

NATIONAL CENTRE FOR RESEARCH  
INTO THE PREVENTION OF DRUG ABUSE



**INDIGENOUS AUSTRALIANS  
AND  
LIQUOR LICENSING  
LEGISLATION**



**National Centre for Research into the Prevention of Drug Abuse  
Curtin University of Technology**

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## **EXECUTIVE SUMMARY**

This research project was designed to review liquor licensing and related legislation throughout Australia, and to develop recommendations aimed at ensuring that such legislation:

- furthers the objective of minimising the harm caused by alcohol among Indigenous Australians;
- promotes Indigenous community involvement in decision making regarding the availability of alcohol; and,
- is culturally appropriate.

The study utilised a qualitative research methodology, which included review and analysis of existing legislation, a literature review, and analysis of written comment and interview data pertaining to liquor licensing legislation.

### **Summary of Findings**

#### *Harm minimisation*

- Indigenous people are disproportionately affected by alcohol-related harms, including higher rates of alcohol-related morbidity and mortality, and higher rates of alcohol-related crime. As a result, Indigenous people argued that harm minimisation provisions need to be more rigorously enforced, and that licensing authorities need to be cognisant of how the supply of alcohol affects Indigenous attempts to control the negative impacts of alcohol.
- Harm minimisation is a primary object of liquor acts in New South Wales, Queensland, South Australia, Victoria and Western Australia. It is a liquor licensing authority policy in the A.C.T., the Northern Territory and Tasmania.
- All jurisdictions have provisions regarding responsible service. Responsible service training is mandatory for all new managers in New South Wales, the Northern Territory, Tasmania and Western Australia, and is at the discretion of licensing authorities in other jurisdictions.
- Informants alleged that Indigenous people were subjected to disproportionate levels of irresponsible service, including the supply of liquor to intoxicated people, the supply of liquor in unhygienic containers, the supply of liquor in ways that contravene licence conditions, and illegal sales of liquor.
- Indigenous people were more likely to frequent premises that had lower levels of amenity, and as a consequence, were more likely to be subjected to alcohol-related injuries resulting from excessive alcohol consumption on licensed premises.

- A number of innovative and/or informal harm minimisation strategies were operating throughout Australia, such as night patrols and police agreements with Indigenous organisations.

#### *Community Participation*

- All jurisdictions have provisions that allow community members to participate in liquor licensing matters. However, the complexity of legislation, the costs involved, cultural biases within legislation and the protracted nature of liquor licensing matters impedes community participation.
- Many provisions that allow community participation rely on the volition and enterprise of liquor licensing authorities.
- Community members were poorly informed of their rights to participate in liquor licensing matters.
- Licensing authorities need to develop culturally appropriate ways of eliciting community views on liquor licensing matters, including the appointment of Indigenous community liaison officers.
- Advertising requirements fail to bring licence applications to the attention of community members. Directly informing peak community organisations, which are in a position to comment on applications and can circulate information to community members, would be a more effective way of informing communities.
- In general, local councils only became involved in liquor licensing matters with regard to alcohol free zones and public drinking. However, some councils have sought to address liquor licensing matters through strategies such as alcohol management plans.
- Local Indigenous councils in Queensland and Western Australia can make community by-laws regarding the supply, possession and consumption of alcohol.
- Local accords are a popular harm minimisation strategy. However, research regarding the effectiveness of accords is inconclusive, and breaches of accord agreements cannot be enforced.
- Beer canteens and licensed clubs operate in Queensland and the Northern Territory. However, canteens and clubs are controversial as research indicates that higher rates of alcohol consumption and alcohol-related harm occur in communities where they exist.
- Many communities with canteens and clubs rely on profits generated from alcohol sales to provide basic community services and infrastructure normally subsidised by government funding and/or competitive government grants.

*Enforcement and Administrative Matters*

- Objections can be lodged in all jurisdictions by community members or organisations, however Indigenous informants considered the processes involved in objecting to be culturally inappropriate.
- Western Australia is the only jurisdiction with specific legislation that allows community members to directly lodge objections on the basis of public health concerns.
- Most Indigenous informants were unaware that they could lodge complaints against licensees, or how to go about doing so.
- There are provisions within each jurisdiction that allow licensing authorities to nominate the location where a hearing takes place. It was considered important to hold hearings at the locality to which a licence relates so that community members in rural areas do not have to travel long distances for hearings.
- The enforcement of liquor licensing and related legislation was considered to be highly problematic. Informants felt that legislation is enforced in a manner that discriminates against Indigenous people, and that authorities focus their enforcement efforts on consumers, rather than suppliers, of alcohol.
- Most police have limited expertise in liquor licensing legislation, and many are discouraged from charging licensees due to the level of evidence required for successful prosecutions.
- In New South Wales, Queensland, Victoria and Western Australia, on-the-spot fines—which are normally ten per cent of the maximum penalty for an offence—can be issued for minor offences.
- On some Indigenous communities in Queensland, Indigenous community police are responsible for enforcing alcohol by-laws. However, enforcement is limited due to community police having insufficient knowledge of the legislation, among other factors.
- Police in some jurisdictions have established procedures whereby general duties police are trained in liquor licensing legislation and directly liaise with licensees when problems arise on premises.
- Indigenous people were disproportionately affected by public drinking and public drunkenness provisions. Public drunkenness was considered to be a major issue in Victoria, Queensland and Tasmania, where it has not been decriminalised.
- Indigenous informants in Victoria, Queensland and Tasmania called for the decriminalisation of public drunkenness and the establishment of diversionary facilities.
- Indigenous people apprehended for public drinking or public drunkenness often had altercations with police. As a result, they were routinely charged with more serious combinations of offences, colloquially referred to as ‘trifecta’ and ‘quinella’ charges, and therefore faced greater penalties.

*Liquor licensing restrictions, dry areas and 'sly grogging'*

- A number of Indigenous communities use liquor licensing restrictions and/or dry areas legislation as a strategy for minimising alcohol-related harms.
- Evaluations of liquor licensing restrictions show that they have positive effects on the health and welfare of communities in which they operate.
- Dry areas and alcohol free zones that are imposed at the request of Indigenous communities are usually supported by Indigenous people. However, dry areas and alcohol free zones that are imposed by external bodies, such as local councils, are not supported as they have a disproportionately negative effect on Indigenous people.
- 'Sly grogging' allegedly occurs in many locations where there are restrictions or dry areas.
- It is extremely difficult to prove 'sly grogging' offences unless the only evidence required is simple possession.
- It was alleged that credit sales of alcohol were widespread in all jurisdictions. Informants alleged that it was common in many locations for licensees to allow Indigenous people to purchase alcohol against incoming social security funds.

**Recommendations****Harm minimisation***Harm minimisation as an object of the act*

1. That, where it is not, harm minimisation should become the primary object of liquor acts.
2. That, where it does not, the definition of harm minimisation should include 'the minimisation of harm or ill health caused to any group of people as a consequence of their alcohol use'.

*Responsible service of alcohol*

3. That the responsible service of alcohol should be included as a provision in all Acts.
4. That, where it does not occur, licences should not be granted unless licensing authorities are satisfied that responsible service practices will be implemented and maintained.

5. That, where it is not, responsible service training should be mandatory for all managers and licensees.
6. That, where it does not exist, a definition of drunkenness should be included in all liquor acts.
7. That, where it does not exist, licensing authorities should have the authority to impose temporary conditions on licences if they or other enforcement authorities have *reasonable grounds* to believe that serious breaches of irresponsible service practices are occurring. The burden of proof should be on licensees to prove that conditions are unwarranted.
8. That, where they do not exist, on-the-spot fines be introduced for the irresponsible service of alcohol.

#### *Amenity*

9. That, where they are not already, minimal standards of amenity should be clearly specified in all acts.
10. That enforcement authorities should allocate funding to undertake *routine* reviews of all premises to identify factors in the drinking environment that may contribute to alcohol-related harm. Reviewing officers should supply licensees with amenity reports, including required and recommended improvements. If licensees do not comply with these recommendations, the licensing authority should place amenity conditions on the licence.
11. That managers of Indigenous licensed clubs and canteens should be provided with assistance to review the amenity of clubs if so desired.

#### *Innovative or informal harm minimisation strategies*

12. That liquor licensing authorities should investigate ways to support communities which wish to determine whether reducing the number of licensed premises in their locality may reduce alcohol-related harm.
13. That liquor licensing authorities should investigate ways to support communities which wish to conduct evaluation into the effectiveness of Indigenous hotel licences as a harm minimisation strategy.

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**Community Participation***Advertising*

14. That advertising requirements should be established which bring new licence applications to the attention of Indigenous community members and organisations.
15. That where it does not occur, peak Indigenous community, health, welfare and legal organisations receive direct notice of new licence applications if licences relate to localities with a significant aggregate of Indigenous people.
16. That, where it does not, the role of Indigenous community liaison officers should include the identification of, and liaison with, Indigenous community organisations which can inform communities of applications.

*Local councils*

17. That, where it has not occurred, local councils and governing bodies formulate an alcohol management plan for their locality.
18. That, where it has not occurred, an employee of local councils and governing bodies be assigned the responsibility of informing local community groups about liquor licensing matters.
19. That, when commenting on licence applications, local councils and governing bodies should take into consideration the potential health and welfare effects of licenses, and the availability of alcohol in their municipality.

*Accords*

20. That local accords should not operate in isolation, but rather be one aspect of a local council alcohol management plan.
21. That local accord agreements be made conditions of licences so that breaches of accords can be enforced.

*Beer canteens and licensed clubs*

22. That, where it does not occur, all licensed club managers ensure compliance with laws regarding responsible service of alcohol.
23. That, where it does not occur, licensing authorities assess whether applications for new club licences are likely to affect nearby dry communities. Residents of those communities should be notified of the application and

representatives of licensing authorities should solicit opinions of those residents in addition to opinions of residents where clubs will be located.

24. That a review be conducted into the contribution of social club profits to basic community infrastructure.
25. That, where it does not occur, liquor licensing authorities should investigate ways to support communities wishing to undertake research into the health and welfare impacts of clubs.

### **Enforcement and Administration**

#### *Objections*

26. That, where it does not occur, objections should be allowed to be made by any individual adversely affected by licences.
27. That, where it does not occur, objections should be allowed to be made orally to police, local councils, clerks of courts, justices of the peace, or licensing authorities.
28. That, where it does not occur, the 'grounds for objection' should include public health and harm minimisation.
29. That, where it does not occur, definitions of the negative impact on the 'amenity or good order of the neighbourhood' should include alcohol-related violence and public drunkenness.
30. That, where it does not occur, conciliation conferences or hearings regarding objections should take place in the locality to which applications relate.
31. That organisations should be able to lodge an 'intention to object' if they cannot object within the specified time frame. The extended time frame granted should be sufficient for organisations to collect further evidence in support for objections.
32. That, where it does not occur, objections should be able to be made on the basis that there is already sufficient access to alcohol in a locality.

*Complaints*

33. That, where it does not occur, complaints should be able to be made orally to police, local councils, clerks of courts, justices of the peace, or licensing authorities.
34. That, where it does not occur, 'grounds for complaints' should include public health, harm minimisation, alcohol-related violence or disturbances, and public drunkenness. Complaints should not have to be in direct response to a breach of licence conditions.
35. That, where it does not occur, police should systematically lodge complaints against premises which are associated with high levels of alcohol-related harm.

*Hearings*

36. That, where it does not occur, communities should be granted *locus standi*.
37. That, where it does not occur, hearings should take place in the locality to which licences relate.

*Enforcement by police and licensing authorities*

38. That stricter enforcement of responsible service and harm minimisation should occur.
39. That stricter enforcement of responsible service and harm minimisation at *off-licenses* should occur.
40. That, where they do not exist, on-the-spot fines for breaches of harm minimisation and responsible service provisions should be introduced.
41. That police and licensing authorities should apply equal effort to policing suppliers of alcohol as they do to consumers.
42. That, where they exist, Indigenous Community Police receive remuneration, training and support commensurate with the tasks that they are required to perform.
43. That liquor licensing authorities should investigate ways to support communities which wish to devise alternative strategies for enforcing alcohol by-laws.

44. That, where they have not, police should initiate programmes to monitor the following:
- numbers of alcohol-related 'trifecta' and 'quinella' arrests that occur in the vicinity of licensed premises.
  - numbers of alcohol-related arrests and places from where alcohol was supplied (ie, last drinks survey).
  - use of alternative strategies for dealing with intoxicated Indigenous people.

The above information should be used to improve policing methods that identify and monitor premises associated with high rates of alcohol-related harm.

45. That security personnel should be licensed, registered and properly trained. Part of their training should include non-violent conflict resolution and cross-cultural training.

*Public drunkenness as a criminal offence*

46. That, when police are taking people into custody for public drunkenness, 'trifecta' or 'quinella' arrests should only be made in cases of serious behaviour and violence.
47. That, where it has not occurred, police should monitor all 'trifecta' and 'quinella' arrests of Indigenous people which result from public drinking or public drunkenness.
48. That, where it has not occurred, informal police procedures which aim to reduce the number of intoxicated people in police custody be formally recognised so that parties have some form of legal protection should injury occur.
49. That, where it has not occurred, penalties for public drinking and public drunkenness be repealed.
50. That, where they remain on the statutes, other provisions which have the same effect as public drunkenness provisions should be repealed.

**Licensing restrictions, dry areas and 'sly grogging'***Licensing restrictions*

51. That liquor licensing authorities should investigate ways to support communities which wish to investigate the potential benefits and disadvantages of implementing restrictions.
52. That restrictions be routinely evaluated to determine whether or not they are effective in reducing alcohol consumption and/or alcohol-related harm.

*Dry areas and alcohol-free zones*

53. That, where it does not occur, dry areas and alcohol-free zones (AFZs) which will have a disproportionate effect on Indigenous communities only be implemented at the behest of Indigenous communities.
54. That, where they are not, dry areas and AFZs be monitored and routinely reviewed.
55. That, where they do not, applications for dry areas and AFZs be accompanied by a management plan which shows the range of other strategies already in place to deal with public drunkenness and alcohol related harm.

*'Sly grogging'*

56. That penalties for sly grogging be greatly increased.
57. That, where it is not the case, the onus of proof be on parties accused of sly grogging to show that they were not transporting alcohol with an intent to supply.
58. That, where it is not the case, simple possession of alcohol in excess of an amount set by local by-laws or liquor licensing conditions be classified as proof of sly grogging.
59. That licensees or their employees who supply in excess of defined amounts of alcohol—except in the case of bona fide orders—be held vicariously liable for sly grogging.

*Credit sales*

59. That, where they exist, penalties for the supply of alcohol on credit be increased.
  
60. That, where debts are incurred as a result of credit sales, a 'tippling clause' be introduced so that debts in excess of a nominated amount cannot be collected.

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## 1.0 INTRODUCTION

### 1.1 Background to the Report

Throughout Australia, liquor licensing legislation reflects the fact that alcohol is regarded as a potentially harmful substance which requires some control over its supply, availability and consumption. Liquor licensing legislation, among other things, regulates the times and places that alcohol may be sold, the persons who may sell it, and to whom it may be sold. This legislation is complemented by related legislation including criminal offence acts that make it illegal to drive while under the influence of alcohol, local government acts that allow local councils to make alcohol by-laws, and Aboriginal lands or communities Acts that provide for the declaration of alcohol free areas.

Over the past decade, governments have liberalised controls over the availability of alcohol, and in some jurisdictions it is now possible to obtain alcohol in many types of public venues. At the same time, harm minimisation provisions have been introduced into liquor licensing legislation in order to reduce the social and economic costs of excessive consumption. Given this new harm minimisation focus, liquor licensing related legislation should be viewed primarily as pieces of social legislation, the role of which extends beyond regulating the liquor industry, collecting government revenue, and enforcing laws.

As an instrument of social policy, liquor licensing legislation has the potential to aid Indigenous community efforts for self-determination and control over the supply and consumption of alcohol. However, at present this is compromised by culturally biased provisions within legislation, a lack of effective enforcement, and inadequate liaison between licensing authorities and Indigenous communities. Furthermore, although there are provisions for community participation in liquor licensing matters, few provisions obligate licensing authorities to actually heed community wishes. Therefore, interpretations and applications of legislation are often subject to how those in charge of licensing authorities exercise their discretionary powers.

Despite the shortcomings of legislation, Indigenous peoples are increasingly utilising legislative provisions to control the availability of alcohol—and thus reduce alcohol-related harm—in their communities.<sup>1-5</sup> In parts of Western Australia, Queensland, the Northern Territory and South Australia, Indigenous groups have used legislation to have their communities declared 'dry'. Other communities have achieved a limit on the hours and days of trading, restrictions on the availability of types or amounts of alcohol sold, and a prohibition on specific promotional activities such as sex shows.<sup>3, 5-10</sup>

Although some communities have used legislation to their advantage, such legislation is presently an imperfect vehicle for community control over alcohol. An

extensive review conducted in 1995 of the Western Australian *Liquor Licensing Act (1988)* identified a number of issues of concern to Indigenous community organisations, which have been echoed by Indigenous informants interviewed for this research.<sup>11-14</sup> This report discusses those issues and offers recommendations on how to reduce the notable obstacles confronting Indigenous communities attempting to utilise liquor licensing related legislation to reduce alcohol-related harm.

## **1.2 Aims and Objectives of the Project**

The project was designed to review liquor licensing and related legislation throughout Australia, and to develop recommendations aimed at ensuring that such legislation:

- furthers the objective of minimising the harm caused by alcohol among Indigenous Australians;
- promotes Indigenous community involvement in decision making regarding the availability of alcohol; and,
- is culturally appropriate.

### **Objectives**

The objectives of the research were to:

- review liquor licensing related legislation from each state/territory in the light of a set of guidelines which incorporate Indigenous aims and objectives for such legislation;
- prepare commentaries on each piece of legislation; and,
- develop a set of recommendations that can serve as both a tool for Indigenous organisations seeking to change liquor licensing legislation and as a guide for the amendment of such legislation.

## **1.3 Overview of Legislation Reviewed**

Four main types of legislation were reviewed for the project: liquor licensing legislation, police enforcement legislation, local government legislation, and Indigenous community legislation (see *Appendix 2*). Although variations exist between jurisdictions, the general purposes of legislation as they relate to the project are as follows:

### *Liquor licensing legislation*

- To regulate the sale and consumption of alcohol.
- To minimise the harms associated with alcohol use.

- To facilitate and regulate the development of the liquor, hospitality and tourism industries.
- To enforce liquor licensing provisions.
- To administer liquor fees.
- To educate licensees and the public about the consequences of alcohol supply and consumption.

#### *Police enforcement legislation*

- To enforce laws concerning public drinking, public drunkenness, and under-aged drinking.
- To enforce laws concerning public conduct, including 'good order' offences.
- To enforce certain provisions of liquor acts and local government acts.
- To enforce provisions of dry areas legislation.
- To enforce provisions concerning 'sly-grogging'.

#### *Local government legislation*

- To regulate the consumption of alcohol in local government areas, including the declaration of 'alcohol-free zones' or dry areas.

#### *Indigenous community legislation*

- To regulate the sale and consumption of alcohol.
- To minimise the harms associated with alcohol use.
- To make by-laws concerning dry areas and 'sly-grogging'.
- To enforce by-laws and to appoint persons responsible for that enforcement.
- To issue alcohol permits to individuals.

## **1.4 Report Outline**

The body of the report is divided into five sections:

- *Introduction* gives a background to the report and lists its aims and objectives;
- *Methodology* describes the methodology employed for the project. It includes a sub-section containing a table of legislation reviewed and organisations interviewed by jurisdiction for the project;
- *Harm Minimisation* defines the term in relation to the project and discusses how liquor licensing and related legislation impacts upon minimising the harmful consequences of alcohol use. The discussion includes sub-sections on responsible service and other harm minimisation strategies.
- *Community Participation* discusses the processes currently in place to elicit opinions from communities, and focuses on some obstacles faced by Indigenous

Australians who try to influence liquor licensing decisions in their communities. The discussion includes sub-sections on means of encouraging community participation—such as advertising requirements, the role of local governments in liquor licensing related matters, local alcohol accords, and licensed canteens and social clubs operating in the Northern Territory and Queensland.

- *Enforcement and Administration* summarises administrative processes involved in managing objections, complaints and hearings, and describes how police and licensing authorities enforce liquor licensing legislation. It discusses the way in which laws concerning public drunkenness and the public consumption of alcohol have a disproportionate impact on Indigenous Australians.
- *Liquor licensing restrictions, dry areas, and alcohol-free zones* discusses various forms of geographically specific interventions that restrict the availability of alcohol, including dry areas, alcohol free zones, and conditions on licences.
- *Conclusion* summarises the findings; and
- *Appendices* contains relevant recommendations from the Royal Commission into Aboriginal Deaths in Custody, and a guide to sections of legislation relevant to the project.

## 2.0 METHODS

### 2.1 Research methods

The study utilised a qualitative research methodology, which included review and analysis of existing legislation, a literature review, and analysis of written comment and interview data pertaining to liquor licensing legislation. In outline, this work proceeded as follows.

Based on research previously undertaken with Aboriginal people in Western Australia and upon more general work on liquor licensing undertaken by colleagues at the NCRPDA,<sup>16</sup> a set of guidelines was developed for the review of various pieces of legislation. The guidelines took into account how liquor licensing and related legislation impacts on harm minimisation, non-discriminatory enforcement, community participation, and Indigenous attempts to control the availability of alcohol.

- In the light of the guidelines, relevant sections of acts from each state/territory were reviewed and assessments prepared that identified their relative strengths and weaknesses.
- Guidelines for interviews were developed on sections of the legislation pertinent to the research.
- These guidelines were forwarded to representatives of agencies to be interviewed in each jurisdiction (see *Table 1*) so that they could prepare for interviews.
- Informant interviews were arranged and conducted. In some cases, interviews with certain organisations could not be conducted because the nominated person was absent from work at the time of fieldwork or could not be contacted despite repeated phone calls. Interviews ranged in time from 30 minutes to three hours, depending on the extent of views that each informant wished to express.
- Comprehensive notes from interviews were analysed.
- A literature review was undertaken. Topics reviewed included harm minimisation, alcohol-related crime, alcohol-related morbidity and mortality, community participation, enforcement, liquor licensing restrictions, dry areas, community based alcohol interventions, other reviews of legislation, and all major reviews regarding the impact of alcohol on Indigenous Australians.
- A report was prepared based on the informant interviews and literature. Finalisation of the report was delayed for 12 months pending the introduction of new legislation in Western Australia, Victoria, and South Australia.

## **2.2 Ethical Issues**

The project was conducted within the framework of the NH&MRC's *Guidelines on Ethical Matters in Aboriginal and Torres Strait Islander Health Research*.<sup>17</sup> The researchers offered informants at the time of interview the opportunity to review their contributions before publication, although only one wished to do so. As further protection, even where permission was given, quotes have been attributed only as 'informant at organisation x'.

Table 1: Organisations from which representatives were interviewed

**A.C.T.**

Alcohol and Drug Foundation of the A.C.T.  
Assisting Drug Dependents, Inc  
Australian Federal Police  
Australian Institute for Aboriginal and Torres Strait Islander Studies  
Commonwealth Ombudsman  
Liquor Licensing Administration  
Queenbeyan District Hospital

**New South Wales**

Aboriginal and Torres Strait Islander Social Justice Commission  
Aboriginal Co-ordination Unit, NSW Police  
Aboriginal Health Branch, NSW Health Department  
Aboriginal Justice Advisory Council, Attorney General's Department  
Alcohol & Health Unit, NSW Health Department  
Drug Programs Co-ordination Unit, NSW Police  
Indigenous Social Justice Association  
Licensing Enforcement Agency, NSW Police  
Liquor Administration Board, NSW Department of Liquor and Gaming  
Local Government and Shires Association of NSW  
Policy & Development Division, NSW Department of Liquor and Gaming  
Race Discrimination Unit, Human Rights and Equal Opportunity Commission

**Northern Territory**

Aboriginal and Ethnic Services, NT Police  
Alcohol and Drug Unit, NT Police  
ATSIC  
Council for Aboriginal Alcohol Program Services  
Crime and Support, NT Police  
Local Government Association of the Northern Territory  
NT Liquor Commission  
Office of Aboriginal Development  
Territory Health Services

**Queensland**

Aboriginal and Torres Strait Islander Corporation for Legal Service  
Alcohol, Tobacco and Other Drugs Branch, Queensland Department of Health  
Cultural Advisory Unit, QLD Police Service

Drug and Alcohol Service, QLD Police Service  
Legislation Development Unit, QLD Police Service  
Liquor Licensing Division, Department of Tourism, Small Business and Industry  
Murrie Watch  
Service Development, Queensland Department of Health  
Strategic Planning, Coordination & Review Branch, Department of Families, Youth & Community Care

**South Australia**

Aboriginal Drug and Alcohol Council  
Aboriginal Legal Rights Movement  
Aboriginal Sobriety Group, Inc  
Department of State Aboriginal Affairs  
Liquor Licensing Commission  
Local Government Association of S.A.  
National Centre for Education and Training in Addictions  
Police Department  
Prevention Programs, Drug and Alcohol Services Council

**Tasmania**

Aboriginal Health Service, Tasmanian Aboriginal Centre, Inc  
Aboriginal Health Unit, Department of Community and Health Services  
Aboriginal Legal Service, Tasmanian Aboriginal Centre, Inc  
ATSIC  
Liquor Licensing Commission  
Local Government Association of Tasmania  
Office of Aboriginal Affairs  
Police Department

**Victoria**

Aboriginal Legal Service  
Aboriginal Liaison Unit, Victoria Police  
ATSIC  
Department of Aboriginal Affairs  
Drug and Alcohol Policy Co-ordination Unit, Victoria Police  
Koori Alcohol and Drug Program, Department of Human Services  
Liquor Licensing Commission  
Ngwala Willumbong

Note: Within the report, the word 'Commissioner' is used as a generic term for Commissioner (SA and TAS), Chairman (NT), Director (NSW, WA and, since 1999, VIC), and Chief Executive (QLD) when referring to these positions collectively. Likewise, the term 'licensing authority' refers to all liquor licensing authorities collectively.

Table 2: Legislation reviewed by jurisdiction

**A.C.T.**

Crimes Act 1900  
 Intoxicated Persons (Care and Protection) Act 1994  
 Liquor Act 1975

**Queensland**

Community Services (Aborigines) Act 1984  
 Community Services (Torres Strait Islanders) Act 1984  
 Liquor Act 1992  
 Liquor Regulation 1992  
 Local Government (Aboriginal Lands) Act 1978

**Western Australia**

Aboriginal Communities Act 1979  
 Liquor Licensing Act 1988  
 Liquor Licensing Act 1988 (Amended 1998)  
 Local Government Act 1995  
 Police Act 1892

**South Australia**

Aboriginal Lands Trust Act 1966  
 Liquor Licensing (Dry Areas-Long Term) Regulations 1997  
 Liquor Licensing (Dry Areas-Short Term) Regulations 1997  
 Liquor Licensing Act 1985  
 Liquor Licensing Act 1997  
 Maralinga Tjarutja Land Rights Act, 1984  
 Pitjantjatjara Land Rights Act, 1981  
 Public Intoxication Act  
 Summary Offences

**Tasmania**

Liquor and Accommodation Act 1990  
 Police Offences Act 1935

**Northern Territory**

Liquor Act  
 Local Government Act  
 Police Administration Act  
 Private Security Act 1995  
 Summary Offences Act

**New South Wales**

Crimes Act 1900  
 Intoxicated Persons Act 1979  
 Liquor Act 1982  
 Local Government Act 1993  
 Summary Offences Act 1988

**Victoria**

Liquor Control Act 1987  
 Liquor Control Reform Act 1998  
 Local Government Act 1989  
 Summary Offences Act 1900

## 3.0 HARM MINIMISATION

### 3.1 Overview

Plant *et al.* define harm minimisation as:

(Strategies that focus) on decreasing the risk and severity of adverse consequences arising from alcohol consumption without necessarily decreasing the level of consumption. It is essentially a practical rather than an idealised approach: the standard is not some ideal drinking level or situation (abstention or 'low-risk' levels), but whether or not the chances of adverse consequences have been reduced by the introduction of the prevention measure.<sup>18</sup>

During the 1990's, licensing authorities throughout Australia made harm minimisation one of their primary objectives, either formally through legislation—as is the case in New South Wales, Queensland, South Australia, Victoria and Western Australia—or informally through policy guidelines—as is the case in the Northern Territory, the A.C.T., and Tasmania.

The emphasis on harm minimisation in liquor licensing legislation is a relatively recent occurrence. In 1994, Craze and Norberry examined the objectives of Australia's liquor licensing legislation and found that:

...concern to address the ill-effects of alcohol consumption was reflected in provisions which attempted to maintain local amenity, restrict the serving of young, intoxicated, quarrelsome and noisy persons and reduce excessive drinking through the provision of food and entertainment.<sup>19</sup>

Craze and Norberry argue that most liquor laws in 1994 did not focus on preventing drunkenness and its consequential harm because that specific objective was seen to be the responsibility of the health and welfare sector. Instead, liquor laws existed to protect the economic interest of licensees and ensure that the liquor industry was regulated in a way that promoted tourism, competition and profits. Research into the massive social and economic costs of alcohol in Australia<sup>20,21</sup>—including the cost of absenteeism, medical expenses, unemployment of alcohol dependent persons, and premature death—has, however, shown the need for liquor licensing legislation to regulate alcohol in a manner that minimises the harms arising from its use.

The harm minimisation legislation that now exists has had a wide range of impacts on the broader community, including a reduction in drink driving due to the lowering of the legal blood alcohol level permitted in drivers and the introduction of random breath testing.<sup>22</sup> In addition to its general community benefits, it can be argued that harm minimisation legislation has had a disproportionately *positive* impact on Indigenous communities seeking to reduce alcohol-related problems at a local level. This is because it has facilitated Indigenous community attempts to implement strategies designed for their benefit. For example, liquor licensing restrictions have been implemented in towns with a significant aggregation of Indigenous people in Western Australia (e.g. Halls Creek and Derby), the Northern

Territory (e.g. Tennant Creek and numerous dry communities), Queensland (e.g. Doomadgee and Bourke Town) and South Australia (e.g. Yalata and Coober Peedy).

In addition to liquor licensing restrictions, there is an array of more moderate harm minimisation strategies designed to reduce the negative impact of alcohol on Indigenous people, although these strategies often provide benefits to the wider community. In some New South Wales towns with a significant aggregation of Indigenous people, for example, a variety of harm minimisation conditions have been placed on licences including provision of transport for patrons, improvement of amenity of premises, and banning sales of alcohol on credit. Likewise, there are community-based responses to alcohol-related harm, such as night patrols, treatment services and sobering up facilities, with many of these services being designed for, and run by, Indigenous people.

The Royal Commission into Aboriginal Deaths in Custody made numerous recommendations concerning ways to minimise alcohol-related harm (see Appendix 1). However, many of these recommendations have been ignored and Indigenous people around Australia continue to struggle for increased community participation in liquor licensing matters.<sup>6,13,14,23,24</sup> They believe that greater Indigenous input into minimising the harms associated with alcohol is justified given its disproportionate effect on Indigenous communities.

This disproportionate effect is verified by a number of sources.<sup>25,33-40</sup> For example, the 1994 National Drug Strategy Household Survey found that:

Alcohol repeatedly emerged as the overriding issue of concern for Aboriginal and Torres Strait Islander peoples. Ninety-five percent of the urban population regard it as a serious problem, and 63% regard either alcohol or alcohol-related violence as the most serious social issue facing the Aboriginal and Torres Strait Islander community today.

...Alcohol-related crime is nearly twice as prevalent in the Aboriginal and Torres Strait Islander community than in the general community.

...Involvement in crime-related incidents while affected by alcohol was also proportionately twice as high among Aboriginal and Torres Strait Islander peoples than in the general population.<sup>25</sup>

One of the main reasons that these problems exist is because the pattern of Indigenous drinking tends to be a hazardous one, resulting in a wide range of harms to the individual and the whole community. Research has shown that although fewer Indigenous people drink regularly compared to non-Indigenous people, and more Indigenous people have either stopped drinking or are lifetime abstainers, many of those who drink do so at hazardous levels.<sup>25-32</sup> As a consequence of this hazardous drinking pattern, a greater proportion of Indigenous people than non-Indigenous people is exposed to alcohol-related violence and other forms of alcohol-related crime,<sup>25,33-35</sup> is imprisoned and arrested,<sup>36</sup> and suffers from higher rates of alcohol-related mortality and morbidity.<sup>37-40</sup>

The disproportionate effect of alcohol on Indigenous communities is most clearly demonstrated by research into alcohol-related morbidity and mortality. For example,

alcohol is a risk factor for low birth weight and failure to thrive infants,<sup>37,38</sup> and in the adult population, Aboriginal people die as a result of alcohol use at a younger age and at significantly higher rates than non-Aboriginal people.<sup>39,40</sup> A state-wide study in Western Australia found that for the period of 1983-1991, alcohol-related deaths among Aboriginal men were 5.2 times higher than among non-Aboriginal men, and alcohol-related deaths among Aboriginal women were 3.7 times higher than among non-Aboriginal women.<sup>39</sup> The same study also found that Aboriginal males were hospitalised at 9.3 times, and Aboriginal females at 12.8 times, the rate of non-Aboriginal people, with the main causes of hospitalisation being assault, alcohol abuse, alcohol dependence syndrome, and fall injuries. The authors estimate that these higher morbidity rates cost approximately \$3.2 million per year in hospital expenses alone.

Studies from other parts of Australia also show high rates of alcohol-related morbidity and mortality among Indigenous people. For example, Brady found that in 1987, 50 per cent of clinic presentations in a Pitjantjatjara community in South Australia were alcohol-related, and that over a ten year period, 30% of deaths were alcohol-related.<sup>41</sup> Studies in New South Wales during the 1980's found that alcohol was implicated in between 14 per cent to 27 per cent of Aboriginal deaths<sup>42-44</sup>, and a 1989 study in the Alice Springs Hospital found that alcohol-related admissions of Aboriginal people were double those of non-Aboriginal people.<sup>45</sup>

In addition to studies of alcohol-related mortality and morbidity, studies of criminal justice, public drunkenness and alcohol-related crime demonstrate the degree to which alcohol affects the Indigenous community.<sup>24,46-49</sup> Researchers have also collated qualitative evidence from Indigenous people about the impact of alcohol in their lives to expound the intangible human costs of alcohol abuse.<sup>24,33,50-52</sup> Given all the evidence, it is no surprise that Indigenous people around Australia are concerned that harm minimisation provisions within liquor licensing legislation are implemented and rigorously enforced.

Several Indigenous informants expressed the view that the recent tendency for governments to liberalise controls over the availability of alcohol contradicts harm minimisation principles. For example, some informants argued that their efforts to reduce alcohol-related harm were being compromised by legislation that makes alcohol available in an ever increasing number of venues, and often for longer periods of time. They also believed that liberalising controls over availability reinforces an incorrect perception that all Australians have a 'right' to access alcohol when and where they want, which in turn makes it more difficult for Indigenous organisations to argue for restrictions on availability.<sup>14</sup> Informants from licensing authorities also mentioned that harm minimisation provisions become more important as availability increases—particularly due to extended trading hours—as

they are the best way to minimise negative effects which may arise as a result of increased availability.<sup>14</sup>

Research into the negative impact of alcohol on both individuals and communities in Australia highlights the need for governments to not only strengthen their own harm minimisation efforts—paying particular attention to the needs expressed by Indigenous community representatives while doing so—but to also support and fund harm minimisation efforts undertaken by Indigenous communities themselves. If harm minimisation is to have an optimal effect, governments need to establish legislative and practical avenues for Indigenous communities to create and implement strategies in a manner that promotes self-determination and culturally appropriate methods of minimising the harms associated with Indigenous alcohol abuse.

### **3.2 Harm minimisation as an object of liquor licensing legislation**

Harm minimisation is an object of liquor licensing acts in five out of eight jurisdictions. Although the wording of legislation varies from jurisdiction to jurisdiction, harm minimisation is broadly defined and therefore can be applied in a wide range of circumstances. Licensing authorities can use harm minimisation provisions as reasons for justifying a range of licensing decisions, including declining licence applications, imposing conditions and enforcing penalties for offences committed under the acts.

#### *Queensland*

In 1992, Queensland became the first state to introduce harm minimisation as an object of its *Act*. The harm minimisation objects of the *Act* are:

- (3d) to regulate the liquor industry in a way compatible with—
  - (i) minimising the harm arising from misuse of liquor; and
  - (ii) the aims of the National Health Policy on Alcohol.

The Executive Director of Liquor Licensing stated that harm minimisation principles are applied to all applications, and if an Indigenous council lodges an objection to a licence because of health or welfare concerns, this greatly influences his decision on the matter.<sup>14</sup> A strong point of the Queensland legislation is that it is the only *Act* which requires the Executive Director to take into account the ‘population and demographic trends’ of an area when considering applications (S116.4). It is important to note that the Executive Director must also consider the ‘likely health and social impact that granting the licence would have on the locality’ (S116.4.d). The Executive Director stated that as a consequence of these provisions,

applications for premises located near Indigenous communities are closely scrutinised for their impact on the local community.

### *New South Wales*

New South Wales was the second state in Australia to adopt harm minimisation as an object of its *Act*. All licence applications must be evaluated for harm minimisation components, and the Liquor Board can impose a range of conditions on licences to ensure that they comply with this object.

2A Harm minimisation is a primary object of the Act

A primary object of this Act is harm minimisation, that is, the minimisation of harm associated with misuse and abuse of liquor (such as harm arising from violence and other anti-social behaviour). The court, the Board, the Director, the Commissioner of Police and all other persons having functions under this Act are required to have due regard to the need for harm minimisation when exercising functions under this Act. In particular, due regard is to be had to the need for harm minimisation when considering for the purposes of this Act what is or is not in the public interest.

The New South Wales Department of Racing and Gaming conducts a campaign, which originated in Queensland, called 'No more, it's the law'. The aim of this campaign is to raise awareness among both patrons and licensees of their obligations under section 2A of the legislation. It is important to note that licence applications have been declined in areas with a significant aggregation of Indigenous people because members of the Liquor Board felt that granting the applications would counteract harm minimisation efforts being undertaken by local communities and send 'the wrong message' to people about alcohol use (see *Objections*).<sup>53</sup>

### *South Australia*

Harm minimisation has only been an object of the *Act* in South Australia since the *Liquor Licensing Act 1997* came into effect:

3. The object of this Act is to regulate and control the sale, supply and consumption of liquor for the benefit of the community as a whole and, in particular-

(a) to encourage responsible attitudes towards the promotion, sale, supply, consumption and use of liquor, to develop and implement principles directed towards that end (the responsible service and consumption principles) and to minimise the harm associated with the consumption of liquor.

Despite its recent introduction as an object of the *Act*, harm minimisation has been implemented as a policy of the Liquor Licensing Commissioner since the early 1990's.

There are many instances in South Australia where the Commissioner has implemented harm minimisation strategies, such as liquor licensing restrictions, at the request of Indigenous communities. However, it is worth noting that South Australia is in a difficult situation because on the one hand it has significant aggregations of Indigenous people in some areas, many of whom wish to restrict the availability of alcohol, and on the other, wine production is one of the state's major industries. According to the Commissioner, the state's legislation attempts to strike

a balance between the health and welfare needs of the community while still protecting the economic interests of its powerful wine producers.<sup>14</sup> For example, some Indigenous community groups had called for a provision in the new *Act* that would regulate the types of containers in which alcohol is sold, with the intention of stopping unscrupulous licensees selling bulk port to Indigenous people in unhygienic containers. As this would also prevent tourists from acquiring port from wineries to age themselves—which is a popular practice—the ‘safe containers’ provision was not incorporated into the *Act* as suggested. However, the Commissioner argued that with harm minimisation and responsible service now objects of the *Act*, any licensee selling bulk port in unhygienic containers would be prosecuted for being in breach of those provisions.

### *Western Australia*

In 1994, Craze and Norberry found that:

‘Liquor laws in Western Australia perhaps provide the most graphic evidence of the concern of state governments to be responsive to the needs and interests of the liquor industry.’<sup>19</sup>

This situation changed with the 1998 amendment of the *Liquor Licensing Act 1988*, and now harm minimisation is included as one of the two objects of the *Act*:

5 (1) The primary objects of this Act are —

(b) to minimize harm or ill-health caused to people, or any group of people, due to the use of liquor.

The Western Australian *Act* is the only one in Australia that specifically mentions the minimisation of harm to ‘any group of people’, and it is hoped that this object will assist Indigenous people in particular to argue for harm minimisation conditions on licences.

### *Victoria*

Victoria has had some form of harm minimisation legislation in place since 1987. However, it has been more clearly defined in the new *Liquor Control Reform Act (1998)*.

The objects of this Act are

(a) to contribute to minimising harm arising from the misuse and abuse of alcohol by—  
(i) providing adequate controls over the supply and consumption of liquor; and  
(ii) ensuring as far as practicable that the supply of liquor contributes to, and does not detract from, the amenity of community life.

As the new *Act* is also the most liberal in Australia in regard to the types of venues that may hold liquor licences, it is crucial that the new harm minimisation object is applied to all new applications and enforced with all existing licences.

### *Northern Territory*

The Northern Territory still does not have harm minimisation as an object of the *Liquor Act*, although Parliament in the Northern Territory is considering a new *Act* that is highly likely to include harm minimisation as its primary object.<sup>14</sup> The legislation is expected to be passed sometime towards the end of 1999.<sup>14</sup> Despite the absence of harm minimisation as an object of the *Act*, the NT Liquor Commission's Mission Statement functions as a de-facto measure:

Mission Statement: To regulate the liquor industry in a manner designed to minimise harm arising from the sale, supply and consumption of liquor.

It is important to note that since the 1970's, the Northern Territory Liquor Commission's application of harm minimisation provisions has been the most progressive in Australia, particularly in relation to Indigenous communities.

### *A.C.T.*

The A.C.T represents an anomalous situation as its liquor licensing legislation is more focused on town planning concerns than on harm minimisation in licensed premises. The *Liquor Act 1975* does not explicitly nominate harm minimisation as an object, but rather focuses on the responsible supply and use of alcohol:

3A. The object of the Act is to promote and encourage responsibility in the sale and consumption of liquor through the establishment of a scheme of liquor licenses and permits.

At the time of research, informants did not consider it important to include harm minimisation as an object of the *Act*.<sup>14</sup>

### *Tasmania*

The Tasmanian legislation does not include harm minimisation as either an object of the *Act* or as an official policy. Under Section 17 of the *Act*—which allows the Board to formulate policy guidelines—harm minimisation is not mentioned:

... the Board shall formulate policies which, in its opinion, will best aid and promote the economic and social growth of Tasmania by encouraging and facilitating the orderly development of the hospitality industry in the State. (S17.3)

According to the Commissioner, the Board has an informal policy of examining new applications within a harm minimisation framework, yet absence of harm minimisation provisions in the *Act* means that it would be difficult for the Commission to defend in court decisions based on harm minimisation.<sup>14</sup>

### **3.3 Harm minimisation strategies**

#### **3.3.1 Responsible service of alcohol**

One of the main harm minimisation strategies in place across Australia is the responsible service of alcohol. This strategy aims to reduce alcohol-related harm by regulating the manner in which alcohol is supplied to consumers. The primary method of doing this has been by training management and staff in responsible service practices, such as when to refuse service to patrons, ensuring that food and non-alcoholic beverages are available, and making low- or mid-strength drinks less expensive than full-strength drinks. The training also educates management and staff of their responsibilities under liquor licensing legislation, and demonstrates how to comply with requirements applicable in their jurisdiction.

Although responsible service training programs are now available in all jurisdictions, reviews of literature on the benefits of such programmes is inconclusive.<sup>54</sup> Some of the research suggests that responsible service programs do reduce alcohol related harms, while other research suggests that they have little or no effect. For example, Saltz reviewed a number of responsible server training programs that had been evaluated by independent researchers and found that some programs demonstrated significant reductions in harm while others did not.<sup>54</sup> He argues that responsible service programs operating in isolation have limited benefits, and that they require commitment from management, development of house policies that focus on harm minimisation practices, enforcement by police and licensing authorities, community support, and an incentive for management in the form of reduced insurance premiums. Therefore, it is important to note that even though managers, licensees and staff may undertake responsible service training, it in no way guarantees that responsible service will actually take place, or, if it does, alone it may not be effective.

The requirements for managers to complete responsible service training varies depending upon the jurisdiction. It is mandatory for new managers in New South Wales, the Northern Territory, Tasmania and Western Australia, but not in the A.C.T., Queensland, or Victoria. An informant from the Liquor Licensing Commission in Victoria stated that it was common for police to approach prospective managers and advise them to undertake the training. If they failed to do so, the police would usually request that training became a condition of granting the licence.<sup>14</sup> In South Australia, the responsible service requirement is at the discretion of the Commissioner, who is likely to waive the requirement if the manager has substantial experience and can show knowledge of responsible service requirements.<sup>14</sup>

New South Wales is the only jurisdiction which specifies that licence applications can be refused on the likelihood that responsible service practices will not be adhered to:

47A Refusal of application—responsible service standards

The court is to refuse an application for a licence unless satisfied that practices will be in place at the licensed premises as soon as the licence is granted that ensure as far as reasonably practicable that liquor is sold, supplied and served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place.

A similar recommendation was put forth by Anderson QC in his review of the South Australian Liquor Act 1985.<sup>55</sup> He stated that ‘If a person holding a licence is not prepared to abide by these principles, they (*sic*) should not be granted a licence in the first instance.’

Although some research suggests that responsible service training may be contributing to a reduction in alcohol-related harm in some premises,<sup>56</sup> informant interviews in all jurisdictions indicated that Indigenous people were more likely to be subject to irresponsible service for two main reasons. First, a high proportion of Indigenous people live in rural and remote regions, and irresponsible service occurs more commonly in rural and remote regions due to an absence of a real threat of punitive measures (see *Enforcement*). In these locations, there are very few police and licensing inspectors compared to the large geographic areas they are required to monitor. For example, there are only 15 licensing inspectors in the whole of Queensland, and even though the Northern Territory has the highest ratio of inspectors to premises in Australia, the Northern Territory police stated that ‘inspectors are light on the ground.’<sup>14</sup> Second, as will be discussed in more detail in the next section, many Indigenous patrons frequent licensed premises that have a low level of amenity. Premises with low levels of amenity are more likely to be tolerant of rowdy or intoxicated behaviour and more likely to have sub-standard house policies regarding responsible service.

Some of the cases of irresponsible service reported to us include poorly managed licensed canteens in the Northern Territory in which patrons were served while exceedingly intoxicated, the supply of alcohol on credit (see *Supply of alcohol on credit*), and serving Indigenous patrons beyond the point of intoxication in both rural and urban premises. Most of the more notable reports of irresponsible service occurred in remote regions with a significant aggregation of Indigenous people. For example, many South Australian informants spoke about a licensee in Coober Peedy who allegedly filled up empty containers—such as soft-drink cans or milk cartons retrieved from the rubbish bin—with bulk port for Aboriginal customers. Despite complaints from residents and a number of visits to the region by the Liquor Licensing Commissioner, it has not been possible to apprehend the licensee in the process of supplying the port, and therefore this unethical practice allegedly

continues. Similarly, police informants in Queensland spoke of a licensee selling plastic barrels of cheap port wine, known as 'monkey blood', to Indigenous patrons in Bourke Town.<sup>14</sup>

Police informants in the Northern Territory alleged that a licensee supplied tour bus drivers with alcohol orders reputed to be worth up to \$3500, which drivers transported to restricted areas for a percentage of the profit. An informant from AIATSIS expressed concern over the prevalence of irresponsible sales of take-away alcohol to both intoxicated Indigenous patrons and people such as taxi drivers who were likely to be sly-grogging.<sup>14</sup> Recent research in Western Australia revealed that some supermarket chains in rural areas heavily discounted damaged four litre wine casks and sold them for as little as \$5, rather than paying the freight back to the supplier.<sup>57</sup>

One of the reasons that practices mentioned above occur is that it can be extremely difficult for licensing authorities or police to prove that alcohol has been served in an irresponsible manner. For example, in order for a licensee to be found guilty of serving alcohol to an intoxicated person, the actual act of service may have to be observed and it may be up to the prosecution to prove that the patron was intoxicated rather than up to a licensee to prove that the patron was sober. With the exception of Western Australia, there is no definition of 'intoxication' in liquor acts, and thus arguing this latter point can be problematic.

In some jurisdictions, such as Western Australia (S165), licensees and/or managers are held liable for actions of their employees. Although this may discourage irresponsible service to a degree, offences carry such minor financial penalties that fining a licensee does little to prevent future transgressions.<sup>14</sup> Heavier financial penalties, or non-financial penalties such as imposing licence conditions or suspension, would be more effective. Furthermore, given that police concentrate their enforcement efforts on the activities of patrons, not on licensees (see *Enforcement*), there is only a remote chance that licensees will be charged with irresponsible service.

Due to the difficulties in enforcing responsible service, licensing authorities and police need to investigate new and innovative ways to reduce the incidence of irresponsible service to Indigenous people, especially in so-called 'Aboriginal pubs'. Although they have not been independently evaluated, police and licensing informants in New South Wales have found that innovative approaches to enforcing responsible service are successful in reducing alcohol-related harm. For example, a local police sergeant in Bourke lodged complaints against *all* licensed premises in the town. Although the complaints did not relate to any particular incident, the police believed that licensees were not applying responsible service practices. As a consequence, the manner in which they were conducting their businesses had

resulted in excessive alcohol use in Bourke, which in turn was disturbing the quiet and good order of the neighbourhood (S104). The complaint also referred to such things as broken glass outside of premises, lack of security personnel, intoxicated patrons loitering around premises with alcohol, and intoxicated persons being admitted to premises. The outcome of the case was that a number of conditions were placed on all licenses, with the foremost condition being that licensees must 'strictly apply' responsible service practices.

The irresponsible service of alcohol is a major problem that can be addressed using effective combinations of strategies mentioned previously. The rates of alcohol-related morbidity and mortality<sup>20,21,25,28</sup> and the correlation between excessive alcohol consumption and violence<sup>33-35,41</sup>—among both Indigenous and non-Indigenous Australians—indicate that more needs to be done to ensure that alcohol is served in a way that minimises alcohol-related harm.

### **3.3.2 Improving the Amenity of Premises**

Research has been conducted in a number of countries on the relationship between the level of amenity of bars and levels of violence, where 'amenity' includes such things as cleanliness, ventilation, layout of premises, seating, and provision of well maintained entertainment equipment such as pool tables.<sup>57-61</sup> The studies find that bars with a lower level of amenity have a higher level of violence and that '(T)he decor and upkeep in the bar may give a message to patrons about the kinds of behaviours expected.'<sup>61</sup> Commissioners in South Australia, Tasmania and Victoria claimed that all premises were maintained at a high level regardless of patronage. However, Indigenous informants in those states believed that the hotels frequented by most Indigenous people were generally of a lower standard than the norm, 'although nothing like the blackfella pubs in places like Fitzroy Crossing.'<sup>14</sup>

All informants interviewed for this project agreed that there were hotels in most parts of Australia which were considered to be 'Aboriginal pubs'. These premises were known as places where Indigenous people could drink without being subjected to enforcement of dress or behaviour standards, and they tended to become 'Aboriginal pubs' by default rather than by licensees seeking out Indigenous patrons as a niche market.<sup>57</sup> 'Aboriginal pubs' had a lower levels of amenity, minimal dress-codes, staff were more likely to be tolerant of behaviour such as swearing and fighting, and intoxicated patrons were more likely to be served. Effectively, this means that many Indigenous people drink in settings which permit lower standards of behaviour and higher levels of intoxication, and they are therefore more likely than non-Indigenous people to be subjected to acute alcohol-related harms.

Despite research that demonstrates the relationship between level of amenity and alcohol-related harm, licensing authorities have done little to force licensees to improve the standards of their premises. For example, fines imposed for sub-standard amenities are minimal compared to costs of renovation. Therefore, some licensees prefer to incur fines rather than pay significant amounts of money for refurbishing premises.<sup>14</sup>

The licensing authority and police in New South Wales appeared to be more concerned about Indigenous patrons frequenting bars with a lower standard of amenity than authorities in any other jurisdiction. For example, informants from both the NSW police and the licensing authority were adamant that amenity standards should be enforced and conditions be placed on licences to ensure that standards of 'Aboriginal pubs' equals those of other premises, and they reported on cases where licensees were ordered to improve their premises.<sup>14</sup>

In Western Australia, it was acknowledged that standards of some 'Aboriginal pubs' in some remote areas were far below acceptable standards,<sup>14,13</sup> particularly those colloquially referred to as 'chook sheds' for their tendency to have wire mesh or metal bars around serving areas. In the Northern Territory and Queensland, informants stated that most Indigenous licensed canteens and clubs had a particularly low level of amenity, although the management practices of the canteens were considered to be of greater importance than the drinking environment for minimising alcohol-related harm.<sup>14</sup>

Given the relationship between drinking environments and patron behaviour, some licensed canteens and social clubs are now improving the amenity of their premises. Licensees and managers of these premises have tried to create environments that are more conducive to outdoor drinking, cater for the needs of family groups, and can cope with large influxes of visitors to communities. For example, some licensed canteens in the Northern Territory and Queensland have installed barbeques, created beer gardens, and constructed children's areas so that patrons can socialise in a more pleasant, family oriented environment.

The Tyeweretye Club in Alice Springs (NT) was described as a good model of how social clubs can become more like recreation centres where alcohol is not the sole focus of entertainment.<sup>14</sup> Likewise, the social club at Oenpelli was regarded as a well controlled environment that provided a range of resources for the community.<sup>14</sup> Other canteens, such as that located on Mornington Island in Queensland, have recently had conditions placed on them to ensure that renovations are undertaken which improve safety features rather than just amenity. For example, the canteen on Mornington Island was ordered by the Liquor Licensing Division to install fencing and a gate to prevent intoxicated or under-aged patrons from entering the premise.

In contrast with these examples, many other licensed canteens/social clubs were poorly maintained, rudimentary corrugated iron structures with concrete floors. Not surprisingly, these were generally poorly managed from a harm minimisation perspective, were associated with a higher incidence of alcohol-related violence, and—almost without exception—permitted high levels of intoxication.<sup>14</sup> Managers of such premises are perhaps unaware of the impact that low levels of amenity have on patron behaviour, and therefore they may benefit from information regarding ways to change the drinking environment so that alcohol-related harm is reduced.

### **3.3.3 Innovative or Informal Harm Minimisation Strategies**

During the fieldwork, informants told us of a number of innovative harm minimisation strategies that had been devised to counteract alcohol-related harm among communities, and Indigenous communities in particular. Strategies ranged from small scale, locally based interventions such as night patrols, to regional or state-wide policies such as the multi-faceted Northern Territory's 'Living with Alcohol Program'. Regardless of the strategy type, they were all commonsense approaches to ameliorating the negative effects of liquor licensing related legislation on Indigenous people.

Some of the more interesting strategies were relatively simple, grass-roots based interventions aimed at reducing law and order problems caused by or to intoxicated Indigenous people.

In Wilcannia, one of the police noticed that when the pubs put on a sausage sizzle for rugby matches, there was a large decrease in the incidents of domestic violence. Every pension night and CDEP pay night, he puts on a sausage sizzle and domestic violence has decreased because of that. Perhaps it is because people have a feed before they drink or maybe people are more satisfied and don't have to go home and fight about who is going to make dinner after a big night on the booze, but regardless of the reasons, it seems to have had an impact. If a harm reduction strategy is as simple as providing a hearty meal, then maybe that needs to be looked at as a licensing condition. Therefore, this officer has realised what will help in his locality and is doing it on his own initiative. (NSW Police Policy Officer)

In comparison to the above, other strategies, although sometimes still community based, were quite complex. A number of enforcement strategies were noteworthy (see *Enforcement*), including changes in police procedures, provision of harm minimisation and cross-cultural training to police officers, and greater coordination with Indigenous alcohol and drug agencies. There were also many local Indigenous community responses to alcohol-related harm, such as bush camps for youths, Indigenous visitors schemes for those in police custody, and creating alternatives to alcohol use.

Importantly, there were strategies that sought to address other issues associated with Indigenous drinking. For example, the following regional strategy was used by

magistrates' courts to reduce the numbers of Indigenous people incarcerated for public drinking in Victoria.

There actually is a lot of pressure up in that part of the state (to arrest Aboriginal people drinking in public). In 1994 we had some talks with the Chief Magistrate and he was telling us that he had actually been a visiting magistrate in that area and he attended a number of public meetings with Rotary clubs and Lions clubs et cetera, and effectively he was put under a lot of pressure to simply lock up the blacks. For that reason, he instituted a scheme so that the magistrate wouldn't just be a permanent magistrate up there, but there'd be a series of rotating magistrates so none of them became too influenced by the local community. (Informant, Victorian Aboriginal Legal Service)

Likewise, in the New South Wales town of Walgett, the Licensing Court recognised that the supply of alcohol played a major part in the aetiology of the town's alcohol-related problems. When an application was lodged for a new off-licence, the Court took into consideration the effect that granting the license would have on the harm reduction endeavours of the local Aboriginal community.

There are few activities within the Walgett community that do not revolve around pubs and clubs. It is argued that the attempts that Walgett is making to overcome the (alcohol) problem, in particular the efforts being made by the Aboriginal community elders in trying to develop strategies to restrict alcohol use in the community, will be undermined by the granting of a new licence.<sup>53</sup>

By addressing one of the causes—as identified by Indigenous community members—of excessive alcohol use, that is, the supply of alcohol, the Licensing Court attempted to prevent the problems *before* they occurred.

Studies have shown that there is a relationship between the number of licensed premises and alcohol consumption,<sup>62-65</sup> and therefore attempts to reduce the supply of alcohol by restricting or reducing the numbers of licences is a strategy that warrants further exploration. Indigenous community members have called for a reduction in the number of licences<sup>13,14,66</sup> and this strategy has support from some police and licensing authorities. Furthermore, it is in line with the Royal Commission into Aboriginal Deaths in Custody recommendation that 'government consider...the desirability of reducing the number of licensed premises in some localities.'<sup>47</sup> It has also been suggested that Indigenous corporations should apply for licences, as a number already have. However, the limited success of existing licences suggests that communities should be assisted in evaluating this option before implementing it elsewhere.

### **3.4 Recommendations for Harm Minimisation**

*Harm minimisation as an object of the act*

1. That, where it is not, harm minimisation should become the primary object of liquor acts.

2. That, where it does not, the definition of harm minimisation should include 'the minimisation of harm or ill health caused to any group of people as a consequence of their alcohol use'.

*Responsible service of alcohol*

3. That the responsible service of alcohol should be included as a provision in all Acts.
4. That, where it does not occur, licences should not be granted unless licensing authorities are satisfied that responsible service practices will be implemented and maintained.
5. That, where it is not, responsible service training should be mandatory for all managers and licensees.
6. That, where it does not exist, a definition of drunkenness should be included in all liquor acts.
7. That, where it does not exist, licensing authorities should have the authority to impose temporary conditions on licences if they or other enforcement authorities have *reasonable grounds* to believe that serious breaches of irresponsible service practices are occurring. The burden of proof should be on licensees to prove that conditions are unwarranted.
8. That, where they do not exist, on-the-spot fines be introduced for the irresponsible service of alcohol.

*Amenity*

9. That, where they are not already, minimal standards of amenity should be clearly specified in all acts.
10. That enforcement authorities should allocate funding to undertake *routine* reviews of all premises to identify factors in the drinking environment that may contribute to alcohol-related harm. Reviewing officers should supply licensees with amenity reports, including required and recommended improvements. If licensees do not comply with these recommendations, the licensing authority should place amenity conditions on the licence.

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11. That managers of Indigenous licensed clubs and canteens should be provided with assistance to review the amenity of clubs if so desired.

*Innovative or informal harm minimisation strategies*

12. That liquor licensing authorities should investigate ways to support communities which wish to determine whether reducing the number of licensed premises in their locality may reduce alcohol-related harm.
13. That liquor licensing authorities should investigate ways to support communities which wish to conduct evaluation into the effectiveness of Indigenous hotel licences as a harm minimisation strategy.

## 4.0 COMMUNITY PARTICIPATION

### 4.1 Overview

Each jurisdiction has provisions that allow individuals to participate in liquor licensing issues, including objecting to an application, lodging a complaint against premises, requesting that conditions be placed upon licences, and, in some jurisdictions, applying for dry area restrictions. It can be argued, however, that the complexity of legislation, the costs involved, and the usually protracted nature of liquor licensing matters impedes individuals from actively participating in liquor licensing decisions. For Indigenous community members, these difficulties are further compounded by cultural biases within legislation, such as requirements for lodging written complaints or objections in capital cities, and narrow time frames for lodging objections.

The Royal Commission into Aboriginal Deaths in Custody made recommendations regarding provisions that facilitate community participation in liquor licensing matters (*See Appendix 1*), including that communities be provided with the resources necessary to participate in liquor licensing matters.<sup>47</sup> Despite this, there are few if any resources available to communities to undertake the research and consultation required to lodge an objection. Furthermore, Indigenous legal services claim that it is difficult to assist communities with liquor licensing matters due to constrictions on legal service funding.<sup>14</sup> Consequently, communities usually have to finance any legal costs themselves, and limitations on community funding can result in liquor licensing matters being de-prioritised in favour of other community projects.<sup>14</sup>

Indigenous informants in all jurisdictions generally regarded many of the provisions designed to allow community participation as being inappropriate for Indigenous needs and ways of working, and they therefore felt that the legislation was culturally biased. For example, informants claimed that it would be easier for Indigenous people to lodge objections and complaints orally, and that, in some areas, issues such as licensing restrictions should be discussed in sex-segregated community meetings so that women have a chance to express their concerns without fear of reprisal from drinking males.<sup>14</sup> Other research has also suggested that liquor licensing negotiations should take place on community land so that community members who may feel intimidated in a court can voice their opinions.<sup>1</sup> This option is already available to licensing authorities, although it is at the discretion of Commissioners.

Few informants, including those from Indigenous legal services, understood the complexities of liquor licensing related legislation and how it could be used to

ensure that community opinions were expressed to the appropriate authorities. A number of reasons were cited for this. First and foremost, community members were not aware of their rights under the legislation. Informants blamed licensing authorities for not making a more concerted effort to provide information to appropriate Indigenous community organisations, and argued that more direct liaison with Indigenous people was required. Second, understanding the legislation's complexities required a level of knowledge and skills far in excess of most communities' resources. Police informants themselves admitted that one of the difficulties in enforcing the legislation was that it required a specialised knowledge possessed by few police.<sup>14</sup>

There are a number of examples in the literature that support the need for licensing authorities to provide greater information on liquor licensing matters to Indigenous communities. For example, the Western Australian Task Force on Aboriginal Social Justice reports that Aboriginal people are frustrated by the lack of information available to them.<sup>67</sup> McCallum<sup>68</sup> and Gray and Wallam<sup>13</sup> argue that most Aboriginal people are unaware of their rights to object to licences, and that laws are written in a way that makes them both difficult to understand and enforce. Lyon quotes a Northern Territory community member saying 'The Liquor Commission is not interested in us'<sup>66</sup>, and Scougall and Osbourne argue that a rural Western Australian community 'will only be able to effectively contribute to the 'grog' debate...when it is aware of the full range of options.'<sup>69</sup>

Given the lack of information about, and knowledge of, liquor licensing matters, it is no surprise that licensing authority representatives in New South Wales, Victoria, Tasmania, the A.C.T. and Western Australia stated that Indigenous community members rarely initiated liquor licensing complaints, objections or calls for restrictions. Instead, they reported that the most common source of such actions was health and welfare professionals concerned with the extent of alcohol-related harm among Indigenous people, especially in rural and remote areas. On the other hand, they did acknowledge that many Indigenous community members were distressed about the effects of alcohol in their community and were willing to contribute to discussions on the matter.

In contrast to the above five jurisdictions, licensing authorities in the Northern Territory, South Australia and Queensland reported a high level of community participation in geographic locations with significant aggregations of Indigenous people. In Queensland, the licensing authority is obliged to consult with, and regard the views of, local Indigenous councils if licence applications relate to Deed of Grant in Trust land (S189). In the Northern Territory and South Australia, a number of communities have applied to licensing authorities for certain types of restrictions,

conditions, or dry areas to be declared, and the licensing authorities have consulted communities and held community meetings at locations to which licences relate.

It is important to acknowledge that although provisions exist which permit communities to voice their opinions on licensing matters, there are other factors that impede community participation. The need to travel to urban centres for hearings can impose financial and practical strains on community members, yet this can be avoided if Commissioners exercise their right to nominate places where hearings occur.<sup>2,70</sup> Correspondence with remote communities can be difficult, and the time frames designated for filing documentation are considered to be too short.<sup>14</sup> Intra-community conflicts can mean that it is difficult to form a sufficiently coherent 'community opinion' on issues such as restrictions,<sup>7,70</sup> and this is further complicated when community members vote people into positions of power—such as councillors—based on whether or not they drink. People are then expected to make decisions, such as supporting or opposing restrictions, that benefit those of the same drinking status.<sup>71</sup>

Despite these difficulties, a number of communities have managed to participate in liquor licensing matters, most commonly in regard to restrictions. One of the factors that appears to contribute to successful participation is the degree to which communities coordinate their actions. For example, in Yalata (SA), the community council as a political body, rather than just a few individuals, argued for restrictions on take-away alcohol. Likewise, the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council (NT) has successfully lobbied for liquor restrictions at Curtin Springs. Other communities ensure that they have strong representation on local alcohol action groups, and use the groups to voice their concerns to licensing authorities. For example, representatives of the Julalikari Council and other Aboriginal community organisations in Tennant Creek are members of the *Beat the Grog Committee*, which was the group responsible for agitating for restrictions in the town.

In most jurisdictions, it appeared that staff working for licensing commissions were often unsure of how to negotiate with Indigenous communities, and few of them did any routine, pro-active work to solicit opinions from Indigenous community members. The situation is much better in the Northern Territory and South Australia, which may reflect a greater emphasis on Indigenous issues given their higher proportions of Indigenous people. In the Northern Territory, there is an Indigenous community liaison officer employed by the Liquor Commission—but funded by the 'Living with Alcohol Program'—to work directly with communities on liquor licensing issues, and recent incumbents of the position of Chairman have maintained an active interest in how alcohol affects Indigenous communities. In South Australia, the approach of the Commissioner and his willingness to utilise

local Aboriginal people and respected researchers as mediators in places such as Yalata appears to have contributed to greater participation of local communities in liquor licensing related matters.

Indigenous informants in all jurisdictions—although to a lesser degree in the Northern Territory and South Australia for reasons discussed above—believed that licensing authorities needed to evaluate the effectiveness of their community consultation procedures. For example, some informants alleged that licensing authorities sometimes only spoke with a select group of people when they were required to undertake ‘community consultation’. In other circumstances, community meetings would be called, but attendance would sometimes be extremely poor and, therefore, no resolutions could be passed regarding agenda items.<sup>14</sup> Indigenous informants believed that a more effective way of eliciting community views would be to have Indigenous community liaison officers working with communities to develop appropriate consultation frameworks, and by using other methods to supplement community meetings.

The need for other methods of information gathering was reflected in comments made by both Indigenous informants and representatives of licensing authorities. Examples were given of cases where meetings were poorly attended despite community members being very concerned about liquor licensing matters, or where people were afraid to speak at meetings because of the lack of anonymity. Wally and Trindall, for example, report that when the Chairman of the NT Liquor Commission was invited to Elliot to discuss licensing restrictions, few people attended the meeting and therefore restrictions proposed by community members were not imposed. In order to show that people in Elliot did want restrictions, the Aboriginal health promotion officer in Elliot conducted a simple household ballot survey about restrictions, the results of which demonstrated to the Chairman that the majority of people were in favour of restrictions.<sup>72</sup> Although restrictions were ultimately imposed, they were in reality the consequence of the efforts of resourceful community workers, not of the consultation processes used by the Chairman.

Even in cases where community meetings or other forms of evidence gathering have been successful, and there is a consensus about the best way to deal with a liquor licensing issue, licensing authorities may ultimately make decisions that do not reflect community wishes. Informants in South Australia argued that this was true in their state because when matters are referred by the Commissioner to the court under Division 3 of the *Liquor Licensing Act*, parties do not automatically have *locus standi* in court, that being the right of standing before the court. Under this provision, communities must rely on the Liquor Licensing Commissioner to speak on their behalf. Although magistrates may allow community legal representatives to

speak, there are no provisions that give community representatives the right to be heard.

The difficulty with this system is that the Commissioner may or may not represent a community's interests to the court. Therefore, communities' wishes may be overlooked in preference for a 'middle ground' approach that reconciles the needs of all parties. For example, in the case of Yalata, the community wanted a *complete* ban on alcohol sales, whereas the Commissioner wanted to continue the sale of low alcohol beer. Although the community's legal representative was permitted to speak in court, he could not make an application about the low beer issue and thus the court did not ban its sale (for information on the Yalata case and *locus standi*, see Submissions to the review of the Liquor Licensing Act 1985 by Maggie Brady<sup>23</sup> and Aboriginal Legal Rights Movement Inc<sup>73</sup>). As a consequence, South Australian informants felt strongly that communities should have *locus standi*.

## **4.2 Methods of Encouraging Community Participation**

### **4.2.1 Informing communities—advertising of liquor licence applications**

Advertising is the main method used by licensing authorities to notify communities of new liquor licence applications. The purpose of advertising is to make community members aware of applications so they can object to them if desired. Applications are usually advertised in a newspaper, in a government Gazette, and by erecting a sign on the site of a proposed premise. In some jurisdictions, commissioners have the power to modify standard advertising requirements if it is felt that other methods will be more effective for informing communities.

The extent to which advertising brings applications to the attention of the general public, and to the attention of the Indigenous community in particular, depends upon both which advertising methods are used and the commissioners' willingness to exercise their discretionary powers. Some commissioners actively seek community views on applications and will ensure that peak community bodies, including Aboriginal medical and legal services, receive notice of applications. For example, the South Australian Commissioner will write directly to Indigenous organisations requesting their views on an application, and in the Northern Territory, the Liquor Commission's Indigenous community liaison officer will inform communities of pending applications. In Queensland, if an application is lodged for a premise located within an Indigenous council precinct, the Chief Executive of Liquor Licensing must write to the council for their opinion (S189).

The only jurisdictions that do not have compulsory newspaper advertising are Tasmania and Victoria. In these states, it is rare that applications for licences such as restaurants and cafes are advertised in a newspaper, although a sign must be erected on sites of proposed premises. It is standard practice to advertise applications for hotels, night clubs, or one-off events where the amenity of neighbourhoods is likely to be affected.

Advertising is not limited solely to the various forms of mass media. Under Victoria's new *Act*, the Director can instruct applicants to undertake localised advertising, such as letter box drops to residents (S36). South Australia's new *Act* requires applicants to directly notify all occupiers of lands adjacent to proposed premises (S.52.2.ii). These new approaches are aimed at reducing the probability of future complaints by those residents or business owners most likely to be adversely affected by licences. Licensing authorities hope that the new requirements will increase the number of residents voicing their concerns regarding licences *prior* to their approval so that appropriate conditions can be imposed (see also *Complaints*).<sup>14</sup>

In all jurisdictions except the A.C.T. and New South Wales, licensing authorities can modify the above mentioned advertising requirements if necessary. Therefore, if an application relates to an area that has a large Indigenous population, licensing authorities can instruct applicants to advertise in other forms of media, such as community radio, which have a wider Indigenous audience than print media (see *Informing communities—other methods*). However, these provisions are not used to their full capacity. For example, Indigenous informants in all jurisdictions claimed that direct liaison between licensing authorities and appropriate Indigenous organisations—such as Aboriginal medical services—would be far more effective than any form of advertising currently in use.<sup>14</sup> As an informant from the Tasmanian Aboriginal Health Service said, 'Because of our links with other community groups, we can get information circulated, and we have the expertise through those groups and programs to comment on issues and applications'.<sup>14</sup> Therefore licensing authorities should re-examine how Indigenous communities are informed of applications.

#### *Newspaper advertising*

In general, applications must be advertised in a newspaper circulating in the locality of proposed premises at least 28 days prior to the closing date allowed for public objections. However, in Tasmania (Practice Note 13] and Victoria (S35), the need to advertise is at the discretion of the Director and therefore the following discussion only refers to those applications that require advertising.

In the Northern Territory (S27), Victoria (S35), and Western Australia (S67.4) applications are advertised in a newspaper nominated by the Commissioner. For example, if an application is related to a premises in Katherine (NT), the Chairman would direct an applicant to advertise once in the *NT News* and once in the *Katherine Times* so that there is both territory- and regional-wide coverage. In Queensland the application must be advertised 'twice in a newspaper circulating in the locality' (S118.2.a.ii). In New South Wales (Fact sheet 6.1) and South Australia (S52), applications must be advertised in a state-wide newspaper and a local community paper so that, in theory, staff of local papers may become aware of applications and consequently write articles on any applications that may adversely affect a neighbourhood. The South Australian Commissioner considers this requirement to be one of the most effective changes in the new Act and is confident that it will increase community awareness of applications. However, this remains to be shown.

According to informants—even those from the licensing authorities—the effectiveness of newspaper advertising is extremely limited because in most jurisdictions advertisements are relegated to the classifieds or tenders sections of state- or territory-wide newspapers. As a consequence, they are rarely read by the general public and are only likely to attract the attention of other licensees who read them out of commercial interest. In the Northern Territory, however, the Local Government Association of the Northern Territory has a press cutting service whereby they fax licence application notices advertised in newspapers to any local councils likely to be affected by applications. If other licensing authorities appoint Indigenous community liaison officers, a similar service should become one of their tasks.

Given that newspaper advertising is an ineffective means of informing Indigenous community members of applications, licensing authorities should be obligated to take into consideration the demographics and population trends of the locality to which an application relates. Licensing authorities should use that information to identify special interest groups that should receive direct notice of applications. The C.E.O. of the Liquor Licensing Commission in Victoria felt that informing community organisations of license applications would be administratively cumbersome and an unnecessary drain on resources. However, this claim was refuted by the South Australian Commissioner. He believed that directly informing community organisations would allow concerns about applications to be voiced before licences were granted, therefore allowing the Commission to impose appropriate conditions with the ultimate goal of avoiding future problems arising from the premise.

*Signs posted on proposed premises.*

All jurisdictions require that a sign is posted on the proposed site for a premise for a period of between 14 and 28 days prior to the close of public objections (this provision was only implemented in the Northern Territory in October 1998). In some there are standard sizes for signs, whereas in others, there are standard sizes for the writing on signs. The general standard is that signs must attract the attention of local residents and business to applications. Most jurisdictions have provisions whereby Commissioners can specify the types of information included on signs, their size, and dimensions of the print.

When questioned on the effectiveness of such signs, Indigenous informants maintained that regardless of the size and information content of signs, consultation with Indigenous organisations was still far more effective. They felt that even if signs were noticed, individuals would take little or no action, and that this type of information needs to be targeted to organisations that have the infrastructure necessary to lodge an objection to an application should they wish to do so.

**4.2.2 Informing communities—other methods**

As mentioned previously, in Western Australia (S67.3), South Australia (S52.3), and under the new Victorian Act (S35.1), commissioners have broad discretionary powers to modify standard advertising requirements. The effectiveness of these provisions is entirely dependent upon the commissioners choosing to exercise them in ways that benefit Indigenous communities. In South Australia, for example, applicants seeking licences in areas with a significant aggregation of Indigenous people have had to advertise on the radio in Indigenous languages. Along with the radio announcements, the Commissioner has ordered that 'notice be given to specified authorities and persons' (52.3.ii), with the applicants having to inform Indigenous organisations in writing of licence applications.<sup>14</sup> However, the Commissioner is under no obligation to make these instructions and there is no guarantee that future Commissioners will take such a pro-active stance.

Informant interviews revealed that the use of discretionary powers was quite dependent upon the attitudes of commissioners in office. According to informants, some commissioners appeared to be very committed to ensuring that Indigenous communities were informed of applications, while others were quite bureaucratic and not community oriented. For example, Indigenous informants in Victoria perceived the purpose of the Commission, and of the Commissioner in particular, as being only to grant licences, not of community liaison or information sharing. In contrast, the Northern Territory Chairman was seen to have an active interest in

how liquor licensing decisions—in particular licensing restrictions—can affect Indigenous communities.<sup>14</sup>

Licensing authorities should be obligated to make concerted efforts to inform Indigenous communities of pending applications and ensure that people are aware of their rights to act on that information. At present, licensing authorities make little effort to evaluate whether or not their methods achieve the goal of informing communities, and most admit that the methods are flawed. In all cases where applications are lodged in localities with a significant aggregation of Indigenous people, licensing authorities should extend methods used to inform communities beyond standard advertising requirements and instruct applicants to engage in whatever range of activities are necessary to bring applications to the attention of Indigenous community members.

### **4.3 Local councils**

Local councils have the potential to play a major role in liquor licensing issues. They can make by-laws that restrict or control the consumption of alcohol in their municipality, are involved with local ‘accord’ agreements, and can develop council alcohol policies. Although local councils are obligated under liquor licensing legislation to perform certain duties, such as granting council building approval for licensed premises, of most relevance to this research project is the diversity of, and motivation behind, council participation in liquor licensing related matters.

There are three types of local councils, each with their own abilities to control the availability of alcohol: ‘mainstream’ municipal councils, and Indigenous municipal and community councils. For example, in Queensland, Indigenous communities that are located in the Shires of Mornington and Aurukun, or on what is known as Deed of Government in Trust (DOGIT) land, elect municipal councils under the *Community Services (Aborigines) Act 1984*, the *Community Services (Torres Strait Islanders) Act 1984*, or the *Local Government (Aboriginal Lands) Act 1978*. In the Northern Territory, there are provisions in the *Local Government Act* for the election of community councils in areas that are not part of a municipality (Part 5). In Western Australia, communities declared under the *Aboriginal Communities Act (1979)* have ‘councils’ that are governing bodies of communities, but are not municipal councils as defined in the *Local Government Act 1995*. However, these councils can still make by-laws in regard to alcohol.

Some local councils in the Northern Territory, Queensland and Western Australia show a greater interest in licensing matters—especially as they relate to Indigenous communities—than those in other jurisdictions. A number of councils in these jurisdictions have formulated alcohol management policies, participate in local

alcohol action groups, contribute to community debate on alcohol issues and policies, and may, in the case of Indigenous councils, be involved in enforcing by-laws. The range of issues that they address is quite extensive. For example, minutes from meetings attended by local government representatives in the Northern Territory show that the issues discussed included: alcohol restrictions, night patrols, 'two kilometre' legislation, restricted areas legislation, enforcement of liquor licensing related legislation, alcohol rehabilitation programs, home delivery of take-away alcohol, making drunkenness an offence with home detention as punishment, alcohol-related anti-social behaviour, ways in which communities themselves can solve alcohol-related problems, alcohol education, and strategies designed to address the underlying causes of alcohol misuse.

The Local Government Association of the Northern Territory (LGANT) has 62 Indigenous community councils as members. As an organisation it believes that alcohol-related issues—and particularly Indigenous drinking—need to be addressed by local governments. According to representatives of LGANT, alcohol-related issues are the biggest impediment to the reconciliation process between Indigenous and non-Indigenous people in the Northern Territory.<sup>14</sup>

In Western Australia, some local councils are now implementing alcohol management plans for their municipalities. These plans include, but are not limited to, how councils assess licence applications and the reasons for objecting to them, monitoring of licensed premises by environmental health workers, participation in local alcohol accords, and provision of assistance to residents wishing to lodge complaints or objections. For example, the Shire of Stirling in Perth has an alcohol policy that permits the Council to object to a licence application on behalf of residents or ratepayers, and to bear any legal costs involved. This latter point is significant as legal costs can be a major inhibition to community participation in liquor licensing matters.

Other strategies adopted by local councils in Western Australia include the appointment of a community development officer in Broome to work with communities on alcohol issues. Some of the officer's duties include participation in negotiations for a local accord, developing culturally appropriate printed materials about liquor licensing and other alcohol issues, conducting research, and disseminating information. The officer argued that all local councils need to designate resources, both financial and otherwise, to design and implement strategies that address liquor licensing issues, especially in areas where alcohol has become a racially divisive issue.<sup>14</sup>

In contrast to the situation in the above jurisdictions, representatives of licensing authorities and police in New South Wales, Victoria, South Australia, Tasmania and the A.C.T. commented that local councils need to become more involved with liquor

licensing issues, and the general view was that 'local councils are just a dead loss'.<sup>14</sup> Although this is not true for all councils, it appears from informant interviews in these states—including interviews conducted with representatives of local council associations—that the majority of local councils prefer to remain distant from any liquor licensing issues that do not involve town planning issues.

Interviews with local council associations and other informants in these jurisdictions indicated that the main reasons for councils avoiding liquor licensing issues were a lack of human and financial resources, a lack of knowledge about the various pieces of legislation involved, and a lack of pressure being placed upon councillors by their constituents. Informants also argued that councillors were often members of the business community, and thus their interest in licensing issues may reflect their commercial interests and business networks. This comment was particularly directed at how local governments respond to public drinking issues.<sup>14</sup>

When councils in these jurisdictions do become involved in licensing issues, it is often in regard to public drinking and the declaration of alcohol free zones. Councils usually take a pragmatic view of these matters and attempt to eliminate public drinking by having police simply 'move on' Indigenous people who are drinking in public because there is a perception that their presence may adversely affect local businesses (see *Enforcement* and *Dry areas*). However, there is no evidence to suggest that this is the case.

Most other licensing issues, such as new licence applications, are dealt with according to a number of criteria. These criteria include how politically active residents are, whether councils only concern themselves with town planning issues, and whether councils have set guidelines for dealing with liquor licensing matters.

There are some issues that apply more to 'Indigenous councils' than to 'mainstream councils'. For example, informants reported that community and family politics can play a major role as to who is elected to Indigenous councils, and informants in Queensland in particular expressed concern that decisions taken by councils regarding alcohol—such as trading hours of licensed canteens—and enforcement of alcohol-related community by-laws often reflect whether there is a majority of drinkers in the council.<sup>14</sup> Similarly, McCallum argues that enforcement of council by-laws is only possible when councils have sufficient community support, and that by-laws which are enforced during one council's term of office may be ignored during the next.<sup>68</sup>

The situation in Queensland warrants further explanation as there are provisions within the *Liquor Act* that specifically deal with Indigenous communities (Part 8). Local Indigenous councils may apply for a liquor licence, although they must consult with communities before doing so. The *Community Services (Aborigines) Act 1984* gives local community councils the power to draft their own by-laws for liquor

offences, and these by-laws over-ride provisions for offences committed under the *Liquor Act*. Section 39.2 of the *Community Services (Aborigines) Act* allows for by-laws to be enforced by community police, who are appointed by councils; although matters such as enforcing trading hours and serving alcohol to intoxicated persons are enforced by state police (see *Enforcement*).

In 1991, the Aurukun Shire Council requested that the Queensland Government develop legislation that would assist in the Council's attempts to control the availability and use of alcohol. The Council argued that existing laws were ineffective against 'sly-grogging' in particular. In 1995, the *Local Government (Aboriginal Lands) Act 1978* was amended and included provisions for establishing the Aurukun Alcohol Law Council (S43). The responsibilities of the Law Council include:

- declaring dry or controlled public and private places (S58.1 & S58.2);
- issuing permits for the consumption of alcohol (S63.1);
- declaring the quantity or type of alcohol that a person may possess, consume, or transport in a plane (S59.2); and
- consulting the community when it proposes to declare an area dry or controlled.

As is the case in Queensland, in Western Australia on lands declared under the *Aboriginal Communities Act 1979*, Indigenous councils can make community by-laws concerning 'the prohibition, restriction or regulation of the possession, use or supply of alcoholic liquor or deleterious substances' (S7.1.g). Those by-laws can be enforced by members of the Police Service at the request of councils (S7.2), although critics claim that there is insufficient access to police support for effective enforcement.<sup>64,65</sup> When local councils have attempted to remedy the situation by enforcing by-laws themselves, police have informed them that their actions are illegal.<sup>68</sup>

#### **4.4 Local 'Accords'**

Local 'accords' have become a popular form of community-based intervention around Australia and represent an opportunity for police, health departments, non-government organisations, local councils, and licensees to work together to reduce alcohol-related harm. According to representatives of licensing authorities, accords in urban areas are usually aimed at promoting responsible service and security (bouncer) practices, while in rural areas with a significant aggregation of Indigenous people, they are often aimed at reducing alcohol-related harm among that specific population. In the latter case, accords normally include an agreement by licensees to not sell alcohol in a prescribed manner, such as four litre casks of wine or beer in glass containers, and later opening times of 10am. The difference between accords and licensing restrictions or conditions is that the former are voluntary agreements between licensees, while licensing authorities impose the latter.

Of all the accords operating around Australia, the only ones that have been comprehensively evaluated are those in Fremantle (WA), Geelong (VIC), Geraldton (WA), and Surfers Paradise (QLD). The results of the evaluations are either inconclusive due to data problems, or show that accords may actually increase alcohol-related harm.<sup>74-77</sup> Despite this, local police and residents often regard accords as a panacea for alcohol-related law and order issues, and they continue to espouse them as an effective non-legislative control over alcohol.<sup>14</sup>

The main concern about accords is that they are voluntary agreements and therefore not enforceable by law. Thus, if licensees decide to breach the terms of an accord, they cannot be prosecuted. Furthermore, if new licensees take over premises, they are under no obligation to adhere to the terms of an accord. Without legislative controls, there is nothing more than community spirit binding the licensees to accords. The South Australian Commissioner stated, 'I don't really believe in accords. If they're (licensees) serious about doing the things laid out in the accord, then let me make them a condition of their licence.'<sup>14</sup>

#### **4.5 Beer canteens and licensed clubs**

The Northern Territory and Queensland are the only jurisdictions that have legislation with specific provisions for licensed premises to be owned, operated and administered by Indigenous communities. These premises, known as licensed social clubs in the Northern Territory and beer canteens in Queensland (henceforth collectively referred to as clubs), are designed to allow Indigenous communities greater control over the supply of alcohol than would be possible with a regular on-licence premise. In the Northern Territory, there are eight communities with licensed clubs, and in Queensland there are 18 licensed canteens. The standards of clubs varies from well designed, maintained and managed, to what can only be described as extremely poor examples of a controlled drinking environment.

There are a number of reasons for establishing social clubs. First, the 'Living with Alcohol Program' in the Northern Territory advocates social clubs as being 'places where people, with the support of family and community, can learn to drink alcohol in a responsible way'.<sup>78</sup> Second, they are a harm minimisation strategy designed to reduce the number of people drinking away from their community, which in turn reduces the likelihood of road fatalities and drunken altercations with town police. Third, they give communities an opportunity to implement restrictions over the type and amount of alcohol sold, the times at which it is sold, and to whom it is sold. Fourth, they can be a focal point and resource centre for non-alcohol-related community activities, such as cultural days or sporting events. Fifth, and to some

most importantly, they generate profits that can be used for community infrastructure and projects.<sup>78</sup>

Despite these sensible objectives, few clubs appear to provide the controlled drinking and entertainment environment for which they were established. There have been few formal evaluations of social clubs, and they have found that having a club in a community actually increases alcohol consumption and alcohol-related injuries.<sup>26,79,80</sup> As Dillon states, 'The continual presence and almost daily dispersing (sic) of alcohol ... invariably provides a recipe for trouble.'<sup>82</sup>

Regardless of the outcomes of research into the impact of clubs on the health and welfare of communities, clubs are often espoused by government officials, police, and—predominantly—non-Indigenous people as the best way to deal with Indigenous drinkers who live in areas with limited access to alcohol. The main reason for this is to keep Indigenous drinkers in their communities and thus avoid an influx of 'trouble drinkers' to the towns. Although this may reduce alcohol-related road fatalities and altercations with police as desired, it also means that communities—which do not have the police resources necessary to control drunken behaviour—must tolerate excessively high levels of alcohol-related harms. These harms have also been attributed to alcohol being more accessible in communities due to the presence of clubs.<sup>26,80</sup>

Although some clubs, such as the club at Daly River and the Tyeweretye Club in Alice Springs, do result in benefits to communities, they are controversial for a number of reasons.<sup>24,82</sup> The main concern is that most communities are dependent upon club profits to fund community infrastructure and are disturbingly reliant on 'grog money' for services and projects previously funded by competitive government funding.<sup>14,70</sup> For example, Marsden found that the club profits in a community of 430 residents amounted to more than \$500 000 per annum.<sup>70</sup> This represents a massive proportion of the community members' disposable income, and it was used to finance such projects as housing and improvements to the school, services normally provided by government.

The dependence on 'grog money' has two effects. First, communities believe that grog money is an easier and more reliable source of funds than the government.<sup>67</sup> Second, it becomes difficult to gather support for licensing restrictions and other measures to reduce excessive consumption. For example, an informant in the Northern Territory recounted a case where 200 community members confronted a club manager about his unethical trading practice, only to be reminded that the club contributed to the community school and other infrastructure. The community took no further action.<sup>14</sup>

Another effect of clubs is that club managers may become the most powerful economic—and therefore political—figures in communities.<sup>26,79</sup> This is especially

problematic in Queensland where canteens are controlled by local Indigenous councils, which are also responsible for communities' overall well-being, enforcement of local by-laws, and operation of other profitable businesses. It is also true that the vast majority of people controlling clubs are drinking males who are less inclined to consider the wishes of non-drinkers and women, particularly in regard to licensing restrictions or any other intervention that may reduce either profit or access to alcohol.

Due to both the advantages and drawbacks of clubs, most communities are divided in their views as to whether or not clubs offer facilities and services that benefit Indigenous people. For example, Marsden reports that while some Indigenous councils in Queensland would like to close clubs to reduce alcohol-related harm, there are fears that to do so would result in increased 'sly-grogging' and financial hardship for communities due to loss of club profits.<sup>70</sup> In the Northern Territory, organisations such as the Council for Aboriginal Alcohol Program Services strongly disagree with clubs, and state,

Some stupid people in the police and the government are saying that we should have that wet canteen in our communities. This is not a good way to go, these places are too small and there are a lot of people who have their rights not to have the grog around all the time.<sup>83</sup>

Police informants in the Northern Territory and in Queensland had differing views on the effectiveness of social clubs. Police in the Northern Territory believed that, on the one hand, clubs provide communities with a way to control alcohol in their locality, focus recreational activities away from drinking, and contain alcohol-related problems within the community. On the other hand, they also acknowledged that easy access to alcohol causes a range of disturbances—including sometimes violent clashes between drinkers and non-drinkers, that many women are opposed to clubs due to previous experience with poorly managed premises, and that some police would prefer drinkers to consume alcohol in towns where there is a greater police presence.<sup>14</sup> Overall, however, police informants reported that most individual police supported the existence of clubs.

Police informants in Queensland had somewhat more ambivalent attitudes towards canteens. They felt that it was anomalous to have dry communities adjacent to wet communities as this defeated the purpose of dry communities. They believed that the restricted trading hours operating in some canteens actually encouraged binge drinking, and therefore contradicted the 'responsible consumption' objective of canteens. They also felt that canteens create political alignments between drinkers and non-drinkers, and these alignments can lead to riotous behaviour.<sup>14</sup>

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## 4.6 Recommendations for Community Participation

### *Advertising*

14. That advertising requirements should be established which bring new licence applications to the attention of Indigenous community members and organisations.
15. That where it does not occur, peak Indigenous community, health, welfare and legal organisations receive direct notice of new licence applications if licences relate to localities with a significant aggregate of Indigenous people.
16. That, where it does not, the role of Indigenous community liaison officers should include the identification of, and liaison with, Indigenous community organisations which can inform communities of applications.

### *Local councils*

17. That, where it has not occurred, local councils and governing bodies formulate an alcohol management plan for their locality.
18. That, where it has not occurred, an employee of local councils and governing bodies be assigned the responsibility of informing local community groups about liquor licensing matters.
19. That, when commenting on licence applications, local councils and governing bodies should take into consideration the potential health and welfare effects of licenses, and the availability of alcohol in their municipality.

### *Accords*

20. That local accords should not operate in isolation, but rather be one aspect of a local council alcohol management plan.
21. That local accord agreements be made conditions of licences so that breaches of the accord can be enforced.

### *Beer canteens and licensed clubs*

22. That, where it does not occur, all licensed club managers ensure compliance with laws regarding responsible service of alcohol.

23. That, where it does not occur, licensing authorities assess whether applications for new club licences are likely to affect nearby dry communities. Residents of those communities should be notified of the application and representatives of licensing authorities should solicit opinions of those residents in addition to opinions of residents where clubs will be located.
24. That a review be conducted into the contribution of social club profits to basic community infrastructure.
25. That, where it does not occur, liquor licensing authorities should investigate ways to support communities wishing to undertake research into the health and welfare impacts of clubs.

## 5.0 ENFORCEMENT AND ADMINISTRATIVE MATTERS

### 5.1 Objections, complaints and hearings

#### 5.1.1 Objections

Each jurisdiction has a mechanism whereby community members, police, and local councils can lodge objections to applications. The grounds for objections vary, and may include commercial, welfare, law and order, or neighbourhood amenity concerns. The way in which objections are lodged and dealt with also varies, and sometimes these processes depend more upon how individual commissioners wish to exercise their powers, than legislation itself. The overall complexity of processes involved in objecting, and often the cost of legal representation, impede the ability of community members to successfully object to an application.

In most jurisdictions, a simplified version of the objections process is as follows:

- Party (either individual or group) sees an advertisement in paper or hears about it through some other means.
- In the case of local councils and police, they are directly notified of the application.
- Party has up to 28 days to lodge an objection with licensing authority.
- Party lodges an objection in the approved format to the licensing authority.
- Licensing authority may investigate the objection.
- Licensing authority calls a conference or hearing.
- Licensing authority decides on application.

Although the above list may make the process of objecting appear to be relatively simple, it is complicated and may involve objectors in extensive interaction with licensing authorities, collecting various forms of evidence, participating in meetings and attending hearings. Furthermore, it can be difficult for Indigenous communities to participate in the process because of restrictions on financial resources, travel, and time. This is particularly true for communities located in remote or rural areas as objectors may be required to travel long distances for a hearing.<sup>2,14,82</sup> However, the greatest inhibition to communities objecting to licences is the lack of information available to them, and the licensing authorities' failure to use culturally appropriate methods to *pro-actively* seek community views on licence applications in areas with significant aggregations of Indigenous people.

All Indigenous informants felt that processes involved in lodging objections were bureaucratic, disempowering and culturally biased.<sup>14</sup> For example, an informant from ATSIIC in the Northern Territory felt that the objection process did not function well because it did not involve face-to-face consultation between objectors and the licensing authority; and an informant from the Northern Territory Health

Department believed that the current process was too complicated for participants to follow.<sup>14</sup> Informants from the Social Justice Commission and the Race Discrimination Commission noted that the time frames within which objections had to be lodged were inadequate for the amount of community consultation required.<sup>14</sup>

Given the difficulties experienced with the processes involved in objecting, Indigenous communities have called for their simplification, including that objections be lodged in either an oral or written form with local police or local councils.<sup>13,14</sup> This suggestion is partly in order to reduce the disadvantage experienced by communities in rural locations, and partly because police and local councils are already required by legislation to comment on licence applications. It was argued that it would be to the advantage of the whole community if these authorities liaised with local Indigenous groups whenever they are notified of applications.<sup>14</sup> This would ensure that members of Indigenous communities are made aware of applications and can therefore lodge their own objections if desired. In addition, it would encourage police and local councils to consider more thoroughly the implications for Indigenous communities should licences be granted.

The grounds on which objections may be lodged can vary depending upon whether the objector is a local council, the police or a resident. Local councils are responsible for commenting on land use issues and how licences may affect the amenity of neighbourhoods, and police are responsible for assessing the potential impact of licences on law and order issues. In areas with high levels of alcohol-related harm, police may object to the granting of a hotel, take-away or night club licence and argue that either a licence should not be granted due to law and order concerns, or, more commonly, that conditions should be placed on a licence, such as trade restrictions, the provision of lighting and security cameras.<sup>14</sup> Local councils may object and make representations as to why a licence is not in the best interest of a community.

Indigenous informants stated that being able to object to licences during the application process was vital as it was extremely difficult to have conditions imposed or altered once a licence was granted.<sup>14</sup> The most common reasons for community members objecting to applications were the perceived impact upon the amenity of neighbourhoods and concerns for the well being of community members. The latter has become more prevalent since the formal introduction of harm minimisation into liquor legislation—with Western Australia (S74.1.b) and Victoria (41.1.b.ii) now specifying harm minimisation among their grounds for objection. While other jurisdictions do not have similar clauses, most have harm minimisation as an object of their *Acts*, and, therefore, licensing authorities can object to applications on the grounds that they are contrary to the principles and/or objectives of the *Acts*.

It is worthwhile to briefly compare the new objection clauses of the Victorian and Western Australian legislation. In Victoria, licensing inspectors have the power to object to applications on the basis of harm minimisation:

41(1) A licensing inspector may object to the grant, variation, transfer or relocation of a licence on any of the following grounds--...

(b) in the case of a grant, variation or relocation--...

(ii) that the grant, variation or relocation would be conducive to or encourage the misuse or abuse of alcohol.

Section 39 allows the Chief Commissioner of police to object to applications 'on any grounds he or she thinks fit', including harm minimisation. Community members, however, are only able to object on the grounds that a licence will have a negative impact on a neighbourhood's amenity (S38).

In comparison, in Western Australia any person may lodge an objection based on Section 74 of the *Act*, which reads,

(a) that the grant of the application would be contrary to the public interest;

(b) that the grant of the application would cause undue harm or ill-health to people, or any group of people, due to the use of liquor....

(g) that if the application were granted -

(ii) the amenity, quiet or good order of the locality in which the premises or proposed premises are, or are to be, situated would in some manner be lessened.

In Western Australia, the previous legislation allowed for objections if 'the grant of the application would be contrary to the public interest' (S74.1.a). However, it was found in the Derby case (see *Restrictions*) that 'public interest' did not include public health issues. The new legislation rectified this by nominating public health issues as grounds for objection separate from other 'public interest' issues.

Although there are numerous formal requirements for lodging objections, licensing authorities can exercise their discretion in many circumstances. For example, most can accept an objection even if it is lodged after the specified time frame—provided that the application has not yet been determined. Commissioners from Victoria, Tasmania, the Northern Territory, and South Australia will consider oral statements of objection and then take it upon themselves to investigate the issues further if the objections appear to be serious in nature. Some commissioners, particularly the South Australian Commissioner and the Northern Territory Chairman, will seek out the opinions of Indigenous communities because they acknowledge the fact that a lack of objections does not necessarily reflect the feeling in a community. Once again, however, commissioners are under no obligation to perform these tasks.

The difficulties involved in objecting can be magnified in remote or rural areas where low literacy levels, limited resources, and the unwillingness of many community members to be named on objections—often for fear of reprisal from drinkers—play a role. Some non-Indigenous informants noted that these communities may have access to, or may be represented by, tertiary educated

community members or well organised local Indigenous councils. However, the reality is that with the limited resources available to community organisations, more pressing community problems must often take priority over alcohol issues.

Once an objection is lodged and a hearing or conciliation conference takes place, there are three possible outcomes: the objection is upheld and the application is declined; the objection is upheld and the licence is granted with conditions; or, the objection is overturned and the licence is granted without conditions. In all cases, any party aggrieved by the outcome of an application can appeal the decision (see *Hearings*).

### **5.1.2 Complaints**

Each jurisdiction has provisions that allow complaints to be lodged against licensees by either some or all of the following parties: police, licensing authorities, local councils, residents, or, in some jurisdictions, other people affected by licences such as business owners. The grounds for complaint vary according to the jurisdiction, circumstances, and who is lodging the complaint. For example: residents may lodge complaints that noise emanating from premises is disturbing the quiet and good order of a neighbourhood; police and licensing authorities may lodge complaints that licensees served intoxicated persons or contravened licence conditions; and local councils may lodge complaints that there is constantly broken glass and vandalism in the vicinity of premises. Representatives of licensing authorities reported that few Indigenous people lodged complaints. However, as one Indigenous informant stated, this was likely to be the result of 'the current procedures for lodging complaints (which) are culturally biased, and (because) most Aboriginal organisations don't know about their right to lodge complaints or how to do it.'<sup>14</sup> For example, Indigenous informants felt that having to lodge complaints with licensing authorities in cities disadvantages Indigenous people located in remote or rural locations, and having to submit written complaints is intimidating.

The process for lodging complaints against licensees is similar to that of lodging objections. Persons may make complaints by lodging the appropriate forms with licensing authorities, or, in some jurisdictions, by making oral complaints. Once a complaint is received, a number of events may occur depending upon the jurisdiction, the severity of the complaint, and the normal methods employed by the licensing authority. For example, there may be a process of conciliation between the parties, further investigation by the licensing authority, a request for opinions or information from the police and local council, or a hearing on the matter. Depending upon the outcome of these processes, complaints may be dismissed, conditions may be placed on licences, licences may be suspended—although this is very rare except

in extreme cases such as riots—or licensees may agree to put measures in place that will prevent recurrence of problems.

Police and local councils are usually well informed about how to proceed with complaints, and residents can raise their concerns with these bodies to ask for assistance and support in lodging complaints, although it was rare for Indigenous people to ask for such assistance. Informants from police and local councils in all jurisdictions admitted that they had inadequate resources with which to assist all residents who wish to complain, yet they claimed that they informed residents of steps that could be taken in order to bring problems to the attention of licensing authorities. In some localities, local councils and police have a policy of investigating complaints made by residents and will lodge formal complaints with licensing authorities if deemed necessary.<sup>14</sup>

Despite the existence of provisions for lodging complaints, some Indigenous community groups interviewed during this review were unaware of the provisions and their rights in this regard.<sup>14</sup> For example, a meeting with ATSIC representatives in Victoria revealed that there was a problem with a licensed premise operating in the vicinity of an Aboriginal medical service. Everyone present at the meeting was surprised to discover that they could speak with the Chief Executive Officer (now Director) of the Victorian Liquor Commission about the issue as they thought ‘the Commission is only there to grant licences’.<sup>14</sup> In fact, even members of the peak Indigenous drug and alcohol body in Victoria had no idea that the functions of the Commission extended beyond granting applications.<sup>14</sup>

In other jurisdictions, especially the Northern Territory and South Australia, some informants were aware of provisions for lodging complaints. This is likely to be due to the greater liaison between licensing authorities and community members in these jurisdictions. However, informants noted that complaints provisions were culturally inappropriate, and there was a perception that action would not be taken against licensees unless communities managed to acquire substantial evidence of breaches of licence conditions.<sup>14</sup> In South Australia, residents are required to complain about a licence via local councils, police or the Liquor Licensing Commission. In order to demonstrate the inadequacy and complexity of this system, informants spoke of a case where an Indigenous community organisation complained to the Commissioner about a licensee contravening some conditions of his licence. The community hired a private investigator, who collected video evidence of allegedly illegal alcohol sales, yet the complaint did not result in charges being laid. As a consequence, some Indigenous community members have lost faith in the complaints process, especially as they were not provided with an explanation as to why charges were not laid.<sup>14</sup>

In Queensland and the Northern Territory, residents cannot lodge complaints generally about licensees unless licensees are contravening conditions of their licences. Therefore, communities are powerless to complain about issues such as the supply of alcohol on credit or licensees transporting residents of dry areas to their premises for a drinking session if those issues are not included as conditions on the licence. Importantly, it is not possible to complain about breaches of informal conditions that may have been negotiated between licensees and local Indigenous communities.<sup>1,71</sup>

In addition to regular provisions under its *Liquor Act*, Queensland has other provisions within the *Act* that allow Indigenous local councils to lodge complaints regarding premises operating on council land (S198). Complaints can be made if, for example, the sale of liquor 'is the direct or indirect cause of regularly occurring disorder or breaches of the peace in the community area' (S198.1.a), is 'a detriment to the health and wellbeing of ... the community' (S198.1.c.i), or is 'a source of danger to (the) life or safety of members generally of the community'. (S198.c.ii.A)

### **5.1.3 Hearings**

Each jurisdiction has provisions to conduct hearings on licence applications and complaints. However, the procedures vary greatly between jurisdictions. In some, Commissioners conduct the majority of these hearings, while in others, a specialised liquor licensing court or panel hears cases. Parties aggrieved by the findings of a hearing have the right to appeal against the decision to a higher court or tribunal.

In the A.C.T. hearings are conducted by the Liquor Licensing Board. The Board may inform itself as it sees fit (S96.A.1 & S98.3) and the procedure of hearings is at its discretion (S98.1). The Chairperson fixes a place for each hearing (97.1) which can be changed if necessary (98.5). Parties aggrieved by a decision of the Board may appeal to the Australian Capital Territory Administrative Appeals Tribunal (S104).

In the Northern Territory, the Chairman normally conducts hearings, although either a single member or a group of three members of the Commission nominated by the Chairman can do so (S51.2.a). The Chairman fixes locations for hearings (S51.1) which can be changed if necessary (S51.4) and all parties are given the opportunity to be heard (S51.3.c). Parties aggrieved by the findings of a hearing may apply to the Chairman for a new hearing (S51.10.a). When a new hearing is held, a group of three members of the Commission must conduct the hearing. Unlike other jurisdictions, the decision of the Commission is final and conclusive, and 'Shall not be challenged, appealed against, reviewed, quashed or called into question in any court.' (S56.b)

In New South Wales, the Licensing Court is the body that determines licensing matters. Hearings take place at locations determined by the court and in the past they have taken place in rural towns so that witnesses can easily attend.<sup>14</sup> The court may inform itself as it sees fit and 'shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms' (S12.2). Parties aggrieved by the findings of a hearing may appeal to the Supreme Court on a question of law (S146).

In Queensland, on receipt of an objection to an application, the Chief Executive (CE) must call a conference of concerned parties (S121.3). During the conference, if an agreement is reached between parties and the CE concurs that it is lawful, s/he may make a decision that reflects the agreement. If parties cannot agree and the CE makes a decision against which they wish to appeal, parties may take the matter to the Tribunal (S21.1). Hearings occur at places designated by the Tribunal (S34.1) and all parties lodging an application, submission or objection must be notified in writing that an appeal has commenced (S33.1). During the hearing, people notified under section 33.1 are entitled to speak or have their legal representative speak on their behalf (S34.4). Members of the Tribunal can decide on a matter based upon the evidence before it if all parties agree, thereby eliminating a need for a hearing. Otherwise, they hear a case and hand down a written ruling that includes the reasons for their decision. Parties aggrieved with the Tribunal's finding may appeal against decisions to the Supreme Court on grounds of error of law (S24.1).

In South Australia, the Commissioner determines all non-contested matters that are not under the jurisdiction of the Licensing Court and all contested applications for a limited licence (S17.a). The Commissioner is responsible for holding a conciliation conference between parties that reaches a mutually agreeable outcome (S17.b.i), and decides matters if disputes are not resolved (S17.b.ii). When conciliating a matter, the Commissioner may inform himself/herself as s/he sees fit (S18.b) and may hold conferences at places s/he considers to be the most appropriate for a case. S/he may refer cases to the Court for a hearing if s/he considers that they 'involve questions of substantial public importance' (S21.a) or should 'in the public interest or in the interests of a party to the proceedings, be heard or determined by the Court.' (S21.c)

Parties aggrieved by the Commissioner's decisions may appeal to the Court (S22). The Court may inform itself as it sees fit (S23.b) and make a determination on cases or refer them back to the Commissioner for his reconsideration. If parties disagree with the Court's decision, they can apply to the Supreme Court for leave to appeal against it (S27), although they cannot appeal against a decision that the court has made on a review of the Commissioner's original decision (S27.1.b). South Australia

is the only jurisdiction where parties do not have *locus standi* as discussed in the section on *Community Participation*.

In Tasmania, parties aggrieved by the Commissioner's decision may appeal in writing to the Licensing Board (S212). The Board sets places for hearings (S213.1) and can inform itself as it sees fit (S213.e). Unlike most other jurisdictions, in Tasmania, parties are not entitled to be represented by a legal practitioner unless the Board considers that such representation is necessary to ensure natural justice (S213.6). The Board's decisions are final, although it may refer matters to the Supreme Court on questions of law arising from appeals (S215.1) and it is bound by the Supreme Court's findings (S215.3).

In Victoria, under the *Liquor Control Reform Act*, the Director refers matters such as objections to applications to the Liquor Licensing Panel for hearings, and the Panel makes recommendations to the Director as to the appropriate course of action. The Director makes determinations based on the Panel's recommendations, and aggrieved parties may appeal against decisions to the Victorian Civil and Administrative Tribunal. The Panel may inform itself as it sees fit (S169) and witnesses may give their evidence either orally or in writing (S164.3).

In Western Australia, the Director hears all matters except those lodged under section 95 *Disciplinary Action* and appeals (S30). S/he may conduct hearings, meetings, consultations and negotiations in places as s/he sees fit (S16.3), and all parties are given an opportunity to present their case (S16.11). Parties aggrieved by the Director's decision may appeal to the Liquor Licensing Court for hearings (S25). Parties aggrieved by decisions of the Liquor Licensing Court may appeal to the Supreme Court on questions of law only (S 27 & S28).

Hearings procedures have a number of implications for Indigenous communities. First, the process itself often requires that Indigenous community representatives leave their home communities and travel to a city or large rural center for the duration of a hearing. This can place significant drains on limited community resources, and remove people from their daily responsibilities. Second, Indigenous people are, for historical reasons, often distrustful and intimidated by the legal system, and the unfamiliar courtroom environment may result in people being reluctant to speak. Third, the processes that communities are required to participate in—from the initial objection or complaint, to the final hearing—are protracted, unclear, complex and culturally biased.<sup>11,23,84</sup> For example, when residents of Yalata (SA) applied to have restrictions placed on alcohol sales in their region, they did not know until immediately prior to the court date whether or not their legal representatives would be allowed to speak in court. The whole process from the time the application for restrictions was lodged until they were in place took nine months, and, as Brady states:

There was ... considerable anxiety in the community about the drawn out and complex nature of the processes involved. ... The procedures were unclear, not just to the bemused community council, but to the lawyers, ATSI managers and to myself.<sup>23</sup>

## 5.2 Enforcement by Police and Licensing Authorities

The enforcement of liquor licensing related legislation, and the impact of that enforcement on Indigenous people, is one of the most complex issues raised in this project. This is due to a number of factors. First, there are complicated divisions of enforcement responsibilities between licensing authorities, state/territory police, community police, security personnel on licensed premises, and local governments. The inter-relationship of these enforcement agencies, their internal policies, the attitudes of staff, the range of legislation that they enforce, and their willingness to enforce it, can influence how liquor licensing related legislation affects Indigenous people on an individual and community level. Second, enforcement of legislation within a jurisdiction can vary by geographic region, with different approaches to enforcement reflecting local needs and concerns. This may result in inconsistent application of legislation, sometimes benefiting and sometimes disadvantaging Indigenous people in particular locations. Third, there are provisions in some legislation—particularly in Queensland, Western Australia, South Australia and the Northern Territory—that are designed to allow Indigenous communities and individuals greater control over access to alcohol, and the enforcement of these provisions can be complicated. Finally, the broader political climate and fluctuations in community attitudes may influence the ways in which liquor licensing related legislation is enforced.

As mentioned in the introduction, over the past decade there has been a liberalisation of liquor licensing legislation with a concurrent introduction of responsible service and harm minimisation requirements. However, enforcement procedures have done little to ensure that licensees consistently and adequately apply harm minimisation and responsible service practices. Research has shown that unless there is a high probability of prosecution, and that penalties will be applied, compliance with laws will be weak.<sup>86-88</sup> Informants in all jurisdictions felt that, in most cases, the enforcement of liquor licensing laws was insufficient, and that—as licensees did not perceive a real threat of prosecution and resultant pecuniary loss—irresponsible service and breaches of licence conditions occurred regularly.<sup>14</sup>

Informant interviews and other research show that Indigenous people perceive the enforcement of liquor licensing legislation to be particularly poor in remote and rural areas, despite alcohol contributing to up to 90 per cent of protective police

custodies and two thirds of all court appearances.<sup>14,88</sup> They argued that there is insufficient monitoring of both formal restrictions and informal agreements between licensees and some remote Indigenous communities,<sup>1,14</sup> and that there is inadequate enforcement of responsible service to Indigenous people in general.<sup>1,35</sup> They also felt that there are inherent difficulties in how evidence must be collected in order for licensees to be prosecuted, and even police informants agreed that the evidence needed to support a charge discouraged police from prosecuting licensees.<sup>14</sup> The problem with evidentiary requirements was also addressed in *The Alcohol Report*, which states, 'If liquor inspectors ... cannot make a case against an irresponsible licensee, it is not surprising that citizens have trouble making complaints stick.'<sup>1</sup>

Enforcement authorities in New South Wales, Victoria, Queensland and Western Australia have attempted to increase the levels of enforcement by using on-the-spot fines for some offences. On-the-spot fines differ from fines issued under liquor acts—which are criminal offences—as they are infringement notices issued for civil offences. They are usually ten per cent of the maximum penalty for equivalent criminal offences, and apply in cases of more minor offences, such as allowing intoxicated persons to remain on premises. Police reported that on-the-spot-fines have made it easier to fine licensees and employees, and it has made requirements for evidence of offences less onerous. They also reported that on-the-spot fines reduce the amount of time and resources associated with court appearances. As a consequence of these factors, police informants claimed that a greater number of fines have been issued to licensees and their employees for minor offences regarding, for example, irresponsible service.<sup>14</sup>

In some jurisdictions, enforcement is fairly straightforward. In Victoria, for example, there are specially trained licensing inspectors within the Victorian Police whose main responsibility is enforcing the *Liquor Control Reform Act*. Operational police can also charge people for offences committed under the *Liquor Control Reform Act* or the *Summary Offences Act*. Police have the option to issue on-the-spot fines to licensees, staff, or patrons, and either party can nominate to have matters heard in a Magistrate's Court. If offences relate to licensees and are of a serious nature, police can apply to the Liquor Licensing Commission to have licences suspended or cancelled.

The situation in Queensland is much more complicated by comparison. The Investigations and Complaints Unit of the Liquor Licensing Division may investigate offences committed by licensees or staff under the *Liquor Act*, either as a routine investigation or in response to a complaint by police. State police can enforce offences committed under the *Liquor Act*, such as underage drinking, or under the *Police Powers and Responsibilities Act 1997*, such as assault. Both the police and Liquor Licensing can issue on-the-spot fines (Self Enforcing Ticketable Offence

Notices, known as SETONS) for offences committed under the *Liquor Act* or, if the matter is more serious, recommend prosecution in a Magistrate's Court.

In addition to these normal enforcement procedures, many remote Indigenous communities in Queensland are also subject to a range of alcohol-related community by-laws that are enforced by Indigenous community police. Communities that are located in the Shires of Mornington and Aurukun, or on what is known as Deed of Government in Trust (DOGIT) land, come under the jurisdiction of the *Community Services (Aborigines) Act 1984*, the *Community Services (Torres Strait Islanders) Act 1984*, or the *Local Government (Aboriginal Lands) Act 1978*. Offences committed under these Acts are dealt with in a community court. Although communities are still subject to state liquor licensing and criminal offence legislation, community by-laws prevail when there is an inconsistency between the two systems.

Given the dual-law/dual-enforcement situation that exists in remote communities, the relationship between community police and state police in Queensland presents a further dynamic in the enforcement of liquor licensing legislation. Community police are community members appointed by local Indigenous councils to enforce community by-laws and to assist state police in enforcing state legislation. Their wages are usually paid from Community Development and Employment Program (CDEP) money, although there have been recent attempts by communities to have the positions funded out of the state police budget. Since community police are being paid by what are regarded as community funds, yet are being trained and supported by state police, they have, as one informant described it, two masters—community councils and police.<sup>14</sup>

One of the problems faced by community police is that most have very limited expertise in liquor licensing related issues. An informant claimed that this is due to the high turnover of community police, which was said to be a consequence of highly stressful working conditions and community police not being paid wages commensurate with their duties. The result of the high turnover rate is that community police are poorly trained for the duties they are expected to perform.<sup>14</sup> Another informant believed that unsuitable people are sometimes chosen for the positions, and another that 'there is a real distinction between what should and does happen'.<sup>14</sup>

The difficulties of enforcing licensing legislation in Queensland's remote Indigenous communities are further compounded because there are only 15 liquor licensing investigators for the whole state, and, like most jurisdictions, the vast majority of state police posted to remote communities do not have an in-depth knowledge of the *Liquor Act*. In addition, Justices of the Peace who are responsible for hearing matters in Indigenous courts often do not understand all the

technicalities of the legislation, and informants alleged that some community courts become more like 'kangaroo courts' where there is sentencing without due process.<sup>14</sup> As discussed previously in the report (see *Beer Canteens and Licensed Clubs*), there is also a great deal of pressure placed upon local councils to allow licensed canteens to generate maximum profit, and this can result in community police and Justices of the Peace being encouraged to ignore breaches of liquor by-laws.<sup>70</sup>

Western Australia also has provisions for the enforcement of community by-laws on lands declared under the *Aboriginal Communities Act (1979)*. Unlike Queensland, there are no community police in Western Australia and only state police can enforce by-law offences. The absence of community police or wardens has been criticised for two reasons.<sup>68</sup> First, state police cannot always attend to disturbances as they arise, due to the limited number of police posted in remote areas and the time required to travel to communities. Second, community members feel that compliance with by-laws would be increased if the communities themselves were responsible for their enforcement, although this has not necessarily been the case in Queensland. They feel that relying on outside authorities to enforce by-laws undermines the original intention—that is, self-determination—of the *Act*.<sup>68</sup> They also claim that the present reliance on state police enforcement renders by-laws ineffective with the result that alcohol is easily accessible in communities.

As in Queensland, community Justices of the Peace are responsible for imposing penalties upon those who breach by-laws. Although this allows communities to have a degree of control over how breaches of by-laws are penalised, there is a perception that Justices of the Peace are often poorly trained for the tasks they are required to perform, and it has been suggested that more culturally appropriate training be provided. It has also been reported that many community members do not respect Justices of the Peace as they are often reluctant to hear cases against people with whom they have kinship ties.<sup>14</sup>

One of the main themes that emerges from the interviews is that, regardless of whether liquor licensing related legislation is enforced by state/territory police or community police, most police lack the expertise required to effectively enforce legislation. As mentioned previously, enforcement agencies in New South Wales, Victoria, Queensland and Western Australia have introduced on-the-spot fines so that less complex knowledge is required by police to enforce minor offences; and police informants in these jurisdictions claimed that this has improved levels of enforcement.<sup>14</sup> However, informants in all jurisdictions felt that the difficulty of proving more serious charges against licensees leads to a reluctance by police to prosecute.

Even if licensees are prosecuted for serious offences, it is rare that licences are suspended or cancelled. Some notable exceptions were the suspensions of licences

in Port Keats (NT), Elliot (NT) and Aurukun (QLD), though these suspensions only took place as a result of riots. Police and the Chairman of the Liquor Commission in the Northern Territory claimed that it is almost impossible to cancel a licence, although this will be amended in the proposed new Northern Territory Liquor Act.<sup>14</sup>

In rural areas of western New South Wales, where there are significant aggregates of Indigenous people and high numbers of alcohol-related offences, some police practice what is referred to as 'pro-active enforcement'. For example, police in these districts have lodged complaints against *all* licences in some towns, have lodged objections to the granting of new licences, and have requested that the Liquor Court impose special harm minimisation provisions on licences, such as transport for patrons. At the time of research, the division of police responsible for liquor licensing matters, the Licensing Enforcement Agency, was proposing a regional enforcement operation. This operation was to involve a team of enforcement officers examining the standards of premises, analysing alcohol-related harm, educating licensees on their obligations under harm minimisation provisions, and examining the need for premises in each town. They hoped that this type of operation would help to minimise law and order problems, and would reduce the high levels of alcohol-related harm and arrests in the region.<sup>14</sup>

During the period of field research, the South Australian police were also trialing a new form of liquor licensing enforcement using what were known as 'liquor contact officers' (LCO). These police were specifically trained in liquor licensing legislation and were chosen in part for their ability to interact well with licensees. The LCOs monitored activities of licensed premises, and when breaches of the *Liquor Act* or law and order issues were detected, they met with licensees to discuss why this had happened and to suggest strategies that could be put into place to avoid future problems. The program has been successful and there are now over 70 LCOs operating around South Australia.

Under the LCO program, if, for example, a licensed premise appeared to be associated with a high number of assaults, the police would examine security measures such as lighting, the behaviour of both patrons and security personnel, responsible server practices, and environmental factors that may contribute to higher rates of violence (see *Amenity of premises*). The licensee and police would enter into an agreement, the licensee would be given an opportunity to enact appropriate strategies and the LCO would continue to monitor the situation. Should the strategies appear to be ineffective, the LCO would meet with the licensee again, and on the third occasion, the officer would normally charge the licensee. Due to the monitoring of the premise, the LCO would have a demonstrable case of irresponsible management practices to argue before the Liquor Commissioner and consequently, the fines incurred would be more severe.

The case studies from New South Wales and South Australia demonstrate ways that licensing authorities and police are attempting to improve the overall enforcement of liquor licensing at the licensee level. Normally—due to the difficulty of prosecuting licensees—police are more likely to concentrate the greatest proportion of their enforcement efforts on patrons.<sup>14,46,56</sup> Most liquor licensing related arrests in all jurisdictions take place outside of licensed premises or in restricted drinking areas, and are usually in response to complaints by licensees, local business owners, or local residents. Indigenous patrons in particular are regularly charged with alcohol-related offences, especially public drinking and good order offences. Despite the obvious correlation between some licensed premises and alcohol-related offences committed by Indigenous patrons, licensees are rarely charged with serving alcohol to intoxicated patrons. Neither are they often charged with selling to persons that they had reasonable cause to believe would be consuming alcohol in a prohibited manner—that is, drinking in public or drinking in an alcohol free zone—therefore contravening responsible service provisions.

Some informants stated that the concentration of police enforcement on the activities of alcohol consumers, rather than suppliers, contributes to a high proportion of Indigenous people being arrested for alcohol-related offences.<sup>14</sup> Other evidence also suggests that there is an association between the concentration of enforcement on consumers and the high rates of alcohol-related arrests of Indigenous people. The 1994 National Aboriginal and Torres Strait Islander Survey shows that the most frequent reason (32 per cent) for a recent arrest was 'disorderly conduct/drinking in public'.<sup>56</sup> Likewise, the National Police Custody Survey August 1995 found that 31 per cent of Aboriginal or Torres Strait Islander people taken into custody were apprehended for public drunkenness.<sup>46</sup>

A number of informants in Tasmania, Victoria and New South Wales were very concerned about the prevalence of alcohol-related 'trifecta' arrests (offensive behaviour or offensive language plus resist arrest and assault police) and 'quinella' arrests (offensive behaviour or offensive language plus resist arrest or assault police). This concern is validated by recent research from the New South Wales Bureau of Crime Statistics and Research that shows a positive correlation between the proportion of Aboriginal people in a location and court appearances for 'trifectas' and 'quinellas'.<sup>48</sup> Police and Indigenous informants alike acknowledge that a majority of 'trifectas' and 'quinellas' result from Indigenous people either drinking in public or being drunk in public, and resulting altercations when police attempt to intervene. The offence then changes from a minor 'drinking in public' or 'public drunkenness' offence to more serious combinations of offences, and penalties increase accordingly. The police departments in Victoria and Tasmania are

monitoring the numbers of 'trifectas' and are encouraging police to avoid laying such charges.<sup>14</sup>

In some jurisdictions, informants pointed out that in cases of public drunkenness, police can be unwilling to take intoxicated people into protective custody for fear of deaths in custody. In an extreme example, a number of Victorian informants alleged that intoxicated Indigenous people have been left for up to six hours on pavements in places such as Saint Kilda.<sup>14</sup> A police informant from New South Wales believes that alternative strategies, such as night patrols, are needed if this situation is to be remedied, as police in many jurisdictions only have the choice of ignoring or arresting intoxicated people.<sup>14</sup>

In addition to discussing police and licensing agency enforcement of legislation, informants spoke about the relationship between security personnel and Indigenous people on licensed premises. Research has shown that licensees use dress codes and behaviour standards to exclude Indigenous people from licensed premises<sup>57</sup>, (see *Amenity*) and informants recounted a number of incidents when they had personally witnessed Indigenous people being denied entrance to a hotel for so-called inappropriate dress standards.<sup>14</sup> Informants stated that once Indigenous people were inside premises, they were also more likely to attract ongoing attention from security personnel.<sup>14</sup> Some non-Indigenous informants claimed that security personnel were more likely to intervene only on the basis of violent or improper behaviour, and that Indigenous and non-Indigenous people were treated in the same manner.<sup>14</sup> This assertion, however, was overwhelmingly dismissed by Indigenous informants.

The only jurisdictions that require security personnel to be registered and to have completed training are the Northern Territory and Victoria. Although there are moves nationally to steer away from the old 'bully bouncer' style of security to non-violent forms of conflict resolution, Indigenous informants felt that, even among trained security personnel, the methods of dealing with Indigenous people exacerbated conflicts.<sup>14</sup> Research has shown that most security personnel have poor communication and mediation skills, and Homel and Clarke<sup>56</sup> and informants argued that security personnel should receive specific training in how to deal with Aboriginal patrons.<sup>14</sup>

### **5.2.1 Public Drunkenness as a Criminal Offence**

Since the mid-1970's, public drunkenness has been decriminalised in five jurisdictions: the Northern Territory, South Australia, Western Australia, New South Wales, and the A.C.T. The reasons for decriminalising public drunkenness were to

reduce the numbers of intoxicated people being placed into police protective custody, and to treat intoxicated people as requiring care, not incarceration.

The Northern Territory government decriminalised public drunkenness in 1974, although public drunkenness was 're-criminalised' in 1981 as there were no facilities to which intoxicated people could be diverted. When diversionary facilities were established in 1983, it was once again decriminalised. In the Northern Territory, people detained for public drunkenness must consent to being placed in sobering up centres and may leave when they wish.<sup>89</sup>

New South Wales was the second jurisdiction in which public drunkenness was decriminalised, and in 1979 legislation for both the decriminalisation of public drunkenness and for 'proclaimed places' was implemented. Proclaimed places are facilities, such as a sobering up centre or a police station, where people may be held for up to eight hours or until they are sober. In 1981, South Australia followed suit and introduced the *Public Intoxication Act*, which was amended in 1984 to accommodate the establishment of sobering up centres.

Public drunkenness was decriminalised in Western Australia in 1990 despite the fact that sobering up centres had yet to be established.<sup>90</sup> A number of sobering up centres now exist in the state, most of which are managed by Indigenous community organisations.<sup>88</sup> Public drunkenness was decriminalised in the A.C.T. with the introduction in 1994 of the *Intoxicated Persons (Care And Protection) Act*. There are, however, no diversionary facilities in the A.C.T., and people detained under the *Act* are placed in so-called 'suicide-proof' police cells.<sup>14</sup>

Public drunkenness is still a criminal offence in Tasmania, Victoria and Queensland, and the majority of informants interviewed in these states considered it to be a highly problematic and complex issue. In Tasmania and Queensland, it is only possible for police to arrest people for public drunkenness if they are placing themselves or others at risk on account of their intoxication. In Victoria, people can be arrested if they are either drunk or drunk and disorderly, although police have standing orders to divert non-violent intoxicated Indigenous persons to sobering-up facilities or into the care of Community Justice Panel members.<sup>14,92</sup> Once people are arrested, in Queensland they can be detained for up to four hours (or up to 18 hours on Indigenous communities—see below), in Victoria for up to eight hours, and in Tasmania until they are sober.

Recommendation 79 of the Royal Commission into Aboriginal Deaths in Custody states, 'That, in jurisdictions where drunkenness has not been decriminalised, governments should legislate to abolish the offence of public drunkenness.'<sup>47</sup> Since the handing down of the Royal Commission's findings, there has been extensive debate in Victoria, Queensland and Tasmania concerning the benefits and disadvantages of decriminalising public drunkenness. The three main issues

common to each jurisdiction are the lack of diversionary facilities, a concern that public drunkenness charges will be replaced by more serious charges (especially 'trifectas'), and that there may be an increase in the length of time that people remain in custody, particularly if more serious charges become involved.

In Queensland, informants reported a range of views on decriminalisation with most emphasising that it must be preceded by the establishment of sufficient diversionary options, and a standing order for police to bail or release detainees into the care of responsible people. The Aboriginal and Torres Strait Islander Corporation for Legal Service supports decriminalisation, while a non-Indigenous informant from the Queensland Department of Health stated that, 'I don't think they're (Indigenous people) too concerned about the offence status. They just want somewhere to put people when they're causing a nuisance.' Queensland informants also expressed a hesitancy to have the detention time increased from four hours to eight hours, as is the case in some jurisdictions, such as South Australia, where public drunkenness has already been decriminalised.<sup>14</sup>

Currently, the ability of state police in Queensland to send intoxicated people to a diversionary facilities or bail them into the care of responsible people is at the discretion of regional police commanders. As such, it is an informal procedure that varies from region to region. Most informants believed that the informal arrangement works well despite the fact that there was no legal protection for any party if something goes wrong.<sup>14</sup> At the time of research a total of twelve diversionary facilities were operating throughout Queensland, including sobering up shelters, 'chill out zones' (safe sobering up areas), and a cell visitors scheme.

The attitudes of people towards the decriminalisation of public drunkenness in Queensland appear to be somewhat dependent upon geographic location. For example, some remote communities use public drunkenness provisions as a strategy to minimise alcohol-related harm and, as the provisions provide some benefits, community members are cautious about the effects of decriminalisation. Although most of these communities support decriminalisation in principle, they still want the power to detain people so they can preserve this important social control. In contrast, public drunkenness provisions in some urban areas and towns are often applied in a way that discriminates against Indigenous people and there is wider support for the decriminalisation of public drunkenness.<sup>14</sup>

In Queensland at present, there are two ways that people can be arrested for public drunkenness in remote communities; the state police can use the *Liquor Act* (S164) or community police can use community by-laws. Anyone arrested under community by-laws may be held for up to 18 hours (S1.05 of *Draft Law and Order By-Laws*)—instead of the normal four hours under the *Liquor Act*—as heavily intoxicated people sometimes require more than four hours to sober up. If

decriminalisation should occur, and communities want community police to be able to detain people without arresting them, these powers will require the passing of new legislation.

The views expressed by Tasmanian informants were quite different from those of Queensland informants, with all Indigenous Tasmanian informants being strongly in favour of decriminalisation. They alleged that public drunkenness laws were being utilised in a discriminatory manner, had a disproportionate effect on Indigenous people, and resulted in an increase in imprisonment rates of Indigenous Tasmanians due to 'trifecta' arrests and fine defaulting. A police informant disagreed and was emphatic that public drunkenness laws were only used in instances where people were drunk and incapable or drunk and disorderly, and therefore no-one was jailed for public drunkenness offences. Indigenous informants argued that although this may have been true in a legal sense, public drunkenness laws had an *actual* effect of increasing imprisonment rates.

The penalty system for public drunkenness fines in Tasmania is unique. Under the *Police Offence Act 1935*, if a person is arrested more than once during a six month period, the fines incurred may be doubled on each subsequent occasion (\$4.2). That is, if the first offence carries a fine of \$40, the next offence may carry a fine of \$80, and the next of \$160. As the majority of Indigenous people arrested for public drunkenness do not have the financial means required to pay these exponentially increasing fines, they may be sentenced to jail for non-payment of fines at the rate of one day imprisonment for each \$100 fine. Therefore, even though people cannot technically be sent to prison for public drunkenness, they can as a direct result of fines incurred for public drunkenness.

In Victoria, most informants felt that police in Melbourne and other large urban centres had good relationships with diversionary programs and Community Justice Panel members, and therefore the criminal nature of public drunkenness does not have a major impact on Indigenous people in these locations. Where possible, police do not charge people with public drunkenness, and instead 'admit' them, 'process' them, and then, whenever possible, place them into the care of diversionary facilities. As one police informant said, 'No way is anybody put in a cell unless there are exceptional circumstances. ...We don't want drunks in our cells, so the minute they're able to look after themselves they're released.' An informant from Ngwala Willumbong, the peak Aboriginal alcohol and drug organisation in Melbourne, concurred with this, stating that it was normal practice for police to call them prior to police attendance to determine whether their patrol could remove people involved and therefore eliminate police intervention. By doing this, police were trying to also avoid any charges that may have arisen if people became violent in reaction to police attendance.<sup>14</sup>

The police procedures in urban areas were not applied in most rural areas and both the Victorian ALS and police believed that public drunkenness in country regions was a major issue, especially among youth. In particular, they expressed concern that magistrates in rural areas, unlike their urban counterparts, were imposing fines for public drunkenness, and that pressure was being placed upon them by the business community and local councils to do so. A police informant stated that the Attorney General needs to examine the inconsistent enforcement of public drunkenness so that Indigenous people in rural areas are not disadvantaged.

It was not possible to accurately ascertain the number of Indigenous people arrested for public drunkenness in any jurisdiction due to poor statistical data. For example, in Tasmania, the police statistics that were available at the time of research (1995-1996) did not include a breakdown by Aboriginality or by type of drunken offence.<sup>92</sup> However, according to all Tasmanian Indigenous informants, it is likely that the vast majority of the 1167 people charged with drunkenness were Aboriginal. Public drunkenness statistics in Victoria do not include persons referred to diversionary facilities, and statistics in Queensland also understate the numbers of persons detained as they do not include persons arrested under community by-laws. Determining the full effect of public drunkenness legislation is further complicated by the fact that a large number of public drunkenness interventions result in 'trifecta' arrests and are recorded as such.<sup>14</sup> Even though public drunkenness has been decriminalised in most jurisdictions, in some, there remain other statutes which have the same effect. In Western Australia, for example, under the *Liquor Act 1988* (S119.1), it remains an offence to consume alcohol in a park or street, and police substitute these charges for the repealed charge of public drunkenness. Indigenous people have argued that this is anomalous, and that such charges are laid disproportionately against Indigenous people, and that those sections of the Act should be repealed.<sup>12,11</sup>

### **5.3 Recommendations for Enforcement and Administration**

#### *Objections*

26. That, where it does not occur, objections should be allowed to be made by any individual adversely affected by licences.
  
27. That, where it does not occur, objections should be allowed to be made orally to police, local councils, clerks of courts, justices of the peace, or licensing authorities.

28. That, where it does not occur, the 'grounds for objection' should include public health and harm minimisation.
29. That, where it does not occur, definitions of the negative impact on the 'amenity or good order of the neighbourhood' should include alcohol-related violence and public drunkenness.
30. That, where it does not occur, conciliation conferences or hearings regarding objections should take place in the locality to which applications relate.
31. That organisations should be able to lodge an 'intention to object' if they cannot object within the specified time frame. The extended time frame granted should be sufficient for organisations to collect further evidence in support for objections.
32. That, where it does not occur, objections should be able to be made on the basis that there is already sufficient access to alcohol in a locality.

#### *Complaints*

33. That, where it does not occur, complaints should be able to be made orally to police, local councils, clerks of courts, justices of the peace, or licensing authorities.
34. That, where it does not occur, 'grounds for complaints' should include public health, harm minimisation, alcohol-related violence or disturbances, and public drunkenness. Complaints should not have to be in direct response to a breach of licence conditions.
35. That, where it does not occur, police should systematically lodge complaints against premises which are associated with high levels of alcohol-related harm.

#### *Hearings*

36. That, where it does not occur, communities should be granted *locus standi*.
37. That, where it does not occur, hearings should take place in the locality to which licences relate.

*Enforcement by police and licensing authorities*

38. That stricter enforcement of responsible service and harm minimisation should occur.
39. That stricter enforcement of responsible service and harm minimisation at *off-licenses* should occur.
40. That, where they do not exist, on-the-spot fines for breaches of harm minimisation and responsible service provisions should be introduced.
41. That police and licensing authorities should apply equal effort to policing suppliers of alcohol as they do to consumers.
42. That, where they exist, Indigenous Community Police receive remuneration, training and support commensurate with the tasks that they are required to perform.
43. That liquor licensing authorities should investigate ways to support communities which wish to devise alternative strategies for enforcing alcohol by-laws.
44. That, where they have not, police should initiate programmes to monitor the following:
  - numbers of alcohol-related 'trifecta' and 'quinella' arrests that occur in the vicinity of licensed premises.
  - numbers of alcohol-related arrests and places from where alcohol was supplied (ie, last drinks survey).
  - use of alternative strategies for dealing with intoxicated Indigenous people.The above information should be used to improve policing methods that identify and monitor premises associated with high rates of alcohol-related harm.
45. That security personnel should be licensed, registered and properly trained. Part of their training should include non-violent conflict resolution and cross-cultural training.

*Public drunkenness as a criminal offence*

46. That, when police are taking people into custody for public drunkenness, 'trifecta' or 'quinella' arrests should only be made in cases of serious behaviour and violence.
47. That, where it has not occurred, police should monitor all 'trifecta' and 'quinella' arrests of Indigenous people which result from public drinking or public drunkenness.
48. That, where it has not occurred, informal police procedures which aim to reduce the number of intoxicated people in police custody be formally recognised so that parties have some form of legal protection should injury occur.
49. That, where it has not occurred, penalties for public drinking and public drunkenness be repealed.
50. That, where they remain on the statutes, other provisions which have the same effect as public drunkenness provisions should be repealed.

## **6.0 LIQUOR LICENSING RESTRICTIONS, DRY AREAS AND 'SLY GROGGING'**

### **6.1 Liquor Licensing Restrictions**

Liquor licensing restrictions (henceforth, restrictions) refer to the legislative or community-based measures put in place to control the availability of alcohol. In the context of this report, they refer to conditions placed on licences, and to the possession or use of alcohol within community areas. (Dry areas and alcohol free zones are dealt with in the following section as they imply a complete ban on alcohol.) The difference between restrictions and accords is that restrictions are made conditions of licences, and can therefore be enforced by police or licensing authorities. Accords, on the other hand, are agreements between all licensees in a locality, and although accords may involve similar conditions, they cannot be enforced.

Restrictions cover a range of conditions, including the amount of alcohol that is sold, the packaging in which it is sold, and the trading hours of licensed premises. For example, in Bourke (N.S.W.) sales of packaged bottled alcohol, either for consumption on or off premises, must cease at 6:00pm, and all other take-away sales are banned after 8:00pm. In Tennant Creek (N.T.) there are no take-away sales from hotels or bottle shops on Thursdays and no sales of wine in containers greater than two litres. In Doomadgee (QLD), all alcohol except beer is prohibited, and in South Australia, premises within a 300 kilometre radius of Yalata may only sell light beer to residents of, or visitors to, Yalata.

There is substantial research which demonstrates that increased availability of alcohol contributes to increased consumption,<sup>62-66</sup> and restrictions aim to reduce this availability. Many Indigenous communities view restrictions as a chance to either reduce overall alcohol consumption, and/or to reduce harms associated with particular consumption patterns. The ban on take-away alcohol on Thursdays in Tennant Creek, for example, was put in place to reduce harms associated with binge drinking on social security payment days—a strategy likely to be undermined by proposals to allow recipients to nominate other days of the week on which to collect such payments.

Most restrictions are imposed by licensing authorities using the 'conditions' section of liquor licensing acts. Licensing authorities are responsible for determining the scope and severity of restrictions in accordance with legislative provisions, community wishes, health and social needs, commercial interests, and, in most cases, the efforts of a community-based 'alcohol action group'. There are also provisions in Queensland under the *Community Services (Aborigines) Act 1984*, the

*Community Services (Torres Strait Islanders) Act 1984*, the *Local Government (Aboriginal Lands) Act 1978*, and in Western Australia under the *Aboriginal Communities Act 1979*, that permit local Indigenous councils to impose restrictions on the sale, possession, and consumption of alcohol on their lands.

Independent evaluations of licensing restrictions have found that they have a positive effect on the health and welfare of communities in which they operate, and in particular, on the well-being of the Indigenous population.<sup>3,5,93-95</sup> Despite their demonstrable outcomes, restrictions are among the most divisive and difficult harm minimisation strategies to implement and maintain. This is not because the concept or practice of restrictions *per se* is difficult, but rather, that they represent a conflict between the *perceived* rights of individuals for access to alcohol, and the actual rights of community members to enjoy economic, social, cultural and physical well-being.

Attempts to instigate restrictions are usually met with resistance from a variety of sources, but particularly from licensees, drinkers, some non-Indigenous community members and the liquor industry. Notwithstanding the inherent complications and conflicts, liquor licensing restrictions have been implemented in a number of rural communities throughout Australia, including Tennant Creek (N.T.), Halls Creek (W.A.), Fitzroy Crossing (W.A.), Bourke (N.S.W.), Yalata (S.A.), Wiluna (W.A.), Mackay (QLD), and Doomadgee (QLD).

Communities in which liquor restrictions have been comprehensively evaluated include Tennant Creek, Halls Creek and Derby.<sup>5,93-95</sup> (In Derby, restrictions are part of an accord agreement. However, they were originally imposed by the Director of Liquor Licensing and therefore the findings of the evaluation are relevant to this section). The authors of the Tennant Creek and Halls Creek evaluation reports show that the majority of residents in those towns support the restrictions, and that the restrictions have contributed to a reduction in alcohol consumption rates, alcohol-related morbidity, and alcohol-related arrests. For example, the Tennant Creek evaluation found that per capita consumption of pure alcohol had decreased from 25 litres per person per annum in March 1996 to 20 litres in June 1998.<sup>94</sup> Qualitative evidence from health and social services professionals, and from Aboriginal women in particular, confirm that restrictions have a positive impact on the overall welfare of Aboriginal communities.

In a few instances in the Northern Territory, it has been unnecessary to impose formal conditions on licences because informal agreements have been negotiated between licensees and local Indigenous communities.<sup>14</sup> Unlike accords, which are agreements between all licensees in a locality, informal agreements are between the licensee of a single premise and certain Aboriginal communities. Informal agreements have occurred either because licensees were sympathetic to the requests

of the councils, or because informal agreements were more expedient than going through protracted legal proceedings.<sup>14</sup> They have also eventuated because the NT Liquor Commission has been hesitant to introduce restrictions that may contravene the *Racial Discrimination Act 1975*.<sup>1,14,66</sup>

After informal agreements have been negotiated, licensees apply to the Race Discrimination Unit of the Human Rights and Equal Opportunity Commission for a Special Measures Certificate. This certificate shows that licensees have entered into agreements with local Indigenous communities to either not supply community members with alcohol, or to supply it in a specified manner. Although certificates do not prevent licensees from being taken to court for racial discrimination, they do afford a degree of legal protection to licensees as they demonstrate that alleged discriminatory action occurred at the behest of an Indigenous community.<sup>14</sup>

## 6.2 Dry Areas and Alcohol Free Zones

There are a number of types of dry areas, including those communities where alcohol is completely banned, restricted areas where individuals may hold permits allowing them to consume alcohol, alcohol free zones (AFZs) on local council land, and dry areas that only affect small specified areas, such as houses or parks. In the Northern Territory, it is also illegal to consume alcohol within two kilometres of a liquor outlet (*S45D Summary Offences Act*—the so-called ‘two kilometre law’), and thus public land surrounding each licensed outlet in the Northern Territory is effectively a dry area.

There are a number of ways in which dry areas are declared. In New South Wales, AFZs are declared under the *Local Government Act 1993*. In the Northern Territory, restricted areas are declared under the *Liquor Act*. In South Australia, areas can be declared dry under either *Aboriginal Lands Act* regulations, the *Local Government Act* or the *Long Term Dry Areas Act*, depending upon circumstances. Indigenous communities in Queensland can be declared dry under the *Community Services (Aborigines) Act 1984*, the *Community Services (Torres Strait Islanders) Act 1984*, or the *Local Government (Aboriginal Lands) Act 1978*, and in Western Australia under the *Aboriginal Communities Act (1979)*.

d’Abbs suggests a framework for comparing dry area provisions in which he presents three models: the community control model, the statutory control model, and the complementary control model.<sup>9</sup> In the community control model, communities are responsible for initiating the application of dry area provisions and for enforcing them. Levels of community control are high while levels of statutory control are low. Examples of this model include dry areas declared under Indigenous community legislation in Queensland and Western Australia.

In the statutory control model, levels of statutory control are high and levels of community control are low. This model is most commonly used by local and state governments to declare dry areas as a strategy for controlling the public consumption of alcohol. Examples of this model include AFZs declared by municipal councils and the Northern Territory's 'two kilometre law'.

In the complementary control model, there is a high level of both community control and statutory control. Examples of this include restricted areas declared under the Northern Territory's *Liquor Act*. In this model, the wishes of the community are given legislative backing so that licensing authorities and police can enforce community-based measures. This is the model most often espoused by Indigenous communities as it allows them control along with the necessary support to enforce dry areas provisions.

There are a variety of arguments for and against dry areas.<sup>96-99</sup> On the one hand, they improve the chance that community members will be able to live without high levels of alcohol-related harm and constant disturbances. This in turn results in a range of positive effects for both individuals and communities. On the other hand, more people may leave their home communities to drink, thus increasing the risk of motor vehicle accidents, and a greater proportion of personal income may be spent on alcohol purchased from 'sly groggers'.

The attitudes of Indigenous people towards dry areas usually depend upon the motivation behind applications. For example, moves to establish dry areas in locations with significant aggregates of Indigenous people are usually supported—although perhaps not by drinkers—because communities themselves initiate applications. In contrast, applications for dry areas in cities or towns are generally not supported as they appear to be aimed at removing Aboriginal drinkers from public view.<sup>8-10,14,96-99</sup>

The declaration of dry areas is normally preceded by community consultation, although the extent to which Indigenous communities are consulted often depends upon the jurisdiction and the type of legislation being used. For example, in the Northern Territory the Chairman must notify residents, licensees, and local councils of applications. The Chairman is obliged to take whatever action is needed to ascertain the opinions of those who will be affected by dry areas (S79), and must hold a hearing at a place in the affected areas. In Queensland and Western Australia, Indigenous municipal and community councils applying for dry areas must consult with local communities. In South Australia, the Commissioner solicits opinions from various government and non-government agencies and consults with Aboriginal communities if dry areas are likely to impact upon them.

Authorities in South Australia have been investigating the best ways to deal with problems that may arise from dry areas, and have developed protocols that ensure

dry areas are not declared without careful planning. When the Commissioner assesses applications, he must take the following into consideration:

- It should defuse, not exacerbate, tension between different groups in the community.
- It should demonstrably reduce the involvement of the criminal justice system... compared with other options.
- It should occur only in conjunction with a broad strategy for providing appropriate care and rehabilitation for individuals abusing alcohol and for addressing underlying social factors.

It follows from these objectives that:-

- Prohibitions should not be introduced in the absence of any criteria or plan or without their effect being monitored.
- Prohibitions which principally target members of a local community should not be introduced except after consultation with all relevant groups and those who will be directly affected by the prohibition and the involvement of those groups and affected persons in the decision-making process at the local level.<sup>105</sup>

If applications are granted, dry areas must be routinely reviewed to assess their on-going impact.

In the Northern Territory, dry areas are referred to as 'restricted areas', and in June of 1996, there were a total of 96 such areas. Twenty one of the 96 restricted areas allowed residents to apply for permits to consume alcohol. Within those communities, 2823 residents had permits, although it is important to acknowledge that residents in four communities held two thirds of the permits.<sup>102</sup> There has been criticism of the permit system in circumstances where large numbers of people in a community hold permits as it is seen to be defeating the purpose of having restricted areas.<sup>8,14</sup>

As mentioned above, the Northern Territory also has what is referred to as the 'two kilometre law'. It has been argued that because this provision effectively makes consuming alcohol in many public places an offence, it has a disproportionate effect on Indigenous people (see *Public drunkenness*).<sup>1,14,103</sup> In other jurisdictions, AFZs and dry areas also result in similar effects, and as a result, they were criticised by Indigenous informants.<sup>14</sup>

Many Aboriginal people in the NT expressed their concern at what they perceive to be threats to undermine or abolish dry areas and thus their ability to control alcohol availability.<sup>14</sup> These fears appear to have some foundation. Police informants, for instance, stated that they would oppose any new applications for dry areas which did not also cater for the needs of drinkers.<sup>14</sup> Other informants in Darwin and Katherine spoke of a concerted campaign among politicians, business people and others to question the efficacy of dry areas, and to link the existence of dry areas to unwanted congregations of Aboriginal people in centres such as Darwin, Katherine and Alice Springs.<sup>14</sup>

Indigenous communities in Queensland and the Northern Territory have criticised licensing authorities for not considering the proximity of new or existing licences to dry or restricted areas.<sup>14,70</sup> They have called for conditions to be placed

on licences in the vicinity of dry areas, although to date, licensing authorities have taken no such action. In comparison, Indigenous communities in Western Australia have mainly criticised the State government for not providing them with adequate resources with which to enforce dry area provisions. They claim that the effectiveness of dry areas is being consistently undermined by their inability to take swift punitive action against those who breach by-laws.<sup>68</sup>

### **6.3 'Sly Grogging'**

'Sly grogging' is the colloquial term used to refer to illegal sales of alcohol. There are two main forms of sly grogging: licensees selling liquor in a manner that contravenes their licence conditions, and illegal sales of liquor by people who do not hold licences. The first case usually refers to alcohol sales that contravene local liquor licensing restrictions, such as selling full strength beer instead of low alcohol beer, or selling more than a person's daily allowance permissible under restrictions. The second case refers to alcohol sales conducted by people such as taxi drivers who do not hold liquor licences.

Each jurisdiction has provisions in their respective liquor acts to deal with illegal sales of alcohol, either generally or, in the case of the Northern Territory, South Australia, Western Australia and Queensland, in dry or restricted areas. In the Northern Territory, provisions regarding sly-grogging in restricted areas are contained in the *Liquor Act*, while in the other three jurisdictions, provisions regarding sly-grogging in dry areas are contained in Indigenous community acts. Penalties for sly grogging usually involve monetary fines that reflect the severity of offences, and in South Australia and the Northern Territory, vehicles used to transport alcohol can be confiscated.

In Queensland, the Northern Territory, South Australia and Tasmania, informants were extremely concerned about the prevalence of sly grogging in dry or restricted areas as it severely undermines the purpose of restrictions. Unfortunately, for a number of reasons, sly grogging is also one of the most difficult offences to detect and prosecute. First, it usually occurs in remote areas where there are minimal police resources available to enforce liquor licensing matters. Second, there can be pressure from drinkers within communities for non-drinkers to accept the practice, and recrimination against those who try to stop it. Third, it can be almost impossible to collect sufficient evidence against sly groggers for successful prosecutions, especially as it is rare for drinkers to give evidence against their suppliers. Fourth, it is alleged that prominent people in communities, such as councillors, are sometimes involved in sly grogging.<sup>14,70</sup>

In most jurisdictions, persons can only be charged with sly-grogging if they are actually apprehended in the process of supplying alcohol to other parties for sale or barter. This has meant that, for the most part, sly groggers have escaped prosecution.

Sly grogging was so severe in Aurukun (QLD) that the *Local Government (Aboriginal Lands) Act* was amended in 1995. The aim of the amendments were to:

... inhibit both the supply and demand for 'sly-grog'...and to place controls generally on the quantity and type of alcohol brought into the Shire so that sly-groppers in particular can be identified and prosecuted.<sup>102</sup>

The new legislation made it possible for people to be charged on the grounds of simple possession, rather than on the grounds of illegal supply. This was achieved by inclusion of provisions for the declaration of community by-laws that placed limits on the possession, consumption and transport of alcohol:

Directions about controlled places

59.(1) If the law council declares a place to be a controlled place, it must include in the declaration directions about the possession or consumption of alcohol on the controlled place.

(2) Without limiting subsection (1), directions may be made about—

(a) the type of alcohol that may be possessed or consumed on the controlled place; or

(b) the quantity of alcohol that a person may possess or consume on the controlled place; or

(c) the quantity of alcohol that may be carried in a vehicle on the controlled place; or

(d) the quantities or type of alcohol that may be possessed on the controlled place over a particular period.

Importantly, if people are charged with sly-grogging offences, the onus is on those charged to prove evidence to the contrary.

In other jurisdictions, there are no legislative provisions that allow communities to pass such by-laws, and informants were frustrated by shortcomings of both legislation and its enforcement. One solution, suggested by an informant from the Aboriginal Legal Rights Movement (ALRM) in South Australia, was that licensing authorities should be able to impose restrictions upon take-away licences for the purposes of preventing grog running. ALRM also argued that licensees who supply large volumes of alcohol knowing that there is a high probability that it will be used for sly-grogging should be considered 'an accessory before the act'.<sup>14</sup> This means that licensees, who supply alcohol which is likely to be resold or consumed in an illegal manner, should be made liable to some extent if consumers break the law.

It has been alleged that in parts of South Australia, Western Australia and the Northern Territory, the main offenders in sly grogging are taxi drivers.<sup>12,24,57,63-65</sup> There are reports that a carton of beer can cost anywhere up to \$250 if purchased from a taxi driver<sup>70</sup>, and that alcohol is bartered for sexual favours.<sup>14</sup> It has also been alleged that taxi drivers will sell alcohol on the outskirts of dry areas so as to avoid prosecution under community by-laws.<sup>68</sup> In order to reduce the incidence of

sly grogging, Indigenous communities have called for the development of improved enforcement measures, higher penalties, alteration in the evidence requirements, and legislation that makes it illegal to transport alcohol within the vicinity of a dry community.<sup>1,13,14,68,70,73,84</sup>

#### **6.4 Credit Sales**

Informants in every jurisdiction alleged that sales of alcohol on credit to Indigenous people is widespread.<sup>14,57,73,84</sup> 'Credit sales' or 'booking up' refers to when licensees, managers, and other suppliers of alcohol such as taxi drivers, allow Indigenous people to purchase alcohol against incoming funds—usually a social security cheque. It was reported that licensees, managers, and taxi drivers take possession of people's ATM cards, bankbooks, or social security cheques, and they completely control people's access to their own funds. Informants alleged that in most cases, a 'service fee' of approximately 25 per cent of the value of goods purchased is charged on credit sales.<sup>14</sup>

It was alleged that quite significant debts are incurred as a result of credit sales, and that the creditors ban persons from hotels or confiscate goods as surety against debts.<sup>14</sup> In order to discourage credit sales, it has been suggested that a 'tippling clause' be introduced so that debts exceeding a nominal amount, such as \$50, cannot be collected.<sup>14,73</sup>

#### **6.5 Recommendations for Licensing Restrictions, Dry Areas and 'Sly Grogging'**

##### *Licensing restrictions*

50. That liquor licensing authorities should investigate ways to support communities which wish to investigate the potential benefits and disadvantages of implementing restrictions.
51. That restrictions be routinely evaluated to determine whether or not they are effective in reducing alcohol consumption and/or alcohol-related harm.

##### *Dry areas and alcohol-free zones*

52. That, where it does not occur, dry areas and alcohol-free zones (AFZs) which will have a disproportionate affect on Indigenous communities only be implemented at the behest of Indigenous communities.

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53. That, where they are not, dry areas and AFZs be monitored and routinely reviewed.
  54. That, where they do not, applications for dry areas and AFZs be accompanied by a management plan which shows the range of other strategies already in place to deal with public drunkenness and alcohol related harm.

*'Sly grogging'*

55. That penalties for sly grogging be greatly increased.
56. That, where it is not the case, the onus of proof be on parties accused of sly grogging to show that they were not transporting alcohol with an intent to supply.
57. That, where it is not the case, simple possession of alcohol in excess of an amount set by local by-laws or liquor licensing conditions be classified as proof of sly grogging.
58. That licensees or their employees who supply in excess of defined amounts of alcohol—except in the case of bona fide orders—be held vicariously liable for sly grogging.

*Credit sales*

59. That, where they exist, penalties for the supply of alcohol on credit be increased.
60. That, where debts are incurred as a result of credit sales, a 'tippling clause' be introduced so that debts in excess of a nominated amount cannot be collected.

## 7.0 CONCLUSION

This report describes the manner in which liquor licensing related legislation facilitates and impedes efforts to minimise harms associated with alcohol use among Indigenous Australians. Analysis of the interviews conducted and literature reviewed demonstrates that there are four main issues of concern. First, there is a conflict between harm minimisation and liberalising controls over the availability of alcohol. Second, there are cultural biases present in liquor licensing legislation that hinder community participation in liquor licensing matters. Third, the effectiveness of provisions that are aimed at increasing community participation and reducing alcohol-related harm are often dependent upon the volition and enterprise of licensing authorities. Fourth, legislation—particularly legislation concerning public drinking and public drunkenness—is often enforced in a manner that disproportionately affects Indigenous people.

Since the early 1990's, harm minimisation has become the main focus of liquor licensing legislation in most jurisdictions. The ways in which harm minimisation provisions have been utilised by licensing authorities in different jurisdictions reflects a variety of factors, including local politics, the philosophies of licensing authorities, needs of local communities, and legislation. The National Drug Strategic Framework 1998-99 to 2002-03 notes that, in line with the principle of social justice, the harms associated with alcohol use should be addressed by strategies 'that recognise the unique settings of local communities, are culturally responsive, meet the needs of marginalised population groups, and improve access to services'.<sup>106</sup> Licensing authorities should apply this social justice framework to their harm minimisation efforts so that special needs of Indigenous communities are accommodated.

As part of the social justice framework, licensing authorities should recognise that harm minimisation provisions have become a valued mechanism for controlling the availability of alcohol in localities where there are significant aggregations of Indigenous people. Many informants felt that restricting the supply of alcohol was the best chance that communities have of controlling alcohol-related harms, and they argued that licensing authorities should be compelled to consider the disproportionate affect that alcohol has on Indigenous communities when granting licences. If controls over the availability of alcohol continue to be liberalised, they must be off-set by harm minimisation provisions that protect the welfare of all community members and offer them some measure of local control.

Legislation in all jurisdictions contains provisions that allow community participation in liquor licensing matters. However, community participation is limited by a number of factors, including cultural biases within legislation, a lack of

community awareness of provisions, difficulties in using legislation to achieve change, and a reliance on the willingness of licensing authorities to actively involve communities in liquor licensing issues. The latter point is of particular significance as most liquor licensing legislation does not *oblige* licensing authorities to solicit community views and then act upon them. That is, although provisions exist which permit licensing authorities to undertake community consultation, they rarely *require* licensing authorities to make decisions based upon views expressed by members of Indigenous communities. Thus, there is a distinction drawn between licensing authorities only carrying out their legal obligations, and licensing authorities utilising their *capacity* to make decisions that benefit Indigenous communities.

The importance of Commissioners' attitudes towards their capacities, not merely their duties, to reduce alcohol-related harm is demonstrated by the following quote from the South Australian Commissioner.

Conditions on licenses...won't stop the drinkers, because one thing that you or I can never do is stop the drinkers. But what I can do is try to establish a community environment in which the people who don't want to drink can live, where the kids can go to school and be fed, and where the women aren't getting bashed.<sup>14</sup>

If licensing authorities wish to minimise alcohol-related harm, they must examine the steps they can take to creatively interpret and implement legislation, and then inform communities of their rights under harm minimisation provisions.

Informant interviews and the literature reviewed clearly shows that provisions regarding the public consumption of alcohol and public drunkenness have a grossly disproportionate effect on Indigenous people. Of particular concern is the link between public drinking/public drunkenness arrests and more serious 'trifecta' or 'quinella' charges. These factors contributed to high numbers of Indigenous people coming into contact with the criminal justice system as a result of alcohol.

Liquor licensing and related legislation is simply one of many strategies utilised in Australia to regulate the supply, consumption, and effects of alcohol among both Indigenous and non-Indigenous Australians. Neither Indigenous communities nor health professionals believe that these strategies, in isolation, can deal with the complex health and social problems associated with excessive alcohol consumption. Nevertheless, the evidence indicates that community use of liquor licensing and related legislation can reduce consumption and alcohol-related harm. Importantly, demands for control over the availability of alcohol must be recognised as legitimate expressions of Indigenous self-determination and self-management; and governments, licensing authorities and enforcement agencies should all lend active support to such expressions.

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## **9.0 APPENDICES**

### **APPENDIX 1: RECOMMENDATIONS OF THE ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY**

#### **Recommendation 58**

That Governments give consideration to amending the liquor laws to provide a right of appeal to persons excluded from a hotel where that exclusion or its continuation is harsh or unreasonable.

#### **Recommendation 59**

That Police Services use every endeavour to police the provisions of Licensing Acts which make it an offence to serve intoxicated persons.

#### **Recommendation 79**

That, in jurisdictions where drunkenness has not been decriminalized, governments should legislate to abolish the offence of public drunkenness.

#### **Recommendation 80**

That the abolition of the offence of drunkenness should be accompanied by adequately funded programs to establish and maintain non-custodial facilities for the care and treatment of intoxicated persons.

#### **Recommendation 81**

That legislation decriminalizing drunkenness should place a statutory duty upon police to consider and utilize alternatives to the detention of intoxicated persons in police cells. Alternatives should include the options of taking the intoxicated person home or to a facility established for the care of intoxicated persons.

#### **Recommendation 82**

That governments should closely monitor the effects of dry area declarations and other regulations or laws restricting the consumption of alcohol so as to determine their effect on the rates of custody in particular areas and other consequences.

#### **Recommendation 83**

That

- a. The Northern Territory Government consider giving a public indication that it will review the two kilometre law at the end of a period of one year in the expectation that all relevant organizations, both Aboriginal and non-Aboriginal, will negotiate as

to appropriate local agreements relating to the consumption of alcohol in public that will meet the reasonable expectations of both Aboriginal and non-Aboriginal people associated with particular localities; and

b. Other Governments give consideration to taking similar action in respect of laws operating within their jurisdictions designed to deal with the public consumption of alcohol.

**Recommendation 84**

That issues related to public drinking should be the subject of negotiation between police, local government bodies and representative Aboriginal organizations, including Aboriginal Legal Services, with a view to producing a generally acceptable plan.

**Recommendation 85**

That

a. Police Services should monitor the effect of legislation which decriminalizes drunkenness with a view to ensuring that people detained by police officers are not being detained in police cells when they should more appropriately have been taken to alternative places of care;

b. The effect of such legislation should be monitored to ensure that persons who would otherwise have been apprehended for drunkenness are not, instead, being arrested and charged with other minor offences. Such monitoring should also assess differences in police practices between urban and rural areas; and

c. The results of such monitoring of the implementation of the decriminalization of drunkenness should be made public.

**Recommendation 272**

That governments review the level of resources allocated to the function of ensuring that the holders of liquor licences meet their legal obligations (in particular laws relating to serving intoxicated persons), and allocate additional resources if needed.

**Recommendation 274**

That governments consider whether there is too great an availability of liquor, including too many licensed premises, and the desirability of reducing the number of licensed premises in some localities such as Alice Springs, where concentrations of Aboriginal people are found.

**Recommendation 276**

That consideration be given to the desirability of legislating to provide for a local option as to liquor sales trading hours, particularly in localities where there are high concentrations of Aboriginal people.

**Recommendation 277**

That legal provision be available in all jurisdictions to enable individuals, organisations and communities to object to the granting, renewal or continuance of liquor licences, and that Aboriginal organisations be provided with the resources to facilitate this.

**Recommendation 278**

That legislation and resources be available in all jurisdictions to enable communities which wish to do so to control effectively the availability of alcoholic beverages. The controls could cover such matters as whether liquor will be available at all, and if so, the types of beverages, quantities sold to individuals and hours of trading.

**Recommendation 279**

That the law be reviewed to strengthen provisions to eliminate the practices of 'sly grogging'.

**Recommendation 280**

That ATSIC and other organisations be encouraged to provide resources to help Aboriginal communities identify and resolve difficulties in relation to the impact of beer canteens on the communities.

**Recommendation 281**

That Aboriginal communities that seek assistance in regulating the operation of beer canteens in their communities be provided with funds so as to enable effective regulation, especially where a range of social, entertainment and other community amenities are incorporated into the project.

## Appendix 2: Tables of Relevant Legislation

*Unless otherwise specified, the following excerpts refer to sections of liquor licensing acts.*

### Harm minimisation as an object of liquor licensing legislation

Jurisdiction	Section of the Act
Australian Capital Territory	3a Object
New South Wales	2a Harm minimisation is a primary object of the Act
Northern Territory	NT Liquor Commission Mission Statement
Queensland	3 Objects of the Act
South Australia	3a Objects of this Act
Tasmania	Informal arrangement only
Victoria	4a Objects
Western Australia	5.1.b Objects of the Act

### Responsible service of alcohol

Jurisdiction	Section of the Act
Australian Capital Territory	No mandatory training
New South Wales	47A Refusal of application—responsible service standards Mandatory training for new licensees under 2A
Northern Territory	Mandatory training for new nominees and managers
Queensland	No mandatory training
South Australia	At the discretion of the LLC
Tasmania	Mandatory training for new licensees
Victoria	No mandatory training
Western Australia	Mandatory training for new licensees and managers

### Amenity of premises

Jurisdiction	Section of the Act
Australian Capital Territory	71 Cleanliness of licensed premises 72 Maintenance of licensed premises
New South Wales	n.a.
Northern Territory	n.a.
Queensland	n.a.
South Australia	n.a.
Tasmania	48 Licensee to keep premises in good repair 49 Furniture and equipment, &c., to be provided 50 Licensee to keep premises clean

Victoria	n.a.
Western Australia	99 Obligation to keep clean and in repair, ad directions to make alterations or provide facilities, services, etc.

### **Newspaper advertising**

<b>Jurisdiction</b>	<b>Section of the Act</b>
Australian Capital Territory	n.a.
New South Wales	37.1 Making of application and Fact Sheet 6.1
Northern Territory	27.1 Notice of application
Queensland	118.2.a Advertisement of applications
South Australia	52.b Certain applications to be advertised
Tasmania	Practice Note of Liquor Guidelines 13.2 Advertising of applications for licences
Victoria	35.1 Public display of licence application
Western Australia	67.4.a Advertisement of applications

### **Signs posted on proposed premises**

<b>Jurisdiction</b>	<b>Section of the Act</b>
Australian Capital Territory	n.a.
New South Wales	37.1 Making of application and Fact Sheet 6.1
Northern Territory	n.a.
Queensland	118.2.b Advertisement of applications
South Australia	52.c.ii Certain applications to be advertised
Tasmania	Practice Note of Liquor Guidelines 13.1 Advertising of applications for licences
Victoria	34.2 Public display of licence application
Western Australia	67.4.b Advertisement of applications

**Local councils**

<b>Jurisdiction</b>	<b>Section of the Act</b>
Australian Capital Territory	n.a
New South Wales	Local Government Act 1993
Northern Territory	n.a
Queensland	<i>Liquor Act 1992</i> 173B Consumption of liquor in certain public places prohibited 173B Local government may designate public places where liquor may be consumed <i>Community Services (Aborigines) Act 1984</i> Division 3 Controlled and dry places Division 4 Permits <i>Liquor Regulations</i> Part 4 Applications concerning area of council
South Australia	Local Government Act 1934
Tasmania	n.a
Victoria	n.a
Western Australia	<i>Liquor Licensing Act 1988</i> 64.3.ba Power of licensing authority to impose, vary or cancel conditions 69.4.b, 69.7 and 69.8 Disposal of applications, and interventions generally 156 Duties of local governments  <i>Aboriginal Communities Act 1979</i> 7.1 By-laws 7.2 By-laws 8 Procedure for making by-laws

**Objections**

<b>Jurisdiction</b>	<b>Section of the Act</b>
Australian Capital Territory	n.a
New South Wales	44.1 Right of objection to application 45.1.c Grounds of objection 45.4 Grounds of objection 46 Taking of objection
Northern Territory	48.1 Objections and complaints 49 Decision on consideration of objection or complaint

Queensland	119 Objection to grant of applications 120 Requirements of objection by petition 121 Conference of concerned persons and decision by chief executive
South Australia	18 Proceedings before the Commissioner 23 Proceedings before the Court 53 Discretion of licencing authority to grant or refuse application 76 Rights of intervention 77 General right of objection
Tasmania	216.2 Policy to be followed when considering an application for a licence or permit Guidelines - Definitions
Victoria	38 Objection on ground of amenity 39 Objection by Chief Commissioner 40 Objection by local council 41 Objection to licence by licensing inspector
Western Australia	69.6.c.ii Disposal of applications, and interventions generally 69.8.a Disposal of applications, and interventions generally 73 The general right of objection 74 The general grounds of objection

### Complaints

Jurisdiction	Section of the Act
Australian Capital Territory	44 Manner of making a complaint 45 Consideration of complaints by Registrar
New South Wales	68 Grounds for complaint
Northern Territory	48 Objections and complaints 49 Decision on consideration of objection or complaint
Queensland	198 Cancellation or suspension of liquor facility on complaint of council
South Australia	106 Complaint about noise, etc., emanating from licensed premises
Tasmania	Lodged with licensing authority
Victoria	Lodged with licensing authority
Western Australia	117 Complaints about noise or behaviour related to licensed premises

**Hearings**

<b>Jurisdiction</b>	<b>Section of the Act</b>
Australian Capital Territory	Part 2 Division 1 Liquor licensing board Part 12 Inquires by the board Part 13 Review of decisions
New South Wales	Part 2 The licensing court Part 4 Liquor administration board Part 9 Appeals and reviews
Northern Territory	Part 5 Hearings
Queensland	Division 2 Jurisdiction, powers and procedures of Tribunal Division 3 Appeals to Tribunal 121 Conference of concerned persons and decision by chief executive
South Australia	Division 2 The licensing court of South Australia Division 3 Division of responsibilities between the commissioner and the court Division 4 Proceedings before the commissioner Division 5 Proceedings before the court
Tasmania	Part 5 Division 2 Appeals and hearings
Victoria	Division 3 Hearings Division 6 S45 Referral of contested applications to panel Division 6 S46 What does the panel do? Division 6 S47 Determination of contested application after panel report
Western Australia	Part 2 Division 5 Proceedings before the licensing authority Part 2 Division 6 Reference to the court, review and appeals Part 2 Division 7 Division of responsibility between the court and the director

**Public drunkenness**

<b>Jurisdiction</b>	<b>Section of the Act</b>
Australian Capital Territory	<i>Intoxicated Persons (Care And Protection) Act 1994</i>
New South Wales	<i>Intoxicated Persons Act 1996</i>
Northern Territory	<b>Police Administration Act</b> Division 4 Apprehension without arrest
Queensland	<i>Liquor Act 1992</i> 164 Conduct causing public nuisance  Community by-laws under the <i>Local Government (Aboriginal Lands) Act 1978</i> , the <i>Community Services (Aborigines) Act 1984</i> , <i>Community Services (Torres Strait Islanders) Act 1984</i>
South Australia	<i>Public Intoxication Act 1984</i>

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Tasmania	<i>Police Offences Act 1935 Part II, Division 1</i> 4 Drunkenness, vagrancy, indecency, and other public annoyances
Victoria	<i>Summary Offences Act 1966 - Sect 14</i> 13 Persons found drunk 14 Persons found drunk and disorderly
Western Australia	<i>Police Act 1892</i> 53A Circumstances in which a person may be apprehended  <b>Liquor Act 1988</b> 119.1 Limitations as to liquor on unlicensed premises, etc



