

NSW GOVERNMENT RESPONSE
TO THE “STATUTORY REVIEW
OF THE *LIQUOR ACT 2007* AND
THE *GAMING AND LIQUOR*
ADMINISTRATION ACT 2007”

INTRODUCTION

The NSW Government welcomes the report of the statutory review of the *Liquor Act 2007* and the *Gaming and Liquor Administration Act 2007*, which was independently chaired by Mr Michael Foggo, a former Commissioner of the Office of Liquor, Gaming and Racing (OLGR).

The independent review involved consultation with industry and the community including the release of an explanatory paper, information sessions with key stakeholders and a call for public comment, resulting in 106 submissions from the community, government agencies, local councils, industry and the health sector.

Importantly, the review outcomes support the continued regulation of the sale, supply and consumption of alcohol to reduce and prevent the significant harm that can be associated with its consumption. The review also recognised that alcohol is widely enjoyed within society, can be consumed in a responsible manner, and the liquor and associated industries make a significant contribution to the social and economic fabric of New South Wales.

The review made 91 recommendations which focus on three key regulatory reform areas – transparency, efficiency and promoting a risk based approach to enforcement and compliance. The review considered that the recommendations would:

- improve access to and participation in the liquor regulatory system for stakeholders, including the community;
- reduce unnecessary costs and red tape;
- promote informality, timeliness and transparency in decision making;
- provide effective regulatory tools to prevent and respond to alcohol-related harm;
- address technical issues with the current law which impede its operation; and
- provide a better grounding for future liquor regulatory and policy decisions.

In developing its response, the government has acknowledged the importance of a comprehensive approach that is informed by the views of stakeholders. Consultation meetings were held with key community and industry representatives in April 2014 to help inform this response to the review's recommendations.

Consistent with the findings of the review, those consultation meetings confirmed there is a clear consensus that excessive and irresponsible alcohol consumption leads to undesirable outcomes for individuals. There are also real social and economic costs to the community. At the same time, it is recognised that there is a range of different views on the causes and best solutions, and this response seeks to balance those views with a focus on identifying and reducing risks.

This response notes that certain alcohol-related violence reforms have been introduced by the government since the review report was released in December 2013 that have resulted in some of the review's recommendations on key issues – such as trading hours, take away liquor sales, party boats, and a tailored approach to addressing harm – either being implemented or overtaken by subsequent action.

The implementation of these reforms demonstrates how seriously the government views the issue of alcohol-related harm. Those reforms pave the way for additional measures to be introduced in high risk areas such as the Sydney CBD and Kings Cross, as well as other precincts, should that become necessary.

This response also notes that work is underway on other important initiatives, including improved access to regulatory information for stakeholders, and an evaluation of the Environment and Venue Assessment Tool (EVAT) during 2014.

Finally, the response identifies opportunities for other reforms to ensure the *Liquor Act 2007* and the *Gaming and Liquor Administration Act 2007* effectively contribute to reducing harm and providing an environment where the wider community can benefit from responsible liquor and gambling industries.

Note regarding references to the position of “Director General”

Between the release of the review report by the government and the development of this response, the *Government Sector Employment Act 2013* commenced. Accordingly, all references to the Director General of the Department of Trade and Investment, Regional Infrastructure and Services in this response should be construed as references to the Secretary of NSW Trade & Investment.

POLICY OBJECTIVES

Recommendation 1:

The existing policy objectives of the *Liquor Act 2007* remain valid and should continue unamended.

Recommendation 2:

Specific objects should be inserted into the *Gaming and Liquor Administration Act 2007* which are similar to those included in comparable statutes to:

- facilitate access by stakeholders,
- require regulators and decision makers to adopt efficient and effective proceedings which are informal, expeditious and inexpensive, and
- promote fair decision making.

Response – Supported

The government supports the continuation of the existing policy objectives of the *Liquor Act 2007*, which are to:

- (a) regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community,
- (b) facilitate the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system with minimal formality and technicality, and
- (c) contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.

The government acknowledges there is a range of views among stakeholders regarding the existing policy objectives of the *Liquor Act*. While the government appreciates that some submissions to the review called for harm minimisation to be the sole or primary objective of the Act, the government supports the review's findings that the existing policy objectives strike a balance between the need to facilitate social benefit and industry development, as well as economic activity, and the need for proper oversight of the industry to promote responsible practices in order to help minimise alcohol-related harm.

In securing the objects, the *Liquor Act* requires that each person who exercises functions under the Act (including a licensee) is required to have due regard to the need to:

- (a) minimise harm associated with misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour),
- (b) encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor, and
- (c) ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life.

As noted by the review, this ensures that in dealing with any matter under the *Liquor Act*, from a licence application to a disciplinary matter, consideration must be given to issues such as harm minimisation, responsible service and consumption, and the positive role that licensed premises can have on community life.

In regard to the *Gaming and Liquor Administration Act 2007*, the government supports the inclusion of policy objectives as recommended by the review.

The *Gaming and Liquor Administration Act* does not currently contain specific policy objectives. The Act is administrative in nature with its primary function being to constitute

the Independent Liquor and Gaming Authority, provide for its functions and powers, and facilitate enforcement powers under the *Liquor Act 2007*, the *Casino Control Act 1992*, the *Gaming Machines Act 2001* and the *Registered Clubs Act 1976*.

Given the significant concerns expressed by stakeholders about a range of administrative issues identified by the review (such as the importance of transparency and timeliness in decision making), the government supports the review's finding that the Gaming and Liquor Administration Act would benefit from policy objectives similar to those contained in comparable statutes, such as the *Administrative Decisions Review Act 1997*.

Implementation:

The government will develop the necessary amendments to insert policy objectives into the *Gaming and Liquor Administration Act 2007*.

The development of policy objectives for the Gaming and Liquor Administration Act will involve consultation with the Independent Liquor and Gaming Authority.

Proposed timeframe:

Within 6 months from the release of the government's response.

STRUCTURE OF THE LIQUOR REGULATORY FRAMEWORK

Recommendation 3:

The Government should create a 'one-stop-shop' website for liquor and gaming which aggregates information from relevant sources, is simple to use and understand, and is structured so that the starting point for persons accessing the website is what that person wants to achieve, rather than who they should approach to achieve it.

Recommendation 4:

Consideration should be given to including geo-coded licence type information on the website that could be available to the public, and to local councils to consider when determining planning applications, and to regulators to consider where a community impact statement is required.

Response – Supported in-principle

The government notes that the recommendation to create a 'one-stop-shop' liquor and gaming website was made partly in response to the concerns expressed by some stakeholders about the complexity and structure of the liquor regulatory framework, particularly in relation to the roles, responsibilities and expectations of each entity involved in the regulation of the liquor industry.

The review found that there is a lack of understanding within both government and the community as to the respective roles and responsibilities of decision makers, and considered that part of the problem stems from the current state of the OLGR's website. The review therefore considered that OLGR's website was in need of modernising to assist with navigation and to ensure information is current and accurate.

The review also identified the importance of a consistent customer service focus, and the provision of an accessible, simple to use information resource that facilitates community stakeholder input, and better explains how the NSW liquor licensing framework operates.

Implementation:

The government is committed to improving access to information and services and acknowledges that these issues generated strong interest at consultation meetings conducted by Office of Liquor, Gaming and Racing in April 2014 with key community and industry representatives.

NSW Trade & Investment has initiated a website consolidation program to improve the delivery of information, products and services in a user-friendly and streamlined manner, and to enhance customer engagement and business outcomes. Under this program, the Office of Liquor, Gaming and Racing is working to redevelop its website to improve accessibility to authoritative information and to regulatory services.

This will assist stakeholders to understand the obligations of industry, staff and the community under the regulatory framework, and the action that can be taken to address alcohol and gambling-related harm. This work, which is expected to be finalised during 2015, will also provide new resources for industry, government and the community to assist them when engaging with the liquor and gaming regulatory system.

The Office of Liquor, Gaming and Racing will progress this work with a view to developing a "one-stop-shop" platform. This outcome will deliver a single portal for those wishing to operate a venue that provides liquor (and gaming) services or alter existing licence

arrangements, and those who wish to intervene in an application or require action to address local community harm. The design of the portal will be guided by the principle that it be simple to use, provide as seamless experience as far as possible with helpful information to stakeholders independent of the boundaries of regulatory responsibility.

With respect to recommendation 4, the government notes that the Office of Liquor, Gaming and Racing is currently developing tools to allow mapping of geo-code licence information. The initial focus will be to assist with internal regulatory processes. However, wider public access to this information will be considered once the tool has been refined to ensure accuracy of information and compliance with relevant legal requirements governing the use of licensing information.

Proposed timeframe:

Within 6-12 months of the release of the government's response.

Recommendation 5:

The liquor laws should require mandatory publication of brief written reasons for decisions on contentious and high impact licensing applications and regulatory interventions (including enforcement action taken), and should include reasons for decisions and outcomes as part of an enforcement report card.

Recommendation 6:

Consideration should be given to how information relating to decision and enforcement outcomes can be widely distributed, including through the media.

Recommendation 7:

Applicants and other interested parties should be able to request brief written reasons for the Authority's decision in respect of applications not included in the mandatory publication decisions.

Response – Supported

Improving the transparency and accountability of government and its services is a key priority for the government under its *NSW 2021* plan. The government appreciates the strong representations from several stakeholders during the review for improvements in the transparency of significant liquor and gaming related processes.

In this regard, the review suggested that improvement could be achieved by mandating a requirement for brief reasons to be published in higher risk licensing decisions, consistent with the accessible, informal approach to the provision of written reasons adopted by other independent determinative bodies.

The review considered that this requirement should apply to hotel, packaged liquor licence, nightclub and extended trading proposals to provide applicants and those who make a submission with greater transparency and clarity. This would also inform prospective applicants and stakeholders on the issues taken into consideration by the Independent Liquor and Gaming Authority when determining applications.

The review also considered that applicants and other interested parties should be able to request brief written reasons for a decision in respect of applications not included in the mandatory publication list.

Further, the review recommended that publication of decisions and action taken on regulatory interventions should be mandated to better explain the processes adopted by regulators to assist in reducing community harms. It was considered that community understanding and transparency would be enhanced by requiring publication of decisions on regulatory interventions (including enforcement action taken by the Secretary of NSW Trade & Investment and liquor and gaming inspectors), and that consideration should be given to how this information can be widely distributed, including through the media.

Implementation:

The government notes that the Independent Liquor and Gaming Authority now publishes its reasons for decisions in respect of certain contentious matters, or those likely to have a strong public interest, including the outcome of disciplinary complaints and high risk licensing applications, any decision to impose a third strike on a venue, and where a 72 hour temporary closure order has been issued to a licensed venue.

Notwithstanding this, the government will develop the necessary amendments to the liquor laws to mandate these requirements to provide consistency and regulatory certainty.

These recommendations will also be implemented as part of the redevelopment of the OLGR's website (see response to recommendation 3) and will complement current processes to distribute information relating to enforcement outcomes.

Proposed timeframe:

Within 6 months of the release of the government's response for legislative amendments, and 6-12 months for website redevelopment and information channels.

Recommendation 8:

All decisions of the Director General should be reviewable by the Authority, with the available review rights explained to stakeholders.

Response – Supported

Under section 36A of the *Gaming and Liquor Administration Act 2007*, any person who is aggrieved by a decision of the Secretary of NSW Trade & Investment may request the Independent Liquor and Gaming Authority for a review of the decision. This power extends to all statutory decisions of the Secretary with the exception of decisions made under section 102A and 136B of the *Liquor Act 2007*, which are not currently reviewable.

Section 102A of the Liquor Act enables the Secretary to restrict or prohibit activities that encourage the misuse or abuse of liquor, while section 136B of the Liquor Act enables the Secretary to approve liquor accords for designated precincts, or precinct liquor accords as they are more generally known.

In the interests of transparency and ensuring independence and consistency, the review considered that these decisions should also be reviewable, and that the available review rights could also be better explained to the public.

Implementation:

The government accepts the merit of this recommendation, and will develop the necessary amendments to section 36A of the *Gaming and Liquor Administration Act 2007* to enable decisions made by the Secretary of NSW Trade & Investment under sections 102A and 136B of the *Liquor Act 2007* to be reviewed by the Independent Liquor and Gaming Authority.

Proposed timeframe:

Within 6 months of the release of the government's response.

Recommendation 9:

The probity standards required for all liquor and gaming inspector positions located within the OLGR should be determined by the Department as the employer.

Response – Supported

The review noted that the *Gaming and Liquor Administration Act 2007* provides that the Secretary of NSW Trade & Investment can appoint inspectors to undertake a range of gaming and liquor enforcement related functions, including the inspection of premises and seizure of records and items, and issuing of penalty notices for breaches of the legislation. However, the Independent Liquor and Gaming Authority is responsible for determining the standard of probity required for departmental employees involved in the administration of the liquor and gaming laws.

A number of operational issues were raised in submissions, which highlighted the need to ensure a more efficient and effective regulatory environment. In particular, the review considered that there is a need for clarity in determining the probity requirements for staff employed by the Department (NSW Trade & Investment) undertaking functions on behalf of the Secretary or central to Departmental responsibilities.

The government therefore supports the review's recommendation, which is consistent with principles under the *Government Sector Employment Act 2013*, and will progress changes to ensure that the Secretary has ultimate responsibility for the employment arrangements of all departmental staff.

Implementation:

The government will develop the necessary amendments to the *Gaming and Liquor Administration Act 2007* to achieve this outcome.

Proposed timeframe:

Within 6 months of the release of the government's response.

Recommendation 10:

A statutory position of the Director of Licensing should be introduced to determine low risk or non-contentious liquor licence applications under the *Liquor Act* and *Registered Clubs Act 1976*, including the:

- approval of changes to licensees or managers,
- redefinition of the boundaries of licensed premises,
- approval of restricted areas in licensed premises, and
- extension of trading hours for special occasions.

Recommendation 11:

All decisions of the Director of Licensing should be reviewable by the Authority.

Response – Noted

It is noted that as an option to improve decision making timeframes and make better use of resources, the review recommended that consideration be given to divesting some low risk or non-contentious liquor licence determinations to a statutory position holder (suggested to be a Director of Licensing). The review considered that the Director of Licensing would

report to the Executive Director of the Office of Liquor, Gaming and Racing, and that the Director's decisions would be reviewable by the Independent Liquor and Gaming Authority.

This recommendation needs to be considered in the context of the recent realignment of licensing resources and functions within the Office of Liquor, Gaming and Racing and the Independent Liquor and Gaming Authority, which has improved clarity and reporting responsibilities for those dealing with licensing applications.

The government notes that concerns have been raised by certain stakeholders about recommendation 10. In particular, some community representatives questioned the need for such a position, and raised concerns about its role within the current structure of liquor and gaming regulatory decision making, and what would constitute a "low risk" application.

Next steps:

Having certain low risk liquor licensing applications dealt with in a separate regulatory environment may create stakeholder confusion and increase costs and time for applicants. The government will therefore give further consideration to this recommendation in the light of the existing regulatory structures in place.

Recommendation 12:

The Authority should remain responsible for:

- granting all liquor licence applications,
- extension of trading hours on a permanent basis,
- the determination of disciplinary proceedings as currently provided, and
- its current role in relation to casino-related matters.

Recommendation 13:

The Authority should be able to delegate functions to the Chief Executive of the Authority, and Authority members.

Response – Supported

The government acknowledges and supports the review's findings that the current structure of decision making should continue. The government also notes that maintenance of the Independent Liquor and Gaming Authority as the independent liquor and gaming determinative body was strongly supported by both industry and community representatives at consultation meetings held in April 2014.

In its submission, the Independent Liquor and Gaming Authority recommended that it be empowered to make delegations to its Chief Executive and to other members of the Authority to improve its operations and its ability to reduce processing times and application costs. This change has merit in that it will facilitate a more efficient use of resources and potentially expedite the consideration of some applications.

Implementation:

The government will develop the necessary amendments to the *Gaming and Liquor Administration Act 2007* to achieve this outcome.

Proposed timeframe:

Within 6 months of the release of the government's response.

PROBITY OF INDIVIDUALS AND ORGANISATIONS

Recommendation 14:

The current provisions regarding determination of fitness from a criminality perspective allow sufficient flexibility to consider the range of probity issues and should therefore remain unchanged subject to the application of a ‘risk based’ approach to assessments within particular categories to facilitate greater expedition and transparency.

Recommendation 15:

The Liquor Act should make it clear that the concept of “fit and proper” includes the competency (including honesty, knowledge and ability) of the proposed licensee.

Response – Supported

Under section 45(3) of the *Liquor Act 2007*, the Independent Liquor and Gaming Authority must not grant a liquor licence unless it is satisfied that the applicant is a fit and proper person to carry on the business or activity to which the licence relates. The Authority is able to make enquiries about individual and corporate applicants for licences, as well as any close associates or parties interested in the licence. This includes requesting a National Police Certificate for persons, an Australian Securities and Investments Commission (ASIC) report for corporate applicants, and seeking information from the NSW Police Force and the Secretary of NSW Trade & Investment.

Consideration of a person’s fitness to hold a licence is subject to various tests that include a person having requisite knowledge of the requirements of the Liquor Act and associated matters. Being fit and proper normally comprises three characteristics of honesty, knowledge and ability. Ensuring prospective licensees possess appropriate skills and knowledge diminishes potential risks as new licences are approved, and helps to manage emergent risks.

The government recognises that the Liquor Act does not presently make specific provision for measuring an applicant’s competency, and that the “fit and proper” requirement could be better defined to provide assistance to regulators and industry to understand the probity and competency standards that are expected.

Implementation:

The government will develop the necessary amendments to the *Liquor Act 2007* to provide clarity on this issue in a way that takes into consideration the competencies needed to operate different types of liquor licences under different operating environments.

These reforms will be progressed as part of the work to implement recommendations 16 to 18 which deal with industry training, which will also involve the development of internal processes to ensure there is a risk-based approach to consideration of fitness.

Proposed timeframe:

Within 6-12 months of the release of the government’s response.

INDUSTRY TRAINING

Recommendation 16:

A tiered approach to training should be developed that extends to mandated licensee training, and tailored RSA training for other industry workers, and allow for refresher training to be undertaken when competency cards expire.

Recommendation 17:

Initially, mandated licensee training should be focused on and trialled for higher risk venues (such as hotels, bars, clubs, late trading venues) or venues located in high risk precincts.

Recommendation 18:

Competency training should be introduced for high risk venues and the Authority should be given the ability to refuse applications where the competency of the individual (training and experience) is disproportionate to the risk profile of the licensed venue.

Recommendation 19:

The administration of industry training should rest with a single decision maker within OLGR to avoid confusion and inconsistencies.

Response – Supported

The government is committed to a training framework that best serves the needs of industry and provides appropriate competencies for licensees and staff. The review notes that a tiered approach to responsible service of alcohol training, whereby training is tailored to various industry sectors, would be an appropriate vehicle to provide the industry with necessary skills. The review also recommends this approach be extended to mandated licensee training, and that refresher training be undertaken when qualifications require updating.

The review observed that a common view held among those advocating for licensee training was the introduction of a training program targeting licensees either that enter the liquor industry, or for licensee training relevant to the category of the liquor licence. The recommendation follows concerns raised by some stakeholders that training should in most cases be assessed against the level of appropriate skills relevant to the category of licence held.

Significant work is required to develop and implement a tiered training framework that is appropriate for each sector of the liquor industry. The government will progress this issue, potentially through an industry working group, to develop options for an appropriate training regime. This will include consideration of training requirements and courses in other jurisdictions with a view to recognition of relevant prior training, if appropriate.

The review also proposed that the Independent Liquor and Gaming Authority be given the ability to assess licence applications on the basis of an individual's training and experience in association with the risk profile of a venue. As noted in the response to recommendations 14 and 15, the government supports the principle that the fitness of an applicant includes consideration of a person's competency.

As recommended by the review, the government considers that all industry training should be administered by the Office of Liquor, Gaming and Racing. Under current regulatory arrangements, the Independent Liquor and Gaming Authority can approve courses that

may be required to be undertaken by licensees and staff, while the Secretary of NSW Trade & investment approves responsible service of alcohol and responsible conduct of gambling training. The review found that the division of responsibility between the Office of Liquor, Gaming and Racing and the Independent Liquor and Gaming Authority in relation to industry training has led to inconsistencies in course content and the training framework.

Implementation:

The government will progress tiered industry training, potentially through an industry working group, to develop options for an appropriate training regime. The government will then develop the necessary amendments to the liquor and gaming laws to implement the review's recommendations.

Proposed timeframe:

Within 12 months for development of a training framework.

ENVIRONMENT AND VENUE ASSESSMENT TOOL

Recommendation 20:

The Environment and Venue Assessment Tool and the intent of its supporting research have merit, and its ongoing development should be supported by further research.

Recommendation 21:

The Environment and Venue Assessment Tool should be subject to rigorous and independent evaluation and that a summary of that evaluation is available for public review.

Recommendation 22:

A standardised tool, based on the available research in regard to cumulative harms, should be utilised for liquor licensing matters.

Recommendation 23:

The types of issues to be considered by the tool should be prescribed as matters that need to be taken into account in an application for a higher risk liquor licence or permanent extension of trading hours to enable trading past midnight.

Response – Supported in-principle

The Environment and Venue Assessment Tool (EVAT) has been developed to support decision-making on applications for new liquor licences. EVAT offers an objective, evidence-based mechanism that balances potential risk factors within a liquor licence application against local liquor market conditions, existing levels of alcohol-related problems in the region of the proposed venue, and the level of risk associated with the type of licensed venue proposed.

EVAT's purpose is to provide tailored, consistent and transparent risk assessments for the environment (area) and the venue type for each licence application received. It is important to note that EVAT is simply a supporting mechanism for the assessment of liquor licence applications – not the sole tool that informs the decision-making process. Community Impact Statements and submissions are still a critical part of the decision-making process.

The EVAT recognises the broad range of net impacts of liquor licence density, accounts for a wide range of risk factors, and supports risk mitigation. The EVAT provides two overall risk assessments: location risk (which includes both external and market factors) and venue risk.

Next steps:

A 12 month trial of EVAT for new liquor licence applications in the City of Sydney and the City of Newcastle local government areas was completed in the first quarter of 2014. This trial is currently being evaluated.

The evaluation includes collecting qualitative information about EVAT and its utility from Office of Liquor, Gaming and Racing and the Independent Liquor and Gaming Authority, reviewing the role of EVAT in informing licensing decisions, and commissioning an independent peer review of the tool. The evaluation is examining the utility of the tool in informing consideration of other licence application types (e.g. extended trading authorisations). It will also inform any decision on its use on a state-wide basis.

The evaluation findings will identify areas where further research can be conducted and where EVAT can be enhanced based on current regulatory environment and licensing needs.

The evaluation report is expected to be available in August 2014. The government will take into account the recommendations made by the review, and the views expressed by stakeholders during the review process, when considering the evaluation report. Further information will be provided to industry and the community once the government has considered that report.

Recommendation 24:

The Environment and Venue Assessment Tool should be used to inform input into the modified planning process as recommended by this review.

Response – Supported in-principle

Implementing of this recommendation will be considered in light of the outcome of the evaluation of the EVAT trial and the government's response to recommendation 70.

Next Steps:

As noted above, a 12 month trial of EVAT is currently being evaluated. The government will take into account the recommendations made by the review when considering the evaluation report.

Recommendation 25:

Data regarding the density of liquor outlets should be considered when granting a new liquor outlet, and be one of the relevant data sets taken into consideration in the determination of the impact of an additional liquor outlet in a particular area.

Response – Supported

The EVAT considers a radial estimate of density under market-based location risk factors. This information is contained in the EVAT assessment report which the Office of Liquor, Gaming and Racing makes available to the Independent Liquor and Gaming Authority for consideration along with other submissions and reports.

Implementation:

This recommendation has already been implemented through administrative arrangements that ensure the Independent Liquor and Gaming Authority is supplied with relevant data as part of the EVAT report on an application.

LICENCE FREEZE

Recommendation 26:

The issues raised in submissions to the review should inform consideration by the Government of the future of the liquor licence freeze.

Response – Supported

The freeze applying to the Kings Cross and Oxford Street Darlinghurst precincts was extended in early 2014 so that it expires in February 2016. At the same time, a freeze was introduced until February 2016 for the Sydney CBD Entertainment precinct.

Implementation:

The future of these freezes will be reviewed prior to their expiry in 2016, and the issues raised in submissions to the Liquor Act review will inform that process.

LICENCE FEES AND DURATION

Recommendation 27:

All liquor application fees prescribed under Schedule 1 of the *Liquor Regulation 2008* should be revised to align with those fees as far as practical with the actual business cost of processing licence applications as part of the administration of the Liquor Act.

Recommendation 28:

An indexation clause should be applied which allows licence application fees to be aligned with increases in the Australian Consumer Price Index every four years.

Recommendation 29:

A contemporary periodic risk based licensing scheme – including periodic fees and risk based fee loadings as discussed in this review – should be introduced.

Response – Supported

While application fees are payable for around 35 different applications that can be made under the liquor laws, these fees have not changed in over five years, with some fees unchanged for more than 30 years. Furthermore, the legislation does not provide for fee indexation, while none of the existing fees cover the cost of regulatory effort in processing an application. This situation is anomalous when considered in the light of the cost-recovery principles that apply to a range of similar processing fees payable to government for other purposes.

The government's package of liquor reforms announced in January 2014 provides a statutory framework for the introduction of a risk based licence fee for all licensed premises, which is consistent with recommendation 29. Annual fees can encourage better compliance levels to reduce risks associated with trading hours, compliance history, location and patron capacity.

On 11 April 2014, the government announced details of how risk based licence fees will operate from 2014-15. In the first year of the scheme's operation in 2014-15, every holder of a liquor licence will be required to pay a fee that will include a base fee, plus a risk loading where extended trading after midnight is authorised.

For subsequent years, an additional risk loading will apply where a venue has an adverse compliance history. A patron capacity risk loading will also apply where a compliance history risk loading applies. In addition, a location risk loading will also apply where the venue is located in a high risk precinct and it has a compliance history risk loading.

This risk based fee structure recognises that some licensed venues should contribute a greater share of the regulatory cost, given the additional risk they pose to the community. However, for 75 per cent of licensed premises, only a base fee of up to \$500 a year will be payable.

Fees for each licensed venue for 2014-15 will be calculated in March 2015 and be payable by 29 May 2015. Fees are prescribed in the *Liquor Regulation 2008*, and are indexed to the CPI annually.

Implementation:

The government has already made amendments to the *Liquor Act 2007* and *Liquor Regulation 2008* to implement a periodic fee scheme. The Office of Liquor, Gaming and

Racing has been tasked with implementing the program, with periodic fee payments to commence in 2015, and full operation of the scheme from 2016.

With respect to liquor application fees, the government notes that some fee levels have remained unchanged for more than six years (some for more than 30 years). The government will amend the *Liquor Regulation 2008* to introduce a revised fee regime that is indexed to CPI annually. The new fee structure will be consistent with cost recovery principles, and will be gradually increased over time so that a greater percentage of the processing cost is borne by applicants.

Proposed timeframe:

Within 12 months of the release of the government's response for program implementation.

TRADING HOUR CONTROLS

Recommendation 30:

The current strategy of applying a targeted approach to reducing alcohol-related problems associated with licensed premises is supported and should continue.

Recommendation 31:

The adoption of a standard set of conditions to be applied to all existing late trading venues is not supported.

Response – Supported

The government is committed to tailored solutions to address specific alcohol-related problems in local communities.

Significant regulatory tools exist under the Liquor Act to effect changes in behaviour by licensees, staff of licensed venues and patrons consistent with the harm minimisation objectives of the law. These powers include the imposition of restrictions on irresponsible licensed venues which can include lockouts, bans on shots and glass, cessation of alcohol service prior to closing, and other trading restrictions.

The Act also allows directions to be issued by the Secretary of NSW Trade & Investment to licensees and staff relating to conduct on the premises, and for irresponsible alcohol promotions and activities that encourage misuse or abuse of liquor to be restricted.

The government supports the use of these powers on a case-by-case basis to address specific alcohol-related problems caused by particular venues, rather than blanket measures that capture responsible licensees and patrons.

The government's package of liquor reforms announced in January 2014 introduced a regulatory framework that also enables precinct based measures to be applied in areas with unacceptably high levels of alcohol-related violence. The first precinct to be established under the new framework is the Sydney CBD Entertainment precinct in February 2014. This action complemented precinct based measures in place for venues in the Kings Cross precinct.

These reforms introduced a 1.30am lock-out and 3am cease alcohol service restrictions for the Sydney CBD and Kings Cross precincts. The reforms also facilitated the development of a Plan of Management for the Sydney CBD that applies targeted licence restrictions to venues within the precinct to improve safety and reduce the risk of alcohol-related violence.

Implementation:

Existing Liquor Act regulatory powers facilitate a targeted approach and are consistent with the review's recommendations.

Recommendation 32:

The existing wide-ranging powers to control liquor trading hours and apply restrictions to licensed venues under the Liquor Act should be better communicated and explained to the community and local government, including via the proposed new 'one-stop-shop' liquor and gaming website.

Response – Supported

As previously noted in this response, the government acknowledges the important role that a well structured and high quality website can play in ensuring stakeholders have access to information on measures that can be taken to reduce harm associated with liquor trading, particularly extended trading arrangements.

Implementation:

This recommendation, which acknowledges the wide ranging powers that currently exist to control liquor trading hours, will inform the work that is being undertaken in regard to website resources which is further described at recommendations 3 and 4.

Proposed timeframe:

Within 6-12 months for website redevelopment and information access

Recommendation 33:

Following the grant of a liquor licence, the Authority and the Director General through the disciplinary process should have sole responsibility for the variation of trading hours for a licensed venue.

Recommendation 34:

Local councils should be able to make submissions to the Authority for the liquor trading hours of an existing licensed venue to be varied.

Noted

The review acknowledged that while trading hours of licensed venues are controlled by the liquor legislation, there is also a dual approval process with local government in setting trading hours as part of the development approval process under the planning laws. In some cases, a liquor licence may contain differing trading hours to those approved by local councils, and this situation can lead to confusion. The review also noted that liquor trading hours are not defined in all development approvals issued under the planning laws.

Local councils can currently make submissions to the Independent Liquor and Gaming Authority or to the Secretary of NSW Trade & Investment for the liquor trading hours of an existing licensed venue to be varied. This will continue until the future arrangements for the determination of licensing applications within the context of the planning framework are settled, as noted below.

Next steps:

The determination of liquor trading hours is relevant to the environmental and social impact that can result from the sale, supply and consumption of alcohol. Responsibility for determining those hours needs to be aligned with the broader responsibilities for planning and licensing decisions. This issue is relevant to the government's response to recommendation 70, which deals with the intersection between the liquor licensing and planning frameworks.

Recommendation 35:

The current standard trading hours for packaged licences should remain unchanged.

Response – Not supported

The government has recognised the need to reduce the excessive availability of alcohol and the need to change the heavy drinking culture that exists with some people, particularly late at night.

The reduction of takeaway liquor sales to 10pm each night introduced in February 2014 strikes a balance in reducing the availability of alcohol, while still allowing reasonable time for people to purchase alcohol before going out for the night or when socialising at home.

To ensure regulatory consistency, the 10pm takeaway restriction applies to all liquor stores, as well as to hotels and clubs and other venues that are authorised to sell takeaway liquor, either from a designated area or from across the bar.

However, the government recognises that this restriction may have an impact on some businesses and their patrons.

The Government is gathering data from affected operators and other stakeholders on the impact of the 10pm takeaway restriction. This data will inform a review of the impact of this measure that will be undertaken after it has been in place for 12 months ie. after February 2015.

Implementation:

The government will review the impact of the 10pm takeaway sales restriction after it has been operating for at least 12 months to ensure seasonal and other variables are properly considered.

Proposed timeframe:

The review will commence after February 2015.

PACKAGED LIQUOR LICENCES

Recommendation 36:

If the Environment and Venue Assessment Tool process remains in place, the data contained in the Tool should be reviewed to ensure a better mix of indicators, similar to those adopted by the Authority, which are relevant to the type and risk of the application sought.

Recommendation 37:

The indicators used in the Environment and Venue Assessment Tool should include the current density of packaged liquor outlets and domestic violence rates.

Recommendation 38:

The possibility of including information in the Environment and Venue Assessment Tool relating to underage drinking, public drinking and pre-fuelling should be explored.

Response – Supported in-principle

Discussion of the EVAT tool is provided in response to recommendations 20 to 23.

Next steps:

As noted previously in this response, a 12 month trial of EVAT is currently being evaluated. The government will take into account the recommendations made by the review when considering the evaluation report.

Recommendation 39:

If the Environment and Venue Assessment Tool process is not adopted, the present framework should remain in place.

Response – Supported

As noted previously in this response, a 12 month trial of EVAT is currently being evaluated. The government will take into account the recommendations made by the review when considering the evaluation report.

PRODUCER/WHOLESALE LICENCES

Recommendation 40:

The framework for producer/wholesaler licences, as it applies to wine producers, should be extended to the producers of beer and spirits to enable them to apply for a drink on-premises authorisation and to conduct tastings and takeaway sales of their products at a producer's market or fair.

Response – Supported

The government supports the review's finding that no valid reason exists to continue to limit the opportunities available to beer and spirits producers, compared to wine producers, particularly as the existing framework allows wine producers to sell other forms of liquor on their licensed premises, including beer and spirits under a drink on-premises authorisation. Many beer and spirits producers operate as small businesses, often in regional areas in a similar capacity to wine producers.

Implementation:

The government will develop the necessary amendments to the *Liquor Act 2007* so there is equity between all producers in the sale of liquor on licensed premises and at promotional events such as farmer's markets.

Proposed timeframe:

Within 6 months of the release of the government's response.

Recommendation 41:

The definition of a producer's market or fair should be amended to provide that a minimum of 10 stall holders of any kind is required, rather than a minimum of 10 farmers or producers.

Response – Supported

The government supports the removal of the requirement for a producer's market or fair to include a minimum of 10 farmers or primary producers. The government agrees with the review that the inability of event organisers to attract a minimum of 10 farmers or producers should not inhibit a producer's ability to participate in an event. The existing requirement represents an unnecessary barrier to competition and can prevent regional businesses from meeting the demands of customers at producers' markets.

Implementation:

The government will develop the necessary amendments to the *Liquor Regulation 2008* to implement this recommendation.

Proposed timeframe:

Within 6 months of the release of the government's response.

LIMITED LICENCES

Recommendation 42:

Non-profit organisations should be exempted from having to acquire a liquor licence for up to six events a year for fundraising activities that will be of benefit to the organisation or the local community.

Recommendation 43:

The exemption should only apply if the sale and supply of liquor is ancillary to an event and the following conditions are complied with:

- food and free water must be available,
- liquor may only be sold and supplied between 6am and midnight,
- all persons selling and serving liquor at the event must have completed responsible service of alcohol training,
- adequate adult supervision is maintained at any time when minors are present, and
- police and liquor inspectors must be permitted access to the premises.

Recommendation 44:

The exemption should be subject to requirements prohibiting the sale and supply of liquor to an intoxicated person.

Recommendation 45:

A non-profit organisation should be required to provide details of the function to local police 28 days prior to the event, and also to the local council in the case of an event that is proposed to be held on council owned and/or managed property.

Recommendation 46:

Holders of a multi-function limited licence should not be required to obtain approval for each function held under the licence subject to notification to the local police and local council.

Recommendation 47:

The Good Sports program should be promoted to sporting clubs that apply for a multi-function limited licence, and it should be a factor to be taken into account when considering whether a licence should be approved.

Response – Supported

Several submissions to the review suggested that NSW adopt a similar approach to the one introduced into Queensland in 2013 by exempting not-for-profit organisations from having to obtain a liquor licence for one-off or infrequent functions held throughout the year.

As a red-tape and cost reduction measure for non-profit organisations and regulators, the review recommended that non-profit organisations be exempted from having to acquire a liquor licence for up to six events a year for fundraising activities that will be of benefit to the organisation or the local community.

The government supports this proposal, and will develop legislative amendments accordingly. Such exemptions would be subject to prescribed constraints to ensure that appropriate events are conducted by bona-fide non-profit organisations, and to promote a high level of confidence that the liquor laws (including harm minimisation requirements) will be complied with. This would include a need to identify a responsible entity to supervise

the sale, supply and consumption of liquor, prohibitions on the sale and supply of liquor to intoxicated persons, and the need for responsible service of alcohol training by those serving liquor.

With respect to recommendation 46, the government supports the removal of the requirement for approval to be obtained for each function held under a multi-function limited licence, subject to functions being notified to the local police and local council.

The government considers that the existing approval process for functions following the grant of a multi-function licence is unnecessary, onerous and creates red tape, particularly as an application must be made to the Independent Liquor and Gaming Authority at least 28 days prior to the event. Such a requirement can hinder fundraising activities and service to customers, particularly where a proposed function is identified at short notice.

Good Sports is a national community program to improve responsible serving and drinking among non profit sporting clubs and is conducted by the Australian Drug Foundation. It provides free support and advice to sporting clubs to help change their culture and reduce high risk drinking. The program provides guidance to sporting clubs in relation to the liquor laws, bar management strategies and smoke-free environments.

The government does not consider it is appropriate to mandate a requirement which may only be available to some sporting clubs. Therefore, the government supports the review recommendation that the Good Sports program be promoted to sporting clubs as part of the application process for multi-function limited licences where the licence relates to a sporting club, and that it be a factor taken into account when considering whether a licence should be approved.

Implementation:

The government will develop the necessary amendments to the *Liquor Act 2007* to implement these recommendations.

Proposed timeframe:

Within 6 months of the release of the government's response.

LICENSED VESSELS

Recommendation 48:

There should be further discussions between the City of Sydney, OLGR and NSW Police to agree a suitable way forward to the imposition of appropriate licence conditions on vessels with existing licences and those applying to new market entrants.

Recommendation 49:

There should be discussions with vessel operators prior to appropriate licence conditions being finalised.

Response – Supported

The liquor laws enable vessel operators to apply for an on-premises licence to allow liquor to be sold to passengers for consumption on a vessel. Liquor may be sold from one hour before the vessel starts any voyage or passage until 30 minutes after the voyage or passage is completed, or at such other times, or in such other circumstances, as the Independent Liquor and Gaming Authority may authorise. A number of statutory licence conditions and requirements also apply to licensed vessels, including:

- food and free water must be made available whenever liquor is sold or supplied, and
- an incident register must be maintained at all times if authorised to sell liquor after midnight.

As part of the liquor reforms announced in January 2014, the government indicated that party boats that leave from, or operate within, the Sydney CBD Entertainment precinct would be subject to restrictions.

Implementation:

The government's Plan of Management for the Sydney CBD Entertainment precinct includes restrictions on vessel operators so they cannot pickup or set down passengers from within the precinct between midnight and 7am. These restrictions recognise the unique risks associated with the sale and supply of liquor on vessels, and commence on 18 July 2014.

The Office of Liquor, Gaming and Racing, in partnership with relevant stakeholders, will continue to work on this issue during 2014-15 to develop further measures to improve patron management and safety for licensed vessels that operate in Sydney Harbour.

INTOXICATION AND VIOLENT CONDUCT

Recommendation 50:

The 'reasonable steps' provisions in section 73(4)(a) of the Liquor Act should be removed, or alternatively, the Liquor Act should be strengthened to confirm that a licensee has permitted intoxication on a licensed premises unless reasonable steps to be defined in the legislation can be demonstrated to have been implemented prior to regulatory intervention.

Response – Supported

The government considers that the intoxication legislation should set clear standards that licensees should implement to prevent intoxication and support responsible service of alcohol. This will assist industry to understand their obligations, and regulators to enforce the law. The government will therefore develop appropriate legislation to provide better guidance to licensees on the steps they should take to reduce the potential for intoxication on licensed premises, and to assist police and inspectors in taking prosecution action where licensees permit intoxication.

To further strengthen the industry's responsible serving obligations, the government will amend the *Liquor Regulation 2008* by enabling a person's responsible service of alcohol competency card to be revoked by the Independent Liquor and Gaming Authority for serious breaches of the responsible serving laws that occur on licensed premises anywhere in NSW.

This approach recognises that there can be significant employment consequences for staff who do not serve liquor responsibly, and complements sanctions applied to licensees and venue owners for serious breaches of the liquor laws under the Three Strikes disciplinary scheme.

Implementation:

The government will develop the necessary amendments to the *Liquor Act 2007* to provide better guidance to licensees on the steps they should take to reduce the potential for intoxication on licensed premises, and to assist police and inspectors in taking prosecution action where licensees permit intoxication. The development of these amendments will involve consultation with the NSW Police Force and the Department of Police and Justice.

The government will also progress amendments to the *Liquor Regulation 2008* to enable any person's competency card to be suspended or revoked by the Independent Liquor and Gaming Authority for serious breaches of the responsible serving laws.

Proposed timeframe:

Within 6 months of the release of the government's response.

UNDERAGE DRINKING

Recommendation 51:

The Government, in responding to the Social Policy Committee of the NSW Legislative Assembly inquiry into the provision of alcohol to minors, should consider the introduction of a responsible supervision test in the Liquor Act to ensure any liquor supplied to a minor by a parent or guardian, or with the consent of a parent or guardian, in a private setting is done responsibly.

Response – Supported

In its response to the Social Policy Committee of the NSW Legislative Assembly inquiry into the provision of alcohol to minors (available on the NSW Parliament website), the government indicated that it supports this recommendation.

Implementation:

The government will develop the necessary amendments to the *Liquor Act 2007* to introduce a responsible supervision test where alcohol is supplied to minors in a private setting.

Proposed timeframe:

Within 6 months of the release of the government's response.

Recommendation 52:

The Government should consider conducting compliance operations using young looking adults to assess behaviour by licensees when serving persons and there is uncertainty as to their age, with the outcomes to inform industry education and enforcement strategies.

Response – Supported in-principle

The government's package of reforms announced in January 2014 recognised the importance of the underage drinking laws in reducing alcohol-related violence. The package included a commitment to conduct controlled operations involving minors or young looking adults to test compliance with the liquor laws and determine whether liquor is being sold to minors.

Under the Liquor Act, it is an offence to request or order a minor to purchase alcohol from licensed premises. There are a number of safety issues associated with minors purchasing alcohol, as well as a need to consider the sensitivities of these types of operations.

In developing this response, the government has considered options to strengthen compliance with laws prohibiting the sale of alcohol to minors so as to reduce the harms associated with underage drinking. A strong responsible service of alcohol message needs to be supported by effective deterrent measures that are commensurate with the seriousness of this offence. The implications of non-compliance need to be swift to ensure problems are not compounded through repeat offences.

Implementation:

The government will develop amendments to the *Liquor Act 2007* to allow an escalating penalty regime to be prescribed for the offence of selling liquor to a minor on licensed premises. Significant penalties, including suspension and cancellation of a liquor licence will apply in respect of offences under section 117(1) of the *Liquor Act 2007*, where liquor is sold to a minor on licensed premises.

Under this escalating regime, the following penalties apply where an offence is proven at court, a penalty notice is paid, or an enforcement order is issued by the State Debt Recovery Office where a penalty notice is not paid:

First offence – a notice will be issued by the Secretary, NSW Trade & Investment inviting the licensee to make a submission as to why their liquor licence should not be suspended for up to 28 days. In determining, a first offence, the Secretary will take into consideration the compliance history of the licensed premises.

Second offence – the licence is automatically suspended for 28 days where the second offence occurs more than 28 days after, but within 12 months of, the first offence.

Third offence – automatic cancellation of the liquor licence and disqualification of the licensee from holding a liquor licence for 12 months. These provisions apply where a third offence occurs within 12 months of the first offence occurring.

Proposed timeframe:

Within 6 months of the release of the government's response.

PRIMARY SERVICE AUTHORISATIONS

Recommendation 53:

The Liquor Act should be amended to ensure that the sale of liquor should at all times (subject to the recommendation below) be subject to the primary purpose test that applies to an on-premises licence.

Recommendation 54:

Consideration should be given to allowing the Authority to grant a period of grace when the primary purpose concludes so as to, for example, allow liquor to be sold for an hour after the provision of the product or service which is the primary purpose of the business has been concluded.

Recommendation 55:

Clause 19(1) of the *Liquor Regulation 2008* should be revisited in light of the amendment proposed at recommendation 53.

Response – Supported (recommendation 54 is supported in-principle only)

As noted in the review report, the *Liquor Act 2007* is grounded in the principle that licensed premises that operate with a primary service authorisation under section 24(3) of the Act must ensure that the sale or supply of liquor does not become the primary purpose of the licensed premises.

Where the sale or supply of liquor is the primary purpose, the business operator should obtain the appropriate licence, which would generally entail a more substantial consideration of community impact, with the possibility of more restrictive operating conditions given the increased risk resulting from a focus on liquor consumption on the licensed premises.

The government supports the review recommendation that the Liquor Act should clarify this issue by ensuring the primary purpose requirement applies at any given time, and will develop appropriate amendments to the liquor laws.

The government also supports in-principle the view that the law could provide some flexibility so that venues that wish to wind down the sale of the product or service that liquor is provided with as the end of their trading day approaches can do so while continuing to serve alcohol until closing.

However, the timeframe and controls that would apply to the proposed “wind down” period requires further consideration following consultation with relevant stakeholders to ensure it provides real benefits, while not resulting in a fundamental change to business operations and an increase in risk. This will occur in the development of the amendments referred to above.

Implementation:

The government will develop the necessary amendments to the *Liquor Act 2007* to implement recommendation 53, and will undertake stakeholder consultation on recommendation 54.

Proposed timeframe:

Within 6 months of the release of the government’s response.

LICENCE TRANSFERS AND REMOVALS

Recommendation 56:

The existing provisions relating to licence transfers, removals and ownership should be reviewed to remove red tape, reduce processing times, and increase financial certainty for lenders.

Response – Supported

The government notes that licence transfers can be granted provisionally with the grant being confirmed once the Independent Liquor and Gaming Authority has reviewed the probity and competency of the applicant.

There are a number of technical issues with the current transfer provisions that were identified by stakeholders during the review. For example, a simplified approach could be taken where the ownership remains constant and only the licensee changes (particularly where the proposed licensee has previously been a licensee in other licensed premises). There is also a need to ensure certainty around licensee responsibilities where, for example, a licensee is dispossessed and an owner takes control of the business operated under the licence.

The government will therefore develop appropriate amendments to the transfer provisions to improve their operation focusing on the issues identified by the review.

Implementation:

The government will develop the necessary amendments to the *Liquor Act 2007* to implement this recommendation.

Proposed timeframe:

Within 6 months of the release of the government's response.

Recommendation 57:

The transfer owner-in-possession provisions should be revised to make it clear that the licence either reverts to the original licensee where an application is not lodged within 28 days, or where an application is lodged and is refused or the 28 day period expires, the licence is suspended until a new licensee is approved by the Authority.

Response – Supported

As noted by the review, the current law provides that the owner of the premises or business can apply for a transfer of the licence where the licensee is dispossessed, and that application must be lodged within 28 days of the date of the licensee's dispossession. Once lodged, the applicant is taken to be the licensee until the application is determined by the Authority.

The government agrees that the law should provide specific guidance regarding the impact on a licence where the 28 day period expires and an application has not been lodged, or where an application lodged within the 28 day period is refused by the Independent Liquor and Gaming Authority. The law should be framed to ensure clarity and certainty for business operators and regulators.

The government will therefore develop appropriate amendments to make it clear that the licence either reverts to the original licensee where an application is not lodged within 28

days, or where an application is lodged and is refused, the licence is suspended until a new licensee is approved.

Implementation:

The government will develop the necessary amendments to the *Liquor Act 2007* to implement this recommendation.

Proposed timeframe:

Within 6 months of the release of the government's response.

Recommendation 58:

Consideration should be given to removing liquor licences from the realm of “personal property” under the *Commonwealth Personal Property Securities Act 2009*.

Response – Noted

This issue is a matter for the Australian government to consider. The government will therefore refer the matter to the appropriate Federal agency.

MONITORING AND REGULATORY INTERVENTION

Recommendation 59:

A co-ordinated and consistent risk-based approach to regulatory enforcement should be pursued, supported by the extensive regulatory tools already available in the Liquor Act.

Response – Supported

Over the last three years, the government has taken strong action to reduce alcohol-related violence. This has included measures such as the Three Strikes disciplinary scheme introduced in January 2012 (which targets the most serious liquor law offences that are associated with the highest risk activities), and a plan of management for Kings Cross was introduced in December 2012 (which includes targeted measures for this high risk precinct).

More recently, the government has responded to community concerns about alcohol-related violence with a comprehensive package of reforms which has been developed to focus on high risk activities and precincts.

A Sydney CBD Entertainment precinct has been established in which hotels, clubs, nightclubs, karaoke bars, and other high risk premises are now subject to a 1.30am lock out and 3am last drinks. A Plan of Management has been finalised by the government to implement further licence conditions for Sydney CBD Entertainment precinct venues. The government's reform package targets areas of high risk and provides flexibility to respond quickly to alcohol-related problems, as additional precincts can be prescribed should this be necessary.

The government is also introducing risk based periodic licence fees from 2014-15 for all liquor licences. This means that for the first time, licensed premises will pay annual fees which take into account the risks associated with that particular venue – and their compliance history. This reform is discussed in the response to recommendation 29.

These reforms have been developed using a co-ordinated and consistent risk-based approach involving state and relevant local authorities. This principle will continue to underpin the development of the government's policy agenda for the regulation of liquor and gaming activities in New South Wales.

Implementation:

The government will continue with its tailored risk-based approach to minimise alcohol-related risk and harms to the community.

Recommendation 60:

Venue capacity limits should be incorporated into liquor licence conditions following determination by local councils.

Response – Supported in-principle

The government notes that the recommendation for venue capacity limits to be incorporated into liquor licences is in response to uncertainties regarding the capacity of licensed premises, particular higher risk venues that may be subject to crowding at peak trading times in busy entertainment precincts or late at night.

While it is possible to incorporate such limits into liquor licence conditions under the current law, either at the time of grant of a licence or subsequent to the licence

commencing operation, the need for, and means of, incorporating venue capacity limits into all liquor licences is relevant to the development of an integrated planning and licensing system as proposed by recommendation 70.

Next steps:

The issue will therefore be further considered in the context of the government's response to that recommendation.

COLLECTION OF LIQUOR SALES DATA

Recommendation 61:

The Government should closely monitor the outcomes of liquor sales data collection in Kings Cross to inform consideration of future data collection requirements in Kings Cross and/or other precincts.

Response – Supported

The government notes that a number of submissions called for the collection of liquor sales data to be mandated to assist with the development of alcohol policy and regulatory strategies. It was noted that such data is collected in Queensland, the Northern Territory and Western Australia.

There are complexities and costs for industry and government associated with the collection of liquor sales data from a wholesale sector which is much larger in New South Wales than in those jurisdictions which currently collect this data. These can include significant administrative costs to industry and government, depending on the granularity of data collected.

However, the government has implemented data collection arrangements in Kings Cross given the significant level of alcohol-related harm experienced in that precinct. The collection of this data on a time/quantity/type basis may assist regulators in developing strategies to address alcohol-related problems.

Analysis of this data and associated collection issues from mid 2014 will inform consideration of future data collection requirements in Kings Cross and/or other precincts.

Implementation:

The government will consider extending the requirement to provide liquor sales data after analysis of the Kings Cross exercise is complete. This will include consideration of regulatory burden and cost, and the potential to improve on the experience from Kings Cross data collection.

Proposed timeframe:

Within 6-12 months of the release of the government's response.

OFFENCE AND DISCIPLINARY PROVISIONS

Recommendation 62:

Changes to the Criminal Procedures Regulation should be referred to the Attorney General for consideration.

Response – Supported

The issues raised in the review in regard to the *Criminal Procedures Regulation 2010* will be referred to the Department of Police and Justice for consideration.

Recommendation 63:

The provisions of Part 9 of the Liquor Act should be amended to make it clear that it is necessary to have some element of fault or culpability (but not necessarily intention) in finding disciplinary actions proven.

Response – Not supported

The review noted the view of the Independent Liquor and Gaming Authority that some element of misconduct, negligence or fault should be present in a licensee's actions (or lack thereof) to sustain an action for disciplinary proceedings.

While the vast majority of disciplinary matters do involve some element of misconduct, negligence or fault on the part of the licensee or manager, there are circumstances where disciplinary action should be available to regulators to effect outcomes which address local problems associated with the sale, supply or consumption of alcohol or the operation of licensed premises even though the licensee or manager may not have behaved inappropriately. In these circumstances, it is a matter for the Independent Liquor and Gaming Authority to determine the outcome of a disciplinary process.

The current law was specifically developed to allow disciplinary action in a wide range of circumstances where such action is warranted, and the government does not support a narrowing of the operation of the law which may reduce its utility and effectiveness.

Recommendation 64:

OLGR and industry associations should promote education initiatives to inform the public about their responsibilities when attending licensed premises.

Response – Supported

To support the government's liquor reforms that commenced in February 2014, a "New alcohol laws in force" campaign was established to inform patrons and licensees of changes to the liquor laws and expected standards of behaviour within the Sydney CBD and Kings Cross precincts. Information was also made available on those aspects of the reforms that affect all areas of New South Wales.

The government has also committed to develop a high profile road safety style media and advertising campaign to address issues around community perceptions about alcohol abuse and to help the shift away from a heavy drinking culture, as well as complement the new regulatory measures introduced in 2014.

This response includes further information about initiatives to better inform industry and the community about liquor regulatory issues in the government's response to recommendations 3, 32 and 78.

Next steps:

The government, through the Department of Premier and Cabinet, is finalising a high-profile road-safety style social media and advertising campaign to address the issues of community perceptions and drinking culture. The campaign is expected to be rolled out by the end of 2014.

LIQUOR ACCORDS

Recommendation 65:

The Liquor Act should be amended to provide that accords must have terms and be registered, and do not require approval by the Director General or the Commissioner of Police.

Response – Supported

Liquor accords are currently approved by the Secretary of NSW Trade & Investment and the Commissioner of Police under the *Liquor Act 2007*.

The Office of Liquor, Gaming and Racing is working to improve the governance and effectiveness of liquor accords through the adoption of terms outlining the measures that the accord is taking to address local alcohol-related issues and promote the accord's proactive, preventive measures to the community.

The implementation of a registration system by the Office of Liquor, Gaming and Racing better facilitates the provision of support to accords in the development of appropriate harm minimisation and education strategies. This support is informed by a risk-based approach that considers key alcohol-related harm statistics relating to assaults and offensive behaviour, as well as compliance intelligence, to prioritise those accords requiring more intensive activity.

To assist local accords, the government will develop model terms that accords can adopt to better target their activities and ensure effective engagement with local stakeholders to improve harm reduction outcomes. The government will also develop appropriate amendments to move from an approval to a registration process, which will support the continuing requirement for liquor accords to have terms which focus on their role in eliminating or reducing alcohol-related violence or anti-social behaviour or other alcohol-related harm.

Implementation:

The government will develop the necessary amendments to the *Liquor Act 2007* to implement this recommendation.

Proposed timeframe:

Within 6 months of the release of the government's response.

Recommendation 66:

The potential membership of local liquor accords should be broadened to include late night businesses that operate in close proximity to licensed premises, and the providers of security services.

Response – Supported in-principle

The concept of broadening accord membership to include late night businesses that operate in close proximity to licensed premises and the providers of security services is supported in-principle. This can help to ensure a mix of legislative, policy, market and community based incentives to develop effective liquor accords.

A risk-based approach is taken to growing liquor accord membership, with the key focus being high risk licensed venues in high-risk areas. Ensuring accords adopt effective terms provides them with a strategic focus by which they are able to publicly demonstrate their

value to other licensees, police and the local community. Over time it is anticipated that terms will assist in increasing accord membership.

Further consideration needs to be given to which non-licensed entities would be appropriate to become a member of an accord and how this can be achieved to ensure accords remain effective in developing strategies to reduce local alcohol-related harms and there is not a withdrawal of support and/or effort by existing participants.

While there may be benefits in broadening accord membership to other businesses, it must be done in a way that does not diminish the ownership of licensees in developing and implementing local strategies to reduce alcohol-related harm.

Next steps:

The government, through the Office of Liquor, Gaming and Racing, will pursue this issue when engaging with accords in a cooperative manner that does not undermine the future commitment of accord participants.

Recommendation 67:

The approval of precinct liquor accords and community event liquor accords should be simplified under one umbrella as Alcohol Management Plans, with flexibility to determine those licensees and the arrangements that are captured by such plans.

Response – Supported in-principle

The liquor laws enable the Secretary of NSW Trade & Investment to approve of a precinct liquor accord and associated measures where the Secretary is satisfied that there is, or is a potential for, a significant risk of alcohol-related public harm in that precinct and mandate membership for licensees. Precinct liquor accords currently operate in parts of the City of Sydney, Manly, Newcastle/Hamilton, Wollongong and Parramatta.

The Secretary can also designate a community event that is to be subject to a community event liquor accord for a specific period of time that requires licensees to comply with the terms applying to that community event liquor accord.

The government considers that the existing provisions enabling the Secretary to approve precinct liquor accords and community event liquor accords are complex, create confusion given the description of these interventions as accords, and would benefit from reform. These types of regulatory interventions are quite different to traditional accords as there a mandatory element to membership and compliance with terms imposed by the Secretary. There are also risks associated with the existing precinct liquor accord model, which has seen processes and decisions subject to court challenges, leading to delays and regulatory uncertainty.

The government's introduction of a precinct based intervention through a Plan of Management for Kings Cross in 2012, and the expansion of this model in 2014 to allow additional precincts to be prescribed (including the development of a Plan of Management for Sydney CBD Entertainment precinct in 2014), are key components of an escalating regulatory model for licensed venues. The foundation of this model is a locally targeted framework whereby licensees and other local stakeholders agree to work voluntarily to implement measures to reduce alcohol-related harm through local accords. Where more intensive intervention is necessary, this escalation model can ultimately apply specific conditions and restrictions established by law to a precinct on a strategic, risk-based basis.

Conversion of the existing precinct liquor accord and community event liquor accord provisions into a form of Alcohol Management Plan may provide additional flexibility to supplement voluntary local accords and precinct interventions, particularly for specific events or precincts.

Implementation:

This issue will be considered following the evaluation of the Kings Cross Plan of Management later in 2014, and the Sydney CBD Plan of Management in the first half of 2015.

Proposed timeframe:

Within 12-18 months of the release of the government's response.

CONTROL OF UNDESIRABLE LIQUOR PRODUCTS

Recommendation 68:

The updated liquor promotion guidelines should be evaluated 12 months after their commencement (i.e. after July 2014) through an open call for submissions, and consideration should be given to the issues raised in submissions to this review.

Recommendation 69:

The tests in section 101(3) and (4) should be revised to ensure rapid and/or strategic action on undesirable liquor products, while ensuring the manufacturer of a product proposed to be restricted or prohibited is given an opportunity (where possible) to make submissions should action be proposed that would impact on more than one licensed premises.

Response – Supported in-principle

Liquor Promotion Guidelines are required to be issued by the Secretary of NSW Trade & Investment under the *Liquor Act 2007* to enable action to be taken in relation to undesirable liquor promotions conducted by licensed venues.

Updated guidelines were issued in July 2013 following consultation with industry, the NSW Police Force and the Independent Liquor and Gaming Authority. These guidelines, which reflect changes in industry practices since the guidelines were originally issued in 2008, capture point of sale promotions, as well as those conducted using supermarket vouchers and shopper docket, and promotions conducted via social media.

The guidelines will be reviewed on a three year cycle to ensure they reflect new and emerging industry practices and the use of marketing technology with consumers. The review of the guidelines will be subject to consultation with relevant industry and community representatives, as well as key government agencies.

Action can be taken by the Secretary of NSW Trade & Investment to ban the sale of an undesirable liquor product from specific licensed premises on certain grounds where the Secretary is satisfied that the premises are in an area where there are significant concerns about intoxication, underage drinking or irresponsible drinking. These provisions are located in section 101 of the Liquor Act.

The responsible Minister can also recommend a regulation be made under section 100 of the Liquor Act for a state-wide ban of a product that is considered to be an undesirable liquor product.

Grounds that can be considered under both options for declaring a product to be an undesirable liquor product include where it is considered that:

- (a) the name of the liquor product, or its design or packaging, is indecent or offensive, or
- (b) the name of the liquor product, or its design or packaging, encourages irresponsible, rapid or excessive consumption of the product, or
- (c) the name of the liquor product, or its design or packaging, is likely to be attractive to minors, or
- (d) the liquor product is likely, for any reason, to be confused with soft drinks or confectionery, or
- (e) the liquor product is, for any other reason, likely to have a special appeal to minors,

Both banning options are required to follow due process. In the case of a proposed ban by the Secretary, the affected licensee must be provided with an opportunity to make a submission prior to a decision being made.

The Liquor Act also enables the Secretary to issue a direction to a licensee or employee concerning any aspect relating to the licensed premises, with the direction taking effect when the direction is issued.

The government considers that the existing provisions provide an appropriate regulatory framework to enable action to be taken against the sale of an undesirable liquor product on a licensed premises. However, the provision in section 101(3)(b) requiring the Secretary to be satisfied that the premises are in an area where there are significant concerns about intoxication, underage drinking or irresponsible drinking is onerous as it may be difficult and/or time consuming to establish, and this undermines the utility of the provision. This power needs to take account of the fact that some undesirable liquor products are only made available on a temporary basis as part of a promotion, or action may be required quickly to prevent the risk of significant harm.

Implementation:

The government will task the Office of Liquor, Gaming and Racing with reviewing the Liquor Promotion Guidelines every three years commencing 2016. The review will include consultation with relevant industry and community representatives, as well as key government agencies.

In regard to recommendation 69, the government will develop the necessary amendments to the *Liquor Act 2007* to remove the requirement that limits the use of section 101 to circumstances where the Secretary is satisfied that the premises are in an area where there are significant concerns about intoxication, underage drinking or irresponsible drinking.

Proposed timeframe (for recommendation 69):

Within 6 months of the release of the government's response.

SOCIAL IMPACT AND INTERSECTION WITH THE PLANNING LAWS

Recommendation 70:

Consideration should be given to introducing a co-ordinated planning and liquor licensing model (as detailed in this report) as part of the planning reforms that are currently being progressed by the Government so as to provide one forum for consideration of social impact and local neighbourhood issues associated with a liquor licensing proposal.

Recommendation 71:

Consideration should be given to how this new model might be implemented quickly having regard to existing liquor licensing applications that are underway at the time of its introduction.

Recommendation 72:

If the proposals to merge the DA process and the CIS process are not adopted, the CIS process should be reviewed having regard to the issues raised in this review.

Recommendation 73:

The CIS process should be reviewed to ensure it accurately reflects community issues relating to a licensing proposal, with consideration given to requiring full copies of the CIS to be served on local police and local councils; how the CIS process can facilitate the provision of independently sourced data to the Authority; ensuring the community and relevant stakeholders are properly notified of liquor applications; and whether certain licence types should continue to be excluded.

Response – Supported in-principle

The review recommends that the government consider the introduction of a co-ordinated planning and liquor licensing model to apply to new applications for a liquor licence.

This recommendation aims to remove duplication that presently exists in the planning and liquor regulatory systems, while ensuring a robust assessment of the social impact of proposed licensed premises which facilitates community input into licensing decisions and ensure decisions are informed by relevant data (including data on alcohol-related crime and density of licensed venues) and stakeholder submissions.

This model requires consideration of how planning controls and the responsibilities of local councils can facilitate an examination of the social impact of a proposed liquor licence, while recognising the technical and expert role of government agencies. It requires input from liquor regulators as it would become the sole forum for the consideration of the social impact of a licensed venue. Consideration would need to be given to whether the *Liquor Act 2007* should be amended to remove or modify the requirement for assessment of social impact (and the associated community impact statement process) as part of the liquor licence application process where a complementary assessment process has been carried out as part of the development assessment process.

The government acknowledges there is a strong interest from industry and community stakeholders concerning the intersection between the planning and liquor licensing laws. For industry, the focus is on reducing costs and increasing business certainty, while the community wants to ensure there is opportunity for input into licensing decisions and appropriate consideration of the social impact of a licensed premises.

Progression of reforms in this area is expected to be a significant task. There are a range of options requiring consideration by government and with stakeholders, including utilising the government's "one stop shop" proposed to be established within the Department of Planning and Environment, including additional heads of consideration for councils in the existing development assessment process, or extending the existing integrated development framework to these circumstances.

The Department of Planning and Environment is currently conducting a review of concurrences, referrals and planning related approvals as part of the reform of the planning system. Any recommended changes to the approvals process, including the use of the one-stop-shop or extending the integrated development framework, will need to align closely outcomes of this review.

As set out in *NSW 2021*, the reform of the planning system is a key priority for the government. The government believes that NSW planning laws should strike the right balance between ensuring responsible, sustainable growth, while giving local communities a say in the future of their area.

The government is committed to consulting widely on the issue of planning reform, recognising that it is important to get the balance right, and to develop a system which is simpler, better understood and more efficient.

The review's planning related recommendations would need to be progressed through the establishment of a working group to investigate options for consideration by government. Depending on the outcomes of the planning reforms mentioned above, this process is targeted for 2014-15.

Recommendations 72 and 73 relating to the operation of the community impact statement (CIS) process will be considered in the context of the working group process referred to above.

Next steps:

The government, through the Department of Planning and Environment and the Office of Liquor Gaming and Racing, will consider development of a co-ordinated planning and liquor licensing model once the outcome is settled in regard to the government's reforms to the planning system.

COMMUNITY INTERVENTION – COMPLAINTS REGARDING LOCAL DISTURBANCE AND HARM

Recommendation 74:

The use of a mediation process should be promoted where possible and appropriate to deal with community disturbance issues in an informal and expeditious manner.

Recommendation 75:

The availability and operation of this mediation process should be explained in simple terms to stakeholders.

Recommendation 76:

The disturbance complaint process should allow submissions by the community to OLGR, and the immediate commencement of mediation between parties with agreed outcomes in writing.

Recommendation 77:

The *Liquor Act 2007* should be amended to allow agreed resolutions to be imposed on the licensee (rather than the licensed premises) and be subject to disciplinary action, if breached.

Recommendation 78:

Access to information and assistance relating to intervention measures (such as licence conditions, directions, and disturbance complaints) should be significantly improved for local government and the community through measures such as an enhanced website with supporting resources.

Recommendation 79:

Publication of decisions and action taken on regulatory interventions should be mandated, and should include reasons for decisions and outcomes so as to better explain the processes adopted to assist in reducing community harms and to implement regulatory interventions.

Response – Supported (recommendations 76 and 77 are supported in-principle only)

The government appreciates the need for a simple and fair process to allow communities to take action to address neighbourhood disturbance associated with the operation of licensed premises and/or the sale, supply and consumption of alcohol.

The review heard calls for a rationalisation of the current disturbance complaint process to improve the ability of communities and local government to participate through clearer responsibility for processes, improved provision of information to stakeholders, and enhancements to the investigation of complaints to assist decision makers.

The review's support for the benefits of mediation to consider complaints quickly has merit. The government supports the use of a mediation process to reduce costs and complexity, and to facilitate the timely and efficient consideration of neighbourhood problems.

The review noted that there have been improvements to the management of disturbance complaints under the *Liquor Act 2007* so the majority of complaints are now resolved within six months. These improvements have included an assessment procedure to expedite complaints management and escalate complaints meeting the statutory

requirements to investigation and early resolution. This system of case management has also assisted in redirecting complaints to appropriate agencies, where necessary.

The review also noted that where stronger intervention is required, licensees have been required to implement additional measures such as a complaints 'hot-line' to prompt immediate ameliorative action by a licensee in responding to a noise disturbance complaint, and a requirement for acoustic testing with the cost borne by the licensee.

In light of the issues raised in the review, the government will consider how the use of a mediation process to improve complaint processing and achieve more immediate results can be better promoted. While a mediation process is possible under the current law, the government will consider whether legislative amendments are necessary to strengthen the operation of a mediation process, including the use of submissions from the wider community to inform outcomes.

The liquor laws are grounded in the principle that a licence applies to a premises and is held by a person or a corporation. It is not consistent with that principle to apply agreed resolutions only to a person without their application to the premises as well, as this could allow licensees to be swapped out so as to avoid compliance.

It is possible for agreed resolutions to be imposed as a condition on a licence under the current law, and for disciplinary action to be taken where such a condition is breached. The government will consider whether amendments are necessary to ensure this type of outcome has the necessary support through appropriate legislative and administrative processes which promote efficiency and facilitate timely outcomes.

Implementation:

Recommendation 78 regarding access to information and assistance to stakeholders will be addressed in the work to implement recommendation 3 of the review.

Consistent with the response to recommendation 5 of the review, the government will develop the necessary amendments to mandate publication of reasons for decisions and outcomes.

Proposed timeframe:

Within 6-12 months of the release of the government's response.

ALCOHOL-RELATED RESEARCH

Recommendation 80:

The Government should consider mechanisms to fund an independent alcohol-related research program in New South Wales modelled (as appropriate) on the Gambling Research Australia program.

Response – Supported in-principle

The review recommended that consideration be given to funding an independent alcohol-related research program in New South Wales. This program would help inform future policy development and regulatory activity in relation to issues such as the impact of late night liquor trading.

The government recognises that this recommendation will help improve the strategic focus of the research agenda so that it can better inform government policy.

Therefore, the government will explore options for developing stronger strategic relationships with key research centres in New South Wales (e.g. the National Drug and Alcohol Research Centre) that already receive significant funding from the Australian Government for alcohol-related research.

The Office of Liquor, Gaming and Racing has recently entered into a Memorandum of Understanding with the NSW Bureau of Crime Statistics and Research to promote research on key issues. Consistent with this objective, the Bureau is currently undertaking a series of research studies into the effect of liquor licensing restrictions on alcohol-related violence in NSW between 2008 and 2013, the impact of the new licensing reforms introduced on 24 February 2014 for the Sydney CBD Entertainment precinct, and the effect of liquor licence density on rates of assault, offensive behaviour and property damage. The Office of Liquor, Gaming and Racing has provided input and relevant data to inform these research studies which will continue into 2014/15.

The Bureau also provides key alcohol-related crime data to the Office of Liquor, Gaming and Racing on a quarterly basis to inform a range of policy and regulatory initiatives, including the violent venues scheme under schedule 4 of the Liquor Act.

Next steps:

As this recommendation requires further development work to identify a source of funding, and to ensure there is no duplication with existing research programs, the government will consider this issue further as part of the implementation of review outcomes during 2014-15.

PROVISION OF FOOD WITH LIQUOR ON LICENSED PREMISES

Recommendation 81:

The regulation making powers under sections 17(4) and 27 of the Liquor Act should be utilised to prescribe requirements in relation to the nature and quality of food that must be made available when liquor is sold or supplied for consumption on licensed premises.

Response – Supported

The *Liquor Act 2007* requires food of a nature and quantity consistent with the responsible sale, supply and service of alcohol to be available at all times in a hotel, small bar and on on-premises licence when liquor is sold or supplied. However, the Act does not mandate the type of food that would be considered consistent with the responsible sale, supply and service of alcohol.

Compliance with this requirement can cause confusion for industry and regulators, with the review suggesting that New South Wales would benefit from considering the approach adopted by Queensland to provide some direction and greater certainty as to the types of food that would be considered consistent with the responsible sale, supply and service of alcohol.

Requirements in Queensland mandate the need for the provision of ‘prepared food’, which is defined as:

- a. a meal, or
- b. other food usually needing preparation before it can be eaten, but not including snacks, or liquor or other beverages.

Examples of prepared food include burgers, falafel rolls, hot potato chips and sandwiches. Pre-packed snacks such as confectionery, potato crisps and fruit and nuts, where there is no preparation undertaken by the licensee, are not considered to be ‘prepared food’ under Queensland’s liquor laws.

To provide greater certainty, and to ensure food is available that is consistent with responsible serving practices, the government will utilise regulation making powers to prescribe specific requirements under the *Liquor Regulation 2008* that are consistent with those adopted in Queensland.

The development of these requirements will involve consultation with industry and police.

Implementation:

The government will develop the necessary amendments to the *Liquor Regulation 2008* to implement this recommendation.

Proposed timeframe:

Within 6 months of the release of the government’s response.

NON-VOLUNTARY EXCLUSION OF PERSONS FROM LICENSED PREMISES

Recommendation 82:

The Liquor Act should be amended to compel a person refused entry or removed for any reason authorised by the Act to leave the vicinity of the licensed premises and not attempt to re-enter the premises.

Response – Supported

The *Liquor Act 2007* authorises a licensed venue to refuse a person entry to the licensed premises, or remove a person from the licensed premises, if that person:

- a. is intoxicated, violent quarrelsome or disorderly
- b. whose presence on the licensed premises renders the licensee liable to a penalty under the Act,
- c. smokes within a smoke-free area of the licensed premises,
- d. uses or possesses an illicit substance.

Further, a person who is refused entry or removed from the venue for being intoxicated, violent, quarrelsome or disorderly cannot remain in the vicinity of the licensed premises for six hours and cannot attempt to re-enter the premises for 24 hours. A breach of these fail to leave provisions can result in a \$550 penalty notice being issued for each offence.

However, the requirement to leave the vicinity and not attempt to re-enter the premises does not apply in other instances when a person is refused entry or removed the venue under section 77 of the Liquor Act, and therefore, no further action can be taken under the liquor laws.

For example, a person who is refused entry to licensed premises as part of a mandated lock-out, is not required to leave the vicinity of the premises and does not commit an offence if that person attempts to enter the premises.

Also, a person asked to leave licensed premises for suspected possession of an illicit substance does not commit an offence under the liquor laws if that person attempts to re-enter the premises later that day.

This anomaly has the potential to undermine the lock-out provisions applying to violent venues under the declared premises scheme, and to premises in the Sydney CBD Entertainment and Kings Cross precincts where a 1.30am lock out applies. It can also have consequences for licensees in dealing with persons attempting to re-enter their premises when they have previously been required to leave the premises.

To address this anomaly, the government will develop amendments to the Liquor Act to provide that it is an offence for a person refused entry or removed for any reason authorised by the Act to attempt to re-enter the premises within 24 hours or remain in the vicinity of the premises for six hours.

Implementation:

The government will develop the necessary amendments to the *Liquor Act 2007* to implement this recommendation.

Proposed timeframe:

Within 6 months of the release of the government's response.

CESSATION OF LIQUOR SALES FOR LATE TRADING PREMISES

Recommendation 83:

The Liquor Act should be amended to clarify that it is not an offence for a:

- a. hotelier to keep a bar area open when required by the Act to cease liquor sales for a period of time during authorised trading hours, and
- b. patron to remain in a bar area of a hotel when it is required to cease liquor sales for a period of time during authorised trading hours.

Response – Supported

Under the *Liquor Act 2007*, a hotelier must close every bar area when liquor is not authorised to be sold or supplied, and patrons must not remain in a bar area more than 30 minutes after liquor trading ceases.

Industry had suggested that the requirement to cease liquor sales created uncertainty at those times when the Liquor Act required sales to cease.

As part of the commencement of the *Liquor Amendment Act 2014*, sections 103 and 104 of the Liquor Act were amended to provide certainty that it is not an offence for a licensee to keep a bar area open when required to cease liquor sales, or for a person to be in a bar area when liquor sales are not permitted.

Implementation:

This recommendation has been implemented.

INCIDENT REGISTERS

Recommendation 84:

The form of incident registers should be approved by the OLGR and licensees should be required to produce them immediately to police and OLGR inspectors.

Recommendation 85:

The law should be amended to provide clarity around the amount of time that information in a register is required to be kept, and should include controls on the subsequent alteration of register entries.

Recommendation 86:

OLGR should investigate the establishment of an on-line incident register to be trialled in high risk precincts and/or for licensed premises that are subject to special conditions under Schedule 4 of the Liquor Act or have incurred a strike under the Three Strikes disciplinary regime.

Response – Supported

Under the *Liquor Act 2007*, licensed premises authorised to trade after midnight are required to maintain an incident register that records incidents that occur between midnight and 5am in the form approved by the Independent Liquor and Gaming Authority. Licensed premises in the Kings Cross precinct are also required to maintain an incident register at all times, along with violent venues prescribed under Schedule 4 of the Liquor Act.

As recommended by the review, the government considers that the form of incident registers should be approved by the Secretary of NSW Trade & Investment given the regulatory and compliance functions assigned to that position, to ensure registers complement enforcement and intelligence activities. This will enable the use of incident registers to be expanded to record details of other types of incidents occurring on or near the premises, including where a person is refused entry to a licensed premises.

The government also recognises that clarity around the amount of time that information in a register is required to be kept is needed by both industry and regulators, and that there is a need to preserve the integrity of these registers. In this regard, the government will develop amendments to the Liquor Act to prescribe three years as the minimum time for keeping details of incidents in an incident register. This is consistent with incident register requirements that have been introduced since 2012 for licensees in the Kings Cross and Sydney CBD Entertainment precincts.

Implementation:

The government will develop the necessary amendments to the *Liquor Act 2007* to implement this recommendation.

The government, through the Office of Liquor, Gaming and Racing, will also explore the merits of establishing an online incident register system which can be accessed by licensees and regulators.

Proposed timeframe:

Within 6-12 months of the release of the government's response

VOLUNTARY SUSPENSION OF LIQUOR LICENCE

Recommendation 87:

The Liquor Act should be amended to enable the Authority to, with the consent of the licensee, suspend the operation of a licence for a fixed period of time.

Response – Supported

Currently, the authority to suspend a liquor licence is limited to circumstances where the Independent Liquor and Gaming Authority exercises its disciplinary functions under the *Liquor Act 2007*.

The review found that there have been circumstances where the Independent Liquor and Gaming Authority has been requested by the owner of a licensed premises, with the consent of the licensee, to suspend the liquor licence for a fixed period of time to enable another operator to use that space at times when it is otherwise vacant.

Suspension of a licence in these circumstances would help avoid any concurrent liability associated with two licences being held for the same premises.

Therefore, the government will progress amendments to the Liquor Act to enable the Authority to suspend a licence, subject to the licensee's consent.

Implementation:

The government will develop the necessary amendments to the *Liquor Act 2007* to implement this recommendation.

Proposed timeframe:

Within 6 months of the release of the government's response.

INVESTIGATION OF RELATED MATTERS UNDER THE GAMING MACHINE TAX ACT

Recommendation 88:

The definition of gaming and liquor legislation in the Gaming and Liquor Administration Act should be amended to include a reference to the *Gaming Machine Tax Act 2001*.

Response – Supported

The *Gaming and Liquor Administration Act 2007* defines gaming and liquor legislation as the following Acts and regulations and other instruments made under those Acts:

- a. *Gaming and Liquor Administration Act 2007*,
- b. *Casino Control Act 1992*,
- c. *Gaming Machines Act 2001*,
- d. *Liquor Act 2007*,
- e. *Registered Clubs Act 1976*.

Office of Liquor, Gaming and Racing inspectors exercise compliance functions under the liquor and gaming laws.

As identified by the review, the absence of the *Gaming Machine Tax Act 2001* from the definition of gaming and liquor legislation could potentially compromise a ClubGRANTS audit of a registered club undertaken by inspectors, as the ClubGRANTS scheme is established under the Gaming Machine Tax Act.

To address this anomaly and to provide regulatory certainty, the government will progress amendments to the Gaming and Liquor Administration Act to include the Gaming Machine Tax Act in the definition of gaming and liquor legislation.

Implementation:

The government will develop the necessary amendments to the *Gaming and Liquor Administration Act 2007* to implement this recommendation.

Proposed timeframe:

Within 6 months of the release of the government's response.

OFFENCES UNDER PART 4 OF THE GAMING AND LIQUOR ADMINISTRATION ACT

Recommendation 89:

Section 46 of the Gaming and Liquor Administration Act should be utilised to prescribe the offences under section 34 as offences for which a penalty notice may be issued.

Response – Supported

The *Gaming and Liquor Administration Act 2007* contains offence provisions for where a person hinders an investigation, or refuses or fails to comply with requirements relating to investigations. However, the Act does not allow penalty notices to be issued for these offences, as they are not prescribed as offences for which a penalty notice can be issued.

As a result, the Office of Liquor, Gaming and Racing and police must either commence resource intensive prosecution action or issue a warning.

While there may be circumstances where it is appropriate to take prosecution action or issue a warning for these offences, the government considers that the issuing of a penalty notice is a cost effective regulatory option that will provide a further incentive for compliance and enable enforcement to be undertaken in a more expeditious manner.

Implementation

The government will develop the necessary amendments to the *Gaming and Liquor Administration Regulation 2008* to implement this recommendation.

Proposed timeframe:

Within 6 months of the release of the government's response.

REQUIREMENT TO PROVIDE INFORMATION AND RECORDS

Recommendation 90:

The investigation powers under section 21 of the Gaming and Liquor Administration Act should not be altered.

Response – Supported

Under section 21 of the *Gaming and Liquor Administration Act 2007*, the Independent Liquor and Gaming Authority, a liquor and gaming inspector or a police officer may require a person to furnish information or records in connection with any matter under the liquor and gaming laws. Any such notice must specify the manner in which information or records are required to be furnished and a reasonable time by which they are required to be furnished.

While the government acknowledges the concerns that have been raised by some industry stakeholders about how these provisions may be used, the government supports the review's finding that these powers should continue to be available to regulators without any unnecessary constraints or tests, particularly given the level of risk associated with the operation of licensed premises and the need for regulators to have unfettered access to records associated with the operation of liquor and gaming machine licences.

SECRECY

Recommendation 91:

Local councils and other consent authorities should be considered for inclusion in the list of exempt bodies under Section 17 of the *Gaming and Liquor Administration Act 2007*.

Supported:

Under section 17 of the *Gaming and Liquor Administration Act 2007*, a person who acquires information when exercising functions under the liquor and gaming laws must not make a record of the information, or divulge the information to another person, except when exercising those functions.

However, the secrecy provisions do not apply to information provided to certain enforcement and investigative agencies, such as the Independent Commission Against Corruption (ICAC) and the NSW Police Force, as well as any entity prescribed by regulation.

The government notes the NSW Police Force has requested local councils be prescribed for these purposes so information can be shared between police and local councils on licensing proposals and development applications.

The government supports this approach, particularly given the need for local councils and local police to exchange information at the local level on licensing proposals. Therefore, the government will progress amendments to prescribe local councils under Schedule 1 of the *Gaming and Liquor Administration Regulation 2008*.

Implementation:

The government will develop the necessary amendments to the *Gaming and Liquor Administration Regulation 2008* to implement this recommendation.

Proposed timeframe:

Within 6 months of the release of the government's response.