alcohol in the hours leading up to being arrested and detained by police for various crimes. Drug Use Monitoring in Australia (DUMA) data describe the self-reported alcohol consumption of detainees based on the most serious crime¹³ with which they were charged (Adams, Sandy, Smith, & Trigione, 2008). In the 48 hours leading up to their offence 84%¹⁴ of detainees charged with a drink-driving offence, 58% charged with disorder offences and 49% charged with a violent offence reported drinking alcohol¹⁵ (Adams et al., 2008). Further analysis of the 2007 DUMA data revealed that of detainees charged with assault, 26% reported that their consumption of alcohol had contributed to them committing the crime, and another 4% were too incoherent from alcohol intoxication to be interviewed (Morgan & McAtamney, 2009). Although self-reported, these findings highlight the close association between alcohol use and offending.

3.1.2.1 Alcohol-Related Public Disorder

In Australia, alcohol-related disorder¹⁶ is wide spread and constitutes a considerable burden for police (Williams, 2001). Furthermore, alcohol-related disorder impacts greatly on society in terms of social harms and a range of economic costs (Makkai, 2001). Types of alcohol-related disorder include physical abuse, verbal abuse, being put in fear, damage to property,

stealing property, creating a public disturbance or nuisance and drink-driving (Makkai, 2001). The role of alcohol in public disorder has been reported using DUMA data: 58% of detainees charged with a disorder offence, 44% charged with a traffic offence and 31% charged with a property offence as their most serious offence reported consuming alcohol in the previous 48 hours (Adams et al., 2008).

3.1.2.2 Alcohol-Related Violence

There appear to be discernable risk factors for experiencing alcohol-related violence. They include being male, young and being in a licensed venue or on the street (or potentially in the vicinity of licensed venues). This echoes the consumption patterns of young males, the rate at which they frequent licensed premises, and subsequent alcohol-fuelled incidents that impact police and harm reduction efforts.

Although the relationship between alcohol and violence is not straight forward (Doherty & Roche, 2003), an association between alcohol consumption and alcohol-related violence has been clearly demonstrated (Nicholas, 2008). Data from the 2001 NDSHS showed that in the workplace setting specifically, 19% of employed recent drinkers had been put in fear, 34% had been verbally abused, and 6% had been physically abused by a person affected by alcohol and/or drugs in the workplace (Pidd et al., 2006).

The 2007 NDSHS reported that Australians were twice as likely to be victims of alcohol-related assaults than victims of illicit drug-related incidents, and 38% of those surveyed reported consuming alcohol at the time of their alcohol-related victimisation (Australian Institute of Health and Welfare, 2008a). For Australians aged 14 years and over, 25.4% were victims of verbal abuse, 4.5% experienced physical abuse, and 13.1% were put in fear in 2007 from someone under the influence of alcohol (Australian Institute of Health and Welfare, 2008a).

Hospital admission and treatment rates have shown a strong association between alcohol and violence. Griggs et al. (2007) reported that 47.8% of assaulted patients treated by the Trauma Team at the Royal Adelaide Hospital (RAH) tested positive for alcohol, with 72.2%

13 Detainees could be charged with more than one crime.

14 This does not equate to 100% as it is self-reported data and it appears not all detainees have reported alcohol use before being detained.

15 These correlations do not necessarily imply that the drinking caused the offending.

16 Alcohol-related disorder and disorderly behaviour (in a criminological sense) does not necessarily refer to criminal behaviour, but to actions which are not tolerated and which disturb the normal way of life (Makkai, 2001).

testing positive for alcohol and other drugs. Just under two-thirds of assault victims presenting to the Emergency Department of St Vincent's Hospital, Sydney, reported consuming alcohol in the previous six hours before they were assaulted (Poynton, Donnelly, Weatherburn, Fulde, & Scott, 2005). Also, 40% of assault patients reported that the other party had also been consuming or were affected by alcohol (Poynton et al., 2005).

Certain groups of people are at heightened risk of being a victim of alcohol-related assaults (Teece & Williams, 2000). The 2007 NDSHS found that males (29.3%) were more likely to be verbally abused by someone under the influence of alcohol than females (21.5%), and that 5.9% of males compared to 3.1% of females were physically abused by someone affected by alcohol (Australian Institute of Health and Welfare, 2008a). The age group found to experience the highest incidence of alcohol-related verbal and physical abuse, and being made to feel fearful, was the 20 to 29 age group (Australian Institute of Health and Welfare, 2008a).

In a secondary analysis of the 1998 NDSHS, being younger (aged between 14 and 39) was found to be strongly associated with being a victim of alcohol-related violence (Teece & Williams, 2000). The authors also reported that 36.5% of those who experienced alcohol-related violence did so in pubs and clubs, with a further 35.5% assaulted on the streets, and 23.3% assaulted in their own homes. Most victims' experience of alcohol-related assault occurred on weekends (41.8%, versus 14.5% weekdays only) and at night (60.6%, versus 12.2% in the day only) (Teece & Williams, 2000). Also, the Australian Bureau of Statistics (2005) reported that 13.2% of 770,600 people who were assaulted in the previous year were assaulted in places of entertainment, including car parks. Additionally, 71% of assault victims at an Emergency Department in Sydney stated they had been drinking at either a club or night club (Poynton et al., 2005).

3.1.2.3 Intimate Partner Violence and Alcohol Consumption

Many studies have suggested that alcohol consumption and excessive alcohol use are risk

factors for violence within marriages (Leonard & Blane, 1992). Previous research has indicated that abusive males who have a substance use problem, including alcohol, inflict more frequent violence, more serious injury and have a higher likelihood of inflicting sexual violence against their intimate partner than those without a substance use problem (Browne, 1997 cited in Mouzos & Makkai, 2004).

An examination of the female experience of male violence in the International Violence Against Women Survey (IVAWS) showed that alcohol consumption played a significant role in violence against women (Mouzos & Makkai, 2004). Women whose partners were intoxicated two or more times per month experienced higher rates of violence than women whose partners drank less, or did not drink at all. Thirty-five percent of women indicated that their partner was drinking alcohol at the time of the most recent violent incident compared to 4% who indicated that their partner was using other drugs (Mouzos & Makkai, 2004).

3.1.2.4 Sexual Assault and Alcohol Consumption

Women are at risk of alcohol-related sexual assault as an increasing number of women are drinking to the point of intoxication which in turn makes them more vulnerable to sexual assault and abuse (Doherty & Roche, 2003). In terms of where sexual assaults occur, the most frequently cited place of sexual assault for female victims was their home or another's home (40%), followed by a public venue (37%) including places of entertainment and car parks (Australian Bureau of Statistics, 2002). However, only 20% of female victims surveyed reported their attack to police (Australian Bureau of Statistics, 2002).

The extraction of data from the 2004 NDSHS by Roche et al. (2007) regarding people under the age of 24 identified that females reported the overwhelming majority of experiences of sexual abuse by someone affected by alcohol. Alcohol-related sexual abuse was most common among 15 to 20 year olds, with 4% of females in this age group reporting this type of abuse.

For females who reported sexual abuse, 54%¹⁷ reported they had also been drinking alcohol at the time of the abuse (Roche et al., 2007).

3.1.2.5 Homicide and Alcohol Consumption

Previous research into homicide has shown a strong association with alcohol consumption (Carcach & Conroy, 2001; Dearden & Payne, 2009; Makkai & Payne, 2003). Darke (2011) has noted that it is important to examine not only the risk of committing alcohol-related homicide, but also the victimology in such incidents. There are also issues with how such data is reported, with toxicology and the location of homicide rarely disseminated (Darke, 2011).

Using the Australian Institute of Criminology (AIC) National Homicide Monitoring Program's (NHMP) database, the link between alcohol and homicide was investigated by Carcach and Conroy (2001). The authors reported that between 1989 and 1999, 13% of all homicides that occurred in Australia were the result of an alcohol-related altercation or argument, involving either a victim or offender (or both) who was under the influence of alcohol. Homicides involving a male offender and victim were 4.9 times more likely to have been initiated by an alcohol-related altercation, and homicides involving a victim between 25 and 34 years of age were twice as likely to be alcohol-related (Carcach & Conroy, 2001). Additionally, homicides in recreational settings were 5.9 times as likely to be the end result of an alcohol-related altercation (Carcach & Conroy, 2001).

An examination of solved homicides using the AIC's NHMP database for a six year period¹⁸, found 47% of homicides (729) to be alcohol-related¹⁹ (Dearden & Payne, 2009). The time periods with the highest probability of alcohol-

involved homicides were between 6 pm and 12 am (56%) and 12 am and 6 am (57%). Homicides that occurred on Saturdays and Sundays also had the highest probability of alcohol involvement (60% and 54% respectively), and eight in every 10 homicides which took place in recreational venues and 63% that occurred in public spaces (e.g., on streets) involved alcohol. The authors also reported that homicides with victims aged 18 to 29 (54%) and 30 to 39 years (53%) were statistically more likely to have involved alcohol. A meta-analysis of 61 independent studies across 13 countries (mainly the United States) on homicide victims and their toxicology revealed that 48% of homicide victims tested positive for alcohol, and around a third (33% with 0.08²⁰ as the threshold, and 35% with 0.10²¹ as the threshold) were deemed to be intoxicated at the time of the homicide (Kuhns et al., 2011).

3.1.2.6 Road Trauma and Alcohol Consumption

Considerable progress has taken place in Australia in the prevention of drink-driving and alcohol-related road deaths, following a national campaign to reduce driving under the influence of alcohol (Ministerial Council on Drug Strategy, 2006). Despite this, alcohol use is still a major cause of road-related harms in Australia (Ministerial Council on Drug Strategy, 2006). From 1992 to 2001, it was estimated that 5,489 people died as a result of road crash injuries due to risky or high-risk drinking, which was the second highest cause of alcohol-related deaths behind alcoholic liver cirrhosis (6,825) (Chikritzhs et al., 2003). Also, the reported tangible and intangible cost of road crashes attributed to alcohol in Australia in the year 2004/05 equated to \$3.12 billion (Collins & Lapsley, 2008).

An investigation into trauma cases at the Royal Adelaide Hospital (RAH), found that among injured drivers of motor vehicle crashes, 22.6% tested positive for alcohol (Griggs et al., 2007). According to the 2007 NDSHS, 12.1% of the Australian population who were 14 years or

17 Forty percent of these women reported they had consumed only alcohol, and 14% reported they had consumed both alcohol and other drugs (Roche et al., 2007).

18 Between 1 July 2000 and 30 June 2006 (Dearden & Payne, 2009).

19 Homicides were classed as alcohol-related if the victim's toxicology analysis identified alcohol in their blood stream during the post-mortem and/or the police indicated in their report that the offender was drunk or had been consuming alcohol at the time of the incident (Dearden & Payne, 2009).

20 80 mg/dl blood alcohol content (BAC) level (Kuhns, Wilson, Clodfelter, Maguire, & Ainsworth, 2011).

21 100 mg/dl BAC (Kuhns et al., 2011).

older reported driving a motor vehicle whilst under the influence of alcohol in the previous year (Australian Institute of Health and Welfare, 2008a). Men (16.2%) were more than twice as likely to drive under the influence of alcohol as women (8.0%) (Australian Institute of Health and Welfare, 2008a). Makkai (2001) reported that the 1993, 1995 and 1998 NDSHS results together showed that those aged 20 to 39 reported the highest levels of drinking and driving, followed by 14 to 19 year olds. Those aged 20 to 24 were found to be 2.9 times more likely to drive whilst under the influence of alcohol than those aged over 40 (Makkai, 2001).

With large proportions of Australians continuing to drink and drive (e.g., one in six males report having done so in the last 12 months), it indicates that licensed premises are implicated in at least a proportion of these transgressions. As many people driving under the influence will have been consuming alcohol at licensed premises, it is evident that patrons continue to be served alcohol such that their blood alcohol concentration (BAC) will exceed 0.05%. Police data on driving under the influence is also likely to be conservative as the figures from the 2007 NDSHS refer to self-reported drinking and driving, not to being apprehended by police for this offence.

3.2 Initiatives to Curb Alcohol-Related Harm

3.2.1 Liquor Licensing Legislation: Enforcement and Penalties

In order for police and other enforcement agencies to minimise harms that arise from alcohol consumption, appropriate legislative tools must be in place. Each Australian jurisdiction has its own set of liquor legislation which is reviewed and amended at different times in an effort to make improvements (Chikritzhs, 2006). Changes made to some liquor legislation in the 1980s and 1990s were designed to incorporate harm minimisation as a main objective. This reflected a shift in focus for some jurisdictions (Chikritzhs, 2006). However, it is necessary to have more than just adequate legislative provisions, as commitment

to enforcement by authorities is also required to reduce alcohol-related harms (Nicholas, 2008). Adequate enforcement of specific policies and strategies adopted (e.g., responsible service of alcohol programs) is crucial for their success in reducing harms (Babor et al., 2010). For police specifically, best practice in policing licensed premises needs to incorporate enforcement of non-compliance with provisions contained within liquor licensing legislation (Fleming, 2008). There is some evidence that authorities, including police, focus on enforcing breaches by patrons as opposed to breaches by licensees (Briscoe & Donnelly, 2003a). This may not be the most effective approach to reducing alcohol-related harms (Nicholas, 2010).

Studies evaluating the effectiveness of liquor licensing legislation in Australia are scarce. However, one study in New South Wales reported that in 2001, 4,619 enforcement actions under liquor laws were undertaken (Briscoe & Donnelly, 2003a). Police infringement notices accounted for more than half of these actions, with 42.5% of these actions being against patrons for either failing to leave premises or for offences relating to minors. The authors reported that when action against licensed premises was taken, it often was for technical breaches (such as signage breaches) not for offences such as serving liquor to intoxicated patrons. However, it has been suggested that there has been a noticeable shift in the focus of enforcement in relation to licensed premises in recent years, from individual patron offences to breaches by premises (Fleming, 2008). This has been achieved through a movement away from reactive policing towards targeted (or proactive) police activity, and the implementation of intelligence systems and databases. The re-centralisation of specific liquor licensing policing groups with designated budgets has also been employed by some Australian jurisdictions to assist in broadening the range of alcohol-related problems being targeted (Fleming, 2008).

An example of a problem-orientated strategy is the collection of intelligence data by police regarding last place of alcohol consumption from people involved in police-attended incidents (Wiggers et al., 2004). This affords

police the ability to target specific high-risk premises with feedback and recommendations for service improvement (Wiggers et al., 2004). The Alcohol Linking Program implemented in the Hunter Valley and Central Coast regions of New South Wales involved 400 hotels, registered clubs and nightclubs and the provision of problem-orientated feedback to licensees based on alcohol intelligence data collected by operational police (Wiggers et al., 2004). Licensed premises identified one or more times by people involved in a police-attended incident were subject to audit by police and feedback was given to the licensees (Wiggers et al., 2004). Over a three-month follow-up, compared to premises that acted as controls and received only regular law enforcement, there was 15% greater reduction in alcohol-related incidents for premises who received feedback from police (Wiggers et al., 2004). This type of enforcement strategy is a cost-effective measure that can allow police resources to be directed towards high-risk licensed premises (Stockwell, 2010).

3.2.1.1 Liquor Licensing Reform in New Zealand

The New Zealand Law Commission's (2010) recent report *Alcohol in our lives: Curbing the harm*, outlining the need for review of their *Sale of Liquor Act 1989*, is relevant to Australia and current liquor licensing legislation. As New Zealand is both our closest and most culturally alike neighbour, we examined the alcohol-related issues signalled and recommendations tabled.

The report notes that since the New Zealand *Sale of Liquor Act 1989* was enacted, societal changes have occurred in relation to alcohol consumption to the extent that the liquor laws can no longer keep pace (New Zealand Law Commission, 2010). Not only have society and technology changed, but advances in research regarding the harmful health impacts of alcohol, as well as the links between alcohol and aggression, have also emerged (New Zealand Law Commission, 2010). The report recommended a new policy framework for alcohol regulation be instated that aimed to reduce alcohol-related harms and impact most on those who drink at risky levels. These policy recommendations were also believed to

have the potential to assist in the reduction of criminal offending in New Zealand, decrease the burden carried by New Zealand Police and to help improve the health of the population. Some of the recommended policies proposed in the report to achieve these aims included:

- a new *Alcohol Harm Reduction Act* to replace the current Act
- increasing the price of alcohol through excise tax
- regulation of alcohol promotion
- reducing licensed premises' trading hours
- increasing alcohol purchasing age to 20 years
- increasing the responsibility of parents for secondary supply to minors
- increasing individual responsibility and behaviour as a result of alcohol consumption
- increasing local influence in licensing decisions through new local alcohol policies and District Licensing Committees
- referring decision-making to a new Alcohol Regulatory Committee presided over by specially selected District Court judges (New Zealand Law Commission, 2010).

3.2.2 Liquor Accords

In Australia, the term "Liquor Accord" is used to describe local community-based initiatives to reduce levels of alcohol-related harm (Babor et al., 2010). Liquor accords are based on voluntary agreements and encourage collaboration among different stakeholders (Graham & Homel, 2008), with the goal of implementing practical harm minimisation strategies to reduce alcohol-related violence and disorder in and around licensed venues, and improve community safety (National Drug Research Institute, 2007).

There have been a limited number of evaluations of the effectiveness of strictly voluntary liquor accords, with those that have been carried out largely unable to demonstrate effectiveness (Graham & Homel, 2008). However, the enhancements in communication that can flow from accords may be seen as a desirable outcome in some communities

(Nicholas, 2008). The development of local networks and open lines of communication (National Drug Research Institute, 2007), and giving the local community, police and licensees a say in matters (Graham & Homel, 2008) is more likely to be to the advantage of accords rather than an actual reduction in alcohol-related harms. Nevertheless, voluntary accords may have the potential to help reduce alcohol-related harm in certain circumstances (Doherty & Roche, 2003), especially in the short-term when there is enthusiastic monitoring (Stockwell, 2010). Accords may also be viewed as a complementary strategy to liquor licensing legislation. Doherty and Roche (2003) have noted that if liquor laws are not enforced, or policing strategies which encourage licensees to adhere to legislation are not implemented, then safer alcohol provision by premises is unlikely to be encouraged.

3.2.3 Dry Community Declarations and Local “Dry Area” Alcohol Bans

The regulation of alcohol supply to Indigenous Australians has been identified as an important factor in efforts to reduce alcohol-related harms and offending (Doherty & Roche, 2003). Restrictions on alcohol supply need to involve (and often be led) by Indigenous community members, as well as involve government and non-government agencies and services and licensed venue operators (Doherty & Roche, 2003).

In Western Australia, the Northern Territory and South Australia, some remote Indigenous communities utilising provisions in state/territory legislation have declared themselves “dry” (National Drug Research Institute, 2007). Dry communities are one strategy used to address alcohol-related problems in remote Indigenous communities (Doherty & Roche, 2003). The combination of Indigenous community control and police enforcement is a key feature of effective dry community declarations, along with active enforcement by police (National Drug Research Institute, 2007). There is evidence that positive outcomes have occurred in these communities, though there are obstacles to successful implementation

such as sly grogging²² (National Drug Research Institute, 2007).

Dry area bans are restrictions placed upon specifically designated areas, usually where high levels of alcohol-related disorder occur, however, these have not been found to be effective in reducing alcohol-related harms in locations other than where the ban is imposed (National Drug Research Institute, 2007). Decreases in public disorder observed in banned areas can largely be attributed to drinkers moving to places that do not prohibit alcohol consumption (i.e. a displacement effect) (National Drug Research Institute, 2007). Dry areas have also been described as discriminatory and associated with negative impacts upon Indigenous people who are already at a higher risk of encountering alcohol-related harms (National Drug Research Institute, 2007).

3.2.4 Responsible Service of Alcohol

Responsible Beverage Service (RBS) and Responsible Service of Alcohol (RSA) programs adopt a harm reduction approach and aim to reduce the negative consequences of alcohol intoxication by changing serving practices and fostering safer drinking in licensed premises (Babor et al., 2010). A review of 20 studies examining the effectiveness of interventions in the alcohol server settings found no reliable evidence for effectiveness in preventing injuries (Ker & Chinnock, 2006).

A study examining the impact of the provision of an educational program to bartenders in university student pubs in Lund, Sweden on student’s Blood Alcohol Concentration (BAC) levels and perception of rowdiness in pubs drew positive results (Johnsson & Berglund, 2003). Compared to students attending the pubs in the control condition, those attending pubs where bar tenders had received RBS training had significantly lower BAC levels at the one-month follow-up than at baseline, with a significant decrease in a “rowdy” atmosphere also reported by this group compared to the control group

22 This term refers to alcohol that is smuggled into prohibited areas and sold at elevated prices (National Drug Research Institute, 2007).

(Johnsson & Berglund, 2003). However, a five month follow-up of these findings revealed that the positive effects that were originally yielded at one-month follow-up were not stable and were no longer evident (Johnsson & Berglund, 2009).

A survey assessing 18 to 39 year old patrons' experiences of RSA in licensed premises in New South Wales was conducted in 2006 (Scott, Donnelly, Poynton, & Weatherburn, 2007). Of the 462 survey respondents that indicated that they had shown at least one sign of intoxication, 54% continued to be served alcohol. Respondents who admitted showing three or more signs of intoxication in a licensed venue continued to be served alcohol over half the time they requested it (54%), though this was an improvement from a previous survey (65% in 2002). The results showed that it was possible to encourage more responsible service of alcohol, with a modest improvement in RSA provisions for patrons who were intoxicated to a greater extent. However, given that over half of the patrons who admitted displaying three or more signs of intoxication continued to be served alcohol, there is still need for improvement such as an increase in appropriate enforcement (Scott et al., 2007).

Police and other licensing authorities need to be familiar with RSA provisions and potential penalties if RSA is to be an effective tool. A study investigating police RSA knowledge in New South Wales showed that the majority of officers correctly identified the five key issues (ranging from 71% to 99%) of the *Liquor Act* regarding RSA (Smith, Wiggers, Considine, Daly, & Collins, 2001). However, 20% of officers were not aware that fines could be issued to intoxicated patrons who refused to leave a licensed venue, with 29% unaware that it was an offence to allow intoxicated persons into licensed venues. Eighty-seven percent of police believed it was important for police officers to enforce RSA practice, though 78% reported that actual monitoring and enforcement of RSA initiatives was best left to specialist police to handle (Smith et al., 2001). Forty-five percent reported they did not have the appropriate skills to monitor RSA in licensed venues, with 83% of police reporting that resources for monitoring and enforcement of RSA provisions were inadequate (Smith et al., 2001).

3.2.4.1 *The Definition of Intoxication and Problems that Hinder Effective RSA*

A particularly challenging aspect of both RSA and liquor licensing legislation is intoxication. Although there are indicators of intoxication, there is no consistent definition of intoxication (Ministerial Council on Drug Strategy, 2006). Effectively managing patrons who are intoxicated may be harder in licensed venues with large volumes of patrons or that have longer trading hours (Donnelly & Briscoe, 2002). In such situations, it may be particularly difficult for bar staff to assess patron intoxication in the brief moments they come into contact at the point of sale (South Australia Police, 2010). Also, more sober patrons may purchase alcohol for their intoxicated friends (South Australia Police, 2010), which can be easily concealed in some environments. Furthermore, as a result of the nature of the hospitality industry and high turn over of casual staff, the bar staff that actually serve patrons often do not receive RSA training (Doherty & Roche, 2003).

There are other reasons why RSA may not be effectively carried out. There is an assumption that incidents of irresponsible alcohol service can be attributed to bar staff and licensees not possessing the skills or knowledge necessary for RSA (South Australia Police, 2010). However, licensed premises are commercial operations which aim to make profits through sales (South Australia Police, 2010). If it is perceived that there will be no consequences for occasions of irresponsible service, profit from sales may take precedence over adherence to RSA standards.

Achieving effective RSA programs has been argued to be more complicated than just having liquor licensing legislation that promotes responsible service programs and training and gives power to police, licensing authorities and the wider community (Stockwell, 2001). Having relevant authorities support and utilise legislative provisions through enforcing penalties for breaches is necessary in order to have an impact on the service of alcohol (Stockwell, 2001).

3.2.5 **Taxation and Pricing of Alcohol**

The price of alcohol has the ability to impact on consumption patterns in society (National

Preventative Health Taskforce, 2008). Because alcohol is seen as a contributory factor to negative health consequences in society, it is viewed as suitable for taxation, with tax systems in different countries adopting varying rates for different types of alcohol (Babor et al., 2010). Limiting the physical availability of alcohol via liquor licensing legislation and economic strategies such as increased tax is seen as the most effective method of decreasing availability and problematic consumption (Vandenberg, Livingston, & Hamilton, 2008). Reducing taxes on beverages that are low in alcohol content, and increasing taxes for specific beverages that are popular with young drinkers such as “alcopops” are two strategies utilised (Babor et al., 2010), with Australia adopting the latter strategy in 2008.

In terms of the effectiveness of alcohol tax increases, studies have consistently shown that increased alcohol prices reduce alcohol consumption and alcohol-related harms and improve public health (Chikritzhs et al., 2009; Vandenberg et al., 2008). Modifying consumers’ preference and the supply of alcohol towards lower-risk and lower alcohol products through changes to current taxation has been reported as a priority for Australia (National Preventative Health Taskforce, 2008). Legislation may also be necessary to control minimum pricing of alcohol set by retailers and licensees. The sale of alcohol at low prices by licensees and corporations is a trend that occurs in on-premise licensed venues by way of “happy hours”, and in off-premise licensed venues via heavy discounting conducted commonly by chain supermarket liquor outlets (Babor et al., 2010).

3.3 Public Amenity and Perception

3.3.1 Public Tolerance of Intoxication

Alcohol-related social harms and alcohol intoxication have acquired an increased profile in the community, especially in recent times (Nicholas, 2010). An increase in concern about alcohol-related issues and decreasing tolerance of alcohol intoxication has led to a rise in community support for ways to reduce the occurrence and the impact of alcohol-related

harm.

The 2007 NDSHS indicated that community support for almost all suggested measures to reduce the problems associated with alcohol increased from a previous survey (Australian Institute of Health and Welfare, 2008a). Measures that focused on enforcement found more support than measures that called for bans and taxes, with females supporting all measures to a greater extent than males (Australian Institute of Health and Welfare, 2008a). This growing level of community support may allow police to take a stronger leadership role and implement strategies that may not have been tolerated previously (Nicholas, 2010). Alcohol-related issues have also received greater media attention, in particular the association between excessive alcohol consumption and alcohol-related violence and socially harmful behaviour (Nicholas, 2010).

3.3.2 Community Feeling about Underage Alcohol Consumption

In addition to the decline in tolerance of public intoxication, there is growing concern about underage and youth alcohol intoxication. Young people increasingly engage in alcohol-related anti-social behaviour which has resulted in less tolerance by the general public for alcohol-related crime and loss in public amenity (Nicholas, 2010). In 2007, 46% of those aged 14 years or older supported raising the legal drinking age, which was statistically significantly more than the 41% in 2004 (Australian Institute of Health and Welfare, 2008a).

3.3.3 Public Perception of Alcohol-Related Problems

Taking into consideration the large proportion of Australians who have been verbally or physically abused, or put in fear by someone who is under the influence of alcohol as discussed in Section 3.1.2.2, it is not surprising that there may be negative perceptions of community safety (Ministerial Council on Drug Strategy, 2006). Although not all people may have encountered personal negative experiences with intoxicated persons, the negative experiences of others, particularly when communicated by the media,

can decrease public perceptions of safety (Ministerial Council on Drug Strategy, 2006). In 2007/08, 86% of the Australian population reported drunk and disorderly behaviour as being “a major problem” or “somewhat of a problem” in their state (Steering Committee for the Review of Government Service Provisions, 2009). Alternatively, problems with drunkenness in people’s own neighbourhood may not be viewed as such a large issue, with only 13% of respondents in one Australian survey perceiving drunkenness as a problem in their neighbourhood in the 12 months before the survey (Australian Bureau of Statistics, 2005).

3.4 Alcohol Availability

3.4.1 Neoliberal Economics

An important factor to consider when examining the availability and regulation of alcohol in Australia is the National Competition Policy (NCP) arrangements (Roche, Bywood et al., 2009). The NCP reflects the world-wide post Second World War trend towards liberalisation of international trade. Aspects of the NCP make efforts to reduce the availability of alcohol difficult (Nicholas, 2008). The introduction of the NCP has been a powerful influence on levels of liberalisation in the alcohol industry and subsequent liquor licensing legislation (Roche et al., 2007). However, any positives that are borne out of increased competition in the alcohol industry may be far outweighed by negative impacts and costs of alcohol-related harms (Alcohol and Other Drugs Council of Australia, 2004).

In 1995, the Council of Australian Governments (COAG) agreed to a review of restrictions in regulations and legislation that had the potential to prevent competition between businesses (Roche et al., 2007), and to remove anti-competitive restrictions that were not in the public’s best interest (National Competition Council, 2005). The National Competition Council (NCC) was the statutory authority formed to oversee the progress of the adoption of NCP by Australian states and territories, and to act as the advisory body for all governments on the implementation of NCP anti-competitive

principles (National Competition Council, 2005). The Australian Government agreed to make NCP payments to states and territories as incentives for progress in legislative reform which addressed anti-competitive concerns (National Competition Council, 2005). The NCC was afforded the right to recommend to the Commonwealth that deductions in payments would occur if there was unacceptable progress, which has been enforced (National Competition Council, 2005). The NCC was particularly concerned with liquor licensing legislation in Australia and its impact on competition between licensed premises through restrictions on trading hours and venue density (Roche et al., 2007).

New South Wales has had competition payments withheld on advice of the NCC in 2003/04 for not complying with obligations under the NCP agreement (Roche et al., 2007). The Commonwealth withheld almost \$51 million from New South Wales, which was almost one-fifth of their competition payments for that year, \$12.7 million of this being specifically for incomplete amendments to liquor licensing legislation (New South Wales Parliament, 2005, as cited in Roche et al., 2007). In 2004/05, the NCC recommended that Queensland, Western Australia, South Australia and the Northern Territory should lose 5% of their annual competition payment as these jurisdictions were seen to be continuing discriminatory selling practices that were not seen to be based on harm minimisation principles (National Competition Council, 2005).

In the period 2005/06 the NCC recommended that these four states should again lose 5% of their annual payment (National Competition Council, 2005). This equated to \$7.8 million for Queensland, \$3.9 million for Western Australia, \$3 million for South Australia and \$0.4 million for the Northern Territory (National Competition Council, 2005).

The NCP agreement has implications for police, as they can no longer rely on licensing authorities to reject new liquor licensing applications based on the need for the licensed venue in the community, and instead need to compile evidence that a new licence is not in the best interest of the community (Fleming, 2008).

3.4.1.1 The Alcohol Industry's Contribution to the Australian Economy

The alcohol industry plays a substantial role in contributing to Australia's economy in various ways, including the employment of Australians in many different settings (Nicholas,

2010). The alcohol industry also supplies the Commonwealth Government with substantial revenue (Nicholas, 2010) including through taxes as depicted in Table 10, which shows the increase in tax from 1998/99 to 2004/05.

Table 10: Alcohol tax revenues, 1998/99 and 2004/05 (Collins & Lapsley, 2008)

	1998/99			2004/05		
	Federal	State (RRPs) ⁱ	Total	Federal	State (GST)	Total
	\$m	\$m	\$m	\$m	\$m	\$m
Excise tax						
Beer	873.9	0.0	873.9	1,653.0	0.0	1,653.0
Spirits	144.5	0.0	144.5	739.0	0.0	739.0
Total excise tax	1,018.3	0.0	1,018.3	2,392.0	0.0	2,392.0
Sales tax (beer, wine and spirits)	620.6	997.4	1,618.0	n.a. ⁱⁱ	n.a.	n.a.
Custom duties						
Beer	14.0	0.0	14.0	83.0	0.0	83.0
Wine	4.0	0.0	4.0	5.0	0.0	5.0
Spirits	719.0	0.0	719.0	980.0	0.0	980.0
Total customs duties	737.0	0.0	737.0	1,068.0	0.0	1,068.0
GST	n.a.	n.a.	n.a.	0.0	976.5	976.5
Wine equalisation tax	n.a.	n.a.	n.a.	676.0	0.0	676.0
Total revenue	2,375.9	997.4	3,373.3	4,136.0	976.5	5,112.5
Percentage	70.4	29.6	100.0	80.9	19.1	100.0

i RRP were revenue replacement payments made by the Australian Government to jurisdictions to compensate for the abolition of licensing franchise fees following a decision by the High Court of Australia in August 1997. These payments were subsequently replaced by GST payments.

ii n.a. means not applicable.

3.4.2 Liquor Sales and Wholesale Alcohol Sales Data Availability

In the 2000/01 financial year, Australians aged 15 years and over consumed on average 9.32 litres of pure ethanol each and just over half of the alcohol consumed was beer²³

(Chikritzhs et al., 2003). At present there is a lack of data in Australia regarding wholesale alcohol purchases made by retailers (as well as limited police data such as last place of drinking for drink-drivers). This limits the scope to predict alcohol-related harm from alcohol outlet density (see Section 3.4.3.2) (Chikritzhs, Catalano, Pascal, & Henrickson, 2007).

23 Mainly beer with 4.5% alcohol by volume (Chikritzhs et al., 2003).

Currently, Western Australia, the Northern Territory and Queensland are the only jurisdictions in Australia that collect retail wholesale alcohol purchase data (Chikritzhs et al., 2007). Retailers' wholesale alcohol purchase data was formerly collected by all Australian jurisdictions until 1997 when the High Court of Australia ruled that the licensing fees and levies collected by states and territories were excise duties and were illegal under the terms of the Australian Constitution (Chikritzhs et al., 2007). Most states and territories stopped collecting this data as they no longer had any incentive to do so (Chikritzhs et al., 2007).

It has been argued that in order for police to be effective in targeting problematic licensed premises and reducing alcohol-related crime, wholesale alcohol sales data collection for individual licensed venues needs to occur (Nicholas, 2008). Similarly, the National Preventative Health Taskforce (2008) in their technical report on the prevention of alcohol-related harm in Australia has also recognised that alcohol sales data is an important asset to researchers and the public health sector, though not readily available for use.

3.4.3 Density of Licensed Premises and Alcohol Availability

One important factor related to the availability of alcohol is the density of licensed premises in defined geographical areas. Outlet density, and in particular the clustering together of alcohol outlets, has been suggested to potentially affect levels of binge drinking and alcohol-related harms and consequences (Livingston, Chikritzhs, & Room, 2007). There can also be considerable financial motive for licensed premises to be in close proximity, as patrons will often move from place to place during the night (Livingston et al., 2007).

3.4.3.1 Density of Alcohol Outlets and Alcohol-Related Harm

The impact of alcohol availability and density of licensed premises in defined areas on drunkenness, property damage and assaults in homes in New South Wales has been examined (Donnelly, Poynton, Weatherburn, Bamford, & Nottage, 2006). Respondents who lived in

closer proximity to licensed venues have been found to be more likely to report problems in their neighbourhood such as drunkenness and damage to property, and those who lived in areas with higher density of licensed premises were more likely to report drunkenness problems, but not property damage (Donnelly et al., 2006). Although not statistically significant, respondents who lived in areas with higher liquor outlet density and accessibility reported higher levels of assault victimisation in the home (Donnelly et al., 2006). The authors assert that there is a strong case to restrict and regulate the number of licensed premises in order to minimise alcohol-related harm to the public.

The relationship between alcohol-outlet density and a number of alcohol-related harms in Western Australia was investigated by Chikritzhs, Catalano, Pascal and Henrickson (2007). Regardless of how outlet density was measured, it was positively related to all indicators of harms. Both raw counts of outlets and counts of outlets per unit of land area were found to have strong positive associations with levels of assaults, drink-driver road crashes and random breath testing (RBT) offences (Chikritzhs et al., 2007). However, these measures of outlet-density were found to have only moderate/weak associations with alcohol-attributable hospitalisations and deaths (Chikritzhs et al., 2007). Alternatively, the specific wholesale purchase of regular strength beer by retailers was found to have the strongest linear associations with assaults, drink-driver road crashes and RBT offences, with correlations over 90% (Chikritzhs et al., 2007). In contrast to other measures of outlet density, regular strength beer purchases were strongly related to alcohol-attributable hospitalisations and deaths.

Chikritzhs et al. (2007) found that the affect of regular strength beer purchases on types of harm varied by type of licence. Hotel/tavern and liquor store licences were reported to be strongly associated with all alcohol-related harm indicators, whereas club licences and restaurants were generally found to have only moderate associations with assaults, drink-driver road crashes and RBT offences, and weaker associations with alcohol-attributable

hospitalisations and deaths (Chikritzhs et al., 2007). The exception to this was for restaurants which showed a strong association between wholesale regular strength beer purchases and RBT offences (Chikritzhs et al., 2007).

A recent study investigated the association between alcohol outlet density and assaults occurring on or around licensed premises in the Sydney Local Government Area (LGA), New South Wales (Burgess & Moffatt, 2011). The Sydney LGA was chosen due to the relatively large number of licensed premises, and assault and alcohol-related assault incidents in comparison to other New South Wales LGAs. Licensed premise clusters were identified based on 20, 50, 100 and 200 metre zones surrounding the outlets. Commercial (unlicensed) premises were included in the study as a comparison to the licensed premises. Assaults on or around licensed premises were determined using 2008 incident records completed by the NSW Police Force on the Computerised Operational Policing System (COPS). Assaults tended to be concentrated in clusters in close proximity to the premises. Results indicated that 37% of assaults in Sydney LGA occurred within 20 metres of a liquor outlet, with 93% of assaults occurring within 200 metres of a liquor outlet. The authors commented that these figures were notably higher than police recorded data relating to assaults that occurred on a liquor outlet (18%). Results suggested that assaults were more likely to occur around places that people gather (e.g., licensed premises and commercial premises). However, a greater concentration of assaults occurred in the vicinity of licensed premises as opposed to commercial premises.

3.4.3.2 Outlet Density Modelling

It has been suggested that if police are to influence issues regarding alcohol availability, accurate modelling of the impact of present and proposed liquor licences on alcohol-related social harms at a local level is needed (Nicholas, 2010). Modelling can allow police, communities and liquor authorities to mount arguments and gather evidence to assess whether an additional liquor licence should be granted or trading hours extended (Nicholas, 2008). This type of

assessment requires accurate police recorded data, and also wholesale liquor data that indicate type and volume of liquor supplied in a geographical area (Nicholas, 2010). However, as noted, the majority of Australian jurisdictions do not collect this data.

As Western Australia does collect this information, models to estimate the impact of various measures of outlet density on levels of police-reported assaults have been successfully devised. As mentioned, Chikritzhs et al. (2007) reported that the level of wholesale regular strength beer purchases by liquor outlets and licensed premises was found to be the strongest predictor of harms in Western Australia. It was estimated that an addition of 65,000 litres of wholesale beer purchases by a hotel/tavern in one LGA (Local Government Area) (equivalent to about one Western Australian hotel/tavern with an average annual beer purchase) would result in an additional 8.4 assaults per year (Chikritzhs et al., 2007). The authors noted that an increase in beer purchases would have a much larger impact on private premise than licensed premise assaults.

Alcohol outlet density has also been examined for three licence categories: general (hotels and taverns), on-premise (e.g., restaurant) and packaged (retail outlets), in relation to police recorded data for alcohol-related assaults (that took place between 8 pm and 6 am), for 217 postcodes in Melbourne, Victoria (Livingston, 2008). An association between licensed venue density and violence was found, with a non-linear model reported to best explain this relationship (Livingston, 2008). The author reported that as overall alcohol-related assaults increased with the number of premises, there appeared to be a crucial threshold at which point the addition of each new licence contributed to a sharp increase in these assaults. The non-linear model showed little change in the number of annual alcohol-related assaults predicted (approximately 12) when there were between zero and 25 general liquor licenses²⁴ in a specific post code area.

²⁴ General liquor licences allow a licensee to sell alcohol for consumption by patrons both on and off the premises and include taverns, hotels and pubs (Livingston, 2008).

When there were between 30 and 42 general licenses in a post code area there was a sharp increase in expected assaults (Livingston, 2008).

3.4.4 Licensed Venue Trading Hours

Restricting the hours during which licensed venues can sell alcohol to the public is a common strategy used to decrease availability and subsequent consumption of alcohol by patrons (Babor et al., 2010). The available research generally demonstrates that the greater the physical availability of alcohol, the greater the level of associated harms (Chikritzhs et al., 2007). The National Drug Research Institute (2007) has noted that the majority of Australian studies that have investigated the impact of increased trading hours of licensed venues has shown that extended trading hours are associated with increased alcohol consumption and related harms. It has also been suggested that there is strong evidence for the effectiveness of restricting days and hours of trading in licensed venues, as even one or two extra hours of trading after midnight has the potential to double the occurrence of violent incidents on licensed premises (Stockwell, 2010). However, since World War II, there has been a deregulation of alcohol availability in economically developed countries, including the deregulation of hours in which licensed venues can sell alcohol (Stockwell & Chikritzhs, 2009).

Chikritzhs and Stockwell (2002) investigated the impact of later trading hours in Perth on levels of assaults on or near hotels with standard closing times (12 am), or that had permits for extended trading (1 am) in the period 1991–1997. After extended trading permits were granted, the hotels with these permits had an overall mean monthly assault rate increase of approximately 70% compared to the period before the permits were introduced. This result was largely attributed to increased full-strength beer, wine and spirits purchases by these late trading hotels.

In another study, 56% of all assaults on licensed premises between July 1998 and June 2000 in inner Sydney were found to occur between the period 12 am to 6 am (Briscoe & Donnelly, 2003b). Thus, venues that traded past midnight

would be expected to have higher rates of assaults on their premises (Briscoe & Donnelly, 2003b). Indeed, 74% of inner Sydney hotels which had 10 or more assaults occur in the study period had the ability to trade 24 hours a day, with no hotels with standard trading hours in this area reporting more than 10 assaults within the same period (Briscoe & Donnelly, 2003b).

Recently, the reduction in trading hours of licensed premises in Newcastle, New South Wales was evaluated against the control site of Hamilton. In 2008, a reduction in closing times for 14 licensed premises in Newcastle from 5 am to 3 am (and subsequently 3.30 am) was adopted (Kypri, Jones, McElduff, & Barker, 2010). The reduction in closing times in Newcastle was found to have had a positive impact with a decrease in assaults compared to the control site at Hamilton (Kypri et al. 2010).

A comprehensive review of international research into the impact of licensed venue trading hours was recently conducted and found “... that under most circumstances, increasing trading into the early hours for on-premise liquor consumption licences will result in increased alcohol use and related harms such as violence.” (Stockwell & Chikritzhs, 2009, p. 164). They found that 79% of reviewed studies²⁵ reported significant effects for at least one outcome measure in the direction predicted. The studies that were more methodologically robust were most likely to show positive associations between licensed premise trading hour changes and levels of alcohol consumption and alcohol-related harms (Stockwell & Chikritzhs, 2009).

25 Studies included both baseline and control data of some kind (Stockwell & Chikritzhs, 2009).

3.4.4.1 Lockout Conditions for Licensed Premises

In some Australian jurisdictions, lockout conditions have been utilised as a pragmatic intervention to reduce alcohol-related harms in and to improve perceived community safety (South Australia Police, 2010). Lockouts are usually applied in problem areas with high outlet density. They involve refusal of entry to new patrons (and those that have previously left) after a designated time, usually a time after midnight and when the venue closes (National Drug Research Institute, 2007). The primary aim of lockouts is to alter the migration of patrons between licensed venues (also known as “club/pub hopping”), as well as to give police (and security staff) greater control over patron behaviour (South Australia Police, 2010).

Lockouts may be an effective tool to reduce harms when implemented as part of a range of strategies. There is, however, limited evidence regarding its effectiveness in isolation. This is because lockouts are usually implemented as one strategy alongside a range of other deterrents, for example: greater police presence, changes in access to transport, and CCTV camera installation. This makes it difficult to attribute any changes solely to the lockout (South Australia Police, 2010).

An evaluation of the Gold Coast 3 am lockouts implemented in 2004 found that the total number of incidents as well as specific alcohol-related incidents had proportionally reduced²⁶ after the lockout was implemented (Palk et al., 2010). Although the authors noted that no other police initiatives co-occurred with the lockouts, limitations of the study make it difficult to draw definitive conclusions regarding effectiveness. Limitations include: the subjective nature of police alcohol-related incident recordings; only first response operational police recordings being used; unknown fluctuations in numbers of patrons in the Gold Coast area; and different pre and post data collection time periods (Palk et al., 2010).

26 There were more incidents recorded after the implementation of the lockout in the Gold Coast as the data collection period was longer for the post-lockout period than the pre-lockout period. Thus, Chi-square analysis was used to take into account the proportional differences (Palk, Davey, & Freeman, 2010).

As noted above in the Newcastle study 14 licensed premises had restrictions placed on them in March 2008, which included a 1 am lockout, earlier closing times, production of Plans of Management by licensees, no “shots” from 10 pm and a range of other restrictions (Jones, Kypri, Moffatt, Borzycki, & Price, 2009). Three types of police data were used to determine the impact of restrictions in Newcastle (in relation to a comparison site at Hamilton): recorded crime data, last place of consumption data from the Alcohol Linking Program (see Section 3.2.1) and Computer Aided Dispatch (CAD) data (Jones et al., 2009). The recorded crime data and the Alcohol Linking Program data suggested that there was a reduction in alcohol-related assaults in the intervention site but not in the comparison site (Jones et al., 2009). All three data sources showed a decrease in the proportion of assaults between 3 am and 6 am. Increases in assaults earlier in the night were found, however, besides results from the CAD data, this increase did not offset the reduction in assaults between 3 am and 6 am (Jones et al., 2009). The results from this evaluation showed positive results for the combination of strategies implemented. However, it was not possible to determine the individual impact of the lockout on harm reduction at the intervention site.

A lockout was implemented in New South Wales for 48 premises in 2008 following the New South Wales Bureau of Crime Statistics and Research (BOCSAR) release of a ranked list of the top 100 licensed premises where assaults took place in that jurisdiction (Moffatt, Mason, Borzycki, & Weatherburn, 2009). Although significant decreases in assaults and glassing attacks on premises were found, other strategies²⁷ implemented in conjunction with the 2 am lockout make conclusions of effectiveness difficult (Moffatt et al., 2009). Also, the decreases were found for all 100 licensed premises listed by BOCSAR and occurred

27 Other measures implemented were cessation of alcohol service 30 minutes before closing, restrictions in use of glassware for beer service after midnight, no “shots” and purchase limits after midnight, and 10 minute alcohol sale “time-outs” every hour after midnight (Moffatt et al., 2009).

before the implementation of restrictions, with explanations for this including increased licensee pro-activity due to media attention and publicity as well as increased enforcement (Moffatt et al., 2009).

3.4.5 Off-Site Liquor Sales

Packaged liquor stores also need to be considered when examining alcohol-related harms, as they make a substantial contribution to the overall availability of alcohol in Australia. It has been suggested that regions that have a high availability of packaged liquor (via high outlet density and extended trading hours) have associated alcohol-related harm even if the premises are well managed and comply with liquor licensing legislation (Nicholas, 2010; Livingston, 2011). An explanation for this is that off-premise liquor stores have much less control over alcohol-related harms that occur as a result of consumption of liquor they sell, compared to licensed premises where liquor is consumed on-site.

The assaults that occur in and around on-site licensed premises are of major concern to police, however, more assaults occur on private premises than on licensed premises (Nicholas, 2010). Chikritzhs et al. (2007) reported that the amount of regular strength beer purchased by liquor stores for sale to the public in the Metropolitan Health Region of Western Australia, predicted 75% of the variance of assaults on private premises. Increased sales from liquor stores were also associated with a moderate increase in assaults in licensed venues (Chikritzhs et al., 2007), which may reflect the trend of “pre-drinking”. Using wholesale alcohol purchase data for Western Australia, liquor stores have been found to have the highest availability of all types of alcohol across all types of licensed outlets²⁸ (Chikritzhs et al., 2007).

3.4.5.1 The Proliferation of Supermarket Alcohol Outlet Chains

In Australia, Woolworths Limited and Coles brands dominate the retail liquor industry with a combined 45% market share of the liquor

retail industry (Dooley, 2010). Coles controls 871 liquor outlets comprising several different stores, including Liquorland (626), Vintage Cellars (78), 1st Choice Liquor (72) as well as 95 hotels and Woolworths Limited owns 1,481 liquor outlets including Woolworths Liquor (442), Dan Murphy’s (115), BWS (638) as well as 286 hotels and clubs (Dooley, 2010).

With such a large market share in the liquor retail industry, these supermarket liquor store chains can sell alcohol at below cost price (Dooley, 2010). Many liquor stores owned by Woolworths and Coles operate alongside or very close to their parent grocery stores, which makes buying alcohol very convenient. The cheap prices that these superstores (such as Dan Murphy’s and 1st Choice Liquor) offer increase the availability and affordability of alcohol to the public. As indicated, making alcohol more physically and financially available is likely to contribute to increases in a range of alcohol-related harms.

3.4.6 Secondary Supply of Alcohol to Minors

The secondary supply²⁹ of alcohol to minors is an important factor in underage drinking in Australia, and is the main source of alcohol for minors. It is illegal for minors to be served alcohol on licensed premises, for parents to purchase alcohol for minors for consumption on licensed premises, as well as for adults to purchase alcohol for secondary sale to minors (Nicholas, 2010). Evidence indicates that the main source of alcohol for 12 to 17 year olds is parents, friends and acquaintances (Australian Institute of Health and Welfare, 2008b). The provision of alcohol by parents to their underage children for consumption at home or at functions is a matter that can draw debate from different sections of the community with negative and positive consequences of this practice often cited.

²⁸ Including hotels/taverns, clubs, restaurants, nightclubs and other outlets.

²⁹ Secondary supply is the provision (including sale) of alcohol by parents, other adults or minors to those under 18 years of age who cannot legally purchase alcohol (Nicholas, 2010).

3.4.6.1 The Ways in Which Minors Source Alcohol

Overall in 2007, the majority of young people under 18 years reported that their usual supply of alcohol came from their friends (or acquaintances) or from a relative (86.9% of 12-15 year olds, 83.4% of 16-17 year olds) rather than from other sources (Australian Institute of

Health and Welfare, 2008b). The 2008 ASSAD examined the use of alcohol by Australian secondary school students, with parents found to be the most common source of alcohol supply to 12 to 17 year olds (34%) (White & Smith, 2009) (Table 11).

Table 11: Most common sources of alcohol for adolescents who drank alcohol in the past week,^{i,ii} Australia, 2008 (White & Smith, 2009)

	Age								
	12-15 year olds			16-17 year olds			Total		
	Male %	Female %	Total %	Male %	Female %	Total %	Male %	Female %	Total %
Did not buy, supplied by:									
Parents	36.1	34.3	35.3	30.5	33.5	31.9	33.4	34	33.7
Siblings	11.8	8.2	10.1	7.3	6.4	6.9	9.6	7.4	8.6
Took from home	8.3	7.8	8.1	2.4	1.3	1.9	5.5	4.7	5.1
Friends	22	24.6	23.2	22.4	20.7	21.6	22.1	22.8	22.4
Someone else bought	13.4	18	15.6	22.3	28.3	25.2	17.7	22.9	20.2
Bought from:									
Liquor store/supermarket	0.8	0.6	0.7	6.3	2.4	4.4	3.4	1.4	2.5
Bottle shop	0.7	0.1	0.4	2.3	1.1	1.7	1.5	0.5	1
Drive-in bottle shop	0.5	0.2	0.3	1.4	1.1	1.3	1	0.6	0.8
Bar/Pub/RSL	0.4	0.2	0.3	1.4	1.6	1.5	0.9	0.9	0.9

i Percentage of total in each age and gender category.

ii Additional sources of alcohol were included in the survey. As only the most common sources are shown, percentages do not add to 100%.

Although training and guidelines for the prevention of underage alcohol purchasing are incorporated in RSA programs and it is clearly legislated against, minors continue to purchase alcohol themselves. The 2007 NDSHS found that around 30% of 16 to 17 year olds had previously purchased alcohol themselves at a shop or retail outlet, with males (35.4%) more likely to do this than females (25.6%) (Australian Institute of

Health and Welfare, 2008b). Around 3% of 12 to 15 year olds and 12.2% of 16 to 17 year olds indicated that personal purchasing of alcohol was their usual source of alcohol (Australian Institute of Health and Welfare, 2008b). White and Smith (2009) reported that 3% of younger (12-15 years old) students, and 10% of older (16-17 years old) students purchased their last alcoholic beverage (Table 11).

3.4.6.2 *The Location and Supervision of Underage Alcohol Consumption*

The three main places where students consume alcohol are the family home, parties and friends' homes, with 80% of current drinkers indicating that their last alcoholic drink was at one of these three locations (White & Smith, 2009). Around 31% of current drinkers reported that the last drink they consumed was at home, 30% last consumed alcohol at a party, and 20% last consumed alcohol at a friend's house (White & Smith, 2009). The majority (59%) of secondary students classed as current drinkers also reported that their last alcoholic drink had been consumed under adult supervision (White & Smith, 2009). This decreased with age, with 64% of 12 year olds and 56% of 17 year olds consuming their last alcohol drink under adult supervision (White & Smith, 2009).

3.5 Conclusion

Alcohol-related harm and its relationship to licensed premises is complex. It has been argued that the responsibility for managing alcohol-related harms stemming from licensed premises cannot be assigned to any one person or group (Fleming, 2008). Liquor licensing legislation and other tools and strategies can assist the relevant authorities to regulate the provision of alcohol, and thereby minimise potential harms. While the evidence presented here has highlighted the efficacy of different strategies, it is not necessarily the case that liquor licensing legislation reflects current evidence in this field. In a number of jurisdictions, liquor licensing legislation was enacted some time ago, and even with continual amendments, may not adequately adopt harm minimisation principles and other evidence based strategies necessary for alcohol-related harm reduction to occur.

Chapter 4 presents an overview of liquor licensing legislation and related administrative arrangements across Australia, and a summary of alcohol-related data collection strategies in each jurisdiction.



4 Legislative Overview

4.1 Legislation³⁰

Liquor licensing legislation in Australia is established by each state independently. As a result, there is considerable variation across Australia in regard to liquor licensing legislation and regulatory frameworks. There is also inconsistency in regard to the manner in which the administrative regimes carry out their functions. Outlined below is a summary of the major features of the legislation.

Liquor licensing legislation controls the sale, supply and, in some instances, the consumption of liquor. In all jurisdictions, the legislation operated within an administrative and criminal law framework, which varied by jurisdiction. A breakdown of the government, administrative, statutory, and judicial offices involved in liquor legislation is provided in Table 12 below. The legislation specified objectives, and assigned responsibility to various organisations for achieving the objectives, of the Act. Powers were granted to government authorities (including police), statutory bodies, and courts to make and review decisions, interpret and apply the legislation, and undertake specific actions in prescribed situations.

³⁰ Please note that legislation is dynamic and may change but was correct at the time of writing this report as of 31 December 2010. Readers are advised to check with their local jurisdiction for any revisions to the relevant liquor licensing legislation subsequent to 31 December 2010.

Likewise, responsibility and liability was assigned to licensees for the manner in which alcohol was sold, supplied, promoted and consumed. Licensees were bound by their statutory obligations and any other condition of the licence imposed upon them individually or collectively (e.g., a code of conduct). Breaching these conditions could result in a range of statutory penalties and/or disciplinary actions. In order to assist licensees to fulfil their obligations and to ensure that licensed premises remained safe, licensees were also empowered to exercise specified powers and activities. These powers related to using force to remove patrons from their premises and sharing information with other venues (e.g., during liquor accord meetings) regarding patron behaviours, trading hours and other commercial practices.³¹

The liquor legislation in many jurisdictions also contained restrictions on the places where alcohol could be consumed (e.g., public spaces, specified locations), as well as who was permitted to consume alcohol and/or attend licensed premises. Further to this, liquor legislation in all states and territories provided that liquor could not be sold and supplied by licensed premises to those aged under 18. In

³¹ These authorisations were necessary as licensees could be subject to prosecution under other legislation for engaging in these activities and behaviour. For example, assault and unfair trading practices.

some jurisdictions, those aged under 18 were not even permitted to be on licensed premises. There was also an obligation upon underaged people not to attend these premises or attempt to buy alcohol. In addition to this, several states had recently adopted legislative provisions prohibiting the supply of alcohol to minors within private settings (see Section 4.1.5 “Minors”).

4.1.1 Administrative Frameworks

Decisions regarding licensing matters were determined by individuals, committees, or a combination of both. In the Australian Capital Territory and Queensland, licensing matters were determined by an individual. The respective state’s Commissioner and Chief Executive determined licence applications. However, in the Australian Capital Territory disciplinary matters were referred to the ACT Civil and Administrative Tribunal after initial investigation by the Commissioner, while in Queensland the Chief Executive had power to conduct disciplinary proceedings and execute disciplinary penalties.

In South Australia, the Liquor and Gambling Commissioner determined all non-contested matters and contested limited licences. The Liquor and Gambling Commissioner had to undertake conciliation of contested matters (unless the matter was under the exclusive jurisdiction of the Licensing Court). If conciliation failed then the applicant could elect to have the matter heard and determined by the Liquor and Gambling Commissioner or the Licensing Court.

In Victoria, contested applications were determined by the Liquor Licensing Panel.³² The Liquor Licensing Panel would make a recommendation to the Director of Liquor Licensing about whether or not the application should be granted and any other matter they thought relevant.³³ The Liquor Licensing Panel’s recommendations were not binding upon the Director. However, the Director was required to give full consideration to the Panel’s recommendations.³⁴

32 In Victoria, non-contested applications were determined by the Director of Liquor Licensing (see Section 44).

33 *Liquor Control Reform Act 1998* (VIC), Section 46.

34 *Liquor Control Reform Act 1998* (VIC), Section 47.

In New South Wales, responsibility for administering the Act was designated to the Director-General of Communities New South Wales and the Casino, Liquor and Gaming Control Authority. Each party was given express powers in relation to different aspects of the Act, as well as having some shared powers. For example, the Director-General and Casino, Liquor and Gaming Control Authority could impose, vary or revoke licence conditions.³⁵ The Casino, Liquor and Gaming Control Authority could review specific decisions made by the Director-General.³⁶ Disciplinary decisions made under the Act by the Casino, Liquor and Gaming Control Authority could be appealed to the Administrative Decisions Tribunal.³⁷

Similar arrangements were found in Western Australia, where the Licensing Authority could be constituted by an individual, the Director of Liquor Licensing, or by a committee, the Liquor Commission. Within this jurisdiction, the both parties shared jurisdiction in certain matters. However, they were unable to exercise the same jurisdiction in the same matter. Both parties could review decisions made by the other. The Licensing Authority was authorised to conduct hearings, grant application, and review decisions.

In the Northern Territory and Tasmania, the roles of the respective Director and Commissioner for Licensing had greater demarcation from the statutory duties of the Liquor Licensing Commission and the Licensing Board, in contrast to the sometimes intersecting roles found within Western Australia and New South Wales. In these jurisdictions, the Director and Commissioner for Licensing acted as a conduit for licensing matters. They were responsible for developing approved forms and procedures, receiving applications and submissions/objections, ensuring the validity of applications, objections, and submissions, and forwarding these to the relevant decision-maker for determination.

35 The Director-General could exercise these powers for such reasons, or in such circumstances, as they considered necessary or appropriate (see Section 54). The Casino, Liquor and Gaming Control Authority could exercise these powers and impose conditions not inconsistent with the objects of the Act (see Section 53).

36 *Liquor Act 2007* (NSW), Section 153.

37 *Liquor Act 2007* (NSW), Section 144.

Further to this, the Commissioner for Licensing in Tasmania also conducted enquiries into the applicant's associates, appointed departmental employees, determined whether applicants were qualified to hold a licence, authorised extended hours for specific events, and approved licence transfers and permit applications. In the Northern Territory, the Director could approve liquor accords. Notwithstanding these functions, primary responsibility for making licensing decisions about the granting of licences and the hearing of disciplinary matters lay with the Liquor Licensing Commission and the Licensing Board in the Northern Territory and Tasmania respectively.

4.1.1.1 *Review Bodies*

The administrative framework adopted for issuing licences involves limitations to constrain the power, authority, and discretion exercised by these regimes. These limitations may be expressed or implied within the liquor legislation, or they may be a feature of administrative decision review legislation and/or common law principles of judicial review and statutory construction. In general, common law principles of judicial review provide that decisions which affect a person's rights or legitimate expectations may be subject to review. There are various grounds upon which a decision may be reviewed. These are that the decision-maker acted "ultra vires" to the grant of power, that the applicant was not afforded

"procedural fairness", or that there was a "jurisdictional error" in the decision-making process. Further to this, decisions which are subject to review by an administrative tribunal may sometimes be reviewed on merit.

Review bodies varied by jurisdiction. In the Australian Capital Territory, Queensland, and Victoria an administrative tribunal was responsible for reviewing decisions made in the execution of the Act. In South Australia and Tasmania, there were dedicated bodies authorised to review decisions made by the licensing authority. In South Australia, a specialist Licensing Court was established by the *Liquor Licensing Act 1997*. In Tasmania, a Licensing Board was established to have this review function. Both bodies were also empowered to make decisions in the first instance (see above).

4.1.1.2 *Enforcement Bodies*

Police were awarded enforcement powers by the liquor legislation in all states and territories. These powers were often shared with liquor licensing employees.

Table 12: Liquor licensing regulatory structures (December 2010)

	ACT	NSW	NT ⁱ	QLD
Legislation	<i>Liquor Act 2010</i>	<i>Liquor Act 2007</i>	<i>Liquor Act Northern Territory Licensing Commission Act</i>	<i>Liquor Act 1992</i>
Regulations	<i>Liquor Regulation 2010</i>	<i>Liquor Regulation 2008</i>	<i>Liquor Regulations</i>	<i>Liquor Regulation 2002</i>
Department	Department of Justice and Community Safety	Office of Liquor, Gaming and Racing, Communities NSW	Department of Justice	Department of Employment, Economic Development and Innovation
Administrative authority	Office of Regulatory Services	Casino Liquor and Gaming Control Authority (CLGCA); Office of Liquor Gaming and Racing ⁱⁱ	Director of Licensing, Licensing, Regulation and Alcohol Strategy Division	Office of Liquor, Gaming, and Racing (OLGR)
Decision-making authority	Commissioner for Fair Trading, Office of Regulatory Services	Casino Liquor and Gaming Control Authority (CLGCA)	Licensing Commission	Chief Executive, Office of Liquor, Gaming, and Racing (OLGR)
Review decisions/ hear appeals from decisions	ACT Civil and Administration Tribunal (ACAT)	Communities NSW; Casino Liquor and Gaming Control Authority (CLGCA)	Licensing Commission	Queensland Civil and Administrative Tribunal (QCAT)
Breaches of conditions/ offences/ complaints	Commissioner (complaints) ACAT (occupational discipline) Magistrates' Court/ Infringement notices (offences)	Local Court (summary offences & breach of conditions) Director-General, Communities NSW (complaints)	Magistrates' Court (summary offences) Licensing Commission (complaints)	Magistrates' Court (summary offences) Chief Executive (disciplinary action)

i Please note that the Northern Territory was also subject to the provisions of the *Northern Territory National Emergency Response Act 2007* (Cth).

ii These bodies shared a dual administrative function.

Table 12 continued: Liquor licensing regulatory structures (December 2010)

	SA	TAS	VIC	WA
Legislation	<i>Liquor Licensing Act 1997</i>	<i>Liquor Licensing Act 1990</i>	<i>Liquor Control Reform Act 1998</i>	<i>Liquor Control Act 1988</i>
Regulations	<i>Liquor Licensing (General) Regulations 1997ⁱⁱⁱ</i>	<i>Liquor Licensing Regulations 2003</i> <i>Liquor Licensing (Fees) Regulations 2005</i> <i>Liquor Licensing (Infringement Notices) Regulations 2008</i>	<i>Liquor Control Reform (Prescribed Class of Premises) Regulations 2008</i> <i>Liquor Control Reform (Prohibited Supply) Regulations 2005</i> <i>Liquor Control Reform Regulations 2009</i>	<i>Liquor Commission Rules 2007</i> <i>Liquor Control Regulations 1989^{iv}</i>
Department	Attorney-General's Department, Financial and Business Services Division	Department of Treasury and Finance	Department of Justice	Department of Racing, Gaming and Liquor (RGL)
Administrative authority	Office of the Liquor and Gambling Commissioner	Liquor and Gaming Branch, Revenue, Gaming and Licensing Division	Responsible Alcohol Victoria	Director-General, Department of Racing, Gaming and Liquor (RGL)
Decision-making authority	Liquor Licensing Commissioner/ Licensing Court ^v	Commissioner for Licensing/Licensing Board	Director of Liquor Licensing/Liquor Licensing Panel ^{vi}	Director of Liquor Licensing/The Liquor Commission
Review decisions/ hear appeals from decisions	Licensing Court	Licensing Board/ Supreme Court of Tasmania	Victorian Civil and Administrative Tribunal (VCAT)	The Liquor Commission
Breaches of conditions/ offences/ complaints	Licensing Court (disciplinary matters) Magistrates' Court (summary offences)	Liquor and Gaming Branch Magistrates' Court (when prosecution for an offence is required)	VCAT (inquiries and disciplinary matters) Magistrates' Court (summary offences)	Magistrates' Court (summary offences) The Liquor Commission (disciplinary matters)

iii *Liquor Licensing (Dry Areas—Long Term) Regulations 1997; Liquor Licensing (Dry Areas—Short Term) Regulations 1997.*

iv *Liquor Control (Bayalu Restricted Area) Regulations 2010; Liquor Control (Irrungadji Restricted Area) Regulations 2010; Liquor Control (Jigalong Restricted Area) Regulations 2009; Liquor Control (Juwurlinji Restricted Area) Regulations 2009; Liquor Control (Koongie Park Restricted Area) Regulations 2010; Liquor Control (Kundat Djaru Restricted Area) Regulations 2010; Liquor Control (Nicholson Block Restricted Area) Regulations 2010; Liquor Control (Noonkanbah Restricted Area) Regulations 2009; Liquor Control (Oombulgurri Restricted Area) Regulations 2008; Liquor Control (Punmu Restricted Area) Regulations 2010; Liquor Control (Wangkatjungka Restricted Area) Regulations 2008; Liquor Control (Yakanarra Restricted Area) Regulations 2010.*

v The Licensing Court (SA) determined contested applications.

vi The Liquor Licensing Panel considered contested applications and reported its findings (including recommendations) to the Director of Liquor Licensing.

4.1.2 Powers of the Licensing Authority

The authority of the decision-maker was defined by the objects of the Act, and express and implied powers within the legislation. Whether a power was exercised in accordance with the Act was a matter of statutory interpretation.³⁸ Decision-makers were often authorised to use their discretion when determining licensing matters. This discretion was provided through the adoption of abstract concepts such as public interest. Licensing authorities were often required to perform their functions and make decisions by considering what the public interest and/or the best interests of the community were. Notification, submission, and complaints processes were integral to informing the licensing body about matters of importance to the public.

38 Statutory interpretation was reliant upon several sources of construction. The diverse nature of these sources meant that drawing comparisons across jurisdictions was complex. Methods of statutory construction were influenced by established common law principles which could be binding or persuasive in jurisdictions, as well as the *Acts Interpretation Acts* of each jurisdiction. Common law principles of statutory construction dictated:

- That words must be interpreted with reference to:
 - » their ordinary and grammatical sense
 - » the context and purpose of the legislation
- A presumption that parliament did not intend the statute to exceed:
 - » constitutional limits
 - » fundamental rights and freedoms which exist at common law.

These are principles of general application which have been incorporated into interpretation acts in all jurisdictions. See *Legislation Act 2001* (ACT); *Interpretation Act 1987* (NSW); *Interpretation Act* (NT); *Acts Interpretation Act 1943* (QLD); *Acts Interpretation Act 1915* (SA); *Acts Interpretation Act 1931* (TAS); *Interpretation of Legislation Act 1984* (VIC); *Interpretation Act 1984* (WA).

Cases: *Federal Commissioner of Taxation v Munro* [1926] 38 CLR 153 at 180; *Attorney-General (Vic) v The Commonwealth* [1945] 71 CLR 237 at 267 per Dixon J; *Chu Kheng Lim v Minister for Immigration* [1992] 176 CLR 1 at 14 per Mason CJ; *New South Wales v The Commonwealth* (Work Choices Case) [2006] 229 CLR 1 at 161; *Gypsy Jokers Motorcycle Club Inc v Commissioner of Police* [2008] 234 CLR 532 at 553.

R v Secretary of State for the Home Department; Ex parte Pierson [1998] AC 539 at 587 per Lord Steyn.

Potter v Minahan [1908] 7 CLR 277 at 304; *Bropho v Western Australia* [1990] 171 CLR 1 at 18; *Coco v The Queen* [1994] 179 CLR 427 at 436-437.

4.1.2.1 Objects of the Legislation

The objects of the Act are of critical importance and bind the actions and decisions of any authority that operates under the legislation. Most jurisdictions had a section declaring the object of the Act, and these objects almost invariably contained a harm minimisation provision.³⁹

An exception to this was Tasmania. In that state, the object of the Act could be ascertained from its Long Title.⁴⁰ As such, the object of Tasmania's liquor legislation was to "regulate the sale of liquor".⁴¹ Australian courts also recognise that a primary object of liquor legislation is to reduce harms which result from the sale, supply and consumption of liquor.⁴² Further to this, when making decisions about licences, the Commissioner and the Board are required to base their decisions on what they consider to be in the best interests of the community.⁴³

Other than Tasmania, every other state and territory had enumerated objectives.⁴⁴ These objectives highlighted the complexity of the interests and issues involved in liquor licensing schemes. A broad overview of the objectives of the Acts across all states is as follows:

1. Regulation of the sale, supply, and consumption of alcohol
 - a. Minimise harm associated with alcohol misuse and abuse [some states provided examples (e.g., alcohol-related violence, antisocial behaviour)]

39 *Liquor Act 2010* (ACT), Sections 9 & 10; *Liquor Act 2007* (NSW), Section 3; *Liquor Act* (NT), Section 3; *Liquor Act 1992* (QLD), Section 3; *Liquor Licensing Act 1997* (SA), Section 3; *Liquor Control Reform Act 1998* (VIC), Section 4; *Liquor Control Act 1988* (WA), Section 5.

40 *Liquor Licensing Act 1990* (TAS). All legislation contains a Long Title. It is situated at the front of the legislation and explains the purpose of the Act.

41 *Liquor Licensing Act 1990* (TAS), Section 24A(1).

42 For example, in *Adeels Palace Pty Ltd v Moubarak; Adeels Palace Pty Ltd v Bou Najem* [2009] HCA 48, at [20] it was stated that the "sale of liquor is controlled because it is well recognised that misuse and abuse of liquor causes harm".

43 *Liquor Licensing Act 1990* (TAS), Section 24A(1).

44 *Liquor Act 2010* (ACT), Section 9; *Liquor Act 2007* (NSW), Section 3; *Liquor Act* (NT), Section 3; *Liquor Act 1992* (QLD), Section 3; *Liquor Licensing Act 1997* (SA), Section 3; *Liquor Control Reform Act 1998* (VIC), Section 4; *Liquor Control Act 1988* (WA), Section 5.

- b. Encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor
 - c. Contribute to, protect, and enhance amenity of community life, social harmony and wellbeing
 - d. Regulate the amenity of premises as well as control the people employed within the licensed premises, and the people permitted on licensed premises
2. Continued development and sustainability of the liquor industry, live music, entertainment, tourism, hospitality and adult entertainment
 - a. Facilitate a diversity of licensed premises and associated services for the benefit of the community
 - b. Ensure competitiveness of the market
 3. Provide a flexible, practical, informal, and untechnical regulatory scheme
 - a. Provision of a tribunal in some states, other states had dedicated licensing boards/courts
 - b. Some states even provided that the regulatory scheme should have minimal intervention
 4. Secure revenue for the state.

In order to achieve these objectives, all states and territories contained statutory provisions regulating:

- who could sell and supply alcohol
- the commercial practices of licensed premises
- offences and duties of licensees
- disciplinary procedures and penalties
- who could consume and access alcohol, and
- where alcohol could/could not be consumed and/or possessed.

These provisions were enacted in a range of regulations, policy documents, and codes

of conduct, which served a dual purpose. Regulations could be enacted to further bind or expand the discretion given to licensing and other authorities, as well as providing further guidance to interested parties about the application of the legislation. Policy documents often provided advice about departmental policies and the manner in which licensing matters were interpreted, processed and adjudicated by the licensing authority. Codes of practice were used to inform concerned persons about the standards expected of them. Several jurisdictions provided that adherence to the standards set in published documents and codes of practice was a condition of licence,⁴⁵ and as such licensees who breached codes of practice could face disciplinary matters.

4.1.3 Public Interest

Consideration of the public interest was applicable to various aspects of the liquor legislation in several jurisdictions.⁴⁶ The decisions and actions of the licensing authority were only authorised after they considered whether the decision and/or action was in the public interest. There were differences among jurisdictions about when the public interest was a relevant consideration. In some jurisdictions, the consideration was relevant prior to a licence being issued. In other jurisdictions, the disciplinary tribunal was required to consider whether the penalty meted out was in the public interest.

For example, in the Northern Territory and Western Australia the Licensing Commission was only authorised to issue licences when they considered it to be in the public interest. In both

⁴⁵ *Liquor Regulation 2010* (ACT), Schedule 1; *Liquor Regulation 2008* (NSW), Regulation 53; *Liquor Act* (NT), Section 31; *Liquor Licensing [General] Regulations 1997* (SA), Regulation 9; *Liquor Control Reform Act 1988* (VIC), Section 11 – relates to packaged liquor licences.

⁴⁶ For example, see *Liquor Act 2010* (ACT), Sections 183 & 184; *Liquor Act 2007* (NSW), Sections 3, 82, 84, 100, 101, 102, 116, 139; *Liquor Act* (NT), Sections 3, 6, 26, 32A, 44, 48A, 86E, 101E; *Liquor Act 1992* (QLD), Sections 95, 121, 156B; *Liquor Licensing Act 1997* (SA), Sections 11, 17, 21, 28A, 52A, 53, 75A, 99, 119; *Liquor Licensing Act 1990* (TAS), Sections 22, 42, 46A; *Liquor Control Reform Act 1988* (VIC), Section 115A; *Liquor Control Act 1988* (WA), Sections 30, 33, 38, 59, 64, 69, 72, 73, 74, 77, 91, 95, 99, 126D, 152E, 152J, 175.

these jurisdictions, the onus was placed upon the applicant to demonstrate that granting the licence was in the public interest.⁴⁷ Along with Queensland, these jurisdictions enumerated specific matters of public interest which the decision-maker was required to have regard to when making their decisions.⁴⁸ In the Australian Capital Territory legislation, matters of public interest were stipulated as harm minimisation principles which the Commissioner of Fair Trading was required to consider.⁴⁹

In some jurisdictions, matters of public interest were also relevant when determining penalties for licensees who had breached their conditions or committed an offence. In Tasmania, licences could only be suspended or disqualified if it was considered to be in the public interest. Likewise in the Australian Capital Territory, a licence could be suspended if the licensee had contravened an order of the Commissioner of Fair Trading or a licence condition. This could only occur, however, if two other conditions were satisfied:

1. It was in the public interest to suspend the licence
2. It was not appropriate to cancel the licence.⁵⁰

Other states required the licensing authority to consider what was in the public interest in regards to specific items. For example, in Victoria, the Director could ban a licensee from advertising or promoting the (1) supply of liquor or (2) conduct of premises if, in the Director's opinion, the advertising or promotion was likely to encourage irresponsible consumption of alcohol or was otherwise not in the public interest.⁵¹ In Queensland, the Minister could declare certain liquor products prohibited if they considered it to be in the public interest.⁵²

4.1.3.1 Judicial Interpretation

Whether a decision was made in the public interest has been the focus of several cases. These cases have provided guidance about what is meant by the concept of the public interest when used in legislation. In general, the concept has been an instrument used by legislators seeking to balance the pursuit of private interests with those matters which may affect the community at large and upon which "everyone is entitled to make fair comment...".⁵³

In *Telstra Corp Ltd and Department of Broadband, Communications and the Digital Economy*,⁵⁴ the concept was found to be dynamic as the considerations involved in determining the public interest were influenced by the particular circumstances of the case as well as the "statutory provisions applicable to those circumstances for its very dimensions and boundaries are drawn by those circumstances and provisions".⁵⁵

However, it is readily accepted that even though the concept of "the public interest" involves consideration of a number of competing arguments, some of which may lie outside the statutory provisions, it is not a multi-faceted concept.⁵⁶ Matters which are purely personal or subject to public attention are not necessarily "in the public interest". Matters of public interest have been described as "issues directed towards standards of human conduct, the functioning of government and those government departments which are tacitly accepted and acknowledged to be for the good order of society and for the well being of its members."⁵⁷

47 *Liquor Control Act 1988* (WA), Section 38.

48 *Liquor Act* (NT), Section 6; *Liquor Act 1992* (QLD), Section 121; *Liquor Control Act 1988* (WA), Section 38.

49 *Liquor Act 2010* (ACT), Sections 9 & 10.

50 *Liquor Act 2010* (ACT), Section 183(2). Same provision also applies to permit-holders. See Section 184(2).

51 *Liquor Control Reform Act 1998* (VIC), Section 115A.

52 *Liquor Act 1992* (Qld), Section 156B.

53 *Telstra Corp Ltd and Dept of Broadband, Communications and the Digital Economy, Re* [2010] AATA 118.

54 [2010] AATA 118 at [196].

55 [2010] AATA 118 at [196].

56 *O'Sullivan v Farrer* (1989) 168 CLR 210.

57 *Telstra Corp Ltd and Dept of Broadband, Communications and the Digital Economy, Re* [2010] AATA 118 at [196]. *McKinnon v Secretary, Department of Treasury* (2006) 229 ALR 187 per Tamberlin J.

4.1.3.2 Jurisdictional Requirements

Even though the decision-making authority ultimately had the discretion to determine whether the public interest (where it applied) had been satisfied, the methods used to assess this were often contained within liquor legislation. Every jurisdiction had provisions within their legislation to ascertain public opinion regarding new licence applications and/or amendments to existing licences.⁵⁸

The legislation generally adopted two methods of determining the ways in which an application could impact on the community. These were:

- The applicant provided statements and documents to assess the impact on community amenity, and/or
- People were able to object, or lodge submissions.

In some jurisdictions, a combination of the above two methods occurred.

Jurisdictions prescribed who could lodge an objection, as well as the grounds upon which an objection/submission could be lodged. Typical grounds of objection in each jurisdiction were:

- Community amenity would be adversely affected and/or the people who lived, worked, or regularly attended the area for educational and religious purposes would be negatively impacted
- The applicant was not a fit and proper person, or was unsuitable
- The premises were not suitable.

Several jurisdictions also provided that an objection could be raised on the grounds that granting a licence could affect the health,

safety, and/or welfare of people living, working, or regularly attending the area for educational, or religious purposes.⁵⁹

For jurisdictions which did not specifically outline grounds of objection/comment, it was arguable whether objections based purely on intellectual and/or philosophical grounds would be considered relevant by the decision-maker.⁶⁰ For example, in some jurisdictions only those who had an interest in the area or were likely to be impacted by the licence were able to lodge objections.

In New South Wales and Queensland, a more consultative approach was mandated. Applicants needed to engage stakeholders through the development of community impact statements, and incorporate measures within their proposals to address concerns. Other jurisdictions detailed particular powers and grounds of objection for individuals and departments recognised to have a special interest in the implementation of the legislation (see Table 13 below).

⁵⁸ See *Liquor Act 2010* (ACT), Section 34; *Liquor Act 2007* (NSW), Section 40; *Liquor Act* (NT), Section 27; *Liquor Act 1992* (QLD), Section 118; *Liquor Licensing Act 1997* (SA), Section 52; *Liquor Licensing Act 1990* (TAS), Section 23; *Liquor Control Reform Act 1998* (VIC), Section 34; *Liquor Control Act 1998* (WA), Section 67.

⁵⁹ *Liquor Act* (NT), Section 47F; *Liquor Act 1992* (QLD), Section 119; *Liquor Licensing Act 1997* (SA), Section 77 (health and safety of children prejudiced); *Liquor Control Act 1988* (WA), Section 69.

⁶⁰ This is consistent with the common law rules of standing. See cases: *Australian Conservation Foundation Inc v Commonwealth* (1980) 146 CLR 493; *Bateman's Bay Local Aboriginal Land Council v Aboriginal Community Benefits Fund Pty Ltd* (1998) 194 CLR 247; *Onus v Alcoa of Australia Ltd* (1981) 149 CLR 27; *Davis v Commonwealth* (1986) 61 ALJR 32. Standing eligibility could also be affected by provisions contained in administrative review legislation in those jurisdictions which had adopted these tribunals.

Table 13: Matters of public interest & rights to object

State	Submission Process	Grounds for Objection
ACT	Anyone may submit a written representation. ⁱ	Applicant and/or Premises are not suitable.
	Anyone may present a submission.	No grounds provided.
NSW	The applicant engages with identified stakeholders and lodges a Community Impact Statement. ⁱⁱ	N/A
	Two licence categories apply. Categories determine which stakeholders the applicant must consult: Category A – Local government Local police Other stakeholders determined by Casino, Liquor, Gaming, and Racing Authority Category B – Local government Local police Health and Community Services Departments Roads and Traffic Authority Any local Indigenous leaders Neighbouring premises Any other stakeholders determined by Authority.	
NT	Persons, organisations and groups residing or working in area, any person with real estate in the area, members of the Police and/or Fire and Rescue Service, any public authority that performs a health, amenity, education, and public safety function, or community-based organisations or groups may lodge an objection.	Grant would adversely affect amenity of, or the health, education, public safety and social conditions in the neighbourhood.
QLD	Any member of the public, individual or by petition, who in the Chief Executive's opinion: <ul style="list-style-type: none"> • has a proper interest in the locality concerned; and • is likely to be affected by the grant of the application may lodge an objection.ⁱⁱⁱ 	Grant would cause: <ol style="list-style-type: none"> 1. undue offence, annoyance, disturbance or inconvenience to persons who reside, work, or attend places of worship, school, or hospitals in area 2. harm from alcohol abuse and misuse and associated violence 3. an adverse effect on the health or safety of members of the public 4. an adverse effect on the amenity of the community.

i *Liquor Act 2010* (ACT), Section 35.

ii Applied for grants of and approvals to remove hotel, club and packaged liquor licences. Also applied to extended trading authorisations for the above licences, as well as on-premise and producer/wholesaler licences seeking to trade between 12 am and 5 am. The Casino, Liquor, Gaming and Racing Authority and the Regulations could also prescribe other classes of licences.

iii *Liquor Act 1992* (QLD), Section 119.

Table 13 continued: Matters of public interest & rights to object

State	Submission Process	Grounds for Objection
QLD	<p>Local police and councils may lodge an objection for an extended hours permit.^{iv}</p> <p>Applicant must give community impact statements to Chief Executive when applying for most licence types, a variation of a licence, or an extended trading hours approval.^v</p>	<p>As above</p> <p>Statements must address:</p> <ul style="list-style-type: none"> • population and demographic trends • expectations of people living in, staying in, and passing through • likely health and social impacts on locality's population <ul style="list-style-type: none"> » assessment of magnitude, duration and probability of impacts occurring • proximity to identified sub-communities in area (e.g., children, churches), and impact on sub-communities.
SA	<p>Any person may lodge an objection.^{vi}</p> <p>Commissioner of Police may intervene in proceedings before the Commissioner.</p> <p>The local council and anyone else specified by Licensing Authority, and the Commissioner of Police may intervene in proceedings.</p>	<p>Grant inconsistent with Objects or contrary to Act:</p> <ul style="list-style-type: none"> • there is no public need for the facility • the applicant is not a fit and proper person • the applicant is of bad reputation or character • the premises or licence type is unsuitable • amenity of area and those in it would be adversely affected. <p>Person is not fit and proper. Any other reason.</p> <p>Any question before the authority. Any question arising in proceedings. Any question before the Court.</p>
TAS	<p>Any person may give a written representation to the Licensing Commissioner.</p>	<p>No grounds stated. Director may refuse to accept objection:</p> <ul style="list-style-type: none"> • if person not affected by application • if considered it frivolous or vexatious • the objection is outside parameters of Act.
VIC	<p>Any person may lodge an objection.</p> <p>Precluded grounds:</p> <ul style="list-style-type: none"> • business would not be successful • another business would be adversely affected • insufficient need or demand for a licence. 	<p>Grant would detract from or be detrimental to amenity of area.</p>

iv *Liquor Act 1992* (QLD), Section 110.

v *Liquor Act 1992* (QLD), Section 116.

vi *Liquor Licensing Act 1997* (SA), Section 77.

Table 13 continued: Matters of public interest & rights to object

State	Submission Process	Grounds for Objection
VIC	<p>Chief Commissioner of Police may lodge an objection.</p>	<p>Any ground they think fit (for grant, variation or relocation of licence). Applicant is not a suitable person (for transfer of licence).</p>
	<p>Local council may lodge an objection.</p> <p>Precluded grounds:</p> <ul style="list-style-type: none"> • business would not be successful • another business would be adversely affected • Insufficient need or demand for a licence. 	<p>All licences: Grant would detract from or be detrimental to amenity of area. In relation to late-night (packaged liquor) and packaged liquor licences: Grant would be conducive to or encourage the misuse or abuse of alcohol.</p>
	<p>Victoria Police licensing inspectors may lodge an objection.</p> <p>Precluded grounds:</p> <ul style="list-style-type: none"> • business would not be successful • another business would be adversely affected • insufficient need or demand for a licence. 	<p>Applicant is not a suitable person. Grant would:</p> <ul style="list-style-type: none"> • detract from or be detrimental to amenity of the area • be conducive to or encourage the misuse or abuse of alcohol.
WA	<p>Commissioner of Police may intervene in proceedings.</p>	<p>Whether:</p> <ul style="list-style-type: none"> • applicant is a fit and proper person • public disorder or disturbance likely to result • any other matter relevant to public interest • anyone else has interest in licence.
	<p>Local Government may intervene in proceedings by submitting a report.</p> <p>Persons authorised by local government to make representations under:</p> <ul style="list-style-type: none"> • <i>Health Act 1911</i> • <i>Food Act 2008</i> • Various Local Government Acts (provisions relevant to health matters only) may intervene in proceedings by submitting a report. <p>Executive Director of Public Health may provide a report on request or intervene in proceedings.</p>	<p>Whether:</p> <ul style="list-style-type: none"> • premises are suitable • alteration, redefinition of boundaries should be approved • persons who work, reside, worship would be adversely affected. <p>Matters which fall under the provisions of those Acts.</p> <p>Harm or ill-health may be caused to people, or any group of people, due to the use of liquor. Matters relevant to minimising that harm or ill-health.</p>

4.1.4 Matters of Public Interest

4.1.4.1 Fit, Proper, and Suitable Persons

Every jurisdiction provided that prior to issuing a licence, the decision-maker must consider whether the applicant was fit and proper⁶¹ and/or suitable to hold a licence or permit.⁶² In conjunction with the common law meanings attributed to these terms, the legislation often provided further criteria which had to be considered by the relevant decision-maker.

The fit and proper person test contained three elements: honesty, knowledge and ability.⁶³ These elements were generally incorporated in the liquor licensing legislation in a variety of ways (e.g., training provisions, minimum age for employees, and the provision of risk assessment plans). In New South Wales, South Australia and Western Australia, the fit and proper person test was applicable to licensees, managers, and responsible persons.⁶⁴ Where the applicant was not a natural person, but an organisation or partnership, the test also extended to all those who may have an influence upon the business.

As with other concepts found within liquor licensing legislation, the purpose of the phrase “fit and proper person” was to give the decision-maker the “*widest scope for judgment and ... for rejection as they were invested with an authority to accept or reject an applicant the exercise of which depends on no certain or definite criteria and which in truth involves a very wide discretion*”.⁶⁵

61 This was the assessment used in New South Wales, Northern Territory, Queensland, South Australia, Tasmania and Western Australia.

62 This was the assessment used in Australian Capital Territory and Victoria.

63 *Hughes and Vale Pty Ltd v State of New South Wales* (1955) 93 CLR 127, 157.

64 *Liquor Act 2007* (NSW), Section 40, 45, 63 & 68; *Liquor Licensing Act 1997* (SA), Section 55, 56, 63 & 71; *Liquor Control Act 1988* (WA), Section 35B.

65 *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321 at 380.

Definition – Fit and Proper Person

In *Hughes and Vale Pty Ltd v State of New South Wales* (1955) 93 CLR 127 (at p157), the phrase “fit and proper person” was stated as involving:

three things, honesty, knowledge and ability: honesty to execute it truly, without malice affection or partiality; knowledge to know what he ought duly to do; and ability as well in estate as in body, that he may intend and execute his office, when need is, diligently, and not for impotency or poverty neglect it.

In states that had adopted a suitable person test, the term takes its meaning from its context, from the activities in which the person is or will be engaged, and the ends to be served by those activities.⁶⁶ As such, when determining whether an applicant was a suitable person, *material directed to the “...reputation, character, honesty and integrity is to be assessed primarily by reference to its potential to reveal whether or not an applicant will fulfil [their] obligations”*⁶⁷ under the relevant statute. In Victoria and the Australian Capital Territory, the determination of whether someone was or was not suitable was relevant to the determination of whether a licence should be issued to a licensee.⁶⁸ While in Queensland, the consideration of whether an applicant was a “suitable person” was applicable to approved managers, as licensees were required to fulfil the fit and proper person assessment (see above).

There were, however, slight differences in the manner in which the consideration of suitability was incorporated within Victoria and the Australian Capital Territory’s legislation. In Victoria, the Director of Licensing could reject a licence application if they decided that a person was “not suitable”. This denial could occur

66 *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, at 380.

67 *Chief Executive, Department Tourism, Fair Trading and Wine Industry Development v 4 Play (Oz) P/L* [2008] QCA 267, at [35].

68 In Victoria, Section 44(2)(a) provides that the Director may refuse to grant the application on the grounds that the applicant is not a suitable person to carry on business under the licence.

even in the absence of objections by the Chief Commissioner of Police and licensing inspectors about an applicant's propriety.⁶⁹ While in the Australian Capital Territory, a licence had to be issued if the Commissioner decided the applicant was suitable.⁷⁰ While the difference is subtle, it is relevant when determining matters of statutory construction and whether the decision-maker has fulfilled their obligations under the Act. Section 69 of the *Liquor Act 2010* (ACT) identified the relevant criteria in determining whether an applicant was suitable. Amongst other things, these included whether a person had been guilty of an offence under particular legislation, if there was a history of non-compliance in relation to the applicant and the supply of liquor, or whether the applicant was financially solvent.

Probity checks & associates

All states contained legislation giving the licensing authority power to investigate an applicant's "associates". "Associates",⁷¹ as defined within several jurisdictions, were those people that the applicant was involved with on a regular basis either due to familial or marriage-like relationships or someone who had an influential or direct involvement with the business.⁷² Some jurisdictions placed the onus on the applicant to declare their associates and/or anyone with an interest in the licence,⁷³ while other states provided that a comprehensive probity check needed to be undertaken by police.⁷⁴ Whether matters were referred to the police was generally a matter of discretion for the licensing authority; however, in South Australia

and Victoria all applications were required to be given to the Commissioner of Police.⁷⁵

However, in Queensland, associates were only defined in relation to either an adult entertainment permit, or if the person was an executive of a corporation.⁷⁶ This was a more limited application than in other states as it did not extend to individual licensees not involved in providing adult entertainment. As such, in Queensland, if the licensing authority was to give regard to the associates of the applicant, the decision could be subject to judicial review on grounds of relevance. This is because when determining whether the applicant was a fit and proper person in Queensland, the licensing authority could only have regard to whether the individual applicant:

- demonstrated knowledge and understanding of their obligations
- was a person of good repute who did not have a history of behaviour that would render the applicant unsuitable to hold the licence or permit applied for; and
- demonstrated a responsible attitude to the management and discharge of the applicant's financial obligations.⁷⁷

To this end, most states provided the decision-maker with the authority to determine whether an applicant was fit and proper, or suitable, as well as the authority to conduct whatever inquiry they considered necessary to make this decision.⁷⁸ Despite these discretions, police were still able to lodge objections and complaints in several jurisdictions on the grounds that the applicant was not a fit and proper, or suitable, person.

In Victoria, Licensing Inspectors were able to object to the grant or transfer of a licence or a BYO permit if the applicant was not a suitable

69 *Liquor Control Reform Act 1998* (VIC), Section 44.

70 *Liquor Act 2010* (ACT), Section 27.

71 In the Australian Capital Territory; New South Wales and South Australia, "close associates" are defined. See *Liquor Act 2010* (ACT); *Liquor Act 2007* (NSW); *Liquor Licensing Act 1997* (SA), Section 7.

72 *Liquor Act* (NT), Section 23A; *Liquor Act 1992* (QLD), Section 4C; *Liquor Licensing Act 1990* (TAS) Section 3A; *Liquor Control Reform Act 1998*, Section 3AC.

73 See *Liquor Act 2010* (ACT), Sections 25, 35, and 71; *Liquor Act 2007* (NSW), Section 41; *Liquor Act* (NT), Section 26A; *Liquor Licensing Act 1990* (TAS), Section 23; *Liquor Control Reform Act 1998* (VIC), Section 28.

74 *Liquor Act 1992* (QLD), Sections 107F & 117A (only relates to applications for adult entertainment permits and for licences in restricted areas); *Liquor Licensing Act 1997* (SA), Sections 51A.

75 *Liquor Act 2010* (ACT), Section 71; *Liquor Act 2007* (NSW), Section 42; *Liquor Licensing Act 1997* (SA), Section 51A; *Liquor Licensing Act 1990* (TAS), Section 24; *Liquor Act 1992* (QLD), Section 107; *Liquor Control Reform Act 1998* (VIC), Section 33; *Liquor Control Act 1998* (WA), Section 33.

76 *Liquor Act 1992* (QLD), Sections 4C(1)-(2).

77 *Liquor Act 1992* (QLD), Section 107.

78 For example, see; *Liquor Act 2007* (NSW), Section 42; *Liquor Act* (NT), Section 28.

person to hold the licence or permit.⁷⁹ The Chief Commissioner of Police could object on the grounds that an applicant was not a suitable person in the case of an application:

- for a grant, variation, transfer or relocation of a licence or BYO permit⁸⁰
- by a body corporate for the approval of a person as nominee of the licensee or permittee⁸¹
- by an executor, trustee, administrator, owner or mortgagee to have their name endorsed on a licence or BYO permit⁸²
- by a body corporate for the approval of a person to be a director of a licensee or permittee.⁸³

South Australia also provided the Commissioner of Police a right to intervene in proceedings before the licensing authority on the question of whether a person was a fit and proper person; or whether, if the application were to be granted, public disorder or disturbance would be likely to result; or whether to grant the application would be contrary to the public interest.⁸⁴ Further to this, any person could also lodge an objection to an application claiming that the licensee was “of bad reputation or character or is in some other respects not a fit and proper person.”⁸⁵

In many states, whether a licensee was a fit and proper person or suitable person remained an ongoing consideration. The suitability of the licensee to be able to run the business according to their statutory duties and obligations was also considered when penalties for breaches were determined. For example, in the Australian Capital Territory, a licensee committed an offence if they failed to inform the Commissioner for Fair Trading that their status as a suitable person had changed.⁸⁶ Whether a person remained a fit and proper person was an

ongoing matter as it was a ground for initiating disciplinary proceedings in all states and territories (see Section 4.1.7 below “Disciplining Licensees”).

Restrictions on discretion

Some states expressly provided restrictions upon classes of people where there was criminal intelligence. The states which utilised criminal intelligence also often contained provisions protecting the confidentiality of the intelligence submitted on behalf of the police. While the non-disclosure of this information represents a significant departure from established principles of natural justice, and its legitimacy has not been tested within every jurisdiction,⁸⁷ there has been one important judgement which has upheld the legitimacy of the South Australian provisions.⁸⁸ This judgement is considered further below.

Several states had implemented provisions which limited the discretion of the decision-maker in determining who could be considered a fit and proper person. For example, in the New South Wales legislation a person was not a fit and proper person if the Casino, Liquor, Gaming, and Racing Authority had reasonable grounds to believe from information provided by the Commissioner of Police that the person was a member or close associate of, or regularly associated with, any members of a declared organisation,⁸⁹ and that the nature and circumstances of the person’s relationship with the organisation or its members were such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation was likely to occur if the person was granted a licence.⁹⁰

Criminal intelligence

Principles of natural justice are important in administrative law due to the protection of the principle that a person’s interests should not

79 *Liquor Control Reform Act 1998* (VIC), Section 41.

80 *Liquor Control Reform Act 1998* (VIC), Section 39.

81 *Liquor Control Reform Act 1998* (VIC), Section 54(4).

82 *Liquor Control Reform Act 1998* (VIC), Section 83.

83 *Liquor Control Reform Act 1998* (VIC), Section 104.

84 *Liquor Licensing Act 1997* (SA), Section 75A.

85 *Liquor Licensing Act 1997* (SA), Section 77 (5)(d),(e).

86 *Liquor Act 2010* (ACT), Section 73.

87 That is, the legitimacy of the particular legislation in the relevant states.

88 *K-Generation Pty Limited v Liquor Licensing Court* [2009] HCA 4.

89 Declared organisations were defined by the *Crimes (Criminal Organisations Control) Act 2009* (NSW).

90 *Liquor Act 2007* (NSW), Section 45(5).

be arbitrarily interfered with by government departments.⁹¹ The concept of procedural fairness provides that people whose rights or legitimate expectations are affected by government decisions and actions have a right to be notified of the reasons for the decision and given an opportunity to respond.

Several jurisdictions had adopted a provision within their liquor legislation excluding or limiting the operation of this fundamental principle. For example, South Australia, New South Wales, and Western Australia each had a legislated provision prohibiting the licensing authority from providing information to applicants which may disclose criminal intelligence.⁹² While the South Australian provision has been considered in a High Court case, neither the provisions in New South Wales' nor Western Australia's liquor legislation have been judicially considered. However, there have been other cases in these jurisdictions which have considered an express parliamentary intention to deny natural justice.⁹³

In *K-Generation Pty Limited v Liquor Licensing Court* the judges unanimously found that while Section 28A of the *Liquor Licensing Act 1997* (SA) infringed principles of open justice and procedural fairness, the provision did not confer upon the Licensing and/or Supreme Court "functions which were incompatible with their institutional integrity as courts of the States or with their constitutional roles."⁹⁴ This was because the provisions left it to the courts to determine:

- whether "information classified as criminal intelligence answered that description"⁹⁵
- the steps necessary to preserve the confidentiality of the information

- "whether to accept or reject such material and to decide what if any weight shall be placed upon it".⁹⁶

Several factors were noted as relevant in determining whether information could be regarded as "criminal intelligence":

1. The relevance of the information to the question to be decided
2. The reliability of the information with consideration given to the source and the extent to which the information is substantiated by other sources
3. The weight of the information with consideration given to whether the information is mere suspicion or innuendo and the fact that the information has not been able to be tested by cross-examination.

4.1.4.2 Safety in Licensed Premises

Legislation within all jurisdictions contained provisions aimed at ensuring licensed premises were safe venues for people to gather and consume alcohol. Many of these provisions were reactive in that behaviour must occur on or near a premise prior to the venue being classified as "high-risk" and therefore attracting the exercise of these powers. For example, a person could only be removed from the premise and/or barred if they displayed certain behaviours or committed specific offences⁹⁷, and the operational practices of the venue could only be altered after an incident had occurred (see Classifying Premises under Section 4.1.4.4 below).

However, several states and territories had implemented risk-based licensing fee structures as well as risk assessment plans which were designed to assist licensees, police, and the licensing authority determine risk levels and methods of managing risk before the need

91 See *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51.

92 *Liquor Act 2007* (NSW), Section 45(6); *Liquor Licensing Act 1997* (SA), Section 28A; *Liquor Control Act 1988* (WA), Section 30.

93 See *Gypsy Jokers Motorcycle Club Ltd v Commissioner of Police* (2007) 33 WAR 245; *Commissioner of Police New South Wales v Gray & Another* [2009] NSWCA 49.

94 *K-Generation Pty Limited v Liquor Licensing Court* [2009] HCA 4, Fenech J at [10].

95 *Liquor Licensing Act 1997* (SA), Section 28A(5b).

96 *K-Generation Pty Limited v Liquor Licensing Court* [2009] HCA 4, Fenech J at [10].

97 Barring refers to excluding a person from a licensed premise for a prolonged period of time. Depending upon the jurisdiction in which the offending behaviour occurs, they may be utilised by the police, the courts, or the licensing authority. The period of exclusion varies by jurisdiction.

arose. These provisions sought to reduce harm by providing an impetus for licensees to change their operational practices, deter people from engaging in alcohol-related violence and/or anti-social behaviour, and preclude undesirable people from attending licensed premises.

Controlling patron behaviour

In all jurisdictions, licensees, police, courts, and government authorities could prohibit certain people and/or groups of people from attending licensed premises. However, a few jurisdictions required the responsible Minister to declare a designated area prior to the police being able to issue a notice (see Table 14 below).⁹⁸ In some jurisdictions, failure by a licensee to remove the intoxicated, disorderly, and quarrelsome was an offence. In other jurisdictions, the licensee had a statutory duty to ensure premises were safe, and therefore they were provided with the authority to remove the intoxicated, disorderly, and quarrelsome.

⁹⁸ In the Northern Territory, the Minister could declare a designated area if the Minister believed alcohol-related violence had occurred in a public place in the vicinity of licensed premises within the designated area; and the exercise of banning notices and exclusion powers in relation to the designated area was reasonably likely to be an effective way of preventing or reducing the occurrence of alcohol-related violence in the area. In making the order, the Minister could consult with any person they consider relevant. See *Liquor Act* (NT), Section 120F.

In Queensland, Drink Safe precincts were declared in the Regulations. In recommending that the Governor in Council make the regulation, the Minister had to be satisfied the declaration was necessary to achieve the purpose of this part. See *Liquor Act 1992* (QLD), Section 173P.

In Victoria, the Director could declare a designated area by Order in the Government Gazette. Prior to making the Order, the Director had to believe that alcohol-related violence or disorder had occurred in a public place that was in the immediate vicinity of licensed premises within the area; and the exercise of banning notices and exclusion orders in relation to the area was reasonably likely to be an effective means of reducing or preventing the occurrence of alcohol-related violence or disorder in the area. Further to this, the Director had to consult the Chief Commissioner of Police before making an Order. See *Liquor Control Reform Act 1998* (VIC), Section 147.

Table 14: Powers to remove, exclude, and prevent problem patrons from attending licensed premisesⁱ

State	Order	Behaviour	Authorised	Period	Extent of Prohibition
NSW	Self-exclusion Orders	Not specified.	Licensee. Individual.	Not specified	Specified in form
	Non-voluntary Exclusion Order (Refuse entry, remove from premises)	Intoxicated, violent, quarrelsome or disorderly, or whose presence on the licensed premises renders the licensee liable to a penalty under this Act. Smoking on any part of the licensed premises that is a smoke-free area. Uses or possesses, on the premises, a prohibited plant or a prohibited drug. May refuse access if in accordance with a condition of licence or liquor accord.	Licensee. Employee. Police Officer.	≤24 hours However, authorised person have right to refuse entry at any other time	Single premise
	Banning Orders	Satisfied person has repeatedly been intoxicated, violent, quarrelsome or disorderly on or in the immediate vicinity of licensed premises.	Casino, Liquor, Gaming, and Racing Authority. ⁱⁱ	≤6 months	Specified premises
	Power to remove or exclude	Intoxicated. Violent. Quarrelsome. Disorderly. Incapable of controlling own behaviour.	Licensees. Employees. Inspectors. Police.	12 hours	Single premise
NT ⁱⁱⁱ	Prohibition Orders	Applies to specified offences. Has conditions attached. See <i>Alcohol Court Act</i> .	Alcohol Court.	≤12 months	

i In the Australian Capital Territory it was an offence for people to refuse to leave after they had been requested to do so by the licensee, an employee of the licensee, or a crowd controller. Besides this implied power, there were no express provisions contained within the Act giving the licensee or anyone else a power to ban.

ii May be applied for by the Director-General, Commissioner of Police, a licensee who was a party to a local liquor accord, any other person (or class of persons) prescribed by the regulations.

iii Since the completion of this report, the Northern Territory Liquor Act has been amended by the provisions of the *Alcohol Reform (Liquor Legislation Amendment) Act 2011* (Act No. 17, 2011) and *Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011* (Act No. 19, 2011). These provisions commenced on 1 July 2011. This table does not incorporate these recent amendments.

Table 14 continued: Powers to remove, exclude, and prevent problem patrons from attending licensed premises

State	Order	Behaviour	Authorised	Period	Extent of Prohibition
NT	Banning Orders	Specified offence committed.	Police.	48 hours	Designated area All licensed premises in the designated area
	Exclusion Orders	Applies to specified offences. Has conditions attached. See <i>Alcohol Court Act</i> .	Courts of Summary Jurisdiction.	<12 months	Designated area All licensed premises in the designated area Certain class of licensed premises in the designated area
QLD	Power to refuse entry, remove a person	Unduly intoxicated. Disorderly. Creating a disturbance.	Licensee. Permit-holder. Employees. Agents.	N/A	Single premise
	Civil Banning Order	Person committed an act of violence, against another person or property, of such a nature that the act of violence would cause a person in the vicinity to reasonably fear bodily harm to any person or damage to property. Act of violence was committed: <ul style="list-style-type: none"> within the previous 12 month period in licensed premises, or in an area in the vicinity of licensed premises, located within a drink safe precinct Person did not have a reasonable excuse for committing the act of violence. 	Court authorised to make order when satisfied that unless the order is made, the person would pose an unacceptable risk to: <ul style="list-style-type: none"> the good order of licensed premises, and areas in the vicinity of licensed premises, located within a drink safe precinct; or the safety and welfare of persons attending licensed premises, and areas in the vicinity of licensed premises, located within a drink safe precinct. 	≤12 months	Declared DrinkSafe Precincts
SA	Power to refuse entry, remove a person	Intoxication. Speech, balance, coordination or behaviour is noticeably impaired due to consumption of liquor. Offensive or disorderly behaviour.	Licensee. Responsible person. Police officer. Approved crowd controller.	≤24 hours	Single premise

Table 14 continued: Powers to remove, exclude, and prevent problem patrons from attending licensed premises

State	Order	Behaviour	Authorised	Period	Extent of Prohibition
SA	Licensee Barring Notices	<ol style="list-style-type: none"> 1. Welfare of the person, or the welfare of a person residing with the person, is seriously at risk due to the consumption of alcohol. 2. Person commits an offence, or behaves in an offensive or disorderly manner, on, or in an area adjacent to, the licensed premises. 3. Any other reasonable ground. 	Licensee. Responsible person.	Indefinite period for reason 1 First barring: ≤ 3 months Second barring: ≤ 6 months Commissioner may approve longer periods Third + barring: indefinite period	Single premise
	Commissioner of Police Barring Notices	On any reasonable grounds.	Commissioner of Police.	Indefinite or specified period	Specified premise Licensed premises of a specified class Licensed premises of a specified class within a specified area All licensed premises within a specified area
	Police Officer Barring Notices	Same reasons as licensee barring orders.	Police officer. ^{iv}	Same periods as licensee barring orders if authorised by an Inspector If authorised by a Sergeant, order applies for a period ≤ 72 hrs	As above
TAS	Request to leave	Violent, quarrelsome or disorderly behaviour. Disgusting, profane or foul language.	Licensee. Police Officer.	≤24 hrs	Single premise

^{iv} Notices needed to be authorised by an officer of or above the rank of Inspector. In some instances, the officer who authorised the notice could be a Sergeant or any police officer in charge for the time being of a police station.

Table 14 continued: Powers to remove, exclude, and prevent problem patrons from attending licensed premises

State	Order	Behaviour	Authorised	Period	Extent of Prohibition
VIC	Banning Notices	Specified offence.	Police.	≤72 hrs	Designated area All licensed premises in the designated area
	Exclusion Orders	Specified offence.	Courts.	≤12 months	Designated area All licensed premises/ specified premises in the designated area
WA	Prohibition Order	Prove order is warranted due to person's actions.	Director of Liquor Licensing.	≤5 yrs	Specified in Order
	Barring Orders	Violent, disorderly, indecent behaviour. Contravention of any written law.	Commissioner of Police (power may be delegated to officers above rank of Inspector).	≤12 months	Specified licensed premises Specified class of licensed premises
	Power to refuse entry, sell liquor, and remove from premises	Person is or appears to be drunk. Offensive behaviour. Not conforming with relevant, reasonable, and notified dress standards. Reasonable belief and/or knowledge person: <ul style="list-style-type: none"> cannot or will not pay is quarrelsome or disorderly seeks to obtain liquor by begging is an associate of, a reputed thief, prostitute, supplier of unlawful drugs, or person convicted of an offence involving unlawful drugs or violence that is punishable by a term of imprisonment exceeding 3 years is or appears to be a person whose presence on the licensed premises will occasion the licensee to commit an offence under this Act. 	Licenseses. Managers. Employees. Police.	≤24 hours	Single premise

The Australian Capital Territory *Liquor Act 2010* did not contain explicit provisions empowering licensees, inspectors, or police to remove people from the licensed premises. However, there was an implicit power that licensees, their employees, and crowd controllers could remove patrons from premises, as an offence was created for patrons who refused to comply with a direction to leave.⁹⁹

4.1.4.3 Intoxication

Serving and supplying an intoxicated and/or drunk person was an offence in every state and territory.¹⁰⁰ While all states and territories provided that the offence could be committed by the licence/permit-holder and their employees, a few states extended the offence to all persons. This extension was expressly provided in some instances, while in others it could be subject to judicial interpretation.¹⁰¹ In addition to this, several states had also created an offence for permitting intoxicated people to be on licensed premises. Statutory defences were contained in a few jurisdictions (see Table 15).

Many jurisdictions attempted to define these terms by referring either to the physical effects that alcohol consumption may have upon an individual, changes in behaviour or coordination,

and/or the presence of the person on licensed premises.¹⁰² For example, in the New South Wales' legislation, intoxication was defined in relation to the presence of intoxicated persons on the licensed premises,¹⁰³ while in Victoria intoxication was defined as a state of being in which a person's "speech, balance, coordination or behaviour is noticeably affected and there are reasonable grounds for believing that this is the result of the consumption of liquor."¹⁰⁴

Alternatively, in Western Australia, drunk was a defined term.¹⁰⁵ Section 3A(1) provided "[a] person is drunk for the purposes of this Act if the person is on licensed premises or regulated premises; and the person's speech, balance, coordination or behaviour appears to be noticeably impaired; and it is reasonable in the circumstances to believe that that impairment results from the consumption of liquor."

In other jurisdictions, intoxication and/or drunk were either defined within the context of a specific section of the act, for example when giving the licensee authority to remove people from, or refuse entry to the premises, or in relation to the offence of serving and/or supplying an intoxicated person on licensed premises. In the Northern Territory and Tasmania, the terms were not defined. However, in the Northern Territory, the onus was on the defendant to prove the patron was not drunk.

Like the qualitative difference found among jurisdictional definitions of the terms drunk and intoxicated, there were differences in the evidentiary burden between the states and territories which defined the concept of intoxication within an offence. For example, being drunk in Western Australia required a level of observable impairment, while being intoxicated in Victoria only required a noticeable effect upon behaviour. Similarly, in South Australia, it was an offence to sell alcohol to a person who was noticeably intoxicated, while in

99 *Liquor Act 2010* (ACT), Section 138.

100 *Liquor Act 2010* (ACT), Sections 105, 106, & 107; *Liquor Act 2007* (NSW), Section 73; *Liquor Act* (NT), Section 102; *Liquor Act 1992* (QLD), Section 156; *Liquor Licensing Act 1997* (SA), Section 108; *Liquor Licensing Act 1990* (TAS), Sections 78 & 79; *Liquor Control Reform Act 1998* (VIC), Sections 108 & 114; *Liquor Control Act 1988* (WA), Section 115.

101 For example, in Tasmania and Queensland the wording of the legislation lacked clarity in whether it applied to all persons or whether it applied only to those people charged with preventing the occurrence of intoxication on licensed premises. However, the Guide to Tasmania Liquor Laws released in 2005 indicated that this section "relates to the purchase of liquor by a person who then supplies it to another person who appears to be drunk". See <http://www.tenders.tas.gov.au/domino/DTF/DTF.nsf/v-liq-and-gaming/FF01DE5743DAC232CA257346001161C8> and <http://www.tenders.tas.gov.au/domino/DTF/DTF.nsf/v-liq-and-gaming/F8218D336F54690CCA25743B00015343>. While in Queensland, a fact sheet compiled by the Department of Employment, Economic Development and Innovation provided that individuals could receive an \$8000 penalty for supplying alcohol to an unduly intoxicated person. See <http://www.olgr.qld.gov.au/resources/index.php/documents/search/doctype/QWxs/barea/TGlxW9yIENvbXBsaWFuY2U%3D/page/>.

102 Defining a term within the dictionary ensures that the term is consistently applied throughout the act, and any subordinate legislation. See statutory interpretation acts (footnoted above).

103 *Liquor Act 2007* (NSW), Section 5(2).

104 *Liquor Control Reform Act 1998* (VIC), Section 3AB.

105 *Liquor Control Act 1998* (WA), Section 3A.

Queensland it was an offence to sell to a person who was unduly intoxicated. As such, there were differences between the jurisdictions in relation to the term used, the context of its use, and what elements needed to be established to prove the offence.

The legislation in most jurisdictions provided a definition of intoxication and/or drunk which included that “a person’s speech, balance, coordination or behaviour” was affected/ impaired.¹⁰⁶ All states and territories required that this effect or impairment was caused by the consumption of alcohol. See Table 15 for a comparison of the offence of serving an intoxicated person across jurisdictions.

106 *Liquor Act 2010* (ACT), Section 104; *Liquor Act 2007* (NSW) Section 5; *Liquor Licensing Act 1997* (SA), Section 108; *Liquor Control Reform Act 1998* (VIC), Section 3AB; *Liquor Control Act 1988* (WA), Section 3A. Contra *Liquor Act 1992* (QLD), Section 4. No statutory definition and/or description was provided in the Northern Territory or Tasmania. However, in the Northern Territory, the Department of Justice did have guidelines for determining intoxication on their website. See http://www.nt.gov.au/justice/licenreg/substance_apps.shtml#liquor.

Table 15: Definition of intoxication and drunk, offences and defences

State	Offence	Definition	Offender	Defence
ACT	A person commits an offence if the person supplies liquor to another person; and the other person is intoxicated; and the supply happens at licensed/ permitted premises.	A person is intoxicated if the person's speech, balance, coordination or behaviour is noticeably affected; and it is reasonable in the circumstances to believe that the affected speech, balance, coordination or behaviour is the result of the consumption of liquor.	Licensees Permittees Employees Other persons	See The Criminal Code, chapter 2.
NSW	Licensees must not permit intoxication. Licensees, employees, other persons must not sell or supply liquor to an intoxicated person.	A person is intoxicated if the person's speech, balance, coordination or behaviour is noticeably affected, and it is reasonable in the circumstances to believe that the affected speech, balance, coordination or behaviour is the result of the consumption of liquor. A reference in this Act to "intoxication" in relation to licensed premises is a reference to the presence of intoxicated persons on the licensed premises.	Licensee Employees Other persons	If an intoxicated person is on licensed premises, the licensee is taken to have permitted intoxication on the premises unless they prove: <ul style="list-style-type: none"> the person was asked to leave the premises the person did not consume alcohol on the licensed premises the licensee contacted, or attempted to contact, a police officer for assistance in removing the person from the premises the licensee refused to serve the person any alcohol after becoming aware that the person was intoxicated the licensee had taken all other reasonable steps.
NT	A licensee or a person employed by a licensee shall not sell or supply liquor to a person unless the person to whom it is sold or supplied is not intoxicated at the time (the onus of proof of which lies with the defendant).	N/A	Licensees Employees	Contravention of offence: <ol style="list-style-type: none"> occurred in an emergency and was necessary to preserve life, prevent injury, or protect property authorised by being in obedience to the order of a competent authority whom the defendant was bound by law to obey unless the order is manifestly unlawful (the determination of which is a matter of law).

i After the cut-off date for data collection for this report of December 2010, the *Northern Territory Liquor Act* was amended by the provisions of the *Alcohol Reform (Liquor Legislation Amendment) Act 2011* (Act No. 17, 2011) and *Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011* (Act No. 19, 2011). These provisions commenced on 1 July 2011. While this table does not incorporate these recent amendments, readers are referred to the current provisions in sections 7 and 102 of the *Liquor Act* (NT) which state that: A person is drunk if: the person's speech, balance, coordination or behaviour appears to be noticeably impaired; and it is reasonable in the circumstances to believe that the impairment results from the person's consumption of liquor.

Table 15 continued: Definition of intoxication and drunk, offences and defences

State	Offence	Definition	Offender	Defence
QLD	Supply, permit or allow liquor to be supplied to; or allow liquor to be consumed by an unduly intoxicated person.	Unduly intoxicated means a state of being in which a person's mental and physical faculties are impaired because of consumption of liquor so as to diminish the person's ability to think and act in a way in which an ordinary prudent person in full possession of his or her faculties, and using reasonable care, would act under like circumstances.	Any person	For licensees: <ol style="list-style-type: none"> the offence happened without the defendant's knowledge or authority; and the defendant had exercised due diligence to avoid the commission of the offence.
SA	Liquor sold or supplied on licensed premises to an intoxicated person; or liquor sold or supplied on licensed premises to a person in circumstances in which the person's speech, balance, coordination or behaviour is noticeably impaired and it is reasonable to believe that the impairment is the result of the consumption of liquor.	N/A	Licensee Responsible person Person who supplied the liquor	Defendant believed on reasonable grounds that the person was not intoxicated and/or that the impairment of the speech, balance, coordination or behaviour of the person was not the result of the consumption of liquor. Manager/responsible person exercised proper care to prevent the sale or supply of liquor in contravention of the Section.
TAS	A person must not sell liquor to a person who appears to be drunk. A person shall not supply liquor to a person who appears to be drunk on licensed or permitted premises.	N/A	Person who sells and/or supplies the alcohol	Infringement notices were given for offences.
VIC	A licensee or permittee must not supply liquor to a person who is in a state of intoxication, or permit drunken or disorderly persons to be on the licensed premises. A person must not, on licensed premises procure liquor for a person in a state of intoxication; or aid or abet a person in a state of intoxication to obtain liquor.	For the purposes of this Act, a person is in a state of intoxication if his or her speech, balance, coordination or behaviour is noticeably affected and there are reasonable grounds for believing that this is the result of the consumption of liquor.	Licensee Permittee Any person	Defendant did not know that drunken or disorderly persons were on the premises; and had taken reasonable steps to ensure that drunken or disorderly persons were not on the premises.

Table 15 continued: Definition of intoxication and drunk, offences and defences

State	Offence	Definition	Offender	Defence
WA	Licensees and employees who permit drunkenness on premises. Persons who sell or supply liquor, or cause or permit liquor to be sold or supplied, to a drunk person; or allow or permit a drunk person to consume liquor, or obtain or attempt to obtain liquor for consumption by a drunk person; or aid a drunk person in obtaining or consuming liquor on licensed premises.	A person is drunk for the purposes of this Act if the person is on licensed premises or regulated premises; and the person's speech, balance, coordination or behaviour appears to be noticeably impaired; and it is reasonable in the circumstances to believe that the impairment results from the consumption of liquor.	Licensee Employee Any person	Persons and employees may prove that they were instructed by the licensee, an approved manager or another person in a position of authority in relation to the person charged to sell or supply the liquor to the drunk person.

4.1.4.4 Environmental Factors

Classifying premises

Several states had implemented measures designed to reduce the risks from certain premises. In New South Wales, declared premises were classified as Level 1 or Level 2 licences and subject to special licence conditions. Amongst other things, special licence conditions included providing additional security measures, being subject to lockouts, a prohibition restricting drinks from being served in glass or other breakable containers, and controlled serving practices (i.e., no shots and a limit on how many drinks may be sold to a customer at one time).¹⁰⁷

In Queensland, if a venue or part thereof was classified as high-risk, drinks were unable to be served in a glass container. Venues were declared high-risk if the Chief Executive was satisfied that one or more glassings¹⁰⁸ had occurred at the premises during the licence period, or that there had been an unacceptable level of violence at the premises.¹⁰⁹

Risk assessment plans

Several states contained provisions requiring licensees to submit risk assessment plans when applying for licences. In the Australian Capital Territory and Queensland, risk assessment plans were required for specified licences.¹¹⁰

Risk-based licensing fee structures

Classifications, breaches of licence conditions and/or provisions of liquor legislation, and the issuing of infringement notices resulted in venues paying higher fees. The introduction of risk-based licensing fee structures was a relatively new initiative in several jurisdictions. This used characteristics of licensed premises to calculate the risk of alcohol-related harm being associated with those premises. These

¹⁰⁷ *Liquor Act 2007* (NSW), Schedule 4.

¹⁰⁸ Glassing is a term which refers to when an offender hits a victim with a glass.

¹⁰⁹ *Liquor Act 1992* (QLD), Section 96 – 99C.

¹¹⁰ *Liquor Act 1992* (QLD), Sections 50-54; *Liquor Regulations 2002* (QLD), Regulation 38A.

characteristics included trading hours (with extended trading hours being more risky), venue capacity (with larger venues being more risky) and the venue's history of compliance with relevant legislation. These factors formed part of a formula to calculate the venue's licensing fees.

In addition, venues had the opportunity to reduce their licensing fees by implementing measures that would reduce the risk of alcohol-related harms, such as reducing their venue size or reducing trading hours.

4.1.5 Minors

All jurisdictions contained legislation which prohibited people under the age of 18¹¹¹ from purchasing, consuming and/or possessing alcohol on or from licensed premises. In the Northern Territory and Victoria, however, liquor could be supplied on licensed premises if the young person was in the company of their parents, guardians, or a spouse over the age of 18, and the liquor was supplied in conjunction with a meal.¹¹² Offences were created for both the young person,¹¹³ the person who sold and/or supplied the liquor,¹¹⁴ and the licensee.¹¹⁵

111 People under the age of 18 were variously described in jurisdictions. In the Australian Capital Territory and Tasmania they were called "child or young persons" and "young people" respectively. In the Northern Territory, New South Wales, Queensland, South Australia, and Victoria they were described as "minors". Western Australia referred to people under the age of 18 as "juveniles".

112 *Liquor Act* (NT), Section 106C; *Liquor Control Reform Act 1998* (VIC), Section 119.

113 *Liquor Act 2010* (ACT), Section 117; *Liquor Act 2007* (NSW), Section 118; *Liquor Act* (NT), Section 118; *Liquor Act 1992* (QLD), Section 157; *Liquor Licensing Act 1997* (SA) Sections 110 (4), 114(2) 112; *Liquor Licensing Act 1990* (TAS), Sections 73, 76 & 77; *Liquor Control Reform Act 1998* (VIC), Section 123; *Liquor Control Act 1988* (WA), Section 123.

114 *Liquor Act 2010* (ACT), Sections 116, 114; *Liquor Act 2007* (NSW), Section 117; *Liquor Act* (NT), Section 106C; *Liquor Act 1992* (QLD), Sections 155A & 156; *Liquor Licensing Act 1997* (SA), Sections 110 (1),(1a),(2),(4), 114 (2); *Liquor Licensing Act 1990* (TAS), Sections 70, 71 & 75; *Liquor Control Reform Act 1998* (VIC), Section 119; *Liquor Control Act 1988* (WA), Section 121.

115 *Liquor Act 2010* (ACT), Section 110; *Liquor Act 2007* (NSW) Section 117; *Liquor Act 1992* (QLD), Sections 155A & 156; *Liquor Licensing Act 1997* (SA), Section 110; *Liquor Licensing Act 1990* (TAS), Section 70, 71 & 75; *Liquor Control Reform Act 1998* (VIC), Section 119; *Liquor Control Act 1988* (WA), Section 121.

Defences and exclusions were also created in various jurisdictions.¹¹⁶

Further to this, several states and territories created an offence for minors to be on certain licensed premises. This could apply to:

- specific times
- designated parts of the premise
- requirement to be in company of an adult and/or eating a meal.¹¹⁷

A few jurisdictions provided that minors could also not possess and/or consume alcohol in public places.¹¹⁸ In the Northern Territory and South Australia, an offence was contained in the respective Summary Offences Act and Liquor Licensing Act 1997 prohibiting adults from supplying minors in public places.¹¹⁹

Generally the supply and consumption of alcohol by minors in a private place was not regulated. However, in recent years, a few jurisdictions had implemented legislation prohibiting:

1. The irresponsible supply of alcohol to minors, and/or
2. The supply of alcohol to minors except by a parent or guardian.¹²⁰

116 *Liquor Act 2010* (ACT), Sections 110, 111,112, 114(4) & 116(3),(4); *Liquor Act 2007* (NSW) Sections 117 & 124; *Liquor Act 1992* (QLD), Section 155; *Liquor Licensing Act 1997* (SA), Sections 110(3), (5), 114(3) 112(4); *Liquor Control Reform Act 1998* (VIC), Sections 119 & 120; *Liquor Control Act 1988* (WA), Section 125.

117 *Liquor Act 2010* (ACT), Sections 93-94; 120-123; *Liquor Act 2007* (NSW) Sections 123 & 126; *Liquor Act* (NT), Sections 106 & 106B; *Liquor Act 1992* (QLD), Sections 155, 155AA; *Liquor Licensing Act 1997* (SA), Section 112; *Liquor Licensing Act 1990* (TAS), Sections 61, 72, 84; *Liquor Control Reform Act 1998* (VIC), Section 120; *Liquor Control Act 1988* (WA), Section 121.

118 *Liquor Act 2010* (ACT), Section 206; *Summary Offences Act* (NT), Section 45K; *Liquor Licensing Act 1997* (SA), Section 117.

119 *Summary Offences Act* (NT), Section 45K; *Liquor Licensing Act 1997* (SA), Section 117.

120 Parents and guardians were defined as responsible adults in Queensland. See Section 156A. In New South Wales, responsible adults were defined as a parent, step-parent or guardian of the minor, the minor's spouse or de facto partner, or person acting as parent of the minor. See Section 4.

Some jurisdictions had these provisions within their relevant liquor legislation,¹²¹ while others had them within the police acts.¹²²

4.1.6 Liquor Restrictions

Liquor legislation often contained provisions restricting the places where alcohol could be bought, possessed, and consumed. Often restricted areas were declared by the Minister responsible for the legislation after a period of consultation with people living in the area, local police and government. Restrictions could apply to the:

- type of alcohol, if any, permitted in the area
- trading hours of liquor licences in the area
- way in which liquor was sold and supplied.

In the Northern Territory, residents were subject to the provisions contained in the *Northern Territory Emergency Response Act 2007* (Cth) in addition to the restrictions and penalties in their *Liquor Act (NT)*. This Act prescribed larger penalties for those caught in contravention of the restriction provisions.¹²³

Further to this, many Acts contained provisions prohibiting drinking in public areas. These provisions were often also contained within local government acts.¹²⁴

4.1.7 Disciplining Licensees

4.1.7.1 Lodging Complaints & Instigating Proceedings

All jurisdictions provided a method by which people could instigate disciplinary proceedings against licensees. In some states and territories, this was an unlimited right; while in others, the right was invested in designated people and bodies. For example, anyone in the Australian Capital Territory¹²⁵ and the Northern

Territory could submit complaints. Anyone could submit a complaint in the Australian Capital Territory if they believed on reasonable grounds that a basis for occupational discipline existed.¹²⁶

New South Wales, South Australia, Victoria¹²⁷ and Western Australia identified certain people and bodies in the legislation as having a right to lodge complaints. Generally, these bodies were:

- the Commissioner of Police
- an employee of the licensing authority¹²⁸
- a local government authority
- a person whose interests were adversely affected by the operation of the licence.¹²⁹

Additional to the above, in New South Wales, three or more residents of the area were also able to submit complaints to the Director-General.

In Tasmania, the Commissioner was authorised to apply for a hearing before the Liquor Board. An application could be made following an investigation of complaints received by the Commissioner and/or a report received from an “authorised officer”.¹³⁰

Disciplinary proceedings were able to be initiated for a variety of reasons. In most instances, these were statutorily provided.¹³¹

Typical reasons included:

- the licensee was not complying with conditions of licence or permit, their statutory obligations, or an order of the licensing authority

121 *Liquor Act 2007* (NSW), Section 117; *Liquor Act 1992* (QLD), Section 156A.

122 *Police Offences Act 1935* (TAS), Section 26.

123 *Northern Territory Emergency Response Act 2007* (Cth).

124 See Section 644B of the *Local Government Act 1993* (NSW). Police were also afforded powers under this Act. See Section 632A and 642.

125 *Liquor Act 2010* (ACT), Section 176.

126 *Liquor Act 2010* (ACT), Section 176.

127 Under Section 90 of the *Liquor Control Reform Act 1998*, defined persons could apply to VCAT to conduct an inquiry into the licensee or permittee.

128 For example, in Victoria, this was a licensing inspector and in Western Australia, it was the Director.

129 In South Australia, such people could only lodge a complaint in relation to noise emanating from premises. In order to lodge the complaint, the person needed to be supported by at least 10 other people or satisfy the Commissioner that the nature and gravity of the complaint should be accepted. See Section 106 (3)(b).

130 Authorised officers were appointed under Section 209 of the *Liquor Licensing Act 1990* (TAS).

131 For example, see *Liquor Control Act 1988* (WA), Section 95.

- the premises were not properly managed
- the conduct of the business was affecting the amenity of the area
- the premises were not suitable or were unsafe
- the licensee:
 - » was not fit and proper, or suitable
 - » has been convicted of an offence under the liquor legislation or another piece of legislation, or an infringement notice has been issued
- an associate of the licensee was not fit and proper, or suitable
- the behaviour of patrons was affecting the amenity of the area.

4.1.7.2 Liquor Infringement Notices

All jurisdictions had the option to issue infringement notices to licensees who failed to comply with relevant legislation. Offences varied by jurisdiction.

4.1.8 Licensed Premises

4.1.8.1 Licence categories

Most states and territories recognised that liquor sales did not occur in a homogenous environment. As such, legislation generally provided categories of licences which could be issued (see Table 16). Overall, differences in liquor categories encompassed whether liquor was sold and consumed:

1. On-premises
2. Off-premises
3. A combination of on-premise and off-premise
4. In accordance with some other activity or service, for example accommodation, a meal, a sporting club, entertainment
5. Wholesalers/producers.

There was also provision for one-off and/or special events. These were variously issued as a licence or a permit. Often the application process and considerations relevant to the grant differed from the method and considerations applicable to the issuing of a permanent

licence. Several states recognised a distinction between commercial and community events and licences, as well as large events and smaller events.

4.1.8.2 Trading Hours

Trading hours for licensed premises were legislated in all states. In the Australian Capital Territory,¹³² New South Wales,¹³³ Queensland,¹³⁴ and Victoria,¹³⁵ the legislation prescribed hours for most licensed venues regardless of the way in which liquor was sold and consumed (i.e., on-premise, off-premise, with a meal). In other regions, the authorised hours for liquor sales were dependent upon the category of licence issued. This occurred in South Australia,¹³⁶ Tasmania,¹³⁷ and Western Australia.¹³⁸

In Tasmania, however, despite the inclusion of hours within the authorisation of the licence category, all hours were the same (see Table 16).

In the Northern Territory, trading hours were not legislated for venues which sold and supplied liquor for on-premise consumption. They were, however, provided for premises which sold liquor for off-premise consumption.¹³⁹

Further to this, several states had authorised different trading hours depending upon where the licensed premise was located. For example, in Western Australia, Sunday trading was only permitted in the metropolitan area,¹⁴⁰ and several states had alcohol management plans,

¹³² Hours were contained within the regulations. See *Liquor Regulation 2010*, Schedule 1.

¹³³ *Liquor Act 2007* (NSW), Section 12.

¹³⁴ *Liquor Act 1992* (QLD), Section 9.

¹³⁵ *Liquor Control Reform Act 1998* (VIC), Section 3.

¹³⁶ *Liquor Licensing Act 1997* (SA), Sections 32-41.

¹³⁷ *Liquor Licensing Act 1990* (TAS), Sections 7-10.

¹³⁸ *Liquor Control Act 1998* (WA), Sections 97-98H.

¹³⁹ *Liquor Regulations* (NT), Regulation 4.

¹⁴⁰ *Liquor Control Act 1998* (WA), Section 98D.

or other types of restrictions in place for those living in rural and remote areas.¹⁴¹

Many states and territories provided express restrictions on when alcohol could not be provided. Generally liquor sales were restricted on public holidays, unless they were provided in conjunction with a meal.

4.1.8.3 Extended Hours

Most jurisdictions provided licensees with the option of extending their trading hours; the exception was the Northern Territory as licence hours were determined by the Liquor Commission on a case by case basis. There were generally three methods for licensees to extend the trading hours:

1. The decision-maker authorised late-night trading when the granting the initial licence application¹⁴²
2. The licensee applied for an extended trading hour authorisation to extend their hours¹⁴³
3. The licensee applied for a permit.¹⁴⁴

Queensland's liquor legislation contained both an authorisation and a permit.¹⁴⁵ Authorisations allowed licensees to sell liquor for extended

hours on a regular basis,¹⁴⁶ while an extended hours permit entitled the licensee to sell liquor on a particular day.¹⁴⁷

Three late-night trading licences were available in Victoria:

1. A late-night (general) licence
2. A late-night (on-premises) licence
3. A late-night (packaged liquor) licence.

These licence types were authorised to trade during ordinary trading hours and at other times determined by the Director.¹⁴⁸ A late-night (packaged liquor) licence was required to comply with any code of conduct determined by the applicable Minister.¹⁴⁹ All late-night licences were required not to cause or permit undue detriment to the amenity of the area to arise out of, or in connection with, the use of the premises to which the licence related. These conditions applied during and immediately after the hours of ordinary trading.¹⁵⁰

The condition that the licences/authorisations/permits not cause detriment to the area was common throughout the jurisdictions.¹⁵¹ Variances throughout the jurisdictions related to:

- the level of detriment suffered
- who suffered the detriment
- licensee obligations.

For example, in New South Wales, South Australia and Tasmania, the licensing authority was unable to approve an application unless they were satisfied that the grant would not result in an "undue" level of disturbance and/or annoyance.¹⁵² In Tasmania, the onus was on the licensee to satisfy the Commissioner that this

141 *Liquor Act* (NT), Sections 73-101S; *Liquor Act 1992* (QLD), Division 6A, Part 2; *Liquor Control Act 1998* (WA), Section 175. Western Australia's Act provided for restricted areas to be made in the Regulations. There were currently 12 Regulations for restricted areas. See *Liquor Control (Bayulu Restricted Area) Regulations 2010*; *Liquor Control (Irrungadji Restricted Area) Regulations 2010*; *Liquor Control (Jigalong Restricted Area) Regulations 2009*; *Liquor Control (Juwurlinji Restricted Area) Regulations 2009*; *Liquor Control (Koongie Park Restricted Area) Regulations 2010*; *Liquor Control (Kundat Djaru Restricted Area) Regulations 2010*; *Liquor Control (Nicholson Block Restricted Area) Regulations 2010*; *Liquor Control (Noonkanbah Restricted Area) Regulations 2009*; *Liquor Control (Oombulgurri Restricted Area) Regulations 2008*; *Liquor Control (Punmu Restricted Area) Regulations 2010*; *Liquor Control (Wangkatjungka Restricted Area) Regulations 2008*; *Liquor Control (Yakanarra Restricted Area) Regulations 2010*.

142 *Liquor Regulation 2010* (ACT), Regulations 32 & 33; *Liquor Control Reform Act 1998* (VIC), Section 11A.

143 *Liquor Act 2007* (NSW), Section 49; *Liquor Act 1992* (QLD), Section 85; *Liquor Licensing Act 1997* (SA), Section 44.

144 *Liquor Licensing Act 1990* (TAS), Section 12; *Liquor Control Act 1988* (WA), Section 60.

145 See *Liquor Act 1992* (QLD), Sections 84 and 103G.

146 *Liquor Act 1992* (QLD), Section 84.

147 *Liquor Act 1992* (QLD), Section 103G.

148 *Liquor Control Reform Act 1998* (VIC), Section 11A.

149 *Liquor Control Reform Act 1998* (VIC), Sections 11 & 11A. This code was developed and published in 2009. See <http://www.justice.vic.gov.au/wps/wcm/connect/justlib/doj+internet/home/alcohol/apply+for+a+liquor+licence/packaged+liquor+licence/justice++alcohol+++code+of+conduct+for+packaged+liquor+licences+.pdf>

150 *Liquor Control Reform Act 1998* (VIC), Section 17.

151 *Liquor Act 1992* (QLD), Section 121.

152 *Liquor Licensing Act 1997* (SA), Section 44.

would not result.¹⁵³ What constitutes “undue” disturbance and annoyance has been considered in several cases. These cases state that:

1. residents must expect a certain amount of necessary or usual noise from people either arriving at or, more likely, departing from the premises
2. whether such offence, annoyance, disturbance or inconvenience can be regarded as undue will be a matter of degree and will depend upon the circumstances, and
3. in considering what is “undue” the court is entitled to have regard to the previous use of the land and to likely alternative uses if the licence is refused.¹⁵⁴

In New South Wales, however, there was an additional requirement for the disturbances to be frequent.¹⁵⁵ Further to this, while the legislated provision only applied in South Australia to people who lived, worked, studied, and worshiped in the area, in Tasmania, it also included customers and clients of businesses.

Legislation in New South Wales, South Australia, and Tasmania reflected a concern that an extension of hours could result in harmful trading practices. As such, licensees in Tasmania were required to demonstrate they were able to exercise effective control over the sale and consumption of liquor on the premises. In South Australia, licensees were required to implement appropriate policies and practices to guard against the harmful and hazardous use of liquor. Likewise, licensees in New South Wales were required to satisfy the licensing authority that practices were in place to ensure as far as reasonably practicable that liquor would be sold and supplied responsibly and that reasonable steps would be taken to prevent intoxication. The Commissioner in Tasmania was empowered to cancel or vary

permits which failed to fulfil these obligations or comply with the permit’s conditions.¹⁵⁶

However, in other jurisdictions, the licensing authority was required to consider whether an extension of hours was in the public interest. For example, in Western Australia, the licensing authority was required to be satisfied that the grant was in the public interest by considering whether it would:

- result in harm or ill-health
- impact the amenity of the area
- cause offence, annoyance, disturbance, or inconvenience to people living or working in the area.¹⁵⁷

The onus was placed upon the applicant to establish that the grant was in the public interest.¹⁵⁸

In Queensland, applicants for extended trading hour approvals were required to submit a community impact statement to the Chief Executive. The Chief Executive was then obliged to inform the relevant local government authority and Assistant Commissioner of Police. These bodies could comment on the reasonable requirements of the public in the area or object to the grant on the grounds that the amenity, quiet, and good order of the locality would be lessened.¹⁵⁹ Applicants for extended hours permits were required to give a copy of the application to the police officer in charge of the relevant locality. The police officer could comment on or object to the application. The Chief Executive had to consider:

- matters raised by the relevant local government
- any objection or comment made by the police officer
- the impact on the amenity of the community
- for premises seeking to trade between 12 am and 5 am:

153 *Liquor Licensing Act 1990* (TAS), Sections 31, 34, and 40.

154 *Vandeleur and Others v Delbra Pty Ltd and Liquor Licensing Commissioner* (1987) 48 SASR 156 [Unreported].

155 *Liquor Act 2007* (NSW), Section 49(8)(b).

156 *Liquor Licensing Act 1990* (TAS), Sections 31, 34, and 40.

157 *Liquor Licensing Act 1990* (TAS), Sections 31, 34, and 40.

158 *Hancock v Executive Director of Public Health* [2008] WASC 224.

159 *Liquor Act 1992* (QLD), Section 117.

- » the previous conduct of the applicant in discharging any previous duties
- » the applicant's ability to control noise and behaviour of persons on and in the vicinity of the premises
- » the suitability of the premises and its facilities for the purpose for which the extension was sought.¹⁶⁰

The licensing body also had power in several jurisdictions to reduce trading hours.¹⁶¹

4.1.8.4 Lockouts

Lockout conditions had been adopted in some Australian jurisdictions as an attempt to increase community safety by reducing high levels of alcohol-related problems in specific areas. Lockouts¹⁶² require licensees to refuse entry to new patrons (and patrons who have previously left the premises) after a certain time. The primary intention of the lockout is to reduce the migration of patrons between licensed premises and afford greater control (primarily by police) over patron behaviour in the late-night drinking environment.

Lockouts had been implemented throughout jurisdictions in a variety of ways. They could be adopted voluntarily by licensees as part of a liquor accord agreement, or similar type of agreement. Lockouts could be expressly declared within the legislation as a condition of licence.¹⁶³ Or they could be applied to all licences, or licences of a particular type in specified areas (see late hour entry declarations in Victoria and New South Wales). Lockouts were also able to be imposed upon individual licensees as a condition of licence. This occurred when the licence was granted, or as a result of disciplinary action taken and non-compliance with licensing conditions.

¹⁶⁰ *Liquor Act 1992* (QLD), Section 110.

¹⁶¹ For example, see *Liquor Act 1992* (QLD).

¹⁶² In Victoria these were called late hour entry declarations. The New South Wales legislation contained provisions relating to late hour entry declarations (see Sections 87-90) and lockouts (see Schedule 4).

¹⁶³ *Liquor Act 1992* (QLD), Section 142AA. This section statutorily imposed lockouts after 3 am on all licensed premises authorised to trade between 3 am and 6 am.

Late hour entry declarations

In Victoria and New South Wales, the respective Director and Director-General were empowered to make late hour entry declarations. In Victoria, declarations could either be permanent or temporary. If a permanent declaration was made, the Director was required to notify affected licensees, and provide them with an opportunity to object and make submissions. In making their decision, the Director was required to consider any submissions received.¹⁶⁴ Licensees could apply to the Victorian Civil and Administrative Tribunal to review the Director's decision.¹⁶⁵

Temporary declarations could be made by the Director if they believed on reasonable grounds that:

1. alcohol-related violence or disorder had occurred in the applicable area, and
2. a declaration was reasonably likely to be an effective means of reducing or preventing the occurrence of alcohol-related violence or disorder in the area.

The Director did not have to notify licensees before making a temporary declaration. They did, however, have to consult the Chief Commissioner of Police. Temporary late hour entry declarations lapsed after three months.¹⁶⁶

In New South Wales, the Director-General was required to notify both licensees and the local council prior to making an order. The Director-General was required to consider any submissions received from these organisations.¹⁶⁷ Any declaration made by the Director-General could be reviewed by the Casino, Liquor, Gaming, and Racing Authority.¹⁶⁸ Further to this, lockouts were also applied in New South Wales as part of the harm reduction measures adopted in the Schedule 4 conditions for declared premises. Patrons were prevented from entering the premises after 2 am and before 5 am.

¹⁶⁴ *Liquor Control Reform Act 1998* (VIC), Sections 58B, 58C & 58D.

¹⁶⁵ *Liquor Control Reform Act 1998* (VIC), Section 87A.

¹⁶⁶ *Liquor Control Reform Act 1998* (VIC), Section 58CA.

¹⁶⁷ *Liquor Act 2007* (NSW), Section 89.

¹⁶⁸ *Liquor Act 2007* (NSW), Section 153.

Discretionary conditions on individual licences

Legislation within the Australian Capital Territory,¹⁶⁹ Northern Territory,¹⁷⁰ South Australia,¹⁷¹ and Western Australia¹⁷² provided the relevant licensing body with the discretion to impose lockouts on individual licences. In Tasmania, a lockout condition could potentially be imposed upon an out-of-hours permit as a measure taken to suppress or limit noise and disturbances, or as part of a disciplinary measure under a liquor restriction order.¹⁷³

4.1.9 Reducing Availability

In an attempt to reduce alcohol-related violence and reduce the incidence of anti-social behaviour, several states had implemented legislated restrictions on the authority of the licensing body to grant particular categories of licences and/or permits.¹⁷⁴ In some states, restrictions on granting licences were state-wide, while in others they operated in declared precincts. For example, in Queensland and Tasmania, there were express provisions precluding supermarkets being granted a liquor licence. Queensland and New South Wales had also implemented restrictions on granting new licence applications in specified circumstances.

In Queensland a moratorium period applied which restricted new applications for extended hours authorisations from being submitted or approved. This restriction only applied to venues located outside extended trading precincts. To-date, there were 10 extended trading precincts contained within the regulations. Extended trading precincts were defined as areas that had an extended trading hours approval between 12 am and 5 am prescribed under

regulation. The moratorium period currently ends in 2013.¹⁷⁵

New South Wales had legislated a “freeze period” on licence applications in designated “freeze precincts”. At the time of writing, there were three areas: CBD South Precinct, Kings Cross Precinct, and the Oxford Street, Darlinghurst Precinct.¹⁷⁶ Amongst other things, the freeze period operated to limit the authority of the licensing body to issue specified licences, vary or revoke licence conditions on specified licences,¹⁷⁷ and grant extended trading authorisations. The freeze period was set to expire in 2011. It could, however, be extended by the regulations.¹⁷⁸

4.1.10 Jurisdiction-Specific Legislation & Regulations

A brief summary of the key aspects found in each jurisdiction’s liquor legislation is presented in Table 16.¹⁷⁹

169 *Liquor Act 2010* (ACT), Section 31.

170 *Liquor Act* (NT), Section 31.

171 *Liquor Licensing Act 1997* (SA), Section 43.

172 *Liquor Control Act 1988* (WA), Section 64(3)(fa).

173 *Liquor Licensing Act 1990* (TAS), Sections 12, 43(h) and 39.

174 Even though it is not legislated, the Victoria Government imposed a “freeze” on the issuance of new licence applications for bars, pubs or nightclubs seeking to trade past 1 am in 2008. This freeze has been extended until 2011. For further information, please see the Victorian chapter in the companion report *Liquor Licensing Legislation in Australia: Police Expectations and Experiences – Jurisdictional Summaries*.

175 *Liquor Act 1992* (QLD), Sections 89-95; *Liquor Regulations 2002* (QLD), Regulation 3A.

176 *Liquor Act 2007* (NSW), Schedule 5.

177 This also applied to the Director-General.

178 *Liquor Act 2007* (NSW), Sections 47A-47J.

179 For further details on jurisdiction-specific liquor licensing legislation and regulations please refer to the companion document entitled: *Liquor Licensing in Australia: Police Expectations and Experiences – Jurisdictional Summaries*. The companion document contains a detailed chapter per jurisdiction which outlines the relevant legislation, governance structures and applicable regulations pertaining to every state and territory in Australia.

Table 16: Key features of Australian liquor licensing legislation and regulation by jurisdiction

	ACT	NSW	NT ^{iv}	QLD	SA	TAS	VIC	WA
No of licence types	8 + 2 permits	6 ⁱⁱⁱ	3 ^v	5 licences ^{xi} + 5 permits	11	5 licences + 4 permits	8 licences + 2 temporary licences + 1 permit ^{xx}	9
Fee structure	Risk-based	Set fees	Set fees	Risk-based	Set fees	Set fees ^{xviii}	Risk-based	Graduated fees
Harm minimisation objectives in Act	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Accords	No	Yes	Yes ^{vi}	Yes	Yes, voluntary	No	Yes	Yes
Infringement notices	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Barring orders	No	No	Yes	No	Yes	Yes	No	Yes
Banning notices	No	Yes	Prohibition Order Exclusion Order	Civil Banning Orders ^{xii}	No	No	Yes	Prohibition Orders
Lockouts	Yes	Yes	Yes ^{vii}	Yes	Yes ^{xiv}	No ^{xviii}	Yes	Yes
Secondary supply legislation	Yes ⁱ	Yes	Yes ^{viii}	Yes	Yes ^{xv}	Yes ^{ix}	No	No
Public drunkenness a criminal offence	No	No	No ^{ix}	Yes ^{xiii}	No	No	Yes	No
Mandatory RSA	Yes	Yes	Yes ^x	Yes	No	Yes	Yes ^{xxi}	Yes
Licence duration	Expires ⁱⁱ	Continuing	Continuing	Continuing	Not stated ^{vi}	Continuing	Renewed Annually	Continuing ^{xiii}

Table 16 continued: Key features of Australian liquor licensing legislation and regulation by jurisdiction

- i Under Section 204 of the *Liquor Act 2010* (ACT), it was an offence to supply liquor to a child or young person in a public place.
- ii Licences expired on a date determined by the Commissioner and could not be more than three years after issue. Expiry was determined with reference to its trading hour classification and/or occupancy loading. Both young people's events and permits expired on the day stated in the approval. Licensees had to apply to the Commissioner for their licence to be renewed at least 30 days before it expired.
- iii In NSW Community Impact Statements needed to be completed when applying for club, hotel, on-premises and packaged liquor licences.
- iv Since the completion of this report, the *Northern Territory Liquor Act* has been amended by the provisions of the *Alcohol Reform (Liquor Legislation Amendment) Act 2011* (Act No. 17, 2011) and *Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011* (Act No. 19, 2011). These provisions commenced on 1 July 2011. This table does not incorporate these recent amendments.
- v There were only two categories of licence contained within the legislation. However, a third category was issued to social clubs and like organisations. This was a continuing special licence.
- vi Inserted in 2010.
- vii Lockouts were not a statutory provision in the Northern Territory. However, the Northern Territory Licensing Commission had adopted a policy of imposing lockouts on licensed premises as part of its power to determine the conditions of a licence.
- viii In the Northern Territory, secondary supply offences were directed at preventing the sale, supply, and possession of liquor in restricted areas.
- ix In the Northern Territory, Section 128 of the *Police Administration Act* permitted police to hold a person who was intoxicated in a public place in protective custody until they were no longer intoxicated.
- x Even though mandatory Responsible Service of Alcohol was not a statutory provision, the Licensing Commission had adopted a policy mandating that all staff must have responsible service of alcohol training within one month of commencing employment. This was part of the licence conditions.
- xi There were five other sub-categories of licence which could be issued under the Commercial Other Licence category.
- xii Only applicable in declared Drink Safe Precincts.
- xiii Under the *Summary Offences Act 2005*, Section 10.
- xiv There were no provisions for lockouts under the South Australian *Liquor Licensing Act 1997*. However, lockouts could be imposed on individual premises under Section 43 of the Act.
- xv Under Section 117 of the South Australian *Liquor Licensing Act 1997*, it was an offence for a minor to consume or have possession of liquor in a public place, and it was an offence to supply liquor to a minor in a public place, unless the consumption or possession was in the company of an adult, guardian or spouse of a minor.
- xvi The South Australian legislation was unique in that neither the legislation nor the regulations contained any provisions regarding licence renewals and no fees were required to be paid on renewal.
- xvii Fees were paid annually.
- xviii While there were no provisions for lockouts in the *Liquor Licensing Act 1990* (TAS), lockout conditions could be imposed on an out-of-hours permit.
- xix Sale or Supply of Alcohol to Youths (*Police Offences Act 1935*).
- xx These primary licence types were required consistent with Sections 7 & 14 of the *Liquor Control Reform Act 1998*. Further sub-categories of licences were contained within Sections 10, 11A and 14.
- xxi In Victoria, following amendments to the *Liquor Control Reform Act 1998*, as from 1 January 2011, all new applicants and existing licensees and their staff were required to complete an RSA course approved by the Director of Liquor Licensing.
- xxii Licences continued in force unless they were surrendered under Section 94, or cancelled by the Licensing Authority in accordance with the provisions of the Act. A special facility licence expired when it was granted for an express period of time or when the Director determined that it was no longer necessitated. Occasional licences also expired in accordance with their terms, or on a specified date.

4.2 Alcohol-Related Data Collections

In addition to examining the relevant liquor licensing legislation and regulations in each of Australia's eight jurisdictions, consideration was also given to other mechanisms used to record and monitor incidents related to licensed premises. In this context, we examined the applicable alcohol-related data collection systems in place in each state.

There was a close association between the ability of police to gather the requisite data and their ability to optimise the powers available to them under liquor licensing legislation. An outline of the current data collection approaches appears below.

4.2.1 Investing in Data Collection

A number of policing agencies had invested in data collection and other structural changes which allowed them to gather sufficient evidence that could impact upon liquor licensing decisions. Jurisdictions had developed their data collection capability to varying degrees, but also expressed an interest in improving their effectiveness in this area.

Data was identified as critically important because it:

- allowed police to better understand spatial and temporal patterns associated with alcohol-related problems
- assisted in defining priorities and enabled the deployment of resources at times and in places where alcohol-related problems were most likely to arise
- assisted police to hold licensees to account for alcohol-related problems that occurred in, or in the vicinity of, their premises, or following consumption at their premises
- assisted police to make representations to liquor licensing authorities to change licence conditions in ways that reduced alcohol-related harm
- helped identify ways in which licensed premises and their environs could be changed (such as improved environmental design, closed circuit television, increased security, and improved transport and lighting) to reduce alcohol-related harms.

Table 17: Jurisdictional data collection systems/sources

Jurisdiction	Data Collection Systems/Sources	Summary
ACT Policing	<ul style="list-style-type: none"> Police Realtime Online Management Information System (PROMIS) 	<p>ACT Policing used a mandatory alcohol recording field on the PROMIS case management system to record and extract whether an individual involved in an incident reported to police had consumed alcohol. People in police custody charged with an alcohol-related assault were asked to indicate [voluntarily] if they had consumed alcohol prior to the offence. At time of writing, the alcohol recording field in PROMIS was being monitored by ACT Policing.</p>
New South Wales Police	<ul style="list-style-type: none"> Alcohol-Related Crime Information Exchange (ARCIE) 	<p>ARCIE contained significant information across a range of domains representing a combination of intelligence shared between the NSW Police, the NSW Bureau of Crime, Statistics & Research (BOCSAR), the Office of Liquor, Gaming and Racing (OLGR) and the Office of State Revenue (OSR). NSW Police considered the system a “complete” solution for alcohol-related crime queries.</p>
Northern Territory Police	<ul style="list-style-type: none"> NT Integrated Justice Information System (IJIS) Police Realtime Online Management Information System (PROMIS) 	<p>Data collection was related to a specific incident. The PROMIS data collection system collected information on both the offender and victim. IJIS data was offender specific. The data from both databases were used by police when lodging objections or raising concerns about liquor licensing matters with the Northern Territory Liquor Commission. This data could be accessed by outside agencies, subject to appropriate approval.</p>
Queensland Police Service	<ul style="list-style-type: none"> Queensland Police Records and Information Management Exchange (QPRIME) 	<p>The data generated in QPRIME was used by general duties police, local tactical crime squads and the Liquor Enforcement and Proactive Strategy (LEAPS) units throughout the state. It captured police occurrence data across a range of domains. The data had been used to dispel some misconceptions concerning locales and demographic groups often perceived to be problematic.</p>

Table 17 continued: Jurisdictional data collection systems/sources

Jurisdiction	Data Collection Systems/Sources	Summary
<p>South Australia Police</p>	<ul style="list-style-type: none"> • Police Information Management System (PIMS – Mainframe system) • Traffic Online (Data warehouse application) • Expiation Database • Alcohol Incident Reporting (AIR) data collection 	<p>South Australia Police collected data on alcohol-related offending from its existing data systems. These systems were accessed or analysed via a web-based application. The AIR data was used to identify problem licensed premises across the state, and to engage management at these venues to improve compliance with licensing regulations.</p>
<p>Tasmania Police</p>	<ul style="list-style-type: none"> • Non-specific 	<p>While Tasmania Police did not have a specific alcohol-related offences database, data was nevertheless collected in relation to a number of alcohol-related matters using multiple data systems. A range of information/data was routinely collected for reporting on a monthly basis. Tasmania Police was moving towards a new information technology platform and will be reviewing existing data collection systems and future needs.</p>
<p>Victoria Police</p>	<ul style="list-style-type: none"> • Law Enforcement Assistance Program (LEAP) • Alcohol & Drug Reporting Incidents for Tasking (ADRIFT) • Interpose <ul style="list-style-type: none"> » Licensed Premises Incident Report (LPIR) • Attendance Register • Traffic Incident System (TIS) • Taskforce RAZON • Divisional Licensing Units (DLU) • Computer Aided Dispatch System 	<p>A variety of data systems incorporating a diverse and comprehensive set of alcohol and non-alcohol specific data were used to monitor alcohol-related crime and disorder. There was potential for the various information sources to be rationalised as a single database. Identity scanning at licensed premises had been identified as a potential new initiative.</p>
<p>Western Australia Police</p>	<ul style="list-style-type: none"> • Incident Management System (IMS) 	<p>The IMS contained a mandatory “alcohol flag” which was recorded against a particular incident. It was examined daily to identify incidents connected to particular licensed venues. The potential existed for the collection of computer aided dispatch (CAD) data for incidents in which alcohol was a factor.</p>

While valuable now, these data are likely to become even more important to police in the future. This is because in time predictive models of the impact of patterns of alcohol sales on levels and patterns of problems will become increasingly sophisticated. The ability to use this kind of data to predict these problems will provide a stronger basis to inform decisions about the issuance of further licences or changing licence conditions.

An important aspect of any alcohol data collection is wholesale sales data. This refers to records of liquor sales made by wholesale companies to retail outlets. Liquor licensing authorities collected this data up until the late 1990s because the data formed the basis of jurisdictional liquor licensing fees. When the High Court of Australia ruled in 1997 that these fees were unconstitutional, most states and territories ceased collecting these data.¹⁸⁰

Having access to wholesale sales data is particularly important in relation to interpreting the alcohol-related outcomes (including harms) associated with alcohol sales from bottle shops. These outcomes tend to occur more distally from premises compared with harms stemming from alcohol sold for on-premise consumption. It is insufficient for police to merely know the location of bottle shops in order to assess these impacts. Knowing the location of bottle shops provides no insight about the level and nature of sales that emanate from those sites.

4.2.1.1 Centralising Liquor Law Enforcement Functions Within Policing Agencies

In the 1990s, a significant change occurred in the way policing agencies dealt with liquor licensing issues. Until that time, most jurisdictions had specialist licensing squads/units that were responsible for policing licensed premises (Doherty & Roche, 2003). In the 1990s, most squads/units were disbanded or had their functions reduced or decentralised. This stemmed in part from concern about potential for corruption and scope for undue influence

from the alcohol industry (Doherty & Roche, 2003). The responsibilities for liquor licensing matters were often decentralised to police local service areas. However, making “everyone” responsible for the complex area of liquor licensing meant in many cases that “no-one” was responsible for it.

Decentralisation also coincided with a significant liberalisation of liquor sales in Australia. As a result, policing agencies were often devoid of the necessary expertise required to counteract the proliferation of licensed premises that resulted from this liberalisation.

A number of jurisdictions had re-established centralised licensing branches or units. In re-establishing these units in police organisations, specialist police licensing staff could provide a necessary and coordinated link between operational police, managers and liquor authorities (Doherty & Roche, 2003). Risks associated with liquor licensing issues, for example corruption or undue influence, were managed (in much the same way as in other parts of policing organisations) using measures such as regular staff rotations, probity checking and close supervision.

Four of the eight police jurisdictions had recently developed a centralised licensing enforcement function, and a further two had similar models in place or planned. Most of these units did not concentrate exclusively on addressing liquor licensing issues but had a broader licensing focus:

- **New South Wales Police:** the Alcohol and Licensing Enforcement Command (ALEC) was formed in 2008. It was focused on reducing alcohol-related crime and antisocial behaviour by targeting identified hotspots and licensed premises. ALEC consisted of 30 police including six regionally based licensing coordinators who delivered a state-wide licensing service.
- **Victoria Police:** Taskforce Razon was a mobile unit established in 2008 to conduct liquor licensing duties across Victoria. While Taskforce Razon was responsible for all licensed premises, its primary targets were problematic licensed premises and geographical areas where there was clear

¹⁸⁰ For a more comprehensive explanation of the implications of this High Court decision please see the Parliament of Australia, Parliamentary Library Current Issues Brief No.1, 1996/-97 available at <http://www.aph.gov.au/library/pubs/cib/1997-98/98cib01.htm>

evidence of alcohol-related violence or anti-social behaviour. Their main focus was on ensuring that licensed premises serve alcohol in a responsible manner, and they targeted the serving of intoxicated patrons and allowing intoxicated patrons to remain on premises.

- **South Australia:** The Licensing Enforcement Branch (LEB) was established in 2005. Its objective was to monitor, investigate and prosecute matters related to gaming, the Casino, prostitution, security agents, licensed premises and premises fortification in partnership with police Local Service Areas and key external stakeholders. The central focus of the LEB was on enforcement and compliance.
- **Western Australia Police:** The Licensing Enforcement Division managed the compliance and enforcement of licensing across Western Australia. This included developing state-wide strategies to tackle alcohol consumption and illicit drug use associated with licensed premises. It was also responsible for enforcement of legislation in the areas of security agents and related activities, pawnbrokers and second-hand dealers and firearms and other weapons.

In mid-2010, **ACT Policing** was funded to establish a specialist team to work with officers from the Office of Regulatory Services¹⁸¹ to support liquor licensing reforms. A team of 10 police officers will be responsible for strengthening the enforcement of the new Liquor Act 2010 and addressing other issues associated with the sale and supply of alcohol.

In **Tasmania**, the Public Order Response Teams and Licensing Units focussed on enforcing liquor licensing issues to enable the strategic targeting of police resources to address alcohol-related public order issues. Licensing Units existed in each of the police District Commands.

¹⁸¹ Office of Regulatory Services undertook a range of activities including licensing, registration and accreditation, dispute resolution and consumer and trader assistance, compliance and enforcement/litigation, and education.

No plans were reported for **Queensland** or the **Northern Territory** to establish a centralised licensing enforcement function in the immediate future.

In all, six of the eight jurisdictions in Australia had some form of centralised and/or specialised monitoring of liquor licensing issues. Such structures were seen by police in these jurisdictions as being functional and effective.

4.2.2 Getting the Legislative Balance Right

It is important that those responsible for enforcing liquor licensing legislation have a strong voice in its amendment or development. A recent positive example of police involvement in legislative development was the creation of the new Australian Capital Territory (ACT) *Liquor Act 2010*. ACT Policing was directly involved in the initial review of the previous Act and in the subsequent drafting of the new Act and development of the implementation plan.

4.2.3 Administrative Versus Criminal Law Perspectives

Two different approaches and world views are entailed in liquor licensing issues. The legislation relevant to liquor licensing largely falls under administrative law, whereas the remit of police largely encompasses criminal law. Administrative law contains more “grey areas” than criminal law, and it focuses on problem rectification, facilitating due administrative process and procedural fairness. Criminal law, on the other hand, is focused on crime detection and punishment.

Much of Australia’s liquor licensing legislation was developed before a comprehensive understanding existed of the relationship between the number of licensed premises, outlet density, trading hours, harmful patterns of alcohol supply and levels and patterns of alcohol-related harms. Without this insight liquor licensing could quite reasonably be viewed as a largely administrative matter. There is now a much better understanding of the relationship between patterns of alcohol supply and harms.

4.2.4 Secondary Supply of Alcohol¹⁸² to Underaged Persons

Three jurisdictions (Tasmania, Queensland and New South Wales) had implemented legislative changes to control the supply of alcohol to minors on private premises. In Queensland and New South Wales this issue was dealt with in the liquor licensing legislation, whereas in Tasmania it was addressed in the *Police Offences Act 1935*. In each jurisdiction the law stated that only a parent, or an adult acting in the place of the parent, or with the formal approval of the parent, could supply alcohol to a minor.

In 2009, the Tasmanian *Police Offences Act 1935* was amended to make it an offence to supply alcohol to young people under the age of 18 years on property other than licensed premises. In 2008, similar changes were also made to the *Queensland Liquor Act 1992*. These two jurisdictions had a further offence of irresponsible supply, which occurred when alcohol was provided to a minor in an unsafe and irresponsible manner.

Section 117 of the New South Wales *Liquor Act 2007* stated that it was unlawful for a person, in any place whether or not a licensed premises, to sell or supply liquor to a person under the age of 18 years. The exception to this is the supply of alcohol to minors on non-licensed premises by their parents or guardians. The New South Wales Government implemented the “Supply Means Supply” initiative which had both a policy and enforcement focus. The initiative was an education and licensing enforcement program targeting the supply of alcohol to minors. It aimed to control the on-supply of alcohol (primarily by adults) to underage people by raising awareness and knowledge of offences and penalties relating to the supply of alcohol to minors.¹⁸³

182 Secondary supply refers to the sale or supply of alcohol to people under the age of 18 years (minors) by adults or other minors. It was illegal in all jurisdictions for licensed premises to serve minors and for adults to purchase alcohol on behalf of minors for on-premise consumption. It was also illegal for adults to purchase alcohol for secondary sale to minors. Source: Nicholas, R. (2010). *An environmental scan on alcohol and other drug issues facing law enforcement in Australia 2010*. Hobart: National Drug Law Enforcement Research Fund.

183 Source: http://www.police.nsw.gov.au/community_issues/alcohol/supply_means_supply

Under the Queensland *Police Powers and Responsibilities Act 2000*, if police identified that a minor had been served alcohol irresponsibly they had “tip out” powers which enabled them to seize and decant the alcohol. In addition, they also had the power to charge the adult who supplied the alcohol.¹⁸⁴

4.2.4.1 Police Barring/Banning Orders

Under the South Australian *Liquor Licensing Act 1997*, licensees could bar a person from their premises for up to three months for a first barring order, up to 6 months on a second barring order and indefinitely for a third barring order. Amendments to the Act meant that police officers could also bar persons from premises. Any police officer could bar a person for 72 hours from a particular premise, or multiple premises, on the authorisation of a senior police officer. In addition, a police officer of the rank of Inspector or above could approve a barring order for a period of three months from individual or multiple premises or from a particular precinct. Patrons could be barred for their own welfare, for committing behavioural or other offences, or for behaviour which was disorderly or offensive, or on other reasonable grounds.

In December 2007, the Victorian *Liquor Control Reform Act 1998* was amended to include police banning notices. Under the Act, police were able to ban a person from a designated area (including all licensed premises in that area) for a period of up to 72 hours.¹⁸⁵ The Director of Liquor Licensing could declare an area to be a designated area if he/she believed that alcohol-related violence or disorder had occurred in a public place that was in the immediate vicinity of licensed premises and if they believed that making it a designated area would reduce or prevent alcohol-related violence or disorder.¹⁸⁶

Under the Northern Territory *Liquor Act* police could also ban a person from a designated area for a period of up to 48 hours. These banning

184 Source: http://www.olgr.qld.gov.au/consumers/responsible_drinking/dont_kid_yourself/index.shtml

185 The amendment to the *Liquor Control Reform Act 1998* to increase the maximum period of banning notice from 24 hours to 72 hours commenced on 1 July 2010.

186 See Section 147 of the *Liquor Control Reform Act 1998*.

orders commenced in mid 2010 and as such the Northern Territory Police have had little opportunity to evaluate their efficacy.

4.2.4.2 *Liquor Infringement Notices*

All jurisdictions had the option to issue infringement notices to licensees who failed to comply with relevant legislation. These were generally well regarded by police as the effect was immediate and they entailed moderate effort and resources by police.

4.2.4.3 *Risk-Based Licensing Fee Structures*

A relatively recent initiative in some jurisdictions was the implementation of a risk-based licensing fee structure. Characteristics of licensed premises were used to calculate the risk of alcohol-related harm associated with a premise. Relevant characteristics included trading hours (with extended trading hours being more risky), venue capacity (with larger venues being more risky) and the venue's history of compliance with relevant legislation. These factors formed part of a formula used to calculate a venue's licensing fee.

4.2.4.4 *Lockouts*

Lockout conditions had been adopted in some Australian jurisdictions as a pragmatic attempt to increase community safety by reducing high levels of alcohol-related problems in specific areas, which usually had a high density of outlets (such as late-night licensed entertainment precincts). Lockouts required licensees to refuse entry to new patrons (and patrons who had previously left the premises) after a certain time, which was usually after midnight, but before the end of permitted trading hours. The primary intention of the lockout was to reduce the migration of patrons between licensed premises and afford greater control (primarily by police) over patron behaviour in the late-night drinking environment.

4.2.5 **Summary**

This report presented an overview of the liquor licensing legislation in each Australian state and territory, together with an examination of the associated administrative and regulatory structures to reduce alcohol-related harm.

It included an extensive literature review, and a comprehensive examination of each Australian state and territory's liquor licensing legislation and data collection systems.

A second document titled *Liquor Licensing in Australia: Police Expectations and Experiences – Jurisdictional Summaries* provides detailed summaries of the legislation and administrative arrangements in each jurisdiction. It includes the numbers of licensed premises, changes over time (where available) and an outline of police alcohol-related data collection systems.

A third document titled: *Liquor Licensing in Australia: Police Expectations and Experiences – Consultation Results* presents the results of the consultations with each individual jurisdiction. The positive strategies and legislation that assisted police with their efforts to regulate licensed premises, as well as factors that hindered effective enforcement, are outlined in that report.

Taken together these three reports are intended to provide policy makers with information upon which to base future decisions on liquor licensing-related issues.



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Appendix 1: Commonly Used Terms

ACAT	Australian Capital Territory Civil and Administrative Tribunal
ADCA	Alcohol and other Drugs Council of Australia
ADRIFT	Alcohol and Drug Reporting Incidents For Tasking (Victoria Police)
AERF	Alcohol Education and Rehabilitation Foundation
AHA	Australian Hotels Association
AIC	Australian Institute of Criminology
AIR	Alcohol Incident Reporting (South Australia Police)
ALAC	Alcohol Advisory Council of New Zealand
ALEC	Alcohol Licensing Enforcement Command (New South Wales Police)
ARCIE	Alcohol Related Crime Information Exchange (New South Wales Police)
ASSAD	Australian Secondary Students' Alcohol and Drug Survey
BAC	Blood Alcohol Concentration
BOCSAR	New South Wales Bureau of Crime Statistics and Research
CLGCA	Casino, Liquor and Gaming Control Authority (New South Wales)
DUMA	Drug Use Monitoring in Australia
IGCD	Intergovernmental Committee on Drugs
IJIS	Integrated Justice Information System (Northern Territory Police)
IMS	Incident Management System (Western Australia Police)
LEAP	Law Enforcement Assistance Program (Victoria Police)
LEAPS	Liquor Enforcement and Proactive Strategies (Queensland Police)
LEB	Licensing Enforcement Branch (South Australia Police)
LED	Licensing Enforcement Division (Western Australia Police)
MCDS	Ministerial Council on Drug Strategy
MCDS-CSFM	Ministerial Council on Drug Strategy – Cost Shared Funding Model
NCETA	National Centre for Education and Training on Addiction

NCC	National Competition Council
NCP	National Competition Policy
NDRI	National Drug Research Institute
NDSHS	National Drug Strategy Household Survey
OLGC	Office of the Liquor and Gambling Commissioner (South Australia)
OLGR (NSW)	Office of Liquor, Gaming and Racing
OLGR (Qld)	Office of Liquor and Gaming Regulation
ORS	Office of Regulatory Services (Australian Capital Territory)
PROMIS	Police Real-time Online Management Information System (ACT Policing/Northern Territory Police)
QCAT	Queensland Civil and Administrative Tribunal
QPRIME	Queensland Police Records and Information Management Exchange
RAV	Responsible Alcohol Victoria
RGL	Department of Racing, Gaming and Licensing (Western Australia)
RSA	Responsible Service of Alcohol
VCAT	Victorian Civil and Administrative Tribunal

