

Licensing Commission Submission in Response to Alcohol Framework Interim Report

The Northern Territory Licensing Commission commends the breadth of focus on liquor issues brought to bear by the *Northern Territory Alcohol Framework Interim Report*.

In considering its response to issues raised in the Interim Report, the Commission has taken into account recent amendments to the *Liquor Act*. These amendments, which commenced on 5 May 2004, have included the adoption of a range of objects for the Act. These objects are set out in section 3 of the Act and can be summarized as:

- To regulate the sale, provision, promotion and consumption of liquor in a way that minimises the harm associated with the consumption of liquor and that takes into account the public interest in the sale, provision, promotion and consumption of liquor;
- To protect and enhance community amenity, social harmony and wellbeing through the responsible sale, provision, promotion and consumption of liquor;
- To regulate the sale of liquor in a way that contributes to the responsible development of the liquor and associated industries; and
- To facilitate a diversity of licensed premises and associated services for the benefit of the community.

The Commission has had regard to these objects in formulating its comments on the issues raised, and questions posed, in the Interim Report:

General

1. The Commission would welcome the development of an NT Alcohol Framework and the creation of an Office of Alcohol Policy (OAP). We believe that the Framework should provide the broad goals and aims for government policy in relation to alcohol, and should include a statement of principles. We see the recently introduced objects of the *Liquor Act* as providing a useful contribution to the type of issues that could be covered in a statement of principles and/or outcomes for the Framework (Q1, 2 & 3). Consistent with these statutory objectives, we would see both the Framework and the OAP as having a much wider focus than alcohol related harm.
2. We would see the role of the OAP as complementing existing policy, service provision and regulatory structures, rather than duplicating, replacing or directing their functions (Q12). Such an Office could provide information, advice and assistance to all stakeholders, have an important role in facilitating cooperation between diverse stakeholders (including different levels of government, different government agencies, the private sector, the non government sector, licensees, consumers and members of the broader community), and could undertake, facilitate and/or fund information collection, research and evaluation activities. We would also see the OAP having a valuable role in supporting local initiatives

and undertaking a range of programs aimed at community education and cultural change (Q12-20).

3. We agree that it is important that public policy pays attention to the *patterns* and *contexts* of alcohol consumption that make up the Territory's per capita consumption statistic (*pp.28, 73*); including recognizing both harmful and non harmful consumption. Wherever possible, public policy responses should be evidence-based and carefully targeted.
4. We therefore strongly support the establishment of better information systems and the funding of research and evaluation activities as suggested in the Interim Report (*pp99-103*). We agree that there should be a pool of funds available for research and evaluation and that this resource should be utilised in a flexible way; with some research and evaluation priorities identified centrally but also with a capacity to respond to requests for funding from individuals, organisations and groups (perhaps run along the lines of the Community Benefit Scheme). Among other things, we would like to see the capacity to fund small action research initiatives (for example a licensee or community group may wish to trial a harm minimization project).
5. We agree that there is a particular need for research into some aspects of the use of alcohol by indigenous people (*p.101*), and for consideration of the development of a range of indigenous-specific strategies (*pp.107, 111*). We agree that indigenous alcohol use issues should be a priority for the Framework (*p106*) and that indigenous people should be involved in researching these issues and in developing and implementing responses to alcohol related harm. Any "comprehensive plan" to tackle alcohol misuse in indigenous communities will need to allow for regional and other differences and should endeavour not to disrupt any current local strategies that are considered to be working and have community support (Q36).
6. Among other things, we would welcome NT specific research on the influence of price on the consumption patterns of indigenous and non indigenous drinkers and the trialing of any pricing strategies being considered for implementation (Q74, Q75). The evaluation of any such trials should include an assessment of the impact of pricing strategies on individuals, families and communities.
7. Given the lack of systematic information on the impact of takeaway alcohol, we agree that the contribution of takeaway outlets to alcohol-related harm warrants further investigation (*pp45, 211 & 212*). In particular, the contribution of different types of takeaway outlet, the different takeaway consumption environments, consumer demographics and harmful patterns of consumption of takeaway alcohol need to be better understood.
8. In undertaking such an investigation, it would also be useful to identify the similarities and differences with harm associated with consumption on licensed premises. For example there may be differences in the contribution to drink driving offences, public drunkenness, chronic health problems, poverty, domestic violence and other types of violence. Given that some people will drink takeaway alcohol before or after drinking at licensed premises (for example, it is not uncommon for young people to drink takeaway before they go to a licensed

premises in order to keep their costs down), the harm and other issues associated with this pattern of behaviour will also need to be acknowledged and included in any comparative assessment.

9. We note in passing that, whilst licensees in both on-licence and off-licence settings can set standards of behaviour when customers are on their premises, both groups have a very limited ability to control the behaviour of their customers once people have left the premises. For example, a person who is well behaved while drinking at a sports club, may still go home and assault his/her spouse or children or become involved in alcohol-related violence at another location.
10. Whilst not disputing the fact that both on-licence and takeaway alcohol can cause harm, it will be important not to lose sight of the fact that many people consume alcohol in a non harmful manner, that access to alcohol is an important quality of life and civil rights issue for some people, and that alcohol can actually enhance health and community amenity when used responsibly. On this basis, some research effort should also go into identifying the types of premises and patterns of consumption that should be encouraged, or at least do not need to be discouraged. Such an approach is consistent with developing carefully targeted interventions to reduce harm and also with implementing the new objects of the *Liquor Act*, which include attention to the public interest, fostering responsible development of the liquor industry and facilitating a diversity of licensed premises (s3).
11. The Commission would also like to see further research into evaluating the effectiveness of the current restricted areas legislation (*pp200-204*) and to see the findings of such research being used to guide any legislative or other changes in this area. Restricted areas have been a popular strategy for indigenous communities in the NT and, therefore any disruption of the current arrangements should be thoroughly considered and based on empirical, rather than anecdotal, evidence of a need for change (*Q102-108*).
12. The Commission is strongly supportive of any initiatives aimed at influencing community norms in favour of responsible drinking (*pp95-7, Q21-22*), especially where such initiatives lead to identifiable attitude and behavioural changes for individuals and groups. We agree that the Living with Alcohol program remains a useful example of such an initiative that contributed significantly to reducing alcohol related harm in past years.
13. The Commission is also supportive of any initiatives aimed at improving the effectiveness, accessibility and appropriateness of Alcohol and Other Drug (AOD) treatment and rehabilitation services in the Northern Territory, as well as any initiatives which promote the early identification of, and response to, AOD problems. The Commission has a particular wish to see more regional harm reduction initiatives that include a focus on these areas (as well as community education/cultural change initiatives), instead of relying on supply restrictions alone. Other agencies and groups would, of course, need to have responsibility for the identification, design and conduct of such initiatives.

Regional licensing issues

14. We agree that National Competition Policy principles and the Northern Territory's obligations under the National Competition Agreement have had, and will continue to have, an impact on the Government's ability to respond adequately to alcohol-related harm issues (pp.69-74) and that some initiatives of licensees, communities and organisations can encounter problems with the *Trade Practices Act* and anti-discrimination legislation. These issues need to be taken into account in considering the options for alcohol policy and legislation and in providing information to licensees and communities.
15. We share the author's concern (pp70-73,154-157, Q68-70) that reducing the number of liquor licences or capping licence numbers may not be an effective harm reduction strategy (particularly without a consideration of the different operational modes and community roles of the different types of licence) and consider that such initiatives may bring their own problems. Problems are likely to include large compensation costs for government, negative effects on the viability of local businesses and pressures to maximize profit from alcohol. We also have concerns about how such restrictions could be introduced without offending NCP principles and the new objectives of the NT *Liquor Act* which, among other things, promote the responsible development of the industry (s3(2)(b)) and the facilitation of a diversity of licensed premises (s3(2)(c)).
16. The Commission has a long, and largely successful, track record of being supportive of region-specific initiatives to address alcohol problems (as acknowledged at pp.78, 79). This track record has included a history of being responsive to requests from communities, conducting extensive community consultations and encouraging local groups to take on roles in the conduct and evaluation of initiatives. Whilst to date the Commission has, by necessity, had a fairly central role in these regional initiatives, the Commission would welcome the opportunity to transfer as much of this role as is appropriate to an organization such as the OAP. We would anticipate that the involvement of the OAP would have the advantages of enabling the Commission to concentrate on its specialist role in the process and simplifying the Commission's relationship with other agencies. In particular, we would anticipate that the OAP would be available to support the coordination of regional initiatives and that this support would include: providing advice, support and funding to local organizers; encouraging various other government agencies to become involved as appropriate; providing funding for the evaluation of the initiative; and brokering the engagement of community resources with those of government.
17. Whilst it would be inappropriate to make regional alcohol management plans legally binding (given, among other things, the variety of stakeholders), it would be helpful for the Commission to have a more legislatively facilitated path for the consideration and implementation of its decisions in relation to regional plans, regional restrictions or particular regional problems (pp.129,131). For example, a specific provision in the *Liquor Act* allowing the Commission, in making a decision about granting an application and/or setting licence conditions, *to have regard to a regional plan, the location of the premises and/or the licence conditions of other premises in the vicinity where this can be considered to be in the public interest* would be useful.

18. Where regional supply restrictions are proposed as part of a Plan, the Commission considers that it is important that such restrictions continue to be only applied after due process, including the full and genuine involvement of community members, licensees and other stakeholders on relevant local communities (p.45). This inevitably would involve the Commission in continuing to supplement any information gathered and agreements reached by the planning group, with the Commission's own inquiries (including community consultations and hearings) before making its decisions.
19. The Commission is well aware, from its own experience of restriction decisions, that consensus about alcohol problems is rare (if not non-existent), that the issues involved can be complicated, political and divisive in nature, and that there can be unintended consequences of the most well intentioned proposal. We therefore strongly support any initiatives that ensure that local restrictions are always closely monitored and are evaluated as rigorously and independently as possible.
20. Currently the Commission reviews local restrictions on its own motion; the review mechanism is normally built into its formal decision to implement restrictions as was the case in the trial of restrictions in Tennant Creek, Katherine, Nhulunbuy and Alice Springs. We would support the development of a system whereby the public, under specified circumstances, could request a review of particular regional supply restrictions. A similar process could apply to Restricted Areas declared pursuant to Part VIII of the Act. An alternative would be for there to be a requirement for periodic reviews of regional/location-specific based restrictions (perhaps every 3 to 5 years).

The Commission

21. We note that the Interim Report contains a number of suggestions for possible changes to the structure and functioning of the Licensing Commission. We are supportive of a number of these options for change. In particular we are supportive of options which would provide the Commission with more adequate and appropriate resourcing; that would provide a range of more flexible options for dealing with objections and complaints; that would allow more opportunity for community input; and that would review the location of the Commission within government.
22. We note that any proposed changes to the Licensing Commission's structure and/or processes in respect of alcohol should take into account the impact of the changes on the Commission's other roles and responsibilities and should be accompanied by adequate resources. The Commission has a wide jurisdiction that includes responsibility for licensing decisions in relation to liquor, kava, escort agencies, private security, gaming, and some tobacco issues. The resources of the Commission to undertake this work are currently very limited, and are also used to support the Racing Commission. The Licensing Commission consists of two staff, a full time Chairperson and 6 part-time members (paid on a *per diem* basis). Members and staff carry a large workload in relation to inquiry and decision-making activities (including hearings, decision-making meetings, consultation and inquiry processes and other legislative responsibilities). There is

currently a structurally awkward arrangement whereby the Division of Racing, Gaming and Licensing undertakes a range of work on behalf of the Commission, including initial inquiries into applications and complaints, but is not really under the control of the Commission. This structural arrangement is a result of a previous government's "Planning for Growth" initiative, is very confusing to the public and to most other stakeholders, does not sit well with the existing legislation (which is largely designed on the basis of the Commission having direct control of investigations and other processes) and is administratively awkward (for example there may be long delays in the Commission becoming aware of particular complaints and/or applications). We consider that there is considerable merit in the idea that the Commission should return to a situation where it has its own application and complaint investigation staff, as well as project officers to support the Commission's role in regional and other initiatives (pp.128, 151). The argument for the Commission having direct responsibility for licensing inspectors (inspecting premises), is less compelling given that such staff will be potentially lodging complaints before the Commission and the Commission should be seen, for procedural fairness reasons, to be at arm's length from complainants.

23. We consider that there is a very strong argument for retaining the role of the Commission as the decision-maker of first instance in relation to liquor licensing. We consider that it is important that decision making in this area continues to be publicly accountable. Public hearings and published statements of reasons for decisions are important parts of achieving such accountability, and would not be possible if liquor licensing issues were dealt with in a purely administrative way. There are also strong procedural fairness arguments for maintaining a situation where the decision-maker is independent from both government and licensees (p.145), especially as industry ownership continues to concentrate into fewer hands and licensing issues become increasingly contentious. The argument for independence in decision-making in respect of individual cases does not detract from the central role of government in setting policy directions through legislation and program based initiatives.
24. There are advantages to the membership of the Commission continuing to consist of both full and part-time members drawn from a variety of professional backgrounds, although, given the workload and responsibilities involved, it may be appropriate to consider a shift towards additional full-time and/or proportional part-time positions. It is desirable that members are appointed for fixed (but renewable) terms on the basis of an open, merit-based selection process. Members should be selected on the basis that they possess, or have the capacity to quickly develop, the core skills and knowledge required to undertake the work of the Commission. Analytical ability, the ability to exercise impartial judgment, an ability to work within a legal framework and high level oral and written communication skills are all important core requirements. Members should also be selected, where possible, to provide the Commission with a mix of skills and knowledge that will add value to the Commission's work (for example experience in relevant industries, research skills, medical or legal knowledge, experience in similar work etc) (Q 64A).

25. The Commission is supportive of any broadening of the bases for community input into its processes and considerations that nevertheless leaves the Commission with the necessary flexibility and discretion to deal with applications and application issues on their merits. In particular, the Commission is supportive of the re-broadening of the objection process, and of further simplification of the complaint process. Such changes would, of course, need to retain the protection of due process for applicants and licensees subject to objections and complaints given that their livelihoods may be at risk.
26. Currently options for managing both objections and complaints are restricted by the legislation, with hearings being one of the main mechanisms for dealing with these matters. It is understandable that many people (including licensees) find the prospect of going through a hearing process quite daunting. The Commission would welcome legislative amendments to allow for the more flexible and informal consideration of both complaints and objections. Ideally, such amendments would allow the Commission to select a method of dispute resolution which is suitable to the particular case. We do not consider that the choice of procedure should be based purely on, for example, whether the complainant is seeking a punitive outcome to a complaint. Among other things, it would be appropriate to consider, in the case of a complaint, the preferences of the parties, the seriousness of the complaint, and whether it is more appropriate for the complaint to be resolved by agreement or arbitration (Q87).
27. We note that all that is currently required to lodge a complaint with the Commission is a letter of complaint to the Director of RGL. Complainants can lodge complaints about any aspect of the operation of licensed premises. The simplicity of these aspects of the complaint process is not generally understood by the public and needs to be more thoroughly publicized. The problem is somewhat different in respect of objections; with the opportunity to lodge objections being well understood but the technical requirements for the content and form of objections having become more complicated in recent years. Possible initiatives to help the public become more involved in licensing issues are the production of a range of information products and the promotion of contact points for free advice.

Other licensing issues

28. The Commission considers that the liquor licensing system should provide a balance between predictability and flexibility. We see a place for licence categories with core licence conditions, as well as a continuing place for the Commission to authorise individual/special licence conditions where justified to prevail over the standard conditions for the type of licence (p.154). The power to depart from standard conditions would be required to enable the Commission to implement regional plans and local agreements, to comply with applicant wishes for a very limited licence (eg an Aboriginal community club may only wish to open for a few hours each day and to be restricted to selling beer) and to ensure adequate measures to minimize harm and address the concerns of objectors in new licences. The power to vary licence conditions by way of penalty for recalcitrant licensees is also a valuable enforcement tool. We note that the recent NCP amendments to the *Liquor Act* appear to support the continued use of

tailored licence conditions as a harm minimization strategy and as a way of ensuring the public interest test is met (ss6 and 32).

29. A system of guidelines could be useful to the extent that such guidelines are not inconsistent with the legislation and can be departed from when the facts of a particular case are persuasive (Q37A and 37B). Probably the most sensible approach would be a system of non binding guidelines which the Commission can “have regard to” in making decisions. An amendment to the *Liquor Act* along the lines suggested in paragraph 17 above, may be appropriate.
30. Changes in licence conditions should continue to be initiated by licensees (sometimes requiring them to advertise and be subject to the objection process), by the Commission on its own motion, and as a result of hearings of complaints and objections (thus giving the public an opportunity to influence conditions).
31. We note that any changes to the system of granting liquor licences “in perpetuity” are likely to have major compensation implications for government, unless made non-retrospective (Q53). A system of periodically reviewing licences would also have major resource implications for Government (Q54). It may be a more cost effective strategy to put additional resources into the regular inspection of premises (including the conduct of harm reduction audits) and into the promotion of complaint mechanisms to ensure that problems are more readily identified, investigated and addressed (Q56).
32. In an industry increasingly dominated by big business, including multi-national companies, there is a danger that high liquor licence application fees, annual licence fees and/or government cost recovery, could work to further marginalize small local businesses and/or provide an economic imperative to maximize sales, rather than minimize harm. It is therefore arguable that such initiatives could undermine all four of the recently introduced statutory objectives of *Liquor Act* (Q58, 59).
33. There will always be a need for a system of special licences for one off events and for temporary variations of licence conditions. The *Liquor Act* provisions and the current administrative processes utilized to consider applications could probably both benefit from some rethinking. The event licence application process outlined at the SA Police Conference in Alice Springs (May 04) may be a useful model for some NT special licence applications (Q61-63).

Summary

34. The Commission is hopeful that an outcome of efforts to address alcohol policy in the Northern Territory through the development of an Alcohol Framework is that all Territorians will ultimately enjoy the benefits of a liquor industry which is diverse, vibrant and sustainable, but one which is a much reduced concern for the Northern Territory community in terms of the harms it generates.
35. In making this submission, the Commission has been mindful of the new objects of the *Liquor Act* and has endeavoured to ensure that its comments are consistent with these objects.

36. The Commission supports the creation of an Office of Alcohol Policy (OAP) and considers that such an office could greatly enhance the government and the community's ability to deal effectively with alcohol related issues. It will be important that the OAP be informed by the best possible evidence describing the nature and extent of alcohol-related harm in the NT and the effects of strategies and interventions to reduce such harm. Accordingly, the Commission would strongly support the improvement of the NT information base on alcohol-related issues and would hope that this information base could be interrogated to produce reliable and scientifically-valid interpretations.
37. The Commission welcomes the focus proposed in the Interim Report on policy initiatives at the local and regional scale and in the specific domain of indigenous alcohol issues. We are also supportive of initiatives that might improve the opportunities for the community to have input into licensing decisions; including those that might provide the Commission with more flexible options for receiving and managing such input, as long as such initiatives provide due process and allow issues to be dealt with on their merits.
38. The Commission considers that there is a very strong argument for retaining the role of the Commission as the decision-maker of first instance. We consider that it is important that decision making in this area continues to be publicly accountable and adheres strictly to the principles of procedural fairness. The Commission emphasizes that independence in decision-making in respect of individual cases does not detract from the central role of government in setting policy directions through legislation and program based initiatives.

The Commission is grateful for this opportunity to provide a considered response to the Interim Report and looks forward to any further opportunity to discuss, clarify or expand on any of the matters raised in this submission or to provide comments on any additional issues that Framework officers and others may wish to raise.

Peter R. Allen
CHAIRMAN

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