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Liquor Licensing Enforcement Activity in New South Wales

Suzanne Briscoe and Neil Donnelly

This bulletin is the first attempt to provide a comprehensive analysis of liquor licensing enforcement in NSW. Four relevant data sources were accessed for this study; court proceedings, Liquor Administration Board conferences, police infringement notices and NSW Department of Gaming and Racing infringement and compliance notices. In 2001, the most recent year for which complete data was available, 4,619 enforcement actions were initiated under the NSW liquor laws. A large percentage of this enforcement activity was concentrated on patrons or minors, with over one-quarter of enforcement actions being against patrons for failing to leave a licensed venue and 14 per cent being against persons under the age of 18. Just 147 (3.1%) breaches for conduct offences were recorded by enforcement agencies in 2001. Data quality issues are noted throughout the bulletin and barriers to enforcement of the NSW liquor laws are discussed.

INTRODUCTION

In NSW the sale of alcohol at licensed premises is regulated by both the *Liquor Act 1982* (NSW) and the *Registered Clubs Act 1976* (NSW). One of the intended functions of the penalties prescribed by this legislation is, undoubtedly, to deter potential offenders from committing liquor-related offences. All deterrence strategies rely upon creating a credible perception that those persons who breach the law will be caught and sanctioned (Cook 1980; Gibbs 1975; Nagin 1998; Zimring & Hawkins 1973). Whether the NSW liquor laws have been successful in achieving these goals, however, remains unclear, as there has been no comprehensive routine reporting on liquor licensing enforcement activity in this State. To this end, the current bulletin attempts to quantify the amount of liquor licensing enforcement carried out in NSW, as well as the outcomes of prosecutorial actions taken against licensed venues.

It has been well established that licensed premises are associated with a significant amount of acute alcohol-related harm in the Australian community. Previous research conducted by the NSW Bureau of Crime Statistics and Research (BOCSAR) in conjunction with the National Drug Research Institute (NDRI) showed that licensed premises were the third most frequent place for reported assaults to occur in NSW, recording almost one in 10 of all assault incidents (or 5,357 assault incidents) reported to police between July 1999 and June 2000 (Briscoe & Donnelly 2001). Other research conducted in the Eastern Sydney area, which had police officers record their assessment of alcohol involvement in all incidents attended over a four-week period, estimated that 60 per cent of alcohol-related assaults occurred in or near licensed premises (Ireland & Thommeny 1993).

Crime victim surveys confirm the findings from police-recorded crime that licensed

premises are a high-risk setting for violence. Evidence from the most recent National Crime and Safety survey shows that 12 per cent of all assault victims (approx. 80,000 persons) report their most recent assault had occurred at a pub or club. For males alone, 18 per cent of assault victims report being assaulted at pubs or clubs (approx. 60,000 persons; Australian Bureau of Statistics 1999). Analyses of hospital emergency room data further illustrate the extent of violence occurring at licensed premises. One such study conducted on the Gold Coast showed that 38 per cent of male assault victims and 17 per cent of female assault victims presenting to triage staff had been assaulted at a nightclub or bar (Campbell & Green 1997).

In areas that have numerous licensed venues, attracting a large number of patrons, the proportion of assaults occurring in or near licensed premises increases substantially. Jochelson (1997) mapped all recorded incidents of

assault in the inner Sydney area in order to identify 'hotspots' associated with violent crime. Overall, 17 per cent of assaults in the five areas identified occurred on licensed premises and in one particular 'hotspot', up to one-third of all assaults occurred at licensed venues. Furthermore, it was apparent from the crime maps that many outdoor assaults also took place within very close proximity of licensed premises. The recorded crime data used in this study were supplemented with surveys of assault victims presenting both to police and to St Vincent's Hospital emergency department. From these surveys it was found that over 42 per cent of respondents had been assaulted just outside or inside hotels, clubs or nightclubs.

One of the risk factors repeatedly shown to be associated with increased levels of alcohol-related harm on licensed premises is excessive consumption of alcohol by intoxicated patrons. Both survey (Campbell & Green 1997; Lang, Stockwell, Rydon & Lockwood 1995; Stockwell, Lang & Rydon 1993; Stockwell, Rydon, Gianatti, Jenkins, Ovenden & Syed 1992) and observational research (Homel & Clark 1994; Graham, LaRoque, Yetman, Ross & Guistra 1980) have indicated that excessive intoxication at licensed premises is predictive of harmful outcomes. The NSW liquor laws explicitly prohibit the presence and serving of alcohol to intoxicated persons. However, recent research conducted in NSW, suggests that the most frequent response of bar staff to intoxicated patrons at licensed premises is to continue to serve them alcohol (Donnelly & Briscoe 2002). Although there may be several reasons why licensed premises are not adhering to the intoxication provisions of the liquor laws, (e.g. bar staff having difficulty in recognising signs of intoxication) one obvious possibility is that these offences are not being enforced or punished adequately to deter potential offenders.

Research has demonstrated that increasing the perceived certainty of punishment for liquor offences through better enforcement of liquor laws can be a successful strategy for reducing the harm associated with excessive alcohol consumption at licensed venues.

A study conducted by Jeffs and Saunders (1983) in England demonstrated that systematic police visits to licensed premises, in which officers talked with barstaff/licensees and checked for the presence of minors or intoxicated patrons, reduced public order offences by one-fifth. McKnight and Streff (1994) in the US also showed that having plain-clothed police officers conduct audits of licensed premises and then provide feedback to licensees on their performance, in the way of warnings, written reports or fines, increased service refusal to pseudo-patrons feigning signs of intoxication (from 18% to 54%) and reduced drink-driving offences associated with licensed premises (from 32% to 23%). This evidence that increased perceived certainty of punishment can be a significant deterrent is consistent with other alcohol-related crime research, most notably from the drink-driving domain (e.g. Henstridge, Homel & MacKay 1997; Ross 1984; Voas & Hause 1987; Voas, Holder & Greunewald 1997).

For retail alcohol outlets, where competitive pressures can encourage the continual service of alcohol to intoxicated patrons, the creation and maintenance of a high level of perceived certainty of punishment may also be a necessary factor to ensure the success of responsible service of alcohol programs. Saltz and Stanghetta (1997) reviewed the implementation and program effectiveness of the responsible beverage service (RBS)¹ component of a large community-based prevention project based in California and South Carolina. Although the overall prevention project produced some promising results, including a 10 per cent decrease in alcohol-involved traffic accidents and a significant reduction in sales of alcohol to minors, there was no significant change in refusal rates to patrons feigning intoxication despite a large number of servers and managers being trained in RBS (Holder, Saltz, Grube, Treno, Reynolds, Voas & Gruenewald 1997). Saltz and Stanghetta (1997) argue that lack of enforcement of the liquor laws is one of the reasons why learned RBS skills are not translated into serving practice. For RBS programs to produce changes in behaviour, Saltz

and Stanghetta suggest that it is necessary to create the perception amongst bar staff that they will be cited when they serve alcohol to an intoxicated person. The threat of external sanctions may also encourage management to enforce the expectations set out in their house policies and to monitor staff serving practices more closely.

Effective deterrence also requires that, once a person has been detected in breach of the law, penalties will be imposed that are sufficiently severe. A previous report released by BOCSAR and NDRI demonstrated that only a small number of licensed premises account for the vast majority of police-recorded assaults at licensed premises (Briscoe & Donnelly 2003). This research confirmed previous findings from observational studies of violence at licensed premises (e.g. Homel & Clark 1994; Stockwell 1997). If particular establishments are operating a venue in such a way that violence is a regular occurrence, tougher sanctions must be administered by the relevant authorities to deter future offending. Yet there is a scarcity of information documenting the severity of punishment for breaches of the liquor laws in NSW and insufficient data on the severity of sanctions imposed on licensed premises that are the subject of repeat enforcement action.

CURRENT STUDY

In order to plan liquor licensing enforcement initiatives and evaluate their effectiveness, it is important that the current extent of enforcement practice be understood. To date in NSW, however, there has been a lack of comprehensive statewide data on the extent to which the liquor laws are being enforced. This bulletin aims to fill this knowledge gap by providing a descriptive analysis of the number and type of liquor offences for which enforcement action has been taken in NSW, the outcome of such action and the distribution of penalties for these offences. The current bulletin also seeks to explore where the balance of enforcement practice lies with respect to breaches by licensees/managers/club secretaries relative to those by patrons.

To achieve these aims, it was necessary at the outset to identify all means by which the liquor laws can be enforced. In NSW, there exist several different types of formal action that can be taken for a breach of the liquor laws; offences can be prosecuted in the courts, civil disciplinary actions can be pursued through the Licensing Court, parties concerned about noise or public disorder issues associated with licensed venues can have the matter resolved by a statutory body known as the Liquor Administration Board, police or licensing inspectors can issue on-the-spot fines (i.e. infringement notices) and formal warnings can be issued by enforcement agencies. The first section of this bulletin provides a statewide snapshot of each of these types of enforcement actions for the year 2001. Following that are four sections describing court proceedings, Liquor Administration Board conferences, police infringement notices and patterns of enforcement by NSW Department of Gaming and Racing Special Inspectors. A summary of the types of breaches that are enforced is also provided in each section, as are the outcomes and penalties imposed on offenders, where this information was available.

DATA SOURCES

It is normally a straightforward matter to determine the proportion of individuals convicted of any particular offence in NSW and the penalties imposed on those convicted. BOCSAR maintains a comprehensive database on all individuals or agencies appearing before NSW Courts charged with a criminal offence. This makes it relatively easy to monitor and evaluate legislation designed to prevent and deter various forms of criminal activity. However, because the NSW Department of Gaming and Racing is the agency which provides operational support to the Licensing Court, rather than the Attorney General's Department, BOCSAR's databases do not include complete information on breaches of the Liquor Act 1982 or Registered Clubs Act 1976. Such information cannot readily be obtained from the published reports of the NSW

Department of Gaming and Racing or Liquor Administration Board because those reports contain only limited information on the number of individuals prosecuted under the liquor laws, the type of prosecution and the results of those prosecutions.

It was therefore necessary to firstly access data on all breaches of the liquor laws brought before the Licensing Court. The Department of Gaming and Racing provided this information over a period of six years from 1996 to 2001. Included in these data was additional information on complaints, with respect to the quiet and good order of the neighbourhood, heard by the Liquor Administration Board over the same six-year period. These records were, for the first time, consolidated with BOCSAR data on breaches of the Acts brought before the Local Courts, to provide a total number of liquor offences finalised in NSW Courts. Data on prosecuted breaches of the liquor laws brought before the Licensing Court will continue to be provided to BOCSAR and amalgamated into BOCSAR's Local Courts database for future reporting.

Two additional data sources relevant for this investigation were also identified and accessed. Firstly, the Infringement Processing Bureau (IPB) of the NSW Police provided information concerning breaches of the acts that were dealt with by way of an infringement notice issued by NSW Police. Although these

infringement notices would comprise a substantial proportion of all enforcement actions taken against licensees/secretaries and patrons, the IPB was only able to provide the Bureau with two complete calendar years of data, only one of which had adequate offence description documentation. For this reason only infringement notices issued by police in 2001 are reported here. Secondly, information concerning infringement and compliance notices issued by Special Inspectors from the Department of Gaming and Racing was sought from the Department's enforcement branch. Due to the fact that the enforcement branch only recently developed a database collating this type of information, only enforcement action taken by Special Inspectors in 2001 is included. Until now, data on these various sources of enforcement activity have not been fully integrated and as such the current study is the first attempt to undertake such a task.

ALL LIQUOR LICENSING ENFORCEMENT ACTIVITY IN NSW IN 2001

The data made available to the Bureau enabled a cross-sectional analysis of all liquor licensing enforcement activity occurring in NSW for the year 2001. This information, which is displayed graphically in Figure 1, presents a

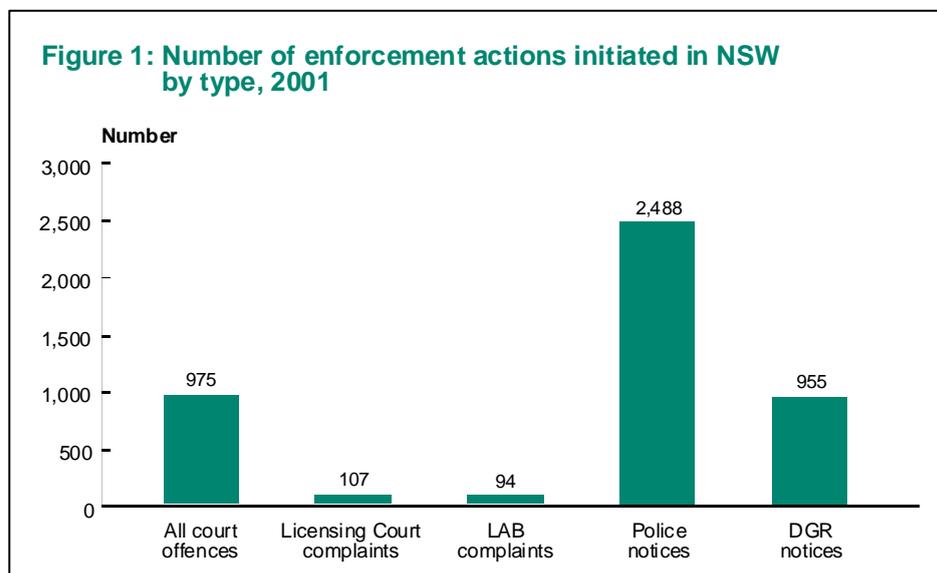
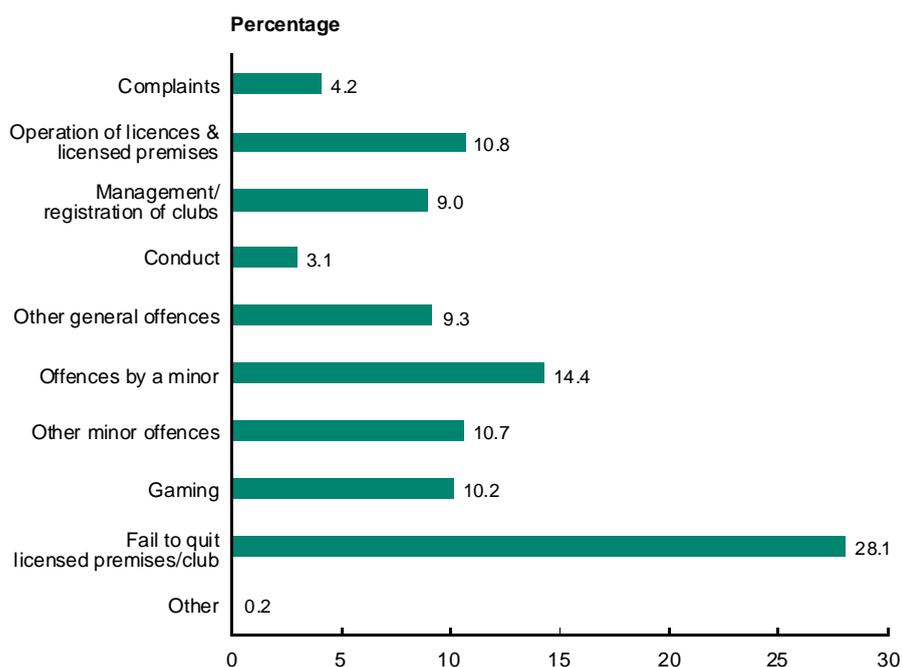


Figure 2: Liquor law breaches where action was taken, percentage by type of breach, 2001



one-year snapshot of all liquor licensing enforcement in this State. Descriptions of each of these methods of enforcement can be found in later sections. Overall, 4,619 enforcement actions under the liquor laws were pursued in 2001, with police infringement notices comprising over half of these. Offences prosecuted in the Courts were the next most frequent type of enforcement action, closely followed by notices issued by Department of Gaming and Racing Special Inspectors.

Figure 2 displays the percentage breakdown by type of breach for all enforcement actions taken in 2001. Assignment to these categories was based on the section of the Liquor Act 1982 or the Registered Clubs Act 1976 under which the breach fell (see Appendix A). From Figure 2 it can be seen that a large percentage of enforcement activity in 2001 was focused on breaches committed by

Table 1: Breaches of NSW liquor laws by type of breach and recording agency, 2001

<i>Breaches of the liquor laws</i>	Licensing Court	Local Court	Police (IPB)	DGR	Total
Complaints heard by LAB	94	0	0	0	94
Complaints heard by Licensing Court	107	0	0	0	107
Operation of licences & licensed premises (n=509)					
Sell liquor otherwise than with or ancillary to a meal	10	0	0	0	10
Sell liquor that was consumed away from table or reception area	6	0	0	0	6
Fail to display licence or prescribed sign	62	0	106	273	441
Other offences associated with the operation of licences & licensed premises	23	6	19	4	52
Management/registration of clubs	14	0	131	281	426
General offences (n=586)					
Conduct on licensed premises/registered club	50	0	91	6	147
Licensee liable for act of employee	15	0	0	0	15
Unauthorised sale of liquor/offences associated with unlicensed venues	32	3	23	9	67
Persons on licensed premises/sales outside trading hours	25	3	34	4	66
Unauthorised persons using defined premises of a registered club	0	1	69	13	83
Other general offences	17	66	79	46	208
Minors (n=1,187)					
Notices to be displayed	13	0	11	57	81
Offences by a club/licensee in relation to a minor	51	1	63	11	126
Offences by a minor	0	2	673	6	681
Sale or supply of liquor to a minor	46	10	183	38	277
Other offences associated with minors	0	6	16	0	22
Gaming offences	24	10	129	321	484
Fail to quit licensed premises/club	83	388	861	0	1,332
Other	0	8	0	0	8
Total	672	504	2,488	1,069*	4,733

* See note 2.

NB: The total number of breaches exceeds the total number of actions taken in Figure 1 because in some instances DGR officers issued a compliance notice for more than one breach.

patrons or minors. Over one-quarter (1,332) of all recorded breaches were against a patron for failing to leave a licensed venue, while a further 14 per cent (681) were against persons under the age of 18. Where there was action taken against licensees and vendors, it was mostly for breaches of legislative requirements associated with licences. Eleven per cent of breaches recorded by enforcement agencies were associated with the operation of licences or licensed venues, of which the vast majority were for failure of licensed premises to display their licence or other required signs.

By contrast, only a very small percentage of enforcement activity was concentrated on licensees/managers/secretaries who were in breach of the intoxication provisions of the liquor laws. Just 147 (3.1%) breaches for conduct offences at licensed premises and registered clubs were recorded by enforcement agencies. Of these 147 offences, 110 were for permitting intoxication at a licensed premises or club, while 33 were for supplying alcohol to an intoxicated person.

A more detailed breakdown of the type of breaches recorded by each agency is included in Table 1. From Table 1 it can be seen that the type of breaches enforced by the different enforcement agencies varied considerably. The concentration on patron offences was most obvious amongst infringement notices issued by the police, while Department of Gaming and Racing Inspectors were more likely to deal with offences associated with legislative requirements of licensed premises and registered clubs. This finding is not surprising given that the police service is a 24-hour agency, which would be called out to deal with drunk or disorderly patrons and which would be in a better position to detect minors drinking at licensed venues late at night. Furthermore, Gaming and Racing Inspectors have a specialised knowledge of the liquor laws and, therefore, are more likely to be proficient at detecting particular licensing breaches. Police, on the other hand, have to be familiar with numerous pieces of legislation in order to complete their general duties, of which the liquor laws form only one part.

This having been said, as will be seen in later sections, the police were also the initiators of a substantial number of Licensing Court proceedings for breaches associated with the operation of licences/licensed premises and also initiators of complaint actions before the Licensing Court and the LAB.

COURT PROCEEDINGS

Formal proceedings for a breach of the liquor laws can be brought before NSW Courts in the form of either an 'information' or a 'complaint'. An information is distinguished from a complaint in that the former refers to criminal conduct whereas the latter is of a civil disciplinary nature. Although no criminal conviction is recorded as a result of a complaint being made out, enforcement action of this type can have a significant impact on licensed premises because the Licensing Court has the power to place conditions on the licence which can restrict trading. Therefore, both civil and criminal court proceedings are considered below.

OFFENCES

An information can be laid before the Licensing Court or Local Courts by an informant in person, or by his or her counsel, attorney, or another authorised person and is disposed of summarily by the Court. Specific penalties are stipulated for each offence (generally a

monetary penalty) but additional penalties for offences can also be imposed by the Licensing Court including:

- reprimanding the licensee/manager/secretary,
- imposing a condition on the licence (or revoking/varying a current condition),
- suspending/cancelling a licence,
- disqualifying the licensee or secretary,
- withdrawing/disqualifying a manager's approval,
- giving directions as how to exercise the licence.

Overall, the Licensing Court finalised 4,825 offences³ under the Liquor and Registered Clubs Acts between 1996 and 2001 and the Local Courts finalised 2,599 such offences.⁴ These offences are deemed to be finalised because they have been fully determined by the court and no further court proceedings are required. For 93 per cent of offences finalised in the Licensing Court the NSW Police was the informant. No information was available on who brought liquor offences to Local Courts.

Figure 3 shows the number of finalised offences in both the Licensing Court and the Local Courts by the year in which the offence was finalised. The total number of offences finalised in both these jurisdictions is also shown. From this

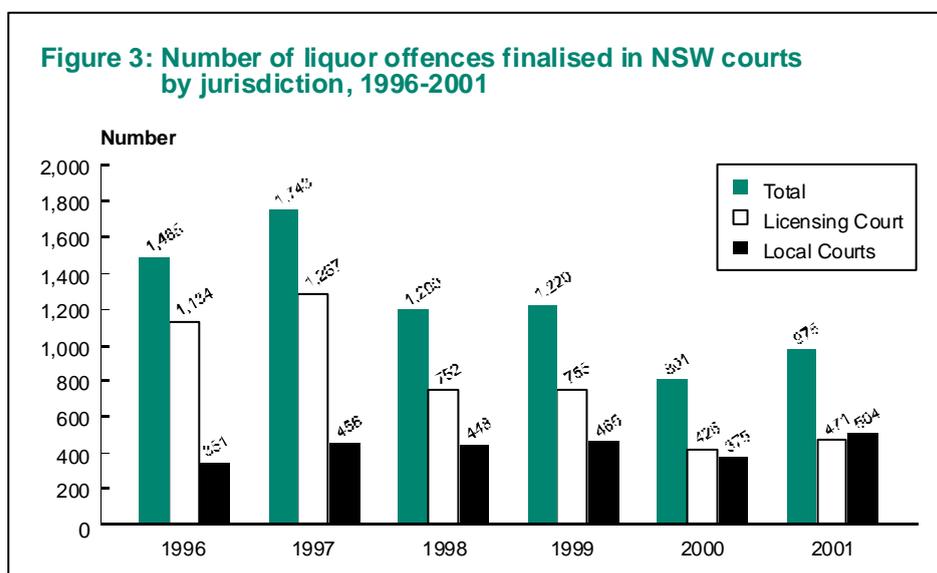


Table 2: Finalised offences by jurisdiction and offence type, 1996-2001

<i>Finalised offences</i>	<i>Licensing Court</i>		<i>Local Court</i>	
	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>
Operation of licences & licensed premises (n=883)				
Sell liquor otherwise than with or ancillary to a meal	148	3.1	0	0.0
Sell liquor that was consumed away from table or reception area	214	4.4	0	0.0
Fail to display licence or prescribed sign	274	5.7	0	0.0
Other offences associated with the operation of licences & licensed premises	224	4.6	23	0.9
Management/registration of clubs	506	10.5	0	0.0
General offences (n=2,022)				
Conduct on licensed premises/registered club	395	8.2	26	1.0
Licensee liable for act of employee	142	2.9	0	0.0
Unauthorised sale of liquor/offences associated with unlicensed venues	284	5.9	21	0.8
Persons on licensed premises/sales outside trading hours	439	9.1	26	1.0
Unauthorised persons using defined premises of a registered club	310	6.4	1	0.1
Other general offences	147	3.0	231	8.9
Minors (n=1,202)				
Notices to be displayed	127	2.6	0	0.0
Offences by a club/licensee in relation to a minor	428	8.9	12	0.5
Offences by a minor*	138	2.9	5	0.2
Sale or supply of liquor to a minor	381	7.9	97	3.7
Other offences associated with minors	8	0.2	6	0.2
Gaming offences	145	3.0	20	0.8
Fail to quit licensed premises/registered club	255	5.3	2,117	81.5
Other	259	5.4	14	0.5
Total	4,824	100.0	2,599	100.0

* See note 6.

NB: For 1 offence in the Licensing Court there was no information on the section of the Acts to which the offence pertained, so an offence type could not be assigned.

figure it can be seen that there was a substantial decrease in the total number of liquor offences finalised by NSW Courts between 1996 and 2001. In 1996, 1,485 liquor offences were finalised in NSW Courts, with this number increasing the following year to 1,743 offences. In 1998, however, the number of finalised offences decreased to just 1,200 offences. A further drop was evident in 2000 with only 801 offences finalised by the Courts. In 2001, the latest year for which data was available, finalised offences increased to 975 offences but remained at a relatively low level in comparison to 1996 and 1997.

On examination of liquor offences by the jurisdiction in which they were finalised, it appears that most of the decrease in the later years of the study period can be accounted for by a reduction in the number of offences being finalised in the Licensing Court. As can be seen from Figure 3, NSW Local Courts finalised

between 351 and 504 liquor offences each year during the study period, with modest variations on this number over time.⁵ By contrast, a large decrease in offences finalised by the Licensing Court was evident in 1998, with only 752 offences finalised in this year and 755 in 1999. In 2000 and 2001 there was a further decrease in the number of offences finalised in the Licensing Court, with 426 and 471 offences finalised, respectively.

Types of offences

The types of offences finalised also varied considerably by jurisdiction. Table 2 shows the number of offences finalised in the Licensing Court and the Local Courts over the six-year study period by type of offence. One of the most common offence types finalised in the Licensing Court was that associated with minors. This offence type represented over one-fifth of all offences finalised by the Licensing Court during the study period and was made up

mostly of offences by licensees/managers/secretaries for having minors on their premises (428 offences) or by persons for selling/supplying alcohol to minors (381 offences). Another major offence category was offences associated with the operation of licences and licensed premises. Of these 860 offences, 274 (31.9%) were for licensed premises not displaying their licence or a prescribed sign, while 362 (42.1%) were against licensed restaurants for selling alcohol that was consumed away from a table/reception area or for serving alcohol without a meal.

The nature of offences finalised in the Local Court differs markedly from those finalised in the Licensing Court. From Table 2 it can be seen that the vast majority of liquor offences finalised in the Local Courts between 1996 and 2001 were offences against the patron rather than the licensee/manager/secretary, with over 80 per cent of offences being for failure to quit a licensed premises.

The next most frequent offence category in the Local Courts was the 'other general offences' category. Two hundred and thirty-one offences of this type were finalised in the Local Courts, of which 217 (93.9%) were for a person failing to pay for liquor, meals or accommodation at a licensed venue.

Outcomes

Table 3 displays the outcome of liquor offences finalised in the Licensing and Local Courts.⁷ In both jurisdictions the majority of all offences were proven, with 80.9 per cent of offences proven in the Licensing Court and 89.0 per cent of offences proven in the Local Courts. However, it is worth noting that, although the majority of offences in both jurisdictions were proven, the Licensing Court dismissed a greater percentage of offences than did the Local Courts (19.1% of offences dismissed in the Licensing Court compared with 11.0% in the Local Courts). In later discussions with the Licensing Court magistrates, it was suggested that a possible explanation for this greater dismissal rate might be that liquor licensing matters are more vigorously contested in the Licensing Court, than is the case in the Local Courts.

Penalties

Table 4 shows the principal penalty imposed for offences proven in the Licensing Court between 1996 and 2001. As shown in this table, 70.9 per cent of proven offences received a fine as the principal penalty. The value of the fines imposed by the Licensing Court ranged from \$10 to \$5,000, with a median of \$250. However, it is also worth noting from this table that over one-quarter of offences were proven but dismissed without a conviction under s.10 of the *Crimes (Sentencing Procedure) Act 1999* (NSW). Action was taken against the licensee/manager/secretary in the form of a disqualification for just nine offences proven during the study period. This resulted in five persons being disqualified by the Licensing Court from holding a licence for periods ranging between 12 months and life. No action was taken against licences, in the form of suspension or cancellation, for any finalised offences.

Table 5 shows the principal penalty imposed for offences proven in the Local Courts between 1996 and 2001. Again we see that the most common principal penalty imposed by the Court was a fine, with 84.4 per cent of all offences proven in the Local Courts receiving a fine. The value of these fines ranged from \$1 to

\$2,000, with a median of \$200. Ten per cent of proven offences were dismissed without conviction under s.10 of the *Crimes (Sentencing Procedure) Act 1999* in the Local Courts. Three proven offences had a gaol term, ranging between three and six months, imposed as the principal penalty for the offence.

Table 3: Outcome of finalised offences by jurisdiction, 1996-2001

Outcome of offence	Licensing Court		Local Court	
	No.	%	No.	%
Offence dismissed	922	19.1	287	11.0
Offence proven	3,903	80.9	2,312	89.0
Total	4,825	100.0	2,599	100.0

Table 4: Number and percentage of proven liquor offences receiving penalty, NSW Licensing Court, 1996-2001

Principal penalty	No.	%
Action taken against licence or licensee/manager/secretary	9	0.2
Bond with or without supervision	11	0.3
Bond without conviction	36	0.9
Fine	2,765	70.9
Licence conditions imposed/varied	12	0.3
Goods or liquor forfeited	16	0.4
Licensee reprimanded/conditions continued	8	0.2
No conviction recorded (s.10 dismissal)	1,043	26.7
No action taken	2	0.1
Total	3,902	100.0

NB: For 1 offence there was no information on the principal penalty imposed.

Table 5: Number and percentage of proven liquor offences receiving penalty, NSW Local Courts, 1996-2001

Principal penalty	No.	%
Imprisonment	3	0.1
Suspended sentence/Bond with supervision	2	0.1
Bond without conviction	79	3.8
Fine	1,754	84.4
Compensation	4	0.2
Nominal sentence	21	1.0
No conviction recorded (s.10 dismissal)	215	10.3
Total	2,078*	100.0

* See note 8.

NB: For 130 offences the principal penalty imposed by the court could not be determined from the Local Courts database.

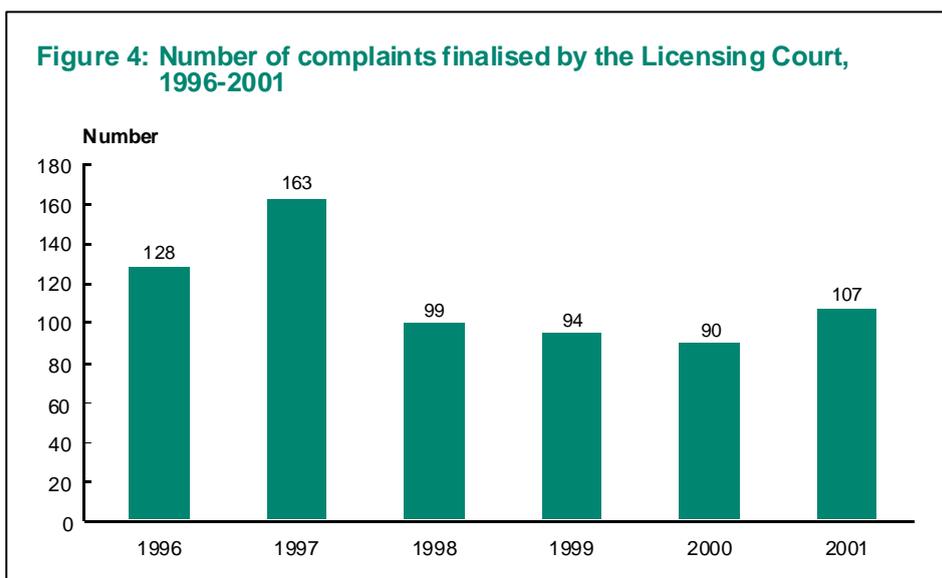
Intoxication offences

Of particular interest in minimising alcohol-related harm are offences associated with intoxication at licensed premises. Breaches of the intoxication provisions of the liquor laws fall under s.125 of the Liquor Act 1982 and s.44A of the Registered Clubs Act 1976 and, in addition to offences associated with prostitution or indecent conduct at licensed venues, are collectively known as 'conduct' offences. In total, 421 conduct offences were finalised in NSW Courts between 1996 and 2001, 395 finalised in the Licensing Court and 26 finalised in the Local Courts. The majority of these conduct offences were for either permitting intoxication at licensed premises (309 offences) or for selling or supplying alcohol to an intoxicated person (77 offences). Overall this offence category represented 5.7 per cent of the 7,424 liquor offences finalised in NSW Courts during the period 1996 through 2001.

The total number of conduct offences finalised in NSW Courts varied considerably over the six-year study period. In the earliest year of the study, 83 conduct offences were finalised by NSW Courts and in the year following, this number increased to 138 offences. However, in 1998 the number of conduct offences finalised in the Courts decreased to 51 and continued at this relatively lower level in the remaining years of the study (in 1999 there were 61 offences; in 2000, 38 offences; and in 2001, 50 offences).

As for all finalised liquor offences, the majority of conduct offences finalised in the Local Court and the Licensing Court were proven (100% and 69% respectively). However, it is also worth noting here that significantly more conduct offences were dismissed in the Licensing Court than other types of non-patron offences (31% v. 19%; $\chi^2 = 34.4$, $df = 1$, $p < 0.01$).

The principal penalties imposed for conduct offences resembled the pattern described for all offences finalised in the Licensing Court. For the 272 conduct offences proven in the Licensing Court, 74 per cent received a fine as the principal penalty and 24 per cent were dismissed without a conviction under s.10



of the Crimes (Sentencing Procedure) Act 1999. The value of the fines imposed by the Licensing Court for conduct offences ranged from \$100 to \$2,500, with a median of \$450. The median fine for conduct offences was somewhat higher than the median fine imposed for all offences finalised in the Licensing Court (\$450 versus \$250). One licensee and a secretary of a registered club were disqualified for conduct offences. Of the 11 proven conduct offences that had a penalty imposed by a Local Court, nine received a fine of between \$200 and \$2,000 and two were dismissed without conviction.⁹

COMPLAINTS

A complaint can be made to the Licensing Court by the NSW Police, the Director of Liquor and Gaming, Local Council or residents living in the vicinity of the licensed premises. The grounds on which a complaint can be made against a licensed premises or registered club are numerous (see s.68 Liquor Act 1982 and both s.17(1AA) and s.35 Registered Clubs Act 1976). Although there are many instances where complaints are made for trivial matters, such as failure to display a sign, they generally comprise more serious breaches of the legislation. Of particular relevance to alcohol-related harm are the following grounds for a complaint:

- that the licensee, manager or club has engaged in conduct or activities

that are likely to encourage misuse or abuse of liquor (such as binge drinking or excessive consumption),

- that intoxicated persons have frequently been on the licensed premises or have frequently been seen to leave those premises,
- that acts involving violence against persons or damage to property have frequently been committed on or near the licensed premises by persons who have been on the licensed premises.

A complaint is brought about by an application to the Licensing Court and the proceedings are regulated, as far as possible, in the same way as summary proceedings before a Local Court. However, the Licensing Court, when hearing these matters, is not bound by rules of evidence and can inform itself as it sees fit. The disciplinary powers of the Court, in relation to complaints, range in severity from simply reprimanding a licensee/manager/secretary, to imposing a condition on the licence, to cancelling or suspending the operation of the licence. Under the Liquor Act 1982 the Court can also make an order for the defendant to pay up to \$55,000 in the case of a corporation or \$22,000 in any other case, with aggravated circumstances attracting a penalty of \$110,000. Under the Registered Clubs Act 1976 an order can be made for a monetary penalty of \$275,000, or \$550,000 in cases of aggravation.¹⁰

In total, 681 complaints were finalised by the Licensing Court during the six-year study period.¹¹ For 91 per cent of these complaints the NSW Police was the complainant. Figure 4 shows the number of complaints before the Licensing Court by the year in which they were finalised. As can be seen from this figure, the number of complaints peaked in 1997, with 163 complaints finalised in this year, then decreased to 99, in the following year. In the later years of the study period the number of complaints levels out, with between 90 and 107 complaints finalised each year in the Licensing Court.

Since more than one complaint can be finalised in a single appearance before the Court (i.e. if several complaints are finalised by the Court for a particular individual or company in a single day) it is also useful to consider the number of appearances in which a complaint was finalised. The results of this additional analysis reveal a similar trend over the study period when appearances for complaint actions are considered in place of the number of complaint actions. The exception is that there was no corresponding peak in 1997 in the number of appearances for complaint actions, with fewer appearances for complaints recorded in 1997 than 1996. This suggests that the peak in finalised complaints in 1997, which is shown in Figure 4, is due to more complaints being made against licensed premises and registered clubs rather than more premises being complained against.

Outcomes and orders made

Table 6 shows that the majority of all complaints heard by the Licensing Court during the six-year study period were

Table 6: Outcome of complaints finalised in Licensing Court, 1996-2001

<i>Outcome of complaint</i>	<i>No.</i>	<i>%</i>
Complaint dismissed	95	14.0
Complaint established	586	86.0
Total	681	100.0

Table 7: Number and percentage of established complaints in which a particular order was made, 1996-2001

<i>Principal order</i>	<i>No.</i>	<i>%</i>
Action taken against licence or licensee/manager/secretary	81	13.8
Fine	349	59.6
Licence conditions imposed/varied	16	2.7
Licensee reprimanded/existing conditions continued	94	16.0
No action taken	46	7.8
Total	586	100.0

established (586 complaints or 86.0%) and thus had at least one order made by the Court. Table 7 shows that for 349 of these established complaints (59.6%), the principal order was a fine, with a value ranging between \$50 and \$50,000 and a median of \$1,000. The median fine imposed by the Licensing Court for complaints was four times higher than the median fine imposed for offences (\$1,000 versus \$250). For 81 complaints (13.8%), action was taken against either the licensee/manager/secretary or against the licence in the form of a disqualification, suspension or cancellation. Included in these complaints were seven licence cancellations and eight licence suspensions for between one week and five months. For the remaining complaints established in the

Licensing Court, 16 (2.7%) had conditions imposed on the licence or existing conditions on the licence varied,¹² 94 (16.0%) resulted in the licensee being reprimanded or the continuation of previously imposed licence conditions, while no further action was taken for 46 complaints (7.8%).

LICENSED PREMISES BEFORE THE LICENSING COURT¹³

An important question arising from the previous analyses, is how many distinct licensed premises appeared before the Licensing Court and did those premises which appeared more often receive more severe penalties? The inclusion criterion utilised for this analysis was any finalised appearance¹⁴ before the

Table 8: Percentage of all licensed premises in NSW appearing before the Licensing Court, 1996-2001

	<i>No. of premises before the court</i>	<i>No. of licensed premises in NSW (year ending 30 June 01)</i>	<i>% of licensed premises appearing before Licensing Court</i>
Conduct offences	167	11,808	1.4
Complaints	370	11,808	3.1
All Licensing Court proceedings	1,080	11,808	9.1

Licensing Court in which a licence number was recorded. It is important to note here that, for some premises identified in this way, the premises' owner(s) may not have been the defendant in the court proceedings (e.g. if the offence/complaint was against the licensee, a manager or an employee). However, since the premises had come to the attention of enforcement agencies and, consequently the Court, they were included in the current analysis.

Over the six-year study period there was a total of 2,277 appearances finalised by the Licensing Court. A licence number was assigned to 1,882 (82.7%) of these finalised appearances,¹⁵ from which 1,080 distinct licensed premises were identified. Table 8 presents this figure as a proportion of all licensed premises in the State.¹⁶ As can be seen from this table almost one in 10 licensed premises in NSW appeared at least once before the Licensing Court during the six-year study period. There was also evidence that a small group of licensed premises repeatedly appeared before the Court, with 26 individual licensed premises identified in more than five finalised appearances before the Court, and a further six of these premises identified in more than 10 appearances.

Restricting our attention to appearances that include conduct offences reveals

that just 167 premises had at least one finalised appearance before the Court for a conduct offence. As shown in Table 8, this equates to 1.4 per cent of all licensed premises in the State appearing before the Licensing Court for a conduct offence between 1996 and 2001. Two premises were identified in more than five finalised appearances for conduct offences.

For appearances in which only a complaint was finalised, 370 individual licensed premises or 3.1 per cent of all licensed premises in the State were identified. Nine premises had more than five finalised appearances for a complaint, with one venue having a total of 10 appearances for a complaint during the six-year study period.

Sanctions imposed on repeat offenders

In order to examine sanctions imposed by the Licensing Court on premises that have been the subject of repeat breaches, it is necessary to consider only finalised appearances wherein at least one offence was proven or at least one complaint was established. This analysis identified 970 premises that had at least one finalised appearance between 1996 and 2001 in which the Licensing Court imposed a sanction.¹⁷ Of these, 46 premises had action taken

against either the licence, in the form of suspension or cancellation, or against the licensee, secretary or manager, in the form of a disqualification. However, as for all court proceedings, the vast majority of premises (67.3%) appearing at least once before the Licensing Court received a fine as the principal sanction.

As shown in Figure 5, the severity of sanctions imposed on licensed premises by the Licensing Court did appear to increase as a function of the number of finalised appearances. Just 1.9 per cent of premises with only one appearance before the Court had a licence sanction imposed, whereas 25.8 per cent of premises with four or more finalised appearances had action taken against the licence or licensee/manager/secretary. Conversely, for almost one-quarter of premises who were identified in only one finalised appearance before the Court, the principal sanction imposed by the Court was a s.10 dismissal in the case of offences (i.e. the matter was proven then dismissed without conviction) or no action taken in the case of complaints. However no premises with more than three finalised appearances had a s.10 dismissal or no action taken as its principal sanction.

LIQUOR ADMINISTRATION BOARD CONFERENCES

The Liquor Administration Board (LAB) is a statutory body which consists of licensing magistrates and up to three members appointed by the Minister for Gaming and Racing. It is required, amongst other things, to keep the standard of licensed premises under constant review. Under s.104 of the Liquor Act 1982 and s.17AA of the Registered Clubs Act 1976 a complaint can be made to the LAB if a licensed premises or the behaviour of persons leaving a licensed premises has unduly disturbed the quiet and good order of the neighbourhood. The NSW Police, the Director of Liquor and Gaming, Local Council, local residents or any other individual who may be adversely affected by the disturbance can make such a complaint. An LAB conference is

Figure 5: Percentage of licensed premises with a licence sanction or a s.10 dismissal/no action taken as the principal penalty by number of appearances, 1996-2001

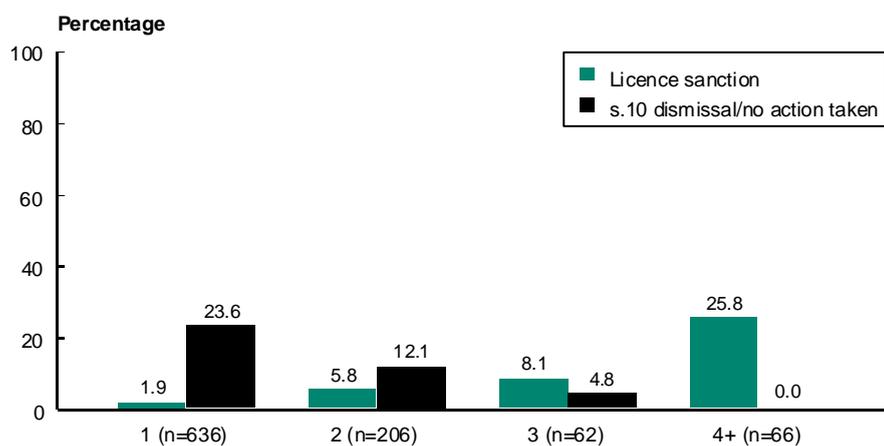
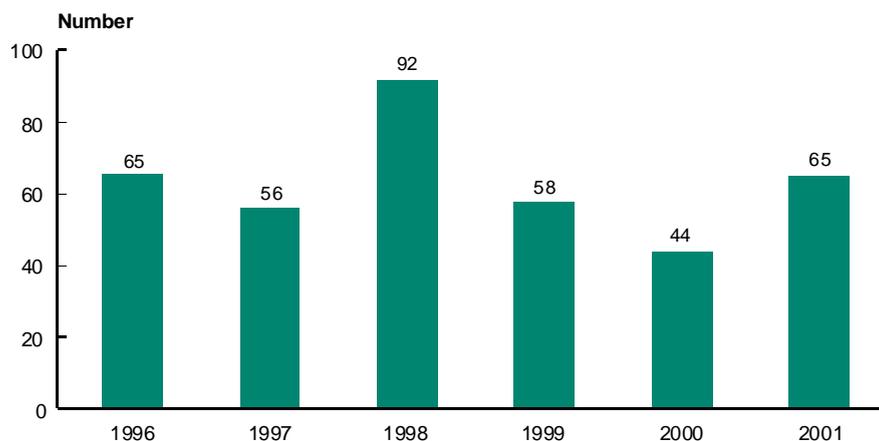


Figure 6: Number of licensed premises appearing before LAB by year of finalisation, 1996-2001



convened with all interested parties to hear submissions relating to the complaint and any subsequent response from the licensee/secretary or owners of the licensed premises. A complaint can relate to more than one licensed premises or the conference can be extended to include other licensed premises if the Board thinks it appropriate. A conference can also involve numerous complaints about different aspects of a particular licensed premises (e.g. a complaint with regard to intoxicated persons leaving the premises, as well as a complaint with regard to loud music emanating from the premises late at night).

Figure 6 shows the number of licensed premises appearing before the LAB between 1996 and 2001, by the year in which the complaint(s) was finalised.¹⁸ It can be seen from this figure that the number of premises, for which LAB complaints were finalised, peaked in 1998, with 92 complaints, but otherwise remained fairly stable across the six-year period. It should be remembered, however, that the management of LAB complaints is a process that can take place over a long period of time. This is reflected by the fact that the average time between a complaint being made to the LAB and that matter being finalised was one and a half years (530 days; median 407 days). Thus, the peak in finalisations evident in 1998 would be due to more premises being complained against in 1997 and 1996.

Overall, 380 premises had LAB complaints finalised by the Board between 1996 and 2001, including 334 individual premises.¹⁹ Unlike offences and complaints finalised in the Licensing Court, parties other than the police brought the majority of complaints before the Board, with only 13 per cent of finalised complaints between 1996 and 2001 having the police as the complainant. A proportion of the complaints (19.6%) brought to the LAB were resolved by the relevant parties prior to the conference, were withdrawn because the complainants no longer lived in the area or no longer wished to pursue the complaint, or were dismissed because the licence was no longer operational. However, the majority of conferences appeared to have an outcome.

Orders made by the LAB

In determining a complaint the Board can do any of the following:

- adjourn the conference on the undertakings given by the licensee with or without imposing conditions,
- impose/vary/revoke conditions on the licence,
- issue a warning to the licensee
- take no action.

In addition to placing special conditions on the licence the Board can also issue other orders with which the premises

must comply, such as obtaining an acoustic report to monitor noise levels at the licensed premises.

In contrast to court appearances, that receive a penalty or an order once the matter has been determined, the management of LAB complaints is an ongoing process that can involve several conferences spanning over months and, in some cases, years. At any one of the conferences relating to a specific complaint against a licensed premises the Board might impose special conditions on the licence, the parties involved in the complaint action might consent to a set of conditions being trialled or the licensee/secretary may give an undertaking to the Board that the matter will be addressed. The Board may then adjourn the conference for a period of time to monitor the effectiveness of the new licence conditions, or the undertakings given, in resolving the issue of contention. Another conference may then be convened with all interested parties to discuss any further issues that have arisen. In this way, the LAB process is much more dynamic than typical criminal court processes and for this reason it was difficult to ascertain all the outcomes from the LAB conferences that may be of relevance from the information contained in the Licensing Court database. More qualitative research, examining the LAB records for each conference, is needed in this area to gain a better understanding of the true impact that this process has on the operation of licensed premises and on subsequent compliance with the liquor laws.

POLICE INFRINGEMENT NOTICES

A police officer can issue penalty notices for numerous offences under the Acts (see Schedule 3 of both the *Liquor Regulations 1996* (NSW) and the *Registered Clubs Regulations 1996* (NSW)). The amount payable for an infringement notice offence is 10 per cent of the maximum court penalty (1% of the maximum court penalty if a person under 18 has committed the alleged offence).

Table 9: Offences for which NSW Police issued an infringement notice, 2001

Offences	No.	%
Operation of licences & licensed premises (n=125)		
Fail to display licence or prescribed sign	106	4.3
Other offences associated with the operation of licences & licensed premises	19	0.8
Management/registration of clubs		
	131	5.3
General offences (n=296)		
Conduct on licensed premises/registered club	91	3.7
Unauthorised sale of liquor/offences associated with unlicensed venues	23	0.9
Persons on licensed premises/sales outside trading hours	34	1.4
Unauthorised persons using defined premises of a registered club	69	2.8
Other general offences	79	3.2
Minors (n=946)		
Notices to be displayed	11	0.4
Offences by a club/licensee in relation to a minor	63	2.5
Offences by a minor	673	27.0
Sale or supply of liquor to a minor	183	7.4
Other offences associated with minors	16	0.6
Gaming offences		
	129	5.2
Fail to quit licensed premises/club		
	861	34.6
Total	2,488	100.0

NB: This table is a replica of Table 2 with categories that recorded no offences excluded.

If the penalty notice is paid, the person is not liable to any further proceedings for the alleged offence except where a complaint is made to the Licensing Court (under Division 8 of Part 3 of the Liquor Act 1982 and s.17 or s.17AAA of the Registered Clubs Act 1976). If a complaint is made and the infringement notice has been paid, the person is taken to have been convicted of the offence to which the penalty notice relates.

The Infringement Processing Bureau (IPB) of the NSW Police is the agency that collects and reports on information associated with penalty notices issued by the police. As discussed previously, this agency was only able to provide the Bureau with two full calendar years (1998 and 2001) of data on penalty notices issued for liquor offences. Data on infringement notices issued for several of the months in other relevant years was missing. A further difficulty encountered with the IPB data was that the IPB has a practice of recycling its offence codes. This means that a particular code that currently identifies a liquor offence may have previously been attached to a non-liquor offence (e.g. a parking offence). The IPB was unable to

provide sufficient documentation to identify suspect codes that may have been included in the earlier 1998 dataset. For this reason, only notices issued in 2001 are reported here.

In 2001, NSW Police issued 2,488 infringement notices for offences under the liquor laws. Table 9 shows the number of infringement notices issued by type of offence. As can be seen from this table, the majority of offences for which infringement notices were issued were for offences committed either by patrons or minors. Over one-third of infringement notices issued by police were for patrons failing to leave a licensed venue, while approximately one-quarter were for minors committing breaches of the liquor laws. Only 91 (3.7%) infringement notices were issued by police for conduct offences on licensed premises and registered clubs. Sixty-seven of these conduct offences were for permitting intoxication at licensed premises or clubs, while 22 were for supplying liquor to an intoxicated person. All conduct offences dealt with by way of an infringement notice received a fine of \$550.

PATTERNS OF ENFORCEMENT BY DEPARTMENT OF GAMING & RACING OFFICERS

Since 1996 Special Inspectors from the Department of Gaming and Racing have been authorised to issue penalty notices for specific offences under both Acts. In addition to infringement notices, breaches of the Acts that come to the notice of the Director of Liquor and Gaming can also be dealt with by way of a formal caution. This takes the form of a compliance notice from the Department of Gaming and Racing asking particular matters to be addressed by a certain date. These notices are typically issued for non-compliance with routine legislative requirements, such as not displaying statutory notices, and the likely outcome of this action is on-going monitoring of the premises. Further disciplinary action can be pursued, however, if the formal caution does not result in compliance (Department of Gaming and Racing 2000).

Table 10 shows the total number of compliance and infringement notices issued by Special Inspectors from the

Department of Gaming and Racing each quarter for 2001. Inspectors issued 955 notices during the 12-month period, 353 (37.0%) were in the form of infringement notices and 602 (63.0%) were compliance notices. The number of infringement notices issued by Inspectors increased across the quarters with almost as many infringement notices as compliance notices being issued in the final quarter of 2001. This increase coincided with additional offences being included in the infringement notice scheme.

Table 11 displays the types of breaches for which compliance and infringement notices were issued by Gaming and Racing. In total 1,515 breaches of the liquor laws were detected by the Gaming and Racing enforcement branch.²⁰ The most frequent category was for breaches of conditions that had been placed on the licence (29.4%). This category included breaches such as not displaying statutory notices or not having house policies in place for the responsible service of alcohol. The next most frequent categories of breaches were for gaming-related offences, for rules of a registered club being broken and for licensed premises failing to display their licence

or prescribed signs. Only six breaches associated with conduct offences on licensed premises and registered clubs were detected by Special Inspectors.

DISCUSSION

Superficially, licensed premises would appear to be subjected to fairly vigorous enforcement action in NSW. Over the six-year period covered by the present study, almost one in 10 licences were the subject of Licensing Court proceedings and for 90 Licensing Court matters, action was taken against the licensee/manager/secretary or against the licence in the form of a disqualification, cancellation or suspension. However, it is also worth noting that over one-quarter

of proven offences were dismissed without a conviction or penalty in the Licensing Court. Moreover, examination of all enforcement activity in the State shows that most actions initiated for breaches of the liquor laws were initiated against patrons rather than premises. For 2001, the most recent year for which complete data was available, it was found that over one-quarter of all liquor law breaches, where action was taken, were for patrons failing to leave licensed venues. A further fourteen per cent of enforcement actions in this year were for offences committed by minors.

Even where enforcement action is taken against licensees/managers/secretaries, the action frequently involves technical breaches of the liquor laws, such as

Table 10: Number of notices issued by the Department of Gaming and Racing Special Inspectors, by quarter and type, 2001

Type of notice	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Total
Compliance notices	132	106	167	197	602
Infringement notices	14	40	137	162	353
Total	146	146	304	359	955

Table 11: Breaches recorded by Department of Gaming and Racing Special Inspectors, 2001

Breaches of NSW liquor laws	No.	%
Operation of licences & licensed premises (n=277)		
Fail to display licence or prescribed sign	273	18.0
Other offences associated with the operation of licences & licensed premises	4	0.3
Management/registration of clubs	281	18.5
General offences (n=78)		
Conduct on licensed premises/registered club	6	0.4
Unauthorised sale of liquor/Offences associated with unlicensed venues	9	0.6
Persons on licensed premises/sales outside trading hours	4	0.3
Unauthorised persons using defined premises of a registered club	13	0.9
Other general offences	46	3.0
Minors (n=112)		
Notices to be displayed	57	3.8
Offences by a club/licensee in relation to a minor	11	0.7
Offences by a minor	6	0.4
Sale or supply of liquor to a minor	38	2.5
Gaming offences	321	21.2
Breaches of licence conditions	446	29.4
Total	1,515	100.0

NB: This table is a replica of Table 2 with categories that recorded no offences excluded and the category 'breaches of licence conditions' added.

failing to display a particular sign, rather than serving alcohol to an intoxicated person or allowing an intoxicated person to remain on licensed premises. Only one per cent of all licences had appeared before the Licensing Court on a conduct offence over the six years examined.

Furthermore, just four per cent of infringement notices issued by police in 2001 were for conduct offences. Police must, of course, respond to anti-social and violent behaviour by patrons on licensed premises. However focusing the majority of enforcement efforts on alcohol consumers rather than on alcohol providers may not be the most effective long-term strategy in minimising alcohol-related harm on licensed premises.

It is difficult to reach any definitive conclusions on whether the level of enforcement of the NSW liquor laws has changed over the time period examined. However there is no doubt that the number of Licensing Court proceedings initiated decreased during the period 1996 through 2001. Since it is the Licensing Court that deals with the vast majority of offences allegedly committed by licensed premises, this suggests that fewer licensees, secretaries and managers are being prosecuted in the Courts for liquor offences. This drop in prosecutions could reflect reduced offending by licensed premises or alternatively, growth in the number of offences being dealt with by way of police infringement notice.²¹ The first of these possibilities, however, seems unlikely. Recent research from the National Alcohol Indicators Project has suggested that alcohol-related violence in NSW has, at best, remained steady during the years that the current study spans (Matthews, Chikritzhs, Catalano, Stockwell & Donath 2002). The second, unfortunately, cannot be tested because the Police Infringement Processing Bureau could not provide the requisite data.

The fact that the Infringement Processing Bureau has difficulty in extracting data on infringement notices creates considerable problems for the enforcement process. A fundamental principle of deterrence theory is that

repeat offenders should be dealt with more severely than first-time offenders. However, because it is difficult or impossible to track repeat offending by a particular licensed premises when sanctioned by way of an infringement notice, it is difficult or impossible to ensure that licensed premises which repeatedly offend receive progressively more onerous sanctions. This problem is exacerbated by the fact that the penalty assigned to an infringement notice offence is 10 per cent of the maximum penalty that can be imposed by the Court. While this may be an appropriate penalty for a first offender, those premises willing to repeatedly breach the law may perceive such a sanction as insignificant in light of their daily revenue.

It must be acknowledged at this point that the median fine imposed by the Licensing Court for liquor offences was only \$250, an amount that is substantially less than many of the penalties prescribed for infringement notice offences. Liquor offences that result in court proceedings, however, can have other quite significant implications for offenders. In addition to a fine, the Licensing Court can impose or vary licence conditions, an action that can restrict trading and therefore have a significant effect on the monetary value of the licence. More importantly, unlike the infringement processing system, the Licensing Court can take account of an offender's past history when deciding what sort of penalty might be appropriate in a given case to deter or prevent further offending.

In a highly competitive industry, such as the retail liquor industry, licensed premises are unlikely to adhere to responsible service of alcohol laws if the perceived risk of apprehension for breaching the law is low or if the punishment associated with a breach is perceived to be trivial. Past research by the Bureau has shown that a small percentage of licensed premises are repeatedly the site of violent behaviour (Briscoe & Donnelly 2003). Other research conducted by the Bureau has also shown that licensed premises, and hotels in particular, frequently breach

the liquor law provisions by serving alcohol to intoxicated patrons (Donnelly & Briscoe 2002). The evidence gathered in the current study suggests that one of the factors contributing to these problems may be the low perceived risks and costs associated with breaching the intoxication provisions of the liquor laws.

The problems identified in the present study are not unique to NSW (Findlay, Sheehan, Davy, Brodie & Rynne 2002; Stockwell 1994; Wagenaar & Wolfson 1995; Wilner, Hart, Binmore, Cavendish & Dunphy 2000). In one recent survey of 749 licensing officers in Queensland, for example, police officers were presented with a list of offences against Queensland liquor laws and asked if they had reported any of them in the previous 12 months. Over two-thirds of these officers reported that they had enforced breaches against individuals who were found to be drunk and disorderly or creating a disturbance at a licensed premises in the year prior to the survey. In contrast, only 14 per cent of the officers had enforced an offence committed by a licensee over the same time period. The authors of this survey also demonstrated that the absence of enforcement of licensee breaches by police was associated with poorer knowledge of the liquor laws (Findlay, Sheehan, Davy, Brodie & Rynne 2002).

Similarly, lack of adequate legal knowledge appears to be an important barrier to enforcement of the liquor laws in NSW. In our discussions with NSW police representatives, subsequent to the presentation of the current findings, a recurrent issue was the training of licensing officers and the lack of continuity of police assigned to these positions. In particular, one view expressed was that, since the disbandment of the specialised licensing squads in 1997, the expertise and skills in liquor licensing have diminished considerably. Reinstating specialised police squads to deal specifically with licensing issues may help ensure that well-trained officers, who have the appropriate licensing knowledge and experience in dealing with licensees and club

secretaries, are available to pursue breaches of the liquor laws. However, such an approach would need to be considered alongside the Wood Royal Commission's findings that enforcement squads of this nature have the potential for corruption (Wood 1997).

The Independent Commission Against Corruption (1991), in its investigation into Sutherland Licensing Police, also voiced similar concerns.

Another way of tackling the problem may be to encourage dual enforcement operations involving officers from both the Department of Gaming and Racing (DGR) and the NSW Police. The licensing knowledge of the Special Inspectors and the operational skills of the police could prove to be an effective combination in targeting licensed venues that are repeatedly demonstrating non-compliance with the liquor laws. While both enforcement agencies have more recently been actively working towards this goal, their efforts have been hampered by the fact that the enforcement branch of the Department of Gaming and Racing has seen its inspectors reduced in number significantly over the last few years.

One concern regarding enforcement of the Liquor Act 1982 and the Registered Clubs Act 1976, frequently voiced by police and DGR officers during the course of this study, is the difficulty in proving intoxication offences. Presently, an officer must rely on his/her own subjective judgement and past experience to ascertain whether an intoxication offence has been sufficiently established to warrant further action being taken. Representatives of the two enforcement agencies responsible for monitoring compliance (i.e. NSW Department of Gaming & Racing and NSW Police) maintain that officers often do not pursue intoxication offences because they are hard to prove in a criminal court. The finding that significantly fewer conduct offences were proven in the Licensing Court than other types of finalised offences provides some supportive evidence for this assertion. However, it should be noted that police rarely even issue infringement notices for serving

alcohol to a person who is intoxicated. Moreover, the ease with which police can successfully bring a prosecution for serving alcohol to a person who is intoxicated will inevitably depend, in part, on the quality of evidence they gather for presentation in Court proceedings.

Lack of an adequate definition of intoxication is not the only barrier to enforcement of liquor laws. A further problem, expressed by key stakeholders during our discussions, appears to be that this area of policing is often not seen as high priority and therefore, frequently lacks the available resources needed to mount successful enforcement operations. This issue was also highlighted in a survey of police officers in the Hunter and Northern Metropolitan Police Regions in NSW, in which 83 per cent of officers surveyed said that insufficient police resources are applied to monitoring and enforcing the responsible service of alcohol in licensed premises. The survey results also indicated that, despite the majority of police agreeing that it is important to enforce the responsible service provisions of the liquor laws, only half thought they had the necessary skills to monitor serving practices at licensed premises, while 83 per cent stated that there was not enough time allocated to education in this area of policing (Smith, Wiggers, Considine, Daly & Collins 2001).

In concluding, it is perhaps worth noting the very considerable differences that exist in NSW between the prosecution process for breaching the liquor laws and the prosecution process for breaching drink-driving laws. Those who violate drink-driving laws stand a significant chance of apprehension and, if apprehended, can expect to face stiff sanctions (including loss of licence) if they re-offend. It is, furthermore, a simple matter for anyone to find out how many people are prosecuted for drink-driving and what happens to those who are found guilty, since this information is easily accessible from the Local Courts database maintained by BOCSAR. Prosecutions for breaching responsible service laws, by contrast, are relatively

rare and those who are in breach of the law can, in some circumstances, repeatedly offend without any change in the sanction imposed upon them. Where the infringement notice scheme is concerned, the sanctions that are imposed in many cases probably cause only minor inconvenience to the offender. This whole problem is further compounded by the fact that it is extremely difficult for anyone to find out how often licensed premises are breached for violations of the liquor laws, what they are breached for and what happens to those who are sanctioned.

Strict enforcement of liquor licensing laws is, of course, not the only means by which to reduce the alcohol-related harm associated with licensed premises. It is only one component of what should be a comprehensive, multifaceted approach to dealing with alcohol-related harm in the community (Hauritz, Homel, McIlwain, Burrows & Townsley 1998). Without adequate enforcement and an effective means of monitoring compliance with the provisions of the Liquor Act 1982 and Registered Clubs Act 1976, however, many of the other measures taken to reduce alcohol-related harm on licensed premises are likely to prove less effective than they could be.

APPENDIX A: RELEVANT LEGISLATION FOR OFFENCE CATEGORIES

Offence category	Liquor Act 1982	Registered Clubs Act 1976
Operation of licences & licensed premises	Parts 3 & Part 6	-
Management/registration of clubs	-	Parts 2, 3 & 4 (including s.47(a) & s.47(b))
General offences	Part 8	Part 6 (excluding minors)
Minors	Part 7A	Sections in Part 6 referring to persons <18
Gaming offences	Parts 11-13*	Parts 10-12*
Fail to quit	s.103(3)	s.67A
Other	All other sections	All other sections

* These Parts of each of the Acts have since been repealed on account of the *Gaming Machines Act 2001* (NSW) being enacted.

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NOTES

- 1 Responsible Beverage Service is the North American equivalent of the Responsible Service of Alcohol programs that have been adopted in NSW.
- 2 Four hundred and forty-six breaches of licence conditions detected by Special Inspectors are not included in this total.
- 3 A total of 561 offences finalised between 1996-1998 were excluded from the analysis because they were enforcement orders issued by the Licensing Court for unpaid infringement notices.
- 4 Ninety liquor offences were also finalised in the Higher Courts during the period 1996-2001. Sixty-three per cent of these were appeals against the severity of a sentence, 32 per cent were appeals against the conviction/sentence and four per cent were matters that went to trial. Due to the relatively small number, Higher Court offences were not included in the analysis.
- 5 It should be noted that BOCSAR does not keep information on breaches of statutory rules and only began collecting information on breaches of the Registered Clubs Act 1976 in 2001.
- 6 The offences by a minor appearing in Table 2 were against persons under 18 and were recorded on the Licensing Court database but they would probably have been finalised in a Children's Court. There were also an additional 36 offences committed by minors between 1997 and 2001 included in the Juvenile Justice dataset which BOCSAR has incorporated into its reoffending database. The five offences by a minor finalised in the Local Courts were for persons who were over the age of 18 at the time of the offence but who had refused to provide identification of age when required to do so.
- 7 In the initial dataset BOCSAR received from the Licensing Court, it was discovered that a proportion of offences which were proven but dismissed without conviction or penalty under s.10 of the Crimes (Sentencing Procedure) Act 1999 had been coded as being 'not proven, dismissed'. The Licensing Court files were obtained for 443 of these matters thought to be suspect. This audit showed that 21 per cent of the offences which had 'not proven, dismissed' entered as the outcome in the Licensing Court database, were in fact proven offences which had been dismissed under s.10. For a further 249 suspect offences, the outcome of the matter could not be verified since the court file had been returned to the Country Court in which the matter was originally heard (of which there is a total of 68 courts throughout the State). However, using the proportion of Licensing Court matters found to be in error as an estimate of the proportion of country matters incorrectly coded, would suggest that 52 additional offences could have been proven but dismissed with no conviction or penalty. This would increase the percentage of offences proven in the Licensing Court by just one percentage point.
- 8 The number of offences with a penalty does not equal the total number of offences proven in the Court because in some cases the Court has treated several counts of the same offence as one event, and thus, imposed only one penalty. For 130 offences the principal penalty imposed by the Court could not be determined from the Local Courts database. Fifty-four of these offences had no penalty information entered into the Local Courts database and the remaining appeared to be coded incorrectly.
- 9 It should be remembered here that in some cases the Court may have treated several counts of the same offence as one charge and therefore, imposed only one penalty.
- 10 Circumstances of aggravation exist if the complaint concerns an alleged breach of s.125 or s.125E of the Liquor Act (also s.44A and s.54A of the Registered Clubs Act) and if both the complaint alleges and the Court agrees that the matter is serious enough to warrant the taking of more serious action. In deciding upon whether circumstances of aggravation exist, the Court is asked to consider such matters as the number of breaches involved, the seriousness of the breach involved, the number of people involved in the breach and/or the seriousness of the outcome of the breach.
- 11 From the data it could not be determined upon which grounds the complaint had been made.
- 12 It could not be determined from the data provided what types of conditions were placed on the licence.
- 13 This analysis was restricted to offences and complaints finalised in the Licensing Court since information on the licence number is not collected in the Local Courts database. This having been said, about 90 per cent of offences before the Local Court were against patrons and therefore would not have been relevant for the current analysis. Offences of failing to quit a licensed premises and offences by a minor are exclusively patron offences and were therefore excluded from this analysis.
- 14 A finalised appearance is a group of one or more offences and/or complaints, against a single individual or company, which were finalised by the Licensing Court on a single day. A particular individual or company can have more than one finalised appearance during the study period. A licensed premises can also be identified in more than one finalised appearance on a single day if there are multiple defendants.
- 15 Twenty-five (7.9%) appearances for a conduct offence and five (0.9%) appearances for complaints had no information on licence number. Overall, 395 (17.3%) appearances had no information on licence number but this may be either because the offence was against a patron or because the data was missing.
- 16 All licences on issue in NSW as at 30/06/01 was used as the denominator in this analysis. However, some of these licences would not have been operational all of the time (e.g. licences for special functions). Including only licences on issue for hotels, registered clubs, bottleshops, licensed restaurants and nightclubs as at 30/06/01 reduces the denominator to 9,030. This increases the estimates to 1.8 per cent for conduct offences, 4.1 per cent for complaints and 12.0 per cent for all court proceedings.
- 17 For 328 appearances there was no information on licence number.
- 18 It should be noted that the date of finalisation is not necessarily the day the conference was convened or the day when orders were issued. However, to maintain consistency across the datasets, date of finalisation was considered most appropriate for this analysis.
- 19 The unit of analysis here is the appearance. Therefore, an individual licensed premises could have appeared before the LAB for more than one matter.
- 20 The total number of breaches does not equal the total number of notices since a compliance notice can be issued for more than one breach of either Act.
- 21 While DGR inspectors have also had the power to issue infringement notices from 1996, they only commenced doing so from 2000 onwards. Thus police infringement notices are only of relevance to any trend analysis.

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