



Performance audit report

Liquor licensing by territorial authorities





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This is the report of a performance
audit we carried out under section
16 of the Public Audit Act 2001

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Foreword

Under the Sale of Liquor Act 1989, territorial authorities have the status of District Licensing Agencies, responsible for considering applications and issuing licences for the sale and supply of liquor to the public. My interest in the regulatory practices of local government led to my staff carrying out a performance audit to examine how territorial authorities were managing their liquor licensing responsibilities under the Act. They are, by and large, doing a good job. However, the audit identified some important areas for improvement.

In my view, the Act clearly makes District Licensing Agencies responsible not only for issuing liquor licences but also for monitoring and enforcing compliance with licence conditions and the Act. Not all District Licensing Agencies are sufficiently committed to this responsibility. I expect all District Licensing Agencies to consider whether they have enough resources allocated to this work, and to follow active and systematic monitoring strategies.

The audit involved consultation with a wide range of stakeholders, including territorial authorities, the Liquor Licensing Authority, the Alcohol Advisory Council of New Zealand, the Police, public health services, and industry bodies. I thank them all for their assistance and co-operation.

A handwritten signature in black ink, consisting of a horizontal line that curves upwards and loops back to the left, ending in a small flourish.

K B Brady
Controller and Auditor-General

6 November 2007

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Summary

The Sale of Liquor Act 1989 (the Act) gives each of New Zealand's 73 territorial authorities the responsibilities and powers of a District Licensing Agency (DLA). A DLA issues licences for the sale and supply of liquor to the public, and certifies managers who are in control of those premises. DLAs are also empowered to carry out other activities consistent with the purpose of the Act – establishing a reasonable system of control with the aim of reducing alcohol abuse. These activities include working with other regulatory bodies such as the Police and public health services, and monitoring licensees' compliance with the conditions of their liquor licence and the requirements of the Act.

Our performance audit examined:

- the resources and systems supporting DLAs;
- compliance monitoring by the DLAs;
- the service offered by DLAs to applicants, licensees, and the public; and
- DLAs' compliance with the liquor licensing legislation.

Resources and systems supporting District Licensing Agencies

Our examination of resources and systems identified the need for territorial authorities to clearly define the scope of their statutory responsibilities under the Act, specify the nature and purpose of activities required to give effect to those responsibilities, and provide the necessary resources to carry out those activities. We examined liquor licensing practices in 12 authorities.

Systematic resource planning is about assigning the right number of staff to a function, and organising those staff in the best way. For each territorial authority these tasks need to take account of the nature and extent of liquor licensing work in its district.

Staffing arrangements varied, and we observed the absence of informed and systematic approaches to determining resourcing requirements. We were not satisfied that the time of territorial authority staff allocated to liquor licensing work accurately reflected the full range of tasks associated with carrying out this regulatory function, including active monitoring of licensed premises. Territorial authorities need to carry out a more informed assessment of the scope of activities liquor licensing staff need to perform as part of their jobs. There were benefits and drawbacks associated with the different arrangements for organising staff, and all relevant factors need to be considered by each territorial authority in deciding on its preferred staffing structure.

To effectively administer the Act, DLAs must work closely with the Police and public health services. These working relationships were generally close, with evidence of effective collaboration. However, information was not always well co-ordinated between the three. Moreover, each approaches the liquor licensing function with different expectations and priorities, and has different resources available for this work.

In our view, a formal agreement between the local DLAs, the Police, and the public health services – such as a protocol – to record the common goals, differing roles, and agreed approach to processing applications, sharing information, and pooling resources would help. With appropriate endorsement from senior management, such arrangements can serve as an enduring record and practical operating framework for working together.

Compliance monitoring by District Licensing Agencies

Compliance monitoring provides assurance that licensees are meeting their statutory requirements under the Act and complying with the conditions of their licences. All DLAs were carrying out compliance monitoring in some form, but practices varied.

The DLAs that we visited were unable to provide us with a clear rationale, based on a target level of assurance about compliance with the Act, for their monitoring strategies. DLAs were aware of high-risk premises from their contacts with the Police and public health services. However, better co-ordination and analysis of intelligence, an emphasis on active, risk-based monitoring for all licence types, and the use of monitoring results to report on trends in compliance would improve the focus and efficiency of compliance monitoring.

Customer service

Applicants, licensees, and the public had access to a range of relevant information about the Act and the licensing system. Standardising some of this material would provide access to more consistent and comprehensive guidance across the different territorial authority areas.

DLAs offered a number of services to applicants, and were responsive to their needs. The responses to our survey of licensees confirmed the positive findings from our assessment of customer service practices. All DLAs should consider carrying out their own regular surveys of licensees to assess satisfaction with their services.

Training, education, and various forms of communication are all important in promoting a better understanding of statutory obligations and encouraging

voluntary compliance. DLAs should recognise training and education as an important part of the work of all inspectors.

Applications should be processed within a reasonable period, to provide certainty to the applicant and minimise business costs. All DLAs had licensing information systems capable of measuring processing timeliness, but not all had targets, and not all were reporting on the time taken to process applications.

Compliance with liquor licensing legislation

Consistent application of the law ensures fairness and certainty. District Licensing Agencies were applying the main provisions of the Act and the Sale of Liquor Regulations 1990 (the Regulations) consistently. Because of this, the statutory processes that applicants were required to follow showed little variation from one district to another.

However, there were some differences in how the legislation was applied and interpreted, and different arrangements for reaching and documenting decisions about applications. DLAs were not always using documentation or following procedures that, in our view, clearly complied with the Act and the Regulations. This exposes the DLAs to risks that the processes leading to decisions, or the validity of those decisions, are open to challenge.

Part 1

Introduction

- 1.1 Under the Sale of Liquor Act 1989 (the Act), each of the 73 territorial authorities has the status of a District Licensing Agency (DLA). DLAs issue liquor licences to people, businesses, or other entities, enabling the licensee to sell and supply liquor to the public at the premises named on the licence (known as licensed premises). Licensed premises include hotels, restaurants, clubs, bottle stores, supermarkets, cafes, and nightclubs. DLAs also issue certificates to individuals, enabling the individuals to manage premises that hold a liquor licence.
- 1.2 Licensing managers and premises to sell liquor through the provisions in the Act is one of a range of legislative measures and policies designed to reduce alcohol-related harm.¹ The Ministry of Health, the Accident Compensation Corporation, the Police, and the Alcohol Advisory Council of New Zealand (ALAC) all have strategies to reduce alcohol-related harm that refer to the importance of enforcing the Act.²
- 1.3 This report sets out the results of the performance audit we carried out to examine how DLAs were giving effect to the provisions of the Act – controlling the sale and supply of liquor to reduce alcohol-related harm.
- 1.4 In this Part, we describe:
- the objective of the audit;
 - how we prepared for the audit;
 - how we selected the sample of territorial authorities; and
 - how we carried out the audit.

The objective of the audit

- 1.5 We carried out a performance audit to examine how selected territorial authorities were using the powers conferred on them by the Act. We were interested to see whether the intent of the Act – controlling the sale and supply of liquor to reduce alcohol-related harm – was reflected in the systems and processes used by the territorial authorities. We also sought to assess how well the needs of licensees were being met.
- 1.6 The audit was designed to provide assurance about liquor licensing practices in a selection of territorial authorities, identify any broad issues for local government,

1 Others include drink driving laws, liquor bans, environmental planning considerations, restrictions on liquor advertising, duties, and a minimum age for purchasing liquor.

2 The *Alcohol Action Plan*, published by the Police in March 2006, refers to overseas studies that suggest that 50-70% of all police work is associated in some way with alcohol. It also refers to research indicating a connection between alcohol abuse and violence, and poorly-run licensed premises. The *Alcohol Action Plan* outlines a range of actions to better monitor and enforce the requirements of the Act, and to promote more responsible management of licensed premises.

and describe areas of good practice that other territorial authorities might find useful.

- 1.7 Liquor licensing activities in territorial authorities are funded from two sources – fees (set by regulation) and rates. We did not examine how these sources of funding are used and applied; nor the adequacy of fees to meet the costs of territorial authorities carrying out this regulatory function.

How we prepared for the audit

- 1.8 To prepare for our performance audit, we studied the Act, the available guidance on the interpretation of the Act, and relevant liquor licensing case law.
- 1.9 We read the available research on liquor licensing administration and enforcement practice in New Zealand. We kept in mind the principles of good regulatory process, drawing on our past work and other sources of good practice.³
- 1.10 We consulted the Police, the Ministry of Health, the Alcohol Advisory Council of New Zealand, local government representatives, and representatives of the liquor industry. We also visited two territorial authorities to find out how they processed liquor licence applications.
- 1.11 We also sought the views of the Liquor Licensing Authority (the Authority, whose role we explain in Part 2) before carrying out our fieldwork.

How we selected the sample of territorial authorities

- 1.12 To decide which territorial authorities to include in our audit, we analysed the annual reports of DLAs for information on the number and types of applications they processed, as well as information on their monitoring and enforcement activities.
- 1.13 Territorial authorities vary significantly in scale and structure, and serve quite different communities. Consequently, the nature and scale of liquor licensing activity differ markedly. The number of licensed premises within a district varies from 1000 or more in the largest cities, where large numbers of applications are processed, to districts with fewer than 50 licensed premises, and few applications. We selected 12 territorial authorities, taking account of factors including the number of applications processed, the number of licensed premises, and the type of community in which each was working.

³ For example, *Administering Regulation*, a Better Practice Guide published by the Australian National Audit Office in March 2007, outlines a set of principles for effective regulatory process.

1.14 The 12 territorial authorities were:

- Auckland City Council;
- Christchurch City Council;
- Dunedin City Council;
- Invercargill City Council;
- Kapiti Coast District Council;
- Kawerau District Council;
- Manukau City Council;
- Palmerston North City Council;
- Rotorua District Council;
- South Waikato District Council;
- Southland District Council; and
- Westland District Council.

How we carried out the audit

1.15 For each territorial authority, we:

- examined manuals, policy documents, check sheets, guidance material, and application forms;
- asked inspectors and support staff about their work;
- asked relevant managers within the territorial authorities about resource planning and performance reporting for liquor licensing;
- examined systems for recording the status of applications and licences, supporting documentation, and compliance activity; and
- examined a sample of licence documentation to check compliance with the Act and the Sale of Liquor Regulations 1990 (the Regulations).

1.16 We asked selected licensees about the services provided by their DLA.

1.17 We asked local public health services and the Police about their working relationships with the DLA. We also sought the views of regional managers from the Hospitality Association of New Zealand on DLA processes and wider licensing issues.

1.18 At the end of each visit, we provided each DLA with our views on its practices, making suggestions for improvement where appropriate.

Part 2

Licensing the sale and supply of liquor

2.1 The primary piece of legislation governing the sale and supply of liquor is the Sale of Liquor Act 1989. The Act was passed to:

... establish a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse, so far as can be achieved by legislative means.¹

2.2 The Act set up a licensing system that territorial authorities administer in their city or district.

2.3 Each of the 73 territorial authorities is designated a DLA by the Act. DLAs are independent statutory bodies that issue licences to people, businesses, or other entities (liquor licences), enabling them to sell or supply liquor to the public at the premises named on the licence (licensed premises). DLAs also issue certificates to the managers of licensed premises. DLAs monitor licensed premises to ensure that the premises are meeting the conditions of their licences, are complying with the requirements of the Act, and are operated responsibly.

2.4 In nearly all of the territorial authorities that we visited, territorial authority staff (usually environmental health staff) were exercising the powers and performing the decision-making functions of the DLA.

District licensing inspectors

2.5 DLAs must appoint one or more inspectors to inquire into, and report on, applications for a liquor licence or manager's certificate. The inspector has specific powers under the Act, and in exercising those statutory powers is expected to act independently of the DLA and the territorial authority. The functions and role of the inspector are critical to the effective administration of the Act.

Types of liquor licences

2.6 There are four types of liquor licences issued by DLAs:

- **On-licence** (for example, for a hotel, tavern, restaurant, or café). This licence authorises the holder to sell and supply liquor for consumption on the premises described in the licence.
- **Off-licence** (for example, for a bottle store or supermarket). This licence authorises the holder to sell or deliver liquor on or from the premises described in the licence for consumption off the premises.
- **Club licence** (for example, for a sports club, Returned Services' Association club, or workingmen's club). This licence authorises the holder to sell and supply

¹ See section 4. The Sale of Liquor Act 1989 also set up licensing trusts and set out provisions governing their operation.

liquor on the premises described in the licence, but only to club members and specified guests.

- **Special licence** (for example, for a food and wine festival or for a party at an unlicensed venue such as a community hall). Special licences allow holders to sell and supply liquor to persons attending an occasion, event, or social gathering, or for the holder of an on-licence or a club licence to sell and supply liquor at any times when licensed premises are required to be closed.

2.7 A person taking over licensed premises and seeking to sell and supply liquor must obtain a temporary authority. This enables the new owner to operate the premises on the same terms and conditions as previously until a new liquor licence has been obtained.

2.8 Every new liquor licence (except for a special licence) is issued initially for a year (known as a probationary period). This allows the monitoring authorities and the neighbours to monitor the business to assess the commitment of the licensee to host responsibility practice and to compliance with the conditions of the licence. After the initial year, licences can be renewed for three-year terms. Hotels and taverns, and holders of off-licences, may not sell liquor on Good Friday, Easter Sunday, Christmas Day, or before 1pm on ANZAC Day (except to people dining or living on the premises).

2.9 DLAs may issue all liquor licences and manager's certificates except where an application is opposed by (as applicable) the Police, the local public health service,² or a member of the public. Of the large number of applications that DLAs receive every year for new licences or certificates, or for renewals (possibly about 30,000³ in total throughout New Zealand), very few are opposed. DLAs issue all special licences.

Certificates for managers

2.10 Controls are exercised not only on who may hold a liquor licence but also on who may manage licensed premises. Accordingly, the Act defines the criteria to be met by people seeking to work in licensed premises as duty managers.

2.11 Before any person can manage licensed premises they must obtain a manager's certificate, which the DLA issues. There are two types of manager's certificate – a general manager's certificate, which allows a person to manage all types of licensed premises, and a club manager's certificate, which allows the holder to manage only premises holding a club licence.⁴ To obtain the certificate, a person

² The Sale of Liquor Act 1989 refers to the Medical Officer of Health. For liquor licensing purposes, public health services staff within local district health boards act in this role.

³ A more precise figure was difficult to determine because the data available from DLAs was incomplete.

⁴ A club manager's certificate also allows a person to manage premises where a special licence is in force.

must prove that they understand and are familiar with the requirements of the Act, are a suitable person to manage the sale of liquor, and have obtained the Licence Controller Qualification.⁵ The certificate is first issued for 12 months, and then can be renewed every three years.

- 2.12 The Act recognises the vital role played by the manager of licensed premises. A manager must be on duty at all times that liquor is being sold to the public. The Act makes that manager responsible for complying with, and enforcing, the provisions of the Act and the conditions of the liquor licence, and for the conduct of the premises.
- 2.13 The manager's role in managing the risks of alcohol abuse makes it important that each DLA assess carefully the suitability of applicants. We discuss this further in Part 6.

Management of licensed premises

- 2.14 The Act includes provisions designed to encourage licensed premises to sell liquor in a responsible manner. There are prohibitions on allowing intoxicated persons onto the premises or allowing persons to become intoxicated, selling liquor to minors (defined in the Act as people aged under 18), and encouraging excessive drinking.
- 2.15 The Act makes the DLA responsible for setting conditions when issuing licences for premises selling liquor, having regard to reducing alcohol abuse. Within certain limits set by the Act, DLAs are able to set conditions that are appropriate to the type of licence being sought, and the particular circumstances of the application. For all licences except off-licences, the Act also empowers the DLA to set conditions about "any other matter aimed at promoting the responsible consumption of liquor".
- 2.16 Other provisions designed to promote responsible management and address the risk of alcohol abuse are the requirement for licensed premises to restrict access by minors to designated areas,⁶ and the specific responsibilities of managers (see paragraphs 2.10-2.13).

⁵ Since 1 April 2006, all new applicants for a manager's certificate and renewal applicants have been required to hold the Licence Controller Qualification. Training providers are accredited by the New Zealand Qualifications Authority. The qualification covers knowledge of the Sale of Liquor Act 1989 and of host responsibility requirements.

⁶ A designation of "restricted" means that no one under 18 years of age may enter that part of the premises. No one under 18 may be in a "supervised" area unless they are accompanied by their parent or guardian. Anyone of any age may be in an undesignated area.

2.17 The Act gives enforcement powers to the Police and the DLA.⁷ It also specifies penalties for various offences, such as:

- selling or supplying liquor without a licence;
- selling to minors;
- allowing minors to be in restricted areas;
- promoting the excessive consumption of liquor;
- selling liquor to an intoxicated person, or allowing a person to become intoxicated on the premises; and
- allowing drunkenness or disorderly conduct.

How applications are considered

2.18 When they consider applications for a liquor licence or manager's certificate, DLAs are required to have regard to the criteria set out in the Act.⁸ For a liquor licence, these criteria (depending on the type of licence) relate to:

- the suitability of the applicant;
- the days on which, and the hours during which, the applicant proposes to sell liquor;
- the areas of the premises that the applicant proposes be designated as restricted or supervised areas;
- how the applicant will ensure that liquor will not be sold to prohibited persons; and
- the applicant's proposals for:
 - selling and supplying non-alcoholic refreshments and food;
 - selling and supplying low-alcohol beverages;
 - providing help with, or information about, alternative forms of transport from the licensed premises; and
 - other goods that the applicant intends to sell or supply.

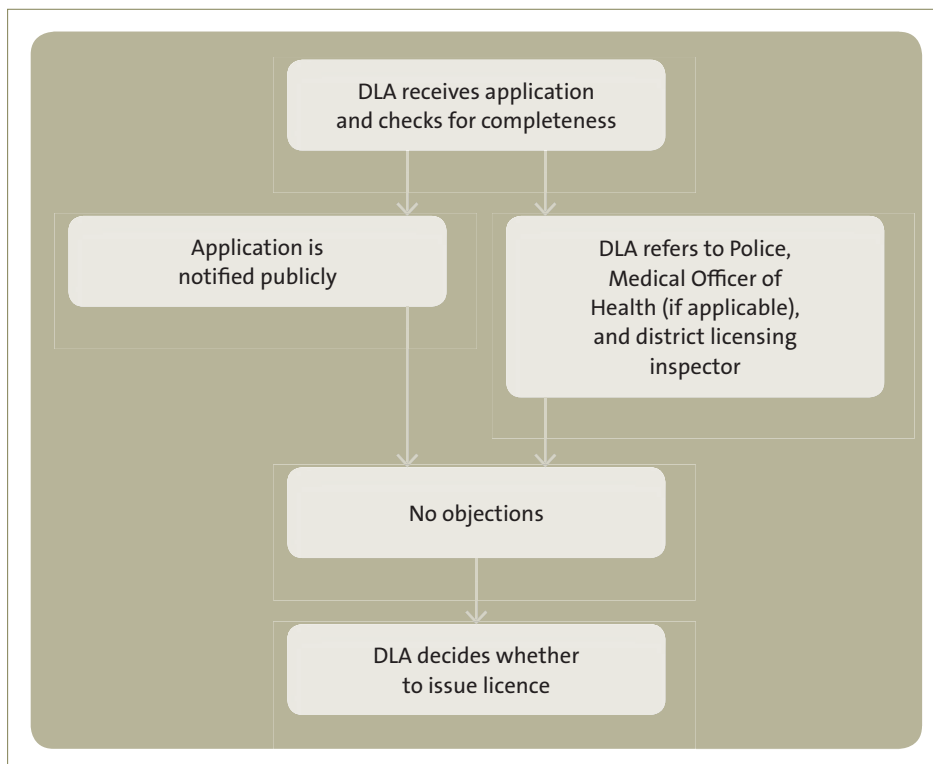
2.19 Every application for an on-licence, off-licence, or club licence must be accompanied by a certificate from the local authority that the proposed use of the premises meets the requirements of the Resource Management Act 1991 and the Building Code.

⁷ Section 134 also empowers the Medical Officer of Health or any member of the New Zealand Fire Service to apply to the DLA for suspension of a liquor licence where they have reason to believe that a licensee's failure to comply with requirements relating to public health puts the health or safety of people using the premises at risk.

⁸ Criteria include meeting certain standards for the buildings and site, policies for providing food and other services, certification of the manager, training, compliance with host responsibility guidelines, and the requirement to meet protocols on advertising and selling liquor.

2.20 In considering applications for on-licences and club licences, DLAs must consult the Police and the local Medical Officer of Health.⁹ The Police and Medical Officer of Health must report to the DLA with any opposition within 15 working days of receiving the application. DLAs must follow a similar consultation process with the Police when they receive applications for off-licences, manager's certificates, and special licences. The consultation process is shown in Figure 1.

Figure 1
Consultation process for liquor licence applications



2.21 The Act also requires the inspector to inquire into, and report on, every application.

The Sale of Liquor Regulations 1990

2.22 The Regulations prescribe in detail the procedures DLAs must follow when considering applications for liquor licences, and the forms to be used (although the forms may be varied as circumstances require). The Regulations prescribe:

- the format of application forms for different types of licence;
- the format of public notices to be published in local newspapers;

⁹ Staff in public health services for the local district health boards support the Medical Officer of Health in performing their functions under the Act.

- requirements for verifying that a person is aged 18 years or older;
- the fees payable by applicants for a liquor licence or a manager's certificate; and
- the records to be kept.

2.23 In Part 6 we discuss how DLAs were complying with the statutory requirements of the Act and the Regulations in processing applications and issuing licences.

Alcohol policies

2.24 Several territorial authorities have alcohol policies. These commonly contain:

- reference to district planning rules governing the permitted location and operation of licensed premises;
- guidelines for permitted trading hours;
- information about how applications will be considered; and
- an explanation of the DLA's approach to enforcing the Act.

2.25 An alcohol policy has a number of benefits:

- articulating the community's expectations about the environment in which liquor is sold and consumed;
- aligning liquor licensing practice with the community outcomes sought by the territorial authority; and
- setting expectations for the public and licensees.

2.26 A policy also provides an objective framework for liquor licensing practice, helping to guide decisions about individual applications.

2.27 Finally, an alcohol policy provides an opportunity to specify when the DLA will exercise its discretionary powers under the Act.

2.28 DLAs have different approaches to considering applications for special licences, and policies can explain the process the DLA will follow. Other matters that a policy may cover include requirements for manager training, managing the provision of liquor at public events, or host responsibility practices.

2.29 The Act specifies mandatory licence conditions, but also gives a DLA powers to set licence conditions that are consistent with reducing alcohol abuse. The alcohol policy can set out how the DLA will apply conditions for this purpose.

2.30 The policy can also be used to specify the level of service the DLA will provide to applicants. Some provide a useful summary of the process, explaining the different steps that the Act requires them to follow.

The Liquor Licensing Authority

- 2.31 The Authority is a judicial body that considers applications to which there are objections. It also exercises powers of review and appeal at a national level.¹⁰ The Authority is administered within the Ministry of Justice.
- 2.32 A DLA must refer any application that is opposed (except for special licence applications) to the Authority. The Authority also determines applications from an inspector or the Police to cancel, suspend, or vary a liquor licence or manager's certificate. These applications are usually made because of concerns about how licensed premises are being run, evidence of breaches of liquor licence conditions, or, more broadly, a failure to comply with provisions of the Act.
- 2.33 The Authority hears any appeals against the decisions of a DLA. Its secretariat gives guidance and advice to DLAs on administering the Act.

Roles and responsibilities in controlling the sale and supply of liquor

- 2.34 Under the Act, there are other agencies with important roles in controlling the sale and supply of liquor to the public. DLAs are required to work with those other agencies in different areas of liquor licensing. Figure 2 shows the roles and functions, under the Act, of territorial authorities, DLAs, the Liquor Licensing Authority, the Police, and the Medical Officers of Health (supported by staff of the public health services). Figure 2 also shows the mechanisms used to carry out the functions that each is responsible for.

¹⁰ Responsibility for issuing liquor licences was devolved from the Liquor Licensing Authority to territorial authorities by section 64 of the Sale of Liquor Amendment Act 1999.

Figure 2
Roles and functions under the Sale of Liquor Act 1989, and mechanisms used to carry out those functions

Function	Agency responsible	Mechanism
Set district planning rules in relation to matters such as location of liquor outlets, traffic, noise, hours of trading. Issue resource consents and approvals under the Building Act 2004. Influence the social and economic environment of their communities.	Territorial authorities.	District Plan, Resource Management Act 1991, Building Act 2004, alcohol policy, Long-Term Council Community Plan, community initiatives with youth, by-laws prohibiting the consumption of liquor in public places.
Consider applications for and issue unopposed on-licences, off-licences, club and special licences, temporary authorities, and manager's certificates. Set licence conditions, monitor compliance, and take enforcement action (variation, suspension, and cancellation of licences) through the Liquor Licensing Authority.	DLAs, in consultation with the Police. Also in consultation with the Medical Officers of Health for certain applications.	Powers under the Sale of Liquor Act 1989.
Considers opposed applications, and applications from the DLA or the Police for variation, suspension, or cancellation of liquor licences. Considers any appeals against DLA decisions.	Liquor Licensing Authority, serviced by Ministry of Justice staff.	Powers under the Sale of Liquor Act 1989.
Report to the DLA on applications for on-licences and club licences. Promote responsible drinking to reduce alcohol-related harm. Carry out inspections of licensed premises. Promote host responsibility.*	Medical Officers of Health.	Powers under the Sale of Liquor Act 1989. Carry out health promotion and regulation under contract to the Ministry of Health.
Inspect licensed premises for compliance with the Sale of Liquor Act 1989, with a particular focus on intoxication and sales to minors. Report to the DLA on applications for licences and manager's certificates. Can seek variation, suspension, or cancellation of licences from the Liquor Licensing Authority.	The Police.	Powers under the Sale of Liquor Act 1989. <i>Alcohol Action Plan</i> of the Police.

* "Host responsibility", as defined by the Alcohol Advisory Council of New Zealand, refers to a set of guidelines aimed at reducing alcohol-related harm by creating drinking environments that are welcome and comfortable, and where liquor is served responsibly. Host responsibility practices include refusing to sell liquor to minors, providing and actively promoting low and non-alcoholic drinks and food, and arranging safe transport options.

Part 3

Resources and systems supporting District Licensing Agencies

- 3.1 In this Part, we discuss the resources and systems supporting DLAs in carrying out their liquor licensing functions. We comment on:
- working relationships with the Police and public health services;
 - the information systems used by DLAs;
 - staffing arrangements within DLAs;
 - the role of the inspector; and
 - how DLAs report on their performance.

Main findings

- 3.2 Working relationships between most DLAs and their regulatory partners were close, with DLAs responsive to the needs of the Police and public health services. However, situations had arisen where differences in expectations, priorities, and available resources had highlighted the need for a collaborative arrangement – such as a protocol – recording an agreed approach to processing applications and sharing information. In our view, a protocol would have several benefits, including recording a joint commitment to common goals, developing an understanding of respective roles, and establishing the means to pool collective resources. At a district level, the need to work effectively together may require DLAs to design their licensing processes to reflect the needs and demands of the Police and public health services.
- 3.3 All DLAs had information systems supporting their liquor licensing activities, enabling them to track and process applications, issue licences and certificates, and retrieve historical licence information. Some systems were used to also store compliance records and schedule monitoring activity.
- 3.4 Staffing arrangements varied in the DLAs we visited, and in every territorial authority the nature and extent of liquor licensing work was different. We were not satisfied that the allocation of territorial authority staff time was appropriate to the range of tasks associated with the scope of the liquor licensing function. Territorial authorities need to carry out a more informed assessment of the range of activities that staff should perform as part of their DLA tasks.
- 3.5 The statutory functions of the inspector and the Secretary of the DLA were not supported by policies and practices to adequately ensure appropriate independence and impartiality. Policies and practices should be in place to enable DLA staff to carry out their duties in the manner intended by the Act, and to manage situations that place them in a potential conflict of interest.
- 3.6 Performance reporting focused on activity levels rather than on trends in compliance. Measures of compliance and contribution to community outcomes

can be used to review the effectiveness of liquor licensing policies and practices, and will require territorial authorities to identify and analyse relevant data from a number of sources, working closely with the Police and public health services.

Working relationships with the Police and public health services

- 3.7 Responsibility for considering applications and issuing licences and certificates rests with each DLA. However, the Act requires each DLA to consult the Police and, for specified licence applications, the Medical Officer of Health (supported by staff in the local public health service). DLAs, the Police, and the public health services have common interests in promoting practices consistent with the Act's aim to reduce alcohol-related harm. The consultation requirements under the Act, and common interests in working towards reducing alcohol-related harm, require the DLAs, the Police, and the public health services to work effectively together.
- 3.8 The Act recognises that the Police and the Medical Officer of Health have an important part to play in assessing the suitability of people seeking to hold a liquor licence or manager's certificate. The DLA must forward applications to both of the other agencies (in the case of the Medical Officer of Health, only applications for new or renewed on-licences and club licences). Each may oppose an application (as may the inspector). If an application is opposed, it must be forwarded to the Authority. The Police – and to a limited extent the Medical Officer of Health – also have enforcement powers under the Act.
- 3.9 We asked staff at DLAs about their relationships with the Police and public health services staff. We also met a number of Police and public health services staff, whose views we sought on:
- DLA consultation as required by the Act, and consultation about individual applications;
 - role definition;
 - information sharing; and
 - collaboration in monitoring compliance.
- 3.10 We also asked the other two agencies whether they had recorded the way they would work together with the DLA and, if so, how they had recorded that information.

Processing applications and sharing information

- 3.11 The 12 DLAs we visited were, on the whole, working well with the Police and public health services. Communication was generally good, and the DLA was responsive to any requests or concerns associated with particular applications.

These concerns might be about a particular aspect of an applicant's proposal. One of the other agencies might ask the DLA to apply conditions to a licence or defer issuing a licence or certificate until additional supporting information had been supplied to them (such as the licensee's host responsibility policy or references for an applicant seeking a manager's certificate).

- 3.12 However, the other agencies had different expectations in some cases about their involvement, and unresolved issues about their processes (including what information they would share and how they would share it).
- 3.13 Police and public health services staff told us that they were referred all applications required by the Act. However, in some cases documentation forwarded by the DLA was incomplete, requiring the Police or public health services staff to seek additional information.
- 3.14 To perform their functions under the Act, and to carry out their wider responsibilities, the Police and public health services need certain information about an application. Some Police and public health services staff referred to particular documentation they were not receiving from the DLA. This included verification of the identity of applicants for manager's certificates, menus, host responsibility plans, copies of licences, and lists of duty managers. The Police and public health services staff referred to copies of licences and lists of duty managers when they visited licensed premises.
- 3.15 There were significant variations in the amount of time DLA, Police, and public health services staff were able to assign to liquor licensing work. For example, at some Police stations we were told that their liquor licensing work was well resourced. At others, staff had limited time for liquor licensing, and it was difficult to process applications when staff were on other duties. This can be difficult for public health services staff too.
- 3.16 In our view, DLAs and their regulatory partners could explore ways to align their processes to their respective needs and capabilities. At one interview, for example, public health services staff noted that regular information about when liquor licences were about to expire would help them schedule their own inspection visits more efficiently. This information could also help the Police.
- 3.17 The Police in one district used DLA records of current duty managers to check for any new offences that might have a bearing on the duty manager's suitability for the role. Where appropriate, the Police would notify the DLA of the offence. This arrangement was a useful way for the Police and the DLA to monitor the ongoing suitability of duty managers.
- 3.18 The practice at one DLA of assigning a risk grading to applications for special licences was useful to the Police, guiding them on how best to focus their efforts.

- 3.19 Processing special licences can be a source of tension between the DLAs and the Police. Applications for special licences were sometimes submitted at short notice, but still required thorough investigation and reporting by the Police. For larger public events, the Police and public health services might need time to consider risks and discuss planning for the event with the organisers. A short timetable creates a potential conflict between the desire of the DLA to meet the needs of an applicant by issuing the licence without delay, and the pressure on the Police to carry out necessary inquiries at short notice and be satisfied with the adequacy of arrangements for managing the provision of liquor at the proposed event. In our view, DLAs need to come to an arrangement with the Police for handling these situations.
- 3.20 The Police (and to a lesser extent public health services staff) sometimes had large numbers of applications to process within the statutory 15-working-day period. This work could be time consuming, particularly when there were few staff available to do it and where some investigation was required. Applications for manager's certificates and special licences were largely responsible for the workload facing the Police.
- 3.21 In some districts, DLAs did not always receive reports on applications from the Police and public health services, or received the reports late. While the Act allows DLAs to issue liquor licences or manager's certificates without this reporting, this is undesirable. The intent of the Act is clearly that applications undergo scrutiny by all three regulatory agencies, and such reporting is an important source of assurance for the DLA. In circumstances where this might be difficult to achieve (normally because of limited resources), DLAs need to design their processes, as far as possible, to enable the Police and public health services to carry out their inquiry and reporting functions as envisaged by the Act.

Collaborative arrangements

- 3.22 In our view, a collaborative approach to regulation offers significant benefits in promoting compliance and bringing about more successful outcomes. This view was confirmed by comments made to us about the perceived benefits of joint monitoring:
- Consistent messages can be sent to licensees and managers of licensed premises.
 - Expertise, resources, and powers can be best used (broader view of compliance, greater monitoring capacity, use of different statutory powers).
 - Intelligence can be shared.
 - Evidence can be verified and corroborated.

- The three agencies can show a common commitment.
 - Views presented to the Authority can be co-ordinated.
 - Collaborative arrangements can be formally recognised by senior management, establishing a framework for ongoing, systematic, and shared resourcing.
- 3.23 We asked DLAs whether they had protocols or other documented working arrangements with the Police and public health services. Such arrangements can have significant benefits, such as:
- recording common goals, and how progress in achieving those goals can be measured;
 - identifying respective roles, setting out how each regulatory agency can contribute to administering the Act;
 - documenting agreed processes for considering applications, collecting and sharing intelligence, monitoring compliance, and pursuing enforcement options;
 - providing a framework for responding to issues as they arise; and
 - establishing agreed expectations about sharing information and resources, making working relationships less dependent on personal relationships.
- 3.24 In one district, the DLA and the Police had recognised the need to clarify and record their roles, responsibilities, and expectations. They had prepared a draft joint policy that:
- defined their respective roles;
 - outlined agreed approaches to high-risk premises;
 - specified a requirement for licensees to submit and give effect to host responsibility plans;
 - defined the information that the DLA would forward to the Police; and
 - set out a process for considering applications for manager's certificates and special licences.
- 3.25 In another district, the three regulatory agencies had prepared a Memorandum of Agreement some years before, recognising the importance of recording their commitment to the working relationships. The parties noted the benefit of working to an established, agreed arrangement, rather than relying on personal relationships that depended on the commitment of individuals in certain roles at the time.
- 3.26 In some situations, working relationships were enhanced by physical access to Police, public health services, and DLA premises. In one district, a more formal co-location arrangement was being considered.

- 3.27 All DLAs could usefully consider the potential benefits of such arrangements, having regard to their own circumstances.
- 3.28 Committing resources (including additional funding where necessary) and providing strategic leadership are critical to the success of any formal working arrangement. In recognition of the importance of resourcing and leadership, each agency's senior management should explicitly support and endorse any documented working arrangement.

Information systems used by District Licensing Agencies

- 3.29 We examined how each DLA recorded:
- when applications were received and the progress of processing; and
 - the history of licensed premises, including details of licence conditions and licence-related information.
- 3.30 Effective information systems are a valuable tool for tracking regulatory activity and retrieving relevant information. They should be designed to promote efficient processing, procedural consistency, and statutory compliance. Liquor licensing staff should be able to retrieve relevant data, and management should be able to monitor activity levels and report against relevant measures of performance.
- 3.31 All DLAs had information systems supporting their activities. Some DLAs recorded in a database when processing tasks were completed, often supplemented by hard copy application cover sheets. One DLA scanned all the documents it received into a database, and used the scanned documents instead of physical documents.
- 3.32 Some systems provided workflow management tools, helping to ensure that the necessary tasks were followed in sequence, and creating a record of when tasks were completed and by whom. Such systems are helpful for ensuring that processing complies with the requirements of the Act. Electronic templates for letters to applicants, standard licence conditions, public notices, reports, and licences were in use, making processing and administration more efficient.
- 3.33 DLAs were able to retrieve information about existing licences and certificates from their databases. Some databases contained a history of compliance monitoring, showing a summary of inspections. One useful tool was the facility to automatically schedule inspections at prescribed intervals, based on the record of the last visit.
- 3.34 Interfaces between liquor licensing and relevant territorial authority property databases (such as those used for recording requests for service, or for issuing resource consents, building approvals, or food hygiene certificates) offer a means to better integrate, and provide central access to, relevant regulatory information about a single property – including licensed premises.

Staffing arrangements within District Licensing Agencies

- 3.35 The time of territorial authority staff assigned to liquor licensing work, and the way those staff are organised, directly affect the mix of regulatory activities carried out by the DLA. Arrangements that suit one DLA will be inappropriate for another. We observed a variety of arrangements in the 12 DLAs that we visited.

Staff resourcing within District Licensing Agencies

- 3.36 Comparing staffing was difficult. The roles of staff differed from one DLA to another, and, where liquor licensing was only one of the duties of a territorial authority staff member, the DLA may not have recorded the proportion of that person's time spent on liquor licensing work. Moreover, some inspectors spent more time on inspections than others, had further to travel to carry out their duties, had more applications to process, had more licensed premises to administer, and were responsible for more high-risk premises that required closer supervision.
- 3.37 No work had been carried out to compare the time of territorial authority staff assigned to doing liquor licensing work in each DLA. However, data we analysed from DLA annual reports for 2005/06 suggested differences in capability throughout DLAs. This was confirmed by observations during our field visits. In our view, staff resourcing was responsible (to some extent) for the limited scope of liquor licensing activity in some of the DLAs we visited.
- 3.38 The effect of staffing constraints was, from our observations, most likely to be reflected in difficulties in carrying out high-volume activities (notably interviewing applicants for manager's certificates), delays in processing applications, less time available for education and training to promote voluntary compliance, and fewer monitoring inspections. These were also the activities identified by inspectors when we asked them what additional work they would carry out if they had more time.

Resource planning within District Licensing Agencies

- 3.39 In planning the resources needed to perform a regulatory function, territorial authorities need to consider:
- the purpose of the relevant legislation and the statutory responsibilities of the regulator; and
 - the types and frequency of activities needed to achieve the legislative purpose and give effect to the regulator's statutory responsibilities.

- 3.40 Territorial authorities need to assign enough resources to DLA functions to:
- consider applications and issue licences and certificates as required by the Act;
 - carry out enough monitoring to be reasonably assured that licensed premises are complying with the Act; and
 - carry out other activities, such as training and education, that are consistent with achieving the purpose of the Act.
- 3.41 We asked team leaders and regulatory managers how they had determined the staff resourcing needed for liquor licensing tasks, and how they were ensuring that their resources were being used in the most effective and efficient way.
- 3.42 Staff resourcing was generally a result of historical practices. We were shown no systematic assessments of resource needs that referred to the range of tasks associated with administering the Act to a particular level of regulatory assurance, or to any indicators relevant to reducing alcohol-related harm. At best, target activity levels related to numbers of applications processed, numbers of inspections carried out, or timeliness targets.
- 3.43 It is important that staff time is used most productively, with tasks assigned in the most effective and efficient way. A recognised way to assess this is to require staff to record how they spend their time. With this activity data, managers can identify where staff time can be better spent, and tasks more efficiently deployed.
- 3.44 Very few staff were recording how they spent their time against a range of categories. One team leader had asked their staff to record their time to determine if the inspector's time was unnecessarily spent on paperwork, limiting the scope for compliance monitoring. This was a useful approach.
- 3.45 While some DLA staff spent all their time on liquor licensing work, at other DLAs this was only one part of their job. This reflected the reality that, for some DLAs, there was not enough liquor licensing work to justify a full-time inspector position.
- 3.46 However, in these circumstances, inspectors found it difficult to give priority to liquor licensing activities – and inspections in particular – in the face of other, competing, demand-driven tasks. Examples of conflicts we observed included:
- environmental health staff carrying out liquor licensing inspections and checks for food compliance at the same time, which, while efficient, was likely to be at the expense of time spent on liquor licensing matters; and
 - the performance of other regulatory functions that sometimes made urgent demands on the time of the inspector.

- 3.47 One inspector cited concerns about conflicting task priorities as the reason for their DLA's decision to retain full-time liquor licensing staff. This arrangement also let staff get to know the legislation more comprehensively, and become more familiar with different aspects of the job.
- 3.48 Having two or more part-time liquor licensing officers with the warrant of inspector under the Act makes it possible to continue carrying out statutory duties and related tasks when one staff member is absent, and addresses the need for succession planning. Using staff with multiple responsibilities also allows for efficient coverage of large geographical districts. A number of DLAs had assigned warrants to more than one environmental health officer of the territorial authority, sometimes using other environmental health officers to supplement the resources of the inspector. All such additional warranted staff should receive thorough training. This had not always occurred, reducing the contribution they were able to make as inspectors.
- 3.49 In the absence of evidence that territorial authorities had taken an informed and systematic approach to defining their staffing requirements, we were not confident that DLAs were appropriately resourced. The decision to use full-time or part-time staff has implications for efficiency, and also for the priority assigned to liquor licensing activity. In our view, these decisions should be made only after careful consideration of the factors discussed in paragraphs 3.39-3.48.

The role of the district licensing inspector

- 3.50 The Act requires the inspector to perform the duties of a statutory officer. Independence and impartiality are critical to the process of inquiry and reporting set out in the Act, and to the exercise of inspectors' powers of inspection and enforcement. An inspector may oppose an application for a liquor licence, and present evidence when the Authority considers the application.
- 3.51 The principles of independence and impartiality should be reflected in policies and practices, recognising those circumstances where the recommendation of the inspector may differ from the views of their managers or of elected members. The policies and practices should also reflect the possibility that the personal life of a district licensing inspector could bring them into situations where there might be a potential conflict of interest with their statutory duties under the Act.
- 3.52 We did not examine corporate policies on independence or managing conflicts of interest. In our view, statutory duties such as those of the inspector should be governed by specific policies and practices that reflect the particular role and circumstances likely to create a possible perception of bias. We asked

DLAs whether the inspector's role and responsibilities were defined, with clear expectations that:

- the district licensing inspector would be free to carry out their statutory duties without undue influence; and
- guidance would be available on managing conflicts of interest associated with the discharge of the statutory duties of the inspector, and processes would exist for recording the nature of any such conflicts.

3.53 Inspectors told us they were able to carry out their statutory duties in an independent manner. However, none of the role definitions we examined referred specifically to the statutory independence associated with the position.

3.54 The private activities of inspectors can present them with possible or real conflicts of interest. We were told of one situation where the independence of the inspector was seen to be compromised by their private involvement in – and presence at – a special event for which the DLA had issued a liquor licence. None of the DLAs referred us to guidance on the management of possible conflicts of interest relevant to the statutory duties of their inspectors.

3.55 We encourage all DLAs to recognise, in defining their roles and responsibilities, the independence of the inspector in performing their duties as a statutory officer. District licensing inspectors should have access to conflict of interest guidance specific to their statutory roles and duties, and processes and mechanisms should be in place for appropriate disclosure and mitigation action where necessary. Such processes and mechanisms could, for example, include establishing a system (such as an interests register) for recording those types of ongoing interests that can commonly cause a conflict of interest, and for updating it regularly. They could also provide avenues for training and advice, and provide a mechanism for handling complaints or breaches of the policy. Such a policy would better protect staff decisions against allegations of bias.

3.56 Each territorial authority has an associated statutory role – that of Secretary of the DLA¹ – and it is important that the roles of district licensing inspector and Secretary are separate. The independence of the two roles provides an important check on the statutory processes of inquiry, reporting, and decision-making envisaged by the Act.

Potential benefits of peer review

3.57 In our view, DLAs could benefit from arrangements to have peers review the supporting documentation for licence applications, to ensure that licences are correct and that applications are considered in keeping with statutory

¹ Section 102 of the Sale of Liquor Act 1989 makes the chief executive of the territorial authority the Secretary of the District Licensing Agency. That person, or their delegate, has administrative responsibilities under the Act. In practice, the Secretary commonly carries out the decision-making functions of the District Licensing Agency.

requirements. Peer review has other benefits, including ensuring that manuals, procedures, and policies are followed. Arrangements for an inspector's report to be reviewed by a fellow inspector, or by another colleague, can promote consistency. Few DLAs had peer review arrangements in place.

- 3.58 DLAs could consider having district licensing inspectors review the practices of their colleagues in other DLAs. This could promote better practice and consistency, with particular benefits for inspectors working on their own.
- 3.59 DLA staff were in contact with their counterparts in other territorial authorities on day-to-day matters relating to the Act. The New Zealand Institute of Liquor Licensing Inspectors provided a valuable channel for discussion among inspectors on a wide range of matters about administering the Act. Periodic practice reviews between DLAs would complement this and other existing informal communications between inspectors on common liquor licensing issues.

Reporting on performance

- 3.60 The Act makes each DLA responsible for carrying out activities consistent with the Act's aim of reducing alcohol abuse. Measuring progress in meeting this objective requires the use of relevant indicators of outcomes related to alcohol-related harm.
- 3.61 We asked each DLA what information it was reporting about liquor licensing activity, and considered how that reporting related to the functions of the DLA under the Act.
- 3.62 Reporting was, at best, confined to activity measures related to processing (including timeliness), and the numbers of inspections carried out. No DLA was reporting on compliance levels or trends, using relevant indicators of outcomes. Outcomes might be defined in terms of community safety and well-being, with possible indicators including the views of residents, data about alcohol-related crime, and health-related data.
- 3.63 Providing assurance on compliance and on contributions to community outcomes will require DLAs to work closely with the Police and public health services. Compliance reporting might draw on the results of periodic and targeted monitoring activity, while possible indicators of changes in outcomes might include the results of controlled purchase operations² over time, the number of offences associated with licensed premises (including data gathered by the Police), and data on alcohol-related hospital admissions.

² In controlled purchase operations, supervised volunteers less than 18 years of age attempt to buy alcohol from licensed premises. The operations are designed to test compliance with the provisions in the Act prohibiting the sale or supply of alcohol to minors.

- 3.64 Compliance and outcome measures can be used to review the effectiveness of liquor licensing policies and practices. Territorial authorities need to identify information relevant to assessing compliance and reporting on community outcomes. This will require them to work, in particular, with the Police and public health services. One DLA told us it used Police intelligence about offending to influence the territorial authority's environmental design, city planning, and liquor policy.
- 3.65 Evidence-based data from the Police can also show the effects of licensing policies and practices (such as licence hours). It has also been used to support evaluation of the effectiveness of intensified monitoring of targeted premises. For one area we visited, analysis of recorded offences over time, when compared against both local and national data, clearly showed the effect of ongoing collaborative and targeted enforcement action by the three regulatory agencies.

Part 4

Compliance monitoring by District Licensing Agencies

- 4.1 In this Part, we describe the monitoring and enforcement responsibilities of DLAs before discussing in more detail:
- monitoring strategies;
 - risk-based monitoring; and
 - how DLAs were recording and analysing compliance information.

The monitoring and enforcement responsibilities of District Licensing Agencies

- 4.2 In our view, DLAs have a clear responsibility for actively monitoring and enforcing the Act.
- 4.3 The monitoring and enforcement roles of DLAs are implied in the requirement for district licensing inspectors to be appointed with specific powers under the Act, including the power to enter licensed premises and to apply for a variation, suspension, or cancellation of a liquor licence or manager's certificate.
- 4.4 The Authority has noted, referring to the report of the Working Party on Liquor¹ that preceded the Act:
- The proposal was that territorial authorities should be empowered to enforce the liquor law, both in relation to conditions attached to licences and to matters of more general application, such as the sale of liquor to minors. It was envisaged that such a responsibility to enforce the liquor law would be in addition to the powers of Police so that enforcement measures could be instituted either by the police or by the Inspector.²*
- 4.5 The responsibility for monitoring and enforcement is also consistent with the powers of the DLA as the body responsible for issuing liquor licences, and for imposing conditions on those licences as prescribed by the Act. There would be little value in a DLA issuing liquor licences (in the expectation of compliance) without taking measures to ensure that the conditions of licences were met.
- 4.6 The objective of DLA compliance monitoring is to provide assurance that licensees are meeting statutorily mandated requirements and the conditions of their licences. To meet this objective requires a systematic, risk-based monitoring programme. Components of such a programme are:
- a monitoring strategy that is supported by objectives directly related to the purpose of the legislation, and an explicit assessment of the desired level of compliance;

1 Report of the Working Party on Liquor chaired by Sir George Laking, October 1986, *The Sale of Liquor in New Zealand*.

2 *Report of the Liquor Licensing Authority for the 12 months ended 30 June 1999*, parliamentary paper E.8, page 6.

- a system for recording and analysing the results of compliance activities, to inform the assessment of risk, plan appropriate enforcement, and assess trends in compliance over time to evaluate the effectiveness of the monitoring and compliance strategy; and
- a programme of risk-based monitoring activities that draws on a variety of relevant information, and provides ongoing assurance about compliance. An assessment of risk based on all relevant information should also support an informed consideration of applications to renew a liquor licence.

Main findings

- 4.7 The primary purpose of compliance monitoring is to provide assurance that licensees are meeting their statutory requirements under the Act and complying with the conditions of their licences. All DLAs were carrying out some form of compliance monitoring, but practices varied in focus and coverage.
- 4.8 The different monitoring strategies lacked a clear rationale based on any target level of assurance about compliance with the Act. DLAs were aware of high-risk premises from their own monitoring or from their contacts with the Police and public health services. However, the intelligence available to assess the risks associated with the management of most licensed premises was often fragmented and incomplete, with relevant information not shared in a co-ordinated way.
- 4.9 Monitoring was sometimes responsive rather than planned, and was often not based on a systematic assessment of risk. Special events at which liquor is sold, for example, pose particular risks of liquor abuse, requiring DLA involvement in planning and supervision. Positive initiatives had been taken by some DLAs to work with event organisers, while others needed to include such occasions in their monitoring strategy.
- 4.10 To assess compliance, a DLA needs to gather and interpret all relevant information. DLAs were not using the results of monitoring to analyse and report on trends in compliance.

Monitoring strategies within District Licensing Agencies

- 4.11 We expected each of the DLAs to have a monitoring strategy, to define the types of activities that the DLA would carry out to confirm and measure compliance, and how often the activities would occur. We expected the strategy to identify the level of risk for each regulated entity, classified according to the type of business, its history, and the conditions of the liquor licence. An assessment of this type should determine the monitoring effort required, and therefore the resources required.

4.12 Strategies for monitoring compliance with the Act should differ according to factors such as the number of licensed premises and licences, the size of the district, whether it serves a rural or urban population, and the drinking patterns of the community. However, any such monitoring strategy should require the inspector to visit licensed premises at different intervals for different purposes. The strategy should, in our view, provide for:

- Periodic visits to licensed premises classified as low risk. These site visits might be scheduled to take place once or twice a year, and would enable the inspector to maintain contact with the licensee and managers, remind them of their obligations, check for compliance with technical provisions of the licence (such as signage and layout), and discuss aspects of host responsibility policy and practice. Such visits could occur during the day when a business is less busy, and offer a valuable opportunity to discuss training and other practices required to ensure that staff are well informed of their roles and responsibilities.
- Monitoring premises in their first year of being covered by a liquor licence (the probationary period), and during the period covered by a temporary authority. Anyone purchasing a licensed business must apply to the DLA for a temporary authority until their own application for an on-licence or off-licence has been approved. The holder of a temporary authority may not be experienced in managing licensed premises, and may not have been subjected to the scrutiny associated with an application for a full licence, so the risk of practices inconsistent with the aim of the Act is higher.
- Visits when a new application is being sought or a licence renewed. These visits are a means of ensuring that the premises will be managed to comply with the requirements of the licence and the Act. When an application is made to renew a liquor licence, a site visit provides the inspector with an opportunity to check that management practices reflect the conditions of the licence, to raise any issues that might have arisen during the previous licence period, and to set expectations for the following three-year period. This visit also provides an opportunity to check that the licensee has displayed the public notice required by the Act.
- Late-night inspections of premises classified (because of the nature of the premises or identified management problems) as high risk. Hotels and taverns are usually busiest at night and in the early morning. At these times it may be more difficult to adequately supervise and control licensed premises (including preventing the entry of minors), to ensure that food and non-alcoholic beverages remain available, and to offer safe transport options.

- 4.13 This suggested monitoring strategy is summarised in Figure 3. However, DLAs should determine their own strategies according to their own circumstances.

Figure 3
Suggested strategy for monitoring by District Licensing Agency inspectors

Purpose of inspection	Target group	Frequency
Maintain contact, set expectations, check for technical compliance, remind licensee of obligations, discuss host responsibility practices, ensure ongoing staff training.	Low-risk premises.	Every six or 12 months.
Set expectations, ensure compliance, ensure understanding of obligations.	New licensees.	Periodic visits during the first 12 months of operation.
Verify the layout of premises, set out or confirm expectations, check management practices, raise any issues.	Applicants for new liquor licences or renewals.	In association with consideration of new applications or renewals.
Ensure compliance, focus on control and supervision, intoxication, access by minors, host responsibility.	Busy and high-risk premises.	Evenings and early morning – at least monthly, and more often for problem premises.
Follow-up on identified breaches, investigate complaints.	All premises.	As necessary.
Ensure compliance with licence conditions, control and supervision.	Selected high-risk events or occasions where these are operating under a special licence.	As necessary.

- 4.14 Other visits should be made if a complaint is received, if circumstances arise that increase the risk of harm, or to verify that a breach identified during a previous visit has been resolved. Visits should be made to sites where liquor is being sold and large numbers of patrons will be attending (such as large festivals or sports events), because the risks of alcohol abuse can be high.

Monitoring approach of District Licensing Agencies

- 4.15 The monitoring approach taken by most DLAs included some, but not all, of the components we expected to see. Practices varied significantly. While some DLAs followed a prescribed inspection schedule, at other DLAs inspections happened only when time allowed. Inspections also differed in their focus – for example, some DLAs were carrying out inspections only during the day, or only for new and renewal applications.

- 4.16 We looked for evidence of the rationale for these different monitoring strategies. In the DLAs we visited, we did not find any articulated goals or objectives that defined the nature and extent of assurance each DLA considered necessary to meet its regulatory obligations under the Act.
- 4.17 Some DLAs had recognised the importance of compliance monitoring by setting targets for the numbers of inspections and making these targets performance measures for inspectors. The licensing database flagged outstanding inspections, ensuring that the target was met.
- 4.18 Other DLAs had a more narrow view of their responsibilities, and sometimes saw no reason to duplicate what they saw as the job of the Police. Some DLAs gave liquor licensing inspections a low priority, with compliance monitoring competing with other, higher-priority tasks such as processing licence applications, and non-DLA regulatory functions such as food premises inspections.
- 4.19 Because of the varying approaches among the DLAs we visited, and without any clear rationale, licensees were subject to different levels of scrutiny, with different levels of contact with an inspector, depending on where they were running their business.
- 4.20 Some licensees might not see an inspector for more than a year, while in other districts routine inspections were made twice a year, with other visits as necessary.
- 4.21 Figure 4 shows, for the DLAs we visited, how often a licensee was likely to be visited by an inspector.

Figure 4
When licensees could expect a visit from an inspector

	When licensee applies to renew licence	When the hotel or tavern is at its busiest	At least once a year
DLA 1	Maybe	No	Maybe
DLA 2	Yes	Periodically – more frequently if there are problems with management or alcohol-related incidents	Likely
DLA 3	Maybe	No	Maybe
DLA 4	Maybe	No	Maybe
DLA 5	Yes	Periodically – more frequently if there are problems with management or alcohol-related incidents	Maybe
DLA 6	No	Unlikely	Maybe

	When licensee applies to renew licence	When the hotel or tavern is at its busiest	At least once a year
DLA 7	Maybe	Periodically – more frequently if there are problems with management or alcohol-related incidents	Yes
DLA 8	Yes	Periodically – more frequently if there are problems with management or alcohol-related incidents	Maybe
DLA 9	Yes	Periodically – more frequently if there are problems with management or alcohol-related incidents	Likely
DLA 10	Unlikely	No	Likely
DLA 11	Yes	Periodically – more frequently if there are problems with management or alcohol-related incidents	Yes
DLA 12	Yes	Unlikely	Maybe

Risk-based monitoring

- 4.22 Any systematic compliance regime should be based on an assessment of the regulated entity against relevant elements of risk. Whether a systematic or less formal approach is taken to identifying and analysing risk³ will depend on the number of licensed premises and the type of community.
- 4.23 The assessment of risk relies on:
- targeted compliance monitoring activity;
 - identifying and collecting all relevant information; and
 - analysing that information to produce useable intelligence about the nature and level of compliance.
- 4.24 Factors that may have a bearing on risk include:
- issues raised by inspections carried out by the DLA, the Police, or the public health services;
 - complaints made by the public about the management of licensed premises – such as excessive noise or the unavailability of food; and
 - reports of incidents of disorder or crime associated with the licensed premises.

³ The Police have developed a Graduated Response Model based on a systematic response to premises posing differing levels of risk as evidenced by instances of harm. This model is applied by the Police in some districts, in conjunction with the DLA, to provide an intelligence-led approach to monitoring and enforcement.

- 4.25 We expected all relevant intelligence about the management of licensed premises to be co-ordinated and recorded by each DLA in licensee files.

Targeted compliance monitoring activity

- 4.26 We looked for evidence that each DLA's inspection programme was based on an assessment of risk. The risk could be based on the type of business, the patron group, the history of the licensee, and the conditions of the liquor licence.
- 4.27 Most of the problems with poorly managed licensed premises are associated with a small number of businesses. For effective and co-ordinated targeting of those high-risk premises, the three regulatory agencies need to share information about problem premises, and consult on monitoring activity and, where necessary, on enforcement.
- 4.28 Most DLAs were in regular contact with the Police and public health services to discuss any concerns about licensed premises (such as incidents of disorder, evidence of intoxication at or near licensed premises, or allegations of sales to minors), share the results of inspection visits, co-ordinate compliance monitoring activity, and, where necessary, discuss enforcement options. These meetings, and other ongoing inter-agency communication, gave DLAs a good appreciation of which premises were causing problems and therefore warranted active monitoring.
- 4.29 Other, more routine, inspection activity was less informed by shared information.
- 4.30 The inspection schedule for one DLA was based on an assessment of the risks associated with types of licensed premises. This was a useful approach, although some premises had not received a visit for more than a year. The inspectors acknowledged that building this compliance history was a priority, because it would enable them to refine their monitoring.
- 4.31 Licences to sell liquor are held by very different types of business, including hotels and taverns, nightclubs, supermarkets, convenience stores, bottle stores, and sports clubs. Inspection activity needs to take account of how each type of business operates, its patrons, and the setting in which liquor is sold, to design an effective and efficient risk-targeted approach.
- 4.32 We did not find evidence of any risk-based approach to the monitoring of businesses holding different types of licence. Rather, the most common approach was to seek to visit all premises in a given period (such as annually), or at the time of renewal, without making a distinction based on relevant risk factors.

The scope of compliance monitoring

- 4.33 We were concerned at the limited scope of some DLA compliance monitoring, which resulted in an incomplete – and potentially distorted – picture of how premises were being managed.
- 4.34 Daytime inspections of licensed premises provide a limited opportunity to assess the effectiveness of supervision and control practices that ought to be addressing the risk of alcohol-related harm. Creating a safe drinking environment for patrons by preventing intoxication and preventing access by minors are important statutory duties. Practices to achieve these objectives are tested when a hotel or tavern is at its busiest – normally in the late hours of a weekend.
- 4.35 Six of the 12 DLAs had an active after-hours monitoring programme, with inspectors expected to carry out regular late night and early morning visits. These DLAs included both large and small territorial authorities. One inspector was carrying out most inspections at night. Reference was sometimes made to this requirement in employment agreements, with provision for rosters and for financial or non-financial recognition of extra hours worked.
- 4.36 However, some DLAs were not carrying out any after-hours monitoring. This significantly limited the nature and extent of assurance that could be obtained about compliance with the Act. We noted the following obstacles to after-hours work:
- the need for inspectors working on their own to arrange joint visits with Police or public health services staff, for personal safety reasons;
 - limited time, sometimes with competing tasks when liquor licensing inspections and other regulatory work had to be carried out during one visit;
 - lack of remuneration or arrangements for staff to take time off later, and the absence of a budget for this work; and
 - the demands of liquor licensing paperwork.
- 4.37 One view put to us was that the DLA's role was to process applications and issue liquor licences, and that after-hours monitoring was the responsibility of the Police. It was seen as the role of the Police to initiate enforcement action in response to any serious breach of the Act.
- 4.38 We asked DLAs, the Police, and the public health services about the benefits of after-hours monitoring compared with inspections carried out during the day. Day inspections typically revealed few significant issues of non-compliance with the Act, other than minor breaches such as incorrect signage. Night inspections pointed to different issues, such as the presence of intoxicated patrons, disorder, and the stockpiling of liquor by patrons.

- 4.39 In two districts, compliance monitoring was carried out primarily by the Police and public health services. The DLA was following up only in response to problems brought to their attention by the Police or public health services, or to complaints from members of the public. Inspectors in these districts carried out only limited checks of compliance.
- 4.40 The Police and public health services have a common interest in compliance, but typically their focus and interests differ. The reactive approach taken by these two DLAs provided no independent or comprehensive assurance that the conditions of liquor licences were being met, or that the requirements of the Act were being followed.

Monitoring special events

- 4.41 Many DLAs issue special licences for particular events or occasions. Some of these – in particular, sporting events open to the public and other occasions with large numbers of patrons – can lead to alcohol-related harm. At one DLA, the inspector assigned a risk score to all applications for special licences. The score reflected an assessment of the likelihood of harm occurring, based on the number of people attending, security arrangements, type of event, age of attendees, and how long the event would last. This approach clearly identified high-risk events to which the DLA and the Police might wish to direct their monitoring efforts.
- 4.42 The Police and public health services both noted that large special events posed significant risks, and needed careful planning and supervision. There was an expectation that DLAs would have a presence at such events, and we asked DLAs if they carried out monitoring inspections as necessary. While some did, others did not – despite, in some cases, a history of well-known alcohol-related problems at such events.
- 4.43 We noted useful initiatives to improve the control over the sale of liquor at public events.⁴ A requirement for organisers to compile an alcohol management plan, to which participating businesses make an explicit commitment as a condition of their attendance, was one positive approach. Other initiatives taken by DLAs were alcohol management protocols with venue organisers such as managers of sports facilities or festival co-ordinators.

Identifying and collecting relevant information

- 4.44 One purpose of co-ordinating intelligence is to guide decisions on monitoring activity, so that effort is directed most effectively and efficiently to where the risks are highest.

⁴ In 1999, ALAC published *Managing a successful public event*, a booklet that provides guidelines for professional events managers organising public events, on the responsible sale of liquor.

- 4.45 A second purpose is to inform the DLA's consideration of applications to renew liquor licences. The DLA has only a limited range of matters to which it must have regard in considering an application for renewal of a licence. These are concerns about suitability, the conditions attaching to the licence, and, in particular, the manner in which the licensee has conducted the sale and supply of liquor under the licence. To carry out this consideration, the DLA must be able to draw on relevant intelligence from a range of sources.
- 4.46 We examined a sample of DLA files to establish what information was held about the management of licensed premises. We also asked the DLAs, the Police, and the public health services whether they shared with each other relevant information about their compliance activities.
- 4.47 Intelligence gathered from the activities of the DLAs, the Police, and the public health services was fragmented. Their interests overlapped, as evidenced by the similarities in their inspection checklists. Given this similar focus, we expected inspection reports to be shared, to avoid duplication of effort and to build a common picture of premises' compliance.
- 4.48 The DLA has primary responsibility for ensuring that licensees comply with the conditions of their licences and with the Act. This responsibility makes collecting and analysing all information about compliance activity a vital component of a DLA's obligations under the Act.
- 4.49 Crime statistics and related data held by the Police can identify possible relationships between individual licensed premises and alcohol-related harm, providing useful intelligence for targeted DLA or joint monitoring or enforcement. Liquor licensing practice in one district was well supported by a systematic Police approach to intelligence-led enforcement. This involved the co-ordinated collection and analysis of information from all three regulatory agencies, to draw up a monitoring programme and consider enforcement options. Weightings assigned to individual premises on the basis of intelligence from the three agencies (such as analysis of inspection results or reports from Police patrols) were used to measure levels of compliance in response to different forms of compliance monitoring activity and enforcement.
- 4.50 However, most DLAs were collecting only limited information about licensed premises from the Police and public health services. Information held by the individual regulatory agencies was generally not co-ordinated, reducing the quality of information available for considering licence applications.
- 4.51 Most DLAs seldom received copies of inspection reports from the Police and public health services, or sent them copies of their own reports. Information about high-risk premises was shared informally at regular meetings. However, co-ordinated

information about licensed premises was not readily available to most DLAs when they considered licence applications. Where available to inspectors, Police information (such as Alco-Link data⁵), records of inspections by public health services staff, or documented results of DLA monitoring were a valuable reference source for considering renewal applications.

- 4.52 Evidence of excessive noise from licensed premises can be indicative of the management of the business, and the suitability of a person to hold a liquor licence. We examined systems for recording noise complaints, and whether liquor licensing staff had access to those records to inform their monitoring and consideration of applications.
- 4.53 Most liquor licensing staff had access to noise complaint data, which was able to be searched to identify specific licensed premises. Informal notification of any complaints generally worked well, although in one DLA we found this process needed to be formalised to ensure that relevant noise issues were consistently brought to the attention of the inspectors. One useful practice was that of routinely checking noise complaint records whenever applications were made to renew a liquor licence.

Other monitoring

- 4.54 The Act prohibits promotions intended or likely to encourage people on the licensed premises to drink to excess. A National Protocol on Alcohol Promotions, drawn up by ALAC, Local Government New Zealand, the Police, and the Hospitality Association of New Zealand, describes the type of promotions and events that are likely to be acceptable in terms of this statutory provision. Inspectors at one DLA told us of an arrangement reached with a particular licensed premise to seek prior approval of any liquor promotions, following concerns raised about their alcohol advertising.
- 4.55 The inspector at another DLA told us they made a special visit when a liquor promotion came to their attention. This is sensible practice, and consistent with a risk-based monitoring approach. All DLAs could usefully draw the attention of licensees to the protocol and remind them of their responsibilities under the Act.
- 4.56 Inspections to check that identified breaches have been addressed are a further important aspect of compliance monitoring. Good practices we found were:
- leaving a copy of the inspection check sheet with the licensee or duty manager;
 - setting out the results of the inspection in a letter to the licensee; and
 - systematic scheduling of follow-up inspections.

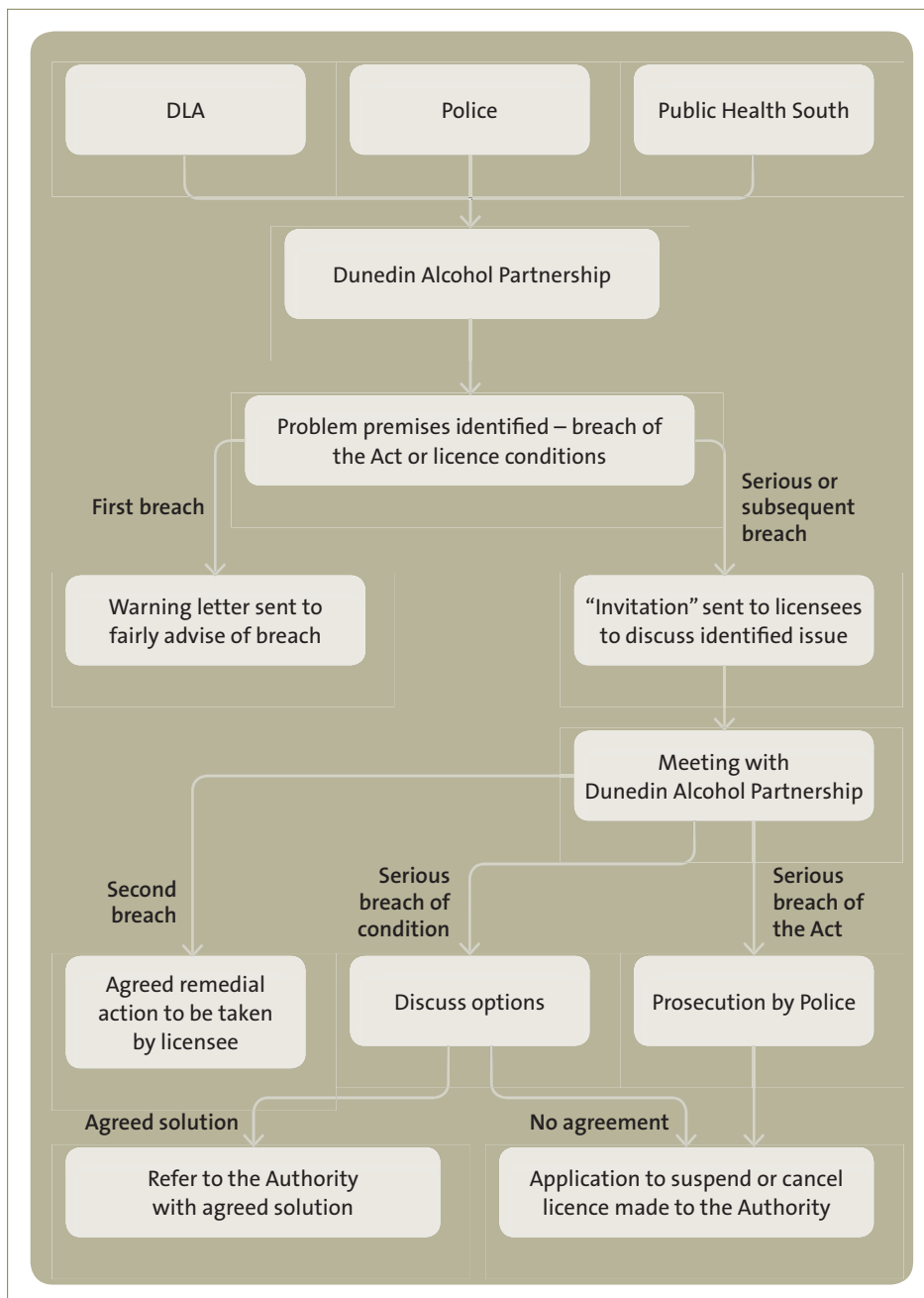
⁵ Alco-Link data is gathered by the Police from offenders. Each offender processed in a Police station is asked whether they have been drinking. If so, they are assessed for intoxication and asked where they had their last drink.

Recording and analysing compliance information

- 4.57 To assess compliance, any regulator has to record and analyse information in a form that allows for consistent interpretation and reporting. Taken together, this enables the DLA to build up a licence history for risk assessment and ongoing monitoring. We examined DLA processes and information systems to assess if and how information was collected and used to report on trends in compliance with the Act.
- 4.58 As noted earlier, compliance information was often fragmented. Better co-ordination and analysis of intelligence was needed to identify risks and to target monitoring, making best use of DLAs' own information and that collected by the Police and public health services. Our discussions with DLA staff indicated the need for more systematic recording of monitoring activity, interpretation of inspection results, and reporting of compliance.
- 4.59 Complete records of compliance findings are vital to enable a DLA to assess the nature and level of compliance at licensed premises. The practice in one DLA of the inspector referring to the results of past inspections in their assessment of an application for licence renewal shows the value of having ready access to monitoring records.
- 4.60 Not all inspectors recorded the findings from all inspections, or entered those findings into the DLA's information system. Records of inspections were sometimes not recorded in licensing files, or were held in hard copy and not accessible through the DLA's licensing database.
- 4.61 While inspection records commonly showed whether a premises had met statutory requirements, most DLAs had no rules for interpreting the significance of a breach or for grading compliance or non-compliance in a transparent and consistent way.
- 4.62 Only three DLAs had clearly specified the enforcement procedures they would follow for different types of breach. Dunedin City Council had published its enforcement procedures on its website, outlining action the DLA, the Police, and the public health services would take when an enforcement issue came to their attention. This gave licensees a clear understanding of the regulatory agencies' expectations, and of how breaches would be dealt with. In Figure 5, we have reproduced a chart used by Dunedin City Council to show how enforcement procedures work.⁶

⁶ Applicable to infringements or issues other than those specifically mentioned in section 132A (which relates to the powers of the Police to seek suspension or cancellation of liquor licences by the Authority for certain offences).

Figure 5
Dunedin City Council's enforcement procedures



- 4.63 Some Police liquor licensing units followed the “Graduated Response Model”, which they often applied in collaboration with the local DLA and public health services staff. The model draws on harm values – and thus levels of risk – assigned to a licensed premise based on identified breaches, making it possible for the three regulatory agencies to have a concerted and systematic response to enforcement.
- 4.64 Inspection check sheets covered similar compliance requirements, although, for those inspectors carrying out inspections only during the day, references to checking for intoxication and sales to minors were largely redundant. A comparison of the check sheets used in the DLAs we visited reflected differences in the scope of compliance monitoring. Training and security were two useful additions to the check sheet used by inspectors at one DLA. At one DLA the Police, public health services staff, and inspectors used the same inspection check sheet, ensuring consistent record-keeping and facilitating the analysis of trends in compliance.

Part 5

Customer service

- 5.1 In this Part, we discuss:
- the information available to applicants, licensees, and the public about the licensing process and the requirements of the Act;
 - communication with licensees and alcohol industry representatives; and
 - the time taken to process applications.
- 5.2 The Act specifies requirements to be met in applying for a liquor licence or manager's certificate. We expected information about these statutory requirements to be readily accessible and easy to understand, licensing documentation to be easy to follow, and forms easy to fill out. At each DLA we looked at guidance brochures, checklists for applicants, information published on the website, and other material about the licensing process. We also looked at how DLA staff helped applicants to fill out licensing documentation.
- 5.3 We expected the applications to be processed within a reasonable period of time; delays in processing could cost businesses money, and job seekers might need a manager's certificate to begin work. The application process brings a period of uncertainty until processing is complete. Timely processing is therefore an important dimension of good customer service.
- 5.4 We assessed whether each DLA's licensing system was able to measure processing times, whether there were performance targets for processing licence applications, and if performance against those targets was reported to management. Where the necessary information was available, we assessed processing times ourselves.
- 5.5 A third important aspect of the customer service relationship is ongoing communication. This can encourage co-operation by licensees, and promote responsible practices consistent with the intent of the Act.
- 5.6 We also asked a sample of licensees for their views on the services provided by the territorial authorities we visited.

Main findings

- 5.7 Applicants, licensees, and the public had access to a range of information about the Act and the licensing system. However, the type and form of this information varied. Some DLAs' promotional or guidance material was particularly useful. Standardising the content and format of information about the Act and the licensing system would give applicants and the public access to a consistent set of guidance.

- 5.8 DLAs offered a number of services to applicants, and were responsive to their needs. The positive findings from our assessment of customer service practices were confirmed by the responses from our survey of licensees. In our view, all DLAs should consider carrying out regular surveys of their licensees to assess satisfaction with their services.
- 5.9 Many DLAs communicate periodically with licensees, getting involved in training, convening licensee groups, or distributing newsletters. DLAs can use these activities to remind licensees of their obligations, obtain their commitment to responsible practices, and promote voluntary compliance. This training and education role is an important part of the work of inspectors.
- 5.10 Timely processing of applications is an important aspect of customer service. All DLAs had licensing information systems capable of measuring processing timeliness, but not all had targets or were reporting on the time taken to process applications.

Informing applicants, licensees, and the public

Guidance material

- 5.11 Well-informed applicants are more likely to meet statutory requirements and to have their applications dealt with promptly. This results in a more effective and efficient regulatory process for both the licensee and the DLA.
- 5.12 The legislation prescribes the information to be provided with an application and, for some types of licence application, requires the applicant to supply supporting documentation.¹ DLA staff told us that applicants often made an error at some stage of the application process, causing delays and extra work for the applicant and staff.
- 5.13 In some territorial authorities, administrative staff or inspectors checked that applications were complete before they were accepted and processing began, and some used a checklist for counter staff. In some cases, staff met applicants in person to help them fill out their applications. This was helpful for applicants.
- 5.14 In one authority where applications were accepted without checks for completeness and accuracy, additional staff time was spent following up with applicants to correct errors or seek additional supporting documentation. Counter staff and customer service officers dealt with a wide range of inquiries from the public, and providing a checklist and some basic training about the requirements of the Act could make processing more efficient.

¹ For example, an application for a new on-licence must be accompanied by a plan of the building in which liquor will be sold, details of the business, a certificate of compliance with requirements of the Resource Management Act, and verification of compliance with the Building Code.

- 5.15 Providing detailed guidance is a simple and efficient way to help ensure that applications are complete and accurate. One way of doing this is to include with licensing documentation (while adhering to the format prescribed by the Regulations) explanations for the more complex requirements most likely to result in errors. The application forms used by one DLA were a good example of this approach, providing useful guidance for the applicant by explaining, in simple terms, the statutory requirements for public notices, compliance with fire evacuation schemes, and host responsibility practice.
- 5.16 There may also be potential for DLAs to make the application process more efficient by identifying the most common errors and amending their forms and guidance material to provide explanation where necessary.
- 5.17 Unless an application for a renewal is lodged before the expiry date, a liquor licence becomes invalid. Although licensees are responsible for applying to renew their licences in a timely way, most DLAs remind licensees when their licences are about to expire. This is an extra dimension of customer service.
- 5.18 Sending reminder letters in the format of renewal applications is a timely and convenient way to trigger the renewal process for licensees. The covering letter sent to the licensee or manager with the issued licence or certificate is another useful way to remind the licensee or manager of their obligations.
- 5.19 The Act requires applications to be publicly notified in local newspapers. Some DLAs prepare these public notices for the applicant. Errors in the wording or format of public notices may constitute breaches of the Act, and this extra customer service is seen as cost-effective by saving time for applicants in having to re-advertise.
- 5.20 Each DLA made a variety of information available to applicants and the public, consisting of brochures, checklists, or information published on the territorial authority's website. Some DLAs had published their territorial authority's alcohol policy, which was posted on the authority's website, providing applicants and the public with guidance on hours of trading, host responsibility requirements, consideration of applications for special licences, district plan provisions, the DLA's enforcement approach, and how to object to an application as a member of the public.
- 5.21 From some websites, applicants were able to download application forms, although none of the DLAs offered the opportunity for online applications. This option could be efficient and convenient, particularly for renewals.
- 5.22 For various reasons, each DLA can define its own set of requirements for applicants to meet when seeking a licence or certificate in its district. However,

for the most part, applicants must meet a common set of statutory requirements. We therefore expected, as we carried out our visits, to find a standard set of information about the Act published in brochures or on each website, with consistent content and in a similar format.

- 5.23 Information about the Act differed in detail, coverage, emphasis, and format from one DLA to another. This meant that interested parties did not have access to consistent information about the Act, the regulatory process, and how it would be administered. We see benefits in all DLAs publishing a common set of information about the Act, in the interests of consistency.
- 5.24 Some DLAs had developed particularly useful material for applicants and the public, such as:
- descriptions of enforcement procedures;
 - a detailed booklet for special licence applicants;
 - guidance for the public on how to make an objection;
 - answers to common questions about the licensing system; and
 - a self-audit checklist for licensees that explained what the regulatory agencies were looking for when they carried out monitoring visits.
- 5.25 Guidance on how special applications will be considered is important information for licensees and the public. We are aware that approaches differ, but this type of material could usefully be included with the information disseminated by territorial authorities generally.
- 5.26 Sharing and standardising this information would result in more consistent and more comprehensive guidance on the requirements of the Act and how they will be administered. Including useful material developed by individual DLAs would produce a more relevant and helpful body of information throughout local government.

Training

- 5.27 The involvement of DLA staff in training licensees and managers can be a useful way to remind them of their responsibilities and what is expected of them. It can be a valuable means of promoting voluntary compliance.
- 5.28 Some useful training initiatives were in place. These included offering free training to licensees who belonged to accords,² organising workshops, giving presentations at Licence Controller Qualification courses, and joining with the other regulatory agencies to train bar staff.

² Accords are agreements that groups of licensees will work collaboratively towards common goals, which normally include a safer community with a reduction in alcohol-related harm.

- 5.29 Involvement in training gives inspectors the opportunity to explain their expectations of licensees and duty managers, and this contact with staff who would shortly be working in licensed premises locally can form the basis for ongoing contact. Training is also one enforcement option available to the regulatory agencies in the event of identifying a breach of the Act or of licence conditions.
- 5.30 Given these benefits, we consider that training should be given appropriate recognition as one of an inspector's core duties. As discussed earlier in this report, however, the limited time available for liquor licensing work may provide little scope for training opportunities to be taken.

Communication with licensees

- 5.31 Effective communication can help DLAs set out their expectations, promote licensees' understanding of the statutory requirements, and encourage management practices that contribute to the responsible sale and supply of liquor. Opportunities include:
- periodic compliance visits to licensed premises;
 - newsletters; and
 - liquor liaison groups or licensee accords.
- 5.32 Periodic visits to licensed premises offer an important opportunity for inspectors to establish and maintain contact with licensees and their staff, remind them of their responsibilities, and check (and provide advice on) management practices. For example, such visits can be used to check the names of duty managers and remind the licensee of their obligation to notify the DLA of any changes.
- 5.33 As described to us, however, visits can often be short, and may consist simply of brief checks of compliance. As such, an opportunity can be lost to help promote responsible practice and offer advice and guidance. The approach by inspectors contrasted with that of public health services staff, whose visits were strongly focused on educating staff about good practice.
- 5.34 Publications are another way to communicate with licensees. Some DLAs issue newsletters, drawing breaches of the Act to the attention of licensees, and reminding them of their obligations. Media releases can be another useful way to reinforce messages about responsible drinking, about alcohol-related harm, and about penalties for offences such as serving minors. In some cases, inspectors had worked with licensees to develop voluntary guidelines for the responsible sale of liquor – such as “one-way door” policies,³ or protocols for large public events.

³ “One-way door” policies are arrangements where licensees agree to close their doors to patrons after a specified time. The purpose is to prevent patrons from moving from one premise to another to continue their drinking, particularly in the early hours of the morning.

- 5.35 Some DLAs were using other opportunities to remind applicants of their obligations. One used the covering letter sent to the licensee or manager with the licence or certificate to draw attention to their responsibilities, while at another inspectors took forms for notification of managers with them on visits.

Timeliness of processing

- 5.36 All DLAs had licensing information systems capable of measuring and producing reports on the amount of time taken to process an application for a licence or manager's certificate. Some measured and reported their performance in processing applications against targets (expressed as a number of working days). In a few cases, these targets were reflected in the performance agreements for inspectors or administrative staff. Targets were reasonable, with processing normally expected to be completed within a period of 6-8 weeks (allowing for inquiry and reporting from the Police and the Medical Officer of Health), although different DLAs had different targets. Some information systems also specified target timeframes for the completion of individual tasks associated with the licensing process.
- 5.37 Not all DLAs had timeliness targets or were measuring or reporting processing times. Inconsistent data was one difficulty faced in reliably calculating processing times for individual applications or trends over time. These calculations also need to take account of delays to the process that are outside the DLA's control.
- 5.38 The processing of applications can be delayed for a number of reasons, and delays are common when the necessary documentation is missing. This makes it necessary to adjust the system to allow for interruptions to the process. Where possible, we measured timeliness ourselves from a selection of applications, and we had regard to delays outside the DLA's control. In our view, DLAs were processing applications in a reasonable period of time.
- 5.39 Although many territorial authorities required a minimum period for processing applications for special licences, special licence applications could be submitted at short notice. Records we examined indicated that territorial authorities were responsive to these circumstances, and processed such applications promptly.

Licensee survey

- 5.40 For each of the 12 authorities we visited, we asked a sample of licensees to answer questions about the licensing process. We asked whether:
- the different responsibilities of the DLA, the Police, and the public health services were clear;

- it was easy to apply for a liquor licence;
- DLA staff were available and willing to help, and knowledgeable about the Act;
- they were told how long their application would take to be processed;
- they were happy with the time it took for a liquor licence or manager's certificate to be issued; and
- they were consulted as necessary on any proposed changes to liquor licensing policies or practices that might affect their business.

5.41 We sent the questionnaire to 159 licensees, and 87 responded.

5.42 The generally positive responses confirmed the findings from our own examinations of customer service practices in the DLAs we visited. Analysis of the responses showed a general satisfaction with the information provided, licensing processes, the attitude and knowledge of staff, timeliness, and consultation.⁴

5.43 All DLAs would benefit from carrying out their own surveys of licensees. Only one was doing so. Its latest survey in 2006 asked about communication, satisfaction with services, information needs, accessibility, co-operation, fairness, and consistency. The results of that and previous surveys contained useful assurance and suggestions for improvement. In our view, seeking the views of licensees on the services provided should be a core component of every DLA's customer service relationship.

4 Comments from respondents sometimes related to the Act rather than to the practices of the DLA concerned. Respondents reported that the responsibilities of the three regulatory agencies were clear. Some noted difficulties in applying for a licence, with comments about the documentation required by the Act. Suggestions for improvement included clearer guidelines for processing applications for special licences, the opportunity to submit applications online, and more understanding staff.

Part 6

Legislative compliance

- 6.1 The Act is a prescriptive piece of legislation. In particular, it sets out in detail the process a DLA has to follow in issuing a liquor licence or manager's certificate. The Regulations prescribe the format of application forms and the format of licences and manager's certificates.
- 6.2 Ultimately, the licence or certificate issued is an important legal document that imposes a number of responsibilities on holders as well as conferring a number of rights. The Act prescribes a process for licensing that determines who may enter and work in the industry, how and when the sale or supply of liquor in licensed premises can occur, and what liquor can be sold or supplied.
- 6.3 The alcohol industry, and in particular those businesses that operate licensed premises in more than one DLA jurisdiction, can reasonably expect a certain level of consistency in the application of the Act. In recognition of the significant legislative powers that DLAs exercise, their decisions are subject to appeal.
- 6.4 To assess DLAs' compliance with the Act we looked at a sample of their files; checked the format of application forms, licences, and certificates; and examined the way they processed licence and certificate applications. We also looked at how inspectors and the Secretary of each DLA exercised their powers. We assessed whether these functions and officers operated in keeping with the Act, to assess whether the procedures followed in reaching decisions met the statutory requirements.
- 6.5 To inform our interpretation of the requirements of the Act we consulted the Legal Compliance Module published by the Society of Local Government Managers,¹ commentary on the Act, and decisions by the Authority. We also met with the Authority.
- 6.6 We did not test staff knowledge or interpretation of the Act.
- 6.7 This Part focuses on those approaches to processing applications and issuing licences that we identified as raising concerns about DLAs' administration of, or compliance with, the Act and the Regulations. These practices related to:
- the format of standard forms and licences;
 - considering applications for 24-hour licences;
 - documenting processes;
 - DLA decision-making;
 - vetting applicants for manager's certificates;
 - public notification of applications;

¹ The module is designed to help territorial authorities to meet their legal obligations in liquor licensing activities, and to achieve good practice in these areas. It was developed in September 2002 and reviewed in October 2004. A revised edition was published in August 2007.

- inspector's reports; and
- special licences for days during which liquor is not meant to be sold or supplied to the public.

Main findings

- 6.8 Consistently applying legislative requirements is important for fairness, certainty, and proper adherence to the law. There was little variation in the way that DLAs applied the key provisions of the Act and the Regulations. We found much consistency and substantive compliance with the detailed statutory requirements of the Act and Regulations. The sample of application-related documentation that we examined showed that DLAs followed the necessary statutory steps, and collected the required supporting documents. Because of this, the statutory processes that applicants were required to follow did not differ much between DLAs.
- 6.9 However, in some respects the application of the legislation, or individual procedures, did differ, as did arrangements for reaching and documenting decisions. DLAs were not always using documentation or following procedures that clearly demonstrated compliance with the Act and the Regulations. Such practices expose DLAs to a risk that the processes they use could be challenged, as could the DLAs' decisions.

Format of standard forms and licences

- 6.10 The Act and the Regulations require DLAs to use application forms, licences, and certificates in a prescribed format, while allowing for variations as circumstances require.
- 6.11 Under the Sale of Liquor Amendment Act 1999, DLAs inherited significant licensing functions and powers from the Authority. The DLAs also inherited operational procedures and standard documents, such as application forms and licence and certificate templates.
- 6.12 Some DLAs have added useful explanatory commentary to the standard application forms, making them easier to follow and complete. However, in some cases the standard application forms and licence and certificate templates no longer complied with legislation. Not all DLAs had updated the documentation in keeping with changes to legislation. Some DLAs had made changes to the forms they were using, but the changes were not in keeping with legislation.
- 6.13 We found cases where DLAs had not updated the standard documentation since 2000, when DLAs took over licensing responsibilities from the Authority. For

example, a manager's certificate application form did not include the statutory requirement that applicants hold the Licence Controller Qualification.

- 6.14 Legislative amendments have changed the format in which liquor licences must be issued. The use of out-of-date licence and certificate templates means that some licences and certificates do not comply with the legislation.
- 6.15 We also found application forms that referred to the wrong sections of the Act, and one that referred to a section of the Act that had been repealed. In one DLA, the application form for a manager's certificate did not include questions required by the Regulations about whether the applicant had any experience in managing licensed premises, and whether they had any relevant training.
- 6.16 Aware of similar concerns about non-compliant application forms and templates, the Authority issued all DLAs with new template licences and certificates in May 2007, noting the importance of strict compliance. We endorse the Authority's initiative.
- 6.17 In our view, all DLAs should check that the format of their licence and certificate templates follows the format of the current templates issued by the Authority. Application forms should be checked against the latest format in the Regulations to ensure that the application forms comply.
- 6.18 The requirements in the Act leave little room for error. However, we found many minor errors in the sample of licence and certificate files that we reviewed. These included, for example, public notices in an incorrect format, or in the name of an individual rather than the company applicant.
- 6.19 In our view, DLAs could set up arrangements for a sample of licence documents to be reviewed by staff well versed in the Act and its requirements. At one DLA we visited, a person in a supervisory role reviewed licence documents for every application. In another DLA, an administrative staff member carried out the reviews.

24-hour licences

- 6.20 The hours during which licensed premises may sell or supply liquor are a matter for each DLA to determine, having regard to the purpose of the Act. Licensees are required to meet the conditions of their licences at all times when they are open.
- 6.21 Some DLAs issue 24-hour licences even though, in practice, the licensed premises will seldom be open for that full period. One argument put to us for this practice was that it avoided the need to issue a special licence for events or occasions that might take place outside normal opening hours. In our view, the practice

of issuing 24-hour licences that may not be sought or required by the applicant creates risks that the licensed premises will not be adequately controlled and supervised.

- 6.22 In issuing any liquor licence, the DLA is responsible for ensuring that licence conditions and the necessary requirements of the Act will be met at any time a licensee chooses to sell liquor within their permitted hours of trading.
- 6.23 For example, a premises must arrange duty manager rosters to ensure that at least one certificated manager is on duty at all times, ensure that food is always available, and provide transport alternatives so patrons can avoid driving after consuming alcohol. The applicant must satisfy the DLA of their ability to meet these statutory requirements and manage the premises responsibly. For applications to sell liquor 24 hours a day, we found no evidence that such assurance had been provided by the applicant, or sought by the DLA.
- 6.24 The practice of issuing 24-hour licences also provides no opportunity for the DLA and the Police to scrutinise arrangements for selling liquor on special occasions or for special events. These events or occasions would normally come to the attention of the regulatory agencies through an application for a special licence, and be subject to particular scrutiny by the DLA and the Police.
- 6.25 To host events for which a special licence would normally be sought, a licensed premises might need to meet specific requirements concerned with control and supervision (such as security to restrict access), with its licence endorsed accordingly. Inspections might be carried out, depending on the risks of alcohol abuse associated with the event or occasion.
- 6.26 We found no evidence that DLAs issuing 24-hour licences had sought assurance that, in the various circumstances when the licensed premises might be open, all requirements for the safe and responsible sale of liquor would be met.
- 6.27 Our concern is supported by comments from the Authority. The Authority has noted that 24-hour operations require great experience, expertise, and maturity. It has also noted that the liberal hours approved by some DLAs have not been universally respected, and that limiting the hours of operation has become established as an important tool in addressing the social and economic cost of alcohol-related crime, disorder, and anti-social behaviour.

Documenting District Licensing Agency processes

- 6.28 The Act contains requirements for the DLA to distribute documents to other parties as part of the application process. For example, it requires the DLA to distribute copies of applications and supporting documents to the Police and,

in some cases, the Medical Officer of Health. This provision ensures that those other two agencies have the opportunity to inquire into, comment on, and where necessary object to, the granting of the application. Not all DLAs kept complete records of distributing documents to the Police and public health services.

- 6.29 The Act also requires the DLA to distribute to the applicant copies of reports from the Police and the Medical Officer of Health. This is an important process of natural justice that allows an applicant to see what has been said about them by the agencies involved in considering their application. Some DLAs were not sending the other agencies' reports to applicants.
- 6.30 We recognise that the Act is demanding in this regard. However, DLAs need to be able to show that they have completed these tasks, and they need to keep their evidence. Doing so provides a source of internal assurance that procedures have been followed and statutory requirements met, and satisfies any possible inquiries or challenges by interested parties.

Decision-making within District Licensing Agencies

Recording decisions

- 6.31 The Act requires a DLA to consider each application against specified criteria, before deciding whether a licence or certificate should be issued. Taking the example of an off-licence application, these criteria include the suitability of the applicant, any matters dealt with in any report received by the DLA on the application, and the days and hours on which the applicant proposes to sell liquor.
- 6.32 The DLA is a statutory decision-making body created by the Act, and its decisions should be formally recorded. Section 113 of the Act requires that every DLA and the Authority record in writing every decision and the reasons for that decision. Some DLAs had no evidence on their files of a formal decision by the Secretary that a liquor licence should be issued. In May 2007 the Authority issued to all DLAs template decisions for each type of licence. We urge DLAs to use these templates to record their decisions.

Consideration of statutory criteria

- 6.33 We looked for evidence that all relevant statutory criteria had been considered before a DLA issued a licence or certificate. Few DLAs were able to show that they had considered all the statutory criteria before they issued a licence or certificate. A failure to demonstrate that it has followed the statutory process may leave a DLA's decision open to challenge.

- 6.34 One approach followed was to use a template that contained an assertion that the relevant statutory criteria had been considered. In our view, this practice does not, without any supporting evidence, show that the DLA has considered all the statutory requirements before issuing a licence. Taken together, the application form, supporting documentation, and inspector's report should enable the DLA to consider the application against all relevant statutory criteria and to make its decision accordingly.
- 6.35 DLAs can meet this requirement by ensuring that all statutory requirements are covered in the inspector's report. If the format of the inspector's report closely matches the applicable statutory criteria, then the requirement can be achieved. While some inspector's reports were very thorough, few of the inspector's reports we examined directly matched all the statutory criteria in the Act. The Authority has also noted that an inspector's report should include the criteria set out in the Act.
- 6.36 For some types of application, one DLA had created a checklist for the delegated decision-maker to use in checking that they had considered all the necessary statutory requirements. This was a useful approach.

The decision-making function of the District Licensing Agency

- 6.37 The Act makes a clear distinction between the inquiry and reporting role of the inspector, and the decision-making role of the DLA. The role of the inspector is an independent one, and involves inquiring into an application and submitting a report to the DLA. The inspector's function is one of carrying out the necessary investigations and making a recommendation.
- 6.38 It is then a matter for the DLA, where a licence application is unopposed, or the Authority, where an application is opposed, to consider and decide whether to grant the application, based on the criteria in the Act. The separation provides a check on the powerful discretion that exists in issuing liquor licences.
- 6.39 The separation of roles is important in recognising the independence of the inspector on the one hand, and the decision-making discretion of the DLA on the other. Arrangements for reporting and decision-making should enable these functions to be performed at arm's length, as envisaged by the Act.
- 6.40 Arrangements varied. At one DLA, some licences and certificates were being issued without the delegated individual personally reviewing the documentation. In our view, this arrangement does not meet the expectation of the Act that the decision-making process will involve some degree of careful deliberation by a committee or officer with delegated decision-making authority.
- 6.41 In other DLAs, the delegated person was exercising some (albeit limited) consideration before approving the licence. We were not always satisfied that

this approval process involved the exercise of careful deliberation necessary for a decision. As noted above, reporting that demonstrates close consideration of the statutory criteria would make the deliberations easier.

- 6.42 A territorial authority manager with no involvement in the day-to-day running of the DLA was often performing the function of the DLA in issuing licences and certificates. This arrangement created the separation necessary for independent decision-making.
- 6.43 However, limited time was made available for this DLA decision-making function, particularly given the large number of applications processed by some territorial authorities. These factors could, together, create practical obstacles to the considered and informed review and decision-making process envisaged by the Act.
- 6.44 We have considered how DLAs could most practically meet this requirement. One possible approach would be to assign delegated decision-making authority on the basis of risk, with selected complex and controversial applications considered and approved at one supervisory level, and routine applications at another.
- 6.45 In other DLAs, a supervisor would routinely review the quality and completeness of applications, along with the inspector's report – effectively carrying out the review and deliberation role of the DLA. Delegating the decision-making function for defined types of application to this person may better meet the requirements of the Act, provide for more careful scrutiny of applications, and represent a practical way to handle a large workload. Decisions about complex or controversial applications could be made by another delegated manager, as could decisions where the supervisor had been involved in considering a particular application.

Vetting applicants for a manager's certificate

- 6.46 The Act imposes significant responsibilities on managers of licensed premises. Section 115 of the Act, which sets out the responsibilities of a manager, was strengthened by the Sale of Liquor Amendment Act 1999 to emphasise and widen a manager's responsibilities. Managers are responsible for compliance with the Act and conditions of the licence, and for the conduct of the premises with the aim of contributing to the reduction of alcohol abuse.
- 6.47 Authority decisions note the obligations on managers. In a recent judgment, the Authority stated:

As far as the Authority is concerned the holders of General Managers' certificates carry greater responsibilities than licensees. The expectation is that the holders will be people who will have personal integrity, as well as a good sound

knowledge of the Act, and the maturity to be able to operate licensed premises without supervision. It is by upskilling the standards of the holders of General Managers' certificates that the object of the Act (which in the long term is the reduction of liquor abuse), can be achieved.²

- 6.48 Inspectors are obliged to inquire into, and file a report with the DLA on, any application for a manager's certificate. We examined how DLAs assessed the suitability of applicants for manager's certificates.
- 6.49 The process of vetting applicants commonly involves checks of reputation, experience in the industry, and knowledge of the Act. The main differences in the approach of DLAs were in their interviewing of applicants for manager's certificates.
- 6.50 The Authority has noted the importance of DLAs interviewing applicants to assess their suitability. It has noted:
- It is difficult to comprehend how an Agency can assess an applicant's character, reputation, experience and training without an applicant ever having been interviewed.³*
- 6.51 The Authority has noted further that an interview enabled the DLA to establish an accurate picture of the applicant's employment history and test that, in the role of manager, an applicant would be able to communicate effectively with patrons, the Police, and inspectors.
- 6.52 Our assessment of DLA practices indicated that few were using interviews most effectively to assess the suitability of all applicants.
- 6.53 Not all applicants were interviewed, and interviewing practices varied. In some DLAs, several applicants were interviewed together. The DLAs that did conduct individual interviews often followed a standard list of questions to test general knowledge of the Act. Others included questions that tested the applicant's ability to apply their knowledge to the premises in which they were, or would be, working, or asked how an applicant would deal with a particular situation. These interviewing approaches gave a more realistic assessment of how the applicant would be able to deal with issues in their workplace.
- 6.54 Before issuing the manager's certificate, some DLAs sought an undertaking from the applicant that they would work only in specified premises. This was done to ensure that young and relatively inexperienced applicants gained confidence and became familiar with the role in a low-risk working environment before taking a job at busy and more demanding licensed premises. In our view, such undertakings are a useful tool, and we note their endorsement by the Authority.

² Liquor Licensing Authority Decision PH 339/2006: Timothy Hendikus Verheul.

³ Liquor Licensing Authority Decision PH 300/2006: Jason Peter Loye.

- 6.55 Most of the applications received by any DLA are applications for new manager's certificates or renewals. Interviewing applicants for manager's certificates can take up large amounts of staff time. One view put to us was that, given this workload, a DLA faces the need to choose between interviewing all new applicants and putting that staff time into compliance monitoring. Practical considerations for applicants include the need for some to travel large distances to attend an interview.
- 6.56 In our view, interviewing applicants for manager's certificates and monitoring premises for compliance with the Act are both indispensable activities for the effective discharge of a DLA's statutory responsibilities. This may require DLAs to consider other options, such as conducting interviews by telephone where face-to-face interviews may not be practicable. It may also require DLAs to increase staff time assigned to liquor licensing work.

Public notification of applications

- 6.57 For on-licence, off-licence, and club licence applications, the Act requires public notification by advertising in local newspapers, and by the placing of a public notice in a conspicuous place on or adjacent to the site subject to the application, unless the Secretary of the DLA agrees that this is impracticable or unreasonable.
- 6.58 In relation to the public notice on site, the Regulations also prescribe the form such a notice should take. This public notice serves the purpose of alerting the local community to the applicant's intention of obtaining or renewing a liquor licence for a premise, and allows the opportunities for objections to be lodged. It is an important requirement under the Act.
- 6.59 Several DLAs were not enforcing this requirement. For two DLAs this was a deliberate decision, while another's published liquor policy expressly exempted all applications from the requirement. In our view, such an exemption is inconsistent with the Act, which provides for exemptions only if impractical or unreasonable in the circumstances of a particular application.
- 6.60 DLAs need to ensure that applicants display a public notice as the Act requires. DLAs were using different ways to check compliance. At one DLA, the inspector checked that the liquor licence was displayed when making site visits. Another DLA required the applicant to submit a declaration of having displayed the notice, and describe where and how that had been done. All DLAs should ensure the requirement is met, seeking whatever assurance they consider appropriate.

Inspectors' reports

- 6.61 Inspectors are required to inquire, and report on, all applications for licences or certificates. Some DLAs were issuing liquor licences – such as special licences – without an inspector's report.
- 6.62 Inspectors' reports also varied in the amount of detail they contained and their format. Some were very thorough, setting out the results of extensive inquiry into the applicant's background – for example, through discussions with referees or former employers. In one DLA, however, the inspector's reports contained no discussion, assessment, or evidence of inquiry, consisting simply of a recommendation that the application be granted. In our view, this practice does not meet the requirements of the Act, and provides no supporting evidence that the applicant has met the statutory suitability criteria.

Special licences for certain days

- 6.63 The Act makes it a condition of every licence for a hotel or tavern that no liquor be sold or supplied on Good Friday, Easter Sunday, Christmas Day, or before 1pm on ANZAC Day, except in limited circumstances. However, the Act also provides for an exemption from this prohibition if a special licence has been obtained for those premises.
- 6.64 Special licences are valid only for a particular occasion or event, or series of occasions or events, specified in the licence. A special licence is intended for an event or occasion that is outside the usual or regular activities of the applicant.
- 6.65 The Authority has considered the relationship between these two provisions, and has reached the view that special licences should be available for Good Friday, Easter Sunday, Christmas Day, or ANZAC Day only where a genuine special event is planned. It has expressed the view that, of itself, a public holiday does not constitute a special event or occasion in the sense of meeting the criteria for a special licence.⁴ The Authority has stated:
- If all taverns (and off licences) had the right to trade through Easter then in our view the law restraining trading during that time would inevitably be brought into disrepute. Having a law that has no effect may not physically lead to liquor abuse, but could certainly encourage the public to treat the Act with contempt and disrespect. This in turn would in our view, undermine any serious attempts to reduce the abuse of liquor.⁵*
- 6.66 Some DLA practices were consistent with the Authority's view, with no evidence that special licences had been issued for these specified days unless there was a genuine special event occurring. However, two DLAs had issued special licences

⁴ Liquor Licensing Authority Decision PH728/2006: Geoffrey Alan McCrostie.

⁵ Liquor Licensing Authority Decision PH806/2003, PH 807/2003: Universal Liquor.

for the days for events described as, for example, “the celebration of Easter”. One DLA’s liquor policy makes it clear that it will grant special licences on application for the Easter period. We encourage territorial authorities and DLAs to review their policies and practices to make sure that they are in keeping with the intent and substance of the Act, and the views of the Authority.

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