



**LIQUOR LICENSING LEGISLATION IN  
AUSTRALIA: PART 3**

# **POLICE EXPECTATIONS AND EXPERIENCES**

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



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*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<sup>1</sup>.

**Part 1:**

Trifonoff, A., Andrew, R., Steenson, T., Nicholas, R., and Roche, A.M. (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.M. (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: Police Expectations and Experiences*, examines the major findings from the consultations with police personnel. Part 1 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 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

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<sup>1</sup> 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 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 undertaken 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 third in the series; it presents the results of interviews with key informants. 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 this report.

The project examined 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 all jurisdictions, 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 first document in the series, *Liquor Licensing in Australia: An Overview*, describes the key elements of each jurisdiction's liquor

licensing legislation. 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 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.

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

## General Liquor Licensing Principles

All Australian states and territories contained 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 *Liquor Licensing Legislation: An Overview* (Part 1, 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:

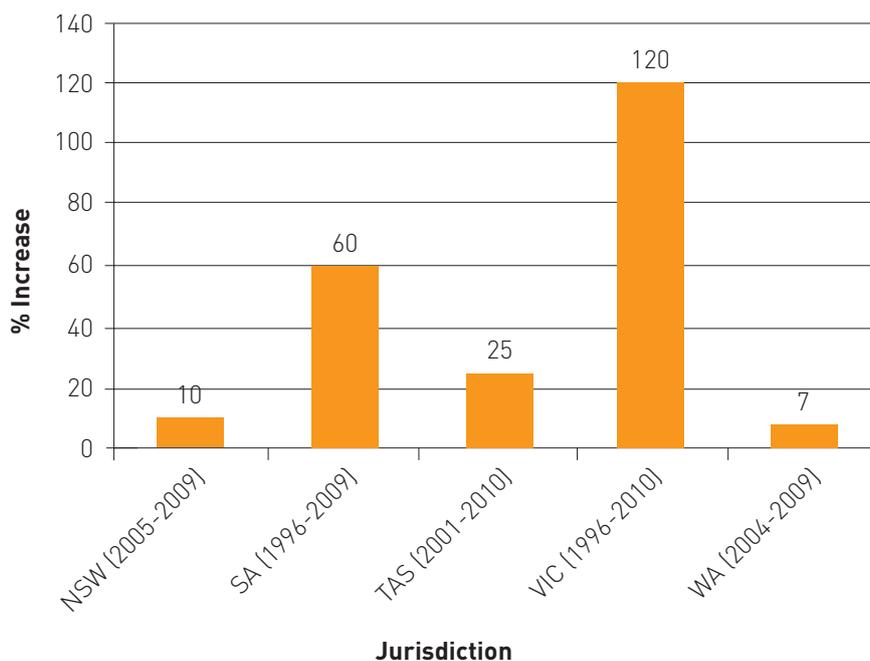
- the structures and resources available to implement and enforce it
- the decision-making and review processes
- licensee disciplinary processes, including the degree of specialist knowledge of judicial members involved in the process
- the extent to which the enforcement of legislation was a priority
- the ways in which key stakeholders perceived the objectives of the legislation
- the extent and nature of legislative powers that sat outside of liquor licensing legislation that could also be used to reduce alcohol-related harm
- the degree of influence that key stakeholders had 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 (NSW), 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 ≥ 18 years old <sup>i</sup>	Population ≥ 18 years per licensed premises
Australian Capital Territory	650 <sup>ii</sup>	279,273	430
New South Wales	15,193 <sup>iii</sup>	5,601,746	369
Northern Territory	622 <sup>iv</sup>	166,626	268
Queensland	6,770 <sup>v</sup>	3,428,226	506
South Australia	5,752 <sup>vi</sup>	1,288,256	224
Tasmania	1,433 <sup>vii</sup>	388,984	271
Victoria	18,872 <sup>viii</sup>	4,316,946	229
Western Australia	4,241 <sup>ix</sup>	1,757,448	414
<b>TOTAL</b>	<b>53,533<sup>x</sup></b>	<b>16,948,232</b>	<b>317</b>

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/ctf/ctf.nsf/fcce52186e9867674a25665500244b46/2a23cfeaac81a794ca257354001b2152?OpenDocument>. As at 10 August 2010.

viii Source: [www.justice.vic.gov.au](http://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 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 existed in liquor licensing legislation across Australia there were strong common themes across all jurisdictions
- appropriate governance arrangements are 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 played 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 tenet<sup>2</sup> 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, some police held the view that the legislation did not provide 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.

<sup>2</sup> 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 intoxication-related offences.

### 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 identified for police to be more fully engaged in liquor licensing decision-making processes, such as raising objections to new licences or changes in existing licences. Participants supported 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 warrant further attention.

17. Liquor infringement notices were regarded positively by police for their immediate impact and moderate resources requirement.
18. Police supported greater use of lockout provisions, 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 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. Participants highlighted the importance of police continuing to invest in improved alcohol-related data collection.
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. Wholesale sales data was identified as an important aspect of any alcohol data collection and was seen 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 <sup>i</sup>	QLD
<b>Legislation</b>	<i>Liquor Act 2010</i>	<i>Liquor Act 2007</i>	<i>Liquor Act Northern Territory Licensing Commission Act</i>	<i>Liquor Act 1992</i>
<b>Regulations</b>	<i>Liquor Regulation 2010</i>	<i>Liquor Regulation 2008</i>	<i>Liquor Regulations</i>	<i>Liquor Regulation 2002</i>
<b>Department</b>	Department of Justice and Community Safety	Office of Liquor, Gaming and Racing, Communities NSW	Department of Justice	Department of Employment, Economic Development and Innovation
<b>Administrative authority</b>	Office of Regulatory Services	Casino Liquor and Gaming Control Authority (CLGCA); Office of Liquor Gaming and Racing <sup>ii</sup>	Director of Licensing, Licensing, Regulation and Alcohol Strategy Division	Office of Liquor, Gaming, and Racing (OLGR)
<b>Decision-making authority</b>	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)
<b>Review decisions/ hear appeals from decisions</b>	ACT Civil and Administration Tribunal (ACAT)	Communities NSW; Casino Liquor and Gaming Control Authority (CLGCA)	Licensing Commission	Queensland Civil and Administrative Tribunal (QCAT)
<b>Breaches of conditions/ offences/ complaints</b>	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
<b>Legislation</b>	<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>
<b>Regulations</b>	<i>Liquor Licensing (General) Regulations 1997<sup>iii</sup></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<sup>iv</sup></i>
<b>Department</b>	Attorney-General's Department, Financial and Business Services Division	Department of Treasury and Finance	Department of Justice	Department of Racing, Gaming and Liquor (RGL)
<b>Administrative authority</b>	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)
<b>Decision-making authority</b>	Liquor Licensing Commissioner/Licensing Court <sup>v</sup>	Commissioner for Licensing/Licensing Board	Director of Liquor Licensing/Liquor Licensing Panel <sup>vi</sup>	Director of Liquor Licensing/The Liquor Commission
<b>Review decisions/ hear appeals from decisions</b>	Licensing Court	Licensing Board/Supreme Court of Tasmania	Victorian Civil and Administrative Tribunal (VCAT)	The Liquor Commission
<b>Breaches of conditions/ offences/ complaints</b>	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.

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

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

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

i	Under Section 204 of the <i>Liquor Act 2010</i> (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 <i>Northern Territory Liquor Act</i> has been amended by the provisions of the <i>Alcohol Reform (Liquor Legislation Amendment) Act 2011</i> (Act No. 17, 2011) and <i>Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011</i> (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 <i>Police Administration Act</i> 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 <i>Summary Offences Act 2005</i> , Section 10.
xiv	There were no provisions for lockouts under the South Australian <i>Liquor Licensing Act 1997</i> . However, lockouts could be imposed on individual premises under Section 43 of the Act.
xv	Under Section 117 of the South Australian <i>Liquor Licensing Act 1997</i> , 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 <i>Liquor Licensing Act 1990</i> (TAS), lockout conditions could be imposed on an out-of-hours permit.
xix	Sale or Supply of Alcohol to Youths ( <i>Police Offences Act 1935</i> ).
xx	These primary licence types were required consistent with Sections 7 & 14 of the <i>Liquor Control Reform Act 1998</i> . Further sub-categories of licences were contained within Sections 10, 11A and 14.
xxi	In Victoria, following amendments to the <i>Liquor Control Reform Act 1998</i> , 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 premises<sup>i</sup>

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. <sup>ii</sup>	≤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 <sup>iii</sup>	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"> <li>• within the previous 12 month period</li> <li>• in licensed premises, or in an area in the vicinity of licensed premises, located within a drink safe precinct</li> <li>• Person did not have a reasonable excuse for committing the act of violence.</li> </ul>	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"> <li>• the good order of licensed premises, and areas in the vicinity of licensed premises, located within a drink safe precinct; or</li> <li>• the safety and welfare of persons attending licensed premises, and areas in the vicinity of licensed premises, located within a drink safe precinct.</li> </ul>	≤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"> <li>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.</li> <li>2. Person commits an offence, or behaves in an offensive or disorderly manner, on, or in an area adjacent to, the licensed premises.</li> <li>3. Any other reasonable ground.</li> </ol>	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. <sup>iv</sup>	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

<sup>iv</sup> 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"> <li>cannot or will not pay</li> <li>is quarrelsome or disorderly</li> <li>seeks to obtain liquor by begging</li> <li>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</li> <li>is or appears to be a person whose presence on the licensed premises will occasion the licensee to commit an offence under this Act.</li> </ul>	Licensees. Managers. Employees. Police.	≤24 hours	Single premise

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

State	Offence	Definition	Offender	Defence
<b>ACT</b>	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.
<b>NSW</b>	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"> <li>the person was asked to leave the premises</li> <li>the person did not consume alcohol on the licensed premises</li> <li>the licensee contacted, or attempted to contact, a police officer for assistance in removing the person from the premises</li> <li>the licensee refused to serve the person any alcohol after becoming aware that the person was intoxicated</li> <li>the licensee had taken all other reasonable steps.</li> </ul>
<b>NT</b>	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"> <li>occurred in an emergency and was necessary to preserve life, prevent injury, or protect property</li> <li>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).</li> </ol>

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
<b>QLD</b>	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: 1. the offence happened without the defendant's knowledge or authority; and 2. the defendant had exercised due diligence to avoid the commission of the offence.
<b>SA</b>	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.
<b>TAS</b>	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"> <li>Police Realtime Online Management Information System (PROMIS)</li> </ul>	<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"> <li>Alcohol-Related Crime Information Exchange (ARCIE)</li> </ul>	<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 &amp; 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"> <li>NT Integrated Justice Information System (IJIS)</li> <li>Police Realtime Online Management Information System (PROMIS)</li> </ul>	<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"> <li>Queensland Police Records and Information Management Exchange (QPRIME)</li> </ul>	<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><b>South Australia Police</b></p>	<ul style="list-style-type: none"> <li>• Police Information Management System (PIMS – Mainframe system)</li> <li>• Traffic Online (Data warehouse application)</li> <li>• Expiation Database</li> <li>• Alcohol Incident Reporting (AIR) data collection</li> </ul>	<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><b>Tasmania Police</b></p>	<ul style="list-style-type: none"> <li>• Non-specific</li> </ul>	<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><b>Victoria Police</b></p>	<ul style="list-style-type: none"> <li>• Law Enforcement Assistance Program (LEAP)</li> <li>• Alcohol &amp; Drug Reporting Incidents for Tasking (ADRIFT)</li> <li>• Interpose                             <ul style="list-style-type: none"> <li>» Licensed Premises Incident Report (LPIR)</li> </ul> </li> <li>• Attendance Register</li> <li>• Traffic Incident System (TIS)</li> <li>• Taskforce RAZON</li> <li>• Divisional Licensing Units (DLU)</li> <li>• Computer Aided Dispatch System</li> </ul>	<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><b>Western Australia Police</b></p>	<ul style="list-style-type: none"> <li>• Incident Management System (IMS)</li> </ul>	<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 and Overview of Findings

This report is the third in a three-part series on liquor licensing legislation in Australia. It presents the results of interviews with key informants. Findings are presented in individual stand-alone chapters for each jurisdiction, arranged alphabetically. Each chapter contains details of the firsthand experiences of police officers involved in the enforcement of liquor licensing legislation in that jurisdiction.

Information presented in each jurisdictional chapter includes:

- participants' perspectives and understanding of their jurisdiction's liquor licensing legislation and associated administrative arrangements, including their views of the challenges for police and other key stakeholders and examples of successful strategies and proactive activities.

The major topics/issues identified during the interviews were:

- the importance of addressing alcohol-related community harms, including intoxication and problems associated with some licensed premises
- the importance of liquor licensing legislation and associated regulatory processes focusing on the principles of harm minimisation
- the significant role of partnerships in addressing alcohol-related harms

- the centrality of the police role in contributing to the prevention and resolution of alcohol-related harm
- a need for greater role clarity between police and liquor licensing authorities
- greater scope for police to be more fully engaged in liquor licensing decision-making processes
- enthusiasm for greater involvement by police in legislative and regulatory reform processes
- support for centralising liquor law enforcement functions within policing agencies
- the importance of police investing in improved alcohol-related data collection.

Consistently strong and positive views were expressed by police about the importance of addressing community harms stemming from alcohol and problems associated with licensed premises. They placed great emphasis on their roles in the prevention and resolution of these problems and their commitment to effective change where required. There was a high degree of agreement about the role that police could and should play in this regard, and willingness to be engaged in positive and constructive ways. Indeed, the strength and level of consensus around the issues of alcohol and community safety was a defining feature of the project's findings.

## The Role of Police and the Law Enforcement Perspective

Police have an important role to play in addressing the social harms associated with alcohol; a key way in which they do this is by enforcing liquor licensing legislation. This task is challenging and how police should enforce liquor licensing legislation has not always been clear.

A law enforcement perspective on liquor licensing legislation is important for three reasons. Firstly, the National Alcohol Strategy places considerable emphasis on the social harms associated with alcohol misuse<sup>3</sup>. Three of the four priority areas of the Strategy address social issues, namely:

- reducing the incidence of intoxication among drinkers
- enhancing public safety and amenity at times and in places where alcohol is served
- facilitating safer and healthier drinking cultures by developing community understanding of the special properties of alcohol and through regulation of its availability (Ministerial Council on Drug Strategy, 2006).

Secondly, a law enforcement perspective is important in light of increasing awareness of the scope for proactive policing measures to reduce the range of problems associated with alcohol misuse. These problems represent a substantial drain on police resources and any measures which can alleviate this burden are of interest to police in Australia.

The third reason why the voice of law enforcement is important is that the jurisdictional Ministers responsible for liquor licensing legislation do not hold responsibility for police agencies. Ministers responsible for liquor licensing legislation are drawn from other portfolios including Justice, Tourism and Fair Trading, Communities, and Treasury and Finance. This governance arrangement impacts on police in two ways:

- it limits opportunities for police perspectives on liquor licensing issues to be brought to the attention of the Minister responsible
- liquor licensing authorities deal with a myriad of liquor licensing-related issues and may be less focused on reducing alcohol-related harms than police.

## Major Issues and Themes Identified<sup>4</sup>

This project examined the liquor legislation in each of Australia's eight jurisdictions. It involved in-depth interviews with 60 key informants drawn from all jurisdictions, 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 has been undertaken from an enforcement perspective.

Outlined below is an overview of the major themes and issues that emerged from the key informant interviews. Despite the diverse legislative, geographical, historical and structural differences that exist in liquor licensing across Australia, some strong common themes emerged.

Police expressed strong and positive views about the importance of addressing community harms stemming from alcohol and problems associated with licensed premises. They placed great emphasis on their roles in the prevention and resolution of these problems. Unquestionably, police have become active players in the field of alcohol and community safety.

Participants agreed about the role that police could and should play in regard to alcohol and community safety and confirmed that police are willing to be engaged in positive and constructive ways. The strength and level of consensus around the issues of alcohol and community safety was a defining feature of the project's findings.

3 The National Drug Strategy 2010-2015 was released in March 2011. One of the objectives of the National Drug Strategy 2011-2015 is to control and manage the supply of alcohol, tobacco and other legal drugs with an emphasis on regulating the sale and supply of alcohol.

4 The opinions expressed in this Chapter are those of the authors and the individual participants involved in the interviews. They do not necessarily represent the views of the police services or other agencies that participated in this study.

Police identified a range of issues and strategies that could improve their effectiveness in this area. These included:

- the need for greater role clarity between police and liquor licensing enforcement bodies
- greater scope for police to be engaged in the decision-making process
- greater involvement in legislative and regulatory reform processes
- more resources, training and support for police to carry out their roles in relation to liquor licensing.

### Harm Minimisation and Liquor Licensing Legislation

Harm minimisation was identified as a central tenet<sup>5</sup> within the relevant legislation and regulatory mechanisms in each of Australia's eight jurisdictions. Police strongly supported harm minimisation principles in relation to the legislation and regulations surrounding licensed premises, and particularly in regard to public amenity and public safety issues.

While very supportive of the harm minimisation principles expressed in liquor licensing legislation, some police did not consider that legislation provided them with the requisite tools or latitude to deliver harm minimisation outcomes. Where legislation specified a harm minimisation aim, it was often couched in terms of the need to minimise harms associated with licensed premises while simultaneously seeking the furtherance of the alcohol industry. Consequently, harm minimisation principles were often depicted as an element in the legislation that countervails the interests of the alcohol industry. Reconciling these disparate elements was often challenging for police.

The scope for police to reduce alcohol-related harm in Australia is shaped by a variety of complex factors including their ability to gather evidence, a range of structural issues and

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

The severity of harms that stem from the current patterns of alcohol sales in Australia strongly suggests that this legislative imbalance should be redressed and police given the ability to further enhance their impact in this area.

### Police Roles in Reducing Alcohol-Related Harms

#### Upstream and Downstream Roles of Police

Police noted their "upstream" and "downstream" roles in alcohol-related crime and disorder problems. Police (in concert with regulatory authorities) sat upstream of problems as they were empowered to enforce measures that reduced alcohol-related social harms (such as policing activities directed at errant licensed premises). Police also sat downstream of problems in that they shouldered substantial responsibility for redressing many alcohol-related problems once they have occurred (e.g., violence, road trauma, crime and loss of public amenity).

Increasing expectations and requirements were reported by police to address both "upstream" and "downstream" problems. As one respondent indicated:

*...it is a greater problem than just us picking up and dealing with what's happened after the event.*

Police are not only required to manage alcohol-related crime, violence and anti-social behaviour, they also manage the impact of these issues on public perceptions of safety. Increased community concern and greater public support for enforcement measures means that police are increasingly expected to develop and implement appropriate responses (Nicholas, 2010).

<sup>5</sup> Whether stated explicitly within the "black letter" law of legislation or reflected in its principles.

## Role Ambiguity

Consultation participants frequently highlighted ambiguity surrounding the respective roles of police and liquor licensing authorities in enforcing liquor licensing legislation. Police noted that there would be greater understanding by all key stakeholders (including police, licensing authorities/regulatory bodies and licensees) if their roles were more clearly outlined in liquor licensing legislation.

Despite the ambiguities described above, the relationship between police and the liquor licensing authorities was identified across all jurisdictions as having improved substantially in recent years, with growing recognition of respective roles and willingness to work together. This included engaging in more open communication and joint initiatives. Police and liquor licensing authorities also found that they worked more efficiently when there was a specialist licensing enforcement branch/unit within the policing organisation. This was partly due to the specialised knowledge of the members of those branches/units and partly to the existence of a centralised contact point within police where the sole function was to deal with licensing matters.

Role delineation issues were not as evident when the liquor licensing legislation explicitly stated that the licensing authority was responsible for granting licences and police were responsible for “enforcement”. Lack of role delineation was more evident where the licensing authority undertook both compliance and enforcement roles; however, this was considered less of a problem if the liquor licensing authority was adequately resourced to undertake expanded compliance and enforcement roles and personnel were provided with appropriate training.

Respondents believed that the problems they perceived in role delineation could be exacerbated by legislative amendment. Respondents suggested that amendments to liquor licensing legislation should ideally be accompanied by:

- clear statements specifying the commitment from the key organisations responsible for enforcing the legislation

- appropriate procedures and guidelines for each key organisation
- appropriate, targeted and shared training on major aspects of the legislation that impacted on each organisation and its practical implementation
- Memoranda of Understanding between police and liquor licensing authorities to clearly outline the respective roles of the two agencies, and to formalise a process for regular meetings (at both the corporate and operational levels) and the exchange of information.

Respondents indicated that role ambiguity could be improved through more intensive liaison to enhance understanding of respective roles. Conducting joint operations was identified as another way to reduce role ambiguity and enhance the relationship between police and liquor licensing authorities. Joint operations were identified as providing police with support in dealing with problematic licensed premises. Police believed that inter-agency cooperation adds evidentiary weight to the matters being considered and increases the likelihood of a successful prosecution.

## The Importance of Partnerships

While respondents viewed alcohol-related crime and disorder as a policing issue, it was also seen as a problem for other groups and agencies in the community. It was recognised that a wide range of stakeholders contributed to the task of reducing alcohol-related harms in Australia, including the alcohol industry, local government, police and transport, and health and welfare authorities. It was therefore considered important that alcohol-related crime and other disorder problems are not predominantly defined as a policing problem that can be solved merely by more police resources or “smarter policing”. Such an approach was perceived to allow other stakeholders, including the alcohol industry, to avoid their responsibilities.

Development of partnerships was seen to be of central importance.

*I would also like to see a greater role recognised for other stakeholders. For example, local government, fire and rescue, ambulance, chamber of commerce, a whole range of other entities are incredibly influential actors when it comes to the regulation of licensed premises. And they need to be recognised and they need to have their role formalised, particularly that first object which is harm minimisation within the context of licensed premises.*

Respondents indicated that partnerships with the alcohol industry (such as liquor accords) were an important part of this process, but these relationships could not be substituted for the strong enforcement of legislation. In other words, partnerships needed to be developed with regard to liquor law enforcement.

Local government was another key stakeholder identified as critically important. Many participants saw local government as crucial to both local urban planning and the liquor licensing process. Police respondents often saw themselves as the conduit between these two processes, and well placed to ensure greater convergence between urban planning measures and liquor licensing (particularly at the application stage of the liquor licensing process).

Respondents perceived that local government could make contributions to the liquor licensing process in several ways, including:

- development approvals for licensed premises
- interventions and objections to licence applications
- event risk-management processes
- providing local government and planning documentation to licensing authorities to use in their deliberations when considering applications (Nicholas, 2010).

In some instances local government could have the same authority to intervene as police, such as in relation to dry area prohibitions. However, local government agencies were seen as sometimes being reluctant to do so because of a lack of expertise or resources. This was

identified as an area where there was scope for police to provide support to councils.

### Centralising Liquor Law Enforcement Functions Within Policing Agencies

Appropriate governance arrangements were identified as pivotal for police in order for them to be able to execute their roles with respect to licensed premises and alcohol issues in general. Jurisdictions that had a centralised unit with oversight for matters related to the policing of licensed premises and associated alcohol-related problems reported that these arrangements worked better than when there was no such centralised function.

Centralised licensing enforcement units are a relatively recent phenomenon. Police viewed centralised licensing enforcement units as having major benefits, one such being the ability to access expert advice and guidance on the complexities of the legislation and to train other personnel. These units also facilitated development of best-practice guidelines for policing licensed premises for dissemination to local policing areas. Centralised licensing enforcement units/branches could also act as repositories for data on incidents and police call-outs to licensed premises. These data could be readily accessed by the specialist branch to respond to matters in a timely and appropriate manner.

Respondents indicated that centralisation also creates an easily accessible entry point for other agencies to liaise with police and promotes a consistent and measured approach to the enforcement of liquor licensing matters across jurisdictions.

### Getting the Legislative Balance Right

Respondents acknowledged the complexities entailed in achieving a balance between the interests of the alcohol industry and minimising associated community harm. There was a perception that liquor licensing legislation in Australia was weighted towards the interests of the alcohol industry. Police indicated that this placed them in a position of being exposed to increased community pressure to respond to

unacceptable levels of alcohol-related crime and disorder while lacking the appropriate tools. Many also perceived that they often did not have the power to influence decisions that would prevent problems from occurring in the first place.

Some police described the current liquor licensing legislation in Australia as a “toothless tiger” that has not only failed to evolve to address contemporary issues but in many cases has contributed to existing problems. Respondents believed much of Australia’s liquor licensing legislation required reform if it was to enable police to better respond to alcohol-related harm.

A frustration was raised in regard to the difference in views held by police and the alcohol industry; the latter were perceived to view liquor licences as a right, not a privilege.

*Having a liquor licence is not a right, it’s a privilege. It’s a privilege that by law in this state can be withdrawn at any time. You quite often hear counsel for licensees in these proceedings talking about rights for this and rights for that, and there is no right. A licence by its very nature as a legal concept is not a right, it’s a permission that’s subject to qualifications. And I think that there could be some merit in considering inserting a provision in legislation that spells that out a little more clearly, so that when these issues are raised, decision-makers know they have the force of legislation behind that principle.*

## Perceived Influence Over New or Existing Liquor Licences

Respondents identified a particularly challenging issue for police in relation to objections to new licences. Police were aware of growing evidence about the impact of increased numbers of licensed premises, licensed premises density and extended trading hours on levels and patterns of alcohol-related harm. There was a recognition that as opportunities for purchasing alcohol increase, so do levels of problems.<sup>6</sup>

<sup>6</sup> See National Drug Research Institute, NDRI, 2007 for a summary of this evidence.

However, police indicated that it was difficult to apply this evidence to a specific proposal for a new licensed premise, expansion of an existing one or an application for extended trading hours. In many instances, police needed to prove that if a particular application was successful it would of itself increase levels of harm. Furthermore, in raising these arguments police were open to criticisms of being anti-competitive, as attempting to limit the expansion of opportunities to purchase alcohol could be seen as favouring existing licensees.

In some instances, police did not appear to fully and effectively utilise all their existing powers under the current legislation. However, if police did not believe that the use of their existing powers would be productive then they were unlikely to allocate time and resources in these areas.

Several police respondents noted examples of licences gradually changing or evolving over time. A licensed premise could, for example, obtain a restaurant licence, and then gradually expand the conditions of the licence. While each individual change in trading conditions might be relatively minor, the cumulative effect of changes was often significant, and even more impactful if nearby venues are also undergoing similar “morphing” processes.

There was a concern that existing approaches to liquor licensing in Australia fail to take into consideration the impact of incremental decisions to liberalise the supply of alcohol to the community.

## Influencing Legislative Change

The limited influence that police had over liquor licensing processes was a common theme in the consultations. In contrast, it was widely perceived by police that the alcohol industry was able to exert substantial influence over liquor licensing decisions and legislative amendments. It was maintained that this has led to a substantial power imbalance between the alcohol industry and police in this area.

This imbalance was considered to be particularly problematic in the area of

legislative change. It was maintained that if the perspectives of police and other enforcement agencies are not taken into consideration, then legislation can be developed which, *prima facie*, appears to address critical problems (such as the serving of drunken patrons on licensed premises). But in reality, aspects of the legislation may be unenforceable where practical issues of burden of proof are not fully considered prior to its enactment. Legislation which is difficult or impossible to enforce is likely to attract less enforcement effort, despite the centrality of the problem concerned.

*It has to be workable otherwise you might as well not have it.*

*There needs to be an examination of the police powers in order to make it easier for police to do their job. It seems as if a lot of the legislation was drafted without consideration being given to determine whether it is practical for police.*

In short, police respondents noted that for them to be more effective in their role in reducing alcohol-related harm through the enforcement of liquor licensing legislation, the legislation has to be workable and enforceable.

## 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. A non-policing respondent indicated:

*...police do not understand admin law ... It's a foreign being to police. It's a difficult thing in policing culture because police see themselves as the enforcers of the law, and the law that they enforce is actually the*

*criminal law, and they don't understand that there's this vast majority and body of other areas of law other than just criminal law, and realistically it's a pimple on a pumpkin ... It's a very, very small component of a much greater body of established rules. That is extremely challenging in this environment.*

## Penalties for Breaches of Liquor Licensing Legislation

A further issue raised by some police was the perceived inadequacy of penalties associated with licensees breaching liquor licensing legislation. There was a perception that, in many instances, minor monetary penalties had little impact on changing the serving practices of licensees. Some respondents suggested increasing the monetary value of the penalties as a means of increasing compliance by licensees.

## Dealing with Complementary Legislation

Respondents described dealing with a range of complementary licensing legislation (e.g. gambling legislation) as another legislative difficulty; this was potentially problematic where the role of police was defined differently in various pieces of legislation. It was suggested by interviewees that there is a need to ensure that the roles of police are consistent across all relevant legislation.

## The Impact of National Competition Policy

National Competition Policy was a further factor which many respondents indicated had tipped the balance of liquor licensing legislation in Australia<sup>7</sup> towards the interests of the alcohol industry. The National Competition Policy arrangements reflect a worldwide trend towards the liberalisation of international trade, which has been occurring since the end of the

<sup>7</sup> One exception to this is South Australia, which chose to not comply with NCP guidelines and incurred a resultant financial penalty from the National Competition Council.

Second World War. National Competition Policy represents a pressure to liberalise restrictions on the sale of alcohol by reducing anti-competitive forces in the alcohol market. Anti-competitive measures included restricting the number of licences available and restricting the issuing of new licences. National Competition Policy requirements can be counterbalanced if evidence can show that liberalisation is not in the public interest. The difficulty is that current data capture and interpretation and predictive models cannot adequately highlight areas in which liberalisation of alcohol markets is not in the public interest.

Overall, the consultations made it clear that across Australia, many police were of the view that legislation and regulatory processes were unsympathetic to reducing the current levels of harms from alcohol.

*The community is awash with alcohol. Sure, you can't buy alcohol in a supermarket. But why would you be worried when you can walk literally to the shop next door ... and buy as much alcohol as you want ... If we were to give this fact more prominence ... from the point of view of police who do an incredible amount of work in dealing with the aftermath of the alcohol of consumption within the community ... The reality is that certainly this needs to be given greater prominence, and that is an issue for liquor licensing, and that is an issue for the legislation, and that is an issue for police.*

## Changing the Focus of Liquor Licensing Legislation

Many police respondents expressed concern about the proliferation of alcohol outlets in Australia, long trading hours, and the potential for increased harm from poorly-run licensed premises or those operating outside the conditions of their licence.

Several police respondents expressed the view that commercial interests and market forces were the dominant influences shaping alcohol sales in Australia at present. It was suggested that Australia's liquor licensing arrangements were underpinned by market theory principles

– that supply and demand forces, rather than government regulation, are the major determinants of the market. Arguably, however, market theory fails to take into consideration the unique characteristics of alcohol as a product (Babor et al., 2010).

There are two implications of this perspective. The first is that market forces should be more heavily regulated so they are not the dominant factors shaping the availability and supply of alcohol. The second is that in order to effectively reduce harms associated with alcohol consumption, future liquor licensing legislation needs to take into consideration the impact of individual liquor licensing decisions and how they fit with existing conditions to contribute to problems associated with aggregate alcohol supply. In other words it is necessary to examine the range of interrelated ways that alcohol is supplied to the community and how these mesh with other causal factors to contribute to social harms. The complexity of alcohol-related harm means that liquor licensing legislation should not focus solely on licence compliance by individual licensed premises but should address the totality of alcohol supply issues.

In summary, the feedback from respondents suggested that liquor licensing legislation in Australia should, in future, focus more broadly on patterns and levels of supply at the community level, rather than having a predominant focus on individual premises.

## The Complexity, Changeability and Practical Workability of Legislation

Police consistently commented upon the complexity of liquor licensing legislation. Not only was the legislation seen as complex, so too were the associated regulations, codes of practice and other industry standards. Multiple categories of licences, transitional arrangements between subsequent iterations of legislation and complex variations on conditions of licences all contributed to make the legislation challenging for specialist police to work with and even more difficult for general duties officers.

Much Australian liquor licensing legislation has been in place for many years. In many cases,

legislation has been amended with additions and deletions made in response to emerging issues. In the view of some police respondents, this meant that the legislation had become a “patchwork quilt” of legislative intentions and at times these changes interacted to produce outcomes never intended by legislators.

The frequent legislative changes described made it difficult for both specialist licensing police and general duties officers to remain abreast of all changes. These changes also presented difficulties for licensees and for the general public.

In summary, liquor licensing legislation in Australia was largely (but not exclusively) viewed by police as being overly complex and cumbersome to enforce.

## Guidelines Recommended

Respondents raised concerns about the issue of consistency in the conditions placed on licensed venues. Inconsistencies tended to arise as licensing conditions were established on a case-by-case basis. The development of a national set of guidelines was recommended. Guidelines were considered useful to inform decisions related to matters such as standards on security, closed-circuit television (CCTV), “shots”, sizes of beverages, energy drinks and alcohol and harm minimisation generally. Licensing authorities could then use the guidelines to place conditions on premises. The guidelines would need to be continuously updated in line with new advances and research.

## Proving the Offence of Serving Drunk<sup>8</sup> Patrons

The liquor licensing legislation in all Australian jurisdictions contained provisions which made it an offence to serve alcohol to a drunken person.

A common theme among police respondents from all jurisdictions was that dealing with drunkenness, whether associated with licensed premises or not, was a major impost on policing resources.

*Realistically if we could reduce intoxication, which is the driver, we could have cops chasing robbers not drunken louts.*

At the same time, police respondents highlighted the difficulties associated with proving the offence of serving alcohol to drunken persons on licensed premises. The reasons for these difficulties varied between jurisdictions, but included issues such as:

- inadequate definitions of intoxication contained within the legislation
- the range of defences against the offence available for bar staff and licensees<sup>9</sup>
- the need to prove that a drunken person served alcohol on licensed premises was affected by alcohol and not another drug
- the challenge of proving secondary supply to drunken persons on licensed premises<sup>10</sup>
- the need for police to remain on the licensed premises for a long period of time to observe drunken patrons being served alcohol
- the fact that police observations of drunken behaviour are not considered sufficient proof of drunkenness
- having offences related to the serving of alcohol to drunk patrons heard by liquor licensing magistrates who do not have expertise in this area
- the relatively small penalties that can be associated with serving drunk patrons

8 This section uses the term “drunk” in preference to the term “intoxication”, which is more commonly used in the legislation; this is because any amount of alcohol will produce intoxicating effects on individuals. Serving a patron with minor alcohol intoxication on licensed premises was not necessarily problematic. Preventing gross intoxication or drunkenness was the aim of this part of legislation.

9 A range of defences were available to licensees and staff of licensed premises. These included that the licensee had taken reasonable steps to ensure that alcohol was not served to significantly intoxicated persons, and that the person supplying the liquor believed that the person was not intoxicated.

10 This referred to the supply of alcohol to a significantly intoxicated person by another person other than employees of the licensed premises.

- confusion between different definitions of intoxication for the purposes of liquor licensing legislation, road traffic legislation and legislation relating to public drunkenness.<sup>11</sup>

Drunkenness-related offences were seen as critically important aspects of liquor licensing legislation in Australia, as well as one of the most contentious. On the one hand, continuing to serve alcohol to drunk patrons is associated with potential for great harm. On the other hand, it may be difficult for serving staff to assess a patron's sobriety at the point of alcohol service; this is particularly the case in dark, crowded and noisy environments. Bar staff can also be intimidated by drunk patrons and may be under pressure from their employers to ensure speedy, efficient service and to maximise alcohol sales.

There is no straightforward solution to the problem of defining drunkenness for enforcement purposes. Several suggestions arose during the consultations. The first involved a spectrum of intoxication levels defined in the legislation, ranging for example, from mildly affected, through to intoxicated and drunk. The offence would then be serving alcohol to a drunk person, rather than an intoxicated person.

A further suggestion was to reverse the onus of proof such that the defendant (the licensee and/or staff) had to prove that a patron was not drunk when they were served alcohol. It was suggested that this measure has been introduced in the Northern Territory to good effect.

A further measure adopted in the Northern Territory was the use of patron breath analysis when the question of whether a person was intoxicated was at issue. A reading of a breath analysis instrument prescribed for the purposes of the Traffic Act was admissible and prima facie evidence of the blood concentration of alcohol. Use of breath analysis tests would not exclude the offence of serving patrons with low blood alcohol levels, since some individuals can exhibit

intoxicated behaviour at these levels. However, it may be difficult to compel patrons to provide a sample of breath for analysis for the purpose of obtaining evidence under liquor legislation.

A final suggestion (which has been adopted by some jurisdictions) to address drunkenness on licensed premises was the addition of an offence for licensees/staff who permit a drunken person to remain on licensed premises. This measure would place the onus on licensees/staff to become more aware of the level of intoxication of all patrons on their premises.

The difficulties experienced by police in proving the offence of serving drunken patrons suggest that this issue should receive greater legislative attention. If the intent of the legislation is to reduce the frequency with which intoxicated persons are served alcohol, then it is not facilitated by the current legislative provisions.

## Sales of Alcohol from Bottle Shops

Many police respondents raised concerns about current legislative provisions in relation to bottle shops. Bottle shops have proliferated in most jurisdictions and supply large amounts of alcohol to the take-away market. Police respondents from the Northern Territory indicated that the majority of the alcohol-related problems they faced stemmed from alcohol sales for off-premise consumption.

*One of our greatest areas of concern is the amount of take-away liquor that is consumed across the Territory, and not only that, the amount of that which is actually responsible for the public place anti-social behaviours and also the anti-social behaviour which pervades our housing commission areas.*

There were two facets to this issue. The first was that, in most jurisdictions, police were unable to obtain alcohol sales data. Lack of access to wholesale sales data makes it difficult for police to assess the impact of take-away sales on levels of crime and other problems in the surrounding areas.

The second issue reported was that as long as licensed premises operated within the confines of their licences, police were generally unable

<sup>11</sup> There is potential for similar definitions of drunkenness to be applied in the liquor licensing context and in public drunkenness, but not in the road traffic context.

to intervene in their activities. This problem highlights the need to focus liquor licensing legislation on total alcohol supply rather than individual licensed premises.

## Secondary Supply of Alcohol<sup>12</sup> to Under-Aged Persons

Respondents indicated that secondary supply of alcohol to under-aged people on licensed premises and other locations was a difficult issue to address legislatively. Sale and supply on licensed premises was dealt with by provisions under jurisdictional liquor licensing legislation which made it illegal for minors to be served alcohol and for adults to purchase alcohol on behalf of underage people on licensed premises (Nicholas, 2010). Respondents suggested that overall, the secondary supply of alcohol on licensed premises was not a major issue for police.

Several police respondents, however, were concerned about the use of false identification by underage people to gain entry into licensed premises. Interviewees noted that increased vigilance by security staff and bar staff regarding the use of false identification was an effective tool in reducing secondary supply.

The supply of alcohol to minors in situations other than licensed premises was seen as more complex. Licensed premises are environments in which the licensees and those with a role in liquor law enforcement can exert some influence over patterns of alcohol supply. This is not the case for non-licensed premises environments. Respondents reported that there had been few successful prosecutions in relation to secondary supply. It was further noted, however, that the main benefit of this legislation was that it raised the profile of secondary supply in the community.

<sup>12</sup> 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.

## Police Perceptions of Effective Legislative Tools to Reduce Alcohol-Related Harm

Respondents identified a range of strategies underpinned by legislation that are effective in reducing alcohol-related harm.

### Police Barring/Banning Orders

Most South Australian interviewees were supportive of the barring orders. They were seen to be effective in reducing the impact of recidivist offenders. Respondents expressed concern that the penalty for breaching a barring order was very low. Consequently, the main deterrent was being removed from the premises. To-date South Australia Police had undertaken more than 2000 barrings and consensus among respondents was that it had been a very good initiative.

While generally supportive of police banning notices, some Victorian police indicated that the duration of banning notices was not sufficient and should be extended to 72 hours.<sup>13</sup>

Based on the experience of South Australia and Victoria, however, banning orders appear to have considerable merit in reducing problems associated with licensed premises that stem from disruptive patrons.

### Liquor Infringement Notices

Respondents indicated that infringement notices saved significantly on legal brief preparation and court time. Some police interviewees noted the relatively low penalties that applied for infringement notices, but generally felt that they were a positive initiative.

### Risk-Based Licensing Fee Structures

This initiative was supported by police respondents because it imposed costs on venues associated with most problems. In addition, venues have the opportunity to reduce their licensing fees by implementing measures

<sup>13</sup> An amendment to the *Liquor Control Reform Act 1998* to increase the maximum period of a banning notice from 24 hour to 72 hours commenced on 1 July 2010. Respondents were interviewed prior to July 2010.

to reduce the risk of alcohol-related harms, such as reducing the venue size or reducing trading hours.

### Lockouts

Police respondents were generally supportive of lockouts and described them as reasonably effective. This support was, however, tempered by observations that the lockouts should be:

- applied in conjunction with a range of other measures
- applied consistently across a whole precinct
- rigidly enforced.

### Summary

While liquor licensing legislation and its associated administration and enforcement features are historically and structurally different in each Australian jurisdiction, the interviews with key informants yielded the following common themes and suggestions for future consideration:

- for the most part (aside from in the ACT), liquor licensing legislation was seen as outdated and in need of fundamental review and reform
- police would like a greater role in the review of and subsequent re-development of liquor licensing legislation
- 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 (and in particular, the enforcement roles) of police, liquor licensing authorities and other key stakeholders need to be clearly articulated in liquor licensing legislation
- partnerships must be developed and enhanced between police, liquor licensing authorities, the alcohol industry, local government and other stakeholders (e.g.,

transport, health and welfare agencies) to ensure that alcohol-related issues are dealt with in a holistic and consistent manner

- there exists an opportunity for police agencies to build upon recent investments in:
  - » centralising liquor law enforcement functions – six out of eight police jurisdictions have successfully developed a centralised and/or specialist function
  - » alcohol-related data collection and to use that information to have a greater impact on liquor licensing decisions
- initiatives such as police barring/banning notices and lockouts, which have been trialled and implemented in several jurisdictions, warrant further consideration.

### 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 place a high priority on addressing alcohol-related community harms associated with licensed premises.

#### *Principles of Liquor Licensing Legislation*

3. Harm minimisation was a central tenet<sup>14</sup> 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

<sup>14</sup> Whether stated explicitly within the "black letter" law of the legislation or reflected in its principles.

legislation and regulations surrounding licensed premises. In the consultations, 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, some police considered that the legislation did not provide 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.
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 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 intoxication-related offences.

#### *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. Consultation participants highlighted ambiguity surrounding the respective roles of police and liquor licensing authorities in enforcing liquor licensing legislation. Some police noted that there would be 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 identified for police to be more fully engaged in liquor licensing decision-making processes, such as raising objections to new licences or changes to existing licences. Participants supported 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 warrant further attention.
17. Liquor infringement notices were regarded positively by police for their immediate impact and moderate resources requirement.
18. Police supported greater use of lockout provisions, 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 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. Participants highlighted the importance of police continuing to invest in improved alcohol-related data collection.

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. Wholesale sales data was seen as an important aspect of any alcohol data collection and was identified as being of considerable potential benefit to police.

#### *Criminal Intelligence*

25. Participants expressed concern that licensing authorities are 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’s ability to collect data on alcohol-related crime, public disorder and amenity problems was seen as 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 be of considerable benefit to police.



## 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.

The project had three major components:

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

This document presents findings from the interviews with key informants.

### 2.2 Interviews with Key Informants

The study involved an examination of the experiences of key personnel in relation to liquor licensing legislation across Australia. Views and perspectives of key stakeholders were central to the project's objective of identifying what law enforcement personnel want from liquor licensing legislation in order to do their job effectively.

Participants' views were obtained via interviews held between April and August 2010. Most interviews were conducted via telephone rather than face-to-face. Two police participants opted to provide their responses in written form.

Police personnel were asked about their perceptions of the liquor licensing legislation within their jurisdiction, including views of their roles in relation to enforcement of the legislation and whether those roles were clearly articulated in the legislation. Liquor licensing authority personnel were asked the same questions and invited to discuss their roles.

### 2.3 Procedures

NCETA wrote to all Australian Commissioners of Police informing them of the project and seeking their permission to interview key personnel that had a role in the enforcement of liquor licensing legislation. Commissioners were invited to nominate an appropriate contact person. NCETA's letter of invitation to participate was accompanied by a letter of support from Commissioner Mal Hyde, South Australia Police (the lead agency for this project) encouraging fellow Commissioners to participate in the project.

Monthly project meetings were held with personnel from the Drug and Alcohol Policy Section within South Australia Police. South Australia Police also established a Project Advisory Group to oversee the project.

## 2.4 Ethics

Ethics approval was obtained from the Flinders University and Southern Adelaide Health Service Social and Behavioural Research Committee, the Victoria Police Research Coordinating Committee and the Victoria Police Human Research Ethics Committee and South Australia Police Research Survey Coordination Committee.

## 2.5 Sample

Nominated police liaison officers identified key people within their organisation with expertise in liquor licensing legislation as potential interviewees. They also identified key contact people from their jurisdictional liquor licensing organisations. Other non-police participants were invited to take part in the interviews on advice from the Project Advisory Group.

## 2.6 Interviews

Interviewees were men and women of a variety of ages representing all eight Australian jurisdictions, residing and working in various geographical locations and with differing levels of experience and varied backgrounds.

A semi-structured interview protocol (see Appendix 1) was developed to guide the interviews. Participants were asked about their perceptions and understanding of the liquor licensing legislation in their jurisdictions and about their experiences in applying and enforcing that legislation. Participants were encouraged to identify any other issues that impacted on their ability to work with or apply the legislation.

A similar semi-structured interview protocol was also used with non-police interviewees (see Appendix 2). This protocol focused less on the participants' specific knowledge of and experiences in applying the legislation and more on their understanding of the broad issues that impact on liquor licensing legislation and its enforcement.

## 2.7 Police Jurisdiction Alcohol-Related Data Collections

One of the major factors influencing the ability of police to reduce alcohol-related harm was the quality of data and other information available to them. The project liaison officers were asked to identify the data that their jurisdictions collected in relation to alcohol-related crime, offending and incidents, including the type of alcohol-related data collected, how they were collected and the methods used to record it (i.e., has a specific database and/or application been developed for this purpose). Jurisdictions were also asked to identify any gaps in their current data collection processes and what could be done to overcome these. A pro forma seeking this information was developed and sent to representatives of each jurisdiction (see Appendix 3). Jurisdictional responses were used to supplement information obtained during the interviews, particularly in relation to identifying tools that police used when working with liquor licensing legislation.

## 2.8 Data Analysis and Management

### Audio Files

Interviews were recorded on a digital voice recorder and these files were uploaded onto a secure location on the NCETA computer network.

### NVivo Software

NVivo qualitative data analysis software was used to assist with data management and analysis. Members of the NCETA project team either had previous experience in using this software or undertook appropriate training during the project.

### Data Analysis

Data analysis commenced with the open coding of the data sources (i.e., audio recordings of the interviews, written responses and researcher notes) by grouping together conceptually similar data into categories. A mixed approach of topic coding was undertaken using open coding and

analytic coding (i.e., by using a pre-defined coding scheme) and the meaning of each code was then noted in the researcher's memos.

## 2.9 Participants

### All Participants

This study involved 60 participants, including 53 current serving police officers. The remaining participants included unsworn police personnel (n=2); liquor licensing personnel (n=3); and key non-police stakeholders with an interest in liquor licensing legislation (n=2). Fifty-one participants were male.

Fifty-one telephone and seven face-to-face interviews were held with participants across Australia. A further two participants provided written responses to the semi-structured interview questions.

All Australian states and territories were represented and participants came from a broad range of geographical settings including metropolitan, regional and remote areas.

### Police Participants

Participants worked in a range of policing areas, including:

- specialist licensing enforcement units (including officers who had an operational focus and those who performed a policy, advice and/or prosecution function)
- drug and alcohol policy areas
- other policy/advice areas
- local police area commands including:
  - » officers who performed a specialist licensing function within that local police area
  - » general duties police.

Participants ranged from Constable to Assistant Commissioner in rank, and from three to 38 years of policing experience.





## 3 Australian Capital Territory<sup>15</sup>

This section details the responses from participants from the Australian Capital Territory (ACT) who engaged in the consultation process. Participants shared their experiences and suggestions regarding alcohol-related matters, liquor legislation and the application of this legislation in their professional duties. At the time of writing, liquor licensing legislation in this jurisdiction was under review and drafting was taking place. Interview questions asked were in relation to the *Liquor Act 1975*; however, many participants opted to respond in relation to the *Liquor Bill 2010* that was being drafted at the time. Provisions from the *Liquor Act 1975* are referred to and identified where relevant.

### 3.1 Legislation and Administrative Processes

#### 3.1.1 Perceived Intent of the Legislation

ACT police participants were of the view that there was not a sufficiently strong focus on harm minimisation in the old *Liquor Act 1975*.

*[There is] a lot of stuff in there about harm minimisation, but ... not ... well I suppose it's not all that forceful. It's a lot about what the licensees may do ... what they can do ... but not what they have to do.*

A reason offered for this lack of emphasis on harm minimisation was that at the time it was enacted, this issue had less prominence. One participant felt that the *Liquor Act 1975* did not capture new research and recommendations around harm minimisation principles. This interviewee suggested that the new Act represented the ACT coming into line with legislation in place in other jurisdictions.

In the new *Liquor Act 2010*, ACT Police lobbied for strong harm minimisation provisions in order to protect the community. One officer noted that the focus on harm minimisation in the new Act may not be looked on favourably by the alcohol industry and licensees in terms of how some changes may impact on them. However, the officer explained that the interests of the alcohol industry were not the main priority; rather, the key focus was on a reduction in harm and violence in the community.

In order for police to have an effective role in reducing harms associated with alcohol, legislative tools need to be in place. One respondent noted that there had been negative media attention surrounding police and their

<sup>15</sup> 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.

The opinions expressed in this Chapter are those of the authors and the individual participants involved in the interviews. They do not necessarily represent the views of ACT Policing or other agencies that participated in this study.

enforcement activities in relation to liquor enforcement in the past, but also noted that:

*There's only so much police can do without a strong regulatory framework around [liquor licensing] ... Without updated legislation and regulation, we were really quite tied in what we could do.*

It was maintained that the right tools and provisions set in legislation could play a substantial role in assisting police to reduce harms from alcohol and licensed premises.

*The [new] Liquor Act will give us the tools that we need to work with.*

A specific tool included in the *Liquor Bill 2010*<sup>16</sup> to facilitate effective harm minimisation was the Risk Assessment Management Plan (RAMP) process. A RAMP was required to accompany all applications for liquor licences and permits, and outlined procedures and arrangements for selling liquor (Office of Regulatory Services, 2010). There was a requirement for this plan to be approved by the Commissioner. Once approved, licensees and employees were required to adhere to requirements of the RAMP (Office of Regulatory Services, 2010).

*That RAMP process ... really focuses on harm minimisation. It's not just looking at alcohol-fuelled violence or responsible sale of alcohol. It's taking a more holistic approach and looking at the social ramifications of the night-time economy ...*

### 3.1.2 Complexity of Legislation and Importance of Training and Education

An issue identified in several jurisdictions was that the complex and in-depth nature of the legislation, among other tools<sup>17</sup> that police and licensees use, complicates the task of alcohol law enforcement. One officer listed the numerous tools currently in use, including

liquor legislation, regulations, codes of practice and other industry standards. The number of tools and their complexity meant that difficulties arose for police when it was necessary to use several tools concurrently.

Relevant training and education could assist police to effectively enforce complex legislation such as the *Liquor Act of 2010* when it came into effect. One participant explained how police had not received any formal training in relation to liquor licensing, but did receive on-the-job training. This participant maintained that:

*...whenever there are any substantial changes to the Act then there should be a more formal training process.*

This view likely reflects the large workload and consequent limited time availability of police, which mean that minor changes in legislation may not be the subject of formal training. However, for more substantial legislative amendments, and especially for a new Act, formal training and education was considered important. It was noted that the Office of Regulatory Services (ORS) Compliance Team provided some training and information sessions to ACT Policing and the City Beats Squad, in particular around the liquor legislation and their roles.

One participant noted that with the implementation of the new liquor legislation, joint training would be provided to both police and ORS staff along with staff from the Civil Administration Tribunal. It was reported that:

*Having police officers well aware of the legislation is probably one of our key core functions in the education part of our strategy ... We do have a very junior workforce, there is little if no knowledge of the Liquor Act ... Compared to other Acts, it is actually quite a powerful Act, especially in powers of entry, powers of search and seizure ...*

It was added that guidelines would be developed for police officers, together with team training days. Another respondent indicated that the roles and responsibilities of key stakeholders who had powers under the *Liquor Act of 2010* also needed to be clarified. With the

<sup>16</sup> The term Liquor Bill is used as at the time of interview that was what was referred to, not the promulgated Act.

<sup>17</sup> "Tools" in this context refer to legislative provisions and other non-legislative functions that police personnel and/or other authorities can utilise in their enforcement duties.

implementation of the *Liquor Act 2010*, training was being conducted on-the-job through participation in joint operations, including Operation Unite, where members of the new team established to police the *Liquor Act 2010* worked as part of a general patrol during operations. It was considered that this would result in a shared understanding of the new Act and police powers.

### 3.1.3 Legislative Review and Police and Other Stakeholder Input

At the time of the interviews, ACT police personnel were in the unique position of having a new Liquor Bill released as an exposure draft for consultation (ACT Government, n.d.). As a part of the consultation process, police had input into the Bill and provisions contained therein. The *Liquor Act 2010* commenced as of 1 January 2011<sup>18</sup> (ACT Government, n.d.).

Police input into the new *Liquor Act 2010* was viewed as important, as police often managed alcohol-related issues and problems related to licensed premises. Police were able to voice their concerns and raise issues specifically related to enforcement of the Act. Having police input incorporated within new legislation appeared to raise the respondents' confidence in the Act. It was suggested:

*We really did have a very receptive government in terms of what we put forward.*

It was evident that the recent review of liquor licensing legislation was long awaited and strongly supported. The consultation also bolstered police confidence in regard to making future contributions or amendments to legislation.

The influence of the alcohol industry on the new Liquor Act, was discussed. It was noted that the industry did have "...a little bit of influence..." but indicated that the message police had been conveying to government about the new Liquor Bill 2010 was the importance of public safety. This participant stated that:

*Obviously the industry has had their comments to that review, and I know that they did get a good audience with the government. They were listened to. But I think ... the focus is definitely on public safety.*

### 3.1.4 Specialist and Generalist Courts

The ACT Civil and Administrative Tribunal (ACAT) provided a forum for the determination of civil disputes, professional disciplinary matters and requests for review of administrative decisions (Australian Capital Territory Civil and Administrative Tribunal, 2008). Participants raised concerns about this administrative arrangement. One interviewee noted that it may be more beneficial for enforcement and for working relationships, to have a specialised liquor licensing board (as previously established in the ACT).

*... people (from a licensing board) are going to have a little more subject matter expertise, they're going to have a little more knowledge of the history of a licensee ... of the industry.*

Respondents perceived that different parties involved in some alcohol-related offences were dealt with by different judicial bodies, which could result in either a criminal or an administrative penalty. The offence of serving alcohol to minors was proffered as an example. Respondents highlighted the disparity between the potential criminal charges for bar staff associated with serving underage persons and the lesser administrative charge that a licensee may receive.

*...it's a little unfair that the underage person and the bar staff go before a magistrate and are subject to a criminal history, yet the person who really is ultimately responsible gets an administrative fine.*

It was suggested that it would be more appropriate and fairer to have a single specialist liquor licensing court that would manage the judicial processes for all parties in an offence.

<sup>18</sup> Note that not all provisions and amendments contained within the *Liquor Act 2010* commenced from 1 January 2011.

### 3.1.5 Administrative and Government Review Bodies

The ACAT reviewed decisions and complaints in relation to liquor licensing and was a source of frustration for some participants. Frustration stemmed from the limited success of police when they had prepared detailed briefs for the ORS, who then passed the matters on to be reviewed. Respondents perceived the process as cumbersome and often with no definitive outcome. Police were removed from direct involvement at this level, which was a further source of frustration.

Participants felt that the respective roles of police and the ORS were not clearly outlined in the *Liquor Act 1975*, with one participant describing the level of knowledge of police regarding their own roles as “functional”. Respondents generally viewed police as embodying an enforcement role and the ORS a regulatory role.

*...Most of the offences [that police have to deal with] are public order related offences just because, well largely because of resources. At the time that we're there we have to prioritise public safety above a lot of the enforcement provisions in the Liquor Act. So the regulatory stuff takes a back seat to the public order, safety and violence related issues. Most offences relate to assault and offensive behaviour.*

This contrasted with police perceptions of the enforcement efforts of the ORS. One participant noted that the ORS's enforcement focus was on more minor legislative issues rather than issues likely to contribute to alcohol-related problems. Some participants wanted to see the ORS take on more of an enforcement role, but acknowledged that the new Act would assign most enforcement responsibility to the police.

Nevertheless, participants also saw the function of the ORS as protecting public safety, acknowledging that there were complex mechanisms in the legislation that made enforcement difficult for the ORS.

*...their [the ORS's] main interest and responsibility is for protecting public safety.*

Interviewees acknowledged that the ORS needed to maintain a balance between protection of the public and the needs and interests of the alcohol industry. It was noted that the ORS's focus on liquor licensing administrative issues could also have a positive impact on public safety and working relationships between the key stakeholders.

Respondents noted the substantial powers of the Commissioner for Fair Trading under the *Liquor Act 2010*; there was concern that many of the provisions were at the Commissioner's discretion.

*...there's a lot of potential in the Bill, as long as it's used how it can be used ... as long as it's being applied when it should be applied ... We will obviously want to make sure that that's being utilised when it should be.*

### 3.2 Intoxication Provisions and Drinking in ACT

The *Liquor Act 2010* contained more comprehensive provisions in relation to supplying alcohol to intoxicated persons compared to the provisions of the *Liquor Act 1975*. Under the *Liquor Act 1975* there was no offence of providing an intoxicated person with liquor by a person other than a licensee or permit-holder. The new Liquor Act specified that liquor could not be supplied to an intoxicated person by a licensee (or permit-holder), employee or another person. This could assist police to reduce the incidence of secondary supply by friends to persons intoxicated at licensed premises. Furthermore, a provision included in the new Liquor Act enabled action to be taken against people who abused, threatened, or intimidated staff for refusing to supply alcohol on the grounds of the patron being intoxicated. The three supply offence provisions (i.e., by licensee/permit-holder, employee or another person) and the offence of harmful behaviour toward staff member are all strict liability offences.

Participants noted that new provisions in the *Liquor Act 2010* would enable more expedient handling of offences relating to intoxication.

However, as one respondent noted, the Act did not clarify the process that should apply if fines were not paid. It also did not clarify the evidence police would need to provide if the matter went to court.

### 3.2.1 The Definition of Intoxication

In the *Liquor Act 1975*, a definition of intoxication was provided within Section 138: Sale or supply of liquor to intoxicated people. Part of Section 138, stated that:

*...there are taken to be reasonable grounds for believing that a person is intoxicated if (irrespective of the actual belief of the licensee or permit-holder) there are reasonable grounds for believing that the person's speech, balance, coordination or behaviour is seriously affected by the consumption of liquor.*

In relation to the *Liquor Act 1975*, one participant highlighted how the lack of a clear definition of intoxication impacted not only police but also licensees.

*Unfortunately it is one of those Acts...which doesn't actually define a lot of the things that we are looking at. It brushes over, has a very broad approach to intoxication. Doesn't actually have a definition of intoxication, which licensees tell me is a big issue<sup>19</sup>.*

The definition provided in the new *Liquor Act* was distinctly different. Firstly, a separate definition of intoxication was provided that was distinct from the offence of "supply liquor to intoxicated person", and secondly, the burden of proof had been lowered from "seriously affected" to "noticeably affected". One participant noted that this definition was based on, and mirrors, NSW's definition of intoxication. In the ACT *Liquor Act 2010*, Section 104 stated:

For this Act, a person is intoxicated if:

- a. the person's speech, balance, coordination

or behaviour is noticeably affected; and

- b. it is reasonable in the circumstances to believe that the affected speech, balance, coordination or behaviour is the result of the consumption of liquor.

At the time of writing police had not worked with the definition of intoxication provided under the *Liquor Act 2010*, and therefore referred to their experiences with the definition under the *Liquor Act 1975*. In terms of the definition given under the *Liquor Act 1975*, one participant noted that the City Beats Squad, who have specialised knowledge of the liquor licensing area, would know the definition in the *Liquor Act 1975*, but noted that general duties officers may not possess this knowledge.

Some participants discussed the subjective nature of definitions of intoxication and the recognition that alcohol can affect people differently. There was a view that no one definition would be perfect and able to accurately define how intoxication manifested.

*As far as a definition goes, it is very hard to say that if a person stumbles if they walk, they are too intoxicated. You know, some people stumble after one beer and they're fine, they can still talk, their balance is fine, their coordination and behaviour is fine. Others ... are the exact opposite. I think that it is too hard to tie it down to if a person does A, B or C then they are too intoxicated.*

One interviewee felt that the new definition of intoxication in the *Liquor Act 2010* still did not adequately define the concept and did not make a distinction between being intoxicated and drunk. However, it was acknowledged that the new definition of intoxication provided police with a more workable base, with the shift from "seriously affected" to "noticeably affected" by alcohol. Another interviewee felt that the definition of intoxication in the 2010 Act did not impact on police to a large extent. From this perspective, assessing intoxication should not be an issue when police follow protocols outlined for them. This interviewee asserted:

*...police are almost subject matter experts in regard to assessment of sobriety.*

<sup>19</sup> In November 2010, as part of the implementation of the *Liquor Act 2010*, ORS released intoxication guidelines to assist people involved in liquor supply to determine if a person is intoxicated. These guidelines are available at <http://www.ors.act.gov.au/BIL/pdfs/Industries/2010/20101117-Final-Intoxication-Guidelines.pdf>

### 3.2.2 The Culture of Drinking in Australia: Pre-Drinking

Pre-drinking was a recurrent concern raised by police from several jurisdictions, including the ACT. Pre-drinking was not a new phenomenon, but appears to be becoming more common amongst alcohol consumers (Wells, Graham, & Purcell, 2009). Pre-drinking refers to the planned heavy consumption of alcohol before going to licensed premises (often bars or clubs). It can occur for a variety of reasons, including:

- to avoid paying for expensive drinks at licensed premises
- to become intoxicated rapidly
- facilitating social time before going to licensed premises
- to enhance group bonding and confidence in the social setting (Wells et al., 2009).

Pre-drinking was an issue raised by several participants around Australia, with two types of drinkers identified by an ACT respondent:

*... [they drink] in the car park ... and by the time that they approach the door they are not necessarily heavily intoxicated but ... there's enough alcohol in the system that a very small amount will tip them over the edge ... That category of people really go out with a preconceived notion that they're going to get drunk, they're going to play up ... and get themselves in strife.*

*...[The other type of drinker is] going to plan, they're going to have a feed, they're going to go on and have a dance, they're going to have a few drinks, and they planned, they've got enough money,[and] they planned their route home etc. ...*

It was also acknowledged that the use of social networking by young people contributed to the process of planning drinking occasions at licensed premises as well as pre-drinking. One interviewee outlined the apparent culture of drinking in the ACT.

*In Canberra ... we have a culture of people going out very late. A lot of people won't go out, or won't get to licensed premises ... until 11.30*

*pm, between 11.30 pm and 1 am is sort of the main time when all these people attend all these nightclubs which then pushes the time. They can then drink for another five hours, and they can then drink right up until 5 am.*

### 3.2.3 Apportioning Responsibility

The question of whether the licensee or the intoxicated individual was responsible for the individual's welfare was raised. This concern reflects the objective in the *Liquor Act 2010* that draws attention to both the individual drinker's and the alcohol industry's respective responsibilities.

*There seems to be ... a bit of a trend towards ... nobody being responsible for their own actions. ... obviously the licensees do need to be held accountable for the serving of intoxicated persons, and obviously for allowing them to remain in that area, but there does have to be some onus placed upon the person in question relating to their behaviour.*

In regard to licensees' responsibility for intoxicated patrons, it was suggested that:

*...[The] way they [licensees] deal with the patrons, just because of the sheer volume of the people they have in there, they find it difficult to deal with the people who are intoxicated and troublesome, and they often take a very strong approach and put a lot of people out onto the street where they end up fighting, and we have to deal with them. Which solves their problem, but causes us problems.*

There was a general view among participants that once patrons had left or been ejected from premises they were no longer seen as the licensee's responsibility. Once such patrons were in the public domain, where they may potentially cause harm, they became the responsibility of the police.

### 3.2.4 Intoxication Offences: Issues of Proof, Expiation and Prosecution

Participants welcomed the change in definition of intoxication from "seriously affected" to "noticeably affected" in the *Liquor Act 2010* as

this was viewed as more workable. Police were also satisfied with the lowered burden of proof and believed it to be more appropriate.

*That was something that we had input to, and we were happy with ... I guess we'll have to see how it works in practicality with this change. Certainly they took our advice on it, you know, saw where we were coming from with it and have changed it to what they think will be workable. I guess we won't know until we get out there, but I like to think that probably it's at a point now where it's quite workable for us.*

Participants reported frustrations with proving intoxication offences under the previous Liquor Act.

*The issue is proving that they supplied the alcohol to that person whether it was directly or indirectly ... That is usually the issue because somebody else obviously, you know, buys drinks for the drunk person so the bar is not giving drinks to the drunk person, they're giving it to their half-sober friends. That's a very hard offence to prove.*

One interviewee suggested there should be an offence in the legislation relating to allowing intoxicated persons to stay on premises, as it was often hard to prove the offence of supply to intoxicated persons unless it was witnessed at the point of sale. Another participant wanted to see public drunkenness included as a strict liability offence in liquor legislation, with people taken into custody as a result of being intoxicated (or drunk) issued with an infringement notice. The 2010 Act, however, did not contain such provisions.

### 3.3 Proactive Activities

Reactive policing, where the consequences of excessive alcohol consumption are managed by police, is unavoidable. Nonetheless, proactive policing strategies and policies can be implemented to assist in preventing alcohol-related harms. One such strategy involved considering the environment and its potential for contributing to harm. One participant mentioned his involvement in bringing crime

prevention strategies to the attention of licensing authorities in the ACT. According to this participant, the police have helped to train licensing authority staff in the principles of Crime Prevention Through Environmental Design (CPTED) (CPTED Security, 2005) in the hope that this strategy might be incorporated into the RAMP program. The four main design guidelines outlined by CPTED were:

- natural surveillance
- natural access control
- territorial reinforcement
- maintenance (CPTED Security, 2005).

#### 3.3.1 Centralising Specialist Liquor and Other Licensing Enforcement

A specialist team focusing on liquor licensing and alcohol matters was established within ACT Policing as a result of the consultation process undertaken as part of the development of the new Act. According to one participant, the initial four-year budget allocated for the specialist team allows for 10 full-time equivalent officers to strengthen enforcement of the liquor laws as well as address other issues associated with the sale and supply of alcohol. Other jurisdictions (e.g., South Australia and NSW) have found this type of specialised squad to be of value in police harm reduction efforts. Liquor licensing squads allow for development of specialised knowledge in that area and the training of other officers.

One participant anticipated a substantial difference in terms of reducing alcohol-related harms when the new specialist liquor licensing team was introduced, as it would help licensees abide by the legislation and their obligations.

*I'm happy to have as many licensed premises as we have now, as long as they are all toeing the line, as long as they are all singing off the same song sheet.*

#### 3.3.2 Barring Orders

Licensees had the ability to exclude patrons from their establishment if they were drunk, violent, quarrelsome, or using foul language (or based on other criteria) under Section 143

of the *Liquor Act 1975*. Under Section 138 of the *Liquor Act 2010*, it was an offence to fail to leave a licensed premise when directed by the licensee/permit-holder, employee of the licensee/permit-holder or crowd controller working at the premises. One participant questioned the effectiveness of this provision, asserting that many licensees and security personnel were unaware of it. Another believed that this provision was targeted more at removal of patrons and excluding people from entry than actually barring people. However, the new *Liquor Act 2010* did not include power of removal or powers to ban for police.

Participants expressed disappointment that the new Act did not include barring provisions for police. According to one officer, ACT Policing sought to have barring powers similar to those of SA Police but was unsuccessful. Several respondents would have liked this provision included in the new legislation, as difficulties with policing and enforcing barring orders remained an issue.

*Identification is a big issue ... We may well see people out behaving in a certain manner and we will go around to certain clubs as we walk around and say, "there's a gentleman he looks like this, he's wearing this, don't let him in" ... The guys working there they may see 5, 6, 7 hundred people just in the doors at any one time ... I can see why they would miss these things. So the identification of those people would be difficult and obviously the enforcement of it [too] ...*

### 3.3.3 Enhancing Relationships

Participants had mixed views about the working relationships between ACT Policing, the ORS, and licensees. The liaison that occurs between police and licensees was raised.

*It probably depends a lot on people's personalities. It's probably, sometimes it works, and other times it's pointless. So it really depends on the personalities of the licensees and how cooperative they want to be.*

Participants expressed mixed opinions about the nature and effectiveness of the relationship

between police and ORS. The relationship between ACT Policing and ORS had improved recently largely due to the consultation process involved in the development of the new liquor legislation. A recent increase in resources also contributed to this improvement. One participant described the partnership as good, with ORS taking the lead on a specific liquor licensing project mentioned and police lending support.

*...We're now a united front when talking with licensees. If we have cause to speak with the licensees ... ORS will usually invite myself or one of my portfolio members to come along to that meeting ... we're now a united front. We are not two separate entities anymore.*

A Liquor Licensing Implementation Team comprising members of the ORS and ACT Policing was being established and this was seen as a positive outcome of the review of the *Liquor Act 1975*. This team would be responsible for further clarifying the respective roles of the two organisations in relation to several new offences. The formation of a new liquor licensing squad in ACT Policing was also predicted to improve the relationship between police and the licensing authority, clarifying responsibilities and assisting joint operations.

Relationships had been strained previously when police were asked to accompany civilian ORS staff to licensed premises to conduct inspections. This was reported to create tension and result in decreased support for each other's efforts. One interviewee noted that although their working relationship with the ORS was good, they did not engage enough in joint operations. Some participants felt that this was due to the ORS's lack of resources.

### 3.3.4 Lockouts

The *Liquor Act 1975* did not include lockout conditions. However, the new *Liquor Act 2010* contained provisions for the Minister<sup>20</sup> to impose conditions which could include lockouts. Some believed that lockouts would have to be designed on a case-by-case basis, with

<sup>20</sup> The concerns raised by the different groups are summarised below.

effectiveness dependent on the location of the premises, surrounding premises, and transport. Lockouts were considered beneficial due to the high density of licensed venues in Canberra's small geographical area, and the potential to encourage initiation of drinking at an earlier time in the night. This view was predicated on lockouts being applied across the ACT.

*A lockout would be beneficial purely because a lot of our offences happen in an eight block area because there's nightclubs pretty much on every street. And they walk from one place to the next if they get thrown out of one because they're too intoxicated they just go around to another. They'll cause issues. They'll cause issues at three or four places before we may be able to get to them ... [With] a lockout ... there will be no people out on the street for them to stand around and talk to, and then they'll go home.*

Another respondent noted:

*[Lockouts are] going to stagger the displacement effect ... we're not going to have the issue where ... at 4 o'clock in the morning, 99.9% of the bars shut bar one ... the 99% of the people that just got kicked out of 99% of the clubs ... so they all go across to the last pub that's left. They know that they're not going to get in ... But it becomes an entertainment district.*

Participants also considered the consequences of the implementation of a lockout. Some thought lockouts would be hard to enforce because of smoking laws. For example, heritage-listed buildings, where beer gardens or external spaces were unable to be constructed to accommodate smokers, forced people to exit those venues to smoke. Nonetheless, there was support for a trial lockout program to examine the effect on safety and other problems faced from licensed premises.

*The more people that are on the street, the more issues it causes for us. I would like to see a lockout trialled at least to see whether it does have an effect on people's safety, people's perception of safety within the CBD*

*because we have a lot of people come up to us and say; "Look, no disrespect, but this place is out of control. How did this happen?" And it's not a matter of police not doing their job. It's a matter of having so many nightclubs, licensed premises within a small area. Everyone congregates within that area and they tend to ... cause issues as they go around.*

One participant alluded to licensees' views about lockouts and the impact they would have on the viability of such a tool being implemented and therefore doubted its acceptability. Others felt that lockouts were not necessary for the ACT and would not be beneficial to the region. Concerns were raised that there was not enough robust evidence from other jurisdictions to demonstrate the effectiveness of lockouts, and further that they may not work in a city such as Canberra where most venues were located on one block.

Only a senior police officer with a very good understanding of the *Liquor Act 2010* and an appreciation of the strategic impact on a licensed premise would have the power to enforce a lockout. Any decision to enforce a lockout would be made at a very high level.

### 3.3.5 Liquor Accords

Neither the *Liquor Act 1975* nor the *Liquor Act 2010* contained provisions for liquor accords. One participant noted that although liquor accord agreements did not exist in the ACT, they were nonetheless seen to have potential to engender goodwill and open communication between key stakeholders. This may be a non-legislated option that police could examine in the future to facilitate communication between police, other agencies and licensees.

The first liquor accord in the ACT was due to occur in May 2011.

### 3.3.6 Infringement Notices

Under the *Magistrates Court (Liquor Infringement notices) Regulation 2010*, infringement notices could be issued for various offences under the *Liquor Act 2010*. Participants agreed that there were major benefits to infringement notices and would like to see them included in the new

legislation. The main benefits of infringement notices were their immediate impact, their deterrence effect and ability to act as a catalyst for behaviour change while eliminating drawn-out court processes. Infringement notices were reported to encourage licensees and patrons to be aware of their responsibilities and obligations to try to control or prevent problems.

*[An infringement notice] discourages that type of behaviour straight away. Rather than having to go in front of the liquor board in a month's time ... If they get a fine there and then, then they are more likely to take some action and rectify the problem.*

One participant expressed admiration for the infringement notice process in New South Wales, perceiving infringement notices to have had a positive impact on harm reduction efforts, including enhancing cooperation efforts between police and licensees. It was also noted that an infringement notice system could help bring licensees who had repeatedly offended back into line.

Overall, participants looked forward to the infringement notice system in the new Act. The need for training in regard to different elements of the new Liquor Act including infringement notices was noted, particularly for those officers who did not often use the Act.

### 3.3.7 Powers of Emergency Shut Down and Powers of Entry

A new provision for emergency shutdown powers was included in the *Liquor Act 2010*. Under Section 146 of the *Liquor Act 2010*, officers from ACT Policing (of a certain rank) may order an emergency 24-hour closure of a licensed premise if they believed that a breach of the *Liquor Act 2010* had occurred, or was likely to, or if there was a serious threat to safety. Police had requested this provision be included in the *Liquor Bill 2010*.

### 3.3.8 Responsible Service of Alcohol (RSA) Initiatives

Prior to the new *Liquor Act 2010*, Responsible Service of Alcohol (RSA) courses were not mandatory for bar staff. However, under Section

101 of the *Liquor Act 2010* it was mandatory for employees of a licensed venue who serve alcohol to have completed and hold an RSA certificate, with offences for non-compliance. One participant felt that RSA provisions would be hard to enforce; however, others felt it was a necessary education program that was especially important for younger staff.

*...In principle, I am obviously behind [RSA]. Anything which gives your 18-19 year old university student who's never really lived out of home some more exposure to how we deal with this situation ... this person, who displays these types of indicators, is too intoxicated. Therefore, you cannot serve that person. Under the law, this is the penalty, this is the penalty for the licensees and all that type of thing. I think any amount of education is beneficial.*

Also included in the Act was legislation regarding approval of RSA training courses.

### 3.3.9 Security Industry

The security industry and the manner in which it operated in licensed venues was of concern to some participants. One participant noted that the guidelines and procedures for security on licensed premises were not clear enough, with the legislation that controls the security industry not specific to the liquor legislation.

*Security is not regulated tightly enough, they tend to get a little bit out of control. They tend to take things into their hands more than they should.*

Participants indicated that security personnel could play a very important part in maintaining RSA standards in venues, as they had the ability to observe the actions of patrons that bar staff may not be able to see. Under Section 102 of the new *Liquor Act 2010*, it was an offence to work as a crowd controller in a licensed premise without holding an RSA certificate. Security personnel and crowd controllers could be proactive by conducting walk-throughs of the venue and remaining vigilant for signs of intoxication or harmful behaviour. This would be helpful to bar staff who may only have contact with patrons for

short periods of time and are not well placed to gauge intoxication levels. It was suggested that this type of activity may prove to be as important as the role served by security personnel regarding entry of patrons to premises.

### 3.4 Ongoing Challenges

#### 3.4.1 Human Rights Implications

A potential conflict of interest between liquor legislation and human rights issues was noted. Respondents mentioned the implications of the ACT's *Human Rights Act 2004*, which could impact on police powers and enforcement of provisions in the liquor licensing legislation. Relevant provisions in the *Liquor Act* include:

- supply to intoxicated/underage persons
- probity checks
- police powers of entry.

#### 3.4.2 Probity Checks

Respondents viewed probity checks for licence applications under the *Liquor Act 1975* as generally failing to effectively identify people who should not be involved in licensed establishments. One participant stated:

*I suspect they (probity checks) are not adequately judging the calibre of some of the licensees which are around.*

Another challenge identified was that licensees often had little to do with the operation of a venue, and people appointed to run the venue did not require a probity check. Respondents asserted:

*Licensees themselves may not have anything to do with the business other than the money side of things. The people they put in there to manage them is what we see as being the big issue. It's quite easy for ... the licensees to have nothing to do with the business apart from ... money.*

The *Liquor Act 2010* required all influential persons to undergo a criminal history check. These changes to probity checks were supported by police in the development of

the new Act. Section 25 of the *Liquor Act 2010* referred to the application process for a liquor licence and the requirements that applicants needed to address. In applications, suitability information<sup>21</sup> needed to be provided for:

- close associates of the proposed licensee
- if the proposed licensee is a corporation – each influential person for the proposed licensee
- for the person that will have the day-to-day control of the licensed premise if this is not the licensee.

A police certificate also needed to be included for:

- the proposed licensee
- each close associate of the proposed licensee
- the person that will have the day-to-day control of the licensed premise if this is not the licensee.

Although participants believed that probity checks had improved significantly under the *Liquor Act 2010*, some felt they did not go far enough. These police wanted the power to be able to look at police intelligence in regard to licence applicants and their known associates and associations. However, not all respondents were convinced that examining associates of licence applicants would be beneficial. Concerns reported with this type of probing were the protection of police information and intelligence, the legality of information in court and privacy issues. Some participants considered the examination of associates was potentially helpful, but that the consequences of such examination may outweigh any benefits. One suggestion to improve the ACT's probity checking process was to adopt a more formal interview process (as opposed to a paper-based process) that could be conducted by the liquor authority.

#### 3.4.3 Trading Hours

Participants maintained that most problems for police and ambulance personnel in relation to

<sup>21</sup> Suitability information referred to any conviction of, or finding of guilt against, the person for an offence for one or more of Acts listed in Section 96 of the *Liquor Act 2010*.

licensed premises were a consequence of late trading. It was further argued that extended trading hours had been permitted too freely. Under the *Liquor Act 2010*, licensees had to apply for extended trading hours instead of merely notifying the liquor authority as required under the previous Act. This could provide opportunities for police and other key stakeholders to mount objections or place conditions on licensed venues before a request for extended trading was fulfilled.

The prospect of limiting trading hours to help reduce alcohol-related harms generated a mixed response. Some participants felt that reducing the trading hours of licensed venues could have a substantial impact on reducing harms.

*The longer that people have to remain on the premises and consume alcohol, obviously the more intoxicated they are going to get, and the poorer the lifestyle decisions they are going to make thereafter.*

One participant noted that a reduction in trading hours would help police carry out their duties more effectively, as closing times of 4 am or 5 am led to problems up until 6 am and 6.30 am. This created logistical issues for police as their day shift began at 7 am. Thus, problems stemming from the previous night impacted on the day shift personnel who needed to carry out other duties. It was suggested that a closing time of 2 am or 3 am would reduce these problems.

Conversely, other interviewees commented that reducing trading hours may not have the desired impact on reducing alcohol-related harms because of the culture of drinking in Australia, where people were still likely to become intoxicated and cause problems. These interviewees felt that reducing trading hours was more of a public health strategy that could reduce long-term alcohol-related harms. Others commented that reducing trading hours could be an effective tool to reduce harms, but the drinking culture that young people embraced would also need to alter so that patrons started their nights earlier in the evening. But not all were convinced it would make a substantial difference, with one participant stating:

*As far as flow-on effects, I don't think it would make a lot of difference, it would just make us quieten down a little earlier.*

Some police believed that closing licensed premises earlier may have an undesired effect and lead to quicker consumption of large amounts of alcohol before premises closed.

#### 3.4.4 Take-Away Sales

Problems resulting from take-away liquor sales were not seen as a major alcohol-related issue for police in the ACT, and did not receive attention in the recent review of the liquor licensing legislation. However, it was noted that regulating sales from liquor stores could be an effective strategy to reduce harms related to alcohol consumption. As one participant mentioned, how patrons consume alcohol in private homes and premises cannot be regulated or controlled.

Consumption of alcohol from liquor stores was noted to be creating problems for police, as it was an offence to drink alcohol in prescribed public places (Section 139 of the *Liquor Act 1975*), and alcohol-free public places (as prescribed under Section 198 of the *Liquor Act 2010*). Nevertheless, participants felt that limiting take-away liquor sales would be of no substantial benefit to reducing alcohol-related harms. Others noted that restricting liquor store sales would not have the desired impact as it would not prevent people from going to several different stores in order to get the quantity of alcohol desired.

#### 3.4.5 Outlet Density

Police were concerned about the density of licensed venues in the ACT as the geographical area containing most licensed venues was small.

*... Density is a problem, not the total number, but density is a problem because they are in a fairly small geographic area, most of them. It is a problem when people spill out in the public into the same area.*

Also:

*Because we do have such a large number of licensed premises within such a concentrated*

*area, it does tend to bring a lot of issues to the fore sooner rather than later.*

The density issue in the ACT prompted respondents to voice related concerns about the impact on community amenity through displacement of people as they moved between licensed venues, gathered in car parks and waited for taxis. One participant noted that the ORS did not restrict the number of licensed premises allowed to operate in the ACT. However, that participant also noted that new premises did not tend to open, rather existing premises evolved into new premises through a change in management or licensee.

It was highlighted that a consequence of licensed premises density, coupled with high disposable income in the ACT, was large volumes of people on the streets as well as in licensed premises.

#### 3.4.6 Special Events

Several respondents mentioned problems regarding the operation of special events. Participants had differing opinions concerning which events were most troublesome, with music, car racing and cultural events mentioned. An issue pertaining to special events was that operators who obtained a liquor permit for these events may not possess the experience or knowledge required for responsible and safe management of alcohol. One participant noted that special events licensees did not appear to have a thorough knowledge of their responsibilities compared to other licensees who work with these obligations every day. It was further suggested that licensees for special events may be more willing to pay fines, and accept other consequences, compared to licensed venue operators who depend on regular business.

Respondents noted that police who attended special events in the ACT were not sufficiently involved in planning processes, unlike in other jurisdictions. Police were informed about special events by The Counter Terrorism and Emergency Management team (a division of ACT Policing), which is responsible for liaising and consulting with licensees and organisers running events.

*We normally just get notifications more as a formality than anything else. We're not really consulted, as much as informed.*

Alternatively, one participant felt that under the *Liquor Act 1975*, inspections of events were carried out well, and noted this was one of the major benefits of having liquor permits for special events. Licences allowed for ORS regulation of events and the option for inspectors to shut down poorly managed events. A major drawback, however, was that it was difficult to prosecute event managers and organisers for problems and breaches after the conclusion of an event.

#### 3.4.7 Police Influence

Police reported they had little influence over the increase in the number of licensed premises, density, conditions, hours of operation and the total availability of alcohol. One participant noted that it was easier for someone to obtain a licence than it was for police to oppose it, with another commenting that police had no influence over the availability of alcohol.

Similarly, another interviewee felt that under the *Liquor Act 1975* community amenity issues and location of the venue were not taken into consideration when licences were issued. The relatively easy process of gaining a liquor licence was a frustration for police, although most believed that this process would tighten up with the new *Liquor Act 2010*.

During the review of the ACT's liquor legislation interviewees had had input into the new Act and provisions contained within it, and therefore had more influence over these issues. Police anticipated that they would have more say over the conditions and expansion of licensed premises when the *Liquor Act 2010* came into force. Also, under the new Act, there was greater focus on public interest, particularly in relation to new licences and their impact on planning issues such as outlet density, than in the *Liquor Act 1975*; this focus would be facilitated by use of the new RAMP process. It was noted that in the absence of the RAMP process under the *Liquor Act 1975*, police had no influence over the proliferation of licensed

venues. Respondents believed that inclusion of this process in the new Act would provide police with an increased ability to influence the availability of alcohol. As one respondent noted:

*That RAMP process is really going to give us the buy-in that we need, that we should have always had.*

In addition to the RAMP process, with the implementation of the new liquor legislation there were public consultations in regard to new licence applications, as well as opportunity for police to comment. Applicants were required to publish their intention in the newspaper and place a sign in front of the premises; the public then had the opportunity to object during the consultation period. This was seen as a very important and necessary step (according to one interviewee), as previously there was no provision for applications to be denied on the basis of outlet density or other community amenity issues. The extent to which RAMP will assist police and the community to extend their influence remained to be tested under the new Act.

#### 3.4.8 Secondary Supply to Minors

Section 204 of the *Liquor Act 2010* created an offence for supplying liquor to a child or young person in a public place. Sections 110, 111 and 112 of the *Liquor Act 2010* outlined the offences of supply of alcohol to a child or young person on licensed or permitted premises. However, no provisions existed for secondary supply offences on private property. Respondents raised the issue of the difficulties in establishing who provided alcohol to minors in cases of secondary supply on private premises, particularly at large gatherings and parties that came to the attention of police. It was noted that this issue had not been one of the main priorities of the recent review of liquor licensing legislation, though one participant noted that secondary supply needed to be examined after the implementation of the new 2010 Act.

### 3.5 Conclusion

The following key points arose from the interviews:

- participants strongly supported the recent review of the *Liquor Act 1975*, drafting of the *Liquor Act 2010*, and the input of police
- specific training for the *Liquor Act 2010* was noted as an important consideration
- some participants felt that it would be beneficial to have a specialised licensing review board
- lack of funding for the ORS was perceived to hinder the ORS's harm reduction efforts, including its ability to conduct joint operations with police
- the shift from "seriously affected" in the previous Act to "noticeably affected" in the definition for intoxication in the new Act was seen as a positive development
- participants queried the allocation of responsibility for intoxicated patrons, especially role delineation between licensees and police once patrons leave licensed premises
- the new specialist liquor licensing team established in the ACT as a result of the *Liquor Act 2010* was perceived as a positive development
- some participants were disappointed that the *Liquor Act 2010* did not include provisions for police barring orders
- participants felt they did not have sufficient influence over the total availability of alcohol, increases in number of licensed premises, or density and hours of operation. However, as police had input into the *Liquor Act 2010* and certain provisions therein, participants viewed their influence over these matters as increasing.



## 4 New South Wales<sup>22</sup>

### 4.1 Legislation and Administrative Processes

#### 4.1.1 Role of the *Liquor Act 2007*

The NSW *Liquor Act 2007* provided a framework for the issuance of liquor licences. It was also responsible for the operating and opening hours of licensed premises, the RSA guidelines and prohibiting underage access and underage drinking. Several interviewees thought that overall the Act was effective in promoting the principles of harm minimisation/public safety.

*The Act is very comprehensive and there is an appropriate balance between harm minimisation and the responsible sale and supply of alcohol. The Act also provides police with plenty of tools to minimise alcohol-related crime.*

Not all respondents shared this view. One respondent maintained that the Act was more focused on serving the interests of the alcohol industry. There was also a concern, shared by

several interviewees, that responsible service of alcohol had not been addressed adequately in the legislation.

*...most importantly, but probably not well executed is the provision of responsible service of alcohol.*

#### 4.1.2 Police Roles and Powers Under the *Liquor Act 2007*

A common theme in the interviews was that police personnel thought the *Liquor Act 2007* did not adequately support enforcement efforts by police and favoured licensees. This view largely stemmed from the onus placed on police to prove breaches under the Act.

*The current Act does not support strong enforcement. Not only do police have to identify that breaches have occurred but we have to go to extreme lengths to convince the courts that a breach has occurred. Ultimately the penalties imposed by the courts do not always reflect the severity of breaches.*

While the respective roles of police and licensing authorities were clearly outlined in the *Liquor Act 2007*, participants noted potential duplication in relation to their enforcement responsibilities. This created confusion and frustration for police, the Office of Liquor, Gaming and Racing (OLGR) and for the alcohol industry, including licensees.

22 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.

The opinions expressed in this Chapter are those of the authors and the individual participants involved in the interviews. They do not necessarily represent the views of the New South Wales Police Force or other agencies that participated in this study.

In addition to these challenges, police reported frustration with their relationships with various licensing/regulatory bodies. The nature of these relationships varied across different levels within the respective organisations.

*We have dealings with OLGR<sup>23</sup> that frustrate my licensing police, and I then share in that frustration. As police, we're very black and white people. We simply want action. And OLGR, I think, struggles to deliver any sort of service to us in that regard. I think that their heart and their focus are in the right place. I don't think that they are on the side of the liquor industry at all. But I do believe that they are constrained in what they can do.*

Respondents regarded the terminology used in the Act as difficult for police and others to fully understand. There was also a view that the Act was too convoluted in places and needed to be simplified to make it more workable.

*The Act needs to be simplified and easily understood by a range of stakeholders.*

One interviewee suggested that due to the complexity of the legislation and the manner in which legal documents were written, more education and information needed to be provided to police, licensees and patrons in relation to the relevant laws.

Frustration was expressed about the implementation of the Act. One respondent stated that even though the Act had been in place for over three years, the associated processes were still being implemented long after the Act had been promulgated.

#### **4.1.3 Administrative Arrangements Under the *Liquor Act 2007***

Prior to the *Liquor Act 2007*, NSW had a Liquor Administration Board and a Licensing Court. Several respondents indicated that, from a policing perspective, they were more comfortable in dealing with the Licensing Court and the Board than an administrative tribunal

or authority such as the Casino, Liquor and Gaming Control Authority (CLGCA).

Some participants regretted that the *Liquor Act 2007* had removed the need for specialist licensing courts and Magistrates, and that police prosecutors, who had specialist knowledge of the liquor licensing legislation, were no longer required.

*... prosecutors were specialist licensing prosecutors. Now we have local court police prosecutors who deal with these matters. It's certainly a specialist role and I don't think it can be incorporated into the broad court system; it was just a mistake to go that way.*

Liquor licensing matters were now dealt with at the local court level.

*Before we had four or five specialised licensing court magistrates who knew it absolutely back to front. Now we've gone to a local court based system where the magistrates read the legislation but may not completely understand it.*

*I would love to see a return to the licensing court. I don't think this is going to happen. That would be fantastic as you lose all the expertise and you lose the parity in sentencing. In my view it was a sad day for licensing when it disappeared, so I would love to see the reintroduction of some sort of specialist court like that.*

Some interviewees perceived that the previous Licensing Court system was able to deal with matters more expediently than the existing system. They claimed that under the existing system, a matter agreed to jointly by police and licensees could take up to six months to be dealt with through CLGCA processes. There was also a view that under the existing system it was more difficult for police to find out when applications had been lodged and their current status.

#### **4.1.4 Perceptions about Community Impact Statements**

It was necessary for a Community Impact Statement to accompany an application for some types of permanent liquor licences, as

23 OLGR: Office of Liquor, Gaming and Racing

well as some licence-related authorisations.<sup>24</sup> They allowed consideration to be given to the likely impact of a proposed licence or authorisation on the local community, and provided opportunity to gauge the level of community support for a proposal.

Several respondents saw potential in Community Impact Statements for police, the local community and other stakeholders to have their concerns considered in regard to a proposed liquor licensing application.

*It's my view that we are an entertainment precinct in a residential area, not the other way round and we need to be given the opportunity to express this view as part of the application process.*

It was further suggested that Community Impact Statements provided a potential applicant with the opportunity to examine the level of resistance to their application and to reconsider whether they wanted to proceed with it or to amend their proposal to reflect community concerns.

Community Impact Statements were also viewed as an opportunity for police and the local community to influence licensees in terms of practices that related to noise and patron behaviour.

*Our community is particularly vigilant when they see that there are new liquor licence applications because they know what that means in terms of noise and consequence. We find it that we have a great deal of interest from community members who want police involved to help them take on any inappropriate liquor licence applications.*

There was concern, however, about the processes for completing Community Impact Statements. Police reported that they were not always informed by the CLGCA when a

Community Impact Statement was being prepared, and even when they were advised, their submissions were not always given full consideration.

#### 4.1.5 Opportunity for Input

There was a perception amongst some interviewees that the alcohol industry had an influence on liquor licensing decisions and on legislative amendments disproportionate to the influence that police had on those processes.

#### 4.1.6 Legislative Amendments

It was noted that even though the *Liquor Act 2007* was relatively new legislation, several legislative amendments were enacted during 2008-09. There was a view that extensive amendments to the Act had potential to diminish the intent of the legislation and to reduce its effectiveness in addressing alcohol-related harm.

The *Hassle Free Nights* initiative was a recent legislative amendment referred to by some interviewees (see above). A key component of the *Hassle Free Nights* initiative involved mandatory membership of liquor accords for late night traders in the areas in which it was implemented. Interviewees expressed cautious support for the *Hassle Free Nights* initiative.

Respondents also referred to another scheme introduced in 2008 to regulate licensed premises with high levels of recorded assaults and other violent incidents.<sup>25</sup> It was noted that the scheme relied on police data regarding violent incidents on licensed premises. The data were compiled and reported on every six months by the NSW Bureau of Crime Statistics and Research (BOCSAR) and were used by the OLGR to monitor the activities of identified licensed premises by imposing special licence conditions on those premises.

<sup>24</sup> A primary service authorisation could apply to an on-premises liquor licence. Where a venue had a primary service authorisation, the venue could sell or supply liquor to patrons without the liquor being provided with another product or service. An application for a primary service authorisation had to be accompanied by a community impact statement.

<sup>25</sup> Under the scheme, licensed premises with high levels of assault and other violent incidents were categorised as Level 1, 2 or 3 venues depending on the number of incidents a venue had recorded between 1 July 2009 and 30 June 2010. Venues categorised as Level 1 or 2 had additional licence conditions imposed on them by a regulation that amended Schedule 4 of the *Liquor Act 2007*.

Respondents were cautiously supportive of the scheme as it enabled problematic licensed premises to be readily identified. There were reservations, however, about the effectiveness of imposing special licence conditions on identified premises.

*And I must say that, in my opinion ... I do not believe that those provisions are effective. And I know that people, including politicians will point to statistical changes for individual licensed premises. But in my experience where there is a proliferation of licensed premises it's no good taking one or two out of the mix. It has to be done on a precinct-wide basis and there must be a precinct-wide implication for these licensed premises conditions to be effective.*

*One of the big issues is that the premises don't improve. We're getting these assault numbers out from those violent venues. If you ask any of those venues about how many assaults they may actually have, they may have 10 or 12 which are recorded but there might be 30 or more in the same period that are not reported. The problem with the legislation is it says that they must record anything that happens after midnight but it doesn't say that they have to report it.*

*The venues which have been named and shamed in the media are only the tip of the iceberg.*

In spite of support for some of these innovations to the legislation, some respondents suggested that alcohol-related problems needed to be dealt with in a more holistic manner rather than by piecemeal legislative amendments.

#### 4.1.7 Existing Legislative Responses to Intoxication

Intoxication was cited by many interviewees as the main driver for alcohol-related violence. As police are at the forefront of responding to violence, intoxication was a central issue for them.

*Realistically if we could reduce intoxication, which is the driver, we could have cops chasing robbers not pissed idiots.*

Some respondents expressed concern about the definition of intoxication in the *Liquor Act 2007*. They noted that because of their training and the nature of their work, police should be able to determine if a person was intoxicated without having to rely on a legislative definition. This was considered to be the case regardless of how well intoxication was defined.

It was suggested that while it was good to have a workable definition of intoxication, the way in which the judicial system interpreted the definition was a key issue for police. It was also noted that when a matter involving intoxication was heard in the courts insufficient emphasis was placed on patron responsibility. Respondents suggested that patrons should be required by legislation and the courts to take greater personal responsibility for avoiding intoxication.

*The most important thing is to get some onus on the patron.*

*I think one of the things with the intoxication is ... that there is no onus on that person for being intoxicated other than fail to quit, and certainly I think that we have got to look at the personal responsibility of people. The licensee has got a role to play, and his staff have got a role to play, but I think the person themselves should also be held accountable.*

*I don't think that we should take away the offence of permitting intoxication, but I think that we should also create an offence of being intoxicated so that the patron is committing an offence as well.*

The Intoxication Guidelines developed in 2008 by the OLGR were referred to by several interviewees. It was noted that the Guidelines were used to remind licensees and their staff that:

- they must not allow their patrons to become intoxicated
- intoxicated people must be removed from the premises immediately or refused entry onto the premises.<sup>26</sup>

26 [http://www.olgr.nsw.gov.au/pdfs/intox\\_guidelines.pdf](http://www.olgr.nsw.gov.au/pdfs/intox_guidelines.pdf)

The Guidelines stated that:

- a licensee was liable for permitting intoxication to occur if an intoxicated person was detected on the premises by authorised officers (i.e., a police officer or OLGRI inspector)
- anyone (including staff and other patrons) could be fined up to \$11,000 if they were found supplying alcohol on licensed premises to an intoxicated patron
- the offence of permitting intoxication<sup>27</sup> applied regardless of whether the intoxicated person was still drinking on the licensed premises or not.

Respondents were generally positive about the Guidelines and agreed they provided sufficient information and direction for licensees and their staff to help them identify and deal with intoxicated patrons. A few interviewees suggested that the Guidelines were less relevant for police, because police were generally provided with appropriate information (via policy documents) and training to deal with intoxication.

#### 4.1.8 Proving Intoxication

Some interviewees expressed concern that both the Guidelines and the *Liquor Act 2007*<sup>28</sup> outlined the types of defences available to a licensee to counter the charge of allowing intoxication to occur on their premises. It was noted that if a licensee could argue that they had taken all reasonable steps to prevent intoxication then they could successfully defend such a charge. There was a perception, among some respondents, that this made it difficult for police to undertake successful prosecutions in relation to the offence of permitting intoxication.

As indicated above, the difficulties associated with successfully prosecuting intoxication-related offences could be addressed by placing greater responsibility on the patron. This was supported by multiple respondents, who

suggested that consideration should be given to incorporating personal responsibility in regard to intoxication into the *Liquor Act 2007*.

Police also expressed concern that liquor licensing matters were dealt with by local courts rather than a specialist licensing court. There was a view that every police prosecutor now had to know something about liquor licensing matters rather than having specialist licensing police prosecutors who dealt with these matters, as was previously the case. This added another layer of difficulty for police if attempting to prove that a patron had been allowed to become intoxicated.

*Proving intoxication has become ridiculous. I think that we are seriously flawed in this state where we have magistrates that don't necessarily understand what a police officer does. In this regard, when a police officer says that someone is mildly or otherwise intoxicated, I think they ... can make that judgement.*

There was a view that the removal of specialist licensing police prosecutors had resulted in inconsistent prosecutions and variability in decisions by Magistrates when dealing with intoxication-related matters under the *Liquor Act 2007*.

During the interviews, reference was made to a case law judgement<sup>29</sup> (referred to by interviewees as the “Kenny Decision”) which involved a licensee (Rosehill Racecourse) appealing seven convictions for offences in breach of Section 125<sup>30</sup> of the repealed *Liquor Act 1982*. In July 2008, the New South Wales District Court of Criminal Appeal upheld the appeal and quashed the convictions on the basis that:

- there was no widespread evidence of intoxication detected by the police

27 Section 73 of the *Liquor Act 2007* referred to the licensee's obligations in preventing excessive consumption of alcohol on their licensed premises.

28 Sections 73(4) and (5) of the *Liquor Act 2007* outlined the reasonable steps that could be used by a licensee as a defence to the charge of permitting intoxication.

29 *R v Kenny* [2008] NSWDC 389 <http://www.lawlink.nsw.gov.au/dcjjudgments/2008nswdc.nsf/00000000000000000000000000000000/591ecf7728856e2eca2577d90013edc2?opendocument>

30 Section 125(1) (b) of the *Liquor Act 1982* stated: A licensee shall not permit intoxication or any indecent, violent or quarrelsome conduct on his or her licensed premises.

- the defendant (i.e., the licensee) had taken all reasonable steps to prevent intoxication occurring on the licensed premises in relation to each of the offences that he had been charged with originally.<sup>31</sup>

Interviewees noted that police lost the case by not being able to attribute fault and vicarious liability (i.e., attributing fault and liability to a licensee even when not physically present on the premises at the time of the breach). It was further stated that police took this particular judgement into account when preparing briefs for prosecuting intoxication offences under the *Liquor Act 2007*.

*This puts additional pressure on police to successfully prove the charge within the context of having to deal with a convoluted legislative definition of intoxication.*

*Police also need to be mindful of any defence issues that may be raised. They also need to be aware that there will also be different interpretations made by Magistrates and that these interpretations could be subject to appeal in the higher courts.*

#### 4.1.9 Managing Intoxication

The issue of the broader impact of intoxication on policing resources was raised. One interviewee expressed frustration about police having to deal with the effects of intoxication, particularly after patrons had left a licensed premise, and disappointment in the perceived lack of appropriate facilities to manage intoxicated people. It was reported that this often resulted in responsibility for dealing with intoxicated people falling back on to police.

*There is a lack of sobering-up facilities. We don't have any sobering-up facilities. That's the trouble ... what do you do with someone when they're drunk? You put them in the cells, you've got to assign someone to actually look at them and keep a constant watch on them.*

#### 4.1.10 Secondary Supply – “Supply Means Supply”

Section 117 of the NSW *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 (referred to in the Act as minors). The maximum penalty was \$11,000 and/or 12 months in prison.

In December 2009 the NSW Government officially launched the “Supply Means Supply” initiative, which had both policy and enforcement focuses; it was an education and licensing enforcement program targeting the supply of alcohol to minors. It was aimed at controlling 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.<sup>32</sup>

Respondents viewed “Supply Means Supply” (which was formulated by two police licensing officers) as a good initiative. It was noted that from a policing perspective, “Supply Means Supply” involved overt and covert operations and the collection of intelligence-based information about the supply (and potential supply) of alcohol to minors. It also included an advertising campaign aimed at promoting the initiative, particularly in rural and regional areas within NSW. At the time of writing, the initiative had been implemented in 15 NSW Police local area commands chosen on the basis of identified risk of secondary supply.

Interviewees were of the opinion that the *Liquor Act 2007* adequately addressed the issue of secondary supply to minors on licensed premises. It was also suggested that it was in the licensee’s interest (in view of the penalties entailed) to report the presence of any minors on their licensed premise to police, thus enabling police to take action against the minor rather than the licensee.

A related issue was the use of false identification to gain entry to licensed premises by minors. This was seen as a major issue for police and licensees despite provisions in the *Liquor Act*

31 The reasonable steps were outlined in the *Liquor Act 1982*.

32 Source: [http://www.police.nsw.gov.au/community\\_issues/alcohol/supply\\_means\\_supply](http://www.police.nsw.gov.au/community_issues/alcohol/supply_means_supply)

2007 that addressed this problem. Of particular concern were the advances in technology and methods for obtaining false identification.

*The Transport Department have now created driver's licences with the date of birth on the back so it cannot be altered. But now the big problem is using IDs with a picture that looks like the minor. An ID is sold and the person reports it missing so they can obtain another one which means that there are two driver's licences out there. This is the most significant drama facing police in licensed premises presently.*

Several respondents suggested that a major challenge for police was dealing with parents who had supplied alcohol to their children. It was maintained by one interviewee that there needed to be more responsibility placed on parents.

*From my point of view, the only way to actually solve the problem is that if kids are going to consume alcohol legally, then the parent must stay with them. So this business of giving them a carton of beer, and saying going off to a party, have a good time is not right. I think the only way that we could actually get on top of this problem is to say that that parent must stay with the children, who must drink under their supervision.*

## 4.2 Proactive Activities

### 4.2.1 Liquor Licence "Freeze" Precincts

The NSW *Liquor Act 2007* was amended in October 2009 to allow restrictions to be placed on the granting of certain types of liquor licences and authorisations for premises located in designated "Freeze" precincts within the City of Sydney. Under the Freeze, no new liquor licences or extensions of licences were granted in the designated precincts. Participants reported that police were very supportive of the Freeze initiative as it provided them with an opportunity to influence the number of licensed premises in the City of Sydney.

There was a view, however, that even though the Freeze was viewed as a positive initiative

it may not be sufficient to address the broader issue of increased availability of alcohol.

*There has not been a real influx of new licence applications in the area. Off-licence premises have tended to increase as large companies (e.g., Woolworths, Coles, etc.) tend to buy hotels and convert them into off-licences.*

### 4.2.2 Alcohol-Related Crime Information Exchange (ARCIE)

NSW Police has developed ARCIE to collect data on alcohol-related crime. ARCIE data were used to deploy NSW Police personnel to deal with problematic licensed premises and precincts. Data were also provided to the NSW BOCSAR, the OLGR and the Office of State Revenue.

Respondents indicated that ARCIE was highly regarded by NSW Police:

*NSW Police regards the ARCIE system as unprecedented in terms of information collection, collation and report preparation and a complete solution for alcohol-related crime queries.*

### 4.2.3 Centralised Specialist Liquor Enforcement Function

The Alcohol and Licensing Enforcement Command (ALEC) was formed in 2008. It was focused on reducing alcohol-related crime and anti-social behaviour by targeting identified hotspots and licensed premises. ALEC consisted of 30 police officers, including six regionally based licensing coordinators, who delivered a statewide licensing service that provided coordination, consistency and support to all local area commands. ALEC and the OLGR liaised quarterly to clarify their respective organisations' roles in relation to the *Liquor Act 2007*, exchange information and develop a joint approach to licensing that included education and enforcement strategies.<sup>33</sup>

Respondents viewed the formation of ALEC as a positive development that had enabled NSW Police to adopt a more coordinated approach

<sup>33</sup> [http://www.police.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0005/165227/Annual\\_Report\\_-\\_Crime.pdf](http://www.police.nsw.gov.au/__data/assets/pdf_file/0005/165227/Annual_Report_-_Crime.pdf)

to dealing with alcohol-related issues. They also indicated that it enabled police to more appropriately target licensed premises and to report on alcohol-related crime in a consistent manner. An additional benefit was that ALEC acted as a central contact point for police in their dealings with the OLGR, thereby improving the relationship between these organisations.

*Overall the relationship between the two organisations has improved substantially with the establishment of ALEC.*

#### 4.2.4 Banning Orders

Under Section 78 of the *Liquor Act 2007*, a person who had been repeatedly intoxicated, violent, quarrelsome or disorderly on or in the immediate vicinity of licensed premises could be banned for up to six months. An application for a banning order could be made to the CLGCA by:

- the Director-General, Communities NSW
- police
- a licensee who is a member of local liquor accord.

Licensees applying for a banning order were required to pay a processing fee of \$50; there was no fee for the Director-General, Communities NSW or police. A banning order could apply to multiple venues. During the order a person could not enter, attempt to enter or remain on licensed premises. The maximum penalty for breaching a banning order was \$5,500 (levied against the person to whom the order applied).<sup>34</sup>

Respondents noted that police had only recently started to use the banning order provisions due to a delay in the availability of the associated administrative processes/forms. Interviewees suggested that a major challenge for police in issuing banning notices was accurately identifying people who had been banned. That the notices cannot exceed six months was viewed as an additional problem.

<sup>34</sup> [http://www.olgr.nsw.gov.au/pdfs/L\\_FS\\_ELP.pdf](http://www.olgr.nsw.gov.au/pdfs/L_FS_ELP.pdf)

One suggestion to overcome the problem of identifying banned patrons was to record details of that person on a police database; if that person then came to the notice of either the premises or the police, the police could search their database to locate identification details. NSW Police were looking at recent amendments to the South Australian *Liquor Licensing Act 1997*<sup>35</sup> and in particular provisions that pertained to banning orders.

Overall, most respondents thought that banning orders were a promising tool, albeit with some limitations.

*I think the concept is OK, but I don't know that the implementation is correct.*

*It is a good concept, but not the silver bullet that we are looking for.*

*The banning orders section of the Act is a very strong piece of legislation. This used to be the largest problem that police had to face and we did not have the legislation to deal with the problem.*

It was further suggested that banning orders could be used effectively in country or rural areas where:

- people could be more readily identified
- banning orders were regularly discussed during liquor accord meetings.

#### 4.2.5 Probity Checks

Respondents indicated that probity checks needed to be comprehensive to ensure that any organised crime links were adequately identified.

*Probity checks are an onerous task but are nevertheless an important part of police work.*

It was acknowledged that despite these checks indirect links to known or suspected organised

<sup>35</sup> Under the South Australian *Liquor Licensing Act 1997*, any police officer could bar a person from a particular premise. A Sergeant could also approve a barring order for 72 hours from multiple premises. An inspector or above could approve a barring order for three months from multiple premises or from a particular precinct.

crime figures may escape detection. One interviewee expressed the view that:

*The legislation should include provisions that state that once there has been a question about whether the applicant is a “fit and proper person” then the licensed premises should not be allowed to open until the issue has been verified.*

A strategy employed by police in Newcastle was to establish a joint committee with the local council and the OLGR to consider all new licence applications. While this joint committee was not primarily concerned with probity issues, police used the forum to gather further information to which they may not previously have had access.

Another interviewee preferred the process that had applied under the previous Act, where applications were provided to police prior to the matter being considered by the licensing court. It was suggested that this had enabled police to consider the application more fully and conduct appropriate probity checks.

#### 4.2.6 Special Event Licences

Section 39 of the *Liquor Act 2007* included provisions for special event licences. One interviewee stressed the importance of ensuring that special events were appropriately managed with relevant conditions imposed on them. It was noted that NSW Police was in the process of developing a set of standard conditions that could be applied to major events (e.g., the Bathurst 1000 car race). Any proposed conditions would need approval from the CLGCA. Development of a standard set of conditions for major events would assist police input in the special event licence application process and at the event planning stage.

One interviewee expressed reservation and suggested that while special event licences were a positive initiative, care needed to be exercised in the way they were approved.

*The issuing of special events licences has become too liberal and police are not always consulted when an application has been lodged. In addition, police are also given short*

*timeframes in which to query any aspects of an application for a special events licence. Not being notified of an event and short timeframes ultimately create difficulties for police in relation to the way an event is managed and in relation to the deployment of adequate police resources.*

#### 4.2.7 Lockouts

Schedule 4 of the *Liquor Act 2007* included provisions for “Declared Premises” lockouts. This aimed to address NSW’s most violent premises (based on recorded incidents over the previous 12 months). As part of Schedule 4, 2 am lockouts applied together with drink restrictions and other conditions around the management of the licensed premises. Sections 87 to 90 of the Act dealt with late hour entry declarations and in effect these declarations also operated as lockouts.

Interviewees agreed that lockouts were effective in preventing alcohol-related incidents because they prevented the migration and “venue hopping” of large numbers of people between premises. They also provided patrons with a clear understanding of entry and exit times and conditions.

Another interviewee noted the findings from the 2008 trial of lockouts in the Newcastle Central Business District (CBD).<sup>36</sup> A key aspect of the trial was the imposition of a 1 am lockout; this resulted in fewer people migrating from hotel to hotel and reduced the number of assaults and anti-social behaviour incidents. Other positive initiatives imposed as part of the trial included restrictions on the number of drinks that could be purchased by one person (i.e., no more than 3 drinks at one time) and restrictions on serving “shots” after a certain time. Following the trial, lockouts continued to be applied and were reported to be strongly supported by NSW Police.

From a policing perspective, lockouts were noted to be an effective tool that could be used to control the migratory movement of

<sup>36</sup> See: Jones, C., Kypri, K., Moffatt, S., Borzycki, C., & Price, B. (2009). *The impact of restricted alcohol availability on alcohol-related violence in Newcastle, NSW*. Sydney: Bureau of Crime Statistics and Research.

patrons from premises in the early hours of the morning. This had the perceived advantage of reducing the propensity for people to loiter and engage in arguments or fights.

It was suggested that consideration should be given to including lockouts as a standard condition for premises with late night extended trading hours.

#### 4.2.8 Infringement Notices

Infringement notices were generally regarded as a positive and effective tool for police to assist them to enforce the *Liquor Act 2007*. One interviewee noted that infringement notices were easy to apply and there was an immediate penalty associated with the offence.

Other interviewees reinforced the view that infringement notices were easy and convenient for police to apply, particularly in relation to simple matters. It was also noted that anyone issued with a notice had the right of appeal and police needed to exercise discretion in how and when they issued infringement notices.

#### 4.2.9 Closure Powers

Under Section 82 of the *Liquor Act 2007*, a closure order could be made on licensed premises by an Authorised Officer. For the purposes of the Act, an Authorised Officer was a Magistrate or a Children's Magistrate; a registrar of the Local Court; or an employee of the Attorney General's Department. Further, an Authorised Officer could only make a closure order if they had received an application from the Director-General, Communities NSW or the Commissioner of Police. The application had to show that there had been a serious breach of the Act and that the licensed premises should be closed to prevent or reduce a significant threat or risk to the public interest.

The Act defined a significant threat or risk to the public interest as a:

- threat to public health or safety
- risk of substantial damage to property
- significant threat to the environment
- risk of serious offences (having a maximum penalty of not less than 2 years

imprisonment) being committed on the premises.

One interviewee proposed that senior police (i.e., at the rank of Inspector or above) also be given closure powers under the Act whereby licensed premises could be closed by a police direction rather than having to lodge an application with an Authorised Officer. In addition, it was noted that closing licensed premises had major ramifications for crowd control and for police who subsequently must deal with a large number of patrons.

#### 4.2.10 Risk-Based Fee Structure

It was noted that the *Liquor Act 2007* did not include provisions for a risk-based fee structure. Respondents further suggested the enforcement functions of the *Liquor Act 2007* could be enhanced with the introduction of a graduated licence fee structure where fees would escalate based on the frequency of breaches (e.g., assaults, allowing banned patrons to enter) on licensed premises. This was viewed as a potentially positive strategy for getting licensees to accept greater responsibility for managing their licensed premises effectively.

### 4.3 Ongoing Challenges

#### 4.3.1 Issuance of Licences

One of the key limitations noted with the *Liquor Act 2007* and the associated processes was that licences were issued in perpetuity. This meant that once a liquor licence was granted in NSW there were few grounds or opportunities for it to be rescinded. This created a perception that licensees had a free hand and that breaches could only be dealt with by the imposition of additional conditions. It was suggested that the Act should contain provisions that would allow problematic licensed premises to be put on notice of losing their licence.

#### 4.3.2 Trading Hours

Participants consistently raised trading hours as an issue for police, with one noting that the debate around trading hours should take

a “balanced approach.” This respondent suggested that the concerns of police and other stakeholders with a role in enforcing the legislation needed to be considered along with the interests of people to be entertained and the commercial sector.

Some interviewees perceived that police had little influence over trading hours. It was suggested that one way of overcoming this could be to link the local council development approval process more closely with the liquor licensing approval process. It was further suggested that police and local councils could liaise more closely in relation to evidence that supports limited trading hours.

*This would be of mutual benefit to both parties because police know how a licence may impact the amenity of a neighbourhood, while councils do not really understand the crime side of new licences.*

Further suggestions to limit trading hours included:

- late night trading venues having standard conditions imposed on their licences such as lockouts, increased security and closed circuit television monitoring
- only granting extended trading hours on a temporary basis and requiring licensees to reapply for those extended hours on an annual basis. The reapplication process could assess the number of incidents that had occurred in those venues over the previous 12 months. If an unacceptable number of incidents had been generated (no number was specified by the interviewee) then the licensee should lose the privilege of having extended trading hours for a period of six to 12 months.

*Extended trading hours are a privilege, not a right.*

Some respondents argued that placing restrictions on trading hours was one of several related initiatives that could be implemented to reduce alcohol-related crime and that they need to be implemented as part of a holistic approach.

*Implementing restrictions on trading hours in isolation of other initiatives is likely to have little impact. They need to be implemented in conjunction with other industry, regulatory and community initiatives including transport, security and crime prevention initiatives (e.g., better lighting in premises and on streets).*

#### 4.3.3 Outlet Density

Police were aware of the importance of outlet density, but frustrated by the limited scope to influence decisions in this regard. One interviewee suggested that more research should be conducted on the issue of outlet density.

*Investigate the impact of introducing more liquor licences into an area and whether it draws more people into an area. If more people are drawn into an area then the likely outcome will be more strain on the infrastructure and services. This in turn has the potential to create an environment that is likely to be more violent. A possible solution is to ensure that there is greater engagement between local government and central government in relation to more closely linking the liquor licensing application process with the planning development process.*

#### 4.3.4 Responsible Service of Alcohol

Regulation 40, *Liquor Regulation 2008* stated that a licensee must not sell, supply or serve liquor or cause or permit liquor to be sold, supplied or served on the licensed premises unless they held a recognised RSA certificate. There was concern that even though the *Liquor Act 2007* stipulated that licensees and their staff were required to attend RSA training, this training was not as effective as it could be. It was noted that in NSW a person could be issued with an RSA certificate after attending a one-off training session and was not required to attend any additional training sessions or re-training. Interviewees stated that they would like to see this situation changed such that there was an ongoing commitment for licensees and their staff to attend refresher training courses on the responsible service of alcohol. There was also a perceived need for licensees and managers

to take a greater role in monitoring the way in which their staff applied the principles of responsible service of alcohol during the course of their normal duties.

It was also suggested that there needed to be a greater emphasis placed on the responsible service of alcohol from a compliance and proactive perspective. This needed to occur at different levels throughout the licensed premises including at the front door (security staff, door hosts), at the bar (bar staff) and within the premises (crowd controllers).

### 4.3.5 Liquor Accords

Sections 131 to 136 of the *Liquor Act 2007* provided the legislative framework for the establishment of Local Liquor Accords. Even though Local Liquor Accords were mandated under the Act, membership of an accord was not compulsory.

While liquor accords were generally regarded as an effective tool in addressing alcohol-related issues there was concern that they were limited in what they could achieve.

*The current voluntary nature of accords makes them a bit of toothless tiger.*

Nevertheless accords were seen as an important tool that police could use to negotiate with licensees to ensure that they provided safe venues. It was noted that the Newcastle Liquor Accord had been successfully used as the forum to initiate the implementation of lockouts.

There was a further suggestion that liquor accord membership should be made compulsory. In addition, it was noted that the accord membership should be accompanied by a fee scale and that the scale of fees should be based on the degree of risk that a licensed premises represented.

Another respondent recommended that the *Liquor Act 2007* be amended to enable the revocation of a licensee's membership of a liquor accord due to poor behaviour.

*For accords to be successful there needs to be some value from the accord to the licensee, e.g., access to information and to be surrounded by best-practice operators.*

### 4.3.6 Take-Away Sales

Most respondents thought that take-away sales from licensed premises were not generally a major issue in most parts of NSW. Limiting take-away sales was considered to be more relevant to rural and remote areas than metropolitan areas. It was noted that from a policing perspective, initiatives aimed at limiting take-away sales (i.e., specifying times when certain types of packaged liquor can be sold) had been successful in places such as Walgett, Bourke and Wilcannia where there was also strong community support for the imposition of restrictions.

## 4.4 Conclusion

During the interviews the following key issues were identified:

- while the roles of police and liquor licensing authorities appeared to be clearly outlined in the *Liquor Act 2007*, there was nevertheless some duplication particularly in relation to enforcement responsibilities
- it was suggested that the terminology used in the Act could be simplified and made more user-friendly for police, liquor licensing personnel, licensees and the general public
- intoxication was identified as a key issue for police, particularly in relation to having to prove that a licensee had allowed a patron to become intoxicated. The "Kenny Defence" was also cited as a key issue that police had to consider when charging a licensee with having served an intoxicated patron
- there was a perceived need to review the responsible service of alcohol system and in particular the provision of RSA training
- the development of the ARCIE database and the establishment of ALEC within NSW Police were regarded as positive tools to assist police in their enforcement of the *Liquor Act 2007*
- from a policing perspective, partnerships with a range of stakeholders, and particularly with local government, were viewed as a positive tool to enhance enforcement functions under the *Liquor Act 2007*.



## 5 Northern Territory<sup>37</sup>

The Northern Territory's *Liquor Act* was generally considered to offer a reasonable balance in maintaining commercial interests, promoting public safety, and minimising harms associated with the consumption of liquor. However, the same view was not held in relation to how the Act was interpreted and implemented. Participants noted the politicised nature of the Liquor Commission's role and commented that the Commission was subject to political and commercial influence when determining the public interest. A lack of clarity was noted about harm minimisation with diverse views expressed about what was needed to reduce harm. For example, some participants supported an increased focus on individual responsibility coupled with criminal sanctions. Others stressed that alcohol misuse

was a cultural issue and that greater support, health and educational resources needed to be directed towards those who experience the greatest impact. While others considered that larger penalties needed to be given to licensees who breach their obligations.

Participants emphasised the importance of consultation with the public, industry, and other agencies to guarantee the success of any measures introduced to reduce harms in licensed premises, as well as harms which occur outside licensed premises (i.e., due to take-away sales). In this regard, several participants noted the willingness of the liquor industry in the Northern Territory to support measures aimed at increasing public safety.

### 5.1 Legislation and Administrative Processes

#### 5.1.1 Licensing Authority

Participants generally reported good relationships between the Licensing, Regulation and Alcohol Strategy (LRAS) Division of the NT Department of Justice and the Northern Territory police. This relationship had improved over time and was "*positive and productive and based on a mutual desire to work together.*" Improvements in the relationship between police and the licensing authority were attributed to:

<sup>37</sup> 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 the completion of this report, 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 and have not been incorporated in this report.

The opinions expressed in this Chapter are those of the authors and the individual participants involved in the interviews. They do not necessarily represent the views of Northern Territory Police or other agencies that participated in this study.

- increased collaborative training opportunities
- improved opportunities for communication and information-sharing
- recognition that each agency has a unique perspective which needs to be respected in order to achieve the objectives of the Act.

*A lot of police have a certain view as to what liquor licensing does and doesn't do ... when I saw the hurdles that they had to jump through, it certainly put a lot of things in place. It certainly wasn't as a result of inaction on behalf of the staff of liquor licensing, but more of their processes and procedures.*

Numerous respondents recounted the benefits of undertaking joint training initiatives with the licensing authority. Joint training had allowed both parties to develop an increased appreciation of the other's working environments, the intricacies of the Act, and the various powers inspectors and police could utilise. For one respondent this opportunity allowed the parties to:

*Work towards a more collegiate approach. Work together for the same ultimate gain and work a bit smarter in how we do that.*

Interviewees from smaller regional and remote areas were particularly satisfied with the relationship that existed between licensing authorities and police, noting that a benefit of having a close community was that it permitted licensing inspectors and police to have a shared focus on public safety. Within their regions, respondents stated that the licensing inspectors were “very understanding about police requirements in terms of public safety.”

*In the Katherine region, the focus of licensing inspectors is on public safety, and they work closely with police. Where police are asked for comment on applications for events, the licensing inspectors are very proactive in making sure that the police know what happened at previous events, so that they can make a well-educated comment about the proposal. They are very understanding about police requirements in terms of public safety.*

Despite proactivity on the part of licensing inspectors, respondents believed a lack of resources compromised their ability to effectively fulfil their functions, claiming that only two inspectors were responsible for a third of the Northern Territory. This was held to be unworkable given the size of the area. The lack of licensing inspectors was a common complaint, with one participant noting that:

*Other agencies have been relying on police to carry out functions for them for a long time.*

*Other agencies use this (police as inspectors) as an excuse not to provide sufficient resources to a particular area as they feel that police do that role. I think that licensing authorities understand their role, whether they are resourced adequately is another issue.*

#### 5.1.1.1 Role Clarity

Several participants recognised that the licensing authority was legislatively required to consider the commercial implications of their decisions and actions, while police focussed on the harm minimisation aspects of the legislation. The licensing authority's focus on regulating an industry and the police focus on crime prevention and enforcement was regarded as an important and inherent difference in the roles of the agencies.

*Licensing inspectors and the licensing authority they are about regulation not so much enforcement. It is difficult to top police in terms of enforcement and prosecution, as police are trained in this.*

Interviewees noted that the distinction between policing enforcement and licensing regulation was advantageous as it provided police with the independence necessary to conduct covert operations. In conducting covert operations, police relied upon criminal intelligence, and were therefore able to maintain an optimum level of anonymity. This was not possible when conducting operations with liquor licensing inspectors, as they were required under the provisions of the Act to show identification when requested. Further to this, any information used to inform a decision of the Licensing Commission was required to be given to

the licensee. Given this, participants stated that they preferred to undertake criminal investigations alone.

*This is an advantage in having police do the enforcement and the licensing inspectors do the regulations. If they do joint operations, police will do the enforcement and do the paperwork as it is a criminal offence, then will hand the file over to liquor licensing who will request for a penalty to the licence because of the breach. Also the police might just do an operation by themselves due to confidentiality or because it is not the licensing authority's role to do this, and will then hand over the file for them to get a penalty for breach of licence.*

This preference was also based upon concerns regarding the safety of licensing inspectors when they were conducting joint operations with police.

However, doubt was expressed as to whether all the agencies involved in implementing the *Liquor Act* fulfilled, or were aware of, their roles and obligations under the Act. Participants attributed a lack of awareness to two factors:

- The provisions of the Act were indefinite in allocating responsibilities between organisations.

*There are some places in the legislation where roles are defined and [it] explains where police can act and where licensing staff can act. But it doesn't clearly delineate roles and doesn't make it obvious to the reader whose responsibility is public safety and whose is commercial regulation, and where they overlap.*

*There is a blur of lines between the responsibilities between the licensing authorities and police, and they [the licensing authority] like to defer a lot of responsibility to police as well. So the police have basically the same powers as a licensing inspector, which makes life difficult when you are trying to do law enforcement as well as licensing duties. There is no confusion, but particularly in NT where alcohol is the problem, there are two distinct issues, and police should be dealing with policing issues not the licensing issues.*

- The Act has been amended, but inspectors had not been trained to ensure that they were aware of changes and its impact on their job roles. This was considered to be particularly problematic for long-term employees.

*Some of the inspectors have been in their role since the time when it was all about regulation not so much public safety. There is a group of longer-term inspectors that are bringing with them some baggage from the old perspective.*

Imprecision within the Act regarding roles and responsibilities affected the way in which police exercised their powers under the Act. There was acknowledgement that “sometimes you have to remind police that they have the same powers as licensing inspectors,” as one respondent stated:

*I think that where a lot of police fall down is, .... we don't exercise a lot of our powers correctly or often at times.*

A lack of certainty was reported to be particularly noticeable in the methods employed by police when taking legal action against licensees who breached their licence conditions, or when they were required to lodge objections to licence applications. One participant reported that police often deferred primary responsibility for instigating complaints against licensees to the licensing inspectors. This deference was based upon a:

- lack of knowledge about “how to proceed” with the complaint and/or raise objections
- recognition that Northern Territory Police was not the primary body responsible for the Act.

Yielding power to licensing inspectors was not readily embraced by participants and they were often unhappy with the manner in which disciplinary action and/or complaints were pursued and the outcomes of these matters.

*Police may detect a breach, but because they are unsure about how to proceed with provisions because police are not the primary agency for that Act, police will sometimes*

*provide that information to inspectors. But they might not take the same action as police think is appropriate. Police are doing themselves a disservice, as they are capable with proceeding with prosecutions themselves, but because the Act is not clear, and are not too sure how they operate under that Act, they will take the cautious route and hand it over.*

The delineation between the Licensing Commission and the LRAS Division was also reported to be ambiguous. Participants asserted that not all police understood that the Licensing Commission was an independent statutory authority whereas LRAS was a division of the NT Department of Justice.

### 5.1.2 Licensing Commission

One respondent claimed that police and LRAS had an adversarial relationship with the Licensing Commission. The Licensing Commission could overrule decisions agreed to by the police and licensing officers, and police and licensing inspectors could circumvent the authority of the Commission by referring matters for hearing before the Courts. Once a conviction was obtained in a court, the matter was then referred to the Licensing Commission so that it could impose additional penalties.

There was acknowledgement that liquor licensing legislation was political and some respondents expressed concern about the independence of the Licensing Commission in carrying out its functions. Several participants indicated that they would like to see the Commission demonstrate greater independence. They perceived the decisions of the Commission were often influenced by commercial and government interests. To this end, a participant suggested that to have a truly independent body, members should not be appointed by the Minister responsible for the Act, and that policy and decisions should be established around harm minimisation and evidence-based literature.

### 5.1.3 Harm Minimisation

Many respondents noted that the objective of harm minimisation contained within the *Liquor Act* represented something of an

impasse as it lacked sufficient precision to be actioned. Several participants also maintained that while the object of harm minimisation remained coupled with the objectives of industry diversification and self-responsibility, harm minimisation would never gain precedence.

*I think that therein lies the rub. You have competing interests. Obviously, police will certainly continue to try and engage licensing regulators in respect of trying to have that stronger harm focus, that stronger harm reduction focus, while commercial entities obviously have commercial pressures that they have to contend with including being profitable and being able to maintain the ability to open their doors, let alone to make a profit as well. And so it is very difficult for those two to live side by side.*

One respondent stated that they would prefer the legislation to include a more unequivocal statement regarding harm minimisation.

*The preferred option from police is to have legislation that states that all liquor licenses must have a harm minimisation focus. This would make the primary object/focus of the Act on harm minimisation.*

However, other participants recognised that the concept of, and importance given to, minimising alcohol-related harms was a relatively new focus for liquor licensing legislation and represented a change in direction from when liquor legislation was first implemented.

*The NT liquor legislation probably started out as a regulation of commercial operations, but has grown into something bigger than this. It does have some useful tools, and have had some recent amendments that give more powers to police ... Would not say that there is a really strong harm minimisation focus but it is a developing one, and is growing with each legislative amendment.*

It was emphasised that many harm minimisation initiatives that matter for police were directly related to the prevention of crime and focused upon the individual. In this regard, the practice of taking intoxicated

people into protective custody was regarded as a harm minimisation measure as it prevented intoxicated individuals from committing alcohol-related crimes, as well as hurting themselves and others.

*People who are intoxicated in public can be put into protective custody and go to the sobering-up shelter which is a harm minimisation strategy, as there is a direct correlation between the amount of people in custody and the amount of crime that is committed.*

*There is the issue of drinking in public which is an offence but there are no terms of imprisonment, so they won't go to the alcohol court so they have to be charged with an offence. Sometimes may be charged with something if it is really offensive, but other times they will realise these people have a health problem and won't want to put them in the criminal justice system.*

Participants stressed the necessity for police to take people into protective custody as they had a duty of care to ensure the safety of vulnerable people. Police shouldered this responsibility more so than other agencies, even though incarceration was often imposed for health reasons more than for criminal reasons.

*Lock people up and put them in the sobering-up shelters when they are a danger to themselves or others, but now there is a problem where sobering-up shelters won't take people when they are too drunk, police can't help them so they take them to the hospital but they do not want them as they are just drunk. Police are always conscious of duty of care as a lot of the people who are locked up have health problems due to disadvantage, and people may have a medical problem and need attention but police are not doctors.*

Liquor licensing legislation was seen as an inadequate tool to rectify the high prevalence of complex alcohol-related harms in the Northern Territory. Several participants recognised that even though liquor legislation had an important role in reducing harms stemming from licensed premises, in order to achieve harm

minimisation and effect cultural change, a multi-agency and consultative approach needed to be adopted.

*Hate to say it but I think a lot of people have historically viewed what happens as a result of excess alcohol, or alcohol abuse as becoming a police issue and it is a greater problem than just us picking up and dealing with what's happened after the event. There's all the health issues and all the associated other stuff that comes with it. I just don't think that the public in general sees all that, or understands that.*

*Looking at ways in being able to get people access to health services who clearly display elements of alcoholism and who are involved in these types of nuisance offences. And being able to see if we can start going back and beat the problem before police are ... called in. Because sadly we are the last port of call when everything else has failed or it has not even been utilised.*

Interviewees noted that liquor licensing helped regulate the times when people could access alcohol, the amount of alcohol they could obtain, and in some instances the type of alcohol they could obtain. Further to this, it was highlighted that the legislation promoted the harm minimisation objective through its encouragement of responsible service programs.

However, several participants cautioned that even though these restrictions and conditions played a significant role in controlling how much harm flowed from alcohol consumption, they are "probably not enough ... [because] not everyone plays by the rule book."

*This [responsible drinking] is not something that we have a great deal of control over in a public place. While in a licensed premises you at least have some control over the service of that, and the responsibility is placed on the licensees and their staff to ensure that people are not served to the point that the flow-on effect becomes ... clearly in a public place we just don't have that. So to be able to have that as a safeguard to monitor alcohol intake is*

*an important part of being able to reduce the harms from alcohol.*

Respondents commented that strategies which focussed upon the individual had very little effect upon the alcohol industry at large and noted that there was potential for liquor legislation to do more to ensure that licensees adhered to both the conditions imposed upon them and the objectives of the Act. To this end, participants suggested that meaningful financial penalties should be imposed on recalcitrant licensed premises. One interviewee suggested that closing down licensed premises would have a financial impact and that police need greater powers to shut down licensed premises in an emergency. However, another participant questioned whether short-term closure powers had any lasting impact.

*Have closed licensed premises for short periods for breaching liquor act and have also been fined. But in the scheme of things, both have been quite minimal and then they turn over their trade and it seems that most of them go back to doing pretty much what they were doing beforehand.*

Respondents highlighted the limitations of the legislation to effect cultural change. While the legislation was able to exercise control over the serving practices of licensed premises, it was ineffective in controlling drinking behaviours which occurred in public places and private domains. Participants noted that in the Northern Territory, take-away sales constituted the issue of greatest concern for police. As such, the majority of alcohol-related harms in the Northern Territory were perceived to occur outside the domain of licensed premises.

## 5.2 Take-Away Sales

Legislation within the Northern Territory was unique amongst Australian jurisdictions in regard to the regulation of take-away sales, which were given substantially greater emphasis than licensed premises. Northern Territory regulations contained provisions that related only to trading hours for off-premise

sales.<sup>38</sup> Over 30% of the legislation related to declared areas in which alcohol was restricted.<sup>39</sup> Further to this, a moratorium on the issuing of new take-away licences was adopted in 2006.<sup>40</sup> The significance given to this issue in the legislation was echoed in the participants' concerns.

*One of our greatest areas of concern is the amount of take-away liquor that is consumed across the Territory, and not only that, the amount of that which is actually responsible for the public place anti-social behaviours and also the anti-social behaviour which pervades our housing commission areas.*

*It is a very interesting dilemma for the Northern Territory this whole issue of take-away sales ... I think we are a relatively unique entity in that regard and I think we are still working to try and find the right balance.*

*The key issue for police in relation to licensed premises is not so much on drinking in licensed premises but more on take-away sales.*

### 5.2.1 Restricted Areas

In order to limit access to alcohol, four categories of restrictions were contained within the Northern Territory *Liquor Act*:

- General Restricted Areas<sup>41</sup>
- Public Restricted Areas<sup>42</sup>
- Special Restricted Areas
- Restricted Premises.

Each category of restriction contained provisions regarding the administrative process undertaken before a declaration was made. Despite the inclusion of the restricted premises category, which related to private premises, a

38 Regulation 4.

39 See Sections 73-101S. This equates to 77 sections out of 243.

40 See Department of Justice website: <http://www.nt.gov.au/justice/licenreg/liquor/index.shtml>

41 The declaration of a general restricted area could restrict the type of liquor which could be supplied, sold, and consumed within the area.

42 Section 74.

public restricted area declaration was available to restrict possession and consumption within private premises.<sup>43</sup>

These provisions need to be read in conjunction with the *National Emergency Response Act 2007* (Cth), which declared “prescribed areas”. Prescribed areas included any area of land defined as *Aboriginal land under the Aboriginal Land Rights (Northern Territory) Act 1976*. The Minister could also declare town camps as

prescribed areas.<sup>44</sup> Even though Section 12 of the *Northern Territory Emergency Response Act* provided that prescribed areas were to apply as if they were general restricted areas under the Northern Territory *Liquor Act*, it provided its own offences, defences, and penalties. Provisions within the Northern Territory *Liquor Act* were invalid to the extent of their inconsistency with the Commonwealth legislation.

**Table 7: Types of restricted areas and offences and penalties**

Type of Restricted Area	Offence	Maximum penalty
<b>General Restricted Area</b>	Bring, possess, control, consume, sell or dispose of liquor in area	First Offence: \$1,000 or six months jail Second or subsequent offences: \$2,000 or 12 months jail
<b>Public Restricted Area</b>	Consume liquor	\$500
<b>Private Restricted Area</b>	Bring, possess, or consume liquor on premises	\$500
<b>Special Restricted Area</b>	Bring, possess, supply or engage in conduct for the supply, consume or dispose of liquor in area.	\$1,000 or six months jail
<b>Prescribed Area</b>	Bring, possess, control or consume liquor in area	First offence: \$1,100 Second or subsequent offence: \$2,200
	Supply, possess, transport liquor for a third person in the area	First offence: \$1,100 Second or subsequent offence: \$2,200
	If the quantity of pure alcohol in the liquor involved is greater than 1,350 ml and the offence involves supply/intended supply to a third person	\$74,800 and/or 18 months jail

Source: Modified from Northern Territory Government Department of Justice website.

43 Section 74(1A).

44 *Northern Territory National Emergency Response Act 2007* (Cth), Section 4.

As such, despite the high priority that limiting access to take-away alcohol was afforded both by police and the legislation, and the amount of power police were given to enforce these restrictions,<sup>45</sup> the complexity of these provisions and the many different classifications made enforcement “a little bit of a minefield.”

*In Katherine there is a general restricted area, which makes it illegal to drink in public, also there is the two kilometre law which does not allow public drinking within two kilometres of licensed premises, these overlay on each other. Then there are “prescribed communities” in remote areas where alcohol is banned completely. The problem is knowing which law to enforce as there are different consequences. For the two kilometre law the punishment is having alcohol tipped out. For a restricted area they should be issued an infringement notice or summons to court,*

45 Police were designated as inspectors under the Northern Territory *Liquor Act* (Sections 19(4); 95(11); 101AN(11), and police powers were legislated for each category of restriction (Sections 101AB; 101AC; 101M; 101N). As such, police were able to:

- enter and search an area of land
- stop, enter, search, remove and retain a vehicle, vessel or aircraft
- stop, detain and search a person in connection with the exercise of a power stated above
- search a thing in connection with the exercise of a power stated above
- seize a thing found in connection with the exercise of a power stated above that the inspector reasonably believes to be related to a relevant offence
- seize any container that they reasonably believed contained liquor and empty the container if it is opened, and destroy the container if it is unopened
- use reasonable force in order to fulfil these duties (section 95).

These powers were able to be exercised in areas outside the boundaries of the general restricted area, without a warrant, and when there was reasonable suspicion on the behalf of the inspector that an offence had been, or was likely to be committed. Additionally, inspectors in order to detect offences, which may be occurring, or were likely to occur, could randomly:

- stop, enter, search, remove and retain a vehicle
- stop, detain and search a person whether or not it is in exercise of a power
- search a thing in connection with the exercise of a power stated above
- seize a thing in connection with the exercise of a power stated above that the inspector reasonably believes to be related to a relevant offence.

*as well as police seizing alcohol as evidence. Presently police are using two kilometre legislation instead of issuing infringement notices. Police as humans tend to revert back to the easiest way of doing business. I think that’s one of the problems with this overlay of different systems.*

Respondents reported several harm minimisation measures which had been adopted in regions with varying degrees of success. These measures primarily relate to limiting the:

- type of alcohol
- amount of alcohol
- hours during which alcohol may be sold.<sup>46</sup>

Further to this, regions which had been declared as general restricted areas, public restricted areas, and special restricted areas had implemented a permit system.

#### **5.2.1.1 Permits for General and Public Restricted Areas**

Permits for general restricted areas were granted by the Commission to applicants who were residing or temporarily living in the areas. The Commission was able to impose conditions upon the permit. Permits entitled the holder to bring liquor into the area, have liquor in their possession or under their control, consume liquor in the area, and provide liquor to their guests.<sup>47</sup>

Public restricted area permits were granted by the Commission to individuals or bodies for specific purposes<sup>48</sup> and authorised liquor to be consumed in a public restricted area in accordance with the conditions of the permit. The Commission was responsible for notifying the relevant local council and police station about the details and conditions stated in the permit.<sup>49</sup> All permits were subject to revocation if the holder breached their conditions or at the discretion of the Commission. Further to this, the

46 For example, participants reported that in one region cask wine could only be sold between 4pm and 6pm.

47 Sections 87-88.

48 These include weddings and other events.

49 Section 89A.

permit-holder could be subject to any penalty for offences against Section 75(1) or (1B).<sup>50</sup>

### 5.2.1.2 Permits for Special Restricted Areas

Section 101AI contained provisions for individuals and companies to apply for permits. The reason for the permit must be specified in the application and may include:

- a single event (i.e., wedding)
- regular or periodic events (i.e., meetings).<sup>51</sup>

Applications were sent to the Minister who could not approve the application unless he or she has considered:

- the likely impact of the issuing of the permit on the communities in and near the area
- any view expressed by the communities about the application.

The Minister could issue the permit if satisfied, after considering the above, that issuing the permit was unlikely to harm the community in any way. If the Minister decided to issue the permit he or she had to notify the local government council and the local police.<sup>52</sup> Anyone issued with a permit who contravened its provisions was liable for a maximum penalty of \$1,000 or imprisonment for six months.<sup>53</sup> The Minister could vary, suspend or revoke the permit by written notice to the permit-holder.<sup>54</sup>

Participants' views varied in regard to the success of the restricted alcohol areas in reducing alcohol-related harms. While one respondent reported that these approaches had resulted in reduced violence, another cautioned that an initial reduction observed in hospital admissions and police offences had declined after 12 months, and the rate of admissions and offences had reverted back to pre-restriction norms. Several reasons were offered for the purported lack of success of the restrictions:

- people switched products and changed their drinking patterns (this included substance substitution)
- it was difficult for police to enforce
- people obtained alcohol from external sources which displaced the problem
- it encouraged "binge drinking"
- the permit system was subject to exploitation
- the restrictions were insufficient to address underlying problems of social disadvantage in Indigenous communities and in some instances exacerbate discrimination.

Respondents indicated that the effectiveness of the restrictions was location dependent. For example, one interviewee maintained that the restrictions operated to good effect on Groote Eylandt, while on the mainland people could travel outside the restricted area to obtain alcohol. Several respondents noted that the restrictions impacted most upon Indigenous populations, with some moving to the major cities that still provided take-away sales. This then increased their visibility as they gathered and drank in parks. The increased visibility and movement of itinerants towards central business districts reinforced public perceptions about Indigenous drinking and tended to promote racist attitudes and a public backlash. The non-Indigenous community tended to feel that they were being unfairly punished.

*Katherine has a lot of Indigenous persons who come in from other towns, and a lot of them move around the CBD and so are highly visible to locals and business owners. They use the public space differently to other people. There is a lot of sitting around in parks with family. People relate seeing a high number of Indigenous people in public spaces with them drinking alcohol, and this is not necessarily the same issue. But the general public when they are making comments about the restrictions refer back to what they are seeing in the public spaces and assume there is more alcohol consumption occurring.*

*In the NT public drinking is often associated with itinerant Indigenous people. This is the link in people's mind.*

<sup>50</sup> Sections 93 and 94.

<sup>51</sup> Section 101 AI.

<sup>52</sup> Section 101AJ.

<sup>53</sup> Section 101 AK.

<sup>54</sup> Section 101 AL.

*We also have communities out there that are completely dry areas ... Those that are seeking alcohol do gravitate to the major centres that still do provide take-away sales so that magnifies the impact of public drinking. Because these are people who normally reside in remote communities who have no actual place to stay in major centres, [they] will gravitate to the public areas and consume alcohol there to the point of excess. And then anti-social behaviours and alcohol-fuelled violence arises from there ... We have had the Intervention come through where people had to produce identification for purchases of \$100 or more and there was a public backlash to that. We certainly have core elements of the community who don't believe that they should suffer for the wrongs of other people.*

The perceived futility of the measures was highlighted by another respondent who reported that despite the onerous restrictions in their community, police were still holding a large and increasing proportion of the population in protective custody.

*The number of people that have been taken into protective custody has risen dramatically since introducing the restricted trading hours.*

This interviewee maintained that because of decreased availability brought into effect through the restrictions, more people were forced to consume alcohol in concentrated drinking bouts (i.e., binge drinking). This then resulted in a rise in offences and protective custody holdings, and potentially alcohol-related charges:

However, other respondents argued that displacement problems would be reduced if the permit and identification system was extended throughout the whole of the Territory. One participant would have liked the permit system to be rolled out nationally to better address problem drinkers. This would avert the negative impact of untargeted measures on those who were not a source of problems.

*What they are seeing with the intervention with Aboriginal communities is that because they are restricting alcohol in communities,*

*they are moving into regional centres and they are accessing alcohol in the CBD, living rough and causing all the social order issues too. So it is not just the late-night licenses. This is a really difficult problem. The police are working with the Commission and [take-away] licensees to come up with a solution .....[whereby].... if you're banned within a community you are banned within the rest of the community too. This system will go a long way to resolving this problem.*

*At the moment the system does not accurately identify the problem drinkers. Have these very blunt instruments, like changes to sale and types of alcohol. But these impact on a lot of innocent people who haven't been offending, and still allow those who are offenders to access the alcohol in different ways. So targeting the restrictions on individuals would be a step forward.*

Further to this, one participant commented that the reduction in trading hours for take-away sales did not go far enough and that there should be whole days designated as alcohol-free for take-away sales. Under this arrangement, patrons could still drink at a licensed premise where they would be subject to the responsible service of alcohol. This concept had been trialled previously in the Northern Territory and was referred to as "Thirsty Thursday" or "Thirsty Thursday and Friday".

Several participants stressed that many of the alcohol-related problems encountered within Indigenous communities were a "manifestation ... of social disadvantage" and they emphasised the importance of working closely with the Indigenous communities and licensees when implementing alcohol restrictions and Alcohol Management Plans. An inclusive, consultative approach was considered essential for treating Indigenous communities equally and not as second class citizens.

*...they are first Australians, you have to treat them equally, though there are cultural differences that need to be taken into account ... Alcohol is an accepted part of life in Australia, it is about moderation. How do*

*you monitor something that you don't have access to? Your whole world comes to centre around getting something illegally, and you criminalise what is not criminal behaviour. This stigmatises a whole class of people.*

Participants stressed that:

*Top-end alcohol-related issues are not only alcohol-related. Have dry communities and prohibition, but go there and there is alcohol. You can ban alcohol in Alice Springs but will still have alcohol problems.*

*It is about ... not treating them (Indigenous people) as second class citizens, not treating them like kids, not treating them like you can't have alcohol ... You'll never have responsible management of alcohol when it's banned.*

These participants argued that a more moderate, evidence-based approach was necessary in order to address alcohol-related problems in the Northern Territory. One participant stated that even though a more moderate approach was not popular with many people, including some Indigenous people in the community and particularly women, it was held to be a more realistic approach. To this end, participants highlighted that despite all the restrictions targeted at Indigenous communities *"the reality is that it [alcohol] is there and has been for 30 years, even though it is banned."* They suggested that a more practical approach towards harm minimisation would be to develop and provide drinking opportunities in a more social, family-oriented environment where the primary focus was not on obtaining and drinking alcohol.

*They have to look at restricted areas and availability of alcohol because there have been 22 reviews saying what does and doesn't work and recommendations. What needs to be looked at is the availability of alcohol in a controlled and normal environment ... although a lot of people speak against it ... the fact is that alcohol is there ... They have looked at "drinking clubs", however the better idea is to have other social or sporting clubs where the focus is not on drinking it is on family and doing things, with alcohol an ancillary part.*

Respondents noted that even though the premise of the Federal legislation<sup>55</sup> was to create a better future for Aboriginal communities in the Northern Territory, several provisions criminalised activities which were neither statutorily criminal nor morally criminal in most other parts of Australia (e.g., drinking within the home), and one participant expressed reservations about enforcing these laws.

*People work for a living and drink alcohol in their homes, however the Federal Government passed the law that ... police can come in without a warrant and arrest you if you are drunk in your own home. If someone told this to someone in Sydney or Melbourne there would be an outrage. There was no consultation or consent ... The important point is that drunkenness is not an offence as it was decriminalised in 1974.*

Some respondents considered that laws which gave police power to enter people's homes without a warrant and arrest them if they were drunk *"would never work."* These laws were held to be ineffective for a variety of reasons such as:

- police do not enforce the law as it is an invasion of people's lives
- the law is inconsistent with other laws
- the law is inconsistent with the duties of police
- police require public consent to enforce laws.

*Police are there to prevent breaches of peace and ensure people can go about their lives being safe.*

*Policing is all about consent ... Police are the public and the public are police. Without the consent of the public and their assistance, we may as well pack up stumps and go home.*

Respondents noted that there needed to be further amendments to the permit system in order to increase its effectiveness in preventing problems. In regard to identification issues in restricted areas, a participant stated that

<sup>55</sup> i.e., "The Intervention"

greater clarification was needed about which forms of identification were acceptable and which were not. It was suggested that in order to prevent “banned” people from obtaining alcohol, a new offence was needed to prevent third parties, not just licensees, from providing banned people with alcohol. One interviewee noted that the permit system exposed permit-holders to pressure from those who had either lost their permits or were unable to obtain one due to their residency status. Those purchasing alcohol intended for on-selling could charge people inflated prices, thereby increasing the negative impact on already vulnerable people.

*Any behaviour which is alcohol-related which is considered unsociable or that leads to a court appearance immediately results in the termination of that permit. So the licensing now plays a major effect for those people who have either lost their licence or have not been able to obtain one because of their residential status. It's quite serious because then they start attempting to get others to purchase for them. That then puts the purchaser under threat of losing their permit and it potentially escalates the purchase prices of whatever good they are after so it can be detrimental financially and socially.*

In this regard, while there was general consensus that individuals needed to assume responsibility for their actions, the majority of interviewees highlighted the need to ensure that alcohol policies did not become persecutory to those most in need of support.

### 5.2.2 Influence of Police and Other Agencies

When applying for a licence, applicants were required to demonstrate to the Commission that granting the licence would be in the public interest. In doing so, the applicant was required to address any relevant criteria in Section 6 (see Object of Legislation for Northern Territory's *Liquor Act* in Part 2) and by specifying any other matter relevant to the public interest in the sale, provision, promotion and consumption

of liquor.<sup>56</sup> When determining applications, the Commission was required to consider the objects of the *Liquor Act*, the public interest criteria, and make an assessment regarding the suitability of the premises and licensee. In making this assessment, the Commission could conduct any investigations that it considers necessary.<sup>57</sup>

Further to this, under Section 47F police were able to lodge objections to various licence applications. Objections could relate to an initial application, condition variations, and premise substitutions and alterations. Objections were able to be lodged on the grounds that granting the application would or could adversely affect:

- the amenity of the neighbourhood where the premises are or will be located
- health, education, public safety or social conditions in the community.

Even though the extent of the investigation was within the discretion of the Commission, respondents reported that the Commission passed all applications on to the police for comment prior to issuing, varying, and placing conditions upon a licence. Participants disagreed about how influential and/or successful police were in making their objections and submissions. One participant highlighted the different perspectives of the Licensing Commission and the police.

*Police form a view which sometimes is upheld by the Licensing Commission and the licence does not get through or the conditions imposed are quite stringent, others get through. That is just the cut and rub of the process ... they [the licensing commission] are balancing all interests, while our slant is predominantly towards the public safety.*

When commenting on licence applications, participants reported that police tended to address hours of operation, density, total availability, and preferred licence conditions. Submissions were dealt with on a case-by-case basis, and participants generally reported that

<sup>56</sup> Section 26(3).

<sup>57</sup> Section 28.

they were given enough lead time in order to fulfil this obligation. One participant indicated that the licensing authority was “pretty good” at ensuring that applicants knew they had to give sufficient lead time, and the authority tended to refuse applications if they were made outside this period.<sup>58</sup> It was noted that the police had the greatest influence when imposing conditions upon special licenses, although some respondents noted that they also had some success with trading hours and licence conditions. Respondents identified two key components influencing the decision-making process:

- basing objections upon evidence-based data
- maintaining a good relationship with the licensing officer.

Basing submissions/objections upon evidence was acknowledged as a crucial component for ensuring success, and one interviewee admitted that previously police “[had] been guilty of objecting without justifying their case.” However, this respondent also noted that police were “getting better at presenting police statistics that backed up their claims and requests.”

Building a relationship with the licensing inspectors was also considered important. Licensing inspectors were able to guide police in the “right direction in terms of what to say” when submitting their objections, and police were able to approach inspectors and ask them to give licensees a warning and/or undertake joint operations if any premises became problematic.

*If a particular venue becomes such a target for us, we will approach licensing and do combined operations with them to target those areas to improve the behaviour of the licensees and the staff. And that has worked relatively effectively for us.*

<sup>58</sup> Section 47F set out the grounds upon which objections could be made. Objectors were given 30 days after a notice had been published to lodge an objection with the Director. Notices were required to be published within 28 days of making the licence application (Section 27). Applications for special licenses were only required to be made seven days prior to an event (Section 58).

Respondents agreed that they had had little success in making objections based on the grounds of density and/or total proliferation of liquor stores. While this was described by one respondent as a commercial decision which was “out of our control”, another interviewee highlighted that obtaining data was challenging as:

*... the majority of alcohol in NT is sold through take-away outlets and it is therefore difficult to attribute alcohol-related problems to a licensed premises.*

This respondent highlighted that even though the Northern Territory collected wholesale sales data, these data were not easily accessed by police. Respondents noted that the Licensing Commission was aware of their concerns relating to density and the proliferation of alcohol, and that they ensured the Commission was aware of the police viewpoint in relation to any application which was endorsed despite police opposition.

#### 5.2.2.1 Trading Hours

While many interviewees considered that a reduction in trading hours would have the greatest impact on reducing alcohol-related harm, others cautioned that this would result in a displacement effect with changes to drinking patterns, where people obtained their alcohol, and when police were required to respond to problems.

*Look if we we're fair dinkum about protecting the public and public safety, we wouldn't have these late licenses. The statistics are there to show ... the amount of harm and assaults that come from having late licenses, and yet we still allow them to happen ...*

*Limiting trading hours has unintended side effects. In Alice Springs there were restrictions on trading hours for takeaways, particularly for high-alcohol drinks such as wine. The restrictions only allowed for three hours per day on trading these drinks, so previously people would buy the wine early in the morning and be drunk by mid-afternoon, the changes meant that people were not drunk during the day but were drunk and committing offences at night-time. This meant that it was*

*harder for police to intervene as it is easier to deal with people in the daytime. The intended consequence was that there was less public drinking in the daytime, but the unintended consequence was that police were dealing with more dangerous situations at night.*

*Used to have trading until 6 am. Hours were cut back to 4 am and while it might have knocked off two hours it didn't really seem to improve the situation all that much. It just meant that people were getting a lot more belligerent a lot early.*

Despite the potential for displacement effects, one respondent noted that a reduction in hours was a positive thing, especially in terms of the impact it had upon workforce stressors experienced by police.

*When the licensed premises are closed for the five nights early, our staffing levels go down, our job attendance goes down, our, I suppose our adrenalin levels go down a little too. Because at 4 o'clock in the morning you're feeling pretty buggered yourself after a 10-hour shift and the last thing you need to be doing is dealing with intoxicated people who want to take you on or create some sort of disturbance.*

Most respondents agreed that 4 am closing times were too late, and one stated that they saw no reason why premises needed to stay open past 1 am. Respondents also noted that despite exclusions in the Act and police objections, licensees were given special permits which extended their trading times to public holidays like Christmas Day and Good Friday, and 7 am for significant events. Respondents considered that these extensions were approved by the Licensing Commission because of pressure from the alcohol industry and government.

*Years ago you could not sell alcohol on Christmas Day and Good Friday, and this meant that 3/4 of the police could go home to their families. Over the years, this has been watered down with special licences. Would like to see that these days you cannot sell alcohol, people can buy alcohol the day before*

*if they want it. Undoubtedly the industry would have something to say about this. Would like to see days where there is no alcohol sold, not just in terms of take-away but also the closure of hotels. I don't think it will kill people, although people in this town think it will.*

However, another interviewee stressed that under the objectives of the Act, it would be necessary to balance “whether a reduction in those trading hours is actually ultimately beneficial compared to people’s lifestyle expectations of the Territory.” In this regard, one participant noted that Darwin City Council also had concerns about late trading hours and often voiced strong objections about late licenses within the Darwin area. Yet, even where these concerns were addressed through planning provisions and lease conditions, they were often inadequate to prevent a licensed area from impacting on the amenity of the area.

*With some of the new developments ... [as] a condition of their lease, because there are high-rises, hours are being limited. However, I have seen licenses granted for alfresco dining turn into a “raging nightclub”, which are issues that the Commission should be dealing with more directly.*

One participant noted that in the absence of the Liquor Commission and licensing authority proactively confronting licensees about these problems, the police would either ask the licensing authority to give the licensee a warning, or lodge a complaint under Section 48 and ask the Licensing Commission to close the premise down.

#### **5.2.2.2 Outlet Density**

Several respondents noted that extensive trading hours was not necessarily the biggest problem for the Northern Territory; it was the “sheer volume of alcohol that was available”.

*The NT Liquor Act is effective in reducing the trading hours but the reduction of trading hours in itself does not necessarily reduce the myriad of complex problems associated with the sheer volume of alcohol that is currently available.*

Overall participants considered that it was extremely difficult for police to influence the

number of licensed premises as this was viewed as a commercial imperative. In the absence of adequate data, it was difficult to demonstrate that another premise would have a detrimental effect on community amenity as the majority of premises were not problematic. While one participant noted that this was a significant concern in relation to take-away liquor stores being attached to supermarkets, other participants noted that there were moves in some areas to reduce the number of licensed premises. A reduction in the number of licensed premises within these areas was currently being negotiated with licensees. One participant commented that the plethora of late night licensed premises was also an industry concern. However, the commercial impact of limiting competition by restricting new liquor outlets was ultimately a matter for the Licensing Commission to determine when considering the objectives of the Act.

*From a police perspective, we don't believe, certainly in the Darwin CBD area, that there is a requirement for any more licensed premises for late night trading in the CBD. We think that we have probably got our quota, if not probably exceeded it to a degree, and we are getting similar feedback from industry that perhaps there are too many there. But that is ultimately for the Licensing Commission to determine ...*

*Police can object to new licenses and have, particularly takeaway liquor stores, especially when there is a supermarket attached to a liquor store, and then there is another one in close vicinity. There is the belief that if you have a supermarket, then there needs to be a takeaway liquor store attached to it. This is a commercial interest.*

### 5.2.2.3 Special Licences

Participants noted that there were two categories of special licences issued in the Northern Territory:

- continuing special licences
- special licences.

Continuing special licences were issued to workplace social clubs, sporting and non-profit

associations/organisations. Liquor sales were approved for a limited number of hours each week (i.e.,  $\leq 30$  hours). These licences were reviewed each year and participants noted that they were able to provide advice and information to the Licensing Commission as part of the renewal process. These licence types were not considered to cause any problems for police.

Special event licences were issued for one-off events. These events could either be major, commercially produced events or small private affairs such as a wedding held at a public place (e.g., a beach or park). Respondents noted that police often had greatest success in influencing the licence conditions which were placed upon these events as applications were considered by all major stakeholders. As such, police noted that they were able to provide input and advice about the feasibility, appropriateness, and logistics of the proposed event (e.g., number of people, number of bars serving alcohol, security requirements, types of alcohol served, serving instruments). Prior consultation generally resulted in events being managed well.

Respondents indicated that the licensee would sometimes challenge the extent of conditions imposed; however, over the last few years there had been greater acquiescence and acceptance displayed by licensees. One participant noted that even though the number of special licences which police needed to address was resource intensive; the process of licensees consulting with a range of stakeholders was a “communicative process which generally works well.” To this end, while some respondents considered the lead time to be adequate, others lamented that it could be longer as it did not provide enough time to investigate applications which were scant on detail.

Interviewees observed one shortcoming of special event licences: once the licence was granted, licensees were often inadequately monitored by either police or the licensing authority to ensure they complied with their licence conditions. Police noted that by the time they became aware that the licensee was not complying with licence conditions the event was already underway, and complaints to the Licensing Commission could only be after the fact.

*... a licensee can ask for a special licence and say that they will have certain conditions in place; however, unless police or licensing inspectors are monitoring what they do, they can do things outside the licensing arrangements. Police and licensing can assume that licensees will follow through with what they agreed to so do not attend the events in large numbers, which means that breaches won't be detected as quickly. In one case where security arrangements were not met, if they were aware before the event of the licensee not intending to comply then the police may have objected and asked them to reduce alcohol sales or not allow the event to occur.*

*There have been issues where someone has applied for a special licence and told one set of facts and then it turn out to be something different (e.g. a dance party). If this occurs the matter is taken up with the Liquor Commission.*

### 5.2.3 Lockouts

Even though lockouts were not contained within the legislation, respondents stated that they were implemented within the Northern Territory either as a condition of a licence, as part of a liquor accord,<sup>59</sup> or as a voluntary arrangement agreed to by licensees.<sup>60</sup> In addition to adopting the lockout, participants reported that some licensees had also embraced other harm minimisation initiatives such as providing plastic drinkware in late-night establishments. One participant noted that these measures were implemented after police and licensing authorities consulted with licensees. The measures were incorporated as part of a larger scheme aimed at reducing alcohol-related harm and a participant noted that they had been successful in achieving this. It was noted that the Australian Hotels Association (AHA) had provided funding and support for these initiatives and had also paid for a secure taxi rank to assist in transporting revellers away from the city centre.

<sup>59</sup> In Alice Springs.

<sup>60</sup> Within the CBD.

*It appears to me and was certainly my experience when I dealt with them that industry were quite keen to come on board and be an active participant because I think they could ultimately see the commercial gain that it would provide for them by being able to create a safer environment in the CBD during those early hours.*

Police generally considered that lockouts were necessary due to the length of time that venues were open (i.e., 4 am closing time) and were successful in reducing alcohol-related crime on the streets.

*It stops a lot of the bar hopping situations and putting people back out on the street where most of the confrontations seem to arc up. Because it seems to be that, people look at it and go "OK I can be highly visible. I can put on a bit of a show and I can get my 2.5 seconds of glory or fame."*

*I appreciate the lockout because it makes our job a little bit easier at the end of the day.*

*If we are going to have these trading hours, then we are glad that there are some processes around that can attempt to limit harms that come from this.*

Participants noted that lockouts worked through a cooperative and voluntary arrangement and that the measure had been initiated by licensees. However, participants considered that if licensees decided to disengage from the voluntary arrangement, then lockouts would need to be legislated.

*They (licensees) realised that if they could minimise the amount of late night ingestions. Because a lot of the thought nowadays people seem to go out a lot later, they get half tanked up before they go so they only need minimal amounts of liquor supplied to them before they start misbehaving ordinarily. So by way of introducing the lockouts they reduce the number of people that are coming in later, they reduce the number of ... people who go from one licensed premises to another either looking for trouble or just getting kicked out of one spot.*

### 5.2.4 Banning Orders<sup>61</sup>

The Northern Territory liquor legislation contained several provisions that granted the licensee and their employees, police, inspectors, and the Alcohol Court powers in relation to problem patrons. These provisions related to:

- powers to remove or exclude
- prohibition orders
- banning orders
- exclusion orders.

Banning orders and exclusion orders were new amendments (Gazetted in 23 June 2010). These amendments clarified that police, along with others, also had the power to remove or exclude patrons. Prior to this amendment, the power of police to remove patrons from premises was ambiguous and contingent upon a request from licensees and/or inspectors (see below). These amendments were universally welcomed by interviewees, and were generally also supported by licensees.

*Most definitely, being able to preclude those who have a propensity to cause trouble and/or commit offences within licensed premises spaces are the ones that we want to exclude. Just have to see how the new legislation takes place and how that impacts on it.*

#### 5.2.4.1 Power to Remove or Exclude

Licensees and their employees, inspectors and police were empowered under the *Liquor Act* to exclude or remove people if the person was “intoxicated, violent, quarrelsome, disorderly or incapable of controlling his behaviour.” Further to this, licensees, employees and inspectors were also authorised to remove anyone:

- whose presence rendered the licensee liable to a penalty under any law of the Northern Territory

- who, in the opinion of the licensee/employee/inspector, would disrupt the business of the licensee or unreasonably interfere with the wellbeing of other persons lawfully on the premises
- found guilty of an offence relating to the possession or supply of a drug on licensed premises in the preceding 12 months.<sup>62</sup>

Despite section 19(10) of the Act providing police with the same powers as inspectors, several respondents noted that previously, under Section 121(3), police could only remove a person from the premises on demand from the licensee, their employees, or an inspector. However, this limitation upon their power had recently been changed.<sup>63</sup>

Several respondents noted that the power to remove and exclude only had limited use as a preventative tool as intoxication was not defined within the *Liquor Act*, the power to remove was confined to a particular premise, and the behaviour had to be displayed prior to police taking action. Removed or excluded patrons who returned within 12 hours could be issued with an infringement notice.<sup>64</sup>

*The problem is that the terms are not well defined, especially “intoxicated”, as police can eject people for displaying a behaviour, though there is no definition of the behaviour. So the power could be good if police had a better definition of “intoxicated”. Police will be cautious because of the lack of definition and patrons will have to display very outlandish behaviour before they get ejected.*

#### 5.2.4.2 Prohibition Notices

Prohibition orders were able to be issued to offenders for periods less than 12 months. These notices were issued by the Alcohol Court (see above). However, several participants questioned the efficacy of these notices. Not

<sup>61</sup> 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.

<sup>62</sup> Section 121.

<sup>63</sup> See *Liquor Legislation Amendment Act 2010* (No 17 of 2010).

<sup>64</sup> Section 121A; *Liquor Regulations*, Part 1.3. It should further be noted that police were also able to charge a person with an offence if they returned within 24 hours under Section 7 of the *Trespass Act*.

only was it difficult for police and licensees to identify a prohibited person, but the majority of alcohol bought in the Northern Territory was take-away and consumed in situations which were not readily monitored. As such, interviewees highlighted that in order to enforce these orders, family members would also need to be prohibited from obtaining alcohol.

*There are a lot of ways around prohibition orders, as the majority of drinking is take-away, and the Aboriginal culture is about sharing as it is family orientated. They are a generous culture and have a generous nature, and not just with immediate family.*

Respondents noted that in order to qualify for a prohibition order, offenders needed to be charged with an offence. A few respondents stated that they were reluctant to do this as there was also a priority, in relation to Indigenous offenders, to keep them out of the criminal justice system. This priority reflected one of the recommendations made by the Royal Commission into Aboriginal Deaths in Custody.

*Have prohibition notices but don't use these often as there is a problem that the majority of people that are locked up are not charged with an offence. The reason for this is the Royal Commission deaths in custody, and trying to keep them out of the criminal justice system, so to get a prohibition notice they have to be charged with an offence ... But this is against the recommendation to keep people out of the criminal justice system.*

Nevertheless, one participant was unsure whether the priority of keeping Indigenous offenders out of the criminal justice system was achievable in the absence of the assistance and support necessary to abstain from alcohol. This participant considered that prohibition orders may have a role to play in reducing rates of recidivism amongst Indigenous offenders as they provided an opportunity to “get sober.”

#### 5.2.4.3 Banning Notices and Exclusion Orders

A recent amendment to the *Liquor Act* had given police and courts the power to issue banning notices and exclusion orders in designated

areas.<sup>65</sup> Banning notices could be issued by police for specified offences<sup>66</sup> for up to 48 hours and could ban a person from the designated area or from all licensed premises.<sup>67</sup> However, notices could only be issued if the police officer believed on reasonable grounds that:

- giving the notice would be a reasonable and effective way of preventing the person from continuing to commit the offence, or committing another specified offence in the designated area, and
- the commission of the offence involved or would increase the risk of alcohol-related violence in the area.<sup>68</sup>

To date, three precincts had been declared as designated areas: Alice Springs, Darwin, and Palmerston.

Exclusion orders were imposed by courts on offenders found guilty of committing a specified offence within a designated area. Orders could be imposed upon those who received sentences of less than 12 months, and where the court was satisfied that making the order would be an effective and reasonable way of preventing the offender from committing a further specified offence within the designated area. Exclusion orders were operative for less than 12 months. Police were able to apply to the court to request an exclusion order be imposed. Additionally, the Commissioner of Police could apply for an order to be made if an offender had been given

65 Designated areas were declared by the Minister if it was believed that alcohol-related violence had occurred in a public place in the vicinity of licensed premises and the issuing of banning orders and exclusion notices were reasonably likely to be an effective way of preventing or reducing the occurrence of alcohol-related violence in the area. See sections 120F – 120H.

66 “Specified offence” means an offence against any of the following provisions of the:

- *Liquor Act*, Section 121(2) or 121A
- *Criminal Code*, Sections 66, 133, 166, 174C, 174D, 174E, 176A(2), 177, 181, 186, 188, 189A, 192, 200, 212, 213, 215, 239, 240 or 251
- *Summary Offence Act*, Sections 45D, 45K, 47, 47AA, 50 or 53
- *Weapons Control Act*, Sections 7(1), 7A or 8, or
- an offence prescribed by regulation as a specified offence.

67 Section 120J.

68 Section 120J.

a banning notice and/or an infringement notice on at least three separate occasions during the preceding 24 months. In these circumstances, offenders were not required to be charged with a crime in order to satisfy the court that the penalty was necessary. In determining whether an order would be an effective and reasonable way of preventing the offender from committing a further specified offence, the court needed to consider:

- the nature and gravity of an offence
- the offender's previous convictions in relation to the area and offence committed
- prior exclusion and banning orders and/or infringement notices served upon the defendant
- likely impact of the order upon the offender, their victims, public safety and public order
- any other matters it considered relevant.<sup>69</sup>

These legislative amendments were generally welcomed by respondents, with one noting that the industry had also supported their adoption due to "their frustration of recidivist offenders operating within their business environments who are causing trouble and being involved in the alcohol-fuelled violence." However, there were also concerns that, while the legislative changes were a step in the right direction, they would be difficult for police to enforce.

Respondents reported that police were currently working with the AHA and the Liquor Commission to implement an identification system. However, several legal issues related to privacy needed to be addressed before a comprehensive identification and reporting system could be implemented. Further to this, even though it was emphasised that it was still too early to evaluate the efficacy of the declared precinct legislation, police generally considered that the orders would have a deterrent effect on anti-social behaviour as "people place[d] access to licensed clubs above everything else. So from an enforcement point of view it is a very important tool."

In addition to the legislated provisions, several participants noted that the power to ban or exclude a patron from premises had previously been used by licensees to good effect. These bans were adopted either as part of a liquor accord or were issued by licensees in accordance with the *Trespass Act*.

*Licensed premises here, they keep a very, very good record of whose been trespassed from their premises. Anyone that does get trespassed, we get a copy of the trespass notice so we have that on file. We also load it onto our systems. So if a person's bona fides are checked up it pops up onto our system as a trespass alert ... I don't see any difference towards barring.*

*Barring orders are linked to a relatively new Liquor Accord. This link is regarded by police as a positive thing particularly from an information-sharing perspective and also in being able to deal effectively with a core group of people who cause problems for licensees. Also provides an opportunity to talk about common issues/common problems and identifying common solutions.*

One participant noted that these powers were only valuable if used sensibly. This participant expressed doubt about the viability of these powers in the hands of a young and inexperienced workforce, and a licensed premise which operated in a competitive and commercial environment.

*The current powers of licensees to bar are quite effective, but at the end of the day there are young people serving alcohol to other young people. There is a competing interest to keep the patrons there and keep spending. By the time they get to the stage where patrons have had too much it is too late.*

<sup>69</sup> Section 120S.

### 5.3 Intoxication<sup>70</sup>

In the Northern Territory *Liquor Act*, Section 102 provided:

*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).*

The offence created in Section 102 was a regulatory offence<sup>71</sup> where the defendant either needed to prove that the patron was not intoxicated or demonstrate, on the balance of probabilities, that they committed the offence because:

- it was necessary to preserve life, prevent injury, or protect property; or
- a competent authority ordered them to commit the offence and they were obligated to obey the order unless the order was manifestly unlawful.<sup>72</sup>

The Northern Territory was distinctive in that in determining whether a person was intoxicated or not, the result of a breath analysis was admissible and was prima facie evidence of the person having, at the time the sample of breath to be analysed was taken, a concentration of alcohol in his or her blood not less than the concentration assessed by the analysis.<sup>73</sup>

Even though a person's intoxication was an element of the offence constitution under Section 102, intoxication was not defined within the Act. Therefore, the definition of intoxication

would be construed with reference to its dictionary definition.<sup>74</sup> However, while there was disagreement amongst participants about whether a statutory definition was desirable, all participants agreed that if a statutory definition was adopted it would be important to ensure that it was consistent with other legislation which defined intoxication.

For instance, intoxication was defined in the *Police Administration Act* as "seriously affected by alcohol or other drugs."<sup>75</sup> However, respondents stated that police were only able to use this definition as a guideline as the definition was not directly applicable to the offence in the *Liquor Act*. Many respondents stressed that police determined whether someone was intoxicated by visual observation.

*... how someone is speaking, their physical appearance, demeanour and gait, smell. ... really it is just purely the physical observations of an individual that will invariably dictate a police officer to determine whether someone is intoxicated.*

However, the reliability of the subjective assessment was questioned by several participants.

*Everyone's perception of what intoxication may be is going to be totally different.*

Interviewees noted that relying upon a purely subjective assessment when determining whether a patron was intoxicated was not beneficial either from a policing perspective or from the licensee's perspective. One officer reported that because the offence was reliant "upon the individual police officer's observations", when charged with the offence of serving an intoxicated person, licensees have been able to produce evidence which challenged the police officer's judgement. As such, respondents

70 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. As such, the statutory offence created by section 102 was changed from that described above. The new Section 102 provided that it was an offence for a licensee or an employee of a licensee to sell or supply liquor to a person who is drunk. Drunk is defined by section 7 of the *Liquor Act* (NT).

71 Section 124AA defines Section 102 as a regulatory offence.

72 Section 124AA.

73 Section 124B.

74 *Nokes v Doncaster Amalgamated Collieries Ltd* [1940] AC 1014. See also *Cody v JH Nelson Pty Ltd* (1947) 74 CLR 629; *Maritime Services Board (NSW) v Posiden Navigation Inc* [1982] 1 NSWLR 72.

75 Section 127A. Further to this the *Criminal Code Act* defined intoxication for Part IIAA and Schedule 1 provisions as being due to the influence of alcohol, a drug or any other substance.

noted that police were hesitant to prosecute people with the offence of serving to intoxicated persons, and were unaware of whether the licensing authority or Licensing Commission had instigated any prosecutions.

*I haven't seen anyone prosecuted for serving intoxicated [patrons]. I'm not sure that there have been any instigated by the Licensing Commission.*

Another problem stemming from the absence of definition within the Act was the lack of clarity it provided for bar workers who were expected to recognise when a person was intoxicated in order to fulfil their responsible service of alcohol obligations. Participants noted that even though hospitality workers were mandated to undertake RSA courses,<sup>76</sup> the circumstances and environment in which they were expected to work made it difficult for them to:

- make an accurate assessment
- act upon their assessment with confidence.

To this end, several respondents noted that not only was the age of the service staff a disempowering factor, but so too was their lack of employment security and the manner in which they served patrons.

*... staff are so busy trying to serve alcohol rather than trying to police it themselves. ... You only have to walk into any of those nightclubs and you can see that they're flat out, and there is not anybody in particular paying attention to levels of intoxication and whether people should be getting service.*

Despite acknowledging that determining intoxication was difficult in the licensed premises, several respondents still wished to see licensees taking more responsibility for managing on-premise intoxication levels. In this regard, one participant suggested that security staff needed to play an increased role in monitoring the intoxication levels of patrons:

*Security have a role, but when they get involved the problem has already occurred. Rather than doing preventative actions like mingling and talking to people and making assessments.*

However, another participant considered that the licensee's role commenced prior to the arrival of patrons. It was more fundamental and they spoke of the culture of intoxication as a recreational pastime and the licensed premises as the vehicle for this pleasurable experience.

*At the moment the police are battling to fight a certain culture where a majority of people agree that you go to the pub to get intoxicated. There is a discrepancy between what the licensee is offering to the public: a chance to come and get drunk, and the police who are there to enforce the liquor legislation that says you cannot serve to intoxicated persons.*

In order to combat the promotion of intoxication as a pleasurable experience, a participant argued that the legislation should focus more specifically on its prevention. One way of doing this was to articulate the problem more precisely.

*... someone being brave enough to actually define what intoxication means ... I don't know whether it is the commercial interest or whether it's just a cultural issue or not, but we just seem really afraid to tackle the fact that alcohol actually is directly linked to so many other things.*

Several participants, however, were not sure whether providing a definition of intoxication would make it any easier for police to identify, and therefore enforce it, under Section 102. Participants thought that even if a definition was provided identification would still require a subjective assessment, and licensees would still be able to challenge the offence.

*Intoxicated is a very open-ended word. Very, very few areas of description seem to suit the needs for all.*

*People can exhibit similar type of behaviours which someone would attribute to intoxication*

<sup>76</sup> This was not a legislated requirement. Rather, it was a policy which has been adopted by the Licensing Commission and is imposed as a condition of licence.

*but not actually be intoxicated. They may have a health disability or they may be under the influence of something else which is not actually alcohol. It is a very difficult term for someone to grasp. These issues have arisen in relation to driving offences.*

Respondents considered that in order to tackle high levels of intoxication, greater emphasis needed to be placed on the responsibility of the individual drinker, particularly those who used intoxication as an excuse to engage in anti-social and violent behaviours.

*It would probably be OK with people going to pubs to get drunk, as long as they didn't then go and bash people or be involved in other kinds of criminal offending.*

*I think it needs to be shored up a little because it puts a lot of emphasis on the supplier.*

Participants suggested that not only should the permit system which currently operated within some parts of the Northern Territory be extended to encompass those who engaged in these behaviours while intoxicated, but the offence of serving and supplying an intoxicated person with alcohol should be extended to third parties. One participant highlighted that:

*There is nothing to say that if you are intoxicated your friend who isn't [intoxicated] can keep purchasing it, so may not come to attention of the bar staff.*

However, the absence of a statutory definition was not considered to be problematic by one interviewee.

*I don't think there is a definition of intoxication that stands up anywhere. We like it the way it is because the onus of proof is reversed.*

It was noted that the responsibility was placed on the server to prove that the patron was not intoxicated and that all police needed to do was to state that they believed that the person was intoxicated. From a police perspective, this provision had worked well and there were no immediate plans to change it. Police

were also trained to identify the behavioural manifestations of intoxication.

Several participants noted the legislative provision which permitted results of a breath analysis test to be submitted as evidence in court proceedings.<sup>77</sup> Respondents had varied opinions regarding how compelling these results would be when attempting to establish that someone was intoxicated. One interviewee said that the results would be the:

*... only true way that anybody can probably produce evidence beyond a reasonable doubt ... is probably for a breath analysis to be conducted on each and every single one of those people where intoxication is an element of the offence.*

While other interviewees stated:

*Someone who may be in the higher range for a blood, a breath analysis can function as well in some areas as most other people ... Intoxication by way of reading is not much ... It's a real difficult one.*

*Therefore, some people could be 0.15 and be completely pleasant to talk to; whereas a person could be 0.02 but behaving unpleasantly. BAC and behaviour depends on a range of things.*

Another interviewee suggested that without further guidance about how to interpret and apply the results of a breath test, it would be difficult to use them as conclusive evidence of a person's intoxication. A participant reported that police currently used the range of BAC levels contained in the *Traffic Act* when interpreting results.<sup>78</sup> However, they admitted that this range was more concerned with impairment rather than intoxication.

<sup>77</sup> Section 124B.

<sup>78</sup> Section 19 of the *Traffic Act* defined:

- high range blood alcohol as blood alcohol content of 0.15% or greater
- medium range blood alcohol content as blood alcohol content of 0.08% or greater, but less than 0.15%
- low range blood alcohol as a blood alcohol content of 0.05% or greater, but less than 0.08%.

*At least with the Traffic Act ... it quantifies it for us on three levels ... low-range, mid-range, high-range [BAC], but even then somebody can have a mid-range [BAC] and be quite capable of carrying out certain tasks.*

In this regard, several participants maintained that “part of what it [the legislation] is about for licensees is conducting a business that is not offensive and unpleasant to patrons.” It was noted that because alcohol affected individuals in different ways, the adoption of universal breath testing on licensed premises was not necessary. To this end, one interviewee stated that they would not like to see a situation:

*... where if a certain BAC is reached then someone can be ejected from a venue.*

The adoption of widespread breath testing of patrons on licensed premises was also considered to be unrealistic by one respondent who noted that it “would have some fairly significant resource implications for any police force across Australia.”

## 5.4 Preventing Supply to Specific Populations

### 5.4.1 Minors

The Northern Territory was unique in terms of participants’ perceptions about secondary supply. This was due to the higher priority given to take-away sales within the region and the extent of the legislated provisions in relation to restricted areas and permits (see Restricted Areas). While supply to minors was recognised as an issue for licensed premises due to the presence of fake identification, it was acknowledged that premises tended to provide adequate controls to minimise the problem. To this end, it was reported that venues which tended to attract under-age customers had introduced the ID-I system, and that legislated changes introduced in 2010 had increased the power of licensees and their staff to seize false identifications.<sup>79</sup> However, one respondent noted

that rather than prosecuting minors who used false ID to gain entry into licensed premises, police and licensing inspectors tended to engage in a more holistic, inclusive approach by working with families.

*As opposed to going down a prosecutorial pathway, they’re actually doing more of a participatory approach with family and through the schools and trying to promote the message that that’s not the way to go and just bring it to the family’s awareness that the individual minor concerned has tried to go to licensed premises underage. That seems to be working reasonably well with them.*

### 5.4.2 Dry Communities

“Sly-grogging” was considered to be a problem of greater significance in the Northern Territory than in other jurisdictions, particularly in dry communities, and respondents noted that police tended to prosecute “where it’s done for profit” and that they had been successful in these matters. In order to enforce the restricted area provisions, respondents noted that they frequently undertook road blocks and seized vehicles used to transport liquor into dry communities without a permit.

*That’s really the area where that secondary sale is the most prevalent. There’s no doubt and it would be naive to suggest that there are people who are probably running a black market of some description to itinerants around the major centres. But realistically, most people are quite comfortable enough to actually come and purchase liquor in town and then the on-selling will generally occur to those who travel fairly significant distances between our communities into the restricted areas to supply to those areas and we do prosecute those offences very strongly.*

However, one participant noted that despite the best efforts of police, sly-grogging was difficult to monitor in Indigenous communities.

*Suspect that there is some secondary supply occurring, this comes from Aboriginal culture where they are generous people and when they buy it is for the whole group. This is*

<sup>79</sup> Section 106BD. ID seized must be passed onto the Director.

*difficult to monitor and enforce, as it would be anywhere in the country. There are “grog-runners” that buy large amounts of alcohol for communities that have been dry for 30 years, this is difficult to monitor due to the many access roads.*

## 5.5 Proactive Policing Tools

### 5.5.1 Probity Checks

Under the provisions of the Northern Territory *Liquor Act*, applicants were required to file an affidavit disclosing any persons who may potentially influence the applicant or benefit from the granting of the licence. If the applicant was a body corporate, the affidavit was required to be made either by the principal executive officer or an authorised person with knowledge of the relevant facts. Unless proscribed by the Regulations, the affidavit needed to disclose:

- the full name, address, and date of birth of any person:
  - » able to influence any decision made by the applicant in relation to the sale of liquor or the sale and consumption of liquor, and/or
  - » who may expect any benefit from the applicant in relation to the sale of liquor or the sale and consumption of liquor
- the name of the body corporate, and the full name, address, and date of birth of the secretary and each executive officer of the body corporate:
  - » the names of any person who has a substantial holding in the body corporate<sup>80</sup>
- name of the club or voluntary association of persons, and the full name, address, and date of birth of the secretary and each executive officer, and:
  - » details of the club or voluntary association’s objectives

- » whether or not the club is a non-proprietary club or the voluntary association of persons conducts its business in the same way as a non-proprietary club

- details about any lease, contract, agreement or arrangement unless they were entered into for the purposes of this Act or the Regulations and were approved by the Commission.<sup>81</sup>

Further to the above, when considering an application and any information contained within the affidavit, the Commission was required to make an assessment regarding:

- the financial stability, general reputation and character of the applicant if they are a natural person
- the business reputation and financial stability of the body corporate and the general reputation and character of its secretary and executive officers
- the business reputation and financial stability of each constituent club and the general reputation and character of their secretaries and executive officers if the applicant is a federation of clubs
- whether the applicant, any persons disclosed in the affidavit, any other associate the Commission considered appropriate, and any manager nominated by the licensee were “fit and proper” people to hold a licence.

The Commission must conduct any investigation it considered necessary to make a proper assessment of an application for a licence.<sup>82</sup>

The Northern Territory provided an extensive list of who may be considered an associate of an applicant. Section 23A defined an associate as anyone listed within the affidavit; the applicant’s spouse or de facto partner, parent or remote lineal ancestor, son, daughter or their partners, sibling, partner; and/or the executive officer of the body corporate. Other people who may be

80 Substantial holding was defined in the *Corporations Act 2001*, Section 9.

81 Section 26A.

82 Section 28.

regarded as an associate included anyone paid to advise the applicant about the sale of liquor; the applicant's employees, employers, and coworkers; anyone else who holds a controlling interest<sup>83</sup> in the body corporate; and associates of associates.<sup>84</sup>

Despite the extensive nature of these provisions, interviewees were divided over their adequacy. One participant argued that the checks undertaken by the licensing authority were adequate due to the unique nature of licences in the Northern Territory. Further to this, the participant stated that the absence of organised crime involvement in liquor licensing was evidence of the sufficiency of the checks.

*We ... as a general rule ... have licensees up here that are pretty well long-term Northern Territory families. We are fortunate in the sense that we don't have the organised crime linkages into liquor licenses that other jurisdictions probably have ... The relevant checks that appear to be done by licensing do appear to assist us in maintaining that standard.*

Nevertheless, several participants noted that it was difficult to undertake appropriate checks when the licence applicant was a company with multiple, or changing, directors. It was acknowledged that even though some licensees may be dubious, hearsay was not sufficient to discredit them.

*I suppose if somebody's got a clean skin<sup>85</sup> there's not much you can argue about, whether you know there might be something untoward about them or not. Unfortunately, hearsay does not mix well with facts.*

To this end, several participants commented that probity checks were more relevant when issuing security licences, and admitted that they were not certain of the processes undertaken by

the Liquor Commission. As such, respondents were not aware of whether criminal intelligence or pending criminal matters were relevant to the Liquor Commission's deliberations. One interviewee commented that both the provisions in the Act regarding these matters and the processes involved in conducting probity checks needed to be improved. However, another respondent was not convinced that this was a duty which needed to be delegated to police.

### 5.5.2 Infringement Notices

Participants noted that the legislation provided for infringement notices to be issued, but these were primarily designated for individual transgressions and only a few could be served upon licensees (for failing to comply with identification system conditions).<sup>86</sup> Participants identified several other Acts which they could utilise when issuing infringement notices to licensees, including the *Summary Offences Act* and *Fire and Emergency Act*. Regulatory offences were also provided in the *Places of Public Entertainment Act*. However, several respondents noted that issuing infringement notices to licensees was not their preferred option as they considered that these notices had little punitive and deterrent effect due to their low dollar value and the lack of criminal conviction involved. As such, in the absence of more significant financial penalties, police tended to consult with licensing inspectors in order to instigate a criminal prosecution, refer the matter to the Licensing Commission, and/or issue a summons to licensees who breached their statutory obligations.

*An infringement notice is always probably a lot quicker, but obviously where we rate offences being committed by licensees and their staff as quite high and we obviously want quite a bit of an education flow on about it and we don't want to run in isolation from the body that has primary responsibility for liquor licensing across the Territory. So there needs to be a mechanism whereby they maintain an awareness of any police action against a licensee.*

83 A person was considered to have a controlling interest if they were in a position to control at least 15% of the voting power in the body corporate or held interests in at least 15% of the issued shares in the body corporate.

84 Section 23A.

85 Having a "clean skin" means a person lacked a criminal record.

86 See Section 31A.

Issuing infringement notices was considered to have greater effect on alcohol consumers than licensees, and participants noted that they had power to issue notices for a plethora of public order offences including public drinking, drinking within restricted areas, and more recently for failing to quit. However, several interviewees were of the view that even the punitive effect of these notices could be enhanced. Participants noted that at present people did not tend to pay the notice as there was no method of enforcing payment. As such, one respondent suggested that a drinking licence should be introduced that could be cancelled upon losing a specific number of points.

*In the first instance, they hit a person in the pocket. So that is probably the most effective. There's no point system as per the motor vehicle and traffic act in that if you score too many points you lose your license ... perhaps that should be the situation where it works on a basis of a points system where if you accrue so many points over a ... period of time that you are no longer allowed to attend a licensed premises for a period so that you maybe wake your ideas up.*

However, a similar system (i.e., the permit system) was noted to have little effect upon the prevention of problem drinkers within the regions in which it operated as there was nothing to stop others from buying alcohol for banned persons (see above).

### 5.5.3 Collaboration

Several participants noted that the role of police in liquor licensing was changing. Police were beginning to take on a more proactive role and their approach had become more conciliatory and consultative.

*I think, certainly in the time that I took on the role, there is a larger focus towards consultation with the AHA and licensing and I think that we've started to make some beneficial in-roads for all.*

To this end, it was highlighted that as well as meeting on a regular basis with the Liquor Licensing Authority, the Liquor Commission,

and on occasion AHA representatives and licensees, police also participated in regular Alcohol Management Plan and Alcohol Reference Group meetings. These meetings provided key stakeholders with an opportunity to share information and discuss issues of concern. One participant stated that these meetings had focused upon alcohol-related matters in the metropolitan area, but also examined provisions to amend the legislation.<sup>87</sup>

Initially the liquor industry was not included in these meetings as it was considered that that due to their conflict of interest, their participation might dilute the harm minimisation focus and the plurality of viewpoints would make it difficult to achieve consensus. Respondents noted that this concern was substantiated when the meetings were expanded to include industry representatives, and it was found that the representatives did “get in the way”. A few interviewees noted that The Menzies Review (Senior, Chenhall, Ivory, & Stevenson, n.d.) had reported that the group had “lost its way” and recommended that the Alcohol Reference Group be abolished and replaced with a new one. However, another participant highlighted that the preponderance of alcohol problems within the community meant that there was a “death by committee” environment within the Northern Territory. This participant stressed that a more streamlined approach may improve outcomes.

*There are so many committees with the Intervention and the Alice Springs Transformation Plan which the police work under. The Safe and Sober Steering Committee which the police work with have \$5.4 million dollars for the next three years to fund projects. There is an issue with having too many committees that cross over, may need to cut back on these.*

*At the end of the day, we're in a people business, and the governments can't solve everyone's problems. It's actually people that solve problems. I find the best approach is talking to people ...*

<sup>87</sup> The amending legislation was the *Liquor Legislation Amendment Act 2010* (No 17 of 2010).

Several participants suggested that for these meetings to be functional and less adversarial, it may be necessary to have legislated arrangements.

*Police do a lot of things on good faith ... working with licensing inspectors they are able to get licensees to agree to temporary changes to their licensing conditions. It would be good to legislate these arrangements so it was more comfortable for all parties involved.*

*The other key issue of concern is that the liquor licensing process is an adversarial one.*

#### 5.5.4 Specialist Enforcement Function

Participants reported that the Northern Territory's Drug and Alcohol Policy Unit was responsible for coordinating all liquor licensing matters in relation to new licenses, special continuing licenses, special event licenses and variations to licenses. In submitting objections, this Unit sought input from the relevant local area command and prepared a response on behalf of the Northern Territory Police.

Participants were divided over the need to establish a specialist liquor licensing enforcement unit within the Northern Territory. While some participants considered that not having a specialist unit provided police with the flexibility to change their priorities and redirect their focus as new social problems arose, others noted the success of the CitySafe Patrol in metropolitan and suburban areas. It was highlighted that this initiative had increased the visibility of police and had a positive impact on the amenity of areas surrounding licensed premises.

*Put people (police) out on foot, where they had high visibility, very reactive. Provided relief for mobile units so while they were dealing with the licensed premises, or the CBD entertainment area, they also had to deal with everything else that happened around the ... suburbs etc.*

Regardless of whether a specialist enforcement unit was established, respondents noted that due to the diversity of alcohol-related problems within the Northern Territory a localised

approach would be required to address alcohol-related harms.

*The issues in Darwin are different to the issues in Alice Springs. The majority of issues revolve around take-away sales in Alice Springs, not licensed venues. Licensing is employed to monitor and enforce those things.*

#### 5.5.5 Training and Education

Participants reported that there had been increased priority given to training police in the provisions of the *Liquor Act*. Training had been undertaken with the licensing authority and there was an intention to make these joint training initiatives an ongoing feature, particularly when amendments were made to the legislation. This training had improved the relationship between police and the licensing authority as they realised that there *"was some miscommunications going on and there seemed to be a push/pull relationship."*

*It [training] was a bit of a wake-up call for both sides of the party ... There was a lot of positive feedback. It was run by an independent party ... It was professionally produced and professionally presented .... A lot of it just reinforced how police do our business as far as the evidentiary side is concerned .... Gave me an actual insight into what the liquor inspectors were inspecting when they carried out their licensed premises inspection.*

Participants regarded the opportunity to network with employees from the LRAS and the Fire Department as valuable, as building relationships was considered important for future liquor licensing activities that involved police. These activities involved collaborating with the agencies that had the greatest impact in relation to maintaining the safety of licensed premises, as well as improving future information-sharing prospects.

*[A representative from the fire service] was totally blown away by what everyone else had to do, yet he had the strongest powers to actually implement anything and put the fear of god into the licensees.*

*Joint training has strengthened the relationship between police and licensing commission, gave a good network base, has had to deal with the ones that fly-in and fly-out so not only do I know the faces I get to know them a little more intimately as far as their work practices are concerned. They get to understand what we have to produce to provide (show) cause and we get to understand what levels they have to meet as far as having the double dip of the cherry either through going to the Courts or taking action through the Licensing Commission itself.*

However, one officer had reservations about the feasibility of undertaking further training courses “as it is difficult to take police off streets for two weeks as they have competing interests” and it was highlighted that officers did receive standard training while they were in the Academy. In addition, training was often delivered at the local area command level for new officers in order to educate them about local conditions. This was necessary as the restrictions which applied in particular areas often varied depending upon the Alcohol Management Plan that was in place, as well as the statutory restriction category that was applicable. As such, the powers that could be exercised by police also varied. One respondent noted that in remote areas, teaching police about enforcement operations in licensed premises was superfluous as there were very few problematic premises.

## 5.6 Conclusion

Participants highlighted the dynamic nature of liquor licensing legislation and noted the transformative effect that changes to the legislation had upon police roles, the licensing authority, and consumers in general in the Northern Territory. It was emphasised that the police role had evolved from being primarily focused on enforcement to a stronger focus on safety and harm minimisation. Interviewees recounted that police often engaged with stakeholders in a conciliatory and consultative manner when working through licensing issues. Police were involved in the Alcohol Reference

Group meetings, development of Alcohol Management Plans, coordination of liquor accords, had a role in relation to new licence applications and were widely consulted in the planning of special events.

Respondents reported that Northern Territory police were establishing a specialist licensing enforcement unit. A specialist enforcement unit would seek to build upon the success of the CitySafe Patrol in metropolitan areas. Increased police visibility was also reported as having a positive impact on community amenity.

The importance of ensuring continued collaboration and training, particularly with those agencies which focus on enhancing the safety of venues (i.e., fire department and local government) was highlighted. Information-sharing opportunities were noted to be of particular importance in the Northern Territory as many licensing inspectors and other stakeholders operate on a fly-in, fly-out basis.

Respondents observed that the relationship between police and the licensing authority was good and continually improving with both agencies striving to develop their knowledge and understanding of the other’s motivations, policies, and processes. This growing positive relationship was attributed to joint training, increased communication and information-sharing, as well as recognition that each agency’s perspective and contribution was necessary to balance the competing objects of the Act.

Interviewees highlighted the limited resources of the licensing authority. It was noted that police were generally responsible for enforcing the Act as there was a dearth of licensing inspectors. This was a particular problem in rural and remote areas where inspectors tended to be employed on a fly-in, fly-out basis. However, the on-site practices of licensed premises were also noted to be less problematic in these areas due to high take-away sales.

Interviewees generally agreed that greater education was needed to ensure all agencies were aware of their roles and legislated powers. Increased knowledge was identified as a central

mechanism to help police develop confidence in instigating legal proceedings and lodge complaints with the Licensing Commission.

Participants emphasised the importance of ensuring that training was adapted to the requirements of local conditions and environments. The provision of practical, relevant, and localised training was necessary due to the prevalence of localised measures adopted within the Northern Territory (e.g., Alcohol Management Plans and differentiations in restricted area category levels). However, due to competing priorities, interviewees stressed that it was often difficult to remove operational police from their front-end duties to undertake training in liquor licensing.

The roles of police and the licensing authority were recognised as different. Police focused on enforcement and crime prevention, while the licensing authority focused on regulating the industry. The efficacy of the respective agencies was reliant upon the maintenance of these divergent yet complementary roles. To this end, interviewees agreed that police needed education about the differences between the licensing authority and the Licensing Commission.

Interviewees noted that licensees and the industry were generally supportive of measures aimed at reducing alcohol-related violence and increased public safety. Some licensees voluntarily implemented harm minimisation initiatives such as lockouts and plastic glassware. The AHA had also funded a secure taxi rank to help transport patrons from late trading areas. Generally, the measures were implemented after consultation with police and the Licensing Commission, and participants highlighted the continued importance of consulting with the industry.

Retailers recognised the commercial gain from ensuring late trading areas were safe, and universally welcomed powers to prevent problem and recidivist patrons from attending premises. Banning orders and exclusion orders were introduced in 2010; they were able to be used as a preventative measure, rather than employing the more reactive measure of removing problem patrons. Respondents

noted that it was too early to comment on the efficacy of banning and exclusion orders. Unlike prohibition orders, offenders were not required to be charged with a crime in order to be issued with an exclusion order.

Lockouts were considered to be successful at reducing alcohol-related violence primarily because they kept people off the streets. Respondents noted that lockouts were currently implemented as a voluntary measure. However, they reported that if licensees became uncooperative, there may be a need to mandatorily impose lockouts through legislation.

Interviewees viewed prohibition orders issued by the Alcohol Court as a holistic approach to alcohol-related crime, as the offender was also required to undergo treatment. It was noted that more needed to be done to support family and other community members pressured to purchase alcohol for offenders. This was particularly prevalent within Indigenous communities where there was also a cultural imperative to be generous and to share. Police noted that these preventative and rehabilitative measures were only effective if introduced with widespread technology such as ID scanners. While difficult to enforce, respondents considered that the greatest impact of these changes resided in their deterrent effect.

Charging a person with an offence was a prerequisite to obtaining a prohibition order, and some participants reported their reluctance to charge Indigenous people with an offence because it was inconsistent with recommendations made by the Royal Commission into Aboriginal Deaths in Custody. Keeping Indigenous Australians out of the criminal justice system was noted as a priority by this Commission, and several respondents highlighted the importance of rectifying the social disadvantage suffered by these populations over and above criminalising them for alcohol-related offences. Participants recognised this as a significant problem but were unsure which initiatives worked to the greatest effect.

Several ongoing challenges were highlighted by participants. These challenges related to the

lack of clarity surrounding principles of harm minimisation, the complex origins of alcohol-related violence and anti-social behaviour found within the Northern Territory, the unique needs of Indigenous populations, and the impediments encountered in proving the detrimental impact of take-away licensed premises on community amenity.

Northern Territory interviewees regarded the issue of take-away sales as crucial due to the high incidence of alcohol-related harms and anti-social behaviour which occurred outside licensed premises and in rural and remote communities. The Northern Territory legislation contained several categories of restricted areas, and respondents in the Northern Territory primarily associated the concept of secondary supply with the practice of sly-grogging. It was noted that preventing sly-grogging and/or the consumption of alcohol in restricted communities was particularly difficult. Respondents were concerned about suppliers who provided alcohol in these communities as a means of making a profit. Many stressed that the permit system was subject to exploitation and the greatest detriment was often incurred by those who were most vulnerable.

Respondents noted that there were many and disparate committees in the Northern Territory charged with addressing alcohol-related health and social problems. Divergent objectives and views meant that the meetings were sometimes conducted in an adversarial manner. Participants suggested that greater progress would be achieved if there was an overarching statutory body which had a streamlined focus on minimising alcohol-related harm and the legislative apparatus required to accomplish this. Interviewees considered that such a forum would need to be a statutory body with the aims and conduct of meetings specified legislatively in order to ensure harmonisation.

Another challenge was the difficulty of proving the offence of serving to intoxicated patrons. In the Northern Territory, this offence contained distinctive features such as placing the onus upon the server to establish the patron was not intoxicated and the ability to use breath analysis

measurements when proving a patron's intoxication. Despite these features, several respondents considered that the offence was still too difficult to prove due to the absence of a statutory definition of intoxication as well as ambiguity surrounding the correlation of breath analysis results with levels of impairment. However, there was a lack of consensus amongst participants about whether a statutory definition was needed, what effect it would have in establishing the offence as a subjective assessment would still be involved, and whether the admissibility of breath analysis results would ever be of any real benefit to police, because:

- a high blood alcohol level does not necessarily equate to impairment and/or result in observable indicators of intoxication
- the adoption of widespread testing was impractical and not necessarily consistent with the stated aim of the legislation.

Interviewees stressed that if legislative amendments adopted a definition of intoxication it would be beneficial to keep it consistent with the definition prescribed in other legislation.

Providing a statutory definition of intoxication was viewed by one participant as a means of increasing clarity for licensees and their staff about their obligation and duty to prevent intoxication from occurring. It was highlighted that the responsibility of preventing intoxication on licensed premises did not lie just with (frequently) young and inexperienced service staff, it also needed to be borne by licensees, security staff, and patrons. Security staff had opportunity and responsibility to monitor patron behaviours. Licensees had an obligation to ensure the venue did not advertise its premises and/or the consumption of alcohol irresponsibly, and patrons needed to suffer the consequences of their own actions by losing their access to alcohol if they behaved in an unacceptable fashion. To this end, several interviewees considered that the permit system that operated in restricted areas needed to be extended so that patrons who engaged in violent and anti-social behaviour when intoxicated

lost their “right” to drink alcohol and attend licensed premises. Further to this, respondents considered that in order to reduce the incidence of third person supply on licensed premises, the offence of supplying an intoxicated patron on licensed premises needed to be extended to everyone, not just licensees and their employees.

Interviewees noted that infringement notices contained within the *Liquor Act* were primarily directed at individuals. Police could issue infringement notices for many public order offences. Legislation needed to be implemented which enforced the notice when a person failed to pay it. Similar to the provisions contained in the restricted areas, participants suggested that people should be issued with a “drinking licence” and failure to pay infringement fines should mean loss of licence.

Respondents provided examples of other Acts which they could utilise to issue notices to licensees. Despite their availability, however, respondents generally reported that issuing infringement notices was not a preferred course of action as they considered that the penalties imposed were insignificant for licensees. As such, participants reported that when licensees breached their statutory obligations, they tended to consult with licensing inspectors and instigate criminal proceedings, lodge a complaint with the Licensing Commission, and/or issue a summons themselves.

Many provisions within the Northern Territory *Liquor Act* aimed to reduce the harms associated with alcohol abuse and misuse, and police often played an integral role in reducing these harms through enforcing compliance to the Act, as well as through liaising with stakeholders and community members. Interviewees within the Northern Territory were particularly empathetic to the social inequalities and dysfunction which existed in the Northern Territory. They stressed that achieving the objectives of the *Liquor Act* was a responsibility which needed to be borne by multiple agencies, and highlighted that the penalties contained within the Act needed to be strengthened for licensees who did not fulfil their obligations, as well as consumers who behaved in anti-

social and violent ways. Overall, participants reported that any measures designed to reduce harm needed to respond to local conditions and be implemented in conjunction with the local community and licensees. Participants saw a need to ensure that police practices and knowledge were supported through continuous training and data collection mechanisms, as well as increases in the resourcing of the licensing authority. Police emphasised that all bodies responsible for liquor licensing needed to be free from governmental and commercial influence and place greater focus on the recipients of harm.





## 6 Queensland<sup>88</sup>

The general view of the Queensland *Liquor Act* was that while it explicitly contained a harm minimisation objective, the manner in which it was administered, the commercial aspects of the Act, and the lack of enforcement measures made it difficult for the Office of Liquor, Gaming, and Racing (OLGR) to prioritise and achieve its harm minimisation focus. It was noted by participants that even though various players had an important role to play in reducing alcohol-related harm by informing OLGR in the decision-making process, they were often not consulted. Further to this, some participants reported that they did not have a detailed understanding of the decision-making process.

*It is too difficult to say whether the primary focus of the licensing authority is on the interests of the industry and/or the maintenance of public safety. The reason for that is I see the end results of their decision but I don't know the rationale for those decisions. It is not at least apparently*

*obviously to me, in terms of the rationale for that decision-making.*

Interviewees considered that harm minimisation was difficult to achieve because the legislation contained many unworkable aspects. Examples were given of obligations imposed upon licensees that were ambiguous and difficult to enforce. In addition, the size and complexity of the legislation was daunting, there was no mandate for the Chief Executive to consult with other agencies in the decision-making process, and the legislation required continuous amendments to ensure it kept pace with changes in drinking patterns and the marketplace.

Nonetheless, participants noted that considerable progress had been achieved in promoting the harm minimisation objective of the Act. This was noted to be of governmental and interagency importance and was evidenced by the number of ongoing inquiries into alcohol-related harms. In this respect, police often undertook proactive activities, such as increasing their evidence base, issuing infringement notices, conducting probity checks, and participating in a dialogue with licensees through the coordination of liquor accords.

<sup>88</sup> 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.

The opinions expressed in this Chapter are those of the authors and the individual participants involved in the interviews. They do not necessarily represent the views of Queensland Police Service or other agencies that participated in this study.

## 6.1 Legislation and Administrative Processes

Participants frequently noted that police were not the body primarily responsible for administering the Act, and several respondents empathised with the challenges faced by OLGR employees. Respondents contrasted the political nature of OLGR's work with the relatively straightforward nature of policing. One respondent noted that officers within OLGR "report to a minister and are more accountable for every action that happens because if licensees are displeased, or there is something that is politically motivated, there could be more ramifications." This view was echoed by another participant who stated that:

*... police are in an enforcement role so everyone expects police to enforce and to arrest people, and be out there every Friday and Saturday nights to arrest the drunk people. However, OLGR inspectors mainly have dealings with the industry and the licensees and trying to prevent harms.*

One interviewee noted that even though there was increased awareness about alcohol-related violence and greater attention given to alcohol-related offences, the Government was yet to release findings and recommendations from a recent review.<sup>89</sup>

*The political world is a funny thing and it depends on the support at the time. This is a sad fact of life. It is going to require a lot of work by a lot of Government organisations to make these changes.*

As such, it was noted that while the legislation continued to focus on the development of the

<sup>89</sup> See Law, Justice and Safety Committee. 2010. *Inquiry into Alcohol-Related Violence, Final Report*. This inquiry resulted in various amendments to the *Liquor Act 1992* (QLD). See [www.parliament.qld.gov.au/ljsc](http://www.parliament.qld.gov.au/ljsc). The Government's response may be found here: <http://www.olgr.qld.gov.au/stories/alcoholrelatedviolence2.shtml>. Amendments included:

- Extending the moratorium period until 2013 (see Section 89)
- The introduction of Drink Safe precincts (see Sections 1730 and 173P)
- The creation of civil banning orders (see Part 6C).

tourist, liquor and hospitality industries, the administrative nature of the Act empowered licensees but rendered OLGR ill-equipped to deal with any resultant social harms and violence. In this respect, it was recognised that liquor licensing legislation was unique, and differed in many aspects from other types of regulatory legislation. One participant speculated about whether the myriad aims of the legislation could ever be harmonised.

*Objects of Act talk about myriad of items. Two competing issues emerge – reducing harm & profitability and economic prosperity of issue. I wonder whether or not that those two things cause some tension .... I wonder whether or not another approach might be to, to ultimately identify which of those has prominence. And I think that potentially it could cause a conflict in terms of those who have to administer it ... it is difficult to imagine how they [the objects] can coexist, and they certainly don't coexist in my mind comfortably.*

To this end, respondents emphasised that the *Liquor Act 1992* needed to change to empower OLGR to achieve the Act's harm minimisation focus. Interviewees noted the continuous threat from large companies who challenged the decision-making authority of OLGR, and that OLGR lacked the resources and knowledge required to deal with legal challenges to their authority.

*They have the continuous threat or concern of multi-national companies taking them on every time they have a contested matter or something. Like they're only a minnow compared to police with their enforcement and their ... and they're quite um, a lot of them don't have a lot of knowledge when it comes to court process and prosecutions and the like. They don't have much experience in that at all.*

Participants considered that the Act was designed to keep licensees out of court and highlighted that this implicit function was achieved through several avenues: ambiguity in the allocation of responsibilities, the issuing of infringement notices instead of formal charges

and prosecutions, and the abstract nature of offences contained within the Act.

*The Act is designed to keep licensees out of Court. So that's why ... they get issued with liquor infringement notices which are very effective but then OLGA lose their experience or don't have any experience when it goes to Court.*

*Like the majority of legislation, there are a lot of grey areas in it ... So while the Act is there, a lot of the time it is not able to be properly enforced because of the grey areas.*

It was observed that while issuing infringement notices for breaches was efficient in terms of police resources, it also served to disempower OLGR, the body primarily responsible for the implementation of the legislation. However, another participant was not sure whether OLGR's inability to fully achieve the harm minimisation objectives of the Act stemmed from a lack of legislative power or a "breakdown in communication between the compliance people and the licensing people." This respondent noted that OLGR was "given plenty of responsibility, but not many powers." In this regard, participants argued that the Act should be more streamlined with greater focus given to preventing and enforcing breaches of the legislation, as it was believed that this would decrease the incidence of violence and anti-social behaviour.

One interviewee stressed that "you can't consider the human toll, the human dimension of this enough." As such, it was noted that key players other than police and OLGR needed to have more input into the planning and conditions imposed upon licensed premises. Several respondents recommended that:

- a range of stakeholders should have a greater role in the Chief Executive's decision-making
- planning provisions and legislation should be more closely aligned with the *Liquor Act 1992*
- the licensing authority should consider whether an area "needs" new licences
- greater regard should be given to evidence collected by police.

*I would also like to see a greater role recognised for other stakeholders we haven't spoken about. For example, local government, fire and rescue, ambulance, chamber of commerce, a whole range of other entities are incredibly influential actors when it comes to the regulation of licensed premises. And they need to be recognised and they need to have their role formalised, particularly that first object which is harm minimisation within the context of licensed premises.*

Participants also noted that the legislation needed to be continuously reviewed and updated. Reasons for this were twofold: to ensure that the legislation reflected "the best, most contemporary thinking ... having regard for ... the number one principle, which is the reduction of harm, the harm minimisation philosophy", and to address the emergence of new forums for unregulated drinking.

*The issues that police are now encountering where liquor is concerned is warehouse parties. They have nothing to do with liquor licences, but it is an emerging liquor issue, as unregulated warehouse parties are the new fad and are unregulated in licensing laws, security and police do not have the resources to deal with them either. This is an emerging issue for police and if this could somehow be addressed in the liquor legislation it would be brilliant. They occur in vacant halls, warehouses, etc., and make them a private party, they make them BYO which means it gets around the licensing legislation.*

## 6.2 Influence of Police and Other Agencies

Provisions are contained within the legislation for the collection of community impact statements.<sup>90</sup> Participants considered there was sufficient police and/or community involvement to inform the licensing body about harm minimisation and to inform OLGR about the impact of liquor outlets in an area. One respondent noted that police had "the same

<sup>90</sup> Community Impact Statements: *Liquor Act 1992* (Qld), Section 116.

opportunity as everyone else” to comment on licence applications and raise objections. Participants, however, generally felt that police had minimal influence over many aspects of the Act including:

- hours of operation and conditions of premises
- proliferation of premises
- disciplinary action.

While one interviewee suggested that an inability to influence the decision-making authority of the Chief Executive may be due to a lack of communication and planning between police, OLGR, and councils, other participants queried “whether there [were] facts and figures to back up the argument.”

### 6.2.1 Trading Hours

Ordinary trading hours were defined within the Act. They were, however, not binding upon the Chief Executive,<sup>91</sup> and the Chief Executive had authority under Section 107C to minimise harm, alcohol-related disturbances, public disorder and violence caused by alcohol abuse and misuse through imposing conditions on licences and permits. Regardless of this discretion, interviewees generally held the view that police were unable to influence the Chief Executive’s decision-making in this regard.

Respondents considered that limiting trading hours would have a considerable impact on reducing alcohol-related harms and would have the greatest impact upon changing the culture of drinking to intoxication.

*Presently, the culture is about going to town on Friday and Saturday nights and drinking until 4 or 5 o’clock in the morning. Previously, it was about having “sessions” on Sundays between 11 am-1 pm and 5 pm-7 pm, and the pubs opened at 10 am and shut at 10 pm and people went home after that. People made other fun; this may be a generational change and has taken a couple of generations to*

*get to this point. Now it is acceptable and considered normal to go out and drink until you are “blind”.*

*The licensees are a bit to blame, as they are anti off-premise sales as they want to sell inside their venues, as the patrons can buy alcohol cheaper outside of venues, the patrons are coming in later. Because of this the licensees are charging a lot for drinks to make as much as they can within the time frame of trading and this leads to a revolving circle. If closing times were earlier then patrons would come out earlier, which would limit off-premise sales so the prices in venues would drop.*

One participant opined that a reduction of trading hours was the only strategy which worked in reducing harm. A reduction in hours was seen as necessary to prevent the incidence of pre-loading.

*Most of the people attending the Valley precinct are pre-loading and coming in late at night, if you were to reduce those hours you reduce the hours that they can attend premises. From 20 years ago, the pattern of drinking has changed enormously.*

### 6.2.2 Conditions

It was noted that consistent with the provisions of the Act, police were mainly consulted when there was a change in licensing conditions or about proposed hours of operation in permit applications. While respondents stated that they generally enjoyed greater success in influencing conditions imposed and hours approved in permit applications, they experienced less success in influencing general liquor licensing applications. Factors that affected their success in persuading the licensing authority in these instances included:

- police needed to produce a high standard of evidence to prove either that the variation would impact adversely upon the area and/or the licensee would be unable to fulfil their obligations. In these instances, they were unable to use hearsay or observational evidence, and had to “attempt

<sup>91</sup> Section 9(2) specifically provided the Chief Executive with the power to reduce the trading hours of specified premises.

*to use a crystal ball to see whether or not they're going to cause problems*<sup>92</sup>

- the licensee was prepared to appeal to the Queensland Civil and Administrative Tribunal (QCAT), and in some instances, the Supreme Court, against any outcome which adversely affected their interests
- police were sometimes given inadequate time in which to comment or lodge their objections. This was either due to being given very little lead time or to competing priorities. For example, one participant reported a situation where a late application was submitted, the police indicated there were too few police on staff at the time to look at the situation, and OLGR responded “that is your problem.”

Several respondents noted that while their ability to influence licence conditions had improved over the years, they still considered that police recommendations should be given greater priority by the licensing authority.

*There is some opportunity there to influence that. And that is one of the positive things that have occurred over recent years. We seem to be, in terms of conditions, being listened to to a greater degree than perhaps has occurred at other times in our recent past.*

Participants generally believed that police had quite a lot to offer decision-makers in matters related to public amenity due to their unique experience and specialist knowledge in alcohol-related incidents.

*Police have something to offer the ultimate decision-makers with respect to both the*

*quantum of licensed premises in a particular area and also the circumstances by which they trade.*

One interviewee highlighted that anecdotal evidence suggested police spent 70-80% of their time responding to alcohol-related incidents. As such, the interviewee considered that the detrimental effect that alcohol had upon the community was often underestimated.

*I didn't believe that the community had an appreciation of the harm that it caused, and moreover, ... [that] the vast majority of things that police officers deal with are alcohol-related. So in terms of the quantum of harms ... [alcohol is] ... very much an understated [sic] drug.*

### 6.2.3 Special Events Licences: Commercial Public Event Permits

Despite variability in their perceptions of their ability to influence a range of alcohol-related matters, participants reported a strong influence in regard to the coordination of Commercial Public Event Permits. Licensees were able to obtain commercial public event permits to sell or supply liquor at public events.<sup>93</sup> Public events were defined as “an event or occasion held at premises other than the licensee’s main premises, that is not a private event.” Examples given were festivals, races, and concerts.<sup>94</sup> When applying for a commercial public event permit, licensees were obliged to submit an event management plan addressing matters specified under Section 103.<sup>95</sup> Section 103 prevented the Chief Executive from granting a commercial public event permit unless satisfied that the:

- licensee was satisfying the principal activity conducted under the licence
- premises were properly defined and appropriately monitored

<sup>92</sup> Under the provisions of Section 118A any member of the public could submit an objection claiming that the application would cause:

- undue offence, annoyance, disturbance or inconvenience to persons who reside, work or do business in the locality concerned, or to persons in, or travelling to or from, an existing or proposed place of public worship, hospital or school
- harm from alcohol abuse and misuse and associated violence
- an adverse effect on the health or safety of members of the public, and/or
- an adverse effect on the amenity of the community.

<sup>93</sup> *Liquor Act 1992* (Qld), Section 102.

<sup>94</sup> *Liquor Act 1992* (Qld), Section 101.

<sup>95</sup> *Liquor Act 1992* (Qld), Section 102.

- event would not create:
  - » any undue annoyance, disturbance or inconvenience to local residents
  - » an unsafe or unhealthy for people attending or employed at the event and/or local residents
- police and local government had been involved in appropriate planning for the event.<sup>96</sup>

Inclusion of police and local government within the planning process for these events was seen as a “good way for the council and everyone to bring the community together.” Respondents reported that their ability to restrict the type of alcohol supplied largely consisted of limiting supply to low- and mid-strength alcohol. Nonetheless, this had been a “particularly successful strategy and it has also led to significant downturns in crimes, violence, and anti-social behaviour generally.” One respondent stated that police set parameters and conditions regarding the police presence at events for which licensees were required to pay. Licensees were also liable for the cost of providing ambulance attendance at the event, but this obligation ceased when the event finished. A respondent stated that this cessation caused problems because:

*... the 30,000 or so people that attend these events then go into the entertainment precinct once the event has stopped ... There is not special funding for police after the concert is over.*

This respondent suggested that every Saturday and Friday in the Valley<sup>97</sup> should be seen as a special event and the cost of the police presence should be borne by late trading venues.

#### 6.2.4 Night-Time Economy

Several participants emphasised the importance of ensuring that there was a planning and development strategy for managing the night-time economy. One

participant noted that for a successful night-time economy there needed to be both a distinct evening economy and a degree of separation between the night-time and day-time economies. While this participant noted that unique factors in the Brisbane CBD meant there was little interaction between the night- and day-time economies,<sup>98</sup> he nonetheless considered this to be a potential problem in other areas. It was observed that the existence of an evening economy provided increased “interaction between families and ... youth who want to party.” This diversification had a “mellowing” effect upon the latter group. A participant noted that the absence of an evening economy impacted negatively on every late-night trader.

*Flow-on effects impact not just licensed venues, but also other businesses that draw money from the night-time economy. Mainly the fast food outlets which are unregulated, with a lot of the problems occurring in these associated areas.*

As such, this interviewee highlighted that responsibility for managing the night-time economy lay not just with the licensees, but with all those who were obtaining a benefit from it.

*It is not just licensed premises, it is adjoining areas ... It is also about responsibility for the aftermath of a night out. It is not just the nightclubs it is the take-aways and the taxis.*

Despite this sentiment, however, another interviewee stressed that the greatest challenge in managing the night-time economy was the high levels of intoxication:

*If there wasn't intoxication involved with patron dispersal there wouldn't be a problem.*

One interviewee noted that harm minimisation provisions needed to extend beyond hours of operation and community amenity factors. It was outlined that factors such as the method

<sup>96</sup> *Liquor Act 1992* (Qld), Section 103.

<sup>97</sup> Fortitude Valley is an area with a particularly high concentration of licensed premises.

<sup>98</sup> The participant noted that although Thursdays were getting busier, the big nights were Friday and Saturday within the Brisbane Central Business District.

of drinking,<sup>99</sup> layout of a premise, and lack of staff could all contribute to problems or tension amongst patrons within a venue.

*All of these things ultimately effect, they encourage people who shouldn't come into contact with each other to do that. And they engineer, and it's engineered in a way that ultimately .. exacerbates the harms in a particular licensed premises. So there is a lot that can be done in terms of geographical set-up of these places early in the process.*

### 6.2.5 Density

The limited scope for police to influence the licensing authority in regard to density issues was viewed as problematic. Participants noted that while they were able to comment on issues related to density they felt they were just one of many voices. In this regard, one participant noted that police needed to provide “*some really good evidence about horrific events in an area*” in order to have any impact.

*The community is awash of alcohol. Sure you can't buy alcohol in a supermarket. But why would you be worried when you can walk literally to the shop next door ... and buy as much alcohol as you want ... If we were to give this prominence, and if harm minimisation from the point of view of police who do an incredible amount of work in dealing with the aftermath of the alcohol of consumption within the community ... The reality is that certainly this needs to be given greater prominence, and that is an issue for liquor licensing, and that is an issue for the legislation, and that is an issue for police.*

### 6.2.6 Disciplinary Action

Participants noted that besides issuing infringement notices, all other disciplinary action was beyond the remit of police. Police could make recommendations to OLGR and give

written warnings to licensees; however, they did not have standing to pursue any action in their own right. While this was generally not regarded as an issue for police, with one respondent describing it as “*good to have that separation*”, interviewees did state that a drawn-out process applied if OLGR took action against licensees. One participant reported that it was “*not unheard of for this process to take two years.*” During this period, it was common for the management of the problematic venue to make changes in the responsible personnel or practices employed at the venue. These changes were relevant to the imposition of any disciplinary action taken by OLGR and could be considered by the Tribunal if licensees appealed. Participants maintained that streamlining the process so OLGR could take immediate action against licensees would be beneficial.

### 6.2.7 Take-Away Sales

Participants generally considered that the legislation was adequate in terms of limiting take-away sales. While many noted that the issue of take-away sales was important overall, several commented that it was not a major problem for police within the Brisbane CBD and surrounding areas.

*The majority of people who get take-away liquor go back to their homes and there are not a lot of issues with alcohol problems in homes. There are issues of minors obtaining liquor and drinking in the streets, but they have sufficient legislation to cover this.*

However, it was noted that the issue of take-away sales was an important consideration when implementing lockouts. To this end, limiting the amount of alcohol that could be purchased, as well as trading hours, was important to prevent people buying take-aways and then drinking in public places.

*Certainly limiting the amount and particularly the time so you don't encourage people who are living in close proximity to a lockout or alternatively to a hotel closing to be able to take, buy their alcohol from over the bar and take it to the nearest park and affect public amenity.*

<sup>99</sup> For example, vertical drinking. Vertical drinking refers to licensed premises which have few tables and chairs. The absence of furniture forces patrons to stand and drink with their glass in their hands (Roche et al., 2007, p. 163).

The issue of take-away alcohol sales was identified as particularly significant for those living in rural and remote areas. In this regard, one participant highlighted the success of the Alcohol Management Plans<sup>100</sup> in Indigenous communities and recounted that these had resulted in:

- an increase in healthy food purchased from local stores
- reduced crime rates including assaults, vicious assaults, and domestic violence
- decreasing family dysfunction and suicide rates.

This participant stated:

*I wouldn't imagine too many people saying that they [Alcohol Management Plans] haven't been successful.*

### 6.2.8 Intoxication

Section 156 prohibited anyone from supplying, permitting or allowing liquor to be supplied or consumed by a person who was unduly intoxicated or disorderly. Unduly intoxicated was defined within the *Liquor Act 1992* as:

*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.<sup>101</sup>*

100 Alcohol Management Plans were developed by Community Justice Groups to assist in reducing alcohol-related harms. Community plans include dry place declarations in the home, bans on home brew, increased health and social services, recreational activity, improved housing and economic development opportunities. Alcohol Management Plans contain recommendations for declaring all or part of a community area a Restricted Area and/or a Dry Place. (Queensland health website: [http://www.health.qld.gov.au/goodhealthintnq/topics/alcohol\\_mgt.asp](http://www.health.qld.gov.au/goodhealthintnq/topics/alcohol_mgt.asp); Office of Liquor and Gaming Website: <http://www.olgr.qld.gov.au/indigenous/alcoholManagementPlans/index.shtml>.)

101 *Liquor Act 1992* (Qld), Section 4.

The maximum penalty available for the offence varied depending upon the status of the offender. For licensees/permittees and approved managers, the maximum penalty was 500 penalty units; for anyone else, the maximum penalty was 80 penalty units.<sup>102</sup> Section 229 extended the liability for offences committed by employees to the employer. This section contained both a presumption and a defence. The presumption was that if an offence against Sections 155, 156, 157, or 161<sup>103</sup> of the *Liquor Act 1992* was committed by the employee, the employer was presumed to have participated. The defence rendered the employer's actions innocent when:

- the offence happened without the defendant's knowledge or authority, and
- the defendant had exercised due diligence to avoid the commission of the offence.<sup>104</sup>

Offences against the *Liquor Act 1992* are dealt with summarily within the Magistrates Court, and/or through the issuance of infringement notices (see below).<sup>105</sup>

Many participants reported their reluctance to utilise this legislated provision in regard to intoxication as there were a myriad of issues associated with it. To this end, participants identified several difficulties in enforcing this legislative provision. It was difficult to prove that the:

- patron was unduly intoxicated (i.e., the ability of the patron to think and act was diminished)
- licensee/permittee/approved manager supplied the liquor
- offender thought the person was unduly intoxicated
- intoxication was caused by alcohol.

102 *Liquor Act 1992* (Qld), Section 156.

103 These sections related to minors on premises (s 155); supplying and allowing liquor to be consumed by minors/unduly intoxicated/disorderly (s 156); minors consuming liquor on licensed premises and in public places (s 157); and, selling, removing, and receiving liquor from a licensed venue outside trading hours.

104 *Liquor Act 1992* (Qld), Section 229(2).

105 *Liquor Act 1992* (Qld), Section 232.

Several participants noted that it was difficult to negate the statutory defence available as licensees were able to readily demonstrate that there were processes in place aimed at preventing intoxication. One participant suggested that decreasing the exposure of a licensee's liability was one of the primary functions of mandatory RSA programs.

*Effectively it is there to protect the licensee. Therefore if staff have done training the licensee can be confident that they do not worry about being charged with selling to unduly intoxicated [patrons].*

These obstacles were perceived to be insurmountable by one respondent who had never heard of anyone being charged with the offence of supplying, permitting or allowing liquor to be supplied or consumed by a person who was unduly intoxicated or disorderly. Another interviewee supported this contention and knew of no-one that had been charged with the offence for the last few years. The former participant noted that matters regarding unduly intoxicated patrons were referred to OLGR; however, they were unsure whether any action had been taken in these matters.

### 6.2.9 Patron was Unduly Intoxicated

Participants also noted that the *Liquor Act 1992* did not define "intoxicated". To this end, it was reported that while Section 10 of the *Summary Offences Act 2005* contained the offence of being drunk in a public place, many participants opined that being intoxicated was qualitatively different to being drunk.

*Unduly intoxicated is more about drinking over time and that they are not a danger to themselves but should stop being served. So it is a lower level. Whereas "drunk" is seen as a danger as they are falling down and could hurt themselves.*

Further to this, there was a general view amongst participants that the definition of unduly intoxicated contained within the *Liquor Act 1992* was longwinded. One participant observed that scientifically objective tools and measurements were inadequate in proving

intoxication levels given individual variations, where some people are "two-pot screamers who may be unduly intoxicated but record a very low blood alcohol level." It was further stated that having to prove to a magistrate that someone's ability to think and act was diminished was problematic as there was no objective point of comparison or base measure. This respondent noted that it was also "effectively impossible to charge someone with serving alcohol to an intoxicated person if the patron was in any way mentally impaired."

Many interviewees highlighted the difficulty in proving intoxication; merely determining when someone was unduly intoxicated was recognised as a complex matter for police officers, security, investigators, licensees, and bar staff.

*This is hard to prove as one of the easiest defences is that it was dark or there was someone else that must have been buying drinks for them. Also if it is a place that is very busy, it can be hard to make those quick judgements ... when it is busy it is very easy to forget things as there are the demands of your boss and other customers.*

As such, the inexact nature of intoxication was considered to be a "judgement call that comes with experience ... making judgement calls is ... difficult in dark areas of pubs and nightclubs." Scientific equipment such as alcometers were also considered inadequate in determining intoxication, with one participant commenting that using them in licensed premises was a little extreme as intoxication did not always lead to violence.

*I wouldn't want to go to the other extreme of having alcometers in premises to judge a person's intoxication level because some people can handle their grog better than others. And intoxication doesn't always necessarily lead to violence.*

While another participant agreed with the difficulty of determining and proving intoxication because "the benchmark ... can sometimes be wildly skewed", they claimed that police were often dealing with people who were "incredibly,

intoxicated.” Several interviewees highlighted that providing alcohol to intoxicated persons increased a person’s risk of becoming a victim of crime.

*And I think that if you go back to the objects of the Act and you say to yourself, the object that has primacy is about harm, harm minimisation or harm reduction, the reality is, is that, the reason that provision of alcohol to intoxicated people is an offence is that ultimately because it that it increases their risk of being injured or suffering some detriment.*

*Look at the victim’s side of intoxication too. You can be intoxicated and not creating any problem. But you can be a victim of crime.*

Participants argued that the harm minimisation objective of the Act should be given greater regard in instances of violence or injury as some considered that excuses offered by licensees (e.g., it was a brief interaction, it was quite dark, someone else must have supplied them) were “a cop out and ... incredibly self-serving.” A participant contended that such excuses offended the spirit and intent of the legislation and provided licensees and their staff with the opportunity to abrogate responsibility for the consequences of their serving practices.

*The notion of intoxication has always been a vexed issue ... It is a vexed issue for police ... because they are so used to dealing with drunk people, and I mean incredibly, incredibly intoxicated people ... who have lost bodily function. You know they’ve urinated, they’ve defecated, they’re on the ground ... You are not talking about people who are slightly slurred and are a little unsteady on their feet. Equally, the licensed premise, security provider, and licensed managers, and licensees themselves will say “well hey hang on. There is the issue of secondary supply, somebody else bought it and supplied it to them. I didn’t know that they were going to get it. Moreover, I didn’t know they were intoxicated. There was a brief interaction, it was quite dark, and it was quite difficult to make that assessment.” Well, I don’t accept that, I don’t accept that*

*at all ... They have a responsibility under law. Even if you took a reasonable assessment of intoxication they would know the spirit and intent of the legislation and I think that they have largely been a little too cute in their interpretation of that.*

#### 6.2.10 Offender Thought the Person was Unduly Intoxicated

Another difficulty encountered by police was proving that the offending licensee knew the patron was unduly intoxicated. Police reported that even where covert operations were conducted, the subjective nature of the offender’s viewpoint was difficult to negate.

*Bartenders turn around and say “well they weren’t drunk in my opinion.”*

*People interpret intoxication on so many different levels. Like I’ve been into premises and had other police later say that the intoxication level was way over the top, but I believe it wasn’t ... And other people are out on their feet and no-one considers them to be intoxicated. It’s a real subjective assessment.*

Participants also emphasised that enforcing these provisions was difficult as police were responsible for enforcing many Acts and did not usually have the resources to wait to observe “someone stagger up and get served and stagger back.” Further to this, one participant noted “licensed premises are inhospitable, often very confronting environments” for police to work in. As such, participants generally considered it unlikely that greater priority would be given to enforcing these provisions until there was more research on:

- police motivation to engage in harm minimising activities in and around licensed premises
- police knowledge of the *Liquor Act 1992*
- the factors which constrain police, or serve as barriers or impediments for them in enforcing the Act.

### 6.2.11 Intoxication Caused by Alcohol

The need to prove that someone was intoxicated by liquor alone was described as an obstacle for police when attempting to establish an offence. Police were unable to undertake any testing regime in a licensed premise in order to prove either that the patron was not under the influence of drugs or to establish the blood alcohol level of the patron.

*If the intoxication is in part due to drugs the police can do nothing ... That's what absolutely kills us. Because you can't say that the ONLY reason they're acting that way is because of the amount of liquor they've consumed... You say "have you taken any drugs?" They say "nuh". But I guarantee you, that if you take one of the nightclubs on, they'll have that blood turn up and [then the patron will] say "look I had some drugs that night. I had some prescription painkillers or something."*

In order to rectify this problem, interviewees suggested that the offence should be changed so police were only required to prove that the intoxication could "be attributed 'somewhat' to the consumption of liquor", and not necessarily exclusively to alcohol.

Several respondents noted that intoxication was, in some instances, attributable to drugs. With longer trading hours and patrons drinking for longer periods of time, if stimulant drugs were also involved, higher levels of intoxication could be reached while the patron remained functional.

*The biggest problem ... is that young people are coming out now and staying out later as they are taking drugs and can function better the next day without the hangover.*

Other participants noted that the issue of drug consumption was a convenient excuse for the licensee.

*All the licensee has to say is ... "well they must have popped a pill because they weren't that intoxicated before you came in."*

### 6.2.12 Statutory Defence

Participants perceived the statutory defence that the defendant had exercised due diligence in preventing the commission of an offence as insurmountable. One interviewee expressed the view that the primary purpose of the offence was to target those licensees who were grossly negligent. This respondent considered that for licensees who had fulfilled all their legal obligations, the responsibility for being unduly intoxicated within licensed premises should be placed upon the patron.

*There are some issues with selling to intoxicated persons, such as if the licensee has fulfilled their obligations and their staff have done their RSA. Even if they have served someone who is unduly intoxicated, it is very hard to prosecute the licensee, as there are processes in place to protect the licensee from this. The unduly intoxicated needs to be there for those grossly negligent licensees who do not care about RSA, but realistically the ... act of being unduly intoxicated in a venue should be a patron offence where the patron has to take back some of the responsibility.*

However, another respondent considered that licensees should not be able to shift blame to the individual and that greater responsibility should be attributed to licensees. In this respect, the respondent considered that there needed to be an additional offence of failing to adequately deal with an intoxicated patron.

*The ideal situation would be if there was an offence for licensee, manager, or person in control for failing to adequately deal with an intoxicated patron. Because it's a given that patrons are going to get intoxicated and the difference between having them intoxicated and dealt with properly and not dealt with properly is what results in assaults and anti-social behaviour. If the licensee was required to have systems in place which actually work for dealing with patrons when they get intoxicated then they would actually have to abide by those systems, and a lot of this resultant violence and assaults would not occur.*

Several High Court cases have considered the scope of the duty of care that a licensee has towards an intoxicated patron. While licensees have a statutory and common law duty to prevent injury or assaults on their premises, it was determined in a majority judgement that:

*... to impose on suppliers of alcohol a general duty to protect consumers against risks of injury attributable to alcohol consumption involves burdensome practical consequences.*<sup>106</sup>

This limit to the scope of a licensee's duty was imposed because licensees were considered unable to monitor the level of risk to which a consumer was exposed,<sup>107</sup> and the common law was unable to impose a duty which devalued the concepts of personal inviolability, autonomy, and privacy.<sup>108</sup> As such, licensees generally do not have the power to prevent patrons from leaving licensed premises, nor do they have a duty, except in extreme circumstances, to prevent patrons from engaging in conduct in which they may unintentionally injure themselves.<sup>109</sup>

## 6.3 Supply to Minors

### 6.3.1 Secondary Supply

Queensland's legislation contained provisions related to the sale and supply of alcohol to minors on licensed premises as well as on private premises. Section 155A provided that a person must not sell liquor to a minor, while Section 156 provided that a person must not supply liquor to, permit or allow liquor to be supplied to, or allow liquor to be consumed by a minor on licensed/permitted premises. Like the offence created for selling to an unduly

intoxicated or disorderly person, differentiated penalties were applied depending on who was supplying the liquor (see above).

Further to the above, Queensland implemented Section 156A in 2008. This section created two offences. It was an offence for:

- an adult to supply liquor to a minor at a private place, unless the adult was a responsible adult for the minor
- a responsible adult to supply a minor irresponsibly at a private place. Factors which may indicate the liquor was supplied irresponsibly include:
  - » whether the adult was unduly intoxicated
  - » whether the minor was unduly intoxicated
  - » the age of the minor
  - » whether the minor was consuming the liquor supplied with food
  - » whether the adult was responsibly supervising the minor's consumption of the liquor supplied
  - » the quantity of liquor supplied and the period over which it was supplied.

A responsible adult was defined as a parent, step-parent or guardian of the minor, or an adult who had parental rights and responsibilities for the minor.<sup>110</sup>

Participants generally did not consider that the matter of secondary supply to minors was of particular relevance to them. They noted that the issue of secondary supply had relatively greater political significance, and that the government had taken an affirmative stance in relation to parents supplying their children with alcohol, for example, for schoolies week.

*Students, most of whom were underage, were provided with alcohol by their parents and other adults [who] set them up in apartments, and then go back and pick up the pieces in a week's time.*

106 Stated as a duty to take reasonable care in the conduct of activities on the licensed premises (see *Adeels v Moubarak* [2009] 260 ALR 628).

107 This was considered to be a matter of degree and circumstance, for example, the level of intoxication, the activities in which people engaged, or the conditions in which they worked or lived.

108 See *Cole v South Tweed Heads Rugby Club* [2004] 217 CLR 469.

109 See *Cole v South Tweed Heads Rugby Club* [2004] 217 CLR 469; *C.A.L. No 14 Pty Ltd v Motor Accidents Insurance Board*; *C.A.L. No 14 Pty Ltd v Scott* [2009] HCA 47 (10 November 2009).

110 *Liquor Act 1992* (Qld), Section 5.

It was highlighted that recent government initiatives focused on the irresponsible supply of alcohol as the legislation contained a minimum purchasing age, not a minimum drinking age. This difference between a minimum drinking age and purchasing age was also echoed in the explanatory notes<sup>111</sup> to the responsible supply of alcohol provisions contained within the *Liquor Act 1992*.

One participant considered that the greatest impact of the statutory provision was to ensure that adults knew their responsibilities and that failure to fulfil them could result in a substantial penalty; this was achieved through a large advertising campaign. Further to this, the provision had given police the authority “*to do something about secondary supply if the parents are not being responsible in their supply to minors.*” In these instances, police can seize the alcohol with a view to preventing any problems occurring.

Participants did comment, however, that the legislation was difficult to enforce in large crowds and police tended to use the “tip out” powers they had under the *Police Powers and Responsibilities Act 2000*.<sup>112</sup> Interviewees further reported that the challenge of enforcing the provisions was evidenced by the scarcity of charges laid and the minimal penalties handed out.

*There have not been too many charges against adults yet, perhaps nine or 10 where two were withdrawn and the others only received minor penalties.*

Consequently, participants doubted that the legislation had fulfilled its intention.

### 6.3.2 Supply to Minors on Licensed Premises

Overall, it was reported that licensees complied with their obligations and implemented identification procedures aimed at keeping

minors out of licensed premises. It was acknowledged however, that bar staff did have difficulty on occasion in assessing the age of purchasers, and that there was also an issue with minors paying adults to obtain liquor from take-away outlets on their behalf. Several respondents noted that rather than prosecute licensees for these matters, police tended to work cooperatively with them in order to identify common issues and implement strategies to redress the problem.

## 6.4 Barring, Prohibition, Banning

Several provisions of the *Liquor Act 1992* related to the removal of persons from licensed premises. Sections 165A and 165 empowered an authorised person to refuse entry to or remove a person from the premise if they were unduly intoxicated, disorderly, creating a disturbance, a minor, or if permitting entry would be in breach of the licence conditions (e.g., a lockout was applied as a condition of the licence. See Section 142AB). A maximum penalty of 25 penalty units applied to those who entered or attempted to enter the premise in contravention of the licensee’s refusal, refused to leave upon request, and/or resisted the licensee’s reasonable and necessary action in removing them from or preventing entry to the premises. An authorised person was defined as the licensee/permittee and/or an employee or agent of the licensee/permittee.

Respondents noted that these powers, and the moving on powers that police possessed, were inadequate to prevent alcohol-related violence.

*Even if the person has had seven fights inside the premises in the last seven weeks, if they turn up at the premises and say I want to come in. Then unless they [patrons] are at the time unduly intoxicated, unruly, or a minor, under the Liquor Act 1992 the licensee has no power to stop them.*

It was stressed that most alcohol-related violence encountered by the participants was committed by recidivist offenders. As such, interviewees generally considered that enabling either police or licensees to have banning

<sup>111</sup> *Liquor and Other Acts Amendment Bill 2008*. Explanatory Notes, page 23.

<sup>112</sup> Section 53A gave police the power to seize and dispose of liquor in any way they considered necessary if the minor possessed liquor or if the officer believed the minor was not being responsibly supervised by a responsible adult.

powers would be a positive strategy with one respondent noting that this was “at the top of the wish list.”<sup>113</sup> Respondents considered that the provision of banning orders placed the onus back onto the patron for their actions; this was considered appropriate as most licensees complied with the legislation and the industry was already heavily regulated.

*The licensees are so regulated and a vast majority do the right thing, there also now has to be the responsibility placed on the drinker.*

One respondent suggested that the amount of time for which a person was banned should be commensurate with the severity of the offence committed. It was suggested that this should be the equivalent of half the time of the maximum custodial sentence that could be imposed for the offence. For example, for an offence that could attract a maximum term of 12 months imprisonment, the person should be banned for six months, with heavier penalties imposed for those who subsequently breached the order.

Once again, interviewees highlighted that other authorities could play an increased role in minimising the harms which arose in licensed precincts. One interviewee relayed that a local magistrate could ban people from entering defined areas for several months as part of their parole/bail conditions. This interviewee endorsed police having power to ban; however, was more comfortable with this power being exercised by the judiciary. Participants considered that providing the judiciary with the power to issue banning orders would prevent the power from being abused and from breaching anti-discrimination legislation if it was perceived that banning orders were being used for nefarious purposes (e.g., for discriminatory purposes).

<sup>113</sup> Queensland’s *Liquor Act 1992* recently adopted civil banning orders; however, when participants were interviewed these powers had not been enacted. This new section operated prospectively, and does not apply to offences or acts of violence committed prior to its enactment. Civil banning orders were only able to be applied in declared drink safe precincts. See Parts 6B and 6C of the *Liquor Act 1992*. These sections came into effect on the 1 December 2010. For further information about these initiatives see Part A.

### 6.4.1 Enforcement

While several participants noted that the greatest difficulty with banning orders was their enforcement, others did not view this as a significant problem. For one interviewee, the true value of banning orders was in their deterrent effect.

*Now if someone said “but you’ll never know” ... you say “well hang on if he knows he is banned for a month and he knows he is going to cop a \$2000 fine for being in there, is he going to play up? No - he might sneak in and have a couple of drinks but he is certainly not going to play up.”*

Another respondent noted that while barring orders worked particularly well in rural areas, in metropolitan areas they needed to be used in conjunction with technology to be effective. Technology was considered necessary to link premises in close proximity to prevent someone who had been removed and/or banned from one premise from gaining entry to another; however, use of identification scanners raised privacy concerns. One interviewee noted that identification was an ongoing issue for licensed premises, and that personal privacy was often sacrificed when balanced against the competing interests of public safety and harm minimisation.

*Identification has always been problematic in licensed premises, particularly for underage, and with the proliferation of fake identification as a result of scanning and colour copiers ... it’s an issue, but not a huge issue ... My view is that if the number one principle is about reducing harm, or minimising harm, then I think that the privacy issues need to take second place ... But it’s about the safety and security of all of those people who engage in the industry.*

## 6.5 Removal of Glass

In 2009, Queensland adopted provisions aimed at minimising potential harm from liquor in the community.<sup>114</sup> Section 97 enabled the Chief

<sup>114</sup> *Gambling and Other Legislation Amendment Bill 2009*, Section 72A.

Executive to classify all or part of a licensed premise as high risk if satisfied that:

- one or more glassings had occurred at the premises during the previous year, or
- there had been a level of violence at the premises during the previous year that was unacceptable having regard to the objects of the Act.

When determining whether to classify a premise as high risk, there was an onus placed upon the Police Commissioner to provide information to the Chief Executive if requested to do so.<sup>115</sup>

Participants considered that the legislation in relation to glassings was beneficial, particularly if it prevented “horrendous” injuries from occurring. They did, however, empathise with the increased cost to licensees and understood the resistance of the industry. Nevertheless, one respondent noted that the increased cost was just an operational factor associated with managing an inherently hazardous business.

*Glassings overall are numerically small in terms of the amount of incidents that occur. But the reality is that they are a horrendous crime and the impacts on the individual are fairly significant. And I think that you can probably apply a reasonable risk matrix over a particular premise conducting its business in a certain way, and say that it's worth more elevated risk than others.*

Further to this, several participants noted that while these provisions were a good step forward, there were significant issues related to these amendments. For example, one participant explained that research had found tempered glass may be more dangerous than regular glass due to its weight. Another interviewee stated that the adoption of the provisions had impacted upon crime scene investigations as police were now required to prove that regular glass was used before they could make recommendations to the Chief Executive. This meant that new training was needed.

<sup>115</sup> *Liquor Act 1992* (Qld), Section 99G.

Another respondent expressed the view that the removal of glass in licensed premises should be a statewide initiative as they considered it necessary to prevent “unintended” glassings (that is, where offenders did not intend to glass their victims).

*Glassings are a problem and do create horrendous injuries, but this comes back to where is the line? There are a number of other weapons that people can use. Glasses are a convenient thing as it is in their hands. When a fight is about to start people many throw a punch with a glass in their hand without even thinking what is in their hand.*

## 6.6 Lockouts

Lockout provisions mostly related to premises authorised to sell or supply liquor on the premises from 3am to 6am. The provisions did not apply to:

- casinos, which were authorised under the *Casino Control Act 1982*, residential accommodation on licensed premises, and airports
- extended hours permits granted for premises to trade on Anzac Day
- New Years Day
- any condition contained within the licence or permit which stipulated an earlier than 3 am lockout period. These conditions overrode this legislative provision.

The lockout provisions superseded any other contradictory trading period provision contained within the Act,<sup>116</sup> and were a condition of the licence or permit. Licensees or permittees who breached the condition could be subject to a maximum penalty of 100 penalty units,<sup>117</sup> and for permittees, a cancellation, suspension or variation of their permit,<sup>118</sup> and for licensees, disciplinary action.<sup>119</sup>

<sup>116</sup> *Liquor Act 1992* (Qld), Section 142AA.

<sup>117</sup> *Liquor Act 1992* (Qld), Section 142AB.

<sup>118</sup> Sections 142 AC & 134.

<sup>119</sup> Sections 142 AC & 136.

There was general consensus that lockouts were effective when implemented in conjunction with a range of other measures. Even though police considered that the most significant measure was ensuring that there was adequate transport to remove people from the vicinity, several respondents also noted the importance of ensuring adequate security at venue entrances and a strong police presence outside venues.

*There needs to be an incredibly timely response by a whole range of public transport entities to be able to move people quickly when they leave licensed premises, to be able to move them quickly from the precinct. Because otherwise what happens is you remove the problems from the inside of the premises to the door of the premises, to the taxi line where they wait for an hour and a half trying to get a taxi.*

*For lockouts to be successful they have to have the correct infrastructure to support it, like transport. Cannot say that it has been a great success like they thought it was going to be ... The argument is that with a lockout you get a lot of people on the streets at a time when there is a lack of police resources.*

Further to this, one respondent noted that for lockouts to be effective in removing people from the streets, they had to operate for a substantial period of time prior to closing time, otherwise people “are willing to wait around until 5 am for their friends to come out” so that they may share a taxi. This respondent also stated that it was not necessarily transport per se which was needed to remove people from the locale; rather it was taxis specifically. This interviewee considered that it was “the Australian way to want to be picked up from the doorstep and get dropped home.”

Participants noted that lockouts were implemented using various methods including legislation, liquor accords, or by convincing the hotelier that the introduction of a lockout was in the best interests of their establishment. While the legislation in Queensland contained provisions for lockouts, these were confined to certain areas, and to date their effectiveness

had not been reviewed. However, one participant noted lockouts had:

*... given police a greater opportunity to be able to manage the environments in and around licensed premises especially between 3 and 5 am ...*

## 6.7 Proactive Policing Tools

### 6.7.1 Data Collection

Participants noted that the authorities increasingly recognised that in order to effectively manage alcohol-related violence, data had to be collected in an accurate, non self-serving, and dispassionate way.

*Information ... [needs] to be collected in a certain way that ultimately lends itself to be used as intelligence or evidence. Then it should be given a reasonable amount of credence.*

The collection of such data was considered an imperative for influencing decisions made by the Chief Executive in relation to licence applications. Participants reported that Queensland police currently collected last drinks data.

One participant reported that disseminating data to OLGR was the role of the LEAPS coordinator. Details regarding crimes, assaults, public nuisances, or any other occurrence in or around licensed venues were reported to OLGR on a weekly basis and entered into their database, then used to assess whether premises were high risk. This was a relatively new process; previously there was no specific way of providing OLGR with these statistics. A participant reported that this process was the main way that police could influence hours and conditions, as OLGR could use the data to justify a variation in licence conditions. One officer further suggested that collecting data about:

*... crimes, violence, anti-social behaviour ... is incredibly important in terms of considering the probity of a particular licensed premises, whether they're a fit and proper establishment to be able to have increased opportunities to trade in alcohol.*

The need for improved data collection was also a recommendation of a recent government inquiry.<sup>120</sup> Several participants suggested that data relating to pre-loading needed to be collected; however, respondents generally considered that this was not the responsibility of the police.

*There is talk of the issues of “pre-loading” where people drink at home before they go out, because it is cheaper. It would be interesting if data could be collected in regards to how many people are pre-loading. If people are drinking a few drinks before they go out, this is not an issue. It is when people are heavily intoxicated and they go out, yet still get into licensed premises when they shouldn’t be.*

### 6.7.2 Probity Checks

Despite the fact that the legislation provided discretion in regard to whether the Chief Executive sought the services of police when determining if an applicant was a fit and proper person to hold a licence,<sup>121</sup> most participants reported that probity checks were undertaken by police, with one interviewee noting that they were “fortunate to have a dedicated unit” that assumed this task. Participants reported that they provided OLGR with background information, criminal history checks, and character information on all applications. One interviewee stated that it was incredibly important to ensure that organised crime was kept out of licensed premises.

*We need to make sure we keep organised crime out of licensed premises, particularly outlaw motorcycle gangs away from the security providers within licensed premises.*

The importance of eliminating the influence of organised crime from licensed premises extended beyond licensees and approved managers to include crowd controllers. Crowd controllers were licensed under the *Security*

*Providers Act 1993*. This Act provided that to receive a crowd controller licence, the individual needed to be an “appropriate person”. A list of criteria for determining appropriateness was provided.<sup>122</sup>

### 6.7.3 Infringement Notices

Issuing infringement notices to licensees was commonly seen as effective from a policing perspective, although one respondent suggested that they had an inhibitive effect upon the disciplinary powers exercised by the OLGR (see above). However, several respondents noted that it was not their first course of action as they preferred to initially engage with licensees in a more proactive and diplomatic manner. This was considered important as it enabled the lines of communication to remain open.

Issuance of infringement notices offered various advantages, with one interviewee noting “it is rare that you come across the same problems after you issue those fines”. Further to this, police noted that not only was issuing an infringement notice expedient, it also had both immediate and prospective financial impacts upon the licensee’s business as it affected their annual fees.

*Effectively what they allow is, they allow a very brief intervention with police, they allow police to meet their obligations and to take action ... and to do it in a way that doesn’t take the police off the street, and thereby contribute to feelings of lower public safety. So they allow us to provide a much quicker, more timely intervention in the matter. And the other thing too, they don’t stigmatise individuals to the degree that a court appearance would. We don’t have to take them into custody, we can issue the infringement notice and someone can elect to pay it without going into court.*

*The whole industry works on money ... even though the infringement notices are relatively minor like you have a multinational like Coles or Woolworths get a \$500 ticket. They’re not thinking of the ticket, they’re thinking about*

120 See Law, Justice and Safety Committee. (2010). *Inquiry into alcohol-related violence: Final report*. Report no. 74. Law, Justice and Safety Committee: Brisbane, Queensland.

121 See *Liquor Act 1992* (Qld), Section 107.

122 *Security Providers Act 1993* (Qld), s11.

*their annual fees. Especially with minors if they do get prosecuted they can lose their licence. So it all relates back to money.*

#### 6.7.4 Fee Structures

While the effect of an infringement notice upon a licensee's annual fees was described as a "big stick which works", several respondents noted that since 2009, when the compliance history of the venue became a factor to be considered when assessing fees, licensees were more likely to contest the notice. Notices were contested due to the large fee associated with them (i.e., \$5150), and because the infringement could provide OLGR with an opportunity to impose conditions and/or instigate disciplinary proceedings. This could result in further financial losses through the loss of revenue, another increase in fees (for example, if OLGR took disciplinary action the licensee could face a \$10,300 increase in their annual fee), or a loss of licence. The growing numbers of licensees who contested infringement notices was noted as a potential weakness of infringement notices.

#### 6.7.5 Liquor Accords

Section 224 of the *Liquor Act 1992* contained provisions relating to liquor accords. This section provided that two or more persons may be parties to an agreement, Memorandum of Understanding or other arrangement which was entered into to:

- promote responsible practices in relation to the sale and supply of liquor at licensed premises situated in the locality
- minimise harm caused by alcohol abuse and misuse and associated violence in the locality
- minimise alcohol-related disturbances, or public disorder, in the locality.

Although views about liquor accords varied in regard to their implementation and potential benefits, they were generally well regarded by participants. Many saw the accords as instrumental in changing state and local government policy.

*A well-structured, well-run accord is worth its weight in gold.*

Accords which were proactive and run by experienced licensees provided a forum in which vital information could be exchanged. Licensees were willing to listen to police and other agencies, and in return police were mindful of the commercial aspects of licensees' businesses and the night-time economy. Further to this, several participants noted that accords provided a platform for "naming and shaming" recalcitrant traders. One participant noted that the liquor investigation unit adopted a case management approach and stated:

*It is about finding a good balance ... [we] ... have a very good relationship with all the liquor accords in the Brisbane Central District.*

*Anything that gets people voluntarily together to help stop some of the problem makers is a good thing.*

Despite acknowledging that liquor accords were beneficial in encouraging a dialogue with the liquor industry, and provided the industry with the support they needed to take control of some of the alcohol-fuelled violence which permeated the night-time economy, several participants qualified their commendation. In this regard, it was noted that good accords needed a strong driver and a stable conduit.

*Someone with institutional memory and knowledge of history that can act as a pivotal point. Relationship basis means that as people move, the willingness to participate and the objectives of the accord may vary. Accords tend to die a natural death.*

Additionally, respondents supported the empirical research which suggested that accords needed to be individualised to the location and implemented in conjunction with other measures. To this end, one participant stated that liquor accords were "not a one size fits all" approach. This participant also supported the voluntary nature of accords as they considered that this was necessary to ensure that they worked to their optimum level.

However, this was not a view shared by other interviewees who highlighted that only the:

*... good licensees are involved in the accord and the people who should be don't necessarily involve themselves.*

This was considered problematic as there was no onus on those premises that were not members of an accord to comply with or adopt the accord agreements. Lack of conformity prevented some licensees from implementing changes which had been demonstrated to have a positive effect in reducing alcohol-related harms (i.e., restrictions on trading hours).

*From what licensees have told us, licensees are happy to have restrictions on trading and hours, as long as everyone else in the vicinity does.*

Lack of consensus was not considered to be a major impediment by all participants, as it was stressed that they only had problems with a small number of licensed premises. As such, it was noted that in the absence of total disregard demonstrated by licensees for their statutory obligations, voluntary participation and mutuality were necessary components for a liquor accord's success. However, this participant warned that in the event that an area became "dysfunctional", legislative prescription could be necessary.

*The only exception to that would be if there was an area that was so dysfunctional, and I am not talking about one or two licensed premises, but if there was an area that was so dysfunctional that was geographically defined, then I would think that there would be a stronger case mounted for it to be proscribed as opposed to voluntary. My view would be if they were to work to their optimum level and people were to participate because they wanted to and that there was a mutual benefit for all of the actors in that transaction.*

### 6.7.6 Role Clarity

Participants reported that police were not overly confident of their powers and lacked certainty in their role when executing the provisions of the *Liquor Act 1992*. This ambiguity was due to:

- the lack of clarity regarding the definition of investigator in the Act
- competing priorities in policing activities
- organisational and systemic structures.

### 6.7.7 Legislated Definition of Investigator

Several provisions within the Act addressed the role of investigators. Section 4 defined an investigator:

- for all parts of the Act as an authorised person<sup>123</sup>
- for all parts of the Act, besides Part 7, as:
  - » a commissioned police officer, and/or
  - » police officer acting as a commissioned police officer, and/or
  - » police officer designated by a commissioned police officer or police officer acting as a commissioned police officer.
- for Part 7:
  - » any police officer
- for the administration and enforcement of Sections 168B, 169 and 171:
  - » a community police officer.

Part 7 of the Act related to the powers of investigators under the Act. Despite these provisions, several participants noted the complexity involved in the legislation and opined that very few police officers had a comprehensive knowledge of the area.

*Even on a daily basis, they find it almost impossible to get any guidance on what they should be doing and their powers. The police need to research three or four pieces of legislation to understand what they need to do.*

The complexity of the legislation notwithstanding, participants reported that police were able to exercise most of the powers under the *Police Powers and Responsibility Act 2000*.

<sup>123</sup> See *Liquor Act 1992* (Qld), Section 174 (1).

*It can be confusing. As in Part 7, police are appointed as investigators, but they already have these powers in the Police Powers and Responsibility Act. But for other parts of the Act, police have to complete training to be able to be an investigator. This needs to be tidied up. They are either investigators for the whole Act or there is something in place that makes it clear what they can and can't do, which would make policing more effective.*

The lack of definitional clarity was considered to be particularly problematic for general duties police as they were responsible for policing many Acts. Respondents generally considered that the increased interest in the *Liquor Act 1992* was a by-product of media coverage due to the growth of legal challenges.

*Powers probably aren't well understood by police. The Liquor Act 1992 is just one of many that police enforce. It is in the last few years that it has become "popular". Police have always had powers in relation to liquor licensing and managed things in the past. It has come to the attention more due to publicity and legal issues of powers being challenged in court.*

Despite some confusion about the role of police as investigators under the *Liquor Act 1992*, participants generally considered that there was a mutual understanding between OLGR and police about their respective roles. While it was noted that the police had recently increased their understanding of OLGR's role due to training, participants were of the view that OLGR had a greater understanding of the police role.

*Police are in every town and there are only approximately 40 liquor inspectors in the state. They understand that the police are the ones who deal with issues on the street whereas their focus is within licensed areas.*

One respondent reported that OLGR personnel saw their role in enforcement as different to the role of police. The participant viewed OLGR as taking a more conciliatory and educational approach, while police took a more cautionary and punitive approach. Even though it was

recognised that this divergent view could on occasion create tension between the two agencies, it was considered that both approaches were necessary as it helped provide balance.

*Their [OLGR] enforcement policy is more in terms of education ... They see their roles as to go and educate licensees and give warnings whereas police will write tickets if licensees are doing something wrong. There is a bit of conflict between the two groups, especially when they are working together. There is a place for both methods with the balance needing to be right ... Just have to keep working on this together and see what happens at the end.*

*It is about getting the message across that OLGR will rarely write a ticket on the spot, as they will write a report and look to see if there is sufficient evidence; whereas police have been trained as inspectors so they will write tickets immediately, as that is their job.*

However, one participant suggested that the constant "morphing" of the relationship between the agencies indicated that each agency needed to continuously reappraise the other's role. It was stated that the "relationship works in fairly disparate ways across the state", and one interviewee flagged that in order to consolidate the relationship greater legislative clarification of each agency's role in achieving the objectives of the Act would be beneficial.

*I think that that [clear enunciation of roles within the legislation] would be a step in the right direction. That there would be some positive determination from each of the agencies in terms of the expectation of their people. And that would lead to a better level of engagement, and particularly interface from an operational perspective.*

Several participants noted that since about 2003, the increased emphasis on the *Liquor Act 1992* and the demand for a specialised liquor unit was reflective of a change in policing priorities as "it became apparent things were getting out of control." One respondent considered that the emerging focus on proactively managing the harm caused by

licensed premises represented a change in policing tactics.

*... from cleaning up on the streets, see how we could actually attack the smaller number of, which is the licensed premises, rather than locking up drunk after drunk after drunk.*

Another participant noted that the increased emphasis by police on enforcing the *Liquor Act 1992* was indicative of other agencies not fulfilling their duties. The extra responsibility placed on police was not welcomed by this participant.

*Police are the significant recipient of the harm that is caused when there are failures with respect to people adhering to the objects of the Act. So on that basis it does also give police flexibility to pick up some of the regulatory slack that is not being picked up by other actors ... Police officers identify that they've got a significant role to play in terms of enforcing the Act. But they see it as a shared responsibility and they do not always see that other actors meet their obligations to the degree that they potentially could.*

To this end, interviewees highlighted that even though the police force may bear the greatest burden of enforcement in licensed premises, they did not always have appropriate resources, nor was there adequate evidence to suggest that established and traditional methods of policing worked to reduce harms. One participant reported that trials conducted in the 1980s were unequivocal about the effectiveness of police “walk-throughs” in licensed premises. This respondent suggested that if police were to continue to shoulder the responsibility for policing licensed premises, further research was needed to identify effective policing methods, better technology was needed to ensure worker safety, and more police were needed.

*If you want police to police licensed premises, you should be telling them what you want them to do. And unfortunately not all of the research is unequivocal in terms of things that ultimately work. You look at for example, something called the Torquay Experiment which was conducted in the 80s in ... the*

*United Kingdom. It encouraged police through an empirical research project to look at walk-throughs through a number of licensed premises. They replicated the number of trial sites some time later and got very, very mixed results. It led academics to conclude that it probably worked, albeit with mixed results. But the problem is ... you tell police you want them to police licensed premises, the very first thing you should be saying is “but we want you to do these things.” And the reality is if you point to an evidence basis for these things it is not always clear-cut.*

### 6.7.8 Organisational and Systemic Structures

Participants reported that while there was not a dedicated liquor licensing unit within Queensland police, districts employed LEAPS coordinators. As such, liquor licensing enforcement was part of a strategy which focused on reducing violence from licensed premises. LEAPS coordinators were charged with establishing and maintaining liquor accords, providing information and statistics regarding trends and emerging issues, maintaining the LEAPS database and quality control of liquor incident reports, providing information to the Commissioner, and providing training to general duties police regarding the *Liquor Act 1992*.

*... the problem is LEAPS in every area is different. There's full-time, part-time, some are just shift supervisors which have LEAPS on the rest of their portfolios. That's a big problem. If it's not a gazetted position, we've never actually been given any guidelines. We've made it up as we've gone along and a lot of that stuff we've actually done here is actually put on the LEAPS state coordinator website and disseminated everywhere. But that is a big problem that it's ... sort of ad hoc.*

Interviewees confirmed that despite the reported importance of liquor control in police duties, the role was not a gazetted position; this was perceived to contribute to a lack of consistency in enforcement approaches and made it difficult to recruit personnel. Several

respondents wished to change this situation, as they considered that a specialised squad focusing on liquor licensing would be beneficial.

*From 2003, I have been doing a job which doesn't exist. And trying to get people into a job which doesn't exist is always fraught with problems.*

Several reasons were advanced to explain why there was not a specialist liquor licensing unit in Queensland Police. Participants referred to the historical impact that the Fitzgerald Inquiry<sup>124</sup> had upon the role police played in liquor licensing. Further to this, the requirement for a specialist unit dedicated to liquor licensing within Queensland Police was questioned as there was a government department responsible for enforcing the *Liquor Act 1992*.

*You have an ... (Office of Liquor, Gaming, and Racing) which is a separate government department totally independent of the police service. So there's always the [question] "why do police need someone dedicated to addressing the liquor related problems when we have a government department which should actually be doing that?"*

### 6.7.9 Training and Education

Participants generally reported that police had a working knowledge of the *Liquor Act 1992* in terms of the street offences contained within it, the powers available to police, and the powers which they could use in conjunction with the *Police Powers and Responsibilities Act 2000*. LEAPS coordinators were responsible for training general duties police, and training was also given to new recruits. However, it was also noted that to understand the more technical aspects of the Act, a course was required. Respondents acknowledged that training had recently been undertaken to redress deficiencies in knowledge of the *Liquor Act 1992* possessed

by general duties police. Training was conducted over three days and OLGR investigators provided advice on the more technical aspects of the Act. Police were also able to undertake a Train-the-Trainer course which enabled them to up-skill others in their unit.

### 6.7.10 Collaboration

Several participants noted the importance of police engaging with key stakeholders when attempting to influence the liquor licensing process. Stakeholders were identified as including licensees, engaged through the liquor accord process, and local councils. Police also participated in the Liquor Interagency Action Group, and until recently, had conducted numerous joint operations with OLGR, and operations continued to be undertaken when a venue was identified as being problematic.

The Liquor Interagency Action Group (meetings occurred every six weeks) was a collaborative venture which included representatives from the following organisations (particular interests are either self-apparent or shown in parentheses):

- Office of Fair Trading (security)
- Workplace Health and Safety
- Fires and Rescue
- Department of Immigration (backpackers)
- Centrelink (unregulated security)
- Queensland Health (smoking legislation)
- Brisbane City Council Health (cleanliness of kitchens)
- Brisbane City Council Building (building checks)
- Brisbane City Council Environmental (lighting and amenity around venues).

Despite the willingness of all these organisations to regularly meet and discuss broad alcohol-related and liquor licensing issues, frustration was expressed by some participants who reported that outside these meetings, OLGR's licensing branch tended to "frown on any consultation of police and [other stakeholders] council prior to applications being submitted." Police were unsure about why

<sup>124</sup> In 1987, an inquiry into police corruption was undertaken by Tony Fitzgerald QC; the inquiry took two years and led to the development of the Crime and Misconduct Commission. Findings were published in the report *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct*, which was tabled in Parliament in 1989.

such importance was attached to ensuring applications were submitted independent of prior consultation and suggested that there should be more liaison (not less) with the liquor licensing authority and planning and development authority at the application and approval stage.

*You can't put an across the board blanket on what works and what doesn't. Have tried many strategies: the strong enforcement strategy; the self-regulation strategy; and, then a combination and consultation. From the strategies in place at the moment, the consultation one seems to be a better one, but this may not work anywhere else. There is flexibility with this strategy and it can be used on a case-by-case basis.*

## 6.8 Conclusion

- Participants recognised that the *Liquor Act 1992* incorporated a harm minimisation objective, and that reducing harm from licensed premises and alcohol consumption was a shared focus of many agencies.
- Respondents highlighted the importance of police engaging with stakeholders in a variety of forums. Police engaged with licensees through the development of liquor accords, commercial public event planning, and developed a flexible case management approach to assist licensees in reducing alcohol-related harms. They collaborated with the licensing authority by undertaking joint training and enforcement operations, and contributed to OLGR's decision-making by providing information and advice about applicants and venues.
- It was seen as necessary for all stakeholders to focus on the harm minimisation objectives of the Act. State and local government, planning authorities and building codes all had a significant role to play in reducing the impact of licensed premises on the amenity of an area. The OLGR needed to be assured of receiving ministerial support when making decisions and enforcing the Act. Increased promotion and planning priority needed to be directed towards developing an "evening economy".
- The *Liquor Act 1992* needed to be continually reviewed and amended to ensure that its provisions reflected community standards and addressed any issues which arose.
- Participants would like increased regard given to:
  - » police views in relation to trading hours, outlet density, and conditions of licences. Participants noted that they were most successful in influencing conditions for commercial public event permits.
  - » police evidence and data about the impact a new premise may have on the amenity of a location. Respondents considered that the unique experience and specialist knowledge that police possessed regarding alcohol-related harms and the impact that licensed premises commonly had on an area was not always given adequate consideration.
- Concomitant with the above, respondents acknowledged police needed to ensure that sufficient and credible information and data pertaining to alcohol-related harms and community amenity issues continued to be collected, analysed, and disseminated. This was noted as being an area of continued growth and improvement.
- Legislative changes were needed to improve role clarity for police in relation to enforcing compliance with the Act. Statutory changes needed to be implemented in conjunction with joint training for police and licensing inspectors, and an increase in resources. Increased training and resourcing would ensure that police and licensing inspectors could support each other to greater effect.

- Interviewees highlighted perceptions that Queensland Police needed to establish a full-time, dedicated liquor licensing enforcement unit. A dedicated unit was required to improve consistency and legitimacy of police efforts in enforcing the *Liquor Act 1992*. Interviewees noted that further research needed to be undertaken regarding what policing styles were most effective when monitoring licensed premises.
  - Respondents emphasised that, in general, licensees were supportive of evidence-based measures to reduce harms. As such, they stressed the importance of promoting a flexible and consultative approach when dealing with licensees and licensing matters.
  - It was noted that when faced with higher fees, substantial running costs, and restrictive trading practices, licensees tended to exercise their legal rights and challenge the legitimacy of the decision and/or infringement notice. Such challenges represented a massive impost on police resources.
  - Several respondents noted that it was sometimes best to use the *threat* of legal action to persuade licensees to change their practices as even though both disciplinary proceedings and engagement could influence a licensee's practices, engagement had more lasting benefits due to the strengthened relationship it created. Engaging licensees was considered valuable as it provided police and licensees with the flexibility to take an individual and localised approach when combating the harms resulting from alcohol misuse.
  - In general, respondents supported a voluntary mode of implementing harm reduction methods. However, a few highlighted that in the absence of goodwill and cooperation there would be a need to legislatively mandate these initiatives.
  - Participants considered that licensees and other late night traders needed to contribute more to the financial burden of ensuring adequate resources were allocated to policing the night-time economy, as well as take responsibility for the moral burden of ensuring that people were not placed at risk through irresponsible serving practices. Nevertheless, participants acknowledged licensees' complaints in these areas (i.e., that people were pre-loading and/or there were drugs involved), and recommended that further research needed to be undertaken to assess the incidence and impact of pre-drinking routines.
  - Other reforms interviewees regarded as positive included:
    - » the introduction of risk-based measures and fee assessments
    - » infringement notices
    - » classifying high-risk premises
    - » lockouts
    - » banning, barring, and prohibition orders.
  - Respondents considered that expanding some of these measures would reduce alcohol-related violence and anti-social behaviour. They emphasised that such initiatives needed to be augmented with a range of other initiatives such as increased public transport and a greater visible presence of security and police personnel.
  - Interviewees highlighted that measures such as glass bans were often introduced after an act or acts of violence had already occurred. Many considered that harm reduction measures such as glass bans should be implemented more broadly and affect like premises in a like manner. They highlighted that more research needed to be conducted about the effectiveness of harm-reduction initiatives in reducing alcohol-related violence and anti-social behaviour.
- Despite the many positive advances in liquor legislation, participants also consistently noted enduring concerns. Primarily, these related to a need to:
- reduce trading hours and the overall density of alcohol outlets

- streamline legal and disciplinary processes to create financial impact on non-performing licensees
- reduce avenues of appeal for licensees when conditions were imposed upon their licences
- reduce the difficulty in proving offences related to serving and supplying unduly intoxicated patrons
- diminish (if not remove altogether) the emphasis in the objectives of the Act on the development of the alcohol industry.

There was a lack of consensus about methods to redress these concerns; however, all participants posited that the most effective way to minimise harm was to reduce trading hours.

Several participants commented that they would like to see licence approvals being determined on an “*as needs*” basis again – that is, whether the community “*needs*” another licensed premise; however, it was unlikely in the short term that such an amendment would be made due to its inconsistency with the National Competition Policy.

Further to this, under Section 117 both the local government authority and the Assistant Commissioner of Police could comment on the “reasonable requirements of the public in the locality”, and applicants were required to address (through community impact statements) trends in the numbers of persons residing in, resorting to or passing through the locality and their respective expectations. However, it is unclear whether the Assistant Commissioner of Police could only comment on this matter in regards to extended trading hours approvals or adult entertainment permits.<sup>125</sup> As such, it may be beneficial to amend this provision so that both the local council and Assistant Commissioner could comment on this ground for all relevant licence applications.

In order to achieve the harm minimisation objectives of the *Liquor Act 1992*, it will be necessary for a wide range of stakeholders to be engaged in the planning, decision-making,

implementation, and review processes. These processes need to be supported by a wide range of compliance and enforcement mechanisms. There needs to be ongoing training and consultation between stakeholders and the licensing authority, and greater consideration given to providing means for these establishments to enact measures aimed at preventing harm. Queensland has recently adopted many initiatives aimed at reducing and preventing harm, and an ongoing review of these measures and the Act will be necessary to ensure that it remains consistent with community expectations and emerging issues.

<sup>125</sup> See *Liquor Act 1992* (Qld), Section 117.





## 7 South Australia<sup>126</sup>

### 7.1 Legislative and Administrative Processes

#### 7.1.1 General Perceptions of the Act

A stated aim of the South Australian *Liquor Licensing Act 1997* was to minimise the harm associated with alcohol consumption in that jurisdiction. It also had the aim of developing and furthering the interests of the liquor industry, but this needed to occur within the context of proper regulation and controls and could not be at the expense of public safety and amenity. From this perspective, the intent of the Act was clear. Nonetheless, several study respondents indicated that the practical implementation of the legislation was a matter of delicate balance. There was also recognition that it was difficult for South Australian liquor licensing authorities to discern exactly where the balance lay in relation to the interests of the retail alcohol industry and public safety and amenity when making particular licensing decisions. Also unclear was the extent to which

patrons should accept responsibility for their own behaviour. These divergent objectives made the Act difficult to enforce.

*Unfortunately while we would like to protect public safety and only concentrate on minimising harm, the interests of the alcohol industry have to have some consideration in there, there has to be a balance between the safety and amenity and on the other hand the commercial aspects, because they are businesses, and we have national influences that dictate what happens even in relation to that state legislation.*

Despite recognition of these difficulties, there was a recurrent theme that the existing South Australian *Liquor Licensing Act* did not have a sufficiently strong focus on public safety/harm minimisation.

*The legislation doesn't really cater at all for harm minimisation and the public safety ...*

Lack of focus on harm minimisation was seen as particularly problematic given the ability of the alcohol industry to lobby to promote its position, which was often at odds with harm minimisation.

*I wouldn't say there is a strong harm minimisation public safety focus in it. I think it's all for just controlling regulated premises. I don't think it actually ... it doesn't go far*

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<sup>126</sup> 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.

The opinions expressed in this Chapter are those of the authors and the individual participants involved in the interviews. They do not necessarily represent the views of South Australia Police or other agencies that participated in this study.

*enough I don't think in relation to harm minimisation, a lot of it is in the interest of the commercial sector ... There is only a certain part of the legislation I think that is harm minimisation including the barrings, but it's only I think a small proportion I think there could be a lot more in there. No I don't think it goes far enough at all.*

One respondent's key concern was that the South Australian *Liquor Licensing Act 1997* actively promoted the interests of the alcohol industry. The respondent asserted:

*I cannot think of any other Act where that is one of the objectives. You don't see the Controlled Substances Act ... where you have take into account the interests of the pharmaceutical companies.*

There was a recognition among respondents that the misuse of alcohol caused a great deal of harm and a view that the existing legislation did not provide sufficient powers to regulate the way it was sold, supplied and consumed. Particularly important in this regard was the fact that the Act permitted 24-hour liquor trading in areas deemed to be tourist precincts.

One respondent noted that when National Competition Policy (NCP) guidelines were introduced, other jurisdictions opted to comply introducing the requirement for a community impact statement when considering new licence applications. South Australia on the other hand, chose to not comply with NCP guidelines and incurred a resultant financial penalty from the National Competition Council.

In South Australia, in order to have a licence for a new hotel or retail outlet licences granted, the applicant was required to pass a community needs test. In doing so, the applicant had to demonstrate that existing venues were not meeting the requirements of the community. The licensing authority was required, on the basis of case law, to balance commercial needs with public safety/amenity needs. Consequently, unless the authority was made aware of all the ways in which licensed premises could impact adversely on public safety and amenity, commercial interests tended to prevail. Several

respondents saw the lack of a requirement for a community impact statement as problematic. Provision of a community impact statement could give police scope to develop and air more robust arguments for consideration by liquor licensing authorities. In this way, it was argued, community safety needs could be better reconciled with NCP requirements. It was suggested that to achieve this would require better data collection and interpretation abilities than currently available to police.

Another recurrent theme was that the Act was confusing, particularly in regard to issues of licence hours and setting of conditions. Respondents noted that the Act "*covers a lot of ground*", including requirements for licensees and patrons, and specified how the liquor authority administered the legislation. It was suggested that reducing the number of licence classes (currently 11) and conditions to a more manageable level would simplify the Act for the licensing authorities, police, licensees and the broader community. This was identified as a particular problem for non-specialist police who did not have a thorough knowledge of the details of the various licences. While police who regularly worked with the Act soon became familiar with it, there was recognition that it could be difficult to understand, especially for local government or alcohol industry representatives.

A further concern was that the current Code of Practice for licensees under the Act, while mandatory, was not able to be enforced. It was also thought that it needed to be made less ambiguous. The Code's ambiguity complicated the process of undertaking covert operations designed to detect Code breaches. It was recommended that the Code be made mandatory and that licensees be legally bound to uphold it before being issued with a liquor licence. There was also a perception that the existing Code of Practice contained too much detail. In all, the Code of Practice was described as a "*toothless tiger*" with, at best, questionable influence on licensees.

South Australia's liquor licensing legislation was recently reviewed, but interviewees believed that improved legislation, on its own,

was not the total solution to reducing alcohol-related harms. Improved legislation should be coupled with effective enforcement, and some interviewees saw a need for the introduction of a suite of measures, including an examination of the impact of broader patterns of alcohol supply beyond problematic licensed premises.

### 7.1.2 Perceptions of Existing Legislative Responses to the Serving of Intoxicated Patrons

Police respondents from South Australia had four broad areas of concern in relation to their ability to enforce the Section of the Act that deals with serving intoxicated patrons.

The first of these involved the adequacy of the definition of “intoxication”. In particular, several interviewees indicated that the Act did not provide a sufficiently clear definition of intoxication that could be easily understood by a lay person, police officer or people working in the alcohol industry. Police are trained to gather evidence and to record their observations; if it is difficult for them to use the definition contained within the Act, then (it was suggested) it would be almost impossible for others to do so. Likewise bar staff experienced difficulties assessing a patron’s level of intoxication at the point of sale, particularly in venues that were dark, noisy and crowded. Under these circumstances, bar staff were required to make a rapid assessment to determine if patrons were intoxicated. Consequently, it was difficult for police to prove that bar staff knowingly served an intoxicated person. It was suggested that an improved definition of intoxication could focus on the serving practices of venues. There was also a suggestion that the definition of intoxication should be more closely aligned with that given in the Road Traffic Act.

A further issue of concern was that the offence of serving an intoxicated patron did not adequately address problems of secondary supply of alcohol on licensed premises. It was an offence to sell or *supply* alcohol to intoxicated patrons. It was very difficult to prove this offence when intoxicated patrons were not being served alcohol by bar staff but were supplied with alcohol purchased by relatively sober

companions. This anomaly could be addressed by creating an offence of suffering or permitting an intoxicated person to remain on licensed premises.

Another issue highlighted by police respondents was that the Act’s definition of intoxication referred only to intoxication caused by alcohol. South Australia (SA) Police had previously unsuccessfully argued that the definition of intoxication should be amended to include intoxication from any substance. This argument was put forward on the basis that the substance that led to intoxication was irrelevant and it should therefore be illegal to serve an intoxicated person, regardless of the substance involved.

Respondents also raised concerns about the extent of the defences available to counter the offence of serving an intoxicated patron.

*the defence that was put in there gets everybody out of it ... It was hopeless before, I don't think they've improved on it much at all.*

If bar staff or licensees could successfully argue that they did not believe a patron was intoxicated, or intoxicated with alcohol, then this was sufficient to defend the charge.

The imprecise nature of the definition of intoxication, when added to the availability of defences for the offence, was seen as an almost insurmountable hurdle to successful prosecutions.

One way to address this problem would be to reverse the onus of proof on bar staff/licensees and make them prove that persons served alcohol were not intoxicated. This approach, however, did not have universal support among respondents. It was noted that many bar staff were young people working in difficult or potentially volatile situations that they may be ill-equipped to handle. This was particularly problematic if there were no supportive “responsible persons” (as defined by the Act) available on the premises.

*It gets a bit difficult because you are trying to make bar staff be police and I think they're very reluctant to do that.*

While acknowledging the difficulties associated with proving the offence of serving an intoxicated person, one respondent indicated that this problem was similar to many situations that commonly confront police. Police must ascertain the evidence required and work out how best to gather it. It was suggested that, despite the fact that there are powerful defences available, there may be scope for police to allocate more resources to collect the required evidence.

## 7.2 Proactive Activities

Proactive measures introduced in South Australia in response to liquor licensing issues are described in the following sections.

### 7.2.1 Alcohol Incident Reporting System

As discussed above, South Australia Police developed the Alcohol Incident Reporting (AIR) system to allow it to record data on alcohol-related offences. The data from the AIR system was helping SA Police adopt an evidence-based approach to setting policy. Take-away sales were identified as a confounding issue for police: not being able to establish the volume of alcohol bought and then taken away to be consumed, usually in residential premises, was a major limitation. Having alcohol sales volume data for particular premises and areas to overlay with the AIR data and crime trends data would provide valuable information on major crime-related issues for a suburb or geographical area. It was suggested that legislation should be used to mandate the availability of wholesale alcohol sales data.

### 7.2.2 Centralising Specialist Liquor and Other Licensing Enforcement

Respondents were of the view that the establishment of the centralised Licensing Enforcement Branch (LEB) in SA Police had several advantages; foremost among these was concentration of expertise and specialist advice in the one area. In addition, the advent of the LEB had increased the quality of probity checks on liquor licence applicants and on people who wish to work in the security industry.

This centralised structure enabled SA Police to capitalise on the provisions of the *Liquor Licensing Act 1997*. The leadership shown by LEB has assisted local police to reduce harmful patterns of alcohol supply, including alcohol promotions such as “*all you can drink in five hours*” and serving jugs of spirits for a relatively low price.

In South Australia, police in local service areas carried the primary responsibility for dealing with liquor issues in their geographical area and contacted LEB for more complex matters. Most respondents considered that this system worked reasonably well.

The LEB conducted a daily Tactical Coordination Group (TCG) meeting. The Branch Manager was briefed by the Branch’s intelligence officers about overnight incidents and occurrences. Briefings were compiled using police call-out data, AIR data and journal entries (police recorded significant events in their journals). The Branch TCG reviewed briefing information and identified licensed premises where there had been problems; a decision was then made on whether the Branch needed to take action on any issues concerning the management of those premises. The Branch also held fortnightly Tasking and Coordination Group meetings to look at more problematic licensed venues. In addition, a report was produced for SA Police using AIR data to identify problematic licensed premises in the State and the major problematic venues in each of the Local Service Areas. This information was then collated and provided to the Liquor and Gambling Commissioner.

The LEB was established by combining the Licensing and Gaming Advice Section with the Vice Squad. One interviewee noted that the role of the Licensing and Gaming Advice Section was provision of advice, whereas the central focus of LEB was enforcement and compliance. It was noted that the Branch was unique as it was self-contained and it had its own dedicated trainers, investigators and prosecutors; it also had other regulatory functions, particularly in relation to the security industry. The LEB was also responsible for conducting probity checks on behalf of the Liquor and Gambling Commissioner.

Overall, respondents were very positive about the benefits of centralising the liquor licensing function within SA Police.

### 7.2.3 Barring Orders

Under the *Liquor Licensing Act 1997*, licensees could bar a person from their premises for up to three months for a first barring order, up to six months on a second barring order and indefinitely for a third barring order. SA Police encouraged licensees to exercise this right. Amendments to the Act have meant that police officers could also bar persons from premises. Any police officer, with authorisation from a senior officer, could bar a person from a particular premise or from multiple premises. As the period of time for which the barring order was sought increased, the officer seeking the order was required to obtain authorisation from increasingly senior officers. A police officer of the rank of Inspector or above, for example, could approve a barring order for a period of three months from multiple premises or from a particular precinct. Patrons could be barred for their own welfare, for committing behavioural or other offences, for behaviour which was disorderly or offensive, or on other reasonable grounds.

Most interviewees were supportive of South Australia's barring orders, believing that they were effective in reducing the impact of recidivist offenders. They were also seen to send a strong message to offenders, the majority of whom were not inclined to be recidivists and would thus change their behaviour after being barred.

*I think it's an excellent tool, very good.*

As a result of these legislative changes there was a significant increase in the number of barring orders issued. The power to bar patrons was an important means of reducing alcohol-related problems and the number of barrings issued by each police local service area (LSA) was used as part of performance indicators for LSAs in South Australia.

There was, however, a divergence of opinion concerning whether it was preferable to have licensees or police issue barring orders. Some respondents thought it preferable to have police issue them, because:

- putting the responsibility onto licensees potentially placed them at risk of a confrontation with the patron
- if police undertook the barring there was a greater degree of objectivity in the issuing of an order and consequently there was less likelihood that the barring decision would be challenged
- there was more likelihood that police would complete the barring orders in accordance with the Act and they would therefore be enforceable
- police could use the tool to immediately defuse potentially volatile situations.

As noted above, police officers required the authorisation of a police inspector to bar a person for up to three months. If the local commissioned officer was not immediately available, Inspectors in SA Police's central Communications area could be telephoned or contacted through police radio transmission. In contrast, licensees could ban patrons for up to three months without reference to anyone. In these circumstances, some interviewees argued, it was preferable for the licensees to bar the person because they had the ability to do so for longer periods.

A further argument put forward in favour of licensees, rather than police, issuing barring notices was that putting the onus on police to issue barring notices meant that licensees could become less accountable for the behaviour of their patrons. It was for this reason that one interviewee encouraged licensees to bar patrons in the first instance. In addition, it was often the venue that allowed the individual to get into a condition that led to the behaviours that would warrant barring. From this perspective, the venue should accept some responsibility for redressing this problem.

Despite the high level of support for police powers to bar patrons, some difficulties were experienced with existing arrangements. There were, for example, problems in relation to police completing the barring order forms correctly. Problems had also arisen in relation to sharing information concerning people who had been barred. SA Police had a system in

place that allowed officers to retrieve information on individuals barred by police. They did not, however, have access to information on individuals barred by licensees. There were also problems with licensees not communicating information about barrings to their staff and to other licensees. Liquor accords were considered a useful mechanism through which this information could be shared among licensees, but it appeared that they did not have a high level of effective implementation in South Australia.

Another difficulty was geographical barrings, where patrons were barred from a whole area. In this instance, all venues within the barring zone had to be notified. If a large number of people had been barred the barring orders became difficult for the venues to enforce.

It was also noted that the penalty for a patron who breached a barring order was very low and consequently the main deterrent was being removed from the premises. As at December 2010, police had implemented more than 2000 barrings and the consensus among respondents was that it had been a good initiative.

#### 7.2.4 Infringement Notices

The ability to issue infringement notices for liquor licensing breaches was a recent development in South Australia. Infringement notices could be issued for a limited number of clear-cut offences. Several respondents believed that infringement notices were likely to become a very effective tool for police, because the notices produced an instant result and reduced the time police need to spend in court. In addition, they meant that licensees did not have to engage legal counsel to defend matters before the liquor licensing authority. Infringement notices carried an effective penalty and they reinforced licensees' rights and obligations. Licensees, for example, could be issued with an on-the-spot fine of \$1,200 if they failed to display their licence appropriately.

*They will be effective. And they make our job a lot easier too, because otherwise we'd be doing a full [prosecution] file for not having a licensed displayed.*

#### 7.2.5 Enhancing Relationships

In some parts of South Australia, particularly the CBD, police worked with local government to exert influence at the planning level. Under South Australian legislation, applicants were required to obtain planning consent before their licence application could be approved. By focusing on planning issues, SA Police could address potential problems at an earlier stage. This was advantageous as it enabled the potential impact of new licensed premises to be considered from a whole-of-community perspective, rather than solely from a liquor licensing perspective. Usually only immediate neighbours were advised when there was a proposal to establish a new licensed premise. This meant that the broader community may not have been aware of these proposals and thus they may not have been considered from a whole-of-community perspective.

One respondent indicated that in some respects local government had the same authority as police to intervene in licensing matters, but that sector often lacked the level of expertise to do so. Assessing the potential impact of applications for licensed premises on public amenity required good data; police were able to assist local government in this regard and were also familiar with using such data to effect. Police in the Adelaide Local Service Area, for example, maintained close liaison with the Adelaide City Council in relation to development applications that involved a liquor licensing component. Through this liaison, both stakeholders ensured that their concerns were addressed in an appropriate and consistent manner when issues were subsequently considered by the Liquor Licensing Court.

Recently LEB was enhancing its relationship with the Office of the Liquor and Gambling Commissioner (OLGC) (the liquor licensing authority in South Australia). This reflected a greater willingness by both organisations to engage in more open communication and to address any issues that arose. The establishment of LEB as the specialist unit within SA Police also extended the level of cooperation with the OLGC. The close relationship that LEB had with OLGC facilitated regular contact between the management

of the two organisations and between police officers and licensing inspectors. Joint operations have occurred between police and OLGC that also involved the fire department, local government, the Environmental Protection Authority, and the Office of Consumer and Business Affairs. These joint operations were very effective and allowed matters to be dealt with in a more holistic and efficient manner.

SA Police maintained an excellent relationship with the local AHA and Clubs SA. While perceptions and opinions on issues may have differed, respondents agreed that the relationship allowed for frank dialogue and issues to be addressed in a proactive manner. SA Police and the industry groups often had much in common in terms of preventing problems and were thus able to work together for the benefit of the community.

## 7.3 Ongoing Challenges

### 7.3.1 Trading Hours

There was consensus among respondents regarding the need to curtail the trading hours of some licensed premises. Processes were developed to enable police and licensees to discuss extended trading applications; these allowed police to highlight their concerns and licensees to modify their applications for extended trading accordingly.

Respondents reported that it was becoming increasingly difficult to prevent extended trading and this was compounded by the limited quality of police data that had not kept up with the requirements to mount increasingly sophisticated arguments. In particular, the lack of any evaluation of the impact of reducing trading hours in South Australia was noted.

Of particular concern was 24-hour trading by some licensed premises in the Adelaide CBD, which had a significant impact on policing. Respondents reported that in the Adelaide CBD the majority of anti-social offences, including assaults, occurred on Friday and Saturday nights between midnight and 4 am. Twenty-four-hour trading was seen to not only cause problems for agencies such as the police, but

create issues for daytime traders who had to contend with drunk patrons exiting licensed premises at 9-10 am in the morning.

*The greater availability leads to the greater consumption which leads to more alcohol-related crime. Closing the doors so they can't access alcohol has to work.*

In addition, the 24-hour and late trading premises in Adelaide were in close proximity; as a result, patrons could simply move from one premise to the next. This increased the risk of groups of intoxicated people fighting and causing disruptions. Limiting trading hours was seen as providing a clear direction for patrons concerning the time at which they should leave entertainment precincts and return home.

Even though the primary rationale for extending liquor trading hours was to enhance tourism, one respondent indicated that recent research conducted by SA Police (2010) found that it was not having this effect. The majority of offenders and victims involved in incidents in the Adelaide CBD were South Australians, not tourists. Extended trading may, therefore, be predominantly catering for the local rather than the tourist trade (South Australia Police, 2010).

### 7.3.2 The Complexity of Licence Categories

A recurrent theme among respondents was the difficulties associated with having 11 categories of liquor licence in South Australia. So many different licence types complicated the licensing requirements for specific premises, particularly for general duties police officers.

### 7.3.3 The Difficulties Associated with Influencing Liquor Licensing Decisions

Several respondents expressed the view that police in South Australia had little influence over trading hours and the number and density of licensed premises. There was seen to be a power imbalance between the retail alcohol industry and the police:

*We're not about preventing competition and it is very difficult to argue, I guess, about the social harm caused by outlet density and availability of alcohol.*

This power imbalance was perceived to be particularly problematic in the context of proposed new premises. Respondents indicated that police were only able to challenge the establishment of a new licensed premise on the basis of its potential to lead to public nuisance. This argument was hard to sustain if a venue was yet to commence trading. Difficulties were seen to stem from the limited extent to which SA Police could generate data to support its arguments. It was reported that generating data to enhance these arguments was a resource intensive process. SA Police has had some success with Section 43 applications (in which the liquor licensing authority could impose conditions on licensees for problems such as noise and public nuisance). Nevertheless, these applications were cumbersome processes and involved considerable effort and intelligence gathering. They tended to be more successful in the country than metropolitan areas.

#### **7.3.4 Lack of Information Concerning Patterns of Take-Away Sales and Lack of Ability to Influence Them**

Several respondents raised concerns about alcohol sales from bottle shops. Two aspects were noted. The first was the inability to access information pertaining to the extent and nature of alcohol sales. Lack of information made it difficult to assess the impact that these premises had on levels of crime and other problems in the surrounding areas. The second issue was that, even if police did have this information, as long as these premises operated within the confines of their licences police had no power to intervene in their activities.

Despite these difficulties, one respondent expressed the view that restricting take-away sales could be an effective strategy, particularly in relation to products that caused the most harm. It was, however, only effective if it involved community consultation and engagement and if accompanied by an effective communications strategy explaining what the restrictions meant and why they had been imposed. By contrast, restrictions imposed by government without appropriate consultation could be more likely to result in problems such as “sly-grogging”, especially

in rural and remote communities. From this perspective, the key factor in reducing alcohol-related harm associated with take-away sales was community engagement. This included convening community meetings, providing information to the local community and liaising with local non-government organisations.

#### **7.3.5 Pre-Loading**

Some respondents asserted that it was becoming common for patrons to “pre-load”, i.e., consume large amounts of alcohol before entering licensed premises. While this could put licensees in a difficult position, it was suggested that some licensees still allowed intoxicated people to enter licensed premises and supplied them with more alcohol. Interviewees described a tendency for licensees to attempt to absolve themselves of responsibility for intoxication-related behaviour on their premises on the basis that patrons consumed alcohol before entering the premises.

#### **7.3.6 The Application Process for Limited Licences**

Ideally, limited licences provided the broader community of South Australia with the opportunity to consume alcohol at time-limited events that were well managed and which supported the responsible service of alcohol. The overwhelming majority of limited licence applications were such that they were unlikely to be contested by, or a concern to, SA Police. At times, however, some event organisers did not conform to the limited licence application timeframes and provided insufficient notification of an upcoming event. Applicants were required to apply for limited licences 14 days before the proposed event but if the application was made within this time period they were generally granted. Often the applicant had already put in place the infrastructure to conduct the event by the time a late application was submitted, which made it difficult for the licensing authorities to refuse it. According to one respondent, the situation has worsened since the advent of online submission of applications for limited licences.

Having insufficient time to respond to limited licence applications created a range

of problems for police, including having insufficient opportunity to examine the suitability of the proposed venue, apply for conditions to be added to the licence to enhance safety, and assess the ability of the licensee to conduct the event. Where police had concerns about these issues, they could also wish to undertake a probity check in relation to the applicant. A significant proportion of applicants for limited licences had little experience in conducting events at which alcohol was served. Ironically, in the experience of one respondent, it was those licensees that were least well organised and least able to effectively manage events that were most likely to make late applications. Short notice of these events also gave police insufficient opportunity to deploy resources to appropriately respond to the event.

Another respondent indicated that it would be preferable for applicants for limited licences to be required to consult with key agencies such as local government and the police prior to submitting an application. The lack of consultation reportedly often lead to situations in which problems arise at poorly planned events which emergency services and local government have to “clean up”.

The application form for limited licences was another area of concern, described by several respondents as difficult to read, contradictory in places and providing insufficient detail for police to assess the nature of the proposed event.

### 7.3.7 Responsible Service of Alcohol Training Arrangements

The concept of RSA training was supported by most respondents because the course material contained information enabling staff to reduce the level of alcohol-related harm. The training was also in the best interests of the alcohol retailing industry because it could make licensed premises more attractive to patrons. Unfortunately, in South Australia not all staff members working in licensed premises were required to undertake this training. Indeed, licensees and people defined as responsible persons under the Act were only required to undertake the training if they could not convince the liquor licensing authorities that they did

already have the requisite skills and knowledge.

A further issue of concern was the quality of RSA training. To assess the quality of the RSA programs available in South Australia, one respondent undertook a course covertly and found it contained many inaccuracies and was very expensive. In addition, this training was generally offered on a one-off basis and there was no requirement to undertake further training in response to new trends and issues and changes in the legislation. Further, it was reported that many licensed premises conducted their own training, but the quality and content of this was not monitored. From this perspective, while there was likely to be benefit in having all bar staff undertake quality RSA training, unless the content of the courses was more closely monitored and where appropriate, improved, there was likely to be little benefit in their wider implementation.

While generally supportive of RSA training, respondents indicated that the basic training needed to be supported by assertiveness training and integrated into the culture of licensed premises. Staff members who refused alcohol to patrons also needed to know that they would have the backing of a responsible person.

### 7.3.8 Liquor Licensing Accords

Liquor accords had no legal status in South Australia, and respondents were at best ambivalent about their efficacy. Accords were viewed as being potentially useful as a means of sharing information between key stakeholders (concerning barred patrons, for example), but respondents cited a range of concerns about them, including:

- the low participation rate among licensed premises (particularly among the licensees of larger venues)
- the fact that they had no legal status
- that they are only as good as the people who participated in them (who can change over time)
- that they could be used by licensees to gain an advantage over their competitors.

Respondents were generally of the view that legislatively mandated accords would be of greater value, particularly when supported by strong enforcement. The current situation with liquor accords in South Australia was generally described in terms of being “*more about talk than action.*”

### 7.3.9 Lack of Legislative Provision for Lockouts

Several respondents expressed concern that there were no provisions for lockouts in the South Australian *Liquor Licensing Act 1997*. Lockouts could be imposed on individual premises under Section 43 of the Act (Power of licensing authority to impose conditions) but it was noted that there were no provisions to apply for a precinct-wide lockout. SA Police respondents favoured having lockouts as part of an overall strategy to reduce alcohol-related violence.

It was noted that voluntary lockouts had been very successfully implemented in Whyalla, Mount Gambier, O’Halloran Hill and Glenelg. A voluntary lockout was attempted in the Adelaide CBD but was unsuccessful due to lack of agreement amongst key stakeholders. It was suggested that lockouts could benefit licensees because patrons arrived earlier and stayed there, and licensees did not get undesirable patrons arriving in the early hours of the morning. The licensee of one large licensed premise in Adelaide had recently instituted lockouts with some degree of success.

Interviewees recognised that lockouts were more difficult to implement in large precincts as it was harder to arrive at arrangements that were equitable for all licensees. Respondents indicated that lockouts were not an easy fix, not least because they were resource intensive to enforce. Nevertheless, lockouts were generally viewed as having significant potential, particularly in suburban areas and when introduced in conjunction with reductions in trading hours.

A potential problem cited with lockouts was that when venues decided to close early the crowd was put out onto the street but could not then enter late-closing venues. Another perceived problem was the rush by patrons to get to the

late-closing venue before the lockout, resulting in a lot of movement between venues. If the venues were located a long way apart, this meant patrons drive to the late-closing venue when they are potentially over the legal blood alcohol limit.

Despite these potential limitations, lockouts were generally viewed as being very effective. The lack of legislative provision for them, particularly at the precinct level, was seen as a major impediment to policing efforts.

### 7.3.10 Police Organisational Development Issues

Respondents reported that over the past two decades there had been a substantial deskilling of general duties police in relation to liquor licensing matters. This, when coupled with the complexity of the South Australian *Liquor Licensing Act* and its proclivity for change, has meant that most police do not deal with liquor licensing matters. Some police recruit training of a general nature occurred in South Australia in relation to liquor licensing issues but beyond that, specific training was conducted by LEB. There was a perception that more workforce and organisational development work could be undertaken in this area.

One respondent indicated that there was a lack of training and other support to encourage police to implement proactive early intervention strategies. Such strategies included conducting walk-throughs of licensed premises, or speaking to licensees and responsible persons in venues in order to get an overview of events. Police’s many other tasks further impacted upon their ability to monitor and visit licensed premises.

## 7.4 Conclusion

The following key issues were identified during interviews:

- several measures to reduce alcohol-related harms were working well in South Australia, including the AIR system, the establishment of a centralised LEB, barring orders, infringement notices and enhancing liaison with other relevant agencies

- a recurrent theme from South Australian respondents was that the existing South Australian *Liquor Licensing Act 1997* did not have a sufficiently strong focus on public safety/harm minimisation, and that this was particularly evident in relation to trading hours
- the complexity of the existing legislation, the difficulties associated with police being able to influence liquor licensing decisions, a lack of data concerning the extent and nature of take-away alcohol sales and a lack of legislative provision for lockouts were seen as significant impediments for police
- the way in which the *Liquor Licensing Act 1997* framed the offence of serving intoxicated patrons, including an inadequate definition of intoxication and the large number of defences available to licensed premises, made this offence difficult to prove
- the limited opportunity afforded police to comment on licence applications and concerns about the quality of RSA programs were prominent topics for SA Police respondents.





## 8 Tasmania<sup>127</sup>

### 8.1 Legislative and Administrative Processes

Tasmanian liquor licensing legislation was unique in that, at the time of writing, the *Liquor Licensing Act 1990* did not contain a statement to the effect that harm minimisation was one of its key objectives. That may have had an impact on perceptions about the intent of the Act. Interviewees asserted:

*I'm very sceptical about the intents of the Act. If it is not in the Section then the courts will not uphold it. Courts are paid to interpret the law absolutely and the intent of the legislation is irrelevant to them.*

*The best interests of the community are undefined in the Act, so there is broad scope for the issuing of licences ... apart from special licences which tend to be very narrow in scope for particular purposes.*

At a general level, respondents indicated that the existing legislation tended to favour the

needs of the alcohol industry over the broader needs of the community.

Tasmanian liquor licensing authorities and police views concerning the efficacy of the Act and the extent to which police could influence the outcome of liquor licensing matters differed. Police tended to hold the view that the Tasmanian *Liquor Licensing Act 1990* resulted in the relatively free availability of liquor licences with little scope for police intervention.

One respondent noted that the Tasmania Police had limited influence over the number of licensed premises, moderate influence on the hours of operation, and some limited influence on the conditions of a licence. A key issue affecting the degree of influence possessed by police related to their ability to obtain relevant data and present it in a manner that supported a case for the imposition of certain conditions or restricted trading hours.

Representatives of the liquor licensing authority, on the other hand, indicated that while police were welcome to make submissions concerning licensing issues, they rarely did so, despite the fact that police often expressed concern about the outcomes of liquor licensing determinations. That said, many of the matters considered by licensing authorities concern eating establishments and other licence categories that are generally much less of a concern to police and therefore less likely to warrant a police submission.

<sup>127</sup> 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.

The opinions expressed in this Chapter are those of the authors and the individual participants involved in the interviews. They do not necessarily represent the views of Tasmania Police or other agencies that participated in this study.

A range of stakeholders, including Tasmania Police, were advised electronically of every licensing application and the timing of its consideration by the Commissioner. This notification also invited submissions on the matter. It was suggested that police were not fully utilising the powers they had under the Act, such as issuing breach and infringement notices. From this perspective, there was an imbalance between the extent to which police expressed dissatisfaction with the outcomes of liquor licensing processes and the extent to which they opted to have input into the process.

*They (police) may feel frustrated, when in fact they already have the power to do something. They just don't know about it, they don't realise it ...*

Liquor licensing authorities expressed some frustration about the level of turnover among Licensing Unit Police. It was felt that staff movement impacted upon the ability of officers to possess high-level understanding of the legislation. These staff changes highlighted the importance of the need for ongoing training.

At the same time, there was recognition from liquor licensing representatives that a civil/administrative jurisdiction was very different from the criminal arena in which police usually operated.

*But at the end of the day, I think one of the issues that is a bit difficult to get around is that the fact that the Licensing Board and, in particular, the Commissioner for Licensing operate within the confines of administrative law, which requires obviously both procedural fairness and natural justice to be afforded ... and the police tend to obviously operate within the criminal law and while the criminal law provides natural justice and procedural fairness, it provides it in a very different way than the administrative law regime does. .... the Commissioner is obliged to bring some deficiency to the licensee's attention and give that licensee an opportunity to rectify it. And if they do rectify it, then in many cases that is the end of the matter.*

There was recognition that the current legislation did not make it easy for police to obtain restrictions on the expansion of numbers of premises and/or their trading hours.

*The problem is that all of these things are set in legislation. And unless, and until, they [the police] can make a convincing argument to Parliament through government processes that it is a problem, then nothing is going to happen.*

Legislation would have to be modified for licences to be easier to lose and conditions imposed.

One representative of the liquor licensing authority was of the view that the regulatory regime to date had been sufficient to ensure that, generally speaking, licensed premises were run well. While some licensees were held to account by the Commissioner's representatives and by the police for particular incidents, this respondent reported no evidence of systemic problems. However, Tasmania Police interviewees tended to hold a different view and highlighted several changes to legislation which would assist them to reduce alcohol-related problems. These were:

- reducing the complexity of the legislation
- changing the definition of a public street to include parks (thereby broadening the impact of Section 25 of the *Police Offences Act 1935*, discussed above)
- defining "drunkenness" and the onus of proof (by clearly outlining the requirements for proving that a drunk person was sold alcohol)
- creating an offence of being in possession of alcohol whilst drunk on a licensed premise (in order to overcome a licensee's defence that another person had purchased the alcohol for the drunk person)
- the ability of police to issue on-the-spot fines for breaches of out-of-hours permits (i.e., permits that allow licensed premises to trade outside of normal hours)
- police being given emergency powers to close a premise down (e.g., when police find they are continually visiting the same premise to deal with assaults and other serious incidents)

- better delineation of the relative roles of police and the liquor licensing authorities
- narrowing liquor licence eligibility criteria (such as rejecting applicants who have previously been licensees and received significant liquor licensing-related convictions)
- enabling police to use material obtained from criminal intelligence sources (such as evidence of criminal links) when presenting evidence concerning the probity of licence applicants.

One police interviewee commented that limiting trading hours could be an effective tool in managing problematic licensed premises, but procedural barriers needed to be resolved first. They included:

- having to wait for a decision to be made by the Licensing Commissioner, which could take more than three months
- the difficulty in showing a causal link between series of incidents (rather than just a single incident) and a given licensed premise.

## 8.2 Effective Measures Implemented in Tasmania

### 8.2.1 Enforcement Strategies

Several enforcement strategies were adopted by police in and around Hobart shortly before interviews took place. These included:

- charging licensed premises with offences in relation to serving intoxicated people
- issuing fines to licensed premises for serving underage people inside licensed premises and in bottle shops
- removing the licences of some crowd controllers.

### 8.2.2 Recent Amendment to the *Police Offences Act 1935*

A recent amendment to the Tasmania *Police Offences Act 1935* prohibited the consumption or possession of liquor in an open container in

a public street, allowing anyone in breach to be issued with an infringement notice. According to one interviewee, this amendment had reduced the number of street based/public order offences dealt with by police. In addition, several public parks in Tasmania had been prescribed as alcohol-free areas, and consideration was being given to extending these; however, extensive consultation with a broad range of stakeholders needed to occur in relation to this matter.

### 8.2.3 Pub Watch

Tasmania Police has participated in the development of an initiative called Pub Watch. This initiative involved establishing a list of people banned from licensed premises and sharing it with all licensed premises, which then collectively banned everyone on the list. The initiative was managed by the Tasmanian branch of the AHA. Similar developments were known to be in place in the Northern Territory and were being closely monitored.

### 8.2.4 Special Events Licences

From a policing perspective, special events permits provided an opportunity for police and other stakeholders to impose specific conditions on licence holders. These conditions could include the types of containers in which alcohol can be served and the type of alcohol that can be sold (e.g., low-strength alcohol). Respondents reported that the broad range of conditions that could be imposed on permits made them an effective tool to reduce alcohol-related harm at special events. Police were able to recommend the type of conditions that should be imposed on permits, and these recommendations were usually given serious consideration and, in many instances, applied.

### 8.2.5 Liquor Licensing Infringement/Breach Notices

Liquor infringement notices, addressed in Section 223 of the *Liquor Licensing Act 1990*, had only been in place in Tasmania since 2008. Respondents were of the view that they were an effective tool for dealing with licensed premises, as fines for licensees were high and the impact immediate. They were also

noted to have a potentially strong deterrent effect, as information about the issuance of a notice spread quickly throughout the hotel industry. The Licensing Authority was notified when infringement notices were issued. Breach notices were generally considered to be an effective tool. One interviewee noted that even though these breach notices were not infringement notices (i.e., no monetary penalty was associated with the issuing of the first notice), they were nevertheless effective because they alerted licensees that their breaches had been detected by police.

### 8.2.6 Improved Liaison

Good quality liaison between police and other relevant authorities was seen as crucial to working effectively across sectors, and it was stressed that its importance could not be under-estimated. Police in Southern Tasmania have sought to improve their liaison with the local representatives of the Liquor and Gaming Branch as a means of reaching common positions, particularly concerning responsible service of alcohol.

Interviewees reported that Licensing Unit police and Liquor and Gaming Branch staff met weekly to discuss planned activities for the forthcoming fortnight, and that the licensing authority was notified when infringement notices were issued. Reports were received each Monday morning, and police were regularly debriefed about the circumstances of the infringement.

As part of the Safer Hobart Community Partnership, police, liquor and gaming and the Hobart City Council met to consider applications for large special events to determine the impact that the event would have on the community. The consultation process ensured that appropriate event management safeguards were put in place (such as perimeter fencing and sufficient security). Two special events monitored by the Partnership were the Sydney to Hobart yacht race and the New Year's Eve celebrations on the Hobart waterfront. As a result of this partnership, both events were reported to be well managed and largely trouble-free.

The focus on liquor licensing issues in Tasmania has recently increased at a police organisational

level. The Department of Police and Emergency Management (DPEM) has clearly articulated in its current business priorities that addressing alcohol-related community safety issues is of high importance. Additionally, both DPEM and the Liquor and Gaming Branch of the Department of Treasury and Finance have been involved, through the whole-of-government Inter Agency Working Group on Drugs, in the development of the *Tasmanian Alcohol Action Framework 2010-2015* and Departmental Annual Alcohol Action Plans.

## 8.3 Ongoing Challenges

### 8.3.1 Legislative Responses to Intoxication

Respondents noted that the Tasmanian liquor licensing legislation placed responsibility on the person selling alcohol to determine if a person appeared to be drunk. Under the Act, both the bar staff and licensee would receive an infringement notice if police suspected that they had served someone who appeared to be drunk. It was reported that this offence was extremely subjective and that it was often difficult for bar staff to make this determination. Respondents argued that it was easier for police (based on their observational skills, training and experience) to determine if someone was drunk.

One respondent reported that, in order to prove that an offence had been committed, the police essentially had to prove that the person behind the bar had made an assessment at the time the alcohol was being served. This was extremely difficult to do and ultimately placed police in the challenging situation of trying to prove that the provisions of the Act had been breached. A respondent described a recent attempted police prosecution, under Section 78 of the Act, in which a police officer observed a person who they believed to be drunk being served alcohol. The Magistrate, however, determined that the barperson did not know that the person was drunk and therefore the matter was dismissed. This respondent considered that the Act required an appropriate definition of drunk/intoxication that was workable for police as well as bar staff.

It was suggested that it may be more useful to create an offence of permitting a drunk person

to remain on licensed premises, rather than only having the offence of serving a drunk person. This would put the onus on the staff of licensed premises to observe alcohol-affected patrons for a longer period of time (rather than just at the point of alcohol service) to determine their level of intoxication. It would also place the onus on other staff, apart from just the serving staff, to assess levels of intoxication. This, it was argued, would make the staff of licensed premises and their employers more accountable for patrons' behaviour on licensed premises.

Two interviewees suggested that the Act should recognise that the effects of alcohol occurred on a continuum and that this should be reflected in the legislation. It was proposed that there should be a distinction between someone who had exceeded the maximum blood alcohol concentration level for driving of 0.05%, someone who was affected by alcohol and someone who was drunk.

### 8.3.2 A Perceived Paucity of Environmental and Financial Restrictions on Alcohol Supply

A consistent view among police respondents was that there were limited restrictions on the supply of alcohol in Tasmania, despite the body of evidence existing in relation to the unfettered supply of alcohol.

*The research is quite clear, if you want to minimise harm, you either have to reduce the physical availability of it or you have to increase the price of it. Anything that does that is going to control alcohol.*

Police respondents expressed several concerns about how few restrictions there were on the availability of alcohol in Tasmania. The first involved extended trading hours; out-of-hours permits in Tasmania operated from midnight until 5 am. One respondent described the impact of extended trading hours on the waterfront at Hobart as creating two separate cultures. Up until 11–11.30 pm the area was filled with people enjoying the wining and dining experience, but once the nightclub entertainment started the environment changed. It then became all about “alcohol, girls, and violence.”

A representative of the Tasmanian liquor licensing authorities was less positive about the value of reducing trading hours, and noted that:

*I suspect that limiting the trading hours of licensed premises merely changes the time and perhaps slightly alters the behaviour of people who would be drinking anyway. I mean police often give me these statistics that say “look between the hours of midnight and 3 am, we see a great deal of alcohol-related violence, so you just need to cut out all these late night permits, stop everyone drinking at midnight, and it all goes away.” And I look at them and I say, “well I don’t think that’s going to happen somehow. What I think is that you will just see the times shift.”... Well there is no evidence to suggest that bringing hours back is going to have an effect on alcohol-related violence necessarily. Severely restricting the trading hours of licensed premises might have a significant effect on behaviours, but I suspect that would just mean that take-away sales, there would be queues outside of bottle shops.*

Police respondents also expressed concern about the number and density of licensed premises. Several respondents indicated that having a large number of licensed premises in close proximity was a source of problems. It created an environment in which intoxicated persons were concentrated, generating a range of emergent problems. A representative of the liquor licensing authority described the difficulties associated with making determinations that impacted on outlet density and trading hours.

*I think it might be useful if there was, perhaps a common, even national understanding of what might make a licensing decision an appropriate decision or an inappropriate decision in the set of circumstances that we find ourselves in. Given that each decision is unique, they generally occur in very different areas ... It would be good to have a common understanding, or at least a common ground, on which we all stood in terms of what does in the best interests of the community mean, or whatever the definition unique to the other jurisdictions might be, in terms of what are*

*the parameters, is outlet density for example an issue? And if so, how is it an issue, and how do you deal with outlet density?*

A further aspect of availability concerned the price of alcohol. One respondent, for example, indicated that he understood that most alcohol-related harm (particularly that which occurred in the home) was a result of cheap alcohol, often cask wine.

In relation to broader community implications of alcohol pricing, one respondent pointed out:

*It's about cultural change and price signals. You start a long-term cultural change campaign to make alcohol, or excessive alcohol consumption ... undesirable ... and at the same time use strong price signals.*

### 8.3.3 Probity Checks

Police reported frustration at investing considerable time conducting probity checks to ensure that unsuitable persons were kept out of the hospitality industry when relevant information was not always considered by the Authority. Conversely, some liquor licensing authority respondents were concerned that police did not always undertake the desired level of probity checks.

### 8.3.4 Ambiguity About the Role of Local Government

Some interviewees expressed support for greater local government involvement in liquor licensing issues. Interviewees identified a need for a better understanding of the extent to which local government plans might impact upon the night-time economy, and how this meshed with liquor laws and their related regulation and enforcement structures. One interviewee stated:

*While the two regulatory regimes have very different local planning and liquor licensing schemes, they still generally are talking about the same thing which is the impact on the local community ... and there's not a lot of, I think, cross over between the two.*

One respondent indicated that at times it was difficult to get any input from local

government about their views and plans for the night-time economy. As a result, local government perspectives were not always able to be considered when licensing issues arose, meaning that urban planning issues were not generally considered when licences were issued.

### 8.3.5 The Role of Crowd Controllers

Tasmania Police officers liaised with key stakeholders to clarify the role of crowd controllers in licensed premises. One interviewee indicated a need for a more proactive approach to the way crowd controllers were utilised. In particular, the interviewee wanted greater emphasis on crowd controllers taking a more preventative and proactive approach by having roving patrols (of security staff) to regularly advise bar staff on any potential or emerging concerns.

Respondents also indicated that the role of crowd controllers in preventing assaults could be enhanced.

*Assaults tend to occur at the door when people get refused entry by security. Possibly neither patron nor security guards have dealt with these situations very well.*

### 8.3.6 Police Barring Powers

One respondent believed police had insufficient barring powers under the *Liquor Licensing Act 1990*. As noted above, under the Tasmanian legislation, a person removed from a licensed premise could be barred for 24 hours and a barred person who re-entered the premises within those 24 hours could be arrested. In addition, under the *Police Offences Act 1935*, police had "move-on" powers whereby they could direct a person to leave a certain area (if it was perceived by police that they were likely to commit an offence or cause a nuisance due to being intoxicated/drunk). Under the *Sentencing Act 1997*, the courts could impose an Exclusion Order on a person who had been convicted of an offence based on evidence from the police. Under these orders, a person could be excluded from entering a specified area for a number of months. Police noted that to do this might

require the employment of three different Acts rather than a single consolidated piece of legislation.

### 8.3.7 No Provisions for Lockouts

The Tasmanian *Liquor Licensing Act 1990* did not include provisions for lockouts. Lockout conditions, however, could be placed on an out-of-hours permit. In Launceston, police were part of a Liquor Accord that included licensed premises and the Commissioner for Licensing. As part of that Accord, the major licensed premises in Launceston open after midnight voluntarily implemented a 3 am lockout. One interviewee noted that because it was a voluntary lockout it was not always applied in a consistent manner.

Another respondent indicated that Tasmania had two scenarios regarding lockouts. Under the first scenario, patrons were refused entry after 3 am; alternatively, clubs could have staggered closing times to assist in clearing people from the city over a longer period of time. Venues that closed later were required to implement stringent security measures because they were likely to be dealing with more intoxicated patrons. Drawing on police data on public place assaults and anecdotal observation, respondents indicated that lockouts had been effective in reducing alcohol-related violence in Tasmania.

### 8.3.8 Secondary Supply of Alcohol to Minors

As noted, the issue of secondary supply was addressed in Section 71 of the *Liquor Licensing Act 1990*, which stated that liquor was not to be supplied to a person under the age of 18 years on licensed premises or premises specified in a special permit. This was also addressed in a recent amendment to Section 26 of the *Police Offences Act 1935*, which stated that a person must not supply liquor to a youth at a private place unless the person is an adult who is a parent, step-parent or guardian of the youth or an adult with parental rights and responsibilities for the youth. Other adults were permitted to provide alcohol to a person under 18 years old at a private place if authorised

by the parent, step-parent or guardian of the youth or an adult with direct parental rights and responsibilities. In addition, an adult responsible for a youth could not supply liquor to the youth at a private place unless the supply was consistent with the responsible supervision of the youth.

Despite the provisions listed above, underage drinking and the supply of alcohol to young people by adults remained a significant issue in Tasmania. Tasmania Police has monitored alcohol sales from bottle shops and found that few underage people were buying alcohol. This supported the view that most alcohol consumed by underage drinkers was purchased and provided by adults including parents, siblings, older friends and other adults. The extent to which the amendments to Section 26 of the *Police Offences Act 1935* assist police in addressing the issue of secondary supply remains to be seen.

### 8.3.9 Conclusion

The following key issues were identified during the interviews:

- measures to reduce alcohol-related harms were working well in Tasmania, including special events licences, amendments to the *Police Offences Act 1935* concerning the consumption of alcohol in public places, infringement/breach notices and enhancing liaison with other relevant agencies
- overall, police respondents were of the view that the current liquor licensing arrangements in Tasmania were significantly increasing opportunities to purchase alcohol and thus increasing associated violence
- the way in which the *Liquor Licensing Act 1990* dealt with the offence of serving drunk patrons made this offence difficult to prove
- the addition of extra powers to ban individuals from licensed premises and to enforce lockouts under the *Liquor Licensing Act 1990* would assist Tasmania Police to reduce alcohol-related problems.





## 9 Victoria<sup>128</sup>

### 9.1 Legislation and Administrative Processes

#### 9.1.1 The Role of Liquor Licensing Legislation

Liquor licensing legislation plays an important role in reducing the harms associated with licensed premises. It provided the legislative structure within which all relevant Government bodies, licensees and the public operated.

*It helps set the framework and boundaries by which liquor is issued, consumed, controls it all, so it plays a fairly significant role in that.*

Some respondents viewed the *Liquor Control Reform Act 1998* as an effective legislative tool.

*Our own legislation is actually quite powerful, if we use it properly.*

Respondents were generally of the opinion that Responsible Alcohol Victoria and Victoria Police took into account both harm minimisation and

commercial interests when considering liquor licensing applications. It was further noted that both agencies gave weight to ensuring public safety was maintained.

The Victorian Civil and Administrative Tribunal (VCAT) was bound to consider the objectives of the *Liquor Control Reform Act 1998*, the primary objective of which was harm minimisation. Some respondents perceived that VCAT did not consider harm minimisation the most important criterion. This was perceived to be partly due to VCAT's broad remit to resolve a range of civil and administrative disputes and not just deal with liquor licensing matters arising from the *Liquor Control Reform Act 1998*.

#### 9.1.2 Police Roles and Powers Under the *Liquor Control Reform Act 1998*

It was noted by one respondent that even with deregulation of the liquor industry more than 20 years ago, and despite the disbanding of Victoria Police's specialist Licensing, Gaming, and Vice Squad, police had retained considerable powers. There was a perception, however, that these powers were not always fully or appropriately utilised.

*... it's just that we did not use it appropriately.*

This respondent also suggested that the situation was changing:

<sup>128</sup> 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.

The opinions expressed in this Chapter are those of the authors and the individual participants involved in the interviews. They do not necessarily represent the views of Victoria Police or other agencies that participated in this study.

*... there's an increasing level of expertise and an increasing level of enthusiasm to use the legislation.*

Some respondents claimed that the role of police had not always been fully taken into account when legislation was drafted. This had resulted in police calling for greater input into the legislative process.

*There needs to be an examination of the police powers in order to make it easier for police to do their job. It seems as if a lot of the legislation was drafted without consideration being given to determine whether it is practical for police.*

One interviewee stated that the establishment of the Compliance Directorate within Responsible Alcohol Victoria had allowed police to focus on instances of violence and anti-social behaviour and serious examples of breaches of liquor laws.

### 9.1.3 Legislative Review

Some participants called for a legislative review, suggesting this was required to simplify the terminology used in the *Liquor Control Reform Act 1998*. It was maintained that this would make it easier for police and other key stakeholders to interpret and apply the legislation. It was also suggested that when new applications were received, greater consideration should be given to their cumulative effect on the broader community. Further, there was a call for a review to be undertaken of penalties for breaches by licensees and patrons and that this should form part of an overall review of the *Liquor Control Reform Act 1998*.

### 9.1.4 Legislative Intent

There was general consensus that the main role of liquor licensing legislation should be to reduce harm.

*The centrepiece of liquor licensing legislation should be on reducing alcohol-related harm.*

It was also argued that the legislation needed to be accompanied by consistent enforcement, as this was crucial to reducing assaults and public order

offences and maintaining the amenity of public areas, and thus ensuring that people felt safe.

It was noted that the objectives of the *Liquor Control Reform Act 1998* aimed to both reduce harm and foster commercial interests. In assessing liquor licensing applications, the primary role of police was to ensure that approval of new applications was not likely to result in an increase in alcohol-related harm. On the other hand, interviewees contended that applicants were likely to argue that approval of their applications would facilitate diversity in licensed premises and contribute to the responsible development of the industry. Based on the Act, police maintained that the principles of harm minimisation and public safety should take precedence over the diversity and development of the industry.

*In Victoria, the legislation is focused on public safety.*

Interviewees suggested that the Government's intention was to foster a viable alcohol industry which would create employment, generate tourism dollars, and contribute significantly to the economy. This perspective could be philosophically at odds with the views of police and other stakeholders, and it was suggested that greater dialogue between police, the alcohol industry and other stakeholders was required.

*I think that it's just up to us to get together from time to time and understand each other's positions and adjust our policy and legislation accordingly.*

### 9.1.5 Opportunity for Input

Under the *Liquor Control Reform Act 1998*, Victoria Police were responsible for:

- assessing liquor licence applications including issues of suitability and amenity
- enforcing liquor laws
- initiating VCAT proceedings against licensees, BYO permittees and licensed premises
- monitoring licensed premises on an ongoing basis

- participating in liquor licensing forums and accords.

Victoria Police could lodge objections against a liquor licence application on the basis that:

- in the granting or transfer of a licence, the applicant was not a suitable person to hold the licence
- the grant, variation or relocation of a licence or BYO permit would detract from or be detrimental to the amenity of the locality (for example, through noise or undesirable patron behaviour)
- the grant, variation or relocation of a licence or BYO permit may be conducive to or encourage the misuse or abuse of alcohol
- there were other matters relating to the application that are of concern to the Chief Commissioner of Police.<sup>129</sup>

In relation to the last point above, respondents indicated that the Chief Commissioner of Police was able to object to liquor licensing applications on any grounds they see fit other than where the application was for a transfer of a licence or BYO permit. In the case of a transfer the Chief Commissioner could only object on “suitability” grounds.

### 9.1.6 Role of Responsible Alcohol Victoria Compliance Inspectors

It was noted that compliance inspectors working in Responsible Alcohol Victoria’s Compliance Directorate had similar functions to police, except for the power of arrest and the power to issue banning notices. Compliance inspectors were appointed by the Secretary to the Department of Justice under Section 172A of the Act.

Changes to the *Liquor Control Reform Act 1998* in 2009 gave Responsible Alcohol Victoria greater power to respond to alcohol-related misuse. As a result:

*Responsible Alcohol Victoria focuses on both the interests of the alcohol industry and the community. They are now involved with*

*legislation change and procedures to try and control the alcohol industry and prevent alcohol-related harm.*

Concern was expressed that providing Responsible Alcohol Victoria with greater powers had resulted in overlapping of the roles of police and personnel from the Responsible Alcohol Victoria Compliance Directorate. Some police respondents also perceived that their powers had been downgraded. For example, it was noted that under changes to the *Liquor Control Reform Act 1998*, police were no longer able to enter a licensed premise when it was not open to the public.

*When the Compliance Directorate was established, they altered the legislation to basically give them identical powers to us, and said that they weren’t going to do anything to the police powers. There was one important provision which they did remove, and their justification for removing that was that it was at odds with the Charter of Human Rights that we have here in Victoria ... that has restricted our ability to go into licensed premises when they are not open to the public.*

Based on the information provided by respondents it was not clear whether these concerns were justified.

### 9.1.7 Processes for Applications, Reviews, Breaches

The *Liquor Control Reform Act 1998* contained an underlying assumption that licensees would run their premises in accordance with their licences unless demonstrated otherwise. Police were thereby limited in their ability to respond proactively when issues were identified at a premise.

*Because of the way the review process is structured even though police may have misgivings about a licensed premises, they have to let it operate until it malfunctions before they are able to take action. It’s about the cart before the horse.*

Under Section 90 of the *Liquor Control Reform Act 1998*, the Director of Liquor Licensing,

<sup>129</sup> See Section 39 and 41 of the *Liquor Control Reform Act 1998*

the Chief Commissioner of Police, a licensing inspector or local Council could apply to VCAT to request an inquiry into a licensee. However, it was noted that Section 90 applications involved an onerous process.

*Technically, a couple of non-serious breaches would provide the threshold to take somebody to the tribunal and we have seen some successful examples of that with a couple of enterprising licensing inspectors. But for every incident that's occurred at a premises, you need to obtain statements, and the actual brief that goes up to be prosecuted involves an awful lot of work by the prosecutor, so it's not an easy process.*

The timeliness of Section 90 applications was also raised. It was noted that a lengthy process may be involved in submitting an application and having the matter heard. One interviewee indicated that matters may not be heard for six months after lodgement. These types of delays made it difficult for police to effectively deal with problematic licensed premises in a timely manner.

Under Section 95 of the *Liquor Control Reform Act 1998*, police were able to lodge an application to VCAT requesting a liquor licence to be suspended or cancelled if they determined that the licensed premises was detracting from or was detrimental to the amenity of an area. Respondents were of the view that the processes associated with these applications were unwieldy and required streamlining. They described trials under a Section 95 application that involved lengthy delays and required numerous police personnel and other witnesses to provide testimony.

Such difficulties notwithstanding, one interviewee was of the opinion that the *Liquor Control Reform Act 1998* and its subsequent amendments had played a major role in reducing the harms from licensed premises. It was noted that approximately 15 years ago the Act had been changed to allow penalty notices to be issued for breaches or infringements. This change had the effect of simplifying the processes for police and enabled them to enforce the Act more effectively.

### 9.1.8 Government Review Bodies

Respondents noted that VCAT<sup>130</sup> was the responsible body that determined disputed licensing applications and objections or requests for licence variations. It was suggested that both VCAT and police may benefit from a better understanding of the evidence needed when VCAT heard matters, and that clarification about the nature of evidence required by VCAT and the type of evidence that could be collected by police would be valuable.

*The process is civil jurisdiction but on occasions, VCAT seem to apply the same test to the evidence that you would expect in criminal cases.*

In addition, a respondent suggested that properly verified police intelligence should be able to be used, as well as other relevant evidence.

Participants maintained that neither the community nor the police had sufficient input into the determination of the issuance of licences and approvals for new premises.

*Can put our two bobs in, but more and more our views are not the views that VCAT find when they specifically look at the legislation that says when they can and can't grant a licence to a person.*

It was further noted by some respondents that while the community may be able to contribute to the liquor licensing application process, ultimately they had little or no influence over the process or final decisions – even when there were strong objections.

*There are instances where the community has been up in arms, yet they have not won the day.*

<sup>130</sup> VCAT utilised an administrative justice system approach to reviewing the decisions of the Director of Liquor Licensing in relation to applications for the granting, variation, transfer or relocation of liquor licences. VCAT dealt with matters by mediation, a directions hearing, or a compulsory conference. According to the VCAT website, many cases proceeded to a hearing which gave the respective parties an opportunity to call or give evidence, ask questions of witnesses and make submissions. At the end of the hearing, a member of VCAT either gave a decision on-the-spot, or wrote a decision after the hearing.

*Local police might object, e.g., too big, too late, but the licensee will take it to VCAT, and they will grant the licence because technically they are allowed to be there.*

By contrast, other interviewees stated that police were able to proffer an assessment of the suitability of a particular licensee, and to assist the local planning authority in their assessment of the impact that a licensed premises might have on the amenity of a particular area.

The concept of community amenity incorporates the following factors:

- trading hours
- take-away sales – packaged liquor outlets (including retail liquor stores and supermarkets)
- outlet density
- on-premises sales
- public drinking/public disorder.

The importance of police collaboration with other stakeholders in order to influence the liquor licensing process was further highlighted.

*Police need to be in collaboration with everyone in order to make changes. Police go around and pick up the pieces after the fighting, but the council and transport authority need to take a lot of responsibility too.*

### 9.1.9 Liberalisation of Liquor Laws in Victoria

The nature of liquor licensing legislation in Victoria has changed significantly since the 1970s and 1980s, with greater emphasis now placed on enhancing commercial opportunities and tourism appeal. This shift resulted in the number of licences increasing over time. A report calling for the liberalisation of Victoria's liquor licensing laws was prepared by the economist, Professor John Nieuwenhuysen, in the mid-1980s. He recommended that the alcohol/hospitality industry in Victoria be deregulated.<sup>131</sup> Nieuwenhuysen's report

<sup>131</sup> Nieuwenhuysen, J. (1986) *Review of the Liquor Control Act 1968*: Report, Melbourne: Government Printer.

has significantly influenced Victoria's liquor licensing environment over the past 20 years.

The Nieuwenhuysen report found no link between alcohol-related harms, the number of licensed premises, trading hours and the number of patrons. One interviewee argued that contemporary evidence now suggested otherwise and that the recent proliferation of licensed premises and increased trading hours has had an adverse effect on the broader community.

## 9.2 Proactive Activities

### 9.2.1 Banning Notices and Exclusion Orders

In December 2007 the *Liquor Control Reform Act 1998* was amended to include banning notices. Under Section 148B of the *Liquor Control Reform Act 1998*, police were able to ban a person from a designated area (including all licensed premises in that area) for up to 72 hours.<sup>132</sup> 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 a licensed premises, and
- making it a designated area would reduce or prevent alcohol-related violence or disorder.<sup>133</sup>

A banning notice could, therefore, only be issued when a police officer suspected that a person was committing or had committed a specified offence wholly or partly in a designated area. Specified offences included:

- drunkenness
- physical assault
- threats to kill
- destroying or damaging property

<sup>132</sup> The amendment to the *Liquor Control Reform Act 1998* to increase the maximum period of a banning notice from 24 hours to 72 hours commenced on 1 July 2010.

<sup>133</sup> See Section 147 of the *Liquor Control Reform Act 1998*.

- offensive or obscene behaviour
- sexual offences
- weapons offences
- failure to leave a licensed premise.

Under Section 148B(4) of the *Liquor Control Reform Act 1998*, prior to issuing a banning notice, a police officer was required to take into account the person's state of health and whether it would be more appropriate to arrest the person. As at 18 July 2010, 3,423 banning notices had been issued for public order offences by police since their inception in December 2007. More than half of those (1,868) had been issued during 2009/2010.<sup>134</sup>

Some police believed that the duration of banning notices was not long enough, with one respondent suggesting that the banning period should be extended to 72 hours.<sup>135</sup> There was also a concern that banning notices were generally unenforceable due to the difficulty of knowing if someone had been banned. In addition, there were no electronic processes for recording the names and details of banned people.

*How do local coppers know that a person is banned or not? ... there are practical difficulties.*

Banning notices were viewed as more applicable to rural/regional areas and within clearly defined geographic areas. In particular, banning notices were considered to be more easily enforceable in rural towns where the subject of the notice was likely to be known to both police and licensees.

An interviewee provided the example of a local Banned Patron Policy developed by police and licensees as part of a Liquor Accord in Bendigo. Under the Banned Patron Policy people could be banned for up to two years for serious offences. The policy also allowed the banned patron list to be shared between

police and licensees. It was noted, however, the policy contained no penalties for licensees who allowed banned patrons onto their premises.

Section 148I of the *Liquor Control Reform Act 1998* empowered the courts to make exclusion orders banning a person from a designated area, or from all or specified licensed premises within that area, for up to 12 months. In making an exclusion order, the court had to find the person guilty of a specified offence committed wholly or partly in a designated area. As with banning notices, exclusion orders were regarded by police as an effective tool to assist them in their duties, but exclusion orders were also regarded as resource intensive for police to administer and were limited to a particular designated area.

### 9.2.2 Infringement Notices

Under Section 141 of the *Liquor Control Reform Act 1998*, infringement notices could be issued as an alternative to having a matter heard before a court for specified breaches of the Act. Infringement notices could be issued to licensees, underage people or any person breaching the specified Sections of the Act. The monetary value of the fine issued under an infringement notice was lower than the maximum penalty a court could impose for the same offence. For example, the maximum court-imposed penalty for the offence of supplying liquor to an intoxicated person was \$14,344, compared to an infringement notice penalty of \$1,433.<sup>136</sup> Notwithstanding payment of the fine, an infringement notice could be used as a basis to initiate Section 90 VCAT disciplinary proceedings against a licensee. Infringement offences were defined by the *Infringements Act 2006*.<sup>137</sup> Under the *Liquor Control Reform Act 1998*, infringement notices could be issued by both police and Responsible Alcohol Victoria compliance inspectors.

<sup>134</sup> Source: Victoria Police (2010) Crime Statistics 2009/2010.

<sup>135</sup> An amendment to the *Liquor Control Reform Act 1998* to increase the maximum period of a banning notice from 24 hours to 72 hours commenced on 1 July 2010. Respondents were interviewed prior to July 2010.

<sup>136</sup> It is important to note that this amount was subject to change as penalty units for fines and fees were automatically indexed on 1 July each year. [http://www.dtf.vic.gov.au/CA25713E0002EF43/WebObj/FinesandFeesFactSheet2010-11/\\$File/FinesandFeesFactSheet2010-11.pdf](http://www.dtf.vic.gov.au/CA25713E0002EF43/WebObj/FinesandFeesFactSheet2010-11/$File/FinesandFeesFactSheet2010-11.pdf)

<sup>137</sup> [http://www.justice.vic.gov.au/wps/wcm/connect/justlib/doj+internet/home/alcohol/licensee+responsibilities/justice++alcohol+++infringement+notices+and+fines+\(pdf\)](http://www.justice.vic.gov.au/wps/wcm/connect/justlib/doj+internet/home/alcohol/licensee+responsibilities/justice++alcohol+++infringement+notices+and+fines+(pdf))

In the period July 2008-June 2009, the following infringement notices were issued:

- 1,281 to licensees
- 309 to patrons (excluding underage people)
- 2,465 to young people
- five to employees.<sup>138</sup>

Issuance of infringement notices by both police and compliance inspectors was regarded by respondents as a positive development because it provided scope for a greater degree of enforcement activity and allowed for greater consistency in approaches by both agencies. It was noted however, that compliance inspectors were more likely to be doing industry-wide checks to ensure that licensed premises were complying with the overall conditions of their licence, whereas police activity was more response driven – for instance, an incident occurred and police then responded to it.

Infringement notices were generally regarded by police as effective in helping curtail problems compared with the alternative of having all breaches dealt with by a court. The recent linking of infringement notices to venue licensing fees was also seen as a positive development in relation to the effective enforcement of problematic licensed premises.

Interviewees believed that infringement notices added weight to messages that unacceptable behaviour and practices would not be tolerated, messages reinforced by the financial penalties associated with the notices.

A criticism of infringement notices was the low monetary value of the penalties. It was suggested that the penalty could be significantly higher, particularly for larger premises (and potentially more lucrative businesses). It was perceived that this could have a greater impact on the behaviour of licensees, staff and patrons. On the other hand, there was a perception that one of the difficulties with increasing penalties for infringement notices was that a licensee was more likely to contest a large infringement

notice, and this could result in a greater workload for police with the risk of substantial costs being awarded if a charge was dismissed.

For some respondents, the immediacy of issuing an infringement notice was preferable to proceeding with a charge and prosecution in the Magistrates' Court. Likewise, initiating disciplinary proceedings against a licensee through VCAT was perceived to be an onerous process by some respondents with no guarantee of a successful outcome.

### 9.2.3 Lockouts

Targeted lockouts (area or locality lockouts) were introduced across Victoria following a trial of lockouts in 2008 across four inner municipalities of Melbourne (Stonnington, Port Phillip, Yarra and Melbourne). The initiative allowed patrons to remain on licensed premises after a designated time but prevented new customers from entering or customers from re-entering after leaving.

In November 2008, KPMG completed an independent evaluation of the Melbourne CBD temporary lockout to examine the extent to which it addressed alcohol-related violence and antisocial behaviour. The evaluation used a range of data sources in addition to relevant crime data. Key stakeholders, including licensees, patrons and the broader community, were invited to participate in the evaluation through online surveys, focus groups and interviews (KPMG, 2008).

KPMG's report highlighted challenges experienced during the temporary lockout, including problems that arose from venues granted an exemption by VCAT. Exempted venues were permitted to continue to allow customers to enter or re-enter the premises, making police enforcement difficult and creating confusion for patrons. Despite these limitations, the report indicated that lockouts were an effective way of reducing late night alcohol-related violence (KPMG, 2008).

Under Section 58B of the *Liquor Control Reform Act 1998*, the Director of Liquor Licensing could make a late hour entry declaration (i.e., lockout) for a particular area or locality. These

<sup>138</sup> <http://www.justice.vic.gov.au/wps/wcm/connect/justlib/doj+internet/home/alcohol/licensing+information/justice+-+alcohol+-+enforcement+activity+data>

late hour entry declarations were referred to by the Department of Justice as targeted lockouts and they applied in suburban and regional entertainment precincts throughout Victoria. Targeted lockouts aimed to minimise the number of people moving between venues at any one time and reduce late night alcohol-related violence.<sup>139</sup> In the metropolitan areas, lockouts applied in Frankston and Knox O-Zone. Regional centres with lockouts included Ballarat, Bendigo, Shepparton, Traralgon and Warrnambool.<sup>140</sup>

Under Section 58C of the *Liquor Control Reform Act 1998* the Director of Liquor Licensing could make a temporary late hour entry declaration in an area where alcohol-related violence or disorder had occurred or in the locality in which the order was to apply. Prior to making a late hour entry declaration under Section 58C, the Director of Liquor Licensing had to consult the Chief Commissioner. Licensees had 21 days in which they could object to a proposed temporary late hour entry declaration.

Police could also apply to VCAT, as part of a disciplinary process, for a lockout to be imposed on specific licensed premises. Lockouts imposed by VCAT were not covered by the legislation and were usually applied to problematic licensed premises.

While interviewees generally supported the use of lockouts, it was suggested that they should be implemented as part of a range of initiatives aimed at reducing alcohol-related harm. There was also a divergence of opinion about the effectiveness of lockouts, with some respondents holding the view that they had been a valuable tool for police.

*It has been absolutely fantastic from a policing point of view because it limits the amount of drunks who are able to access licensed premises after 2 am.*

139 [http://www.justice.vic.gov.au/wps/wcm/connect/justlib/doj+internet/home/alcohol/community+information/what+we\\_re+doing/justice+-+alcohol+-+targeted+lockouts](http://www.justice.vic.gov.au/wps/wcm/connect/justlib/doj+internet/home/alcohol/community+information/what+we_re+doing/justice+-+alcohol+-+targeted+lockouts)

140 [http://www.justice.vic.gov.au/wps/wcm/connect/justlib/doj+internet/home/alcohol/community+information/what+we\\_re+doing/justice+-+alcohol+-+targeted+lockouts](http://www.justice.vic.gov.au/wps/wcm/connect/justlib/doj+internet/home/alcohol/community+information/what+we_re+doing/justice+-+alcohol+-+targeted+lockouts)

According to one interviewee, another advantage of late night lockouts was that they enabled security staff to deal with issues inside the venue rather than having to deal with a large queue of people who were trying to gain entry.

Alternatively, some respondents stated that lockouts were not used extensively and they were therefore more reserved about their usefulness.

*The jury is still out on their effectiveness.*

Respondents also wanted more evidence about the effectiveness of lockouts and were of the opinion that lockouts needed to be applied in a consistent manner across licensed premises.

*...one in all in.*

There was also a view that lockouts needed to be rigidly enforced in order for them to be effective.

*If they are enforced properly, lockouts have the potential to stop excess hours of drinking and drunken patrons from bar hopping.*

Lockouts were considered to be more effective in regional/rural areas where there was likely to be greater opportunity for consensus amongst licensed premises.

#### 9.2.4 Liquor Accords

According to the Victorian Department of Justice, the establishment of liquor licensing forums and accords in local communities was a proactive means by which Responsible Alcohol Victoria, Victoria Police, licensees, councils and community representatives could work together to improve community safety. Accords enabled licensees to raise questions about liquor licences and local issues and were an important opportunity to engage with the local community to help reduce alcohol-related issues in and around licensed premises.<sup>141</sup>

141 <http://www.justice.vic.gov.au/wps/wcm/connect/justlib/doj+internet/home/alcohol/licensee+responsibilities/forums+and+accords/>

Section 146A of the *Liquor Control Reform Act 1998* defined a liquor accord as a code of practice or agreement:

- a. that affected the supply of liquor, the opening and closing of licensed premises or other aspects of the management of or conduct of business on licensed premises; and
- b. that is entered into in writing between two or more licensees or permittees (or both), with the approval of the Chief Commissioner and the Director, for the purpose of minimising harm arising from the misuse and abuse of alcohol.

Respondents noted that even though liquor accords were included in the legislation, they were a voluntary initiative to bring licensees and police together to help identify issues, find solutions to problems, and prevent harm. Accords were generally considered to be valuable as they provided an opportunity for the key stakeholders to come together.

A major drawback of accords was that they were not enforceable and that failure to comply with an agreed condition of an accord was not subject to a penalty. One respondent stated that he was aware of instances in which a licensee had threatened to leave the accord after being issued with an infringement notice by police.

Interviewees agreed that accords were generally supported by licensees who were trying to do the right thing. There was also a perception that problematic licensees were less likely to participate in an accord. It was recommended that membership of a local accord and abiding by its conditions should be included as a standard condition of a licence.

*I believe in the 95/5 rule ... that 95% of your problems will come from 5% of your licensed premises. Those 5% of problematic licensed premises are also unlikely to join an accord and hence membership of a local liquor accord and abiding by the conditions of the accord should be included as a standard condition on licences. Failure to comply with this accord condition on the licence would see the licensee being subject to a penalty notice.*

## 9.2.5 Mandatory Licensing of Managers

It was suggested that the majority of alcohol-related problems came from venues that had on-premises and general licences and venues that operated as nightclubs. At the time of writing, there was no requirement for managers of these premises to be licensed or accredited. Hence, there was a perception that managers of these premises had little or no accountability because responsibility for any offending on the licensed premises was borne by the licensee. One respondent wanted to see mandatory licensing/accreditation introduced for managers of high-risk premises, which would be specific to those individuals and independent of each venue's licence. It was further suggested that this licence/accreditation would accompany that person, regardless of the venue they were managing.<sup>142</sup>

## 9.2.6 Probity Checks

Respondents agreed that current probity checks were generally sufficient, but that there was a need for more detailed financial and associated checks to examine whether organised crime was involved in a particular premise. This type of detailed checking was considered especially relevant for larger licensed venues. There was also a suggestion that the current probity checking arrangements required tightening to ensure people with serious criminal offence convictions were not granted liquor licences.

It was noted that Victoria Police's own internal probity checking processes could be improved to more efficiently identify suspected criminal links of a potential licensee or licensed premises. One respondent suggested that:

*The current processes work well for experienced police officers who have a good understanding of liquor licensing issues and associated legislation but are less appropriate for less experienced officers.*

<sup>142</sup> It is noted that under Section 19 of the *Liquor Control Reform Amendment Act 2010* it will be mandatory from 1 January 2011 for licensees and managers operating under general, on premises, packaged liquor and late night licences to complete RSA training prior to a licence being granted. Existing licensees and managers who have not completed RSA training will have 12 months from 1 January 2011 to complete the course.

Having additional and dedicated resources within Victoria Police to undertake detailed probity checks on criminal backgrounds or links to organised crime was considered a positive strategy. It was perceived that this would also enhance the ability of police to prevent infiltration of organised crime elements into the operation or funding of licensed premises.

*Financial checks and checks on associates, both family and others, along with extensive company checks and the previous history of the nominated person and any associated people, would all assist in providing a more holistic depiction of who is actually going to be involved with a particular venue.*

Respondents also highlighted the opportunity that existed for workforce development and support needs of less experienced officers in relation to the policing of liquor licensing legislation and associated procedures such as conducting probity checks.

### 9.2.7 Victoria Police Liquor Licensing Reference Guide

Respondents referred to the Victoria Police Liquor Licensing Reference Guide, an on-line reference document available to all Victoria Police members and Responsible Alcohol Victoria personnel. Respondents regarded it as the most comprehensive stand-alone document of its type in any Australian police jurisdiction and it was held in high regard by police officers who regularly dealt with liquor licensing issues and liquor licensing legislation. Potential for development of similar guides in other jurisdictions was flagged.

### 9.2.8 Working More Closely with Local Government

The need for police to work more closely with local government was acknowledged. One respondent provided an example of collaboration between police and local Councils undertaken to implement the design specifications for licensed premises developed by Responsible Alcohol Victoria. It was also noted that Councils made a major contribution to the management of liquor licensing

issues through a variety of means, including appropriate town planning, provision of street lighting, public transport and taxi ranks, and limiting the number of planning permits issued. It was suggested that these Council initiatives greatly assisted police in the execution of their duties, especially in regional/rural areas.

The Multi-Agency Liquor Taskforce was established as a 12 month pilot project in 2010 for the collective enforcement of laws governing licensed premises involving Victoria Police, Responsible Alcohol Victoria compliance inspectors, council officers (e.g., council by-law inspectors and building inspectors), workplace safety officers, environmental health officers and fire services personnel. Findings of the pilot project were under review.

## 9.3 Ongoing Challenges

### 9.3.1 Trading Hours

In 2008, the Victorian Government imposed a “freeze” or suspension on the issuance of new licence applications for bars, pubs or nightclubs seeking to trade past 1am (unless the applicant could show exceptional circumstances). The freeze was initially imposed until 31 December 2009 but was subsequently extended to 31 December 2011, and applied to the local government areas of Melbourne (including the Docklands), Port Phillip, Yarra and Stonnington. The stated aim of the freeze was to contain the growth of late night licences and to ensure implementation of long term strategies designed to improve the safety and amenity of the entertainment precincts.<sup>143</sup>

During the interviews only one respondent mentioned that a freeze had been imposed on new licensed premises trading beyond 1am. In contrast, the need to curb trading hours was consistently discussed as an issue that required urgent attention. Several respondents noted there was sufficient evidence to support the argument that longer trading hours resulted

<sup>143</sup> [http://www.justice.vic.gov.au/wps/wcm/connect/justlib/doj+internet/home/alcohol/community+information/what+we\\_re+doing/justice++alcohol++freeze+on+late+night+licences+%28pdf%29](http://www.justice.vic.gov.au/wps/wcm/connect/justlib/doj+internet/home/alcohol/community+information/what+we_re+doing/justice++alcohol++freeze+on+late+night+licences+%28pdf%29)

in greater alcohol consumption which in turn caused higher levels of intoxication.

*My own view of limiting trading hours is that it will have a positive effect. If you reduce the amount of time that people can drink for then you are not going to see the same levels of intoxication. The fact is that people go out late at night; often they've been drinking before they go, and then continue drinking for long periods. Not only that they get increasingly tired as the night wears on. It just leads to higher levels of agitation amongst people which aren't apparent until about 1 o'clock.*

*The longer the trading hours of all licensed premises, the more consumption, and the more intoxication there is.*

Respondents noted that proponents of late night trading argued that longer trading hours promoted tourism and contributed to the vibrancy of major cities. In contrast, interviewees suggested that in the early hours of the morning, when most problems occurred, there were few tourists around. It was further argued that most problems at this time were caused by local people. A typical comment was:

*My experience is that at three o'clock in the morning when the streets are really ugly, there is not much tourism being generated and there is not a lot of money being attracted to the state by what is happening on the street. The evidence shows that most of the assaults which happen in the city streets occur in what we call the high-alcohol hours when people have been drinking for a long time and start behaving badly.*

Interviewees suggested that an effective way of reducing trading hours was to amend the liquor licensing legislation. It was also acknowledged that changing the legislation was not an easy task and that it may be even more difficult to change late night trading hours. Previous attempts at limiting late night trading had been unsuccessful as countervailing arguments about the negative impact on the night-time economy and the vibrancy of the

city predominated.<sup>144</sup> It was generally agreed that police had some input regarding hours of operation, but not to the extent they might like.

In relation to country/rural areas, one respondent suggested that licensed premises should have a mandatory closing time of 3 am as this was sufficient to serve the needs of those areas.

*Do not need anything later than that in a country town.*

A distinction was made between the extent of police influence over trading hours of existing licensed premises as opposed to trading hours of new licensed venues. In relation to the former, it was noted that if police had sufficient evidence (e.g., based on the number and severity of reported incidents over a period of time) that extended trading hours had contributed to an increase in alcohol-related violence and disorder, then this was likely to influence decisions to change those trading hours. However, it was believed that the views of police were less likely to be taken into consideration in relation to new licence applications, where police would not necessarily have the same supporting evidence.

### 9.3.2 Take-Away Sales

Ordinary trading hours for a packaged liquor licence were defined under Section 3 of the *Liquor Control Reform Act 1998*. Retailers were able to apply for an extension beyond this time, but an operating risk fee of \$4,876.10 was payable in addition to the base fee of \$1,625.30 for a packaged liquor licence or a late night (packaged liquor) licence.<sup>145</sup> Any additional trading time beyond 11 pm had to be authorised by the Director of Liquor Licensing. Notwithstanding, it was noted by respondents

<sup>144</sup> Please refer to [http://www.justice.vic.gov.au/wps/wcm/connect/justlib/doj+internet/home/alcohol/community+information/what+we\\_re+doing/justice++alcohol+-+freeze+on+late+night+licences+%28pdf%29](http://www.justice.vic.gov.au/wps/wcm/connect/justlib/doj+internet/home/alcohol/community+information/what+we_re+doing/justice++alcohol+-+freeze+on+late+night+licences+%28pdf%29) for details about the freeze on new licence applications for bars, pubs and nightclubs seeking to trade past 1 am.

<sup>145</sup> <http://www.justice.vic.gov.au/wps/wcm/connect/justlib/doj+internet/home/alcohol/apply+for+a+liquor+licence/packaged+liquor+licence/justice++alcohol+-+packaged+liquor+licence+-+home>

that while the Act allowed for 24 hour off-premises trading, this was generally not approved by the Director of Liquor Licensing.

A respondent stated that the Director's policy of not allowing off-premises trading was challenged in 2006. In response, the then Minister for Consumer Affairs issued a Statement of Government Policy which directed that packaged liquor was not to be sold after 11 pm unless exceptional circumstances existed, and if exceptional circumstances existed, trading was not to go beyond 12 midnight.

Respondents also stated that take-away sales were not only an important consideration in major cities and suburban areas but that they had a major impact on country/rural communities, especially among young people. It was noted that young people in country/rural areas were more likely to purchase alcohol from packaged liquor outlets, particularly if it was substantially cheaper and more easily accessible than from a hotel or nightclub setting.

"Pre-loading" (drinking cheaper alcohol purchased from take-away premises before going out) was perceived as becoming more common and was raised as a concern by police. Police indicated that they were grappling with ways to address packaged liquor sales while also trying to persuade other stakeholders of the direct link between cheaper alcohol, pre-loading and alcohol-related problems.

Respondents were not confident of their ability to influence the approval of licences for packaged liquor outlets or the hours of operation of those outlets. It was noted that because there were few reported incidents at these outlets that required police attendance, the outlets were more likely to come to the attention of Responsible Alcohol Victoria compliance inspectors than police. Occasionally, however, police were involved in joint operations with Responsible Alcohol Victoria compliance inspectors who targeted outlets in response to complaints about liquor sales to underage people. These joint operations were generally considered to be successful.

### 9.3.3 Outlet Density

One respondent referred to data that showed that public order crime and amenity issues

increased with the total number of licensed premises. There was a sense of frustration that such data on the cumulative effect of numerous licensed premises were not taken into account when licence applications were being considered.

An interviewee reported that police had some influence over increases in licensed premises under previous liquor licensing legislation. Police had been able to successfully object on the basis that there was no further need to have any more liquor licences in a particular geographic area. It was noted by another respondent that this ground for objection had been removed from police and this had hindered their ability to stop the expansion of licensed premises. On the other hand, it was noted that the reason that "need" was removed from the 1998 Act was because commercial competitors were using the Act to prevent fair competition. Whilst Victoria Police were no longer able to object on the grounds of need, they could still object on the grounds of amenity as per Section 39 and 41 of the Act. It was further noted that police and local government could rely on relevant case law when arguing in support of the accumulative effect of too many licensed premises in a geographic area.

From a police perspective, there was a need for the local planning application and liquor licensing application processes to be more closely aligned to ensure greater consistency. There was also a perceived need for police to become more involved in the local planning process, which in turn would assist them in lodging objections to a liquor licensing application on the grounds of outlet density.

In general, police were frustrated with the existing process for objecting to new licensed premises in relation to outlet density and would have liked more influence over the number of licensed premises. The need was also highlighted for police, community members, local government, health agencies and Emergency Department personnel to work more closely together when lodging objections to the expansion of licensed premises.

### 9.3.4 Major Event Licences

In Victoria, applications for a major event licence could be made to supply alcohol during special events, provided that the event was determined to be a “major event” by the Director of Liquor Licensing under Section 14B of the *Liquor Control Reform Act 1998*. Major event licences were relatively new in Victoria (they commenced in 2010). They were seen as an improvement on the previous arrangement under which limited licences were issued for special/major events which varied in their terms and conditions, making it difficult for police to effectively enforce those conditions. The new licence structure had potential to simplify the process for all parties.

Other perceived benefits of the major event licences included:

- assessing an event’s previous history as part of the decision-making process
- greater flexibility in relation to the number and type of conditions that could be imposed (depending on the nature of the event, patron numbers/demographics and geographic location)
- better opportunities for effective emergency planning and management (including security) by police and other agencies.

### 9.3.5 Public Drinking/Public Disorder

Public drinking and public disorder may affect community perceptions of public safety and amenity. Respondents believed people were less likely to venture out at times when perceived risk to public safety and amenity was high and if they believed they were likely to be confronted by intoxicated people or displays of public drinking.

*I talk to people who want to go and do things in the city and they just feel that they can’t because they feel that it is unsafe. Well in actual fact, the times at which they want to go to the city, it probably is still safe. But that perception is out there that there are high levels of violence and why on earth would I want to go in there.*

Under the Victorian *Summary Offences Act 1966*, police could charge people with the following offences:

- drunk in a public place
- drunk and disorderly in a public place
- drunk and behaving in a riotous or disorderly manner.

In addition, police also had the power to ban people believed to be at risk of committing an offence for up to 72 hours from designated areas under the *Liquor Control Reform Act 1998*.<sup>146</sup>

Public drinking and public disorder offences were dealt with by local government by-laws banning alcohol in some public places. Council infringement notices were often a preferred option in country areas as revenue raised could be used by the Council.

*Drinking in the streets and urinating in streets are council offences. Tend to use the council infringement notices, rather than the police ones as the money from the council tickets goes back into the area, while the money from the other tickets goes into consolidated revenue and you do not see it again.*

### 9.3.6 Intoxication

Intoxication was consistently identified as one of the more difficult issues that police had to deal with.

*That is all we are worried about ... is intoxication ... what is the primary issue concerning alcohol and policing? ... it all comes down to intoxication ... If people don’t get intoxicated then all the police can go back to locking up burglars again. Intoxication is a headline in the media. If people were not intoxicated it would make a great difference.*

Police expressed their desire for a more appropriate and workable definition of intoxication.

*The definition of intoxication has defeated collective bright minds around Australia on the national alcohol agenda.*

<sup>146</sup> Section 148B, *Liquor Control Reform Act 1998* - Issue of Banning Notice.

Conversely, some respondents thought that the definition contained in the Victorian *Liquor Control Reform Act 1998* was adequate.

*The definition of intoxication is adequate and appropriate.*

### 9.3.7 Intoxication Versus Drunkenness

Some respondents expressed concern about the use of the terms “intoxication” and “drunkenness” and noted the dilemma the different meanings and applications of the two terms caused for police. They stressed the need for a clearer, more specific distinction between the two terms and to make it easier for police to utilise them in operational situations.

Under Section 3AB of the *Liquor Control Reform Act 1998*, intoxication was defined as follows:

1. For the purposes of this Act, a person is in a state of intoxication if his or her speech, balance, co ordination or behaviour is noticeably affected and there are reasonable grounds for believing that this is the result of the consumption of liquor.
2. The Director must issue guidelines containing information about how to determine whether a person is in a state of intoxication for the purposes of this Act, the *Casino Control Act 1991* or the *Gambling Regulation Act 2003*.

Respondents noted that the term “drunk” was not defined in the *Liquor Control Reform Act 1998*.<sup>147</sup> When dealing with public drunkenness issues, Victoria Police utilised Section 13 of the *Summary Offences Act 1966* which stated that any person found drunk in a public place shall be guilty of an offence and may be arrested by a member of the police force and lodged in safe custody. Section 14 of the *Summary Offences Act 1966* referred to people who were drunk and disorderly in a public place.

<sup>147</sup> In *Kordister Pty Ltd v Director of Liquor Licensing* [2010] VCAT 277, the VCAT senior member stated that during the hearing, the respondent’s witnesses attempted to draw a distinction between intoxication and drunkenness. However, the senior member also stated that intoxication was the only term defined in the Act.

In relation to serving an intoxicated person, Section 108(4) of the *Liquor Control Reform Act 1998* stated that a licensee or permittee:

- a. must not supply liquor to a person who is in a state of intoxication
- b. must not permit drunken or disorderly persons to be on the licensed premises or on any authorised premises.

One respondent noted the wording in Section 108(4) of the *Liquor Control Reform Act 1998* could be interpreted to mean that an intoxicated person was allowed to remain on licensed premises, while a drunk or disorderly person could not. This created difficulty for both police and licensees in establishing the distinction between an intoxicated and drunk person, and determining whether that person should be allowed to remain on the licensed premises.

*A lot of police officers don’t know the difference between intoxication and drunk. They seem to both be the same. It is not until you start showing them what liquor licensing is about and then taking them through it, that they realise that there is a fine line between the two.*

*Would also like to see a definition of “drunk”, as it is a sliding scale.*

Another respondent indicated that learning to differentiate between intoxication and drunkenness was a knowledge transfer issue that was incorporated into a liquor licensing training program for police.

A third interviewee stated that they did not rely on the definition of intoxication under the *Liquor Control Reform Act 1998* because they were of the opinion that the issue of intoxication was best dealt with by a licensee. Instead, they preferred to use the powers under the *Summary Offences Act 1966*<sup>148</sup> to deal with someone who was found to be drunk as part of a “walk-through” in a licensed premise. From this perspective:

*Intoxication is a lower standard than being drunk.*

<sup>148</sup> Under Section 13 of the *Summary Offences Act 1966*, any person found drunk in a public place was guilty of an offence and could be arrested by a member of the police force and lodged in safe custody.

The ongoing dilemma for police in determining if a person was intoxicated or drunk, under the *Liquor Control Reform Act 1998*, was not likely to be easily resolved by changing the Act to include a definition of drunk. Respondents suggested that police needed up-to-date and relevant information about these two terms and when and how they should be applied. It was further suggested that a sliding scale of behavioural issues, with intoxication at the lower end of the scale and drunk at the higher end, may help establish the distinction between the two.

On the other hand, one respondent suggested that it may be preferable to do away with the reference to the term drunk. It was further suggested that consideration be given to changing the legislation so that an intoxicated person (as opposed to a drunk person) could not be permitted to remain on licensed premises. It was noted that the existing situation, where a licensee could supply a patron with alcohol until they reach an intoxicated state, did not discourage licensees from supplying alcohol to patrons when they were most at risk.

### 9.3.8 Proving that an Intoxicated Person was Served Alcohol

A challenge confronted by police was proving that a licensee had served a patron to the point of intoxication. The offence of serving an intoxicated person could be dealt with either by administrative law or criminal law. Regardless of whether a matter was dealt with under administrative or criminal law, licensees only had to provide a defence on the balance of probabilities, i.e., it was more probable than not that what the person said happened was true.<sup>149</sup> This lower level of defence meant it was difficult to achieve a conviction. Conversely, under criminal law it had to be proven that an offence was committed beyond all reasonable doubt, i.e., the prosecution had to prove that no other logical explanation could be derived from the facts except that the defendant committed the

crime.<sup>150</sup> Proving a matter beyond reasonable doubt is the highest standard of proof that must be met in criminal law.

Interviewees noted that needing to prove a licensing offence beyond reasonable doubt placed a considerable onus on police to ensure that they had gathered sufficient and appropriate evidence. The evidence required also involved proof that a patron was on the licensed premises at the time that an offence was alleged to have been committed. It was maintained that proving a patron was actually on the licensed premises was difficult to achieve unless police were present and observed the serving practices.

*Unless you have had the opportunity to make observations over a period of time that can be fairly hard to prove.*

*Basically, they don't get prosecuted unless you're sitting there at the bar watching.*

### 9.3.9 Penalties for Intoxication

In Victoria, the following Infringement Notices could be issued for intoxication-related offences under the *Liquor Control Reform Act 1998*:

- supplying liquor to an intoxicated person incurred a fine of \$1,433
- permitting a drunken/disorderly person on licensed premises incurred a fine of \$1,433
- procuring liquor for an intoxicated person incurred a fine of \$239
- aiding/abetting an intoxicated person to obtain liquor incurred a fine of \$239
- failure by a person who is drunk, violent or quarrelsome, to leave licensed premises when requested incurred a fine of \$478.<sup>151</sup>

It was noted by some respondents that the monetary value of penalties was not sufficient to act as an effective deterrent to prevent some licensees from serving intoxicated patrons.

<sup>150</sup> Source: <http://legal-dictionary.thefreedictionary.com/Beyond+a+Reasonable+Doubt>

<sup>151</sup> Source: Responsible Alcohol Victoria website: [http://www.justice.vic.gov.au/wps/wcm/connect/justlib/DOJ+Internet/resources/7/3/73f44100404aa3eaa25bfbf5f2791d4a/Breaches\\_Colour\\_V2\\_LowRes.pdf](http://www.justice.vic.gov.au/wps/wcm/connect/justlib/DOJ+Internet/resources/7/3/73f44100404aa3eaa25bfbf5f2791d4a/Breaches_Colour_V2_LowRes.pdf)

<sup>149</sup> The balance of probabilities is the standard of proof required in civil law cases. Source: <http://www.lawhandbook.org.au/handbook/go01.php>

### 9.3.10 Public Drunkenness

At the time of writing, Victoria had not decriminalised the offence of public drunkenness. In contrast, in jurisdictions such as South Australia and the Northern Territory, public drunkenness was treated as a health or social issue. Those detected by police as being drunk in a public place were not charged with an offence, but either taken to a sobering-up facility (where their condition was monitored) or home (if appropriate). In South Australia and the Northern Territory, an intoxicated person could only be detained in police custody if either of these two options was not available.

In Victoria, under the *Summary Offences Act 1966*, the maximum penalty for the offence of public drunkenness was \$955.60.<sup>152</sup> While several inquiries have examined decriminalisation of public intoxication, there appeared to be no plans to change the law in Victoria.<sup>153</sup>

## 9.4 Conclusion

Victorian respondents were generally of the view that the *Liquor Control Reform Act 1998* had been developed at a time of liberalisation of liquor laws. There was a perceived need for the Act to have a greater focus on public safety using terminology clearly understood by all key stakeholders. There was also a perception that:

- police wanted greater input into the drafting of legislation
- the administrative processes underpinning the legislation needed to be streamlined
- there was potential for police and other key stakeholders to work more closely with local government.

Dealing with intoxication was identified as a

major issue for police and there was a call for a clearer distinction to be made between intoxication and drunkenness. A related issue was the difficulty police had in proving that a licensee had served a person to the point of intoxication.

One of the key findings to emerge from the consultations was the opportunity for workforce development and the provision of support for less experienced officers to assist them to enforce the provisions of the *Liquor Control Reform Act 1998*. The Victoria Police Liquor Licensing Reference Guide was identified as a useful tool to assist police to deal with liquor licensing legislation.

<sup>152</sup> Section 13 of the *Summary Offences Act 1966*.

<sup>153</sup> The Drugs and Crime Prevention Committee in its *Inquiry into Strategies to Reduce Harmful Alcohol Consumption (2006)* recommended that public drunkenness should be decriminalised and that this should be accompanied by the provision of adequate numbers of sobering-up centres and associated services. Source: [http://www.parliament.vic.gov.au/images/stories/committees/dcpc/alcoholharmreduction/DCPC-Report\\_Alcohol\\_Vol1\\_2006-03.pdf](http://www.parliament.vic.gov.au/images/stories/committees/dcpc/alcoholharmreduction/DCPC-Report_Alcohol_Vol1_2006-03.pdf)



## 10 Western Australia<sup>154</sup>

The *Liquor Control Act 1988* was the Act that governed liquor licensing in Western Australia at the time of writing. Respondents outlined challenges and recommendations in relation to the implementation of the legislation and in regard to alcohol in Australia generally.

### 10.1 Legislation and Administrative Processes

#### 10.1.1 Perceived Intent of the Legislation

The general consensus among Western Australian participants was that liquor licensing legislation played a significant role in reducing alcohol-related harms due to the parameters it put in place for licensees, and through provision of tools available to police that could be used in both a proactive and reactive manner. In relation to the impact of the legislation on reducing harms, one participant stated:

*[Liquor legislation] has a major role. And it's paramount that licensed premises are ... policed and enforcement takes place.*

Participants felt that Western Australian liquor licensing legislation had elements that focused on reducing harms. However, they also believed there was insufficient focus on harm minimisation, or that the elements of the legislation that reflected harm minimisation principles were not entirely effective or applied well. The Act was described as addressing both harm minimisation and the needs of the alcohol industry, but when the Act was implemented (for example with licence applications) it usually favoured commercial interests over the public interest. It was noted:

*That is a very difficult issue as the public interest is quite a fluid concept and it will change from one set of circumstances to the other, but the thing that I have noticed is the propensity to throw the public interest out the window for the sake of expediency in dealing with licensing applications, and that is a real shame. So in terms of how it's suppose to be and the legislation is as opposed to how it is implemented, there is a bit of a difference.*

Alternatively, some interviewees perceived a strong harm reduction and public safety focus in the legislation, as well as a focus on public safety through the conditions placed on

<sup>154</sup> 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.

The opinions expressed in this Chapter are those of the authors and the individual participants involved in the interviews. They do not necessarily represent the views of Western Australia Police or other agencies that participated in this study.

licensees using legislative provisions. A recent shift in this regard was highlighted.

*It is moving away from the interests of the commercial sector and they are having to justify why they want things to a greater extent than they ever have in the past.*

### 10.1.2 Complexity of Legislation and the Importance of Specialist Groups and Training

The complexity of liquor legislation was highlighted. A common view was that unless police officers used the legislation regularly or had experience in the area, they found the *Liquor Control Act 1988* complex and confusing. Even those who felt confident with the legislation noted that there were grey areas. One participant stated:

*[The legislation] is not easy at all [to understand]. And that's the situation we've found in WA, where if you're not actually using it all the time, and au fait with the provisions in it, then it's very very difficult as a general uniform police officer to implement the liquor Act.*

It was also acknowledged that general duties police officers needed to understand and implement a raft of legislation, not just liquor licensing legislation, which may impact their confidence with the *Liquor Control Act 1988*. One respondent reported:

*[General duties officers] ... shy away from it, and I think it's a confidence thing because we train them a lot, but it is a confidence thing. And there are a few areas which are tricky, such as the case law. Because the general duties officers have to be a master of many things, they're not really experts in any one thing.*

The challenge of appreciating that the Act had an administrative rather than a criminal function was raised in regard to the legislation.

*... Police do not understand admin law ... It's a foreign being to police. It's a difficult thing in policing culture because police see themselves as the enforcers of the law, and the law that they enforce is actually the criminal law, and they don't understand that*

*there's this vast majority and body of other areas of law other than just criminal law, and realistically it's a pimple on a pumpkin ... It's a very, very small component of a much greater body of established rules. That is extremely challenging in this environment.*

Some provisions of the Act were considered to be difficult to implement. It was noted that when legislation was drafted, it was important that it not just be an academic document, as practical provisions were needed for police and other law enforcement agencies.

*It has to be workable, otherwise you might as well not have it.*

Striking a balance between competing political and practical issues when legislation was being drafted and amended was acknowledged as challenging.

Having a centralised licensing unit that managed liquor licensing-related matters was viewed as a positive factor in efforts to minimise harm and to build relationships with other key agencies. It was noted that members of Western Australia Police's specialised licensing enforcement division obtained considerable information from the Department of Racing, Gaming and Liquor (RGL) and felt comfortable approaching the RGL if they required assistance.

Training and education of police in regard to liquor legislation was highlighted as an important way to achieve effective implementation of provisions in the Act. It was stressed that both police and government bodies needed to be educated about the tools and responsibilities in the legislation, especially when the Act was amended or revised. It was reported that training about liquor legislation was limited and only occurred in the police academy, and when it did occur it was not sufficiently in-depth. Regular, up-to-date training for the Western Australian police force was noted as a priority for officers to carry out their duties.

### 10.1.3 The Impact of Amendments and the Need for Review

Interviewees voiced frustration in regard to the continual amendments to the *Liquor Control Act 1988* and the resulting confusion this often generated. One participant noted that the *Liquor Control Act 1988* was not a recent Act, and that it had been continuously amended and changed to the point where legal issues could arise from additional provisions that had not been thought through properly. This participant described the current legislation as a “hodge-podge”.

Others felt that the *Liquor Control Act 1988* had been changed and amended to such an extent that a review was warranted. It was noted that the mix of provisions in the Act interrelated in ways which were never intended.

*I think it's time we had a review and scrapped it in WA and rewrote it quite frankly ... Honestly I think it's time that we rewrote it, and sat down and isolated all of the good parts of it, and put it in a more user-friendly form.*

Interviewees also voiced frustration with what were viewed as impractical elements of recently developed aspects of the legislation.

*Just because the Director of RGL owns the legislation, I guess he needs to work with the police in implementing some of these changes to legislation so that they're workable, if he doesn't then they'll be totally unworkable.*

Some respondents also felt the legislation was not equipped to deal with alcohol-related harms effectively due to changes in societal attitudes. One respondent noted:

*Legislation itself generally, is reactive, to prevent or deal with some kind of mischief, or you know, public issue.*

The legislation was also seen as ineffective in light of increased levels of alcohol-related violence and anti-social behaviour.

*There seems to be a shift in severity of alcohol-related violence and anti-social behaviour, and it's those sorts of shifts*

*and shifts in social attitudes and behaviour generally which I think calls for a greater degree of control from the legislation ... [Society] is continually evolving, and legislation has to evolve to keep up with it.*

Some participants felt that there was a need to review the legislation in order to improve the capacity of police to implement harm minimisation strategies.

*There needs to be a review of our legislation to probably look at more powers for police to introduce harm minimisation strategies and make it more of a public safety focus.*

Another noted:

*It all depends on how strong the legislation is and what parts of that legislation you use to tackle problematic licensed premises, which can then look at targeting violent crime issues, or alcohol-related violent crime issues within districts.*

One participant reported that they would like to see alcohol become a greater priority in the mindsets of governments. Another identified deficits.

*So I think there are a number of things there that aren't in legislation that could be, that could have an impact on harm minimisation.*

Police have traditionally played an invaluable role through reactive management of alcohol-related issues, but were moving to a more proactive role in reducing harms resulting from alcohol. Increasingly, police wanted to have a role in the drafting of liquor licensing legislation. It was noted that those who draft legislation were rarely from a policing or enforcement background; as a result, provisions within the liquor legislation were often not workable from a law enforcement point of view. It was noted, for example, that police have had little input into the barring orders which Western Australia was looking to develop based on the South Australian model. Interviewees highlighted that police have practical experience in enforcing provisions in the legislation, but without input into how barring orders will be

carried out, this provision may be difficult for police to implement.

#### 10.1.4 Influence of the Alcohol Industry

Interviewees frequently expressed the view that police held a perspective about liquor licences which contrasted with that of the alcohol industry; the latter tended to see liquor licences as a right, not a privilege. As one participant noted:

*... Having a liquor licence is not a right, it's a privilege. It's a privilege that by law in this state can be withdrawn at anytime. You quite often hear counsel for licensees in these proceedings talking about rights for this and rights for that, and there is no right. A licence by its very nature as a legal concept is not a right, it's a permission that's subject to qualifications. And I think that there could be some merit in considering inserting a provision in legislation that spells that out a little more clearly, so that when these issues are raised, decision-makers know they have the force of legislation behind that principle.*

The influence of the alcohol industry was reported to be evident in previous decisions made by the RGL in regard to liquor licensing regulation. Nonetheless, the balance between harm minimisation and the interests of the alcohol industry was seen to be continually improving.

Participants alluded to the influence of the AHA and other large stakeholders in Australia, maintaining that this often complicated the trialling of different tools, such as tackling the provision of alcohol to minors using test purchases with juveniles in licensed premises.

#### 10.1.5 Specialist and Generalist Courts

Participants perceived specialised liquor licensing expertise in administrative roles in liquor licensing as important. There was a view that the person in the senior administrative role of Director of Liquor Licensing should have formal training in administrative law, and that ensuring the provision of such training would help overcome problems that can occur as a result of misunderstandings of matters of law.

Establishing a specialist Liquor Licensing

authority in Western Australia was seen as valuable in the effort to reduce alcohol-related harms. One participant recalled how the previous specialist liquor licensing authority in Western Australia had been disbanded and replaced by the RGL, which had responsibility for three different regulatory areas. Since the establishment of the RGL there had been a gradual increase in the availability of alcohol and operating hours. This was viewed as a reason why there should be a department with specific responsibility for liquor licensing.

*One can only draw the conclusion that there is a conflict [of interest].*

It was perceived that an independent body may allow for a stronger focus on alcohol-related issues and harm minimisation. However, it was also noted that the liquor authorities in most Australian jurisdictions were not independent and were usually attached to other regulatory areas such as gaming or racing.

The establishment of a specialist liquor licensing court was another option raised. In 2007 the Liquor Licensing Commission came into effect to take over from the Liquor Licensing Court (established in 1988) in order to decrease the formal and complicated processes in place to deal with licensing matters (Government of Western Australia, 2010). However, offences under the *Liquor Control Act 1988* that incurred a fine of over \$1000 (or a fine less than this amount if the defendant pleaded not guilty) were heard before a Magistrate. It was maintained that liquor licensing matters should be heard before a specialised liquor licensing court to ensure the application of specialised knowledge.

#### 10.1.6 Administrative Body Discretion and Powers

The power and discretion of the Director of RGL and the Director of Liquor Licensing was noted by several participants. There were two distinct opinions expressed. The first was that the level of power embodied in these positions was unusual and hindered harm reduction efforts, and the second was that this level of power was positive and could assist police and law

enforcement. It was noted that although several participants did not agree with the power exerted by the Director, he/she was afforded this power through the *Liquor Control Act 1988*.

A potential conflict of interest was raised in that the Director of Liquor Licensing was also the Director of RGL. This meant that the Director of Liquor Licensing had the ability to intervene and become a party to the proceedings of the Liquor Commission in a review of his own decisions.

The inability of police to appear before the Director of Liquor Licensing when they requested conditions to be placed on licences was an issue for some respondents. Although mechanisms existed for police to attend and give evidence before the Director of Liquor Licensing and before the Liquor Commission, hearings were never held as all matters were handled on paper, which limited the opportunity to communicate with the licensing authority regarding why particular conditions were being sought.

There were, however, alternative views on this issue. Some participants felt that the power held by the Director of Liquor Licensing was of great benefit to police and helped reduce harms related to alcohol. This was explained in the following terms.

*The Act gives the Director of Liquor Licensing the power to do virtually anything he wants ... This is a fantastic thing, sometimes it's a little bit maddening because he has so much discretion, and he can do it if he wants to but he doesn't have to if he doesn't want to.*

Respondents noted that the Director could apply standard conditions to extended trading permits. This was an approach that police had wanted for a long time. One participant applauded the fact that the *Liquor Control Act 1988* had provisions for prohibition orders based on the public interest (though there was no definition of public interest in the Act). This allowed the Director of Liquor Licensing to make decisions regarding prohibition orders based on the facts presented to him and an assessment of whether this was in the best interests of the public.

### 10.1.7 Focus of the Administrative Body

It was generally agreed that the RGL had to achieve a balance between the safety of the community and the interests of the alcohol industry. The point was made that while the legislation contained a degree of balance, the focus of decisions could still favour one party over another depending on the merits of a case. The focus of decisions could also shift depending on the membership of the Liquor Commission.

Another participant noted that the RGL had to be concerned for the needs and interests of the public as well as for the alcohol industry. They went on to qualify this by stating that nobody would like to see a “nanny state” but nevertheless the public did need to be protected. Others felt that the balance of interest favoured the liquor industry. They claimed this was evidenced by statements released by the Minister responsible for the RGL that cited the need to protect a vibrant nightlife, but with few corresponding statements made in regard to potential negative impacts.

## 10.2 Intoxication Provisions and Drinking in Australia

### 10.2.1 The Definition of Intoxication and its Practicality

The term “drunk” was used in the Western Australian liquor licensing legislation as opposed to “intoxicated”. There were two views raised by participants in regard to the definition of “drunk” in the *Liquor Control Act 1988*. Some felt that the definition was acceptable on face value, and more appropriate than in other jurisdictions, but the practical utility of the definition was a challenge for police when licensees were to be prosecuted for an offence. Alternatively, some felt that the definition of “drunk” provided in the Act was appropriate, and that it allowed for successful prosecution when required.

Respondents noted that people had varied understandings of the concepts of “intoxication” and “drunk”. This was evidenced by the varied definitions of intoxication (and drunk)

in legislation in each Australian police jurisdiction. (Participants from other jurisdictions commented on the distinction between drunk and intoxicated, as detailed previously in this report.) Some argued that drunk was a more extreme form of intoxication and that both lay on a continuum. One suggestion to improve the definitions of intoxication and drunk was to have a sliding scale that represented levels of intoxication based on signs and symptoms. However, it was acknowledged that this approach would be difficult to include in legislation.

One participant commented that they did not know how the current definition could be improved to make it more workable. One reason for this was the reverse onus of proof<sup>155</sup> in the provisions for offences under Section 115 of the *Liquor Control Act 1988*. Overall, police were particularly satisfied with the existence of the reverse onus of proof.

### 10.2.2 The Culture of Drinking in Australia

The drinking culture of youth in Australia and Australia's drinking environment was a concern raised by several participants. One interviewee commented:

*Generally speaking, I don't want to seem to be bashing the youth, but they seem to have a lower degree of self-control, and self-discipline, and respect for others. You combine that with a culture of excessive drinking which quite often is mixed with illicit drugs in licensed premises and a care-free attitude and these sorts of things tend to boil over and create problems.*

Respondents noted that people aged 18 to 23 often liked to pre-drink<sup>156</sup> before they attend licensed venues. This was something noted to be beyond the control of police. Some police felt that once alcohol was taken home it was out

of their control, unless an offence or incident required police attendance.

Respondents discussed the general culture of drinking in Australia. One interviewee noted that alcohol had become normalised, and that it was a rare event that did not involve alcohol. Police also found that when interventions had been implemented to alter alcohol supply at special events, some organisers had refused to hold the event, due to patrons' expectations that alcohol would be available. One respondent noted:

*People now don't tend to go to music events for the music, they go there for the alcohol ... So the event itself is becoming ancillary to the supply of the alcohol, and that's what's happening here in WA.*

In terms of curbing alcohol-related harms to young people, one participant reported that they would like to see the legal age that alcohol could be supplied to a person raised to 21.

### 10.2.3 Intoxication Offences: Issues of Proof, Expiation and Prosecution

There were some differences of opinion between interviewees regarding whether the definition of "drunk" had been tested successfully in prosecutions of licensees. Some participants reported that they knew of no successful prosecutions under the Act for offences relating to Section 115. Prosecutions were challenging due to difficulties such as proving that the patron was actually drunk, according to one respondent. Another noted that Western Australian police were "going through a learning process" in regard to enforcing these provisions.

Difficulties relating to effective evidence gathering to secure prosecutions for offences under Section 115 were also raised; however, respondents noted that successful prosecutions could be achieved through extra work and surveillance. In terms of achieving successful prosecutions, the prosecutors had to address case law as well as statute law. One participant, who felt that the offences under Section 115 were relatively easy to prosecute using the definition of drunk, had concerns regarding those who pleaded not guilty to offences and

155 The reverse onus of proof for offences relating to Section 115 meant that if a police officer or authorised officer said that a person was drunk based on their symptoms and observations, the defendant had to prove otherwise.

156 Pre-drinking or pre-loading refers to the planned heavy consumption of alcohol before going to licensed premises, often bars or clubs (Wells et al., 2009).

were redirected to the Magistrates Court. According to this respondent, Magistrates often did not have the specialised knowledge in regard to liquor laws that specialised courts had, and as a result defendants could “*get away with murder*”.

Infringement notices issued to licensees for offences under Section 115 aimed to penalise licensees for breaches as well deter future offending. One respondent noted that licensees often modified their behaviour after receiving an infringement notice. Another commented that police needed to be on the premises to issue infringement notices, and that this was difficult in remote areas as people knew each other and police were easily recognised. In circumstances where licensees continued to commit an offence, one interviewee’s approach was to discontinue issuing notices and to conduct a meeting with the licensee, followed by a letter and continuous monitoring.

### 10.3 Proactive Activities

Interviewees suggested that a multi-faceted approach which incorporated different measures was needed for alcohol-related harm reduction efforts to be successful, as there was no “silver bullet” to fix all problems related to licensed premises and alcohol. Proactive policing, in addition to reactive policing, was seen as an increasingly important focus for enforcement of the *Liquor Control Act 1988*. As one participant commented:

*Responses often only come after a crisis, instead of looking objectively at the information and then making a decision, you wait until a crisis occurs and then you react.*

#### 10.3.1 Prohibition Orders and Barring Orders

Western Australian liquor legislation had provision for the Commissioner of Police to apply to the Director of Liquor Licensing for prohibition orders under Section 152 of the *Liquor Control Act 1988* for periods of up to five years. This provision was relatively new, with approximately 35 orders executed at the time of writing, according to one interviewee.

The impact of prohibition orders on harm minimisation was noted by one participant.

*The orders have a large impact on minimising harm because a lot of the orders have been sought for people who have used glassware, obviously it’s high in the public eye at the moment and the media. So I think it sends a good message out to the members of the public in general that we are doing something to make them safe ...*

Respondents’ concerns with prohibition orders included difficulty in proving that the actions of a patron warranted an order and in the subsequent enforcement of orders. This was considered to be challenging due to the geographical size of Western Australia. Enforcement was arguably of limited benefit as a prohibited person may be known to authorities and licensees in one area but not another. Only the names of people and not photographs of those with prohibition orders could be publicised. As one participant noted:

*It’s going to be very, very difficult to enforce ... Unless you have specific information about people breaching it, you’re asking the police to go around to all licensed venues to check people to see if they’ve got prohibition orders against them ... Licensees have got no power to ask for names of people as they go into their venues ... I think it is going to be very difficult [to enforce] when we get to a situation when we have hundreds and hundreds of these [prohibition orders] out in the community.*

Participants felt that photographs accompanying prohibited persons’ names on the database would be helpful to enforcement, especially in metropolitan areas. It was suggested that a weekly list of people who had been prohibited be compiled, along with their photographs, and provided to licensees. However, the feasibility of this suggestion was questioned.

*[Prohibition orders] are only effective if everybody knows about it, but it’s releasing that information and photographs ... if [you] can’t release photographs then it is difficult for someone to know who they are serving.*

The ability to prohibit someone from a licensed premise without them recording a conviction or being charged was viewed as a positive element of prohibition orders. It was further noted that prohibition orders should remain as a provision for use only by authorised persons, as giving this power to licensees was perceived to be a “perilous concept”.

*How on earth are you going to entrust the industry to implement something that effectively encroaches upon someone’s civil liberties.*

Recent amendments to the *Liquor Control Act 1988* allowed for barring orders, which could be used when prohibition orders are being processed (see below).

Section 115 (4) of the *Liquor Control Act 1988* contained provisions for licensees to refuse entry to patrons or to eject them from the premises if they were drunk, behaved in an offensive manner, or were not abiding by dress standards. Some participants were unclear regarding whether licensees (and police) were legally allowed to bar patrons under current liquor legislation. In one participant’s opinion, some licensees had barred patrons for months or years while police turned a blind eye.

Participants noted that new legislation was being drafted for barring orders<sup>157</sup> based on the South Australian model. There was concern that prospective barring orders would be too cumbersome and impractical due to the strict rules outlining who could initiate them. Provisions were considered likely to be onerous and difficult to implement if they were drafted without input from police.

### 10.3.2 Enhancing Relationships

Respondents held differing perspectives on the nature of the relationship between Western Australian police and the RGL personnel; overall, however, participants felt that the relationship was cooperative. At the more

junior levels the relationship between the RGL and the police was reported to be good with rapport having been built over time, and at more senior levels this was improving with regular meetings. Other interviewees described the relationship between police and the RGL as strong with police having regular contact with the liquor authority to exchange ideas and seek clarification. Some participants noted that the relationship between the agencies involved joint operations, with assistance provided by the RGL in regard to evidentiary matters and police providing assistance to the RGL when they entered more violent or difficult premises.

Participants mentioned several factors that might contribute to strained relations between the two organisations:

- the roles and responsibilities of the Director of Liquor Licensing and the police overlap at times
- differing views
- not enough compliance officers to cover the vast area of Western Australia
- not enough joint enforcement operations (beyond joint auditing operations)
- misunderstandings over the focus and roles of both agencies
- workloads of police and the expectation that they were responsible for the majority of enforcement activity
- the ability of the Commissioner of Police to intervene in cases and become a party to proceedings where decisions did not seem correct or appropriate.

One interviewee did not believe that there was, or had ever been, a “turf war” between the two agencies, stating:

*It has always been about trying to be smarter with the legislation we have, and to achieve better results to basically reduce the impact upon the community and the impact upon policing the community.*

Suggestions put forward to improve the relationship between the police and the licensing authority included:

<sup>157</sup> At the time of writing these barring orders came into force under Section 115AA, which allowed the Commissioner of Police (or a delegated police officer of or above the rank of Inspector) to issue barring notices.

- taking a more structured and cooperative approach to the relationship
- conducting pre-arranged meetings and visits
- implementing information-sharing protocols and liaison with other services such as ambulance and health departments
- taking a multi-agency approach
- RGL conducting more research into, and taking more of a proactive approach to, understanding the unique difficulties and challenges in more remote locations.

The Health Department was also identified as a valuable ally in regard to efforts by police to minimise alcohol-related harms. It was noted that the police and the Health Department mutually supported each other's actions in relation to influencing liquor licensing decisions, as well as in areas such as making submissions with respect to extended trading permit applications for longer premise trading hours.

### 10.3.3 Probity Checks

Some interviewees noted that although the *Liquor Control Act 1988* contained mechanisms for appropriate probity checks, implementation of this requirement did not always occur to a high enough standard. Conversely, others saw the process for probity checks as appropriate, offering scope to consider associates and accompanying proof that an associate may influence a licensee, and allowing police to investigate and intervene. The ability for police to use confidential police material under Section 30 of the *Liquor Control Act 1988* in probity processes, as well as the ability for police to provide confidential information to the Director of Liquor Licensing for application assessments, was seen as a great advantage. This was an issue raised in other police jurisdictions, with police highlighting the importance of the use of police intelligence in probity processes, as criminal histories in isolation did not always present a complete picture.

It was also stressed that some employees in the hospitality industry have spent convictions.<sup>158</sup> One participant felt that lack of consideration of spent convictions was not appropriate, as it potentially allowed people with criminal backgrounds to enter the industry.

### 10.3.4 Lockouts

Under the *Liquor Control Act 1988*, lockouts could be adopted by a premise or area using conditions imposed by the Director of Liquor Licensing. Processes to implement voluntary lockouts were also available. Generally, participants agreed that lockouts should be used in conjunction with other measures and not as a tool in isolation, as a range of different factors needed to be considered before implementation. Other measures included regulation of amounts of alcohol sold and banning the consumption of certain beverage types, such as shots.

Where lockouts were applied appropriately and correct signage was used to warn patrons, they were seen to be potentially effective. According to one participant, lockouts were a measure often used to assist in reducing alcohol-related harms at special events. Another stated:

*Lockouts tend to keep people in, if they're going to be out and about, they're in the premises rather than out in the streets causing problems, and once they're out they've got to go home, you know they can't sort of move around from place to place, which probably reduces the amount of people standing in lines in various places.*

Some of the positive outcomes noted were that lockouts:

- allowed for a more controlled environment
- could reduce the pressure on public transport

<sup>158</sup> Spent convictions could be granted to individuals who were convicted of crimes, and meant that past convictions could not be used to avoid hiring them or to discriminate against them. Spent Conviction Orders could be made at the time of conviction in a Magistrates Court, with convictions older than 10 years also able to become spent convictions on application to the District Court or the Commissioner of Police [Magistrates Court of Western Australia, 2009].

- lessened the extent of “pub-hopping”
- had the potential to reduce policing issues as they target factors that contribute to offending in the last two hours of extended trading.

One interviewee felt that lockouts could not be used with all licensed premises as it depended on the clientele that a venue attracted and the type of licence it had (e.g., a restaurant licence). Some respondents felt that there were negative aspects to lockouts, including:

- provisions for lockouts were not strong enough under the *Liquor Control Act 1988*
- implementing a lockout was a convoluted process
- the contradictory nature of lockouts in wine growing regions where patrons were mainly mature adults visiting wineries
- the strict approach taken by security personnel enforcing lockouts could exacerbate potentially violent situations.

### 10.3.5 Liquor Accords

Liquor accords were defined in the *Liquor Control Act 1988* under Section 64, Subsection 1(b) as written agreements or other arrangements approved by the Director of Liquor Licensing, entered into by two or more licensees in a local area with other key stakeholders with the purpose of minimising harm caused by excessive consumption of alcohol, and promoting responsible sale, supply and service of liquor.

Interviewees held mixed opinions about the effectiveness of accords in both metropolitan and regional Western Australia. There was general consensus that accords were not living up to their potential, and some respondents felt they did not work at all. Some participants commented that liquor accords were not effective and a waste of time as they were voluntary. Some also felt that police were the only members of the accords who took an active role. One participant did not agree with the concept of accords, and noted that police often had to acquiesce to requests or accept

decisions of licensees in order to ensure that licensees continued their involvement in an accord. One respondent noted:

*There seems to be an avenue where licensees get together and have a good old whinge about who copped a ticket and who's getting hit and who's doing this and who's doing that. They are very much a voluntary sort of thing, and whilst I am sure there are some benefits, at the end of the day, when licensees just worry about making money, they are really only going to do what's good for them, so you need legislation ...*

Another noted:

*... They don't go far enough ... I mean you're asking licensees to implement strategies that at the end of the day may affect their bottom line in their profit, so that is a bit difficult to do.*

Other participants were more optimistic about the effectiveness of liquor accords, with one participant noting that they were a proactive tool that afforded discussion of issues and development of strategies to promote harm reduction. Another noted:

*Some are effective in some ways and some are ineffective, but what I find is that they're better to have than not to have, there are obviously pros and cons ...*

### 10.3.6 Infringement Notices

The *Liquor Control Act 1988* included provisions for issuing infringement notices under Section 167. Overall, participants believed that infringement notices had the potential to be effective in reducing alcohol-related offences, depending on certain factors. One participant noted that infringement notices could be effective when issued to patrons, but they were largely ineffective when issued to licensees. Failure by licensees to pay notices, wherein the notice did not act as a deterrent, was identified as a problem by several interviewees. In contrast, another participant believed that infringement notices were effective, especially with venues that were willing to make changes and understand the problem. Venues that were

not willing to change and cooperate absorbed a substantial amount of police time and resources.

*Tie you up in court for 12 months trying to get it heard, and by the time it gets heard ... the magistrates think it's irrelevant and then you don't get much of a penalty anyway.*

One way police had achieved desired behaviour change despite licensees not paying infringement notices was to issue cautions instead of infringements. According to one participant, cautions went straight to the RGL. Continual offending led to a Section 91 being initiated which requested the Director of Liquor Licensing to suspend the licence or issue a penalty. According to one participant, licensees were more likely to pay fines that originated from the RGL as a result of a Section 91 than pay fines issued by the police, as the RGL was the governing body for liquor licensing. Some participants also believed there was merit in adopting a sliding scale for fines, where after a certain number of fines the amount increased with each additional offence.

### 10.3.7 Powers of Entry and Shutdown

It was generally agreed that the current police powers of shutdown should be extended. Section 114 of the *Liquor Control Act 1988* gave police the power to close licensed premises on reasonable grounds in order to prevent civil disorder and maintain peace and public safety. Several participants felt that if police believed that there was a risk to public safety or public disorder, then venues should be closed for longer periods. Some recommended that shutdown periods should be extended to weekends or periods of two weeks, as opposed to one day. There was also concern that premises could reopen the following day without demonstrating why they should be allowed to reopen, and without licensees being held accountable for their actions.

Participants warned that the ramifications of a closure must also be taken into account. For example, if a venue with 100 people was closed by police, there would be an immediate displacement of potentially intoxicated/drunks

people onto the street. Therefore, it was noted that this power was not something to be taken lightly and the pros and cons of a closure needed to be carefully weighed.

### 10.3.8 Responsible Service of Alcohol (RSA) Initiatives

At the time of writing, it was mandatory for all staff members who engaged in the service of alcohol in licensed premises in Western Australia to have completed training or assessment on responsible practices of alcohol sale, supply and service as approved by the Director of Liquor Licensing (Liquor Control Regulations, 1989).

A common concern voiced by participants in Western Australia was that RSA programs needed more regulation and common standards were needed for the provision of RSA training. One interviewee noted that those who had completed a TAFE course or lengthy RSA program appeared to be more committed to RSA principles. Another participant's experience was that when there were issues with staff and RSA in a venue, the staff member had usually either not completed RSA training or had done so online. Having observed this pattern, some participants suggested that all RSA courses should be accredited. They stated:

*I think that this (online courses) makes a mockery of the legislation.*

The option of taking an RSA course over the internet was noted to have several associated problems. According to participants it was "fail-proof", i.e., once signed up everyone passed, less attention to content was required, and there was no way of verifying the identities of respondents. A different participant noted that online training was necessary and needed to be accessible for those bar staff in regional areas; but it still needed to be accredited.

Some participants believed that RSA was necessary but that to be effective it needed to be implemented along with a raft of other legislative tools. Another element that may need to be taken into consideration, according to one interviewee, was the role of security and their involvement in RSA. This participant

wanted to see crowd controllers involved in RSA training with legislation maintaining this requirement.

### 10.3.9 Restrictions on the Provision of Alcohol in Communities

Restrictions on the provision and consumption of alcohol in rural and remote towns and Indigenous communities could be initiated in Western Australia after a Section 64 Inquiry had been made in response to requests for additional licence restrictions or complaints about levels of alcohol-related harm (National Drug Research Institute, 2007). It could be supported by community leaders, the police and the Health Department. According to one participant, community leaders were expected to take on an enforcement role to ensure that the restrictions were successful. According to one respondent, the effectiveness of enforcement efforts depended on the leader's age, how active they were and how sincere they were in their enforcement efforts. One interviewee raised concerns over the conflict that could arise when breaches occurred and whether these breaches were reported to police.

### 10.3.10 Other Measures: Police Presence

Increasing presence of police was one strategy used in proactive efforts to reduce alcohol-related harms. Participants described how high numbers of police conducted walk-throughs in licensed premises in a particularly busy entertainment district and made their presence known on the surrounding streets. Also, plain-clothes police officers, mounted police and traffic police had a strong presence in the vicinity of licensed premises. According to one interviewee, this method allowed the community to feel safer in their environment and raised the profile of the police.

## 10.4 Ongoing Challenges and Influence

### 10.4.1 Trading Hours

The process of obtaining permits to extend trading hours raised some concerns for

respondents. Participants noted that it was relatively easy for licensees to obtain extended trading permits. It was reported that for this to occur, a public interest assessment had to be completed by the prospective licensee, often with the help of a solicitor, and with input from the police and the Health Department. Despite police indicating that making objections to these applications was a complicated process, the public interest assessments were seen as a tool to hold licensees accountable as they had to demonstrate that there would be no negative impacts arising from the premises. Participants felt that the police influence over applications for extended trading permits for longer trading hours was a convoluted process. Some felt that the police influence was not great and not as valued as that of the Health Department, although input from the Health Department usually reflected what police wanted to achieve.

There was divided opinion in regard to the effectiveness of limiting trading hours as a strategy to reduce harms. Nevertheless, the overall sentiment from participants was that reducing trading hours was an effective tool to reduce availability. One respondent noted:

*Any reduction in [alcohol] availability is a positive.*

Another stated:

*... [Limiting trading hours] would be the most effective [method], because you simply won't have people in there drinking for such a long period of time. If nightclubs shut after 2am, then you're obviously not going to have that extra four hours of drinking time ... traditionally which is when most of the dramas occur.*

One officer felt that reducing trading hours could displace the time when excess drinking occurred to later/earlier in the day, particularly in remote communities. Participants acknowledged that there were pros and cons in this regard. If licensed premises were open longer there would be fewer problems with public transport (because the dispersal of patrons occurred over a longer period of time); however, longer operating hours could promote

more consumption of alcohol and increased numbers of intoxicated patrons.

Participants noted that restrictions on licensed venues' trading hours had potential impacts on the night-time economy and the vibrancy of cities. It was maintained that only a small section of the community demanded very late or 24-hour trading. Although this participant believed that in a modern city there was a need for some licensed premises to be open until the early hours of the morning, it was the extent of opening hours and the saturation of premises that adopted longer trading that was contested. One respondent commented that the media in Western Australia emphasised the importance of the night-time economy and the lack of vibrancy in Perth due to restrictions placed on licensed premises.

Police also noted that the process of reducing the trading hours of problematic premises was complicated. Police were able to make complaints and requests regarding trading hours under the *Liquor Control Act 1988*, but only the Director of Liquor Licensing could take action. It was suggested that the hours of operation of a licensed venue was one of the primary drivers of alcohol-related harms in and around premises, and police wanted more influence over this aspect. Another participant felt that mechanisms were available for police to influence hours of operation, but cases were easily rejected if not well prepared.

#### 10.4.2 Take-Away Sales

Limiting take-away sales from liquor stores was considered by some to be a good tool to reduce harms such as domestic violence. Participants saw careful planning about types and times of restrictions as important. Respondents noted that they would not like to see one set of conditions applied to all premises, as conditions on take-away sales needed to be tailored to specific areas and their circumstances. Take-away restrictions were generally seen as a tool mainly applicable in regional Western Australia rather than metropolitan Western Australia.

One participant felt that take-away sales from liquor outlets was one of the biggest problems they faced in their particular region, and that

restricting take-away sales was an effective tool. At the time of writing, restrictions were in place on high-alcohol content products in some areas of Western Australia. A problem with restrictions on liquor purchases noted by one interviewee was the apparent lack of means to prevent people bringing alcohol into towns. For restrictions to liquor sales to be feasible there needed to be a whole-of-district approach to implementation and enforcement.

Another issue related to take-away sales was sly-grogging.<sup>159</sup> According to one participant, this was a significant problem in Western Australia and particularly problematic for police, with breaches usually only attracting small penalties. One interviewee suggested the penalty for sly-grogging should be imprisonment due to the extent of the impact that it could have on a community.

#### 10.4.3 Outlet Density

The issue of liquor outlet density was seen by participants as a particular problem in Northbridge, where there were approximately 300 or more premises in one square kilometre. One respondent noted that while police did not make decisions regarding outlet density they could attempt to influence them.

Under Section 69 of the *Liquor Control Act 1988*, the density of licensed premises was grounds for police to object to a new licence. It was noted that police had been successful in objecting to new licences when a substantial amount of work was put into the intervention to prevent the issuance of a new licence. Another participant contrasted this with situations where an objection had been accepted by the Director of Liquor Licensing, only for it to be overturned by the Liquor Commission.

*We can sit here and put interventions in until we're blue in the face; it is all up to the Office of Racing, Gaming and Liquor.*

<sup>159</sup> Sly-grogging is the term used to describe the practice of unlawfully selling liquor at highly inflated prices to other members of the community (National Drug Research Institute, 2007).

A reason suggested for police's minimal influence on the proliferation of venues and conditions placed on premises was that while tools were available in the current legislation they had not been effectively utilised. It was maintained that as a result, the administrative body had lacked accountability for several years and had been rubber-stamping applications without giving due consideration to consequences.

*The impact of that is that licences get issued where they shouldn't be, saturation of licences in areas where it shouldn't be, conditions don't get put on licences that should be, and a decrease of proper regulation and control over the industry is the longer-term bigger picture effect.*

A difficulty faced by police in tackling the proliferation of new premises was gathering the evidence needed to demonstrate that alcohol-related harm in high density areas had stemmed from a specific premise. This resulted in a process geared in favour of the applicant, and could leave police hamstrung.

*I just feel like Racing, Gaming, and Liquor are very strapped, I think they're short staffed and I think that they make ad-hoc decisions without going through the correct channels.*

The community also had the ability to comment and voice opinions regarding new licences. Some did not believe that this ability was well utilised other than by people who lived in close proximity to a proposed venue and objected to the threats to community amenity. One participant reported success in preventing the establishment of new licences through a community approach, especially in Indigenous communities, but noted that it was harder to achieve the same results in metropolitan areas due to the existence of more stakeholders with vested interests. Police perceived the commercial sector to be more effective in commenting on new licences; however, their interest was often in relation to unwanted competition or the possibility of negative impacts from licensed venues on their businesses.

In regard to take-away liquor outlets, one participant reported that police had had

considerable success in having these licence applications rejected by basing objections on high outlet density.

#### 10.4.4 Police Influence Over Licence Conditions

Many respondents were concerned about consistency in the conditions placed on licensed venues. One participant felt that there were substantial inconsistencies in the conditions adopted in Western Australia as they were set on a case-by-case basis. It was suggested that it would be of benefit to have a national set of guidelines for recognised conditions such as standards on security, CCTV, shots, sizes of beverages, energy drinks and alcohol and harm minimisation generally. Licensing authorities could then use these guidelines to place conditions on premises, with the guidelines and the conditions continuously updated in line with new advances and research.

#### 10.4.5 Beverage Size, Price and Marketing

The size of alcohol beverages sold in Western Australia was raised as a concern. One participant noted that legislation did not outline standard sizes of various alcohol beverages, which could make it difficult for patrons to gauge how many standard drinks they consumed.

The price of alcohol was also noted as a factor that could be regulated to help reduce the overall consumption of alcohol in licensed venues. One participant noted:

*... If you're going to, you know, buy a pint where the price differential is significant enough as opposed to a half pint, then you might be more encouraged to drink pints than half-pints. I'm not suggesting that we should regulate the sale of beer, but, potentially regulate the price per volume. For example, half pints should be exactly half the price of a full pint rather than more than that, because it tends to encourage the higher volume receptacle to be consumed more often.*

The marketing and sale of certain alcohol beverages in licensed premises was viewed as a potential problem. One respondent felt that

legislation had the ability to deal with changes in the alcohol industry which had seen a shift in the promotion and marketing of products such as jelly shots of vodka, which were designed to get people to consume more alcohol at a faster rate.

The relatively recent phenomenon of mixing of alcohol (a nervous system depressant) with an energy drink (a stimulant) was also raised as a growing issue of concern in relation to alcohol-related harms. Interviewees noted that considerable work had been carried out to prevent alcohol being mixed with energy drinks and sold to patrons.

*We've tried to do as much as we can to prevent alcohol being mixed with energy drinks here in WA and there are a number of licences that have them as a condition on their licences now, it's not regulated and perhaps it should be. They're not actually drafted up a lot of those conditions, and we've had to cross-reference it to food standards ... so it's clear and unambiguous and it both allows for the industry and licensee to know what they can and can't do and provides the ready mechanism to enforce it if they breach it.*

#### 10.4.6 Glassing Attacks and Other Harms

Some respondents were particularly concerned about glassing attacks,<sup>160</sup> which had attracted considerable media attention. One participant felt that glassing attacks were a common occurrence in Western Australia, and that they had become a growing issue for police. Increased media portrayals of a glass or alcohol container as an effective weapon were suggested as an explanation for continued attacks. The consumption of alcohol in conjunction with other illicit drugs was also perceived to be a contributor to glassings. Some licensees switched from glass to plastic drinking cups (at their own cost) as a preventative measure.

Another concern raised by an interviewee was

<sup>160</sup> Glassing attacks refers to assaults in/or around licensed premises where a glass (used for holding beverages) is used as a weapon.

that organised crime was prolific in Western Australia. It was claimed that organised crime had infiltrated the security industry and exercised control over whom and what could enter licensed premises.

*If you control the doors you control the floors, and that directly relates to the availability of illicit drugs on licensed premises, which you then mix with alcohol and no wonder we've got some problems.*

#### 10.4.7 Occasional Licences and BYO Conditions

Participants felt that there were positive aspects to having occasional licences for special events such as music and cultural festivals in Western Australia, which included the ability to regulate the sale, supply and consumption of liquor. As one participant noted, without a licence there were no obligations, but when a licence was granted it came with legislated responsibilities.

Other benefits cited by participants were that occasional licences:

- allowed the community to be involved in variety of events
- allowed conditions to be placed on licence
- allowed for liaison with the council regarding conditions
- assisted police to control and prevent problems and harms that may arise from special events.

Drawbacks of occasional licences mentioned by respondents were that:

- there may not be enough police to monitor all events
- the review process for these applications was lengthy
- the time that applications were submitted for review was not acceptable, as applications sometimes remained at the RGL for three or four days before they were handed to the police
- the small amount of time that police had to review the applications meant that they had to gather information at short notice.

One specific concern was that tickets may go on sale and sell out for large music festivals before an occasional licence application had been lodged; this made it difficult for police to object as organisers would contend that they could not offer refunds. Alternatively, one participant stated that police knew the dates of larger events and could negotiate conditions with management. In this participant's opinion, managers of large events understood that the earlier they got their application in, the more likely it was that police would be willing to negotiate and cooperate with them.

When police were consulted about larger events, they met with the caterers and promoters to assist where possible. Some participants felt strongly that police should consult with organisers of all events in order to ensure appropriate conditions were in place. Participants had differing opinions regarding whether or not police had sufficient influence over the conditions of occasional licences. Some felt that police had substantial influence over conditions if the required evidence was prepared. Others felt that police had little or no influence over occasional licence conditions, but could intervene under Section 69 of the *Liquor Control Act 1988* and request that conditions be changed.

*Unfortunately, when it comes down to the big events where there's a lot of influence from different parties, I think that they tend to treat them a bit more leniently than what they would other people. That doesn't always go down too well.*

Suggested conditions that might be appropriate for an occasional licence included:

- drink limits
- exclusion of the sale of full-strength beer
- lockouts
- limiting the duration of the event
- staffing arrangements
- security arrangements
- entertainment requirements.

Interviewees most satisfied with the influence of police over occasional licence conditions reported that agreement on conditions came from negotiations with event management through interventions conducted under Section 69 of the Act by the police. One respondent noted that if scientific evidence was applied to their request, then they were generally successful and pleased with the level of influence over these licences. However, respondents also reported that conditions placed on occasional licences were ineffective in situations where the main goal of an event organiser was to profit from the sale of alcohol.

*When you've got somebody that's got a clear idea that they just simply want to make money, it doesn't matter what you say. They have their primary focus of having a big event, having plenty of people having a lot of money go over the bar, so therefore, the more restrictions that we try and get in, the less receptive they will be.*

An issue of concern for some Western Australian participants was events and premises offering BYO alcohol conditions. The need for the *Liquor Control Act 1988* to provide a definition of an unlicensed premise was noted. Another interviewee agreed that there were problems with BYO, particularly in regulated premises, with confusion over definitions contained within the legislation. However, for this respondent, it was important that using the police definition of regulated premises allowed prevention of BYO alcohol conditions in events run by bikies.

*...It's going to be tested next month or the month after in court to see [if] what our definition is holds, but of course if it doesn't something needs to be changed in the Act so it ... does take on our meaning so we can prevent bikies from having events and then saying to people "bring your own alcohol" ... We're [stopping bikie clubs] from having BYO so they have to apply for a licence, which then we can stop them getting a licence.*

### 10.4.8 Evidence Collection

The process of charging people with offences and closing licensed premises was sometimes hindered by problems with the evidence collected by police, according to some participants. One participant noted how some officers did not collect sufficient evidence to make a sound case against a licensee or venue and so “some atrociously rogue premises in Western Australia” continued to operate. It was suggested that police needed to improve their evidence gathering skills to ensure that evidence could be used in both criminal and civil proceedings.

*This is where from a policing perspective, they have to have a bigger picture focus and see law enforcement and summary proceedings as a part of a greater compliance program, it is one tool in the tool box ... one of the problems is police, because they generally deal with that component of it and the RGL seem to hold the rest of it, and the things aren't interacting properly and it's not working as a cohesive system. There are just bits and pieces here and there and it's all a bit hit and miss.*

### 10.4.9 Secondary Supply to Minors

Section 121 of the *Liquor Control Act 1988* created an offence for the supply of alcohol to a juvenile on licensed premises. There were no provisions under the *Liquor Control Act 1988* relating to secondary supply of alcohol to minors on private premises. Participants from Western Australia generally felt that the police did not have a great deal of involvement in cases of secondary supply to minors on private premises, simply due to the fact that it occurred on private premises. One participant opined that police should have control over secondary supply, but noted that such provisions would be difficult to enforce. Generally, interviewees felt that it would be a difficult task to control secondary supply in people's homes, as police may not become aware of such behaviour, or may only become aware if they are called to a property due to an out-of-control party.

*If it's a private residence – our hands are tied a lot of the time.*

## 10.5 Conclusion

The following key issues were raised during the interviews:

- the *Liquor Control Act 1988* was seen as difficult to comprehend unless it was used often, with training and education viewed as important
- participants felt the alcohol industry viewed liquor licences as a right and not a privilege
- participants felt that a specialist liquor licensing authority was needed in Western Australia
- participants were generally satisfied with the reverse onus of proof for provisions in relation to “drunk” offences under Section 115 of the *Liquor Control Act 1988*
- infringement notices were generally viewed as having the potential to reduce alcohol-related offences
- RSA programs were viewed as requiring more regulation, and common standards were needed for the provision of RSA training
- views varied on whether police had influence over the proliferation of licences and conditions placed on premises. It was suggested that there are legislative tools to assist in this that are not being utilised
- participants believed a national set of guidelines for conditions to be placed on licensed premises would be beneficial
- negotiations between event management and police for occasional licences were viewed as positive and allowed police influence over conditions
- it was suggested that police needed to improve their evidence gathering skills to ensure that evidence could be used in both criminal and civil proceedings.





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# Appendix 1: Interview Questions (Police)

1. What has been your role, within your organisation, in relation to the enforcement of liquor licensing legislation?
  - a. What proportion of your general time would be spent dealing with alcohol related issues?
  - b. How long have you been serving as a police officer? (police only)
  - c. How long have you worked/ did you work in the liquor licensing enforcement area?
2. What role do you believe liquor licensing legislation plays in reducing the harms from licensed premises?
  - a. Do you think there is a strong harm minimisation/ public safety focus in the legislation or more of a focus on the interests of the commercial sector?
3. Are the respective roles of the police and liquor licensing authorities:
  - a. Clearly outlined in your liquor licensing legislation?
  - b. Clearly understood by the respective organisations? If not, what do you think could be done to improve this?
4. What is the relationship between your organisation and the relevant liquor licensing authority/ court in your jurisdiction and:
  - a. Could this be improved and if so, how?
  - b. Do you think that, in your jurisdiction, the primary focus of the liquor licensing authorities is to protect the interests of the alcohol industry or to protect public safety?
5. Is “Intoxication” defined in your liquor licensing legislation and:
  - a. If it is defined, what does it say?
  - b. Could this definition be improved?
6. What does your liquor licensing legislation say about:
  - a. The powers to bar a person from licensed premises?
  - b. How effective do you think those powers are?

7. Does your liquor licensing legislation include:
  - a. Provisions for the issuing of infringement notices to licensed premises?
  - b. How effective do you think they are?
8. Does your liquor licensing legislation have:
  - a. Provision for lock-outs?
  - b. Do you think they are effective in reducing alcohol-related incidents and if so, why?
9. How effective do you think the following liquor licensing legislation provisions are in relation to preventing or minimising alcohol-related harm:
  - a. Limiting take-away sales from licensed premises?
  - b. Limiting the trading hours of licensed premises?
10. Does your liquor licensing legislation have:
  - a. Provisions for special events licences?
  - b. What do you think are their benefits or drawbacks?
11. Do you think that the current legislative provisions sufficiently address the issue of probity checks for liquor licensing applications? If not, what do you think could be done to improve these?
12. How much influence do police have over the proliferation of licensed premises and in particular the total availability of alcohol including:
  - a. The hours of operation?
  - b. The number of licensed premises?
  - c. The conditions of licence?
13. What is the situation in your jurisdiction in relation to the secondary supply of alcohol? Does it work?
14. What are the major things that you would like to see included in liquor licensing legislation that are currently missing? What can be done to change this?
15. With respect to your organisation, are there any other aspects of the existing liquor licensing legislation that are unworkable or difficult to implement?
16. Are there any other comments you would like to make or any other issues that you would like to raise?

# Appendix 2: Interview Questions (Non-Police Personnel)

1. What has your involvement been in liquor licensing legislation broadly?
  - a. How many years of experience do you have within this field?
2. What is your understanding of liquor licensing legislation across Australia?
3. What role do you believe liquor licensing legislation plays in reducing the harms from licensed premises?
4. How effective do you think the following liquor licensing legislation provisions are in relation to preventing or minimising alcohol-related harm:
  - a. Limiting take-away sales from licensed premises?
  - b. Limiting the trading hours of licensed premises?
5. How effective do you think lock-outs are in reducing alcohol-related harms and incidents?
6. What initiatives to curb alcohol-related harm do you think are effective?
7. How much influence do you think police have over the proliferation of licensed premises and in particular the total availability of alcohol including:
  - a. The hours of operation?
  - b. The number of licensed premises?
  - c. The conditions of licence?
8. What sorts of things would you like to see included in liquor licensing legislation, or what things would you like to see modified?
9. What do you think are the key issues for police in relation to enforcing liquor licensing legislation?

# Appendix 3: Police Jurisdiction Alcohol-Related Data Collection Template

1. Jurisdiction:
2. Name of alcohol-related offence database collection system (if this is not applicable to your jurisdiction please go to question 9):
3. What information and data is collected by your jurisdiction in relation to alcohol related crime, offending and incidents?
4. Does this data relate to the victim, perpetrator or both?  
The victim   
The perpetrator   
Both victim and perpetrator   
Any comments?
5. How regularly is this information collected?  
Always   
Mostly   
Sometimes   
Rarely   
Never   
Any comments?
6. How accurately do you think this data reflects alcohol-related offending in your jurisdiction?
7. How do police use this data to assist them in enforcing liquor licensing legislation?
8. How accessible is this data to other agencies (e.g. Liquor licensing authorities, research bodies, other Government departments)?
9. What kind of alcohol-related offence data would you consider appropriate for your jurisdiction to be collected/What kind of alcohol-related offence data would you like to see collected in addition to what is already collected?







