

# Aboriginal wellbeing and liquor licensing legislation in Western Australia

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**Abstract:** This paper is based on the results of a project undertaken as the basis for a submission to the committee established to review the Western Australian *Liquor Licensing Act 1988*. It reports on key issues relating to liquor licensing, as identified by members of regional Aboriginal organisations. Among these issues are the promotion of alcohol consumption and misuse, discriminatory practices by licensees and the police and the need for greater community involvement in liquor licensing decisions. To address these issues, members of the participating organisations proposed: inclusion of a harm-minimisation objective in the Act, education and training programs for the public, licensees and the police, and industry funding for harm-minimisation programs. (*Aust J Public Health* 1995; 19: 177-85)

Alcohol misuse is both a consequence and cause of many of the social and health problems Aboriginal people face, and it is exacerbated by the continuing legacy of dispossession, disadvantage and discrimination.<sup>1</sup> While there has been no definitive study of the epidemiology of Aboriginal alcohol use, it was found that in the seven days prior to the 1989-90 National Health Survey, 62.4 per cent of Aboriginal men and 38.4 per cent of Aboriginal women reported having an alcoholic drink compared to 73.5 per cent of men and 51.8 per cent of women in the non-Aboriginal population. However, although fewer Aboriginal people consumed alcohol, 22 per cent of Aboriginal males did so at levels likely to be injurious to their health. This is over twice the rate among non-Aboriginal men.<sup>2</sup> Although there is some difference in the proportions, this overall pattern among Aboriginal people is similar to that found by Watson et al. in the Northern Territory and Hunter et al. in the Kimberley region.<sup>3,4</sup>

Various health and social problems result from, or are associated with, the misuse of alcohol among Aboriginal people. The mortality rates among Aboriginal people in Western Australia have been documented most recently by Veroni et al.<sup>5</sup> Veroni et al. found that the all-cause age-standardised mortality rates were 2.6 for Aboriginal compared to non-Aboriginal men and 3.0 for Aboriginal compared to non-Aboriginal women in Western Australia. The causes of Aboriginal mortality are complex.

However, it has been estimated that alcohol is responsible for 8 to 10 per cent of Aboriginal deaths.<sup>6,7</sup> In another report, Veroni et al. found that, although there were wide regional variations, hospital admission ratios for conditions caused solely by alcohol for Aboriginal men were 8.6 for Aboriginal compared to non-Aboriginal men and 12.8 for Aboriginal women compared to non-Aboriginal women.<sup>3</sup>

The social consequences of alcohol misuse among Aboriginal people include family breakdown, neglect of children, and absenteeism from school. Of particular concern is the association between alcohol misuse and violence in the home, and other forms of intrapersonal and interpersonal violence.<sup>9</sup> There is also a strong association between alcohol and crime. As Wilkie has stated, in Western Australia no statistical data are recorded on whether any offences for which prisoners are convicted were committed under the influence of alcohol. However, she cited a survey of Aboriginal prisoners in Roebourne, Broome and Wyndham prisons in which

Nearly three-quarters (74 per cent) of the prisoners answered that they were 'really drunk' when they offended and a further 18 per cent said they had been drinking but were not drunk.<sup>10</sup>

The causes of the alcohol misuse which result in such problems are complex and any strategies to deal with them must be multifaceted.<sup>11,12</sup> Aboriginal people themselves have undertaken a number of initiatives to minimise the harm associated with excessive alcohol use. Among these are

- night patrols, such as the Kullari Patrol in Broome, which pick up intoxicated people
- the provision of treatment and referral and gen-

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- eral health and welfare services, such as those provided by the various Aboriginal medical services
- rehabilitation centres, such as Milliya Rumara
- comprehensive substance abuse programs (such as that conducted by Noongar Alcohol and Substance Abuse Services)
- preventive programs, such as the Albany Aboriginal Corporation's program to provide young people with alternatives to the harmful use of alcohol
- the establishment of outstations
- the declaration of some discrete communities as 'dry'.

Despite the rhetoric surrounding the concept of Aboriginal self-determination, when Aboriginal people take the initiative to deal with issues such as alcohol misuse, they often receive little support from the wider society and its institutions. Liquor licensing is a state or territory responsibility, and in Western Australia (as in other parts of the country) Aboriginal people also find that the Liquor Licensing Act and its administration are obstacles to their efforts to address the problem of alcohol misuse.<sup>13</sup>

While legislation alone will not reduce the harm caused by alcohol misuse, it is important as one of many strategies which can be used in concert to minimise alcohol-related harm. This was recognised by the Royal Commission into Aboriginal Deaths in Custody, the recommendations of which included a number specifically related to liquor licensing legislation.<sup>12</sup> Successive Western Australian Governments have taken little action to implement these recommendations.<sup>14</sup> However, the opportunity to pursue them recently arose as a result of a statutory requirement that the Liquor Licensing Act be reviewed.

Consequently, a proposal was developed to prepare a submission and make recommendations to the Committee established to review the Act. This was undertaken jointly by the Aboriginal Legal Service of Western Australia, the Perth Aboriginal Medical Service, a reference group established by the State's Aboriginal Advisory Council to oversee implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody, and the National Centre for Research into the Prevention of Drug Abuse.

The objectives of the project were to document the concerns of key Aboriginal organisations and individuals relating to existing liquor licensing legislation, to elicit suggestions for change from them, to identify initiatives in other states and territories and overseas in response to similar problems, and from this to develop a set of recommendations for amendments to the Act. These recommendations were also to give effect to the liquor licensing recommendations of the Royal Commission into Aboriginal Deaths in Custody<sup>12,15-17</sup> and various other reports which had involved extensive consultation with Aboriginal people.<sup>18-20</sup>

## Method

A steering committee was established to oversee the project. It comprised the authors as representatives of their respective organisations. The project used a qualitative approach which included group and indi-

vidual interviews with key informants; these were analysed in the light of liquor licensing initiatives elsewhere in Australia and overseas.

The Liquor Licensing Review Committee, established by the Minister for Racing and Gaming, allowed only six weeks from the announcement of the review until the final date for submissions. This placed severe limitations on the consultations that could be undertaken by the project team. To ensure a broad range of Aboriginal perspectives, a decision was made to conduct interviews in the regional centres of Albany, Kalgoorlie, Carnarvon and Broome, as well as within the Perth metropolitan area. Within each of those centres, the regional office of the Aboriginal Legal Service and one key community-controlled organisation that had a particular interest in alcohol-related issues was selected. Telephone contact was made with the chairpersons or administrators of those organisations to explain the review of the Act and the joint submission that was being prepared, and to seek their assistance in arranging group discussions with members of their and other Aboriginal organisations.

These telephone contacts were followed up by a letter containing a package of materials so that the various organisations to be consulted could review the issues and consider them before meeting with members of the research team. The package included the terms of reference for the government-appointed Liquor Licensing Review Committee (see Table 1), a plain-English summary of the existing Act, the recommendations of the Royal Commission relating to liquor licensing, and an article from the magazine *Yarranma*, which outlined some of the liquor-licensing initiatives taken in the Northern Territory.<sup>21</sup>

The group discussions included representatives from nine regional Aboriginal community organisations as well as the Aboriginal Advisory Council's Royal Commission Reference Group (which itself is

Table 1: Terms of reference of the Liquor Licensing Review Committee appointed by the Western Australian Government

The review panel shall report on whether:

1. Section 5 of the Act should be expanded to include control over the supply and sale of liquor, with the aim of contributing to the reduction of alcohol abuse so far as that can be achieved by legislative means.
2. An industry-funded program should be established to educate the public in respect of health issues and for compulsory training of licensees, managers and staff involved in the sale and supply of liquor.
3. The administration and enforcement of the Act can be simplified. In particular, whether the number of regulatory authorities (for example, local authorities, Health Department, fire brigade, police and town planning authorities) is necessary.
4. To continue the provision of a special facility licence and extended trading permit.
5. A licence rationalisation scheme is needed—including consideration of the number of existing licences, the criteria by which they may be obtained or cancelled and how such a scheme could operate.

The panel shall also examine and, if thought fit, make recommendations about the operation of the licensing authority.

Source: Terms of reference: review of the Liquor Licensing Act<sup>22</sup>

composed of Aboriginal representatives from throughout the state). These group discussions involved about 50 people. The group discussions were supplemented by individual interviews with some of the participants as well as unstructured interviews with key informants from government agencies. Both the group discussions and interviews were conducted by two of the authors (Gray and Drandich) and focused on identification of alcohol- and liquor-licensing-related problems and proposed solutions to those problems.

Analysis of the transcripts of the group discussions and interviews focused on how the data related to the objectives and provisions of the existing Act and the terms of reference established for the review committee. Information on licensing legislation in other states and territories and overseas—particularly as this affects indigenous peoples—was reviewed to identify possible solutions to problems raised in the discussions and interviews. On this basis, a comprehensive set of recommendations was developed to meet the needs identified by the organisations and individuals consulted. Recognising the workload of committees of review and the difficulties they often experience in translating general principles into legislative practice, many of the recommendations included suggestions as to the specific wording for proposed amendments to the Act. The proposed recommendations were reviewed by the project steering committee and, with approval of the members, the final submission was prepared and submitted to the Liquor Licensing Review Committee. Copies of the submission were also circulated to the organisations which participated in the project.

## Results

In the group discussions and interviews, participants identified a number of problems related to the Act and proposed a number of solutions to them. Most problems related to activities that were either designed to promote or had the effect of promoting alcohol consumption and misuse among Aboriginal people. Other problems identified were either contingent upon this excessive consumption or the way in which it was promoted or were concerned with discrimination both on licensed premises and in the way in which the law appears to be enforced.

There was a clear recognition by most participants that, in an environment that promotes alcohol misuse, liquor licensing legislation will not of itself address the problems of excessive alcohol consumption by some members of the Aboriginal population and the related harm. It will not address the underlying causes of that excessive consumption and the resultant demand for alcohol. Liquor licensing legislation was, however, seen as a means by which local communities can address issues relating to the control of supply, can contribute to the reduction of harm, and can, through the revenue-raising provisions of the legislation, be used to fund harm-reduction strategies and to reduce discrimination against Aboriginal people.

### *Promotion of consumption*

There was widespread feeling that many licensees, particularly in rural and remote areas, see

Aboriginal people as a source of profit which is vigorously exploited by a variety of strategies aimed to maximise consumption of alcohol. For Aboriginal groups attempting to minimise alcohol-related harm, control over the availability of alcohol is a key issue. Two factors were identified as contributing to the excessive availability of alcohol: the number of licensed premises (both on- and off-licences), and the wide range of hours over which they trade.

Based on 1991 census population figures, the numbers of licensed premises per 1000 persons in Carnarvon and Kalgoorlie/Boulder were 2.1 and 2.2 respectively—compared to 1.2 per 1000 persons for Western Australia as a whole. Representatives of Aboriginal organisations in these towns considered these numbers too high, and in their view, the number of premises contributed to high rates of alcohol consumption. As well as increasing the availability of alcohol, the high number of licensed premises means that some licences are less profitable and that in order to make a return on their investments, licensees often resort to strategies such as selling to juveniles and intoxicated persons and inadequate maintenance of premises, which further contribute to alcohol-related harm.

In Kalgoorlie and Carnarvon, concern was also expressed over licensed premises (including liquor stores) opening as early as 6.00 and 8.00 a.m. Similar concerns have been expressed to the Aboriginal Affairs Planning Authority by Aboriginal people from Port Hedland, and there have been reports in the press about similar concerns by Aboriginal groups from Halls Creek and Roebourne. Again, it is perceived that these extended trading hours encourage the excessive consumption of alcohol by sections of the Aboriginal population. As well as contributing to the frequency of drunkenness, consumption of alcohol over such extended periods has other consequences. These include the effects on personal health, as well as the neglect of children and other family responsibilities.

Particularly among those who are alcohol-dependent, there is a demand by for low-cost, high-alcohol-content beverages such as cask wine and fortified wine. Consumption of such beverages facilitates high levels of intoxication and its physical consequences. Such consumption was perceived as being promoted at two levels, by the liquor licensing fee structure and by the active promotion of high-alcohol beverages by individual licensees.

At present, fees for retail liquor licenses are assessed on 7 per cent of the gross amount paid by the licensee for low-alcohol liquor (defined as less than 3.8 per cent alcohol by volume) and 11 per cent of the amount paid for high-alcohol liquor. Representatives of some of the Aboriginal agencies were of the view that the differential retail price provides little incentive for the purchase of low-alcohol beverages by consumers, and does not provide a disincentive to purchase those beverages with a higher alcohol content than 3.8 per cent.

Among individual retailers, the sale of low-cost, high-alcohol beverages is further promoted by discounting and by displays encouraging their purchase. It was felt that where communities were attempting to reduce alcohol-related harm, and gen-



eral consensus had been reached, it was reasonable for them to have some say in the type of beverages offered for sale. This was achieved in the town of Halls Creek, where residents—most of whom were Aboriginal—were successful in petitioning the Director of Liquor Licensing to restrict the sale of wine in casks and flagons to between the hours of 4 p.m. and 6 p.m. and to limit the amount sold to any individual person.<sup>22,23</sup> While this is regarded by many as an important step forward, such action might still be open to legal challenge, and procedures necessary to obtain such restrictions—should a community so desire—are regarded as a major obstacle.

Among all the Aboriginal groups consulted, particular concern was expressed about the serving of intoxicated persons and juveniles. Although both of these practices are offences under the Act, they are reportedly widespread. The intent of the sections of the Act prohibiting these practices is clearly to protect those who either because of their physical state or their age are in need of such protection. However, in the interests of higher profits, some licensees and/or their employees commonly disregard the law.

Transportation, supply and sale of alcohol (particularly by taxi-drivers) has long been a source of concern to many Aboriginal people. In small rural towns and adjacent areas, Aboriginal people, who often do not have their own motor vehicles, constitute a major client group for taxi services. In some instances, taxi-drivers promote the use of their own services, and the consumption of alcohol, by selling and/or transporting liquor. There are two interwoven issues involved here: the sale of alcohol, and its transportation. Under the Act it is illegal for a person not holding a licence to sell liquor or carry it for the purpose of sale. Under this provision, it is against the law for a taxi-driver who is requested by a customer to do so to purchase alcohol on behalf of the customer, deliver it to the customer and then accept payment for the alcohol. Nevertheless, the practice is reportedly widespread. It was reported to us that in one town children of the age of 13 had called a taxi service and had had alcohol delivered to them at the home of one child's parents. Although reports of this practice are common, there are few convictions for the offence—largely because of the difficulty of obtaining evidence and possibly because of discriminatory enforcement of the law.

While the on-sale of alcohol is clearly illegal, transportation of alcohol paid for by the consumer is more problematic. Some sections of Aboriginal communities are completely opposed to any transportation of alcohol by taxis, whereas others regard it as a legitimate amenity. In urban areas or areas in which the use of alcohol is not prohibited, this is not likely to be resolved. However, there was a strong consensus that where discrete communities have declared themselves 'dry', transportation of alcohol into their vicinity should be specifically prohibited under the Act, which should thus complement similar provisions in the Aboriginal Communities Act (which are more difficult to enforce).

The sale of liquor on credit is also a source of concern to Aboriginal people. Under the Act (except in the case of business accounts) it is an offence to sell

liquor unless it is paid for before, or at the time, it is sold. However, in some towns, licensed premises and/or taxi-drivers are reported to provide alcohol to Aboriginal people on credit. It was also reported that some licensees and/or managers and taxi-drivers either act as agents for individuals and manage their bank accounts or accept social security cheques from individuals and cut the amount out in return by providing services and/or alcohol. Given the conflict of interest involved, these are viewed as a pernicious practices which again promote the consumption of alcohol and often trap individuals in a cycle of debt.

### *Contingent problems*

Aboriginal informants identified (as well as those factors which promote the use of alcohol) other problems which are contingent upon the promotion of Aboriginal drinking or attempts to maximise profits from it. Although they are eager to keep Aboriginal custom, some licensees provide little in the way of service or amenities. In some premises, the facilities provided for Aboriginal patrons, or which Aboriginal patrons are encouraged to use, are clearly below the standard of facilities provided for non-Aboriginal patrons. Often comfortable seating is not provided, and at times, large numbers of patrons are crowded into confined spaces. In extreme instances, facilities consist of little more than a shed with a cement floor and a galvanised iron roof. Not only is the provision of such facilities viewed as discriminatory, but the facilities are seen as contributing to other problems. These include violence and drinking in public areas as people look for more congenial locations.

In some locations, the high levels of injury from broken glass as a result of accidents and violence have caused concern. As a consequence, several years ago in the town of Wiluna, the local Aboriginal community successfully negotiated with the local licensee not to sell alcoholic beverages in glass containers. In a town that has been notorious for high levels of alcohol consumption and related accidents and violence, this has had some effect in reducing alcohol-related harm. However, implementation of this strategy was dependent upon the goodwill of the licensee. If glass containers are to be banned in other communities, the Act will have to be amended.

### *Discriminatory practices*

For many Aboriginal people, discrimination is a daily fact of life.<sup>12</sup> With regard to liquor licensing issues, such discrimination frequently occurs from two sources: licensees and the police. The provision of sub-standard drinking facilities by some licensees has already been mentioned. In other instances, licensees choose a non-Aboriginal market and view Aboriginal people as being likely to discourage non-Aboriginal patrons. Dress requirements are often used to exclude Aboriginal patrons from licensed premises or sections of them. Of concern here is not the requirements themselves, but their discriminatory application. For those aggrieved, legal procedures for seeking redress are complex and beyond the means of many. Several of those interviewed thought

that there is a need for local dispute resolution procedures to adjudicate complaints against unfair exclusion.

As pointed out by an officer of the Aboriginal Legal Service, in the past, liquor control legislation was used as an instrument to control Aboriginal people rather than to promote their interests. This continues to apply as a result of discriminatory enforcement of the Act and other legislation, to the detriment of Aboriginal people. Aboriginal people appear to be singled out for offences such as underage drinking and other alcohol-related street offences, whereas few prosecutions are brought against licensees for serving alcohol to juveniles or to intoxicated persons.

In Western Australia, public drunkenness was decriminalised in 1989 (after many years of calls for its abolition).<sup>24</sup> Aboriginal people were charged with public drunkenness disproportionately compared to non-Aborigines; the offence was used to get Aboriginal people off the streets. Following its decriminalisation, Commissioner Dodson reported that 'it is apparent that the use of the offences of park and street drinking is coming into vogue'.<sup>17</sup> That is, rather than being charged with public drunkenness, instead Aboriginal people were being charged with drinking in parks or on streets—offences under the Liquor Licensing Act which still remain in force. Although there are no comprehensive statistical data available, officers of the Aboriginal Legal Service have reported that rather than there being a simple substituting of these charges for drunkenness, there have been small increases in a broad range of charges, including the charge of being 'disorderly', the offence that replaced 'drunk or disorderly' in the Police Act. In the absence of sobering-up shelters in most locations, Aboriginal people continue to be detained by the police but not charged. Although drunkenness has been decriminalised, Aboriginal people continue to experience adverse effects of law enforcement and higher rates of detention.

#### *Community involvement*

The heterogeneity of Aboriginal populations, their autonomy, the diversity in the alcohol-related problems they face, and the importance of community involvement in addressing those problems was often stressed. Those interviewed were of the view that local Aboriginal people are best placed to define alcohol-related problems and to develop strategies to deal with them. It was believed that the Act should be amended to ensure that all local communities (not only discrete Aboriginal communities) have a far greater say in licensing decisions that affect them. *In fact, in terms of licensing decisions, local community involvement was seen as the key factor in minimising alcohol-related harm.*

Under the present legislation, one avenue for community involvement in licensing decisions is for members of the public to be able to object to the granting of new licenses. However, in a survey conducted in Perth among a sample of 1160 non-

Aboriginal people, Lang et al. found that less than 2 per cent were aware of this provision.<sup>25</sup> Similarly, McCallum found that, in the Kimberley Region, most Aboriginal people were unaware of this right.<sup>19</sup> Even if these provisions were more widely known, the procedures by which the public is notified of licence applications are themselves problematic. They require the applicant to advertise the application in a daily newspaper and on the site of the proposed premises, and the Director of Liquor Licensing to advertise it in the government *Gazette* and at the office of the clerk of the local court. These procedures assume a high standard of literacy, access to newspapers and the relevance of their content to people's daily lives, and a familiarity with bureaucratic structures and procedures. As such, the procedures are culturally biased, are inappropriate to seeking Aboriginal input, and disadvantage Aboriginal people compared with the applicant.

Procedures for lodging complaints about licensed premises present similar difficulties. These include the requirements that complaints be authorised by no fewer than ten people, that they be made first to the licensee, and that they be lodged with the Director of Liquor Licensing in Perth. Representatives of the Aboriginal Legal Service and one of the Aboriginal medical services pointed out that these provisions create major obstacles for community involvement in licensing decisions. Furthermore, it was felt that the Act is too restrictive with regard to the type of complaints that can be made under it (as opposed to other Acts) by the public. Complaints are restricted to noise and the behaviour of individuals on, or in the vicinity of, licensed premises. The Act needs to be amended to widen the range of complaints that members of the public can bring under it (particularly to include offences such as serving juveniles and intoxicated persons), and the procedures need to be simplified to facilitate the lodging of complaints and, where possible, to enable them to be dealt with locally. As well as procedures for dealing with complaints about breaches of the Act, there is also a need for procedures for resolving at a local level justifiable community complaints about practices which are not illegal. Such practices include the promotion of low-priced, high-alcohol beverages, the sale of liquor in particular types of containers, and discriminatory use of serving policies and dress requirements.

Community involvement in licensing decisions is a key issue. Community organisations want the information to make informed decisions about the problems they face and are aware that this is complicated by disputes between non-Aboriginal so-called 'experts' about what strategies are or are not effective. However, it was strongly argued that rather than waiting, perhaps interminably, for the resolution of such disputes, liquor licensing decisions should support those of local communities. This is important because, in itself, the ability of community organisations to exert controls over the availability of alcohol sends a message that it is not acceptable to drink alcohol in an unrestrained manner. The need here



is for the Licensing Authority to seek community opinion on extension of trading hours and to make provision for communities to seek variation in the conditions imposed on particular licences.

### *Objectives of the Act*

It was clearly the view of the community-controlled organisations that liquor licensing legislation should be an instrument which supports and facilitates the efforts of all people to reduce alcohol-related harm. The Act does this to the extent that it contains sections which give the Liquor Licensing Authority the power to grant or refuse a licence application on any ground that the Authority considers in the public interest, and empowers the Authority to impose conditions on a licence for similar reasons. Unfortunately, as the Act stands, there is no requirement that the Licensing Authority must, as a matter of course, consider public interest and community opinion when making a decision. Instead, the interest of the public is subordinated to the primary objects of the Act. These are set out in Table 2. As the added emphases in that table indicate, the main aims of the Act are to promote the interests of the liquor and tourist industries. It was acknowledged that these industries are a major source of economic benefit to the state. However, these interests must be balanced against the harm caused by the misuse of alcohol, the burden of which is borne by all Western Australians. Accordingly, the community organisations supported the notion that a harm-minimisation objective be included in any amendments to the Act and that explicit account of this objective should be taken in all licensing decisions.

### *Education and training*

The second of the terms of reference for the Review Committee was to report on whether

An industry funded program should be established to educate the public in respect of health issues and for compulsory training of licensees, managers and staff involved in the sale and supply of liquor.

Again, there was strong support from the community organisations for this idea. The need for greater education about alcohol and its effects has been demonstrated by Brady and d'Abbs.<sup>26,27</sup> The need for prevention and public awareness campaigns was also considered essential by the National Aboriginal Health Strategy Working Party,<sup>28</sup> and in her review of the Aboriginal Communities Act, McCallum recom-

mended that more education programs about the effects of alcohol and strategies to deal with alcohol-related problems be provided.<sup>19</sup> However, educational programs for Aboriginal people developed by mainstream agencies were generally viewed as having been culturally inappropriate and ineffective in reducing excessive alcohol consumption and related harm among Aboriginal people. For these reasons, the community-controlled organisations were strongly of the view that any allocation of resources for educational and other health promotional programs should be directed to Aboriginal organisations.

As well as expressing a need for educational programs directed at the public, the Aboriginal organisations also supported the establishment of a training program to ensure that licensees and their staff are aware of their responsibilities under the Act; such training should be a condition of holding a liquor licence. As well as a host-responsibility component, such training should include a component—developed and delivered by Aboriginal organisations—on working with Aboriginal people, part of which should be aimed at reducing discriminatory practices by licensees.

As Patrick Dodson pointed out in his Royal Commission report, some of the practices which are of concern to Aboriginal people (such as the serving of juveniles and intoxicated persons) are illegal, and what is required 'is the simple enforcement of the legislation'.<sup>17</sup> However, the prospect of unqualified enforcement was a matter of some concern to the Aboriginal Legal Service. There was a strong view that the law is administered in a discriminatory fashion and more enforcement is likely to result in more discrimination. The community organisations argued that there was a need to go beyond proposals for educating the general public and licensees to more training for police officers on enforcement of the Act. Such training should include a component, developed by Aboriginal organisations, on working with Aboriginal people aimed at ensuring there is no discrimination in the enforcement of the Act.

### *Funding harm-minimisation*

While it was acknowledged that liquor licensing legislation cannot directly address the demand for alcohol by segments of the Aboriginal population, its revenue-related provisions could be used to raise funds to finance initiatives, including those proposed above. Aboriginal people themselves have developed interventions directed at minimising alcohol-related harm, but they are constrained by lack of funds. Given the strong feeling that those who profit from the misery caused by alcohol misuse should bear some of the cost, there was unanimous support for the view that public education and training programs be funded by the alcohol industry. There was some disagreement about how such funds should be raised. Most organisations were in favour of following the Northern Territory example and increasing licensing fees payable on full-strength beverages and decreasing those on low-alcohol drinks and using the net increase to fund education and training programs. However, members of one of the medical services expressed the concern that the

Table 2: Objects of the *Liquor Licensing Act 1988*

The objects of this Act are

1. to regulate, and contribute to the proper development of, the liquor, hospitality and related industries<sup>a</sup> in the state
2. to cater for the requirements of the tourism industry
3. to facilitate the use and development of licensed facilities reflecting the diversity of consumer demand
4. to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor
5. to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act

Note: (a) Emphasis added

Source: *Liquor Licensing Act 1988*<sup>13</sup>

resulting increase in the cost of full-strength drinks would have the effect of diverting even more of the incomes of some people to pay for alcohol. This does not appear to have been a major problem in the Northern Territory. Therefore, the steering committee supported increasing the differential between licensing fees payable on low- and high-alcohol beverages.

### Recommendations

A total of 26 recommendations was made in the submission to the Liquor Licensing Review Committee.<sup>29</sup> They are presented in summary form in Table 3.

The recommendations aimed to increase community involvement in liquor licensing decisions, with the goal of reducing alcohol-related harm. Recommendations were made that applications for extended trading permits must be advertised and that these and licence applications must be advertised in a more appropriate manner. To facilitate this, a senior Aboriginal person should be appointed within the Liquor Licensing Division. The role of that person should be to identify Aboriginal groups likely to be affected by licence applications and/or applications for extended trading permits, and to provide guidance and active support to those organisations wishing to make submissions.

It was recommended that a harm-reduction objective be introduced into the Act. Licensing fees should be increased to 16 per cent of the gross amount paid for full-strength liquor and reduced to 2 per cent on low-alcohol beverages (as in the Northern Territory). The increase in revenue should be used to educate the community about alcohol misuse, to train licensees and managers in responsible serving practices, and to train police in nondiscriminatory enforcement of existing provisions of the Act. It was recommended that the development and delivery of educational programs be contracted to Aboriginal community-controlled organisations, and that training for licensees and the police include a cross-cultural component.

Other recommendations included: the decriminalisation of street and park drinking; the development of minimum standards for the provision of amenities on licensed premises (this was particularly aimed at reducing alcohol-related violence); strengthening the law to facilitate prosecution of licensees serving juveniles and intoxicated persons, and those transporting liquor onto or into the vicinity of 'dry' communities; simplification and development of more appropriate complaint procedures; and appointment of local inspectors to ensure that licensed premises comply with the law and to negotiate local resolution of disputes.

Aboriginal community organisations view changes to liquor licensing laws as an essential part of a broad strategy to address the issue of alcohol misuse and associated harm. However, implementation of these recommendations would not only reduce alcohol-related harm and improve the health of Aboriginal people. It would also go some way towards implementing some of the more fundamental recommendations of the Royal Commission into Aboriginal Deaths in Custody and empower

Table 3: Summary of recommendations to the Liquor Licensing Review Committee

1. The Act should include a harm-minimisation objective.
2. A senior Aboriginal person should be appointed within the Liquor Licensing Division to identify Aboriginal organisations affected by licensing applications and to provide active<sup>a</sup> support to organisations wishing to make submissions.
3. The Act should be amended to enable the public to make any complaint about breaches of the Act.
4. The Act should be amended to enable the public to lodge complaints *directly* with the police, the police should be required to investigate them, and if substantiated take appropriate action.
5. Local inspectors should be given the authority to negotiate disputes between the community and licensees.
6. Given the decriminalisation of public drunkenness, street and park drinking provisions of the existing Act should be repealed.
7. Local community workers should be appointed as inspectors with the power to ensure that premises conform to proper standards.
8. The Act should include a new definition of drunkenness which incorporates behavioural signs.
9. Licensees should be liable if intoxicated persons consume alcohol on licensed premises.
10. Serving intoxicated persons should be among the offences for which an infringement notice can be issued.
11. To reduce the sale of alcohol to juveniles: use of 'pub cards' should be promoted; there should be more active prosecution of those supplying alcohol to juveniles; and penalties for such supply should be increased.
12. Minimum standards of patron amenity should be prescribed.
13. Provisions against unlicensed sales and transport of alcohol should be more vigorously enforced.
14. Transport of alcohol to, or into the vicinity of, 'dry' communities, should be prohibited.
15. Prohibition of the sale of alcohol on credit should be vigorously enforced.
16. Provision of banking facilities, including automatic teller machines, on licensed premises, should be prohibited.
17. Specific provision should be made for communities to seek variation of licence conditions.
18. An industry-funded program should be established to educate the public, train licensees and managers, and train the police.
19. The differential in licensing fees on high- and low-alcohol beverages should be increased, and additional revenue thus raised should be used to finance education and training programs.
20. Provision of educational and training programs on Aboriginal alcohol issues should be contracted to an Aboriginal organisation.
21. Training of licensees and managers should be conducted by an independent organisation.
22. Granting of a licence should be contingent upon knowledge of the Act and completion of a training course.
23. Any amendments to simplify administration of the Act should promote increased community involvement.
24. Extended trading permits should be retained and community comment on applications should be actively sought.
25. A rationalisation scheme should be introduced to reduce the number of licensed premises.
26. In granting or transferring licenses, priority should be given to Aboriginal groups seeking to reduce harm.

Note: (a) Emphasis added

Source: Aboriginal issues and the Liquor Licensing Act 1988: a submission to the review committee Liquor Licensing Act 1988.<sup>29</sup>

Aboriginal people to make decisions about the kind of communities in which they live. The recommendations made as a result of this project were straight-

forward and can easily be implemented. It now remains to be seen whether the Review Committee and the Western Australian Government respond positively to the challenge put forward by Aboriginal people.

### Postscript

The Liquor Licensing Review Committee presented its report to the Minister for Racing and Gaming in April 1994 (at about the same time that this paper was prepared).<sup>30</sup> Approval to print the report was not given until September 1994, at which time Cabinet called for comments on it by the public and government agencies.

In its report, the Liquor Licensing Review Committee made some positive recommendations. These included proposals: to include harm minimisation as an object of the Act; to train liquor industry personnel; to promote community awareness, including support for sobering-up shelters and Aboriginal community patrols; and to raise additional revenue from liquor licensing fees to fund training and community-based projects.

However, the Liquor Licensing Review Committee failed to address Aboriginal issues adequately. The Liquor Licensing Review Committee's recommendations do little to ensure that local communities (be they Aboriginal or not) will be able to exercise any real influence on liquor licensing decisions. We find it incredible that the Committee, while noting that the majority of submissions to it were against the extension of trading hours and that pressure for such extension was 'largely industry generated', recommended extensions of trading hours for hotels and liquor stores. Whereas a particular focus of the Liquor Licensing Review Committee's report was on juvenile drinking, the emphasis was largely on measures directed at juveniles, rather than the adults who supply them. Of particular concern is that the Liquor Licensing Review Committee, with no experience in Aboriginal Affairs, rejected all but one of the recommendations of the Royal Commission into Aboriginal Deaths in Custody pertaining to liquor licensing, the exception being to prohibit the transport of alcohol to 'dry' communities.

Of the 26 recommendations made in our joint submission, the Liquor Licensing Review Committee addressed five (1, 8, 10, 14, 19. See Table 3) and only partly addressed seven (2, 11, 17, 18, 21, 22, 24). Through the Western Australian Aboriginal Justice Advisory Committee (formerly the Royal Commission Reference Group of the Aboriginal Advisory Council), the organisations that conducted this project have made a formal response to the Liquor Licensing Review Committee's report.<sup>31</sup> As of March 1995, Cabinet had not decided what action it would take on the report and responses to it. However, it is our fear that the opportunity to frame liquor licensing legislation so that it supports action to minimise alcohol-related harm among Aboriginal people (as well as the wider population) will be missed.

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