



QUEENSLAND
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The Liquor Report



An investigation into the regulation of licensed premises by the Office of Liquor and Gaming Regulation.

December 2013

Report of the Queensland Ombudsman

The Liquor Report

An investigation into the regulation of licensed premises by the Office of Liquor and
Gaming Regulation

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17 December 2013

The Honourable Fiona Simpson MP
Speaker
Parliament House
George Street
BRISBANE QLD 4000

Dear Madam Speaker

In accordance with s.52 of the *Ombudsman Act 2001*, I hereby furnish to you The Liquor Report: An investigation into the regulation of licensed premises by the Office of Liquor and Gaming Regulation.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Phil Clarke', written over a vertical line that extends down to the name below.

Phil Clarke
Queensland Ombudsman

encl.

Foreword

This report presents the findings of an investigation into the regulation of licensed premises in Queensland, a very complex task which falls to the Office of Liquor and Gaming Regulation (OLGR) which sits within the Department of Justice and Attorney-General (DJAG). The OLGR is a 'co-regulator' of the *Liquor Act 1992* (Liquor Act), together with the Queensland Police Service (QPS).

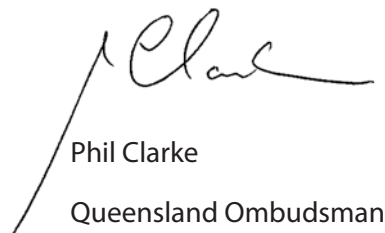
There has been much discussion in the media at both a state and national level about the effects of alcohol consumption on the health, safety and amenity of the public. The primary purpose of the Liquor Act is to regulate licensed premises in a way that minimises: harm from alcohol abuse and misuse, adverse effects on the health or safety of members of the public and adverse effects on the amenity of the community.

In my view, there is significant public interest in ensuring that the OLGR's internal and external coordination of liquor regulation is effective in meeting the objectives of the Liquor Act.

This report identifies factors hindering the more effective regulation of licensed premises by the OLGR. This includes multiple issues with the OLGR's internal processes which have affected its ability to regulate licensed premises and to demonstrate the achievement of harm minimisation objectives. Regulation is also impacted by insufficient coordination of liquor compliance activities between the OLGR and the QPS.

The recommendations in this report seek to assist the Director-General of DJAG to address these issues and improve the achievement of harm minimisation objectives through improved regulatory coordination in relation to licensed premises in Queensland.

I would like to thank all OLGR and QPS staff who participated in the investigation and particularly pay tribute to Senior Investigator Jessica Wellard and Investigator Nancy Alexander of my Office for their hard work and professionalism in conducting the investigation and preparing the report.



Phil Clarke
Queensland Ombudsman

Contents

Foreword	5
Dictionary	8
Executive summary	10
<i>Background</i>	10
<i>Jurisdiction, investigation scope and objective</i>	10
<i>Key themes</i>	10
<i>Findings</i>	10
<i>Recommendations</i>	12
Part 1: Introduction	16
Chapter 1: Balancing harm minimisation and industry growth objectives	16
Chapter 2: Agency roles and responsibilities	18
Roles and responsibilities.....	18
Office of Liquor and Gaming Regulation.....	18
Queensland Police Service.....	21
Joint operations and joint inspections.....	21
Chapter 3: Jurisdiction, investigation scope and objective	22
Part 2: Internal coordination	23
Chapter 4: The compliance framework	23
<i>Investigative practices</i>	23
Investigative planning.....	23
Evidence gathering and analysis	24
Reasons for decisions.....	24
Summary of investigative practices	26
<i>Proactive compliance program</i>	28
Overview of the program	28
Risk categorisation process	29
Timing of visits	30
Outcome advice to licensees	31
Self-assessments.....	32
Summary of proactive compliance program	32
<i>Impediments to effective enforcement</i>	35
No on-the-spot enforcement.....	35

Unjustified senior level decision-making	36
Burdensome approval processes	38
Non-enforcement of noise licence conditions compromises future enforcement action	40
Intervention.....	42
Failure to monitor remedial actions taken by licensees.....	42
Limited ability to monitor patterns in enforcement action	43
Summary of impediments to effective enforcement.....	46
Chapter 5: Internal processes.....	47
Duplicated or contradictory policies and procedures	47
Guidelines and instructions.....	49
Inadequate access to information.....	50
Inadequate information technology systems.....	50
Inadequate training and knowledge among OLGR officers	51
Conflict of interest.....	53
Summary of internal processes.....	56
Part 3: External coordination	57
Chapter 6: The co-regulator model	57
Roles and responsibilities.....	57
Information sharing.....	59
Inspection practices	60
Enforcement practices.....	61
Summary of the co-regulator model	63
Part 4: Approach to regulation.....	66
Chapter 7: The OLGR's regulatory approach	66
Regulatory approach	66
Enforcement action taken by the OLGR: comparison with QPS enforcement statistics	67
Perceptions of the regulatory approach.....	68
Summary of the OLGR's approach to regulation	70
Guarding against perceptions of regulatory capture	72
Chapter 8: Publication of information.....	74
Publication of policies and procedures.....	74
Inability to demonstrate harm minimisation.....	75
Part 5: Conclusion	77

Dictionary

Business Intelligence Project	A project undertaken by the OLGR to create a data warehouse which through its logical and physical design will enable use of Oracle reporting tools to undertake robust analysis and reporting on data from OLGR's COGS database and (initially) limited external sources. ¹
COGS	The OLGR case management system.
compliance officers	Frontline OLGR officers in each region who carry out liquor compliance work, including members of the Investigations Unit and Inspections Unit in Brisbane (AO3 to AO6 level). Most compliance officers are appointed as investigators under the Liquor Act.
Compliance Plan	The annual plan prepared by the OLGR to guide the conduct of its proactive work.
compliance visit	An inspection of licensed premises using the Liquor Inspection Summary to assess compliance with requirements under the Liquor Act. This tool is used as part of the proactive compliance program.
co-regulators	The OLGR and the QPS.
councils	Local governments in Queensland. The role of councils in regulating licensed premises is outlined in Chapter 2 (figure 2).
DACU	The Drug and Alcohol Coordination Unit of the QPS.
DEEDI	The (former) Department of Employment, Economic Development and Innovation.
Director-General	The Director-General of DJAG.
DJAG	The Department of Justice and Attorney-General.
eDocs	The OLGR electronic document management system.
executive managers	A group of three senior officers interviewed by investigators: the Executive Director of the OLGR, the Acting General Manager, Compliance, and the person who holds the substantive position of General Manager, Compliance.
file review	A review conducted by investigators of a sample of 179 reactive (complaints-based) investigations and 100 site files containing proactive inspection documents.
harm minimisation	The three primary sub-purposes under s.3(a) of the Liquor Act, which include minimising harm and the potential for harm from alcohol abuse and misuse and associated violence, minimising adverse effects on the health and safety of members of the public, and minimising adverse effects on the amenity of the community.
head office	The headquarters of the OLGR, located in Brisbane, where the Senior Management Group (SMG) is located.
high-end enforcement action	Four higher-level enforcement actions taken by the OLGR in undertaking its compliance activities under the Liquor Act. The four actions are infringement notices to licensees, orders, disciplinary actions and prosecutions.
industry stakeholders	Casinos Australia, Clubs Queensland, Mount Isa Irish Association, Queensland Hotels Association, and Restaurant and Catering Queensland.
LEAPS	Liquor Enforcement and Proactive Strategies, a program within the DACU of the QPS.
Liquor Accord	An agreement, memorandum of understanding or other arrangement entered into by two or more interested persons (usually licensees) in a particular area. There are over 95 local Liquor Accords across Queensland.
Liquor Act	<i>Liquor Act 1992.</i>
Liquor Enforcement Policy	A policy document prepared by the OLGR that sets out its approach to liquor enforcement under the Liquor Act. In force during the conduct of the investigation.
Liquor Enforcement Policy (May 2013)	The latest version of the Liquor Enforcement Policy, amended during the investigation.
Liquor Planning Sheet	A spreadsheet distributed to regional managers at the start of every month listing region and risk categories for premises and the priority for proactive inspections.

¹ Email from the Acting General Manager, to the Office of the Queensland Ombudsman 12 April 2013.

LIR	Liquor Incident Reports. These were separate reports generated by the QPS and provided directly to OLGR regional offices. Now they are provided to the OLGR's head office through the QPrime database.
Liquor Inspection Summary	A checklist used by OLGR compliance officers to undertake a compliance visit.
LIS guidelines	A document providing guidance on use of the Liquor Inspection Summary.
low-end enforcement action	Three lower-level administrative actions taken by the OLGR in undertaking its compliance activities. The four actions are consultation conducted, cautions (now known as advisory letters), warnings and early intervention.
OFT	Office of Fair Trading. The role of the OFT in regulating licensed premises is outlined in Chapter 2 (figure 2).
OLGR	Office of Liquor and Gaming Regulation, a division of DJAG.
OLGR officers	OLGR compliance officers and regional managers across all Queensland regions, including the Brisbane region.
proactive	A part of the compliance framework describing actions taken as part of the proactive compliance program (described in Chapter 4), usually referring to compliance visits.
QFRS	Queensland Fire and Rescue Service. The role of the QFRS in regulating licensed premises is outlined in Chapter 2 (figure 2).
QPrime	The QPS database that records all police incident data.
QPS	Queensland Police Service. The role of the QPS in regulating licensed premises is outlined in Chapter 2.
reactive	Actions taken to investigate issues arising out of complaints made by the general public or others (e.g. referral of matters from other agencies).
regional managers	The managers of each OLGR region, including the managers of the Brisbane region's Inspections Team and Investigations Team. This includes OLGR officers acting as regional managers at the time of the investigation, as well as the Principal Compliance Officer (PCO) who supervises the North Coast region (which currently does not have a regional manager).
regulation of licensed premises	In this report, this refers to the OLGR's liquor compliance activities, not its licensing functions.
schoolies	A period where senior school leavers celebrate the end of school, usually in November each year.
senior manager	One or more of three officers interviewed during the investigation: the Director (Investigations Branch), the Director (Regional Services Branch) and the Manager Compliance (Regional Services Branch).
SMG	Senior Management Group. The senior leadership team of the OLGR, consisting of the Executive Director, the General Manager (Compliance Division), the Director (Regional Services Branch) and the Director (Investigations Branch).
SPER Act	<i>State Penalties and Enforcement Act 1999.</i>

Executive summary

Background

The regulation of licensed premises is a very complex task. In Queensland, that task falls to the Office of Liquor and Gaming Regulation (OLGR), which is a 'co-regulator' of the *Liquor Act 1992* (Liquor Act) together with the Queensland Police Service (QPS).

Importantly, the OLGR has the task of meeting the objectives set out in s.3 of the Liquor Act, which require the regulation of licensed premises in a way that minimises harm while also facilitating and regulating the development of the tourism, liquor and hospitality industries. Finding the right balance is not an insignificant challenge for the OLGR. Balancing harm minimisation objectives with industry growth objectives is a challenge being faced by liquor regulators across Australia.²

In light of the heightened public awareness of the effects of alcohol consumption and ongoing media discussion about its regulation, I commenced an investigation, on my own initiative, into the regulation of licensed premises by the OLGR. The investigation largely focused on the work of the Compliance Division of the OLGR.

Jurisdiction, investigation scope and objective

As the Department of Justice and the Attorney-General (DJAG) (in which the OLGR currently sits) is a public sector agency, the Ombudsman may investigate its administrative actions. The principal objective of the investigation was to assess the adequacy of the OLGR's current framework, policies, processes and practices for regulating licensed premises in Queensland. For reasons of practicality, the investigation focused only on liquor compliance activities, and did not consider licensing functions.

The investigation method included interviews and focus groups with OLGR officers and the Senior Management Group (SMG). Investigators also consulted with other agencies involved in regulating licensed premises, most notably the QPS Drug and Alcohol Coordination Unit (DACU) and individual QPS Liquor Enforcement and Proactive Strategies (LEAPS) officers in various regions. Investigators also reviewed 179 investigative files to examine the OLGR's investigative practices.

Under s.16 of the *Ombudsman Act 2001*, the Ombudsman does not have jurisdiction to investigate or report on operational actions of the QPS. Therefore, nothing in this report should be taken as reflecting adversely on the actions of, or decisions by, the QPS. Nevertheless, QPS officers assisted with the investigation and were a valuable source of information about the way the OLGR regulates licensed premises in Queensland.

I would like to thank DJAG, and in particular the OLGR, for its cooperation during this investigation.

Key themes

The report is structured around three key themes:

- whether the OLGR's internal systems and processes properly facilitate the regulatory role it performs, including transparent regulatory practices (internal coordination)
- whether the OLGR's external communication and processes properly facilitate the regulation of liquor in Queensland (external coordination)
- whether there is an appropriate balance between the OLGR's roles in regulating licensed premises and facilitating the liquor industry.

Findings

Part 2 of the report identifies multiple issues with the OLGR's internal processes which have affected its ability to regulate licensed premises and to demonstrate the achievement of harm minimisation. Issues include:

- weaknesses in the OLGR's investigative practices, including: introducing investigation planning in accordance with the scale and complexity of the investigation; undertaking appropriate levels of evidence gathering; establishing consistent practices for substantiating and corroborating information; ensuring that outcomes

² A Trifonoff, R Andrew, T Steenson, R Nicholas and AM Roche, *Liquor Licensing Legislation in Australia: Police Expectations and Experiences*, National Centre for Education and Training on Addiction [NCETA], Flinders University, Adelaide, 2011, p. 3.

are not predetermined; recording reasons for taking low-end or no enforcement action; and improving quality assurance processes that evaluate areas for recommended improvement.

- the proactive compliance program lacking coordination, hindering the overall regulation of licensed premises, including: a demonstrated lack of understanding by OLGR officers of the targeting of premises and prioritisation mechanisms of the proactive compliance program; insufficient guidance provided to OLGR officers about the timing of compliance visits; deficiencies identified with communicating timely results of compliance visits to licensees; and a lack of clarity among OLGR officers about the objectives and outcomes of the self-assessment program and how it contributes to the broader compliance program.
- impediments to effective enforcement, including: no on-the-spot enforcement against licensees; complex levels of decision-making; burdensome approval processes that impact on the reasonable exercise of statutory powers of investigators; non-enforcement of noise conditions placed on licensees in the absence of complaints; lack of clarity around the early intervention process; failure to monitor remedial actions taken by licensees; and limited monitoring of patterns in enforcement action.
- internal processes resulting in poor internal coordination, including: multiple and conflicting policies and procedures and uncertainty about procedures; issues with officer access to information and information technology; limited training of staff; and ineffective practices for recording conflicts of interest and secondary employment of staff.

Part 3 identifies that the regulatory framework is impacted by insufficient coordination between the OLGR and the QPS under the Liquor Act. In particular, there is no formal agreement facilitating coordination between the co-regulators. Consequently, there:

- is a lack of shared understanding about roles and responsibilities
- is a lack of coordination around information sharing, including case information, data, enforcement/investigation outcomes, policies and procedures
- are inconsistencies in inspection practices
- are inconsistencies in enforcement practices, including use of enforcement tools and escalation (illustrated by differences in reported enforcement outcomes).

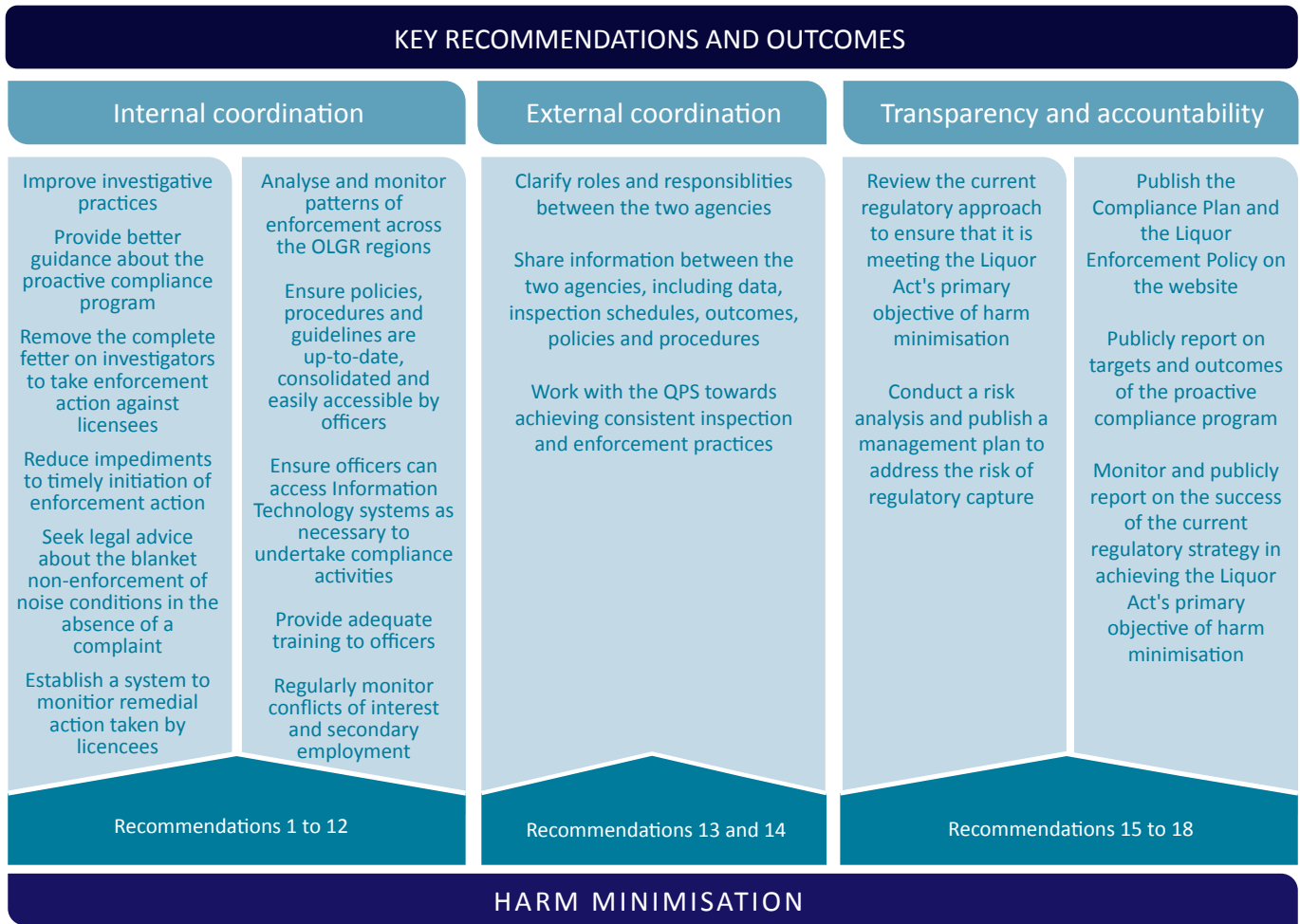
Part 4 identifies that balancing harm minimisation with facilitating the liquor industry poses significant challenges and tensions, including the respective approaches to regulation adopted by the OLGR and the QPS. Specifically:

- The OLGR cannot demonstrate that its approach to compliance is successful in achieving harm minimisation. The OLGR's enforcement data supports the perceptions of OLGR and QPS officers that the OLGR's regulatory approach is weighted towards education of licensees, with little high-end enforcement action taken under the Liquor Act.
- The environment in which the OLGR is operating means that it is at significant risk of regulatory capture.
- There is a greater need for the OLGR to demonstrate transparent regulatory practices through visibility of policies and procedures and its communication with licensed premises, and public reporting of how its strategies are successful in minimising harm.

The recommendations in this report seek to assist the Director-General of DJAG (Director-General) to address these issues and achieve harm minimisation objectives through improved regulation of licensed premises in Queensland.

In particular, the key recommendations in this report are designed to improve the OLGR's regulation of licensed premises. Figure 1 outlines the key recommendations and outcomes aligned with the themes adopted in this report.

Figure 1: Key recommendations and outcomes



Recommendations

The recommendations I have made are:

Recommendation 1

The Director-General ensure that:

- (a) according to the complexity and scale of investigations to be conducted, a system of investigative planning is established and training provided to compliance officers in its use
- (b) evidence gathering and analysis is directed by the investigation plan, relevant policy and procedures, the elements of alleged offences and any other legislative requirements
- (c) officers record reasons for decisions in accordance with the Liquor Enforcement Policy (May 2013) and, for example, through a template or adjustment to COGS
- (d) quality assurance processes incorporate an evaluation of the investigative issues identified in Chapter 4 of this report.

Recommendation 2

The Director-General review the proactive compliance program to improve coordination within the program itself and with the OLGR's other compliance activities. In addition to dealing with the issue of publication (see Recommendation 17), the review should aim to:

- (a) incorporate all mechanisms for proactive compliance targeting based on risk categorisation, prioritisation and regional intelligence about premises history into the Compliance Plan
- (b) provide guidance to OLGR officers in the Compliance Plan on the timing of visits to premises to ensure, as far as practicable, consistency in approach across regions, and to facilitate effective compliance activity through the conduct of compliance visits at the most appropriate time for observing licensee activities
- (c) ensure the timely communication of inspection outcomes to licensees and premises managers, with preliminary written communication at the time that the compliance visit is conducted or shortly after
- (d) incorporate the objectives and outcomes of the self-assessment program in the Compliance Plan.

Recommendation 3

The Director-General review the Liquor Enforcement Policy (May 2013):

- (a) having regard to the powers conferred on officers appointed as investigators under the *Liquor Act 1992* and, as necessary, amend the policy to reflect the powers and responsibilities and reasonable exercise of discretion by investigators
- (b) to remove or reduce impediments to the timely initiation and escalation of enforcement action through the agency.

Recommendation 4

The Director-General seek legal advice and review the OLGR's blanket practice of non-enforcement of noise licence conditions in the absence of a complaint.

Recommendation 5

The Director-General implement a formal risk-based system of monitoring licensee responses to OLGR compliance actions.

Recommendation 6

The Director-General:

- (a) analyse the OLGR's enforcement data to identify and address any patterns that suggest regional differences in approaches to taking enforcement action
- (b) develop a process to monitor patterns in enforcement action across regions.

Recommendation 7

The Director-General ensure that the operational guidance to OLGR officers currently provided by the Compliance Manual and the Investigations Manual is expeditiously consolidated into one document.

Recommendation 8

The Director-General:

- (a) review the communication processes for distributing updates to policies, procedures, guidelines and instructions
- (b) continue to make consolidated policies, procedures, guidelines and instructions easily accessible to all OLGR officers.

Recommendation 9

The Director-General urgently seek the necessary approval, funding and resources to address the most critical information technology issues that are hindering the effective performance of the OLGR's regulatory functions.

Recommendation 10

The Director-General:

- (a) conduct an analysis of the current induction and operational training needs of OLGR officers
- (b) implement a training program that properly addresses these needs and ensures that all OLGR officers maintain these skills while employed by the OLGR.

Recommendation 11

The Director-General ensure that the OLGR conducts regular training on, and monitoring of, the conflicts of interest framework, including secondary employment.

Recommendation 12

The Director-General conduct a review of all OLGR officers and ensure that actual or potential conflicts of interest and secondary employment are recorded and managed in accordance with established DJAG procedures.

Recommendation 13

The Director-General work with the Commissioner of Police to ensure that, as far as practicable, the inspection practices of the OLGR and the QPS are undertaken consistently in relation to licensee management.

Recommendation 14

As a matter of urgency, the Director-General establish an agreement with the Commissioner of Police about key strategic and operational objectives for liquor enforcement under the *Liquor Act 1992* which addresses:

- (a) the roles and responsibilities of the respective agencies
- (b) consistency in enforcement practices
- (c) the sharing of QPrime data between the agencies
- (d) the sharing of information between the agencies, including inspection visit schedules, assessment decisions on referrals and investigation outcomes
- (e) the sharing of policies and procedures
- (f) the sharing of compliance history of premises
- (g) the holding of regular formal meetings at both senior and local officer levels.

Recommendation 15

The Director-General undertake a review of the OLGR's current regulatory approach to determine whether it meets its primary statutory objective of harm minimisation.

Recommendation 16

The Director-General undertake a detailed risk analysis, and develop and publish a management plan to address the OLGR's risk of regulatory capture.

Recommendation 17

The Director-General:

- (a) publish the OLGR's Compliance Plan and the Liquor Enforcement Policy on its website
- (b) publicly report against outcomes and targets in the Compliance Plan.

Recommendation 18

The Director-General ensure that the OLGR monitors and publicly reports on harm minimisation and, in particular, how its current regulatory strategy has been successful in minimising harm.

Part 1: Introduction

This part provides context for the Office of Liquor and Gaming Regulation's (OLGR) important regulatory role in balancing the competing interests of harm minimisation and in facilitating industry growth objectives. It describes the social and health risks associated with liquor consumption as well as the economic benefits of the liquor industry in Queensland.

This part also sets out the roles and responsibilities of agencies involved in the regulation of licensed premises, in particular the OLGR and the Queensland Police Service (QPS).

The scope of the investigation is identified, including my jurisdiction to investigate administrative actions of Queensland government departments, public authorities and local governments.

Chapter 1: Balancing harm minimisation and industry growth objectives

In all Australian states the supply and sale of liquor is regulated by state legislation, which is continually changing³ to reflect shifts in commercial and community needs, priorities and concerns.⁴

In Queensland, licensed premises are regulated by two main pieces of legislation:

- *Liquor Act 1992*
- *Wine Industry Act 1994*.

The regulation of licensed premises is a very complex task. In Queensland, that task falls to the OLGR, which is a 'co-regulator' of the Liquor Act, together with the QPS. A number of other agencies also play related roles in the regulation of licensed premises.

Importantly, the OLGR has the task of meeting the objectives set out in s.3 of the Liquor Act. The primary purpose of the Liquor Act is to regulate licensed premises in a way that is compatible with three primary sub-purposes:

- minimising harm, and the potential for harm, from alcohol abuse and misuse and associated violence
- minimising adverse effects on the health or safety of members of the public
- minimising adverse effects on the amenity of the community.

There are six secondary purposes, the three most significant of which are:

- facilitating and regulating the optimum development of the tourism, liquor and hospitality industries
- providing for a flexible, practical system for regulation of the liquor industry with minimal formality, technicality or intervention
- providing revenue for the state to enable the attainment of the Liquor Act's main purposes and for the other purposes of government.

In this report, the three primary sub-purposes of the Liquor Act will together be referred to as 'harm minimisation'. The first of the above secondary purposes will be referred to as 'industry growth objectives'.

There has been much discussion in the media at both a state and national level about the effects of alcohol consumption. In Australia, alcohol is the second-most preventable cause of drug-related death and hospitalisation.⁵ In 2003, alcohol consumption 'accounted for at least 3.3% of the total burden of disease and injury in Australia'.⁶ Four Australians under 25 die of alcohol-related injuries in an average week.⁷

In addition to health effects, alcohol has a number of social and economic effects. It has been suggested that 'alcohol is involved in up to half of all violent crimes and a lesser but substantial proportion of other crimes'.⁸ In 2010, the total cost of alcohol-related problems in Australia (including health issues and criminal incidents) was

³ In the Queensland context, for example, significant amendments were made to the Liquor Act as a result of the final report of the Parliament's Law, Justice and Safety Committee on Alcohol-Related Violence in 2010. More recently, the government's legislation in the liquor and gaming industry reflects its priority on reducing the regulatory burden on Queensland businesses.

⁴ Trifonoff et al, op. cit., p. 79.

⁵ National Health and Medical Research Council, *Australian Guidelines to Reduce Health Risks from Drinking Alcohol*, 2009, p. 26

⁶ *ibid*, p. 27.

⁷ Department of Health and Ageing, '18+', Department of Health and Ageing, Canberra, viewed 1 May 2013, <http://www.drinkingnightmare.gov.au/internet/drinkingnightmare/publishing.nsf/Content/over-18>.

⁸ National Health and Medical Research Council, op. cit., p. 28.

estimated to be more than \$14 billion.⁹

At the same time, the liquor industry is important to the Queensland economy. It is difficult to obtain data on the value of the Queensland liquor industry; however, a recent estimate of liquor industry revenue across Australia for the 2012-13 financial year is \$17.2 billion.¹⁰

In Queensland, the liquor industry consists of:

- approximately 6,800 licensed premises, with another 966 satellite premises (e.g. detached bottle shops)¹¹
- a mix of commercial hotels, restaurants, nightclubs, community clubs, bottle shops and other licence categories such as adult entertainment premises
- an average of 19.9 liquor licences per 10,000 adults, although these licences are more concentrated in some areas than others
- operators ranging from small family-run hotels to large companies, such as the Coles and Woolworths Groups which own 14.8% of hotels and 49% of detached bottle shops.¹²

Approximately 53% of licensed premises are in south-east Queensland.¹³

Alcohol availability through the number of licensed premises has increased consistently over the last 10 to 15 years.¹⁴

The liquor industry is an integral component of the tourism industry, which is Queensland's second largest industry after coal mining. Tourism is identified by the government as one of the 'four pillars' of the Queensland economy and in 2010-11 contributed approximately \$17.5 billion to the economy.¹⁵

Finding the right balance between harm minimisation and industry growth objectives is not an insignificant challenge for the OLGR. This is a problem being faced by liquor regulators across Australia.¹⁶

9 Australian Institute of Criminology, 'The societal costs of alcohol misuse in Australia', Trends & Issues in Crime and Criminal Justice, no. 454, 2013, p. 3.

10 IbisWorld, 'Liquor Retailing in Australia: Market Research Report', April 2013, viewed 1 May 2013, <http://www.ibisworld.com.au/industry/default.aspx?indid=398>.

11 Research and Statistics Unit, Office of Regulatory Policy, Liquor, Gaming and Fair Trading, 'Queensland Liquor Update', February 2013.

12 These figures do not include liquor barns which consist of the main licensed premises. *ibid.*, p. 11.

13 *ibid.*, p. 5.

14 Trifonoff et al, *op. cit.*, p. xvi

15 In indirect and direct contributions. See Tourism Queensland, Tourism Facts and Figures, March 2013, viewed on 3 June 2013, http://www.tq.com.au/fms/tq_corporate/research%20%28NEW%29/Destination%20Visitor%20Data/12%20December%20Tourism%20Facts%20and%20Figures.pdf.

16 Trifonoff et al, *op. cit.*, p. 3.

Chapter 2: Agency roles and responsibilities

Roles and responsibilities

The current framework for regulating the licensed premises distributes responsibility across multiple agencies.

This chapter sets out the roles and responsibilities of agencies involved in the regulation of licensed premises, in particular, the OLGR and the QPS, who are co-regulators of the Liquor Act.

There are a number of agencies with responsibility for regulating licensed premises. Figure 2 identifies some of these key agencies.

Figure 2: Roles and responsibilities of key agencies



*These agencies are not considered further in this report as its focus is the regulation of licensed premises by the OLGR.

Office of Liquor and Gaming Regulation

The OLGR currently sits within the Department of Justice and Attorney-General (DJAG) and holds primary responsibility for regulation (including licensing and compliance) of licensed premises.¹⁷

The OLGR has a number of responsibilities under the Liquor Act, including:

- issuing liquor licences and permits
- ensuring compliance by licensees with licence and permit conditions and with the requirements of the Liquor Act
- identifying and taking compliance action against unlicensed premises.

From 1 January 2013, the Liquor Act and the *Gaming Machine Act 1991* provided for the appointment of a Commissioner for Liquor and Gaming (Commissioner), who is currently the Deputy Director-General of DJAG.¹⁸ The Commissioner's role includes issuing guidelines and standards about how the Liquor Act will be administered. Many of the Commissioner's responsibilities for liquor compliance have been delegated to the Executive Director

¹⁷ Office of Liquor and Gaming Regulation, viewed 1 May 2013, <http://www.olgr.qld.gov.au/aboutUs/index.shtml>.

¹⁸ Office of Liquor and Gaming Regulation, viewed 1 May 2013, <http://www.olgr.qld.gov.au/industry/commission/index.shtml>.

of the OLGR.

The OLGR consists of three sections:

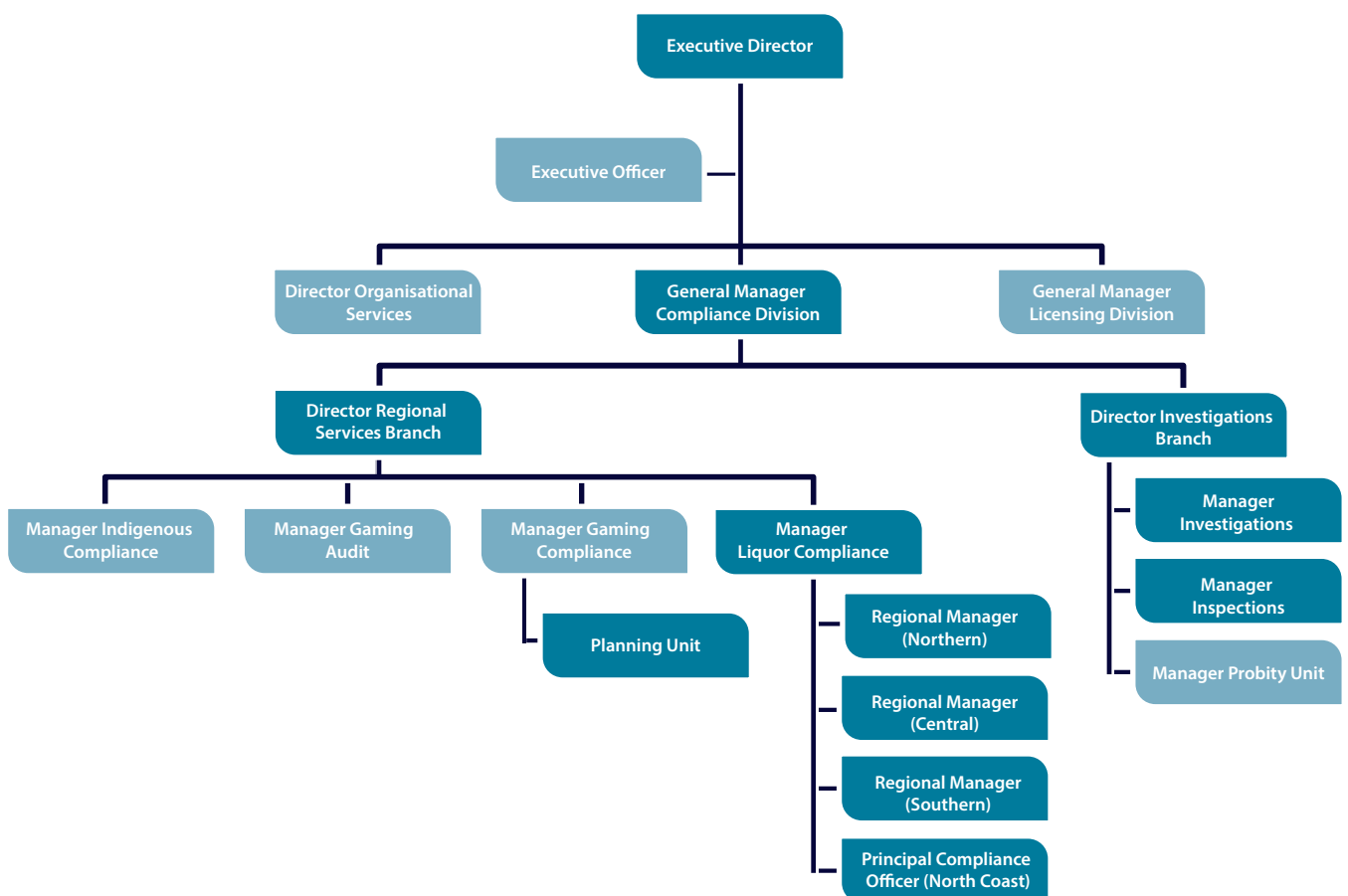
- Licensing Division
- Compliance Division
- Organisational Services Branch.

This investigation largely focused on the Compliance Division, which is responsible for:

- complaints, investigations and enforcement actions
- compliance and technical audits of liquor and gaming operators and inspections under the various liquor and gaming Acts
- probity investigations into the suitability of major participants in the gaming industry
- risk assessments of liquor licence applications.

The organisational structure of the Compliance Division is shown at Figure 3. This investigation focused on the roles displayed with dark shading.

Figure 3: Compliance Division organisational chart



OLGR compliance officers are located throughout Queensland. Sixty are appointed as investigators under the Liquor Act. They conduct a mix of activities, including:

- risk assessments of licence applications prior to a licence being issued
- educational assistance to licensees, other regulatory authorities and the public
- compliance visits to licensed premises during both daytime and peak trading hours, including within DrinkSafe precincts¹⁹

¹⁹ DrinkSafe precincts are currently being trialled in Fortitude Valley, Townsville and Surfers Paradise. The DrinkSafe trial has not been considered in this report.

- investigations into complaints made about licensed or unlicensed premises
- coordination and attendance at Liquor Accords²⁰ with industry and other co-regulators.

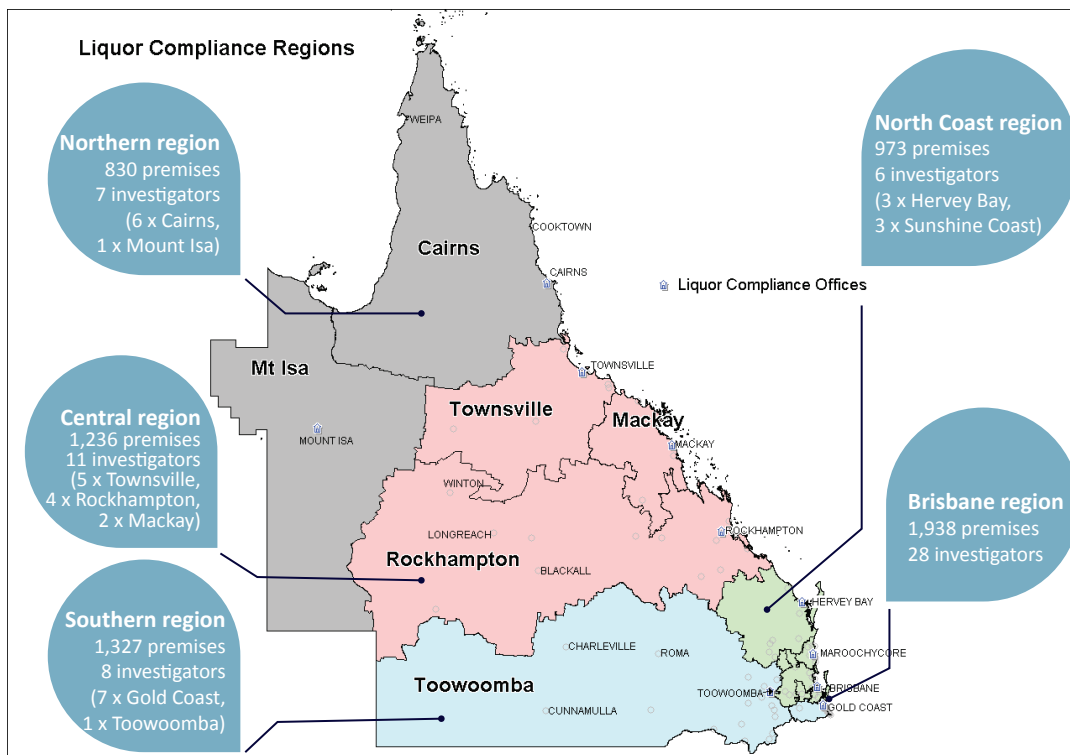
There are five OLGR regions in Queensland:

- Northern region (offices in Cairns and Mount Isa)
- Central region (offices in Townsville, Mackay and Rockhampton)
- North Coast region (offices in Maroochydore and Hervey Bay)²¹
- Brisbane region (office in Brisbane, also called 'head office')
- Southern region (offices at the Gold Coast and in Toowoomba).

In regional areas outside of Brisbane, officers may conduct both licensing and compliance work.

Some offices are responsible for large geographical regions, as depicted in Map 1.

Map 1: OLGR regional offices



Total licensed premises as at 18 March 2013: 6,818; Total authorised investigators: 60

The OLGR Compliance Division works with the QPS, and particularly its LEAPS officers. The OLGR:

- receives weekly QPS liquor-related data and Liquor Incident Reports (LIRs) relating to incidents on or near licensed premises and records some data in its database
- undertakes periodic meetings with local police/Liquor Enforcement and Proactive Strategies (LEAPS) officers
- assists in training QPS officers in the requirements of the Liquor Act.

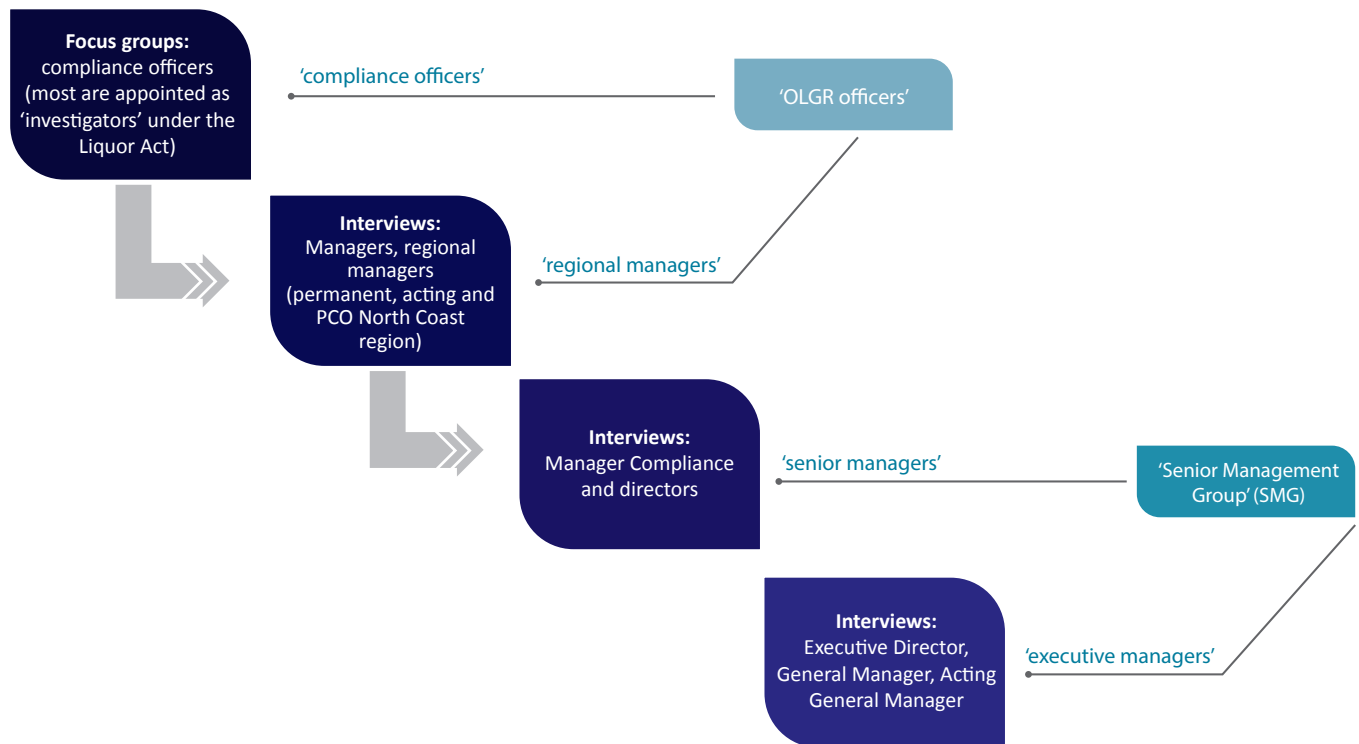
During this investigation, interviews and focus groups were conducted with officers of the Compliance Division. Focus groups were conducted with compliance officers and each regional manager was interviewed. In this report, compliance officers and regional managers are referenced collectively as 'OLGR officers'.

Interviews were also conducted with the Manager Compliance and the directors of the two divisions (the 'senior managers'), as well as the Executive Director, General Manager and Acting General Manager (the 'executive managers'). In this report, the senior managers and executive managers are referenced collectively as the 'Senior Management Group' or 'SMG'. These terms are defined in the dictionary and are depicted in Figure 4.

²⁰ Established under the Liquor Act, the purpose of Liquor Accords is to promote responsible practices in relation to the sale and supply of liquor at licensed premises in a particular area, harm minimisation and minimising alcohol-related disturbances and public order.

²¹ The North Coast region is currently coordinated from Brisbane.

Figure 4: Interview and focus group structure



Queensland Police Service

QPS officers have joint responsibility with the OLGR for enforcing the provisions of the Liquor Act. Although there are over 10,500²² police officers in Queensland, not all officers are operational and those who are operational have many other responsibilities. All operational QPS officers are investigators under the Liquor Act.

The QPS coordinates its liquor compliance activities through the Brisbane-based Drug and Alcohol Coordination Unit (DACU), which oversees the carrying out of joint operations, educates QPS officers about the Liquor Act, and shares QPS data with the OLGR.

Much of the QPS's liquor work is carried out by its regional LEAPS officers, who are coordinated by the DACU. Although the QPS's regions are not the same as the OLGR's regions, each QPS region has one or more LEAPS officers responsible for:

... establishing and maintaining liquor accords, providing information and statistics regarding trends and emerging issues, maintaining the ... database and quality control of liquor incidents reports, providing information to the [Police] Commissioner, and providing training to general duties police regarding the *Liquor Act 1992*.²³

There are currently 12 full-time LEAPS officers across Queensland.²⁴

The Liquor Act also requires that the QPS be consulted about various permit and licence application types.

The QPS was not the subject of this investigation, although QPS officers were a valuable source of information about the way the OLGR regulates licensed premises in Queensland.

Interviews were conducted with LEAPS officers operating in areas that correspond with OLGR regions.

Joint operations and joint inspections

The term 'joint operations' is often used to refer to formal operations between agencies in relation to liquor compliance activities. A joint operation may involve one or more agencies, including the OLGR, QPS, OFT, QFRS and councils. Such operations are usually the subject of an 'operational order' prepared by one of the agencies

²² Queensland Police Service, *Annual Report 2011-12*, p. 25. As at 30 June 2012, the QPS employed 10,695 police officers.

²³ Trifonoff et al, op. cit., p. 97.

²⁴ Cairns – 2; Rockhampton – 1; Townsville – 1; Metro north [Brisbane central] – 4; Metro south – 1; Gold Coast – 2; Toowoomba – 1.

involved.

Distinct from joint operations, OLGR and QPS officers may participate in more informal 'joint inspections'. These joint inspections often consist of one or more OLGR officers inspecting licensed premises with one or more QPS officers.

Chapter 3: Jurisdiction, investigation scope and objective

The Queensland Ombudsman is an officer of the Queensland Parliament empowered to investigate administrative actions of Queensland public sector agencies following a complaint or on my own initiative. As Queensland government departments are 'agencies' for the purposes of the *Ombudsman Act 2001*, it follows that the Ombudsman may investigate the administrative actions of DJAG, in which the OLGR currently sits.

For a number of years, the exercise of regulatory functions by public sector agencies has been a particular focus of the Queensland Ombudsman. A number of investigations and published reports into the effectiveness of how Queensland government regulators conduct their regulatory activity have been completed.

The principal objective of this investigation was to assess the adequacy of the OLGR's current framework, policies, processes and practices for regulating licensed premises in Queensland.

The investigation was not aimed at reviewing the conduct of individual OLGR officers, but at identifying and addressing broader systemic issues within the regulatory framework.

The investigation method included:

- a review of relevant OLGR documents, including policies and procedures
- consultation with other agencies involved in regulating licensed premises, most notably the QPS, through DACU and individual LEAPS officers in various regions
- extensive interviews and focus groups conducted with OLGR officers in all regions around Queensland
- a questionnaire to all compliance officers
- a review of a sample of the OLGR's site files containing proactive inspection documents and reactive (complaint-based) investigation files.

During the investigation, input was also sought from a number of stakeholders, including industry stakeholders, the Queensland Police Union of Employees, the Crime and Misconduct Commission and local councils.

Excluded from the investigation was consideration of DrinkSafe precincts, which are currently under trial and the subject of several government reviews, including a recent report by the Queensland Auditor-General. The investigation also did not consider the glassing provisions introduced into the Liquor Act in 2009, as these have separately received a significant amount of attention and have been the subject of previous court actions. The government's recent red tape reduction initiatives have also not been considered. In addition, Queensland has Alcohol Management Plans in place in a number of discrete indigenous communities, and these were also excluded from the investigation scope.

The investigation also did not consider how the QPS performs its role as a co-regulator under the Liquor Act. Under s.16 of the *Ombudsman Act 2001*, the Ombudsman does not have jurisdiction to investigate or report on operational actions of the QPS. Therefore, nothing in this report should be taken as reflecting adversely on the actions of, or decisions by, the QPS.

For reasons of practicality, the investigation focused only on liquor compliance activities, and did not consider licensing functions.

During the investigation, the liquor and gaming functions of the OLGR were merged operationally and compliance officers now carry out these dual functions. However, as the investigation had already commenced when this operational merger occurred, the investigation did not consider the gaming functions of the OLGR.

Also, I note that the OLGR amended one of its key policy documents, the Liquor Enforcement Policy, during the investigation. The revised Liquor Enforcement Policy (May 2013) is referenced where the document is relevant to issues raised in this report.

Part 2: Internal coordination

This part will discuss internal coordination within the OLGR, including investigative practices, the proactive compliance program, the compliance framework and specific internal policy, practices and processes necessary for facilitating the performance of the OLGR's regulatory responsibilities.

Chapter 4: The compliance framework

It is essential that a regulator's investigative practices and broader compliance framework facilitate the efficient and effective performance of its regulatory functions. This chapter will discuss some of the ways in which the OLGR's compliance framework (both proactive and reactive) could better facilitate the meeting of its regulatory functions.

Investigative practices

Investigators reviewed 179 files closed between October 2011 and June 2012 to assess the adequacy of the OLGR's investigative practices. Investigators also spoke to OLGR officers about their practices and any regional differences in practices.

A number of areas were identified where the OLGR's investigative practices require improvement to support the performance of the OLGR's regulatory functions.

Investigative planning

The investigation found little evidence of documented investigative planning. Only a small proportion of investigation files contained evidence of any investigative planning, such as a supervisor's instructions to the compliance officer about actions to take, specific reference to relevant legislative elements or licence conditions on file or a compliance officer's file notes outlining what actions they would take.

Most files contained no indication that any of the following key issues were identified early in the investigative process:

- whether the matters complained about were within jurisdiction
- the complaint issues
- the purpose of the investigation
- the elements of any potential offences
- the evidence that might need to be gathered, and in what order, to support potential enforcement action
- the potential outcomes.

The current OLGR policies and procedures do not require any level of investigative planning to be undertaken, which raises issues with consistency between investigations as well as reliability of investigation outcomes. Discussions with compliance officers confirmed that there is no prescribed process for investigative planning, with planning activities described as:

- largely ad hoc, carried out informally, done 'in their heads' or through verbal discussions between officers, or with the regional manager
- based on the officer's own knowledge and previous training and experience.

Good investigative practice demands that officers properly plan their investigations to ensure resources are used in the most efficient way. Poorly planned investigations are likely to:

- be ineffective (with issues not fully investigated, missing information or decisions based on incomplete information, or no decision able to be made)
- lead to decisions that are inconsistent with decisions on other similar notifications
- be inefficient (e.g. resources can be wasted pursuing irrelevant avenues of inquiry)
- be unreliable (e.g. when seeking to take high-end enforcement action).

Undertaking a planning process may also assist to ensure that:

- complaints are properly, and robustly, substantiated or dismissed
- all relevant complaint issues are considered and resolved during an investigation

- additional issues that arise during an investigation are also addressed.

While the level of planning for an investigation should be based on complexity, all investigations should still have a basic level of planning to identify the steps required to investigate the specific complaint. Planning for routine and less complex matters could be as simple as a checklist of the potential offence/s, the elements of the offence, required actions to be taken, necessary evidence that needs to be gathered, and any potential outcomes.

More complex or high priority matters are likely to require a detailed planning matrix identifying additional factors such as potential risks during investigation (e.g. safety to patrons, number of people impacted, loss of evidence, etc.), priorities (e.g. actions which need to be taken immediately), and detailed evidence gathering requirements (e.g. formal interviews).

A system of investigative planning according to complexity and scale should be established by utilising approved investigation plan templates. More complex plans should be approved by a relevant manager or supervisor at the commencement of each investigation. Plans should be reviewed as necessary throughout the course of an investigation, according to complexity. Compliance officers should be familiar with the use of investigation plans of all levels of complexity.

Evidence gathering and analysis

The investigation found little recorded evidence on investigation files of:

- attempts to gather sufficient evidence to support the outcomes reached
- attempts to substantiate complaints, with particular complaints (such as noise complaints) frequently closed without attempts made to substantiate the complaint or take enforcement action
- attempts to corroborate information provided by alleged offenders or from the QPS
- analysis against elements of the offence to identify whether the offence could be substantiated.

Identification of these deficiencies is not surprising given the findings about investigative planning, which ordinarily guides the evidence gathering process.

Compliance officers said they relied on previous practice, precedent, and instructions as well as guidance from the regional manager or an experienced officer when gathering evidence. While these may be acceptable workplace arrangements, they should be supported by improved attention to structured evidence gathering processes aligned to the investigation plan, relevant policy and procedures, the elements of offences and other legislative requirements.

A smaller number of cases were also identified where the investigation outcomes were predetermined, in that the outcome was set out in the initial instructions to the compliance officer. Examples include:

- In relation to a QPS referral regarding an assault by a crowd controller (for the OLGR to look into management issues), the compliance officer was instructed before the investigation commenced that the outcome would be 'cautionary advice to licensee'.
- In relation to a noise complaint about a licensed premises, the compliance officer was instructed by the regional manager when the case was allocated that the outcome would be a warning letter, on the basis that another noise complaint was received previously. In this case, there was no attempt to substantiate the current noise complaint, contrary to the Liquor Enforcement Policy which requires that a warning be given if substantiated and a caution be given if not.

Reasons for decisions

Poor investigative planning, evidence gathering and inadequate analysis of issues are also linked to the recording of reasons for decisions. The investigation found that compliance officers generally did not provide reasons for recommended actions, unless the recommendation was for high-end enforcement action. Investigators found that, without recorded reasons, it was difficult to determine why decision-makers took the course of action they did, or why they did or did not support recommendations made by compliance officers.

The OLGR is therefore vulnerable to allegations that decisions are unfair or unreasonable, or fail to take into account relevant information. Recording reasons also goes some way to countering allegations of regulatory capture (discussed in Chapter 7).

From a practical perspective, recording reasons for decisions assists to build an adequate history of compliance for

licensed premises to justify future enforcement action. At the time of investigation, the Liquor Enforcement Policy only required reasons to be documented when proposing high-end enforcement action.

It is my view that the OLGR must shift its practices from simply recording outcomes to recording reasons for decisions in order to demonstrate consistency and transparency, to justify any escalated enforcement action and to strengthen its ability to communicate its decisions to clients and other parties.

The following case study illustrates each of the above weaknesses.

Case Study

The complainant raised several issues, including an allegation of intoxicated bar staff and no 'OLGR signage', which was categorised as 'responsible service of alcohol [RSA]: management practices' on COGS on 16 November 2011. Other allegations included smoking indoors and lack of a disabled toilet facility. It appears that the following evidence was gathered about the RSA issue:

- the compliance officer was 'advised that [police] had attended the premises the previous Saturday on a social basis and had no concerns' (file note)
- compliance officers travelled to premises and arrived at 7.30pm on an unknown date to find premises closed (file note)
- another attempt at a site inspection two months later on an unknown date and time again found the premises closed (file note)
- a telephone discussion with management, whereby the compliance officer was told that the club had five RSA trained volunteer staff and the manager had never seen anyone intoxicated. It was acknowledged that the club had no RSA signage behind the bar (file note).

There is no evidence of a recorded investigation plan. Therefore it was unclear:

- why allegations other than the issue of RSA were not going to be investigated (e.g. that they may have been out of jurisdiction, or required referral to another agency)
- what time and date (including the day of the week) the site inspections should take place to substantiate the complaint
- the purpose or need for the site inspections, such as what evidence was required to be gathered during the inspection to prove the offence
- what other evidence was required to substantiate the allegation/s, for example, RSA training certificates (which were apparently not obtained in this investigation)
- what information the compliance officer sought to obtain from the conversation with management to substantiate the offence and the defences which may be established.

There was no recorded analysis of evidence gathered, or the lack of evidence, to substantiate the allegation, for example, what was:

- the impact of the inability to conduct the inspection in substantiating the allegation
- the relevance of the information provided by management during the phone conversation and the weight given to that evidence (e.g. was a defence given, was it appropriate, were the facts and/or elements of the offence substantiated, what further information was required to substantiate or why could it not be substantiated)
- the outcome of the lack of RSA signage issue (e.g. whether a breach was established and what actions could/would be taken as a result).

During the discussion with a club supervisor, the compliance officer appeared to have already decided the action to be taken but there were no reasons recorded as to why that approach was taken. The compliance officer stated: '[the Treasurer of the premises] was advised that the OLGR would write to the club and enclose some signage, along with an A3 poster which informs the club members of the rights of visitors, guests and visiting club [sic] when being supplied liquor.' There was no explanation about whether a breach was established or rectification required. The OLGR wrote to the club stating 'OLGR now reminds the licensee and management of their obligations under the Liquor Act 1992' but did not specify which section of the Liquor Act was or may have been breached.

Summary of investigative practices

The file review conducted on 179 files closed between October 2011 and June 2012 substantiated the evidence given by compliance officers that there is no prescribed process for investigative planning, that evidence gathering is strongly reliant on peer knowledge and experience and that recording of reasons for decision-making was not done routinely.

I note that the current Liquor Enforcement Policy (May 2013) now requires:

- reasons to be documented for recommendations for enforcement action in accordance with the policy
- more detailed reasons to be documented for recommendations for enforcement action outside of the policy
- reasons to be documented for not taking enforcement action to the level that would normally be expected through application of the policy.

While I acknowledge these improvements, the other areas of investigative practice require further improvement to support the performance of the OLGR's regulatory functions. Apart from the obvious benefits associated with identifying breaches of the Liquor Act, adequate investigative practices are also crucial in building an accurate picture of the compliance history of premises. Such an accurate compliance history is crucial as it will:

- inform targets and priorities for proactive compliance inspections (discussed later in this chapter)
- identify trends which may be addressed through proactive programs (discussed later in this chapter)
- facilitate the escalation of enforcement action (discussed in Chapter 7)
- ensure better consistency in enforcement action (discussed in Chapter 7)
- ensure that the OLGR can better justify actions or decisions to support high-end enforcement action.

I understand that the OLGR has recently introduced a system of auditing the content of investigation files. A robust system of quality assurance should be directed to evaluating issues such as those raised above and ensure that they are addressed quickly.

The revised investigative practices introduced in line with my recommendations should be incorporated into investigative training given to OLGR officers. Training is discussed further in Chapter 5.

In the proposed report provided to DJAG for comment, I proposed to form an opinion and make a recommendation to improve investigative practices.

DJAG response – investigative practices generally:

The Director-General advised that:

- improvements can be made in a number of areas highlighted in this chapter
- quality assurance processes are being updated in response to my recommendations and the OLGR has been developing the Business Intelligence Project, which the Director-General believes will assist to support investigative practices.

I note that the Director-General is committed to taking steps to improve quality assurance practices in response to the issues raised in this chapter. I have amended my recommendation to reflect the intended approach to evaluate the investigative issues in Chapter 4 through the OLGR's quality assurance processes.

DJAG response – investigative planning:

The Director-General advised that:

- it was 'impractical or unnecessary' to prepare individual investigation plans for every complaint investigation
- compliance officers investigate matters in the field, requiring quick assessments without capacity for a formalised plan
- if more capacity is given to officers to take on-the-spot enforcement action, such as issuing infringement notices while on inspection (discussed later in this chapter), these actions would not be subject to any formalised investigation planning or approval by a relevant manager or supervisor prior to the investigative actions being taken

- a balance should be sought to ensure that officers are not 'unduly burdened' by investigative planning
- the OLGR will consider a 'scaled system of investigation planning' which would use simple templates for 'routine and low risk investigations' and more detailed plans for more complex and high-risk investigations and where the matters are likely to result in 'high-end enforcement'.

This chapter relates to investigations in response to complaints (reactive investigations). I consider all levels of reactive investigations can be planned in accordance with the level of complexity and therefore agree with the Director-General's comments relating to the introduction of a scaled system of investigative planning.

DJAG response – evidence gathering and analysis:

The Director-General advised that:

- the nature of some complaints makes it impossible to substantiate an allegation; for example, unreasonable noise or breach of noise conditions is usually investigated after the noise occurrence
- the OLGR seeks to collaborate with the licensee in the first instance to make licensees aware of the issue and to obtain a resolution
- other factors which determine the level of evidence that will be gathered to substantiate a legislative contravention include compliance history, the seriousness of the alleged conduct and the potential enforcement outcomes that can be taken in accordance with the Liquor Enforcement Policy.

I agree with the Director-General that evidence gathering needs to be proportional to what is required to substantiate a legislative contravention. More active consideration of this step should be documented in investigation plans and in the investigation records of the agency to demonstrate the proportionality of the response to the seriousness of the complaint being investigated.

DJAG response – reasons for decisions:

The Director-General advised that:

- the majority of the investigations and compliance inspections are relatively routine and 'do not warrant detailed reasoning regarding recommended and approved outcomes'
- additional detail has been put into the Liquor Enforcement Policy (May 2013) about documenting decisions to take high-end enforcement action
- currently, the COGS system ensures that officers record outcomes of investigations
- there was 'scope for improvement' in recording decisions, but due to resourcing issues it was important that the 'correct balance' was found so that officers and supervisors are not 'unduly burdened' by this process
- the OLGR will give consideration to a scaled system of recording decisions which could include a template or changes to the relevant COGS screens as part of future development work scheduled to commence in the second half of the 2013-14 financial year.

I note the amendment to the Liquor Enforcement Policy (May 2013) to insert a new section 3.2 'Recommendations for Enforcement Action', which requires officers to clearly document the reasons for a decision to pursue an escalation approach under the Liquor Enforcement Policy, or to depart from a suggested course of action that would normally occur. This is an improvement to the policy which needs to be supported in practice. I welcome the Director-General's commitment to introduce a scaled system of recording decisions through a template or by alternative means.

DJAG response – case study:

The Director-General advised that:

- the case study is only a 'single example' and questioned whether it demonstrates a systemic weakness; however, 'there were things that could have been done differently in investigating this complaint'
- the complaint 'essentially amounted to' an anonymous complaint making it difficult to obtain evidence or seek clarification
- there were possible reasons for actions taken on the case (which the Director-General outlined in his response to the proposed report).

The case example was not an isolated instance. These types of weaknesses were found on numerous other occasions during the file review. The acknowledgements made by the Director-General of possible improvements to investigative practices indicates that systemic issues are present and that further action is necessary.

I further note that the Director-General provided the possible reasons for the actions taken by the compliance officer in the above case study. However, as there are no documented reasons on the case, the Director-General could only theorise about why certain actions were made in this case – words such as ‘it is likely this was done due to ...’ and ‘it would appear the officer did not feel this was appropriate [action to take]’. This demonstrates that, without recorded reasons, it is difficult to justify actions taken in an investigation, leaving the OLGR open to criticism that the decision is unfair, unreasonable or otherwise lacking. There is also a perception of regulatory capture where decisions cannot be justified.

I also note that this, and many other similar cases, passed the OLGR’s quality assurance processes.

Opinion 1

The OLGR’s investigative practices, particularly its investigative planning, evidence gathering and analysis, and recording of reasons for decisions require strengthening to facilitate the effective performance of the OLGR’s regulatory functions.

Recommendation 1

The Director-General ensure that:

- (a) according to the complexity and scale of investigations to be conducted, a system of investigative planning is established and training provided to compliance officers in its use
- (b) evidence gathering and analysis is directed by the investigation plan, relevant policy and procedures, the elements of alleged offences and any other legislative requirements
- (c) officers record reasons for decisions in accordance with the Liquor Enforcement Policy (May 2013), for example, through a template or adjustment to COGS
- (d) quality assurance processes incorporate an evaluation of the investigative issues identified in Chapter 4 of this report.

Proactive compliance program

The OLGR has a program of proactive compliance work to assist with the regulation of licensed premises. The QPS also conducts a separate program of proactive compliance activity.

Proactive compliance work involves taking steps to identify potential breaches of the Liquor Act and to encourage licensee compliance with the regulatory scheme, generally through compliance visits and various targeted programs, such as the self-assessment program discussed later in this chapter. This work is a valuable tool for regulators, as it can identify and address problems before complaints arise. The investigation reviewed the regions’ use of the Compliance Plan for the 2011-12 financial year. Most regions reported a high success rate in meeting the compliance targets.

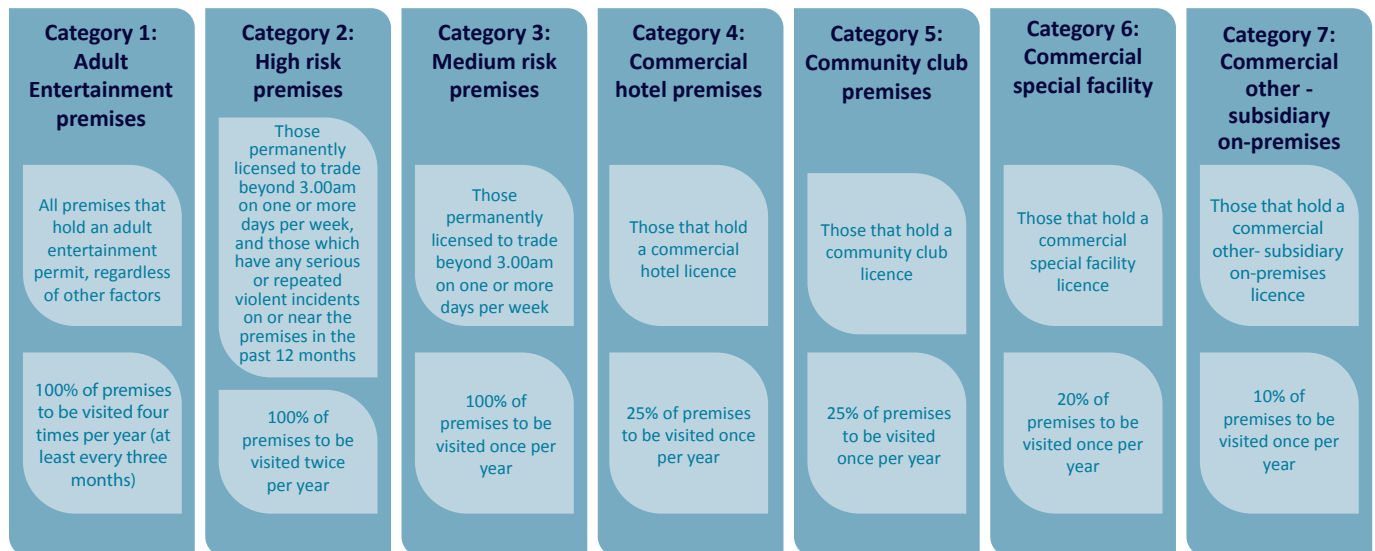
The investigation also considered whether the current proactive work undertaken by the OLGR effectively supports its compliance functions under the Liquor Act.

Overview of the program

The OLGR’s annual Compliance Plan, developed by head office, in consultation with regional managers, provides a broad outline of the proactive strategy for the year, including risk categories, the number and type of compliance visits to be undertaken and which risk categories will be targeted in that year.

The OLGR’s seven categories of licensed premises and visitation targets are set out in Figure 5.

Figure 5: OLGR categories



All premises which fall within categories one to three must be visited in accordance with the targets identified in Figure 5.

If a licensed premises falls into one of the categories four to seven then it would ordinarily be visited according to the category requirements. However, if a premises also has the characteristics described for categories one to three, it will be visited in accordance with the higher category. For example, a premises holding a commercial hotel licence (a 'commercial hotel premises') which is licensed to trade beyond 3.00am (a 'high risk' characteristic) will fall within the 'high risk' category, and not the 'commercial hotel' category.

According to its Compliance Plan, the OLGR determines which premises falling within categories four to seven will be visited each year with regard to the following additional factors:

- the period since the last compliance visit
- the premises' compliance, as indicated by findings from previous compliance visits/investigations
- the premises' incident history, including police reports
- compliance self-assessments, including voluntary completion status and concerns identified through a review of the self-assessments
- premises location, such as in an Alcohol Management Plan catchment area or an entertainment precinct
- gaming program cycle categorisation
- active membership of a Liquor Accord.

Prior to this investigation, the Planning Unit in head office had already commenced the distribution of a 'Liquor Planning Sheet' to regional managers at the start of every month listing the risk categorisation for each premises and priority for compliance visits.

A number of separate issues were identified that point to a lack of coordination both within the proactive compliance program, and between the proactive compliance program and the overall regulatory framework for liquor. These are outlined below.

Risk categorisation process

As described above, the risk categories are largely based on licence type and trading hours, with a system of prioritisation in the Liquor Planning Sheet using relevant data such as the number of liquor incident reports received from the QPS over the financial year or preceding six months.

Both OLGR officers and industry stakeholders told investigators that the compliance program based on the present risk categories did not appropriately target non-compliant premises, while compliant premises felt unfairly targeted. It was also suggested by OLGR officers that greater local input into the categorisation was necessary to identify 'problem' premises in the different regions and properly focus attention on the needs of the region. Several officers spoke about a 'loss of local knowledge' through the centralised proactive compliance program, resulting in some premises not being given enough attention while others are visited more than necessary.

The views of OLGR officers were similar to the views of one industry stakeholder, who commented on the OLGR's need to focus on compliance history and licensee capacity:

... Well run licensed businesses should be told that they are well run, and encouraged by the compliance staff to keep up the good work, and rewarded with an ongoing educative approach to compliance improvement and progressively fewer spot and scheduled licensing inspections and visitations. The [well-run premises] of this world might be formally visited at six monthly intervals, not at peak trading periods, and any corrective actions or advices followed up informally. The late night or poor compliance history licensee should be visited and inspected as often as required, and given strict timelines for improved presentation, rectification or issues management. Put simply, 20% of the compliance and enforcement effort should be put into the known 'good guys', and 80% of the effort should be put into the 'bad guys'.

My initial concern was that the risk categorisations did not appropriately take into account compliance history and local knowledge. I have since amended my view having considered the Director-General's response to my proposed report, which described the factors that influenced the identification of proactive compliance priorities, including local knowledge.

However, I am still concerned that compliance officers appeared to be unaware of the importance of their role in achieving the goals of the proactive compliance program. It was evident during the investigation that compliance officers felt they were using their local knowledge to conduct extra compliance inspections and targeting of premises to supplement the deficiencies of the risk categorisations, as opposed to being incorporated as a normal part of the overall compliance program. That is, many OLGR officers felt they were doing this work *despite* rather than as *part of* the compliance program.

In my view, a lack of clarity about the different methods of proactive targeting within the OLGR is reflected by compliance officers not understanding the interaction between risk categorisations, Liquor Planning Sheet obligations and their role in each region in contributing to the overall program targets. These are not encompassed in the Compliance Plan, which is the key document outlining the proactive compliance program.

The Compliance Plan should include a complete picture of the OLGR's proactive compliance program, including the way in which proactive compliance targets are set and met. Additional training should also be considered to assist compliance officers understand their role in implementing the proactive compliance program.

I note that continuing improvements are being made to the proactive compliance program. Investigators were told that the OLGR Planning Unit was created in part to enhance the ability to target risk areas for the proactive compliance program. Also, the executive managers told investigators that the ongoing Business Intelligence Project will assist with targeting premises. It is noted that the completion of stage one of the Business Intelligence Project now allows the OLGR to follow compliance trends within certain geographical areas as identified through postcode area, local government area or compliance region. Given the above discussion, any changes or enhancements to the framework should also be part of the Compliance Plan and form part of ongoing training to officers.

Timing of visits

The time of day that compliance officers make visits to premises is an important matter for the OLGR, as at least some compliance visits during peak times are essential to ensure that certain operational activities can be observed.²⁵ Licensees are also concerned with the timing of compliance visits for different reasons. One submission from an industry stakeholder indicated that licensees feel that everything 'needed to be dropped' during peak times in order to accommodate compliance visits. It is evident that OLGR officers walk a fine line attempting to manage licensee needs and operational needs in discharging compliance visits under the Compliance Plan.

The investigation could not locate any guidance provided to OLGR officers in the Compliance Plan or elsewhere about whether visits to certain premises should be scheduled at certain times of the day. For example, high risk venues are those trading beyond 3.00am must be visited twice a year. However, there is no guidance provided to clarify whether these venues must be visited during the peak trading period, or whether the Compliance Plan can be satisfied by compliance officers conducting two daytime compliance visits of high risk premises.

The recently drafted 'Liquor Inspection Summary guidelines' (LIS guidelines) also do not clarify this issue. The LIS guidelines provide guidance to compliance officers about which checks are to be conducted depending on what

²⁵ For the 2011-12 period, approximately 85% of inspections were undertaken as after-hours visits as per the Director-General's response to the proposed report.

time of day the compliance visit is occurring. During the investigation, it was clear that compliance officers were uncertain about the operation of the new Liquor Inspection Summary in relation to the timing of visits. OLGR officers told investigators that visits could occur at different times of the day or night, and some officers were of the view that most proactive compliance work could be carried out during the day. Different approaches to determine the timing of compliance visits are taken by different regional offices, depending on the type of inspection, level of perceived risk of a night time visit, availability of staff/management at the premises and different ideas about what to focus on during peak times.

It seems clear that, to be effective, at least some compliance visits should occur in peak periods as this is likely to be the most appropriate time for observing licensee activities, and particularly observing safety issues.

In my view, the Compliance Plan should provide officers with clear guidance about what time of the day visits should be undertaken for premises that fall within certain risk categories, to ensure that the proactive compliance program is adequately meeting the OLGR's primary objectives of harm minimisation and facilitating its compliance activity overall.

Outcome advice to licensees

The OLGR's proactive compliance program has a large educative focus. Therefore, for the program to be most effective, the results of the program should be made known to the individual premises as well as the industry at large. The investigation therefore considered the extent to which the results of the proactive compliance program were disseminated to individual licensees (discussed below) or publicised (discussed in Chapter 8).

The investigation identified that the results of compliance visits are not always provided to both licensees and premises managers. While the practice some years ago was to leave a carbon copy of the inspection checklist (now called the Liquor Inspection Summary) at the premises at the time of the compliance visit, the current process used by the OLGR is to write to licensees to notify them of any issues identified, which may occur some weeks later. No written advice is given to licensees that they have been the subject of a compliance visit in circumstances where no issues were identified. Where a letter is sent to a licensee about the visit outcomes, there is no further written communication with the premises manager about the results.

An industry stakeholder complained about the lack of a '... formal system for providing feedback to a premises following a detailed compliance visit'. The stakeholder noted that while some verbal advice may be given to the licensee/manager, they are basically 'left in the dark' about the overall outcomes of the visit until some form of written correspondence about a potential penalty arrives sometime after the visit. The stakeholder stated:

This deficiency in the system could be easily rectified, and the process given a greater level of accountability, through the introduction of a simple 'post activity report' or compliance visit checklist that could be shared with the licensee or his delegate at the conclusion of each compliance visit.

Investigators were told that the principal reason for not leaving a copy of the Liquor Inspection Summary at the premises was that the checklist was not being passed on to licensees by their employees, and where enforcement action was later taken, licensees were advising that they had not been aware of a previous caution or warning given. The OLGR's approach is to hold the licensee responsible personally, and can only do so by direct correspondence with the licensee. Investigators were also told that there are 'inconsistencies' between regions in providing advice through previous inspection checklists and the current procedure was introduced as part of a broader governance process, including a process for escalation.

Conversely, investigators were told by OLGR officers that the benefits of leaving a copy of the Liquor Inspection Summary included that licensees or premises managers:

- are given natural justice by being advised of a breach at the time it was detected
- have something tangible, in writing, to use straightaway during training or for risk management plans
- can acknowledge receipt of the information by signing the checklist.

Having considered the reasons for the current approach, I am of the view that a process should be introduced to facilitate both the timely communication of outcomes of a compliance visit to licensees and premises managers, and the taking of formal enforcement action post-visit. While the OLGR can and should continue to communicate negative outcomes in writing to the licensee, a process should be adopted for at least preliminary communication of the outcomes at the time that the compliance visit is conducted or shortly after. While the OLGR has advised that using the carbon-copy booklets is not financially or practically feasible, I consider there are other ways in

which a copy may be provided to the premises at the time or shortly after an inspection, such as by email, fax or photocopy.

Self-assessments

A further issue identified with the proactive compliance program is the linkage between the self-assessment program and the broader compliance framework adopted by the OLGR.

As part of its proactive compliance program of work, each year the OLGR conducts a program of licensee self-assessments. Under the self-assessment program, a number of licensees in each region are asked to assess their own compliance with legislative requirements of the Liquor Act through a 'self-assessment form'. Licensees who choose to complete the self-assessment form return it to regional offices, and a number of the respondents are chosen for follow-up, based on their responses and targets for follow-up.

OLGR officers raised a number of criticisms of the voluntary self-assessment program, in particular noting that in some regions there was a poor response rate, and only honest and compliant licensees would be likely to respond. It was also noted by OLGR officers that the purpose of the self-assessments was not made clear, with licensees not made aware that if something was found to be wrong they would not be the subject of high-end enforcement action but would be assisted to fix the problem.

The investigation identified that OLGR officers, particularly compliance officers, were unaware of how the self-assessment program achieved the goals which contributed to a coordinated proactive compliance program. In response to the proposed report, the Director-General outlined the purpose of the program and its outcomes. However, the purpose of the self-assessment program is not set out in the Compliance Plan and the general outcomes of the program are not published publicly, nor does there appear to be a consistent approach to advising OLGR officers of the outcomes.

In my view, while the self-assessment program may be a valuable tool, it is not effectively linked to the OLGR's other compliance activities. The objectives are not clearly set out and the outcomes of the self-assessment program are not reported on internally or publicly.

These issues should be addressed in the Compliance Plan if the self-assessment program is to be an effective component of the proactive compliance framework.

Summary of proactive compliance program

It is pleasing to see that the OLGR has a proactive compliance program in place and the regions are achieving significant success in meeting the compliance targets. However, despite the level of effort, in my view, the program is not sufficiently developed in its own right and integrated with the OLGR's other compliance work. The investigation identified issues which, if addressed, would lead to improved performance both within the program and improved coordination with the OLGR's other compliance activities.

In light of the above discussion, in my view, the Director-General should review the proactive compliance program to ensure OLGR officers understand the prioritisation mechanisms, the timing of compliance visits, the provision of outcome advice to licensees, and the clarification of the outcomes of the self-assessment program and the program's overall contribution to demonstrating achievement of the harm minimisation objective.

In the proposed report provided to DJAG for comment, I proposed to form an opinion and make a recommendation to improve coordination of the proactive compliance program.

DJAG response – risk categorisation process:

The Director-General advised that:

- the method for determining inherent risk at premises based on trading hours and licence type (i.e. the risk categories) is sound and supportable as it is based on analysis of QPS data
- the risk categories are only 'forecasts' and compliance officers have an opportunity to use local knowledge to target problem premises above the minimum inspection requirement set by the risk categories
- regional managers are given a great deal of discretion to target premises which need particular attention, using local knowledge.

I consider that licence type and trading hours are relevant considerations for setting general risk categories and minimum inspection standards. While the risk categories alone do not provide a holistic compliance targeting framework, reactive investigations, QPS data and prioritisation in the Liquor Planning Sheet may draw attention to premises which need to be targeted more often. I note that local knowledge is being utilised in practice by the regional offices to target premises on a day-to-day basis, as required. Having considered the Director-General's response, it became clear to me that while the approach was adequate, the OLGR officers were not aware of their role in using their local knowledge to target premises and contribute to the overall achievements of the proactive compliance program.

DJAG response – timing of visits:

The Director-General advised that:

- independent to this report, there have been discussions about the timing of compliance visits as part of updating the Compliance Plan
- there are benefits of some daytime visits and it is likely the Compliance Plan will require at least one visit per year for high and medium risk to be undertaken during peak time.

I acknowledge the Director-General's comments and believe that such a change, if adopted by the OLGR, would be a positive initial step towards providing greater guidance to staff to ensure that compliance visits are conducted at appropriate times.

DJAG response – outcome advice to licensees:

The Director-General advised that:

- the current practice regarding outcome advice to licensees was a management decision made with 'sound reasoning' and that 'there is currently no intention to change this policy'
- as well as the reasons outlined in the report, other reasons for this stance include that formal correspondence is considered to have greater impact and that there are practical difficulties in using carbon-copy booklets when the content may be frequently changed (e.g. where there are changes to the Liquor Act)
- the move to formal correspondence was 'not popular' with OLGR officers because of the 'extra effort involved' in written correspondence
- there was no value in providing the content of a checklist to licensees
- the OLGR is working on a project which includes the introduction of using portable Information Technology (IT) devices to record compliance visit outcomes whereby the option of emailing inspection results (along with continuing to provide written correspondence) could be explored; this project is scheduled for completion in 2015, subject to relevant funding approvals.

I have not recommended a return to the use of carbon-copy booklets or to stop the use of formal written responses. My intention is to improve the timing of the feedback to licensees and management by the OLGR under its compliance program, which is supported by officers and industry groups. My recommendation requires preliminary communication at the time of, or shortly after, the inspection.

It is encouraging that the OLGR is considering introducing the use of portable remote IT devices, which would provide options to support my recommendations.

DJAG response – self-assessment program:

The Director-General outlined the purpose of the self-assessment program and advised that:

- licensees were advised of the program's purpose in letters sent at the commencement of the program; these letters also advised licensees that follow-up visits would be for the purpose of providing advice only
- the response rate was very good for the voluntary program and has been deemed valuable by licensees, who were surveyed during compliance visits undertaken as part of the 2009-10 and 2010-11 programs

- the 2009-10 results were communicated to regional managers but the 2010-11 results were only communicated to those present at the 2012-13 liquor compliance program meeting, possibly by oversight
- the 2011-12 program was 'in essence a mop up of [DrinkSafe Precinct] licensees not assessed in the [2010-11] program', therefore no post program analysis was undertaken on that occasion; however, correspondence was sent out to licensees reminding them of key obligations, which were also provided to staff in preparation of receiving any questions from licensees
- the 2012-13 program was finalised after interviews held with investigators.

I have not formed a view that the self-assessment program is not valuable. However, the criticisms raised by OLGR officers and the Director-General's response indicate that there is an inconsistent and inadequate approach to advising staff of the outcomes of the program and demonstrating how it is achieving its purpose. Without that clear understanding, OLGR officers are unaware of how the self-assessment program fits into and contributes to the overall proactive compliance framework.

Opinion 2

While it is pleasing that the OLGR has established a proactive compliance program, it is evident that OLGR officers, and in some cases licensees, do not have a clear understanding of the overall targets and objectives of the program. A more cohesive and integrated compliance program will facilitate the effective performance of the OLGR's regulatory functions.

Recommendation 2

The Director-General review the proactive compliance program to improve coordination within the program itself and with the OLGR's other compliance activities. In addition to dealing with the issue of publication (see Recommendation 17), the review should aim to:

- (a) incorporate all mechanisms for proactive compliance targeting based on risk categorisation, prioritisation and regional intelligence about premises history into the Compliance Plan
- (b) provide guidance to OLGR officers in the Compliance Plan on the timing of visits to premises to ensure, as far as practicable, consistency in approach across regions, and to facilitate effective compliance activity through the conduct of compliance visits at the most appropriate time for observing licensee activities
- (c) ensure the timely communication of inspection outcomes to licensees and premises managers, with preliminary written communication at the time that the compliance visit is conducted or shortly after
- (d) incorporate the objectives and outcomes of the self-assessment program in the Compliance Plan.

Impediments to effective enforcement

The investigation identified a number of instances where the OLGR's policy and practices were disjointed and lacked coordination, and therefore were not properly facilitating the performance of the OLGR's regulatory functions.

No on-the-spot enforcement

At the time of investigation, the OLGR's practices prevented compliance officers from taking any enforcement action in relation to licensees at the time of detecting a breach. Warnings and cautions could not be given verbally or in writing at the time a breach was detected (despite the use of template letters in most cases), and infringement notices could only be issued after officers returned to their office and obtained the necessary approval. This is despite compliance officers having the necessary delegation under the Liquor Act to take some of these actions (discussed below).

Compliance officers told investigators that their inability to take any enforcement action while at a premises undermined their authority and meant that the action lost its impact and importance. Compliance officers also reported that taking at least some enforcement action on-the-spot for straightforward offences would save time and resources.

Investigators were told by some regional managers and members of the SMG that requiring compliance officers to return to the office and follow standard procedures for taking the enforcement action, including approval procedures, was a deliberate strategy to encourage deeper thought about the enforcement action being taken and to ensure that this action was appropriate and in line with the Liquor Enforcement Policy.

Some directors and regional managers also told investigators of other reasons for not permitting on-the-spot enforcement action to be taken, including:

- that notice of the action taken was being left with premises staff and not reaching the licensee
- compliance officers were not collecting the appropriate level of evidence and doing the appropriate research necessary to issue an infringement notice
- when taking enforcement action on-the-spot, there was a greater risk that officers could get confused about offences and issue an infringement notice for the wrong offence
- infringement notices cannot be given on-the-spot or for the first offence because they must give the licensee an opportunity for natural justice
- a lack of confidence in the ability of some compliance officers, with training being a key issue.

The Liquor Enforcement Policy in use at the time of this investigation, as well as the current Liquor Enforcement Policy (May 2013) do not specifically prohibit some enforcement action occurring at the time that a breach is detected. For instance, there is no mention made of cautions or warnings not being able to be issued on-the-spot, although action is prohibited in practice. The inability to take enforcement action on-the-spot does not extend to issuing infringement notices to minors and patrons, with such notices able to be issued by any compliance officer at the time that an offence is detected.

I also note that QPS officers, as investigators under the Liquor Act, have the administrative power to issue warnings on-the-spot and the legislative power to issue infringement notices on-the-spot. This raises issues with consistency in enforcement practices between the co-regulators, which is addressed in more detail in Chapter 6.

The Liquor Enforcement Policy (May 2013) allows on-the-spot enforcement if the regional manager is present or if compliance officers seek pre-approval from the regional manager or unit manager (being the Manager Compliance, Manager Investigations or Manager Inspections) to issue an infringement notice on-the-spot. This still precludes compliance officers from exercising discretion to undertake on-the-spot enforcement without approval. The new policy does not provide for on-the-spot warnings or cautions, although it still does not specifically prohibit it.

It is not clear why concerns about compliance officers taking on-the-spot enforcement action could not be addressed by the provision of appropriate training and detailed guidance to officers. Such an approach in relation to at least some straightforward offences would streamline the performance of enforcement action, permit officers to respond to emerging issues while in the 'field', reduce the administrative burden on officers and lead to faster rectification of issues by licensees.

In the proposed report provided to DJAG for comment, I considered that there were circumstances where on-the-

spot enforcement may occur.

DJAG response:

The Director-General advised that:

- the management decision not to allow on-the-spot enforcement actions by compliance officers was reasonable and the necessary evidence that needs to be gathered, such as interviewing and allowing the licensee to respond to allegations, could be impractical to gather on-the-spot
- concerns were raised by the former government about accusations of over-zealousness of officers of the former Liquor Licensing Division
- the Liquor Enforcement Policy (May 2013) now allows on-the-spot infringement notices to be given where a regional manager is present
- the potential for pre-approval to be provided for the issuing of on-the-spot infringement notices for certain offences identified as part of targeted programs has also been considered
- where there is a possibility of obtaining pre-approval for issuing infringement notices for certain programs, the program documentation would specify the minimum evidence required to be obtained and any other pre-requisites to the issuing of on-the-spot infringement notices.

I note that the Liquor Enforcement Policy (May 2013) now allows regional managers to provide prior approval for the issuing of on-the-spot infringement notices by compliance officers. While I note the change to policy in relation to on-the-spot enforcement, the approach does not reflect that there are different levels of complexity to offences, some of which may be suitable for compliance officers to action in accordance with their appointment.

I note that the OLGR will be providing instructions for evidence gathering for on-the-spot enforcement for certain 'targeted programs'. I do not see why this cannot be done for certain types of straightforward offences more generally. Training and guidance may be provided to officers about gathering evidence for these offences.

In addition, the OLGR's escalation model generally only allows high-end enforcement action where warnings and cautions have already been given. With the availability of a premises' compliance history and appropriate steps approved under an investigation plan, officers should be prepared before conducting visits to premises so that they know what to look for and what evidence is required before taking high-end enforcement action. Future remote IT capability will enhance this. Where there is a question of evidence, other technology, such as mobile phones, can be used to assist OLGR officers to seek guidance about evidence gathering, through discussion with senior staff or the regional manager.

The Director-General's response to the proposed report does not adequately address the inconsistency of allowing on-the-spot enforcement by compliance officers against a minor/patron but not licensees. Presumably, appropriate evidence gathering is required in both circumstances.

Unjustified senior level decision-making

The senior levels at which decisions about enforcement actions are made, and the effort to reach those decisions, is of concern.

The Liquor Act gives the Commissioner the authority to appoint investigators with certain powers and responsibilities to effectively and efficiently meet the objectives of the Liquor Act. When read together with the *State Penalties Enforcement Act 1999* (SPER Act), these powers include:

- forming a reasonable belief that a person has committed an infringement notice offence and serving the infringement notice on the person²⁶

²⁶ *The State Penalties Enforcement Act 1999* states that an authorised person can form a reasonable belief that a person has committed an infringement notice offence, and serve an infringement notice to that person. Schedule 5 of the *State Penalties Enforcement Regulation 2000* lists the various infringement notice offences under the Liquor Act and specifies that the authorised person to serve infringement notices is an investigator under s.174[1] of the Liquor Act or a police officer.

- issuing an order or closing the premises immediately in certain circumstances.²⁷

However, at the time of investigation the Liquor Enforcement Policy set out the following parameters for decisions about enforcement action:

- warnings and cautions can be issued by compliance officers²⁸
- infringement notices require approval from an AO8 level manager (i.e. not the regional manager in most regions), or from a director in circumstances including where a second infringement notice is being issued for a separate offence at the same time
- prosecutions and disciplinary action must proceed through the appropriate director.

Although the Liquor Enforcement Policy (May 2013) now provides greater clarity about early intervention (now called 'intervention') I remain of the view that it is still unclear where the decision-making responsibility for intervention action lies. Different regions reported different levels of decision-making (from regional manager to director or the General Manager).

I note that, at the time of this investigation, OLGR officers felt that the level of approval for prosecutions and disciplinary actions were appropriate. The level of approval remains the same in the Liquor Enforcement Policy (May 2013).

Cautions and warnings are administrative actions. Written cautions or 'advisory letters' can be given where a breach is not established but 'there is sufficient information to suggest that an offence occurred' while written warnings can be given where a breach is established advising that punitive action is 'most likely to follow' if the breach is repeated. In respect of who may issue warnings and advisory letters, practices vary among the regions. Compliance officers in one region reported not being able to issue warnings and advisory letters without approval from their regional manager. Other regions indicated that they had the authority to decide to issue a warning or advisory letter, but that the practice was to have correspondence approved by the regional manager in any event. This practice was reported by OLGR officers to cause unnecessary delay.

The requirements for issuing a warning or advisory letter have been substantially retained in the Liquor Enforcement Policy (May 2013), with no further clarification about the level of approval required for issuing a warning or advisory letter.

The most significant issue raised by OLGR officers was that, despite being authorised to issue an infringement notice under the Liquor Act and the SPER Act, the Liquor Enforcement Policy prevented them from doing so. A significant number of OLGR officers thought that the issuing of infringement notices to licensees required an unreasonably high level of approval, and was both frustrating and 'demeaning'.

OLGR officers (including regional managers) noted that in practice all regional managers may, despite the policy, issue the first infringement notice for an offence, but the second infringement notice for the same offence at a different time had to be approved by management in Brisbane – usually the Manager Compliance (although the Liquor Enforcement Policy requires a director's approval). Similarly, multiple infringement notices for different offences at the same time, needed approval from head office.

There is an obvious tension within the OLGR about the application of the Liquor Enforcement Policy. There is a marked and noticeable difference of view about the correct balance between achieving sound, robust, well documented compliance decisions and individual discretion that ordinarily goes with appointment to positions such as that of an investigator under the Liquor Act.

It is also clear that OLGR officers are investigators under the Liquor Act with specific provisions giving them the power to take some actions without approval, but for the Liquor Enforcement Policy. While it is acknowledged that SMG has the discretion to put in place policies to support the application of legislation, such policies should outline how and when these powers should be applied, but they should not fetter the power altogether.

The Liquor Enforcement Policy (May 2013) now allows a regional manager to approve the issue of the first infringement notice. The Manager Compliance and the Brisbane regional managers – the Manager Investigations and the Manager Inspections (called the 'unit managers' in the policy) – may also approve the first infringement

²⁷ Section 187 of the Liquor Act gives an investigator powers to issue an order to stop noise or to close a premises immediately if: there is unreasonable noise; there is contravention of an order made by the Commissioner under section 46 of the Liquor Act; there is an activity in or near the licensed premises that causes a danger to persons or property that is likely to be aggravated by the continued supply of liquor in the locality.

²⁸ In one region, compliance officers told investigators that they needed approval from their regional manager even to issue a caution or warning.

notice. Multiple infringement notices cannot be approved by regional managers and require an 'investigation report' to be approved by the relevant unit manager. This is a shift from the previous requirement of a director's approval.

In short, the approval levels for issuing infringement notices have lowered slightly to reflect what was effectively occurring in practice and what the executive managers were saying was meant to be reflected in the previous Liquor Enforcement Policy.

Having regard to these changes, it is my view that the previous and current Liquor Enforcement Policy (May 2013) swing the balance too far away from individual discretion to issue warnings, cautions and infringement notices. In particular, the approval levels and processes mandated by the OLGR in the Liquor Enforcement Policy and now in the Liquor Enforcement Policy (May 2013) in relation to infringement notices:

- act as a fetter on the powers conferred on OLGR officers appointed as investigators under the legislation in that, for example, the Liquor Act and the SPER Act clearly state that authorised investigators can issue infringement notices
- operate as a disincentive to timely initiation and escalation of enforcement action by OLGR officers.

Finding the correct balance is a task that is best left to the OLGR through a review of the Liquor Enforcement Policy (May 2013). Such a review is justified as the policy, in its current form, is not significantly different to that in force during the investigation, which I considered was not properly facilitating the performance of the OLGR's regulatory functions.

Burdensome approval processes

Concerns were also raised by OLGR officers about the amount of information required to be provided to senior managers to obtain approval to take enforcement action, particularly to issue infringement notices. At the time of this investigation, section 4.8 of the Liquor Enforcement Policy required that, with the exception of infringement notices to minors and patrons, an 'investigation report' was to be prepared before an infringement notice could be issued. The report must include all relevant evidence attached for the approving officer's consideration.

Investigators were consistently told by compliance officers that the approval processes were difficult and lengthy, with an inordinate amount of information required. Investigators were told that:

- the information required essentially amounted to a full 'brief of evidence'
- the report would frequently be sent back and forth with requests for further justification
- the approval processes created delays, which were sometimes quite lengthy and unduly delayed the resolution of investigations.

Investigators were also told that reasons for the refusal of escalation action were rarely provided to officers. Compliance officers from several regions reported no longer requesting escalation action because of a perceived lack of support from senior managers.

The SMG told investigators that what was required was a 'short [memorandum] or email' from compliance officers. They agreed that delays were a concern, but attributed most delays to compliance officers' failures to provide the necessary information for approval in the first place. It was acknowledged by one director that the report requirement has led to compliance officers declining to provide further information when a request for approval was queried, and no longer seeking approval to escalate the matter.

The SMG believed that the Liquor Enforcement Policy was clear and supported escalation within the current approval processes but only sought to ensure that decisions were documented appropriately.

In addition, most QPS officers expressed concern about what they understood of the OLGR's escalation and approval processes and the effect these were having on the OLGR's authority within the industry. DACU and LEAPS officers indicated that most enforcement action was taken by the QPS, leading them to believe that OLGR officers were hindered in taking enforcement action.

It is clear that at the time of the investigation there were different perceptions about the amount of information required in an investigation report. The perceptions held by OLGR officers were likely affecting the initiation and escalation of enforcement action through the agency. This can clearly hinder the effective performance of the OLGR's regulatory functions where OLGR officers are not seeking to escalate matters where escalation is warranted.

The OLGR has provided sample investigation reports evidencing the type of information compliance officers have been providing for enforcement action approval. These samples demonstrated that officers' understanding or individual office requirements varied significantly in relation to the amount of information provided to obtain approval as well as the level at which approval was sought.

Section 3.2 of the current Liquor Enforcement Policy (May 2013) now provides 'basic rules' for documenting recommendations. These rules suggest that a report in email form at a minimum would normally be acceptable for recommendation and associated justification for infringement notices and low-end enforcement. For higher than an infringement notice, a memorandum is appropriate. The level of detail required in the email or memorandum is not outlined in the policy.

In the proposed report provided to DJAG for comment, I proposed to form an opinion and make a recommendation in relation to the Liquor Enforcement Policy.

DJAG response:

The Director-General advised that:

- all non-template warning and advisory letters should be reviewed by regional managers before being sent to a licensee
- compliance officers were not authorised (under both the previous and current Liquor Enforcement Policy) to issue any infringement notices but regional managers were always able to approve the issuing of infringement notices, including second infringement notices for the same offence, and that there may be confusion by this Office with the wording of job titles in the Liquor Enforcement Policy
- while authorised officers may issue infringement notices under the Liquor Act, it is reasonable for these powers to be 'subject to reasonable approval requirements as set out in the Liquor Enforcement Policy' as occurs with other delegations and powers conferred upon public officers where it is not expected that these be used without any form of management consultation or approval; for example, powers are conferred on all public officers under the *Justices Act 1886* to initiate prosecution, but it is expected that they only do so within established procedures and policies
- as a result of a recent review, approval levels were reduced and clarification provided regarding documenting and reporting on discretion used and recommendations made for taking certain actions
- 'the authority to approve the issue of infringement notices to licensees and premises staff remains at regional manager level and senior management are comfortable with this and it is consistent with meeting expectations of [g]overnment'
- quality assurance processes were relied on to identify where officers are failing to recommend enforcement action where it is warranted
- the OLGR's Business Intelligence Project provides new capability to create reports which will assist in identifying where appropriate action is not being taken and the creation of such reports is on the forward program of work for the Planning Unit.

In relation to the previous Liquor Enforcement Policy, in force during the investigation, I note that section 4.8 stated that infringement notices are to be given with 'approval of the Manager for the Brisbane region or the Manager Compliance'. The Manager for Brisbane is the regional manager for the Brisbane region (as defined in the dictionary of this report). However, regional managers in the Northern, North Coast, Southern and Central regions (every region except Brisbane) report to the Manager Compliance, as reflected in the OLGR's organisational chart in Chapter 2. Therefore, all these regional managers would not have the authority to approve the issuing of an infringement notice. Section 4.8.2 stated 'approval of the Director Investigations or Director Regional Services obtained before more than one infringement notice is issued'. Therefore, the approval of multiple infringement notices by a 'director' was not misconstrued by investigators.

I note that the Liquor Enforcement Policy (May 2013) now states the regional manager may give approval for the issue of one infringement notice at a time; however, if there are multiple infringement notice offences found in the once instance, only the 'unit manager' – that is, the Manager Compliance, Manager Investigations, or Manager Inspections in Brisbane – can provide approval. That means regional managers in any office outside of Brisbane would need to seek higher approval. I also note that a director must approve the issuing of an infringement notice for minor or low risk matters such as signage, as such action is not generally supported.

Compliance officers who are investigators under the Liquor Act and remain unable to issue any infringement notices without some level of approval.

I acknowledge the right to set some parameters on the use of powers under legislation but consider the policy does not set parameters but significantly, if not completely, fetters the exercise of investigators' powers in relation to offences under the Act committed by licensees or premises staff.

Further, I acknowledge that the OLGR has taken some steps to consider this issue and reduce 'some approval levels'. However, consideration should be given to further reviewing some enforcement actions to allow them to be taken by compliance officers who are investigators under the Liquor Act, as the Liquor Act intends.

Reducing approval levels in this way would also align with other investigators under the Liquor Act, that is, QPS officers, who can take enforcement action on-the-spot to issue warnings and infringement notices.

Opinion 3

The OLGR's Liquor Enforcement Policy (May 2013):

- (a) acts as a fetter on the powers conferred on OLGR officers appointed as investigators under the *Liquor Act 1992* to issue infringement notices on licensees and premises staff, other than for offences relating to minors
- (b) operates as a disincentive to timely initiation and escalation of enforcement action by OLGR officers.

The Liquor Enforcement Policy (May 2013) therefore does not properly facilitate the effective performance of the OLGR's regulatory functions and constitutes unreasonable administrative action under s.49(2)(b) of the *Ombudsman Act 2001*.

Recommendation 3

The Director-General review the Liquor Enforcement Policy (May 2013):

- (a) having regard to the powers conferred on officers appointed as investigators under the *Liquor Act 1992* and, as necessary, amend the policy to reflect the powers and responsibilities and reasonable exercise of discretion by investigators
- (b) to remove or reduce impediments to the timely initiation and escalation of enforcement action through the agency.

Non-enforcement of noise licence conditions compromises future enforcement action

A large proportion of OLGR investigations relate to noise complaints. Noise is either regulated through the 'unreasonable noise' provision in the *Liquor Act* (s.187 and regulation 40) or, if there are specific noise conditions on a licence, through s.226 (breach of licence conditions).

Investigators were told that the OLGR is no longer enforcing noise conditions on a licence unless there is a complaint received. An email from a director to OLGR officers dated 25 January 2013 instructed OLGR officers that, during a proactive compliance visit at a premises, officers may undertake proactive tests for noise using light noise meters but if the noise levels exceed the allowable limits set by the licence, they are not to take any high-end enforcement action or conduct follow-up visits.

The SMG told investigators that this approach developed as a result of complaints from industry about compliance action being taken on noise conditions where no complaint had been received. Instead of taking high-end enforcement action, compliance officers have been instructed to raise the issue with the licensee and record the issue in case of future complaints.

In my view, this prohibits high-end enforcement being taken where further contraventions may be detected and escalated enforcement may be warranted.

I am concerned that the OLGR has placed a blanket impediment on officers which:

- prevents follow-up in *all* cases, removing discretion to conduct inspections where follow-up is warranted
- prevents officers from taking high-end enforcement action, if warranted, where there is no complaint, despite there being a potential breach of a licence condition in accordance with s.226 of the Liquor Act.

There may well be some situations where non-enforcement of noise conditions placed on licensees is appropriate. However, it is an unreasonable approach to take in every situation.

The difficulty with the approach adopted is that even if complaints are received in the future the licensee may be able to successfully argue that the OLGR has acquiesced to noise being above the limits set out in the licence conditions. Likewise, licensees may argue that they had a reasonable expectation that the noise above the licence condition limits would be allowed to continue, as the OLGR knew that this was occurring and took no escalated enforcement action to stop it.

It is also contrary to the OLGR's escalation model of enforcement under the Liquor Enforcement Policy, as there is no opportunity to escalate enforcement where compliance issues are found during a proactive compliance inspection. This generally undermines the proactive compliance program which aims to 'address risks to the community associated with ... unreasonable noise ...'²⁹ and to be 'consistent and [use] justifiable compliance action, guided by [the] [L]iquor [E]nforcement [P]olicy'.³⁰

OLGR officers also noted that it is usually easier to deal with an issue proactively, to avoid complaints arising. The policy stance was described by a number of regional managers as 'silly', 'a tad hypocritical', 'inconsistent' and as 'breaking the law'. One region indicated that they had several files in which they had substantiated noise breaches but were not allowed to take any action because there had been no complaint.

In my view, a blanket practice of non-enforcement of noise licence conditions sends the message to licensees that they do not have to comply with noise or other conditions, undermining the ability of the OLGR to successfully regulate noise issues in the future if a complaint is received.

In the proposed report provided to DJAG for comment, I proposed to form an opinion and make a recommendation in relation to enforcement of noise conditions placed on licensees.

DJAG response:

The Director-General advised that:

- the OLGR's approach was 'entirely reasonable given that the purpose of noise conditions are to minimise impact on the local amenity that may be caused by noise emanating from licensed premises'
- the noise provisions are currently under review by the Government and the current approach is not inconsistent with the general approach to noise regulation that has been taken for many years
- he did not agree that the OLGR would not take enforcement action unless a complaint was received but that the position is to engage with the licensee or venue and discuss potential solutions including 'the option for the licensee to seek a variation of their licence conditions where it could be supported by an acoustic engineers report' and could formally remind licensees of their obligation
- officers can check whether noise levels exceed the licence conditions to establish a breach
- compliance officers are aware of the context of the position – that if the entertainment noise does not adversely affect the amenity of local residents and business 'they should not aim to reinspect the premises to monitor non-compliance or take enforcement action'.

I disagree with the Director-General's view that the current approach is reasonable, for the reasons outlined in this report. I acknowledge that there is currently a review being undertaken. However, until statutory changes are made to the regulatory scheme relating to noise from licensed premises, the Director-General should take legal advice on the practice and review the position in accordance with the advice obtained.

²⁹ Section 1.3 of the Compliance Plan.

³⁰ Section 1.6.3 of the Compliance Plan.

Opinion 4

The OLGR's blanket practice of non-enforcement of noise licence conditions in the absence of a complaint undermines its legitimacy as a regulator and may make it more difficult for the OLGR to successfully regulate noise issues in the future if a complaint is received. Such an approach is unreasonable administrative action under s.49(2)(b) of the *Ombudsman Act 2001*.

Recommendation 4

The Director-General seek legal advice and review the OLGR's blanket practice of non-enforcement of noise licence conditions in the absence of a complaint.

Intervention

Prior to May 2013, 'early intervention' action was not provided for in the Liquor Enforcement Policy, except to be listed as one of a number of enforcement actions that could be taken. Until May 2013, the OLGR had a separate undated draft procedure titled 'Procedure – to assist in carrying out an Early Intervention meeting' (draft EI procedure) which set out the approach to be taken to early intervention actions. It was not clear to investigators whether the draft EI procedure was fully used by the regions.

The draft EI procedure did not provide guidance as to what circumstances may lead to the use of early intervention as an enforcement tool, or who approved its use. Investigators identified a lack of clear understanding or consistency between regional offices regarding the number of incidents, the type of incidents or the period of time in which incidents occur (e.g. more than two in a three-month period) which would trigger consideration of whether an early intervention was required.

I considered that there would be a clear advantage to including information about early intervention actions in the Liquor Enforcement Policy.

The Liquor Enforcement Policy (May 2013) placed early intervention (now called 'intervention') into the enforcement pyramid above infringement notices (see Chapter 7 for a description of the pyramid); that is, it is a tool to be used after low-end enforcement action has been taken and, where relevant, infringement notice/s have already been issued, or earlier where matters appear to be escalating rapidly.

This is a positive step towards ensuring that there is a proper framework around intervention meetings.

In the proposed report provided to DJAG for comment, I proposed to form an opinion and make a recommendation in relation to early intervention.

DJAG response:

The Director-General advised that:

- the revised Liquor Enforcement Policy (May 2013) now contains details in relation to how this tool is to be applied
- an updated, more detailed procedure for inclusion in the Liquor Compliance Manual is now in draft form and will be completed by December 2013
- capability is now available through the OLGR's Business Intelligence Project to enhance targeting of early intervention activities and monitor associated outcomes.

I acknowledge the OLGR's incorporation of guidance on the use of intervention in the Liquor Enforcement Policy (May 2013). As such, I have decided not to form an opinion or make a recommendation.

Failure to monitor remedial actions taken by licensees

Investigators were told that the OLGR had no formal process for monitoring remedial actions taken by licensees in relation to offences or potential offences identified by the OLGR. Instead, officers in some regions reported that they generally monitor licensee actions during future routine compliance visits, if and when these occur.

With approximately 97% of enforcement being low-end educative advice allowing licensees to rectify breaches without penalty (see Table 1 on page 44), the lack of a formal system of follow-up is a significant concern.

Some regional managers reported that they sometimes had to trust that the licensee is doing what they said they would do. One regional manager noted that if there was a further complaint then the licensee's actions would be reviewed.

It is not unreasonable to rely on the verbal or written statements given by a licensee declaring that remedial action has been taken as, under the Liquor Act, it is an offence to provide false or misleading statements or false, misleading or incomplete documents.³¹

However, in my view, an ad hoc approach to monitoring the remedial action taken by licensees is not consistent with the OLGR's primary objective of harm minimisation.

While I acknowledge that it may not be possible to monitor all remedial actions taken by licensees, it is critical that the OLGR puts in place a risk-based system for identifying remedial actions taken by licensees which should be actively monitored. For instance, factors such as whether the remedial action relates to health and safety or where the premises has been non-compliant in the past, should influence whether close monitoring and follow-up is required to ensure compliance.

The lack of a risk-based system exposes the OLGR to criticism that it is ineffectively regulating licensees, particularly when subsequent compliance visits or investigations of a premises may not happen for a significant period of time. The timely implementation of remedial actions by licensees will assist to prevent future harm arising at premises.

In the proposed report provided to DJAG for comment, I proposed to form an opinion and make a recommendation in relation to monitoring remedial actions.

DJAG response:

The Director-General advised that:

- there was a lack of a formal program of follow-up
- it would be beneficial to have such a system in place
- the OLGR would explore ways to formally schedule follow-up visits or review later in the 2013-14 financial year, coinciding with the completion of the review of COGS.

I acknowledge the Director-General's indication that the OLGR will seek to set up a formal system of follow-up or review.

Opinion 5

The ad hoc approach to monitoring the remedial action taken by a licensee in response to OLGR compliance actions is inconsistent with the OLGR's primary objectives under the *Liquor Act 1992*, in that the risk-based approach to monitoring remedial action taken by licensees will assist to prevent future harm arising at premises.

Recommendation 5

The Director-General implement a formal risk-based system of monitoring licensee responses to OLGR compliance actions.

Limited ability to monitor patterns in enforcement action

The OLGR does not have adequate processes to monitor whether enforcement action is being taken consistently between regions.

The OLGR appears to use different processes, policies and procedures (discussed in Chapter 5) in different regions.

³¹ Sections 231 and 231A, Liquor Act.

The investigation therefore considered the enforcement statistics for each OLGR region for the past three financial years and the first half of the 2012-13 financial year as an indicator of whether there were identifiable patterns relating to consistency of enforcement action across different regions. The analysis excluded the issuing of infringement notices to minors/patrons, focusing on regulation of licensees only.

A high level analysis of the OLGR’s regional enforcement data over a three and a half year period identified the most commonly used (or ‘top three’) enforcement actions taken among all the regions were warning, consultation conducted and caution/advisory.

Table 1:

- illustrates that the top three actions make up between 96.2% and 99.1% of total actions in each region
- shows the average proportion in which each region uses each of the top three enforcement actions
- is divided into the number of matters which have been ‘substantiated’ and ‘not substantiated’. This reflects how actions are categorised in the Liquor Enforcement Policy, whereby warning letters are given to licensees where a breach has been detected and evidence gathered to substantiate the breach. Caution or ‘advisory’ letters are given to licensees where a breach was likely to have occurred but evidence was not found to substantiate the breach. Consultation conducted is not an action listed in the Liquor Enforcement Policy or the new Liquor Enforcement Policy (May 2013); however, the OLGR’s business rules for categorising complaints on the COGS system, which was distributed in December 2012, described consultation conducted as being used in similar situations as caution/advisory letters (i.e. where unsubstantiated) but to be given verbally and only for minor and isolated matters.

Table 1: Top three enforcement actions per region between 1 July 2009 and 31 December 2012

	Brisbane region	Southern region	North Coast region	Central region	Northern region
Warning	52.1%	37.1%	43.2%	52.1%	31.4%
Total substantiated	52.1%	37.1%	43.2%	52.1%	31.4%
Consultation conducted	29.1%	47.2%	47.4%	29.1%	58.7%
Caution/advisory	15.2%	11.9%	8.5%	16.3%	8.5%
Total not substantiated	44.3%	59.1%	55.9%	45.4%	67.2%
Total all actions	96.4%	96.2%	99.1%	97.5%	98.6%

Note: the totals for each region do not add up to 100% because between 0.9% and 3.6% of enforcement action taken in each region during the three and a half year period was high-end enforcement action (infringement notices to licensees, orders, disciplinary action or prosecutions) and early intervention. The regional differences in high-end enforcement actions or early intervention are not discussed further because of the small number of actions taken overall, making it difficult to conduct any analysis of trends and regional differences.

This brief analysis appears to identify a pattern showing that different regions favour different approaches. In particular, Southern, North Coast and Northern regions appear to issue significantly fewer warnings than the Brisbane and Central regions, and conduct more ‘consultation’ (which does not require investigation or substantiation of the complaints). Conversely, the Brisbane and Central regions appear to substantiate more matters and therefore issue more warnings.

Further, the file review identified that where ‘consultation conducted’ was the outcome of an investigation there was rarely an attempt to substantiate the complaint. Likewise, cautions were given where a complaint had not been substantiated. This raises a concern that over half of all ‘enforcement action’ taken in some regions is taken in response to allegations that have not been substantiated, and in many cases, not investigated.

In identifying patterns, such as failures to substantiate a high number of complaints, the OLGR may then seek to identify and focus on the reasons for the pattern. For instance, this pattern could be indicative of a breakdown in investigative process and/or fundamental issues with applying the legislation. Substantiating complaints is a significant issue because, if attempts are not made to substantiate initial complaints, it will be difficult for stronger action to be taken on later complaints, reducing the likelihood of escalating enforcement action. Impediments associated with investigation practices have already been discussed earlier in this chapter. Whether such action in relation to unsubstantiated allegations could properly be considered ‘enforcement action’ at all is another question.

Identifying patterns to ensure consistency is a key component of a successful regulatory regime. While it appears that the OLGR regions are relatively consistent in terms of the extent of low-end enforcement action overall (as shown by the similar 'total all actions' across regions in Table 1), better communication between regions and greater monitoring of patterns and reporting will allow the OLGR to more closely monitor its consistency in the approaches across different regions. This may be particularly necessary if the OLGR begins to take more enforcement action against licensees.

With the introduction of the Planning Unit in November 2011, the OLGR now has greater potential to gather and consider information like the above enforcement data across regions. The unit is responsible for developing reports to management, analysing liquor activities, coordinating self-assessment information, and receiving and sorting QPrime data. However, investigators were informed that this capability has not yet been fully developed.

Investigators were advised that the Business Intelligence Project that is currently underway will analyse data to assist in identifying areas of concern so that the OLGR can better prioritise and target its resources. The OLGR will have the capability to identify potential 'hot spots' around the state, develop strategies to target and respond to particular issues, and measure the effectiveness of those strategies. The Business Intelligence Project will also allow the OLGR to monitor, assess and report on the outcomes of programs and initiatives.³²

It is essential that such planning is integrated into the performance of the OLGR's other compliance functions.

In the proposed report provided to DJAG for comment, I proposed to form an opinion and make a recommendation in relation to monitoring patterns in enforcement action.

DJAG response:

The Director-General advised:

- he was dissatisfied with the analysis in this part of the chapter, indicating that several variables between regions were not factored in, including the proportion of different types of complaints received, proportion of premises that sit in the various risk categories and proportion of reactive to proactive activities
- the OLGR is committed to using available data and has created the Planning Unit and the Business Intelligence Project
- the Business Intelligence Project is evidence of the OLGR's awareness of industry trends, enforcement action and the need to conduct more comprehensive analysis
- in 2011-12, 'Business Rules for Liquor Related Compliance Activities and COGS Data Entry' document was developed and released to all staff (in December 2012) in recognition of identified inconsistencies in the recording of outputs and outcomes.

While I acknowledge there could be supportable reasons for the noted regional differences, there is no evidence that the OLGR was aware of these patterns or was undertaking its own analysis before being raised in this investigation. The response provided by the Director-General is the sort of analysis I envisage should be undertaken on a regular basis, and ideally reported on as part of the OLGR's reporting on achieving harm minimisation goals (discussed in Chapter 8).

I acknowledge that the OLGR has taken some steps towards monitoring trends and trying to gain consistency in administrative processes across regions. My analysis is high level and only seeks to demonstrate the types of inconsistencies that appear to be arising between regions. Whether there are variables which explain these differences is for the OLGR to identify, monitor and evaluate.

Opinion 6

The OLGR's failure to monitor patterns in enforcement action does not facilitate the effective performance of the OLGR's regulatory functions.

³² Email from the Acting General Manager, to the Office of the Queensland Ombudsman, 12 April 2013.

Recommendation 6

The Director-General:

- (a) analyse the OLGR's enforcement data to identify and address any patterns that suggest regional differences in approaches to taking enforcement action
- (b) develop a process to monitor patterns in enforcement action across regions.

Summary of impediments to effective enforcement

The investigation identified a number of impediments to the effective performance of the OLGR's enforcement role. In particular, there is a lack of coordination across the whole of the OLGR's enforcement activities which means that certain processes are impeding other enforcement action.

In particular, the fettering of the ability of investigators under the Liquor Act to issue infringement notices in relation to licensees is an area of concern as well as the ability of OLGR officers to make lower level enforcement decisions and take on-the-spot enforcement against licencees. Although the amendments to the Liquor Enforcement Policy (May 2013) attempted to remove some limitations on the performance of enforcement functions, further steps should be taken to improve the overall performance of the OLGR, as well as address any residual issues relating to the fettering of compliance officers' powers as investigators under the Liquor Act.

The SMG expressed a strong preference for retaining the approach to enforcement under the Liquor Enforcement Policy. I do not consider this level of control to be a balanced approach. It is the OLGR's responsibility to recruit and train its officers to a level that they can adequately perform their duties as set out in the Liquor Act.

Any concerns held by the OLGR in removing or alleviating the restrictions currently in place over on-the-spot enforcement action, decision-making levels and approval processes could be addressed through further training, and through improved policies and procedures. Training is discussed further in Chapter 5.

Chapter 5: Internal processes

The investigation identified a number of internal processes within the OLGR that may be impacting on the efficient performance of the OLGR's regulatory functions, including:

- policies and procedures
- training
- access to information and information technology
- conflicts of interest.

These problematic internal processes suggested that there may be ineffective internal coordination within the OLGR.

Each of these issues is discussed in turn below.

Duplicated or contradictory policies and procedures

While all OLGR officers used the same Liquor Enforcement Policy,³³ the investigation established that OLGR regions have been using different operational procedures to carry out the same proactive and reactive compliance work.

The OLGR has two main procedure documents, the Compliance Manual and the Investigations Manual, also called the 'Business Processes Administrative Policies and Procedures'.

The Compliance Manual sets out the procedures for receipt and handling of complaints, investigation of complaints according to allegation type (e.g. noise, responsible service of alcohol), information about investigation outcomes (e.g. orders, disciplinary action, infringement notices) and operational instructions (e.g. general powers of investigators, use of warrants, exhibit handling). It also includes administrative and risk management information.

The Investigations Manual was prepared by the Brisbane Investigations Team (part of the Investigations Branch) based on an adaptation of gaming regulation procedures. This document covers some topics that are covered in the Compliance Manual, and makes no reference to the Compliance Manual.

All regions except the Brisbane Investigations Team told investigators that they use the Compliance Manual to conduct both reactive and proactive work, although the extent to which the Compliance Manual was used day-to-day varied considerably. Investigators were told by OLGR officers that the Compliance Manual:

- was too large and cumbersome for daily use
- conflicted with 'guidelines' given by senior managers
- had not been updated to include relevant legislative changes
- had been under review for several years
- had various drafts in use, some of which had not yet been approved.

In particular, it was clear that there was no single authoritative version of the Compliance Manual available to OLGR officers.

The Brisbane Investigations Team has been using the Investigations Manual since 2011 and its officers do not use the Compliance Manual at all.

Investigators were told that while the Investigations Manual 'was not a recognised document state-wide', it was endorsed by the Investigations Team and they were trying to roll it out to all offices while the Compliance Manual was being reviewed. Investigators were also told that the Investigations Manual was kept up to date in lieu of the Compliance Manual being updated.

Compliance officers in regions other than Brisbane consistently reported not having seen or been aware of the Investigations Manual. Investigators were told that investigation training, which included the introduction of the Investigations Manual to OLGR officers outside of Brisbane, was originally scheduled for early 2012 but was delayed due to the change of government and travel restrictions that had been applied to DJAG.

The OLGR provided a copy of an internal newsletter from March 2012 advising OLGR officers of the Investigations

³³ Currently the Liquor Enforcement Policy (May 2013), amended and finalised during the investigation.

Manual.³⁴ Similarly, a reminder email dated 11 March 2013 stated:

To avoid confusion however, can I ask that you explain to compliance officers that the intention is for the one manual to eventually exist for statewide matters.

Investigators were told that while the review of aspects of the Compliance Manual is ongoing, there is no set timeline for when a comprehensive review of the whole Compliance Manual is to be completed. The OLGR advised that the intention was to align the Compliance Manual and the shorter Investigations Manual so that they were consistent and compliance officers could refer to both documents.

Investigations training, including on the use of the Investigations Manual, was rolled out to the regions in March and April 2013 and investigators were told that the regions have now begun using the Investigations Manual.

The OLGR has a number of offices and the industry and the public are entitled to expect that practices between the different offices are consistent. It is clear that this was not the case for the OLGR and different regions were applying different policies and procedures. There is a significant risk that having different guiding documents could lead to inconsistent investigation practices, inconsistent decision-making and incorrect application of legislative provisions.

In the proposed report provided to DJAG for comment, I proposed to make a recommendation to improve consistency with policies and procedures.

DJAG response:

The Director-General advised that:

- a review and update of the Compliance Manual was completed in 2010 and, while put to use, it was not approved as a final version because further work was to be undertaken to cut down the length
- competing priorities prevented the review of the Compliance Manual from occurring for some time
- the Investigations Manual was originally an operational manual used by the Investigations Branch when gaming was separate from liquor but after the amalgamation with liquor in October 2011, liquor investigation procedures were added and were meant to be used in conjunction with the Compliance Manual
- in early 2012, it was recognised that all staff should use the same operational manual, and staff were provided with a link to the Investigations Manual; work was undertaken to remove the 'relatively small' number of Brisbane-specific operational matters out of the Investigations Manual into the Compliance Manual
- the Investigations Manual is not intended to replace the Compliance Manual; both are for different purposes
- a copy of the project plan for revision of the Compliance Manual was provided to investigators in response to an information request and that this project is significantly progressed; however, due to competing priorities the timelines documented in the project plan are being revised.

I note the Director-General's observations about the intention of the Investigation Manual and the Compliance Manual and how they both came about. Regardless of the intention, the investigation showed that officers were using one or the other, not both. This included OLGR officers in Brisbane, who were aware of both manuals since 2010.

While I acknowledge that competing priorities may lead to shifts in work programs, it is essential that all OLGR officers work from the same finalised manuals. For the reasons stated above, it is not appropriate to work from a version of the Compliance Manual that has been in draft form since 2010, while under review for three years.

I note that while the OLGR has provided a project plan, it only discussed an 'initial review' and that timeframes would be given to staff for updating the Compliance Manual by 31 July 2013. The actual timelines for completion of the project were not provided. Interviews with the executive managers also indicated that there were some timeframes set but no set timeframes for the final completion. Investigators were advised that the process was ongoing and that different aspects would be released as completed.

³⁴ Office of Liquor and Gaming Regulation, 'Regional Services Branch Newsletter', March 2012.

Recommendation 7

The Director-General ensure that the operational guidance to OLGR officers currently provided by the Compliance Manual and the Investigations Manual is expeditiously consolidated into one document.

Guidelines and instructions

Investigators were told by compliance officers that various guidelines and instructions are regularly emailed to them by senior managers. However, it was clear during the investigation that these guidelines or instructions are not collated into one place and that existing policies and procedures are not always updated to reflect these changes.

Investigators were told that these emailed guidelines and instructions were too numerous to remember, could be lost or go unnoticed, were inconsistent with policy/procedure, or were not easily available to officers while in the field/travelling. OLGR officers expressed concern that the directors of the two branches did not disseminate the same advice, and some OLGR officers were unsure whether the advice was sanctioned by the General Manager or Executive Director.

Where guidelines or instructions supplement a policy or procedure, the OLGR should establish a clear link between the policies and procedures and relevant 'guidelines', and update a single, authoritative version of the documents that can be accessed by officers.

It is also important to ensure that these guidelines are accessible in one place by all OLGR officers. At the time of investigation, there was no central storage of guidelines, instructions and amendments to policies and procedures, and still no authoritative manual with all changes included. The approach of disseminating such important information mainly by email, without collation into the one area (such as an intranet site), creates a significant risk that:

- officers will apply old, out-dated or inconsistent policies and instructions to a particular situation
- officers will forget about or miss a critical update
- officers will not have access to information when they need it, depending on whether the information is retained and searchable in their email account
- new officers will not have access to previous emails containing policy changes, guidelines or instructions.

In the proposed report provided to DJAG for comment, I proposed to form an opinion and make a recommendation to improve access to guidance documents.

DJAG response:

The Director-General agreed that updates to manuals should be placed in a central location. The OLGR has since created a 'Compliance space' on the OLGR intranet, which is a central repository of important announcements which are initially emailed to staff. The Compliance space will also have links to Compliance Division policies and procedures, which are saved in eDocs.

I acknowledge the OLGR's actions to address this issue.

Opinion 7

The OLGR's previous failure to consolidate policies, procedures, guidelines and instructions in a central location that is easily accessible to officers created a significant risk that OLGR officers would apply out-of-date, superseded or inconsistent approaches.

Recommendation 8

The Director-General:

- (a) review the communication processes for distributing updates to policies, procedures, guidelines and instructions
- (b) continue to make consolidated policies, procedures, guidelines and instructions easily accessible to all OLGR officers.

Inadequate access to information

The investigation identified two concerns with the current OLGR systems for accessing information necessary for compliance officers to perform their regulatory functions.

A particular issue was identified with the way in which the compliance history of a premises can be accessed by officers. This process involves manually opening each previous investigation and site file to view or print running sheets of file notes for a particular premises in order to identify details of the compliance history of that premises.

There is also no easy way to identify other premises where enforcement action has recently been taken for similar breaches, in order to ensure consistency in the approach to compliance (i.e. similar fact history). To do so, officers must search COGS for cases with the same breaches and open each case to read file notes and ascertain the facts.

Investigators were told that many officers relied on their memory for any matters other than disciplinary actions and prosecutions, which have a precedent system (registers). However, investigators were told the location of such registers was not known by most officers.

The need for easily accessible compliance history extends to access in the field. I also note that not all visits to premises are planned and in such situations compliance officers would not have access to the necessary information and would have to rely on their own knowledge of the premises.

Investigators were told by OLGR officers that there are enhanced capabilities for searching COGS for gaming cases and that it would be beneficial for those capabilities to extend to liquor.

In the proposed report provided to DJAG for comment, I proposed to make a recommendation to address issues of inadequate access to information.

DJAG response:

The Director-General advised that:

- while the manual capability for searching a venue's compliance history is 'certainly sufficient', it is noted that the Business Intelligence Project will enable the OLGR to provide enhanced compliance history reporting and site profiling
- there is a manual capability of searching cases by breach
- the disciplinary actions and prosecutions registers are now included on the OLGR intranet Compliance space and staff have been advised of this
- the OLGR is working towards getting staff electronic access to compliance history data in the field 'as early as this year'.

I acknowledge the steps taken to introduce electronic access in the field and to make the disciplinary actions and prosecutions registers more easily accessible to staff.

While I do not share the Director-General's view about the ease of accessibility of compliance history information, I acknowledge that enhanced capability is currently being developed through the Business Intelligence Project. As such, I have decided not to make a recommendation.

Inadequate information technology systems

The investigation also identified that the OLGR's current information technology system does not facilitate the

effective performance of its regulatory functions.

COGS was criticised for its lack of search capability and its limited integration with other OLGR systems. The document management system eDocs was also criticised for its ineffective performance and inadequate linkages with COGS, particularly in the regions, which resulted in delays, missing documents and duplication of work. These issues were described by OLGR officers as significantly affecting the performance of their compliance work.

Other issues with information technology, particularly in the regions, included that:

- access was slow and frequently dropped out causing delays in getting work completed
- systems are out-dated and unsupported (e.g. Microsoft Office 2003 and Windows XP)
- email addresses varied between different officers as a result of the OLGR being transferred between multiple government departments.

Investigators were told by SMG that information technology within the OLGR has been a problem for a number of years and the issue had been escalated to the Director-General.

Many OLGR information technology platforms are still part of the Queensland Treasury system, although the OLGR was moved from Queensland Treasury to DEEDI in 2009 and is now part of DJAG. Information technology support is still required from past departments and investigators were told that this is sometimes difficult to access. Since 2011, senior OLGR officers have met monthly with Treasury IT managers to address information technology issues.

Senior managers advised that the OLGR is working on moving from the Treasury system to the DJAG network, but that this had not gone as smoothly as anticipated and the current focus was on ensuring the system could accommodate other priorities.

It is important that the OLGR systems facilitate the effective performance of its regulatory functions. While I am cognisant of the financial and practical difficulties faced by the OLGR in facilitating a move from Treasury's servers to DJAG systems and in updating software, I see this as critically important to ensuring that the OLGR can carry out its regulatory responsibilities effectively.

In the proposed report provided to DJAG for comment, I proposed to make a recommendation to address information technology issues.

DJAG response:

The Director-General did not specifically comment on the proposed report's recommendation but indicated agreement that the information technology system the OLGR has been operating with in recent years has created 'significant problems' for OLGR staff.

I acknowledge the Director-General's agreement of this issue.

Recommendation 9

The Director-General urgently seek the necessary approval, funding and resources to address the most critical information technology issues that are hindering the effective performance of the OLGR's regulatory functions.

Inadequate training and knowledge among OLGR officers

OLGR officers appointed as investigators under the Liquor Act are required to interpret legislation, gather evidence, interview witnesses, make recommendations or decisions about enforcement action, prepare briefs of evidence, and potentially to prepare court documents and give evidence on behalf of the OLGR in a court or tribunal.

While some officers felt that their training needs were met, most OLGR officers outside of Brisbane reported that training courses were generally unavailable. Specifically, OLGR officers told investigators that they were unsure how to apply specific provisions of the legislation, they had insufficient knowledge of, and training in, investigative practices and they were not confident in their knowledge of, or ability in, specialised areas, such as conducting noise tests.

A number of OLGR officers told investigators that training requests had been refused, with some regional officers not continuing to ask for training as a result of being told that training was not available. Other officers reported that there were incorrect assumptions made about their level of knowledge and skills based on their previous jobs. Many officers in the regions reported relying solely or largely on informal mentoring and on-the-job training.

Investigators were told that there is currently:

- no formal system of induction training in many offices
- no formal system of bridging/refresher training
- no advanced course of investigative or enforcement training for officers
- little opportunity for cross-skilling and up-skilling.

Training that had been provided by the OLGR was criticised for not targeting the right people, not having the right content, being given by people without the appropriate skills/training, and sometimes merely involved giving officers a manual and PowerPoint presentation to read.

The investigation also identified a clear disparity in the provision of training to regional officers, with most Brisbane officers reporting having received a higher level of training and few unmet training needs. Investigators were told that training courses advertised on the OLGR intranet were only provided in Brisbane, and travel restrictions made it very difficult for regional officers to attend. These perceived inequities were causing frustration and dissatisfaction among regional officers.

There may be a lack of awareness among regional managers and senior managers about the training needs of their officers, or perceptions of training needs may differ from those held by compliance officers. A number of regional managers reported few unmet training needs among their officers, despite a clear perception among officers that further training was required.

The executive managers acknowledged that the perception among officers of a lack of training was valid, and partly due to the current fiscal climate. The executive managers also told investigators that recent training was largely focused around ethical and accountability issues, rather than operational training, and this priority was necessary for risk management reasons. There is no database which identifies what training OLGR officers have had. In addition, training needs analyses, which were conducted in the past, have not been conducted recently.

The executive managers acknowledged to investigators that the OLGR needs to put more effort into training but do not agree with the information outlined in this section. The OLGR has recently begun using a DJAG software system to maintain training records, as previously such records were not kept consistently. The OLGR's performance and development framework is also intended to assist with addressing training needs. The executive managers are also hoping to draw on other departments' resources or partner with other departments to assist with the delivery of training in regional areas where there are only a small number of OLGR officers.

In relation to operational training, a two-day training course was recently provided to all officers on the application of the compliance tools, that is, interviews, warrants, statement taking, evidence and OLGR's Liquor Enforcement policy.

In the proposed report provided to DJAG for comment, I proposed to make a recommendation to address training issues.

DJAG response:

The Director-General did not specifically comment on the proposed recommendation. However, he indicated that he disagreed with a number of the reported issues relating to inadequate training and officer knowledge and advised that:

- a range of induction, formal training and on-the-job training is available to OLGR officers, including as part of the individual performance system
- there are ongoing efforts to conduct regular assessments of training needs and to ensure managers are identifying gaps and recording training activity
- there has been recent training in investigations, noise assessments and some modules from accredited (Certificate IV) investigations training

- a formal induction in the Client Service Charter, Compliance Philosophy and Liquor Enforcement Policy has been occurring but that a more formal method of recording the training is warranted
- the OLGR is examining how the Evolve system may be used for recording training
- although staff had been requesting Certificate IV investigations training, potentially in order to gain future employment, other tailored training has been provided to staff instead
- feedback following the investigation training has been positive.

I am concerned that the 'formal induction' training does not include compliance training, for example, inspections and investigations. Nor has the Director-General described any ongoing training or refresher training in operational matters. In my view, there should be an established program of core training, with additional training needs raised during professional development discussions.

While I acknowledge the recent steps taken by the OLGR to address this issue, I am concerned that there is no organised program of training for officers and that officers may be reluctant to request training, despite the apparent availability through professional development discussions. In particular, a formal system of induction training in operational compliance is imperative to ensure that compliance officers are trained to consistently and adequately implement the OLGR policies and procedures. While mentoring colleagues may build on the induction training, it should not replace it.

The risk of not having necessary training for officers is clear. Regulatory officers perform important statutory duties that have a potentially significant effect on people's lives and livelihoods. It is critical that regulatory officers have the necessary training and skills to effectively carry out these duties in an efficient manner.

Recommendation 10

The Director-General:

- conduct an analysis of the current induction and operational training needs of OLGR officers
- implement a training program that properly addresses these needs and ensures that all OLGR officers maintain these skills while employed by the OLGR.

Conflict of interest

A conflict of interest occurs when an officer's private interests interfere, or appear to interfere, with the officer's duty to put the public interest first.³⁵ Such conflicts can arise because of a financial interest or a non-pecuniary interest, such as a family or personal relationship, a hobby, sporting or cultural activity, or strongly held personal convictions.³⁶

Conflicts of interest can result in bias (actual or apprehended) in decision-making. Apprehended bias occurs where a 'reasonable person' aware of the conflict of interest would conclude that the regulator's decision in respect of a potential offender is not or will not be impartial.³⁷

Conflicts of interest are addressed in DJAG's policy titled *DJAG Workplace Policy* dated 1 January 2011 which contains the conflict of interest procedure and secondary/concurrent employment procedure. Part 9 of the *DJAG Workplace Policy* clearly sets out the process for managing conflicts of interest. The policy links to a conflict of interest declaration form which should be accessible from the DJAG intranet and gives responsibility of resolving conflicts to the Director-General or delegate. Delegates are required to consult with the Ethical Standards Unit before finalising a decision on conflicts of interest. The declarations are held in the office of the Director-General

³⁵ Independent Commission Against Corruption and Crime and Misconduct Commission, Identifying Conflicts of Interest in the Public Sector, retrieved 6 June 2013 from <http://www.cmc.qld.gov.au/asp/index.asp?pgid=10849>; see also Queensland Integrity Commissioner [February 2006] Information sheet 2: Conflicts of Interest in the Public Sector, retrieved 6 June 2013 from http://www.integrity.qld.gov.au/library/document/catalogue/information-sheets/Sheet_2_conflicts_of_interest_public_sector_V2.pdf.

³⁶ *ibid.*

³⁷ The Crime and Misconduct Commission discusses 'perceived conflict of interest'; see Independent Commission Against Corruption and Crime and Misconduct Commission, *op. cit.* A 'perceived conflict of interest' is an example of apprehended bias. However, it is possible for an apprehension of bias to arise in the absence of a conflict of interest (for example, the way a decision-maker talks to an applicant may lead a reasonable third party to perceive that the decision-maker dislikes the applicant and therefore is not making the decision impartially).

or delegate and are to be updated on a regular basis.

Despite many OLGR officers having received integrity training in the previous year, the investigation identified a clear lack of awareness about the process for reporting and recording actual, potential or perceived conflicts. Even when raised by investigators, only one director and one regional manager were aware of the conflicts of interest policy, register and general process for managing conflicts. When asked about policies relating to conflicts of interest, gifts and benefits and/or secondary employment, most officers only referred to the Code of Conduct.

It was clear that conflicts of interest were handled informally in many cases, with officers making an informal notification to their regional manager or a senior officer and no record of this notification being made. Few officers, even at high levels, were aware of the existence of a policy on conflicts of interest, or the process under which conflicts of interest should be reported and managed.

OLGR officers told investigators that:

- conflicts and potential conflicts are managed within the regional office
- the level of impact of a conflict is generally assessed by individual officers, and where officers did not think a social relationship impacted on their job, it was not mentioned to their regional manager
- conflicts of interest in the form of a friendship with licensees were usually managed by the officer deciding themselves that they would not carry out compliance work at the premises. One regional manager indicated that when he had a conflict or perceived conflict of interest, he did not declare this to his manager but ensured that he did not deal with the licensee, although he acknowledged that he still signed off on matters relating to the licensee as dealt with by a lower level officer.

Officers generally did not appear to see the need for a formal process, with one officer stating, 'everyone knows [about potential conflicts]. It is a small office.'

Investigators requested copies of the OLGR conflicts of interest registers to verify whether such conflicts were being managed formally. However, the OLGR advised that DJAG does not keep central registers of conflicts of interest and such declarations are filed on individual personnel files.

The OLGR advised that, as a result of the investigation, it had now requested that senior managers provide details of all conflicts of interest and secondary employment declarations previously made by their officers. This information would be entered into newly drafted registers, with the employment register to include details of required reviews. The OLGR also undertook to communicate with all OLGR officers to remind them of the requirement to declare conflicts and other employment.³⁸

In most instances, the informal action taken by the officers in reporting and managing their actual, perceived or potential conflict appears to be largely consistent with their obligations as public sector officers.

However, the investigation did identify a small number of areas of concern that will need to be examined and managed appropriately by the OLGR. Investigators were told that, in some regions:

- some compliance officers have children or partners working at licensed premises, but still conduct compliance work at these premises as this was not seen by these officers to constitute a potential conflict of interest
- a compliance officer in one region carries out a small amount of consultative work for a licensed premises as secondary employment, but still conducts inspections and investigations at that premises as a compliance officer.

In the proposed report provided to DJAG for comment, I proposed to form an opinion and make recommendations to address conflict of interest issues.

³⁸ 'HeadsUp' internal staff newsletter dated 10 May 2013.

DJAG response:

The Director-General advised that:

- conflict of interest and other employment declarations were being sought, received and actioned in accordance with relevant policies prior to this investigation
- as a result of this investigation, a conflicts of interest register and an employment register have been created and maintained centrally by the Executive Director's Executive Officer
- the registers are provided to the General Manager and the Director Organisational Services on a frequent basis along with advice of any outstanding reviews
- the situation mentioned in the report where a compliance officer was undertaking consultative work for a licensed premises has been subsequently reviewed and appropriate action taken as a result
- as well as information placed on the intranet about conflicts of interest, the issue with compliance officers having children or partners working in licensed premises where the compliance officer was conducting compliance work has now been addressed through an internal news article released to remind OLGR officers of the requirement to declare conflicts of interest and other employment³⁹
- a 'refresh' staff newsletter article on 13 September 2013 specifically reminded staff that:

It is critical that officers understand they should NOT be making the decision about whether a situation creates a conflict of interest or not, the requirement being to report even a possible conflict, and senior management will make decisions about what action should be taken, in consultation with the Executive Director of the Ethical Standards Unit where necessary.

I acknowledge the steps the OLGR has taken to rectify this matter.

The OLGR should take further steps to ensure that such situations are managed in a timely way in accordance with DJAG policies and procedures. It is also critical that officers understand that they should not be making decisions about whether a situation creates a conflict of interest or not. The requirement is that they report even a possible conflict, and a supervisor makes the decision about what action should be taken to manage the conflict.

Even though integrity training has been provided to officers recently, more work may need to be done to ensure that actual or potential conflicts of interest are reported, recorded and managed appropriately. While it is encouraging that OLGR officers are aware of the high-level conflicts of interest section of the Code of Conduct, officers also need to be trained in the more detailed policies and procedures which are in place to support it. This may be particularly important in the regions where there are fewer accountability structures and a higher potential for conflicts to arise in small communities.

It is important to note that the investigation did not identify evidence of any actual conflict of interest that was handled inappropriately. The above examples mainly relate to the handling of perceived or potential conflicts of interest. However, perceived conflicts still need to be treated seriously so that the integrity of the agency is not undermined.

Opinion 8

Until recently, the existing framework for managing conflicts of interest was not being fully used by OLGR officers, with some conflicts and secondary employment being managed informally without being recorded in accordance with DJAG policy and procedure.

³⁹ *ibid.*

Recommendation 11

The Director-General ensure that the OLGR conducts regular training on, and monitoring, of the conflicts of interest framework, including secondary employment.

Recommendation 12

The Director-General conduct a review of all OLGR officers and ensure that actual or potential conflicts of interest and secondary employment are recorded and managed in accordance with established DJAG procedures.

Summary of internal processes

There are a number of internal processes which do not serve to fully support the performance of the OLGR's regulatory functions. These processes sit behind any compliance activities being undertaken by the OLGR, and can significantly affect the success or otherwise of these compliance activities.

It is critically important that the OLGR ensure its officers have adequate guidance in carrying out their duties, through a detailed and integrated set of policies and procedures. It is equally important that OLGR officers have adequate access to information and technology to facilitate their roles.

The issues discussed in this chapter are key issues which the Director-General needs to address to ensure that the OLGR's internal processes adequately support its key functions.

Part 3: External coordination

This part will discuss the OLGR's external coordination with the QPS, including roles and responsibilities, information sharing, inspections and enforcement practices.

Chapter 6: The co-regulator model

When a regulatory scheme includes more than one regulator with overlapping responsibilities, the effectiveness of the scheme will depend on the level of coordination, communication and cooperation between the co-regulators.

The investigation identified several key issues with the co-regulator approach between the OLGR and the QPS. They are:

- roles and responsibilities
- information sharing
- compliance inspection practices
- enforcement practices.

Roles and responsibilities

While the OLGR has primary responsibility for administering the Liquor Act, officers of the QPS are also empowered to enforce the Liquor Act. Therefore, the framework for liquor compliance is one of co-regulators who have many similar powers. Although any operational QPS officer can enforce the Liquor Act, LEAPS officers are primarily responsible for liquor compliance work undertaken by the QPS under the coordination of the DACU.

The Liquor Act does not identify the roles and responsibilities of the co-regulators. Therefore, no clarity is provided by the statutory scheme. I note that a report on police expectations and experiences published in 2010 indicated that:

... Legislative changes were needed to improve role clarity for police in relation to enforcing compliance with the Act. Statutory changes needed to be implemented in conjunction with joint training for police and licensing inspectors and an increase in resources. Increased training and resourcing would ensure that police and licensing inspectors could support each other to greater effect.⁴⁰

In addition, there is currently no formal agreement between the co-regulators about their respective roles and responsibilities under the Liquor Act. Therefore, each OLGR region has developed informal relationships and understandings with its corresponding QPS regions about coordinating liquor compliance work. The Acting General Manager told investigators:

It's always been fairly informal ... it's just never really been documented as to how philosophies of each department should be, and how we interact and what roles we play.

The investigation identified that:

- Each OLGR region has its own arrangements with the local LEAPS officers and other QPS officers with regard to joint operations, shared work, information sharing and liquor compliance generally. The success of these arrangements depends heavily on the quality of relationships between local OLGR officers and local QPS officers, which vary between regions.
- QPS and OLGR officers felt that coordination between co-regulators would benefit from more frequent meetings with the QPS at local and senior levels. In particular, it was noted that the higher levels of both agencies rarely met.
- There was a level of disagreement between officers of both agencies about which agency was in fact the 'lead agency' for taking enforcement action under the Liquor Act. The OLGR developed an internal document entitled 'Code of Conduct – Joint Operations' (Code), which identifies roles and responsibilities for taking enforcement action between the OLGR and the QPS, but the QPS officers interviewed had never seen this document.⁴¹

The existing Code is clearly inadequate to achieve the purpose of role clarification, because:

⁴⁰ Trifonoff et al, op. cit., p. 99.

⁴¹ Office of Liquor and Gaming Regulation, 'Code of Conduct - Joint Operations', undated.

- it was prepared by one regulator without consultation with, or agreement by, the other co-regulator
- it is limited to the conduct of 'joint operations' and does not cover other situations where the activities of the two co-regulators coincide.

I am not satisfied with the current level of clarity in the roles and responsibilities of the co-regulators. I consider there is a need for either statutory clarity or a formal agreement to set out the roles and responsibilities of the co-regulators.

It is less than ideal that there has not been any significant attempt to formalise this issue, despite it being clear to investigators that there is significant cross-over between the activities that the OLGR undertakes as a regulator under the Liquor Act, and the activities that the QPS undertakes in the same capacity.

The OLGR retains primary responsibility for addressing this issue, as it has lead agency status and therefore is ultimately responsible for the administration of the Liquor Act. In my view, the OLGR should take steps towards achieving greater alignment with the QPS as co-regulator of the Liquor Act.

Although it is an option to deal with the situation through legislative amendment, in my view, attempts should first be made to resolve the situation by the finalisation of a formal agreement setting out the key strategic and operational objectives, including the roles and responsibilities of the co-regulators. This agreement and any supplementary agreements should cover other issues relating to information sharing and inspection and enforcement practices (detailed below).

A formal agreement and clear understanding of the respective roles and responsibilities, as well as formalised communication channels, will assist to bring more consistency in approaches to compliance between the OLGR and the QPS.

I acknowledge that some steps have already been taken towards such an agreement. In particular, the OLGR's 'Office of Liquor and Gaming Regulation Client Service Charter (CSC) six monthly review' (March 2012) recommended that:

[the] OLGR approach the QPS Commissioner with a view to establishing a [memorandum of understanding] regarding liquor enforcement, the training of officers, regular meetings between both organisations to discuss compliance matters and an agreed escalation model.

However, this matter does not appear to have progressed significantly in the intervening 14 months⁴² and I am of the view that an agreement should be finalised between the agencies as a matter of urgency. This failure is hindering the effective enforcement of the Liquor Act and causing confusion to officers of both agencies.

In the proposed report provided to DJAG for comment, I proposed to form an opinion about the failure of the OLGR to work with the QPS on defining and communicating their respective roles and responsibilities.

DJAG response:

The Director-General did not specifically comment on the opinion but did advise that:

- there is scope for improvement of co-regulatory arrangements
- there is benefit to redrafting the Code, in consultation with the DACU, to enable it to provide guidance to both OLGR and QPS officers on how the two agencies consider their respective roles should be executed during joint operations.

I consider the OLGR is the lead agency for addressing co-regulatory issues and should take the steps recommended in this report. As indicated in this report, any formal agreement about roles and responsibilities between the two agencies should extend beyond joint operations and include situations where the QPS and the OLGR are acting independently, ensuring a common understanding between the co-regulators.

⁴² Timeframes relate to the time between that statement being made and the proposed report being completed.

Opinion 9

The OLGR's failure to work with the QPS to clearly define and communicate the roles and responsibilities of the co-regulators under the *Liquor Act 1992* is hindering the effective enforcement of the Act and causing confusion to officers of both agencies. This constitutes unreasonable administrative action under s.49(2)(b) of the *Ombudsman Act 2001*.

Information sharing

The timing of inspections, consistency of inspection and investigation outcomes, consistency of enforcement, and consideration of compliance history all hinge on good communication and information sharing between agencies.

There is one formal process for information sharing between the co-regulators, which is the transfer of QPS data on liquor incidents (through the QPS QPrime system) to the OLGR COGS system. There are also a number of informal mechanisms for sharing information at a local level, including face-to-face discussions, telephone contact and email. However, because these processes remain informal, it is apparent that officers from one regulator are often unaware of the actions taken by the other regulator to enforce the Liquor Act.

Although most OLGR officers were concerned about the quality and amount of QPS data provided to the OLGR, the investigation also identified concerns by DACU and LEAPS officers about the extent to which information is, and should be, shared with the QPS by the OLGR. Communication between the co-regulators was generally viewed by DACU and LEAPS officers to be a 'one-way street', with all the information provided to the OLGR and nothing provided back.

The investigation identified several issues relating to information sharing between the agencies.

The first issue relates to the QPrime data transfer process. This process was criticised by both agencies because:

- The QPS was not receiving feedback from the OLGR about what use was being made of the data.
- The QPS was unaware of the actions/outcomes taken by the OLGR as a result of receiving the data.
- The OLGR was unaware of what actions/outcomes were already taken by the QPS prior to receiving QPrime information, for instance whether the QPS had investigated/collected evidence in relation to the matter or taken enforcement action.
- There were significant delays in receiving data about a QPS incident (four to six weeks), resulting in evidence such as CCTV footage (kept by the premises for approximately 28 days) being lost.

A duplicative and diverging approach to proactive inspections also became apparent through discussions with both QPS and OLGR officers. Generally, the co-regulators carry out their own proactive inspections without the assistance of the other agency or awareness of proactive inspection schedules, resulting in multiple inspections by the two regulators at the same premises and different enforcement action being taken or advice being given for the same breach. Officers of both agencies have indicated that this has caused confusion and frustration to the licensee.

In addition, where matters are referred to the QPS by the OLGR, there are currently no formal processes for following up with the relevant QPS officers about the outcomes of the referral or recording actions taken against a licensee by the QPS on the OLGR's COGS system. Without any formal method for providing information to their co-regulator about the outcome of investigations undertaken, difficulties arise in identifying repeat breaches and escalating enforcement.

Finally, current OLGR policies and procedures on investigations, inspections and enforcement are not shared with QPS officers. Without an understanding of policies and procedures, co-regulators cannot achieve alignment in practices.

Officers of both agencies identified significant benefits to better information sharing practices, including:

- better resourcing allocation, avoiding duplication generally and particularly where a premises has already been visited by another regulator
- the ability to take a coordinated approach between regulators and share tasks, including follow-up with licensees regarding rectification of breaches

- ensuring that licensees do not feel targeted by multiple visits or confused by the actions of both regulators
- the OLGR can assist the QPS to provide adequate feedback about licence or permit applications
- greater consistency in enforcement action for the same offence between regulators, including identifying when escalation action is warranted.

Sharing such information is essential to a good regulatory framework. In my view, the OLGR should work with the QPS to formalise an agreement about information sharing to and from the QPS, including identifying the type of information the QPS is interested in receiving and the means and frequency by which the information is provided.

As a minimum, four key types of information should be shared between the agencies:

- QPrime data
- inspection visit schedules
- outcomes of inspections/investigations
- policies and procedures.

The coordination of the activity, and sharing the above information, will benefit both agencies by helping to avoid duplication, ensure better alignment of practices, achieve greater consistency in enforcement activity and reduce undesirable impacts on licensees.

In the proposed report provided to DJAG for comment, I proposed to form an opinion about the types of information to be shared between the OLGR and the QPS.

DJAG response:

The Director-General advised that:

- adequate feedback is provided to the QPS regarding the use of the QPrime data
- while the current draft memorandum of understanding (MOU) specifically deals with information sharing, including QPrime data, consideration will be given to broadening this MOU to ensure it appropriately covers the sharing of information about Liquor Act compliance assessment activity by the respective agencies
- the OLGR's new Business Intelligence Project is expected to make better use of the QPrime data, including analysing data trends, once the project is finalised and this analysis would be beneficial to the QPS also.

I acknowledge that the Director-General will give consideration to a broader framework for information sharing. While it is unclear whether the Business Intelligence Project will address all of the issues raised in this section of the report, the OLGR should ensure the project outcomes provide for the OLGR's analysis of data to be fed back to the QPS.

I maintain the view that it is crucial for a formal agreement between the two agencies to include all types of information that should be shared between the co-regulators. I consider that this should be undertaken urgently, given the importance of this issue.

Opinion 10

To facilitate the effective enforcement of the *Liquor Act 1992*, the OLGR and the QPS should be sharing four key types of information:

- QPrime data
- inspection visit schedules
- outcomes of inspections/investigations
- policies and procedures.

Inspection practices

In most regions, OLGR officers work with QPS officers to conduct formalised 'joint operations' which may include several regulatory agencies, including the OFT, the QFRS and councils. The OLGR and the QPS also conduct less

formal joint inspections.

Both agencies also separately conduct proactive inspections, using independent processes for choosing which premises to inspect.

Investigators were told that:

- LEAPS officers were not familiar with the OLGR's inspection practices and have developed their own processes.
- No DACU and LEAPS officers reported knowing the OLGR risk categories in any detail, even though the OLGR's risk categories are partly based on QPS data. Likewise, DACU and LEAPS officers were unaware of how the OLGR set inspection targets for licensed premises, although prioritisation of these premises inspections also relied on QPS data.

It is concerning that the co-regulators have entirely independent approaches to selecting the premises to visit.

The OLGR has not made a significant attempt to work with the QPS to ensure that licensed premises are being inspected consistently and fairly by the co-regulators. It is also concerning that, despite having a significant role in enforcement of the Liquor Act and working closely with the OLGR, DACU and LEAPS officers appear to have little understanding of the OLGR's strategies for targeting premises under its proactive compliance program. I consider that inspection practices should, as far as practicable, be undertaken consistently in relation to licensee management.

In the proposed report provided to DJAG for comment, I proposed to make recommendations to address this issue about consistency of inspection practices.

DJAG response:

The Director-General supported this recommendation in principle but advised that:

- in the past, significant effort was made to achieve a consistent approach but this was not achieved, despite good intentions by both agencies
- 'the differences between the two agencies may result in differences in approach'.

I do not consider the differences between the two agencies should preclude the negotiation of a common approach to inspection practices.

Recommendation 13

The Director-General work with the Commissioner of Police to ensure that, as far as practicable, the inspection practices of the OLGR and the QPS are undertaken consistently in relation to licensee management.

Enforcement practices

The investigation identified inconsistencies in the enforcement practices of the OLGR and the QPS during compliance inspections and in investigations. In particular, the investigation identified significant disparities in how the Liquor Act is administered by OLGR officers and QPS officers. This is apparent when comparing the outcomes of enforcement actions, discussed in Chapter 7.

The different approaches by the OLGR and the QPS have the potential to significantly affect the regulation of licenced premises in Queensland. If licensees are faced with inconsistent or conflicting compliance frameworks, they may become confused or unwilling to comply with or challenge inconsistent demands, leading to the need for greater enforcement action or justification of actions (at a higher cost to the regulators) to achieve compliance.

One industry stakeholder's submission indicated that some police officers did not have regard to the OLGR's oversight role and focused on taking high-end enforcement action against licensed premises. As a result, this causes 'angst' and additional complexity whereby the OLGR needs to provide 'clarifications and policy assurances' to licensees. The stakeholder indicated that the OLGR works well with licensees, and licensees believe there needs to be 'better synergies between the two departments to ensure improvements to service delivery'.

Another industry stakeholder was of the view that the OLGR and the QPS work hard to be consistent in their

approach but that various factors lead to differences, mainly that OLGR compliance officers deal with licensing operations on a 'full-time, total immersion and whole of focus' basis, whereas liquor compliance is a secondary focus of the QPS.

As indicated, the Director-General advised that 'ultimately differences between the two agencies may result in differences in approach'. I do not accept the view that the differences between the organisations should be so marked given shared statutory obligations.

It is clear that at present there is significant potential for different enforcement action to be taken against licensees in similar circumstances depending on which regulator is involved. One clear example of this was the different enforcement approach in relation to approved manager registers (AMR), outlined in the case study below.

Case study – Approved Manager Registers (AMR)

On 3 June 2013, amendments to the Liquor Act commenced which, among other things, removed s.155AE from the Liquor Act (the AMR provision). This section required licensees to keep and maintain an AMR to record details of the person responsible for the premises at any given time. Breaches of s.155AE carried a \$1,100 fine.

The following circumstances preceded the amendment:

- 13 December 2012 – the Director-General DJAG advised the Attorney-General of the department's policy position to no longer enforce the AMR provision until the amendments to the legislation removed the requirements. The Director-General intended to notify industry of this policy position. The briefing note also noted that QPS officers were still able to enforce the Liquor Act, specifically the AMR provision, and proposed that the Director-General advise the Commissioner of Police of the OLGR's policy position on this issue.
- 4 January 2013 – OLGR compliance officers were advised by email from a Director that the Attorney-General requested OLGR officers to '... desist from enforcing the provisions of the Liquor Act relating to [AMR], pending the proposed legislative changes' and to advise industry that the AMR provision would no longer be enforced.⁴³ The email noted that QPS officers were able to continue enforcing the AMR provision and acknowledged the potential confusion this may cause.
- 17 January 2013 – the Director-General wrote to the Commissioner of Police asking that the QPS adopt a similar approach of not enforcing the AMR provision of the Liquor Act until the Act is amended.
- 19 February 2013 – the Commissioner of Police advised the Director-General that the QPS would continue to enforce the legislation until the proposed legislative amendments are made. He also raised concerns about the removal of this requirement from the Liquor Act and the lack of consultation with the QPS about this issue.
- February 2013 – the OLGR advised industry during Liquor Accords and on its website that OLGR would 'no longer require licensees to keep or maintain an [AMR]'.⁴⁴ The OLGR website did not advise industry of the QPS approach to enforcing the AMR provision.
- 18 March 2013 – the Director-General wrote to the Commissioner of Police indicating that the disparity in the positions of the two agencies was causing 'confusion and concern' within industry and asked that the QPS reconsider its position considering the 'impending change to legislation requirements and the communication that has already occurred with industry about interim arrangements'.
- 19 March 2013 – the Bill proposing to remove the AMR provision was introduced to Parliament.

⁴³ Email from the Acting Director, Regional Services Branch, to compliance officers, 4 January 2013.

⁴⁴ Office of Liquor and Gaming Regulation, 'Responsible Service – News from the Office of Liquor and Gaming Regulation, February 2013, <http://www.olgr.qld.gov.au/resources/liquorDocs/responsible-service-february-2013.pdf>.

One industry stakeholder noted the difference between the OLGR's approach to the AMR (prior to the amendment), compared with the QPS's approach of maintaining 'the letter of the law':

Imagine the disquiet, confusion and frustration of licensees when they have [industry] and OLGR newsletters in one hand telling them that the requirement is no longer applicable, and yet the uniformed policeman at the Liquor Accord meeting is telling them that they'll be fined \$1,000 if they don't continue to maintain the [AMR] register. Too silly for words, and undermines confidence in the process.

Despite the differing approaches by the co-regulators, no infringement notices were issued for breaches of the AMR provision by either agency from December 2012. The OLGR executive managers also expressed the view that if a QPS officer had issued an infringement notice under the AMR provision, it was likely that the recipient could have challenged it on the basis that the OLGR (the lead regulator) was not enforcing the provision.

Industry stakeholders highlighted the significant confusion caused by the different approaches taken by the OLGR and the QPS on the AMR issue. In my view, the OLGR's advice to compliance officers on 4 January 2013 placed OLGR officers and licensees in an uncertain position.

Summary of the co-regulator model

Where two or more regulators are responsible for administering a regulatory scheme, the public is entitled to expect that the scheme will be enforced consistently across Queensland, regardless of which regulator takes enforcement action.

The regulatory framework is impacted by ineffective coordination between the OLGR and the QPS, a key co-regulator under the Liquor Act. In particular, there is no formal agreement facilitating coordination between the co-regulators. Consequently, there:

- is a lack of shared understanding about roles and responsibilities
- is a lack of coordination around information sharing, including case information, data, enforcement/investigation outcomes, policies and procedures
- are inconsistencies in inspection practices, timing of visits, purpose of visits, and advice given to licensees
- are inconsistencies in enforcement practices.

Based on the investigation findings, I do not consider the present arrangements deliver on the public expectation that the scheme be enforced consistently across Queensland, regardless of which regulator takes enforcement action. There is a need for greater coordination, communication and cooperation between the co-regulators. As the lead agency, it is appropriate that the OLGR pursues improvements.

In the proposed report provided to DJAG for comment, I proposed to form an opinion about consistent enforcement of the Liquor Act. I also proposed to make a recommendation about a formal agreement being established by the co-regulators.

DJAG response – case study:

In relation to the case study, the Director-General advised that:

- the email from the Director to staff sought to emphasise to compliance officers that steps were being taken to proactively avoid an inconsistent approach by seeking the Attorney-General's approval to communicate with industry and the QPS about the OLGR's intended approach
- this report does not represent what the SMG advised investigators was the impetus for the decision not to enforce the AMR provision
- this is an isolated example and lessons were learnt from the experience – as a result, a different approach would be taken for similar occurrences in the future.

In relation to the AMR case example, I consider the report provides adequate context for the decision in relation to the enforcement of the AMR provisions. While the AMR case example is unusual as it relates to the non-enforcement of legislative provisions by the regulator where another co-regulator is capable of enforcing the same provision, the case is indicative of the general dichotomy between the co-regulators in relation to enforcement practices and the general lack of consistency in approach.

DJAG response – summary on the co-regulator model:

The Director-General did not comment on the proposed opinion. In relation to the recommendation, the Director-General advised that:

- 'it is acknowledged that there is scope for improvement of co-regulatory arrangements between the [OLGR] and the [QPS]'
- recent meetings with the QPS discussed the benefits of an overarching MOU as well as more detailed 'practice statements' or policies where appropriate
- the OLGR aimed for the MOU to be a 'high level principals-based [sic] document, supported by more detailed practice statements or policies where appropriate, such as the joint operations practice document and a revised (more policy focused) liquor enforcement policy'
- the proposed MOU would include clarifying: shared roles, responsibilities and objectives across the regions and at a strategic level; the commitment to achieving consistencies in approach and outcomes; and the sharing of information between agencies
- the relationship between the two agencies has 'enhanced' over recent months by senior representation of both agencies on an expert panel considering changes to the regulation of the liquor and gaming industry and the 'OLGR is eager to capitalise on newly formed relationships to progress enhancements in the co-regulatory partnership'; there is scope for improvement of the 'governance' of periodic meetings with the DACU and these have already commenced with a meeting held on 7 August 2013
- 'It is important to acknowledge the significant challenges associated with co-regulation of the Liquor Act, including inherent differences between the two agencies, including in structure, scope of responsibilities (involvement in liquor regulation being just a small part of [the] QPS role – its attitude to enforcement is affected by this) and nature of operations. Even with strong commitment at a senior management level in both agencies, it will need to be accepted that differences between the two agencies may result in differences in approach.'

I acknowledge the OLGR's recent collaboration with the QPS to advance the issues which this Office has raised. I consider the OLGR is the lead agency for addressing co-regulatory issues and should continue to take the steps recommended in this report. I do not consider that any differences between the two agencies should be a significant barrier to negotiating a common approach in relation to licensee compliance under the Liquor Act.

Opinion 11

The *Liquor Act 1992* should be enforced consistently across Queensland, regardless of which co-regulator takes enforcement action.

I consider that the Director-General should seek agreement with the Commissioner of Police on a number of strategic and operational objectives.

As the lead agency, it is appropriate that the OLGR, through the Director-General, pursue the necessary improvements.

Recommendation 14

As a matter of urgency, the Director-General establish an agreement with the Commissioner of Police about key strategic and operational objectives for liquor enforcement under the *Liquor Act 1992* which addresses:

- (a) the roles and responsibilities of the respective agencies
- (b) consistency in enforcement practices
- (c) the sharing of QPrime data between the agencies
- (d) the sharing of information between the agencies, including inspection visit schedules, assessment decisions on referrals and investigation outcomes
- (e) the sharing of policies and procedures
- (f) the sharing of compliance history of premises
- (g) the holding of regular formal meetings at both senior and local officer levels.

Part 4: Approach to regulation

This part will discuss the tension between the different roles of the OLGR: as facilitator of licensed premises and regulator of liquor in Queensland. A number of issues concerning transparent regulatory practices are also discussed.

Chapter 7: The OLGR's regulatory approach

As a regulator, the OLGR is responsible for taking action against licensees and individuals to enforce compliance with the provisions of the Liquor Act.

The investigation considered the current regulatory approach adopted by the OLGR, in light of concerns identified from an analysis of the OLGR's enforcement data and significant criticisms received from both OLGR officers and QPS officers about the OLGR's approach to regulating licensed premises.

Regulatory approach

The OLGR's regulatory approach is set out in its Liquor Enforcement Policy,⁴⁵ which states:

While OLGR seeks to achieve an acceptable level of compliance, it does not intend to portray itself as an aggressive, punitive agency and would rather work with industry in order to achieve a sustainable level of compliance.

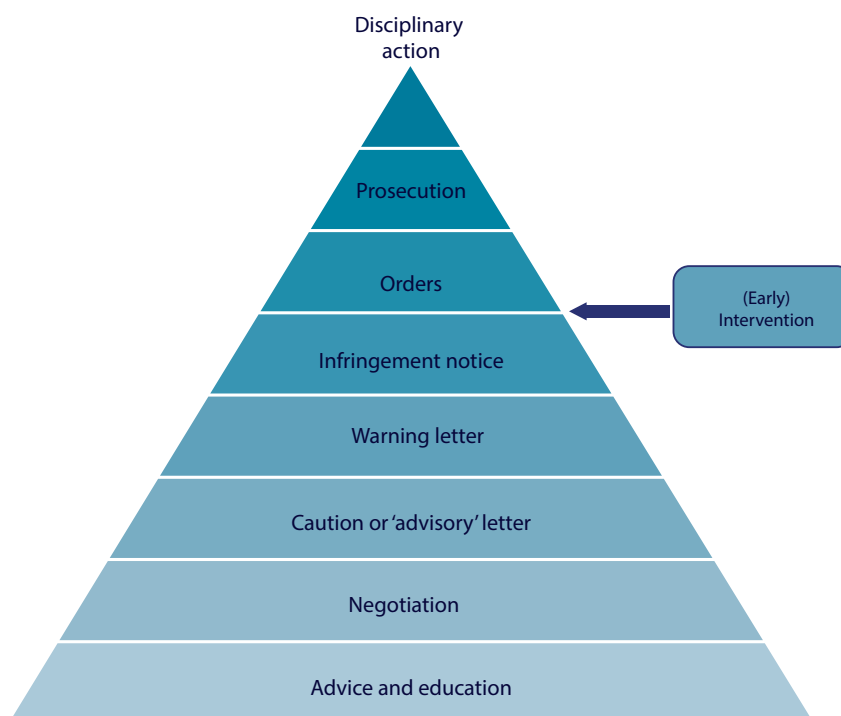
OLGR recognises that compliance can be best achieved through using a broad range of tools ... OLGR employs an escalation model for enforcement to further ensure that strategies adopted are appropriate to the situation, consistent and equitable ...

The OLGR adopts an escalating series of enforcement tools. The enforcement tools at the lower levels are intended to be used more frequently than those at the higher levels. However, the Liquor Enforcement Policy also states that:

Notwithstanding the escalation model, OLGR will invoke high end enforcement in the first instance in situations where it is considered necessary and appropriate.

The OLGR's 'enforcement pyramid' is pictured in Figure 6.

Figure 6: The OLGR's enforcement pyramid



⁴⁵ Dated February 2012 [version 3] and reflected in the same words in the most current version, May 2013 [version 5].

At the time of investigation, intervention actions (previously called 'early intervention' actions) (discussed in Chapter 4) were not included in the pyramid but now fall between infringement notice and orders in the latest version of the Liquor Enforcement Policy (May 2013).

Enforcement action taken by the OLGR: comparison with QPS enforcement statistics

Investigators undertook an analysis of the number of enforcement actions taken in each OLGR region between 1 July 2009 and 31 December 2012 to determine the extent to which different types of enforcement action were being used. This is shown in Table 2.

Table 2: Breakdown of infringement notices issued by the OLGR between 1 July 2009 and 31 December 2012

	2009-10	2010-11	2011-12	2012-13 (first six months)	Total for 3.5 years
Infringement notices to licensees	60	37	47	30	174
Infringement notices to minors/patrons	278	345	490	546*	1659
Total infringement notices issued	338	382	537	576	1833
Percentage issued to licensees	17.75%	9.68%	8.75%	5.21%	Average of 9.49%

*This figure includes the Schoolies period. The OLGR generally issues a large number of infringement notices to patrons and minors during this period.

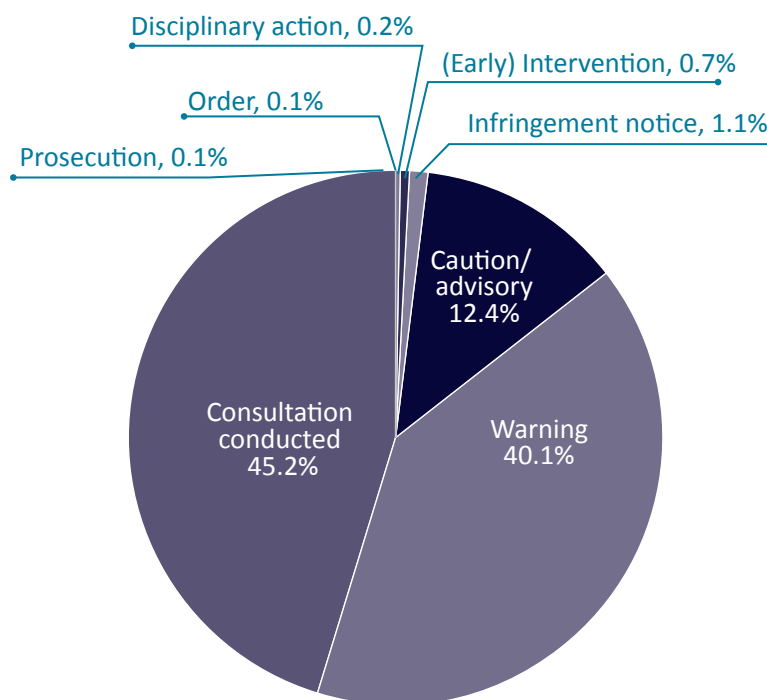
It is relevant to note that when the infringement notice statistics are separated into those issued to licensees and those issued to minors/patrons, the bulk of infringement notices issued by the OLGR each year are issued to minors/patrons (see Table 2 above). This serves to highlight the comparatively low number of infringement notices issued to licensees each year (an average of 9.49% of all infringement notices issued by the OLGR).

The analysis in Chapter 4 shows that approximately 97% of all enforcement action taken by the OLGR against licensees fell within the categories of consultation conducted, caution/advisory letters or warning letters (the majority of 'low-end enforcement action'). These actions are not prescribed under the Liquor Act, but are taken by the OLGR using its administrative powers.

Enforcement actions prescribed under the Liquor Act, or 'high-end enforcement action' (which include infringement notices to licensees, orders, prosecutions or disciplinary actions), accounted for less than 3% of all enforcement actions taken by the OLGR across all regions. An average of less than six prosecutions were brought by the OLGR each year over the three and a half years from 1 July 2009 to 31 December 2012.

These figures are represented in Figure 7.

Figure 7: Types of enforcement action taken across all regions (averaged over three and a half years from 1 July 2009 to 31 December 2012)



A review of the enforcement action taken by the QPS provides a comparison for this analysis. As QPS officers are also investigators under the Liquor Act, comparing enforcement action taken by each of the co-regulators provides some context for the OLGR’s enforcement approach.

Although the OLGR is unable to provide a complete picture of the enforcement action taken by QPS officers, the OLGR provided data on infringement notices. A comparison between the number of infringement notices issued by the OLGR and the QPS for the period 1 July 2009 to 31 December 2012 is set out in Table 3. This analysis excludes infringement notices issued to patrons/minors.

Prosecution data obtained from the QPS was not sufficiently detailed to permit an accurate assessment of prosecutions taken against licensees.

The analysis below also excludes disciplinary actions and orders, as only the OLGR has the authority to take such actions under the Liquor Act.

Table 3: Comparison of infringement notices issued by the OLGR and the QPS between 1 July 2009 and 31 December 2013

	2009-10	2010-11	2011-12	2012-13*
Total issued by the OLGR	60	37	47	30
Total issued by the QPS	516	285	370	142

*First six months of financial year only

Noting that there is no data on the number of inspections conducted by the QPS, the comparison of infringement notices indicates that the QPS issues a significantly larger number of infringement notices to licensees than the OLGR and is therefore taking a greater proportion of high-end enforcement action.

Perceptions of the regulatory approach

The investigation sought the views of four groups in relation to the OLGR’s regulatory approach: the SMG, industry stakeholders, OLGR officers and QPS officers.

The SMG told investigators that the OLGR’s regulatory approach outlined in the Liquor Enforcement Policy was adopted in 2009 and represented a significant shift from the general policy approach previously taken of stricter

enforcement practices to a more 'educative' emphasis. Other reasons for the change of approach have been attributed to reforms to the Liquor Act in 2009, ceasing operation of the Flying Squad⁴⁶ which issued infringement notices at major events, the introduction of the high-risk community public event guideline to assist organisers reduce harm, and negotiation of conditions for major events. The approach was seen by the OLGR to still maintain the goal of harm minimisation by using a range of compliance tools to achieve sustained compliance.

A key factor identified by a large number of OLGR officers, at all levels up to the executive managers, was the perception that the OLGR needed to change its regulatory approach to facilitate the industry more. One senior manager stated that a clear message had been given that 'we have to think of facilitating business' and managing and protecting the liquor industry's contribution to the economy. A significant number of OLGR officers held the view that the OLGR's regulatory approach was targeted more towards education than enforcement. Although OLGR officers acknowledged the need for, and value of, education of licensees, there was a clear perception that the current balance is tipped in favour of the licensees. The OLGR's regulatory approach was described as being 'soft' on licensees, 'toothless', 'weak' and 'created at the whim of industry'.

Most OLGR officers saw the Liquor Enforcement Policy as effectively changing their role from that of a regulator to that of a consultant to the liquor industry or, as one officer described, an 'educator or facilitator of licences and liquor in general'. OLGR officers felt that they were required to focus on giving cautions and warnings, and that the OLGR was reluctant to take high-end enforcement action.

OLGR officers told investigators that the balance currently struck between education and enforcement was inadequate to ensure compliance with the Liquor Act because:

- There was an expectation from the general public, as well as licensees who were compliant with the requirements of the Liquor Act, that the OLGR would take stronger enforcement action against non-compliant licensees.
- Non-compliant licensees knew that high-end enforcement action would not be taken against them, and some had made comments to that effect to compliance officers.

The dissatisfaction with the OLGR's regulatory approach was shared by DACU and LEAPS officers, who told investigators of their frustration at the lack of enforcement action taken by the OLGR. DACU and LEAPS officers shared the view of OLGR officers that the OLGR mainly conducted 'education' over 'enforcement'.

Submissions were also received from two industry stakeholders that discussed the OLGR's regulatory approach.

One industry stakeholder described the OLGR's regulatory approach favourably, indicating that OLGR was 'reasonable' and compliance officers were described as 'accommodating' towards cooperative premises. The OLGR was considered to have significantly changed its approach in recent years, and the present approach was believed to be 'positive and productive' with prosecution occurring as a last resort. However, the industry stakeholder advised that it still saw incidents where 'physical audits/technical inspections have been unnecessarily punitive in nature and small matters of non-compliance have been met with threats of blanket closure'.

In contrast, another industry stakeholder stated that the approach by the OLGR and the QPS is 'consistently negative', and that compliance officers should have flexibility in the manner, choice and type of interventions that might be applied to particular problems or deficiencies. The industry stakeholder indicated that, '[p]roperly implemented, the selective and intelligent application of a varied range of enforcement tools will encourage the pursuit of higher standards of compliance by all licensees'.

The frustration among OLGR officers with the OLGR's regulatory approach has led to compliance officers drawing on QPS resources to issue infringement notices and take action where the compliance officers perceived that they could not do so under the Liquor Enforcement Policy. This was done either passively, by standing back and letting the QPS take the lead in enforcement, or by actively (though informally) referring matters to local QPS officers for possible enforcement action. One OLGR officer noted:

... [there are] instances where the OLGR officers have a quiet word with a police officer about the issues arising at a premises and the QPS officer goes over and issues a ticket ... It's circumventing the whole process.

LEAPS officers in various regions confirmed that there were instances where they perceived that OLGR officers could not take certain enforcement actions that the LEAPS officers felt were warranted, so QPS officers stepped in

⁴⁶ A group of OLGR officers from Brisbane who travelled to other regions to inspect licensed premises and major events.

to take the action.

The investigation did not attempt to identify specific examples of when these referrals to the QPS allegedly occurred. Like OLGR compliance officers, QPS officers are investigators under the Liquor Act and can lawfully take enforcement action. However, the number of OLGR and LEAPS officers who reported that such an approach occurred leads me to accept that this is occurring. Such instances may make the OLGR look less effective than the QPS in the eyes of licensees and may be inconsistent with the OLGR's status as the lead agency for regulation of licensed premises.

The investigation identified a significant disparity between the views of the SMG and other OLGR officers regarding the effectiveness of the OLGR's regulatory approach. It is obvious that many OLGR officers see the present approach as frustrating, inadequate to regulate licensed premises, and as tailored to meet the needs of the industry. This has contributed, in my view, to compliance officers drawing on the resources of the QPS to take enforcement action against licensees.

It is also concerning that compliance officers appear to see the Liquor Enforcement Policy as getting in the way of carrying out their statutory responsibilities as investigators under the Liquor Act. I have dealt with that concern in Chapter 4.

Summary of the OLGR's approach to regulation

The tension between the two different roles of the OLGR as *educator* of licensees and *enforcer* of the Liquor Act is an important issue for the OLGR to resolve.

The enforcement data clearly supports the views of OLGR and QPS officers that little high-end enforcement action is taken by the OLGR against licensees. The perceptions held by both OLGR officers and QPS officers about the OLGR's regulatory approach provides support to this data, and supports a view that the OLGR's regulatory approach is weighted in favour of education or facilitation of the liquor industry rather than enforcement.

In considering this issue, attempts were made by investigators to compare OLGR enforcement statistics with those agencies responsible for regulating licensed premises in other states. However, sufficient information is not publicly available, and the information that is available is not adequate for comparative purposes.

I acknowledge that the OLGR has put in place an enforcement model which identifies a range of tools, both enforcement and education focused. However, it is unclear whether the tools are being applied in a balanced way. From the available data, the OLGR follows the pyramid escalation framework (see Figure 6) in the majority, if not all cases, and is mainly positioned in the low-end enforcement (or educative) model. Since the introduction of the approach outlined in the Liquor Enforcement Policy in 2009, the pendulum seems to have swung firmly into the education space.

The appropriate balance between education and enforcement is an issue that justifies careful consideration by the Director-General. While there is no single 'correct' answer to ascertaining the appropriate balance between education and enforcement, it is important that the regulatory approach adopted by the OLGR is:

- sufficient to ensure compliance with the Liquor Act requirements
- as consistent as possible with the approach adopted by its co-regulator, the QPS
- sufficient to achieve the OLGR's primary statutory objective of harm minimisation.

In light of there being no correct answer to the question of balance, and little publicly available information from similar agencies in other jurisdictions for comparative purposes, I have not formed the view that the regulatory approach taken by the OLGR is inappropriate, inadequate or unreasonable. However, I have concerns about whether the approach adequately strikes the balance between education and enforcement.

In the proposed report provided to DJAG for comment, I proposed to form an opinion about the OLGR's regulatory approach and make a recommendation to consider whether the regulatory approach meets the primary statutory objective of harm minimisation.

DJAG response:

The Director-General advised that:

- there is no tension between roles of educator and enforcer as 'these are all tools for achieving sustainable levels of compliance and reducing harms that may arise from the sale of liquor and liquor abuse and misuse'
- he does not consider that the OLGR approach is 'tipped in favour of licensees' or that there is a reluctance to take high-end enforcement action 'where appropriate'
- the Liquor Enforcement Policy provides for high-end action in circumstances where the most serious offences occur and where appropriate remedial action is not taken to remedy other legislative non-compliance
- the report has not addressed whether the OLGR's current enforcement approach is effective but that the report appears to indicate that an approach in favour of education is less effective; this is disputed on the basis that there are certain circumstances in which 'punitive enforcement' is required
- while the OLGR has issued less infringement notices over time, so has the QPS
- 'it is difficult to assess the overall performance of the industry in relation to responsible service of alcohol and alcohol-related violence and to attribute the change to any one initiative; however, along with other initiatives introduced since 2009 (e.g. approved managers), this would suggest that the balanced approach being adopted by the OLGR is producing results.'
- the OLGR approach is consistent with the former and current government's policy position
- comments in this report about OLGR officers relying on the QPS to take high-end enforcement action is concerning
- OLGR officers have the ability to take high-end enforcement action by following procedures and that it is 'concerning if officers are taking this approach to avoid the work required to substantiate the breach, document their finding and recommend the appropriate action'
- the OLGR will consider whether enhancements to quality assurance processes are required to ensure it is identified that officers are failing to escalate matters to higher levels of enforcement action where appropriate
- 'enhancements' were made to the Liquor Enforcement Policy (May 2013), along with an accompanying announcement clarifying that repeated warnings are not necessary before escalating a matter to an infringement notice.

I note that the Director-General considered this report to assert that effectiveness is directly linked to the amount of punitive action taken. That is not so. It simply means that the effectiveness of the OLGR may be diminished by the apparent reliance on the QPS to take high-end enforcement action.

This section of the report identifies the comparative high-end enforcement effort of the co-regulators and how those figures tend to support the perceptions of the regulatory approach told to investigators by OLGR officers, QPS officers and by some of the industry group commentary.

I have drawn attention to these issues to reflect a possible imbalance. Although the Director-General is of the view that the balance is not inappropriately tipped in favour of educative approaches, I remain of the view that further consideration should be given by the Director-General to whether the approach meets the statutory objective of harm minimisation. I have also sought to strengthen the reporting framework (see Chapter 8) so that the success of the regulatory approach against the harm minimisation objective is reported and can be publicly evaluated.

Opinion 12

The OLGR's enforcement data supports the perceptions of OLGR and QPS officers that the OLGR's regulatory approach is weighted towards education of licensees, with little high-end enforcement action taken under the *Liquor Act 1992*.

Recommendation 15

The Director-General undertake a review of the OLGR's current regulatory approach to determine whether it meets its primary statutory objective of harm minimisation.

Guarding against perceptions of regulatory capture

A facilitative regulatory approach creates a higher risk of perceptions of regulatory capture developing. 'Regulatory capture' occurs where a regulator identifies so strongly with the industry it is intended to regulate that it can no longer effectively discharge its regulatory functions. Once a regulator has been 'captured', it is more sympathetic to the interests of the regulated industry than to the public interest it was created to protect.⁴⁷ Where the regulator is captured, it can lead to the regulator becoming unwilling to perform its compliance tasks diligently and impartially in respect of that industry,⁴⁸ particularly when carrying out enforcement action.

The investigation did not find evidence of regulatory capture within the OLGR. However, there does not need to be actual regulatory capture for there to be a *perception* of capture, and such a perception can be just as damaging.

The investigation identified that the OLGR operates in a high-risk environment for regulatory capture, because it is a small regulator with limited resources and a relatively low profile regulating a large, lucrative industry with significant resources and which makes a significant contribution to the state and national economy.

Operating in a high-risk environment establishes a need for the OLGR to be alert to the risks of capture and to manage these risks appropriately.

It is important that the OLGR has the necessary systems and processes in place to ensure it can defend itself against a perception that it is captured by the liquor industry. Managing or preventing such a perception will be more difficult where a regulator has a marked preference for a facilitative approach to regulation, and where minimal enforcement action is taken under the relevant legislation.

My analysis and comments above in relation to the extent of enforcement action taken by the OLGR may mean that it also has limited capacity to defend itself from allegations that it is too close to, and not effectively regulating, the liquor industry. In particular, I note:

- low levels of high-end enforcement activity
- high levels of cautions and warnings given over a period of years
- the number of OLGR officers telling investigators that licensees are being given repeated warnings without adequate follow-up
- the lack of support among OLGR officers for the OLGR's compliance framework
- evidence of failures to record reasons for decisions (discussed in Chapter 4).

The investigation did not identify evidence that the OLGR was adequately identifying or systemically managing its risk. Although the OLGR does have a risk plan titled 'Office of Liquor and Gaming Regulation Strategic Planning Workshop: Risk Profile', this document merely addresses eight risk factors regarding technological, workforce and stakeholder risks and does not consider the risk of regulatory capture.

An adequate risk analysis should identify areas of the OLGR's operational activity that might be susceptible to inappropriate influence from the liquor industry. The Director-General should then develop a management plan to address the OLGR's risk of regulatory capture.

In an evaluation of risk, the following factors may be relevant:

- Structural risk – factors may include where the regulator is part of the industry responsible for supporting and promoting the industry and shares the same Director-General and/or Minister; and/or the regulator routinely provides direct reports (e.g. correspondence) to the Minister.
- Legislative risk – factors may include where the regulator interprets legislation in a way that favours the industry.

⁴⁷ Queensland Ombudsman, *Tips and Traps for Regulators*, 2nd edn., 2009, pp. 78-79.

⁴⁸ The concept of regulatory capture is concisely explained in S Marsden, G Kathy and C Hollingsworth, 'Tasmania's environmental improvement programs and the 'Brown Issues': environmental accountability or regulatory capture?', *Environmental and Planning Law Journal*, vol. 17, issue 1, 2000, pp. 24-33.

- Geographical risk – factors may include where officers are isolated with little interaction between officers; an officer is in one geographical location for a long period (particularly regionally); and/or there is regular social contact between officers and people in the industry.
- Operational risk – factors may include where there is the creation of one public face with industry (e.g. joint sponsorship of industry and social events); increasing use of informal or oral warnings and acceptance of informal or oral undertakings; pre-announced regulation activity (e.g. audits); lack of recorded reasons for failure to take action; competing tensions between safety/environment concerns and industry profit; and/or poor data capture and analysis.
- Personal risk – factors may include where there is excessive mobility between enforcement officers and/or executive of the regulator and the industry; and/or regular receipt of gifts/hospitality/benefits from industry.
- Attitudinal risk – factors may include where the regulator is found to be leaping to the defence of industry; there are no complaints from industry about the regulator; and/or any denials of questions about the regulator's independence are made without supporting evidence.

In the proposed report provided to DJAG for comment, I proposed to form an opinion about the risk to the OLGR of regulatory capture and made a proposed recommendation to manage that risk.

DJAG response:

The Director-General advised that:

- there is no evidence of industry capture and there is no evidence or allegations of such from stakeholders
- a perception of regulatory capture is disputed
- the OLGR has policies in place to ensure industry capture does not occur
- the compliance approach is one 'of facilitating sustainable compliance outcomes', not industry facilitation.

In response to my view that a risk analysis should be undertaken and that a management plan be developed to address the OLGR's risk of regulatory capture, the Director-General advised:

- 'this and other areas of the report fail to give any consideration to or acknowledge OLGR's responsibility to the mandate of the elected [g]overnment of the day'
- while there is 'little to no evidence to support [the recommendation] there is no objection to undertaking a risk assessment'.

It is unclear what policies the Director-General refers to that ensure industry capture does not occur. However, while policies regarding conflicts of interest and secondary employment (for instance) provide guidelines for avoiding some particular risk-factors, this report indicates those procedures were not fully in place until recently. Nevertheless, these do not provide a risk analysis which directly identifies all risks of regulatory capture and puts into place strategies for reducing the risks. I note the Director-General's preparedness to undertake a risk assessment.

I also note that while the OLGR, as a regulator, must follow the legislative requirements set by the 'government of the day', I do not see how this would affect its general duty to put into place guards against regulatory capture.

Opinion 13

The environment in which the OLGR is operating means that it is at significant risk of regulatory capture. The OLGR is not adequately identifying or systemically managing that risk.

Recommendation 16

The Director-General undertake a detailed risk analysis, and develop and publish a management plan to address the OLGR's risk of regulatory capture.

Chapter 8: Publication of information

This chapter will briefly discuss the need for greater publication of information to ensure transparency in the OLGR's regulatory practices, including:

- publication of policies and procedures
- public reporting of achievement against the harm minimisation objective.

Publication of policies and procedures

An effective regulatory framework requires that licensees know how the Liquor Act will be enforced.

A number of OLGR policies are not publicly available, including the Compliance Plan and the Liquor Enforcement Policy.

The investigation identified that key stakeholders, including the QPS, were unaware of all the elements of the OLGR's program of proactive work and risk categories set out in the Compliance Plan (discussed in Chapter 4). Stakeholders had also not seen the Liquor Enforcement Policy, and investigators were advised that the liquor industry has similarly commented about the inaccessibility of the Liquor Enforcement Policy.

Making such documents publicly available would have the benefit of making the OLGR's approach to enforcement and the targeted proactive compliance program open and transparent.

Publicly releasing the Compliance Plan, or a summary of it, could also have additional benefits, including maintaining awareness among the industry of the regulator and regulatory requirements. The information about the OLGR's compliance activities would also assist to build relationships with key industry stakeholders and facilitate discussions with the QPS.

In my view, for the purposes of openness and transparency and to aid the performance of its compliance functions, the above documents should be made available to the public.

Finally, I note that there is currently no communication with industry or the public about the outcomes of the proactive compliance program. Publicly reporting by way of periodic updates on the progress against the plan and targets will make it clear to the industry that the OLGR is committed to its program, is willing to work with industry on compliance issues and may promote self-initiated industry activities, in addition to OLGR inspections. The reporting of the response of the industry to OLGR inspections and their outcomes may also facilitate greater goodwill and better compliance outcomes.

In the proposed report released to DJAG for comment, I proposed to form an opinion about publishing key documents and the outcomes of the proactive compliance program. The Director-General did not respond to my views. I remain of the view that these steps are beneficial.

Opinion 14

The openness and transparency of the OLGR's enforcement practices would be assisted by publishing the targets and outcomes of its proactive compliance program, its Compliance Plan and the Liquor Enforcement Policy.

The Director-General did not specifically respond to my recommendation to publicly report against the Compliance Plan. I remain of the view that this step is also beneficial.

Recommendation 17

The Director-General:

- (a) publish the OLGR's Compliance Plan and the Liquor Enforcement Policy on its website
- (b) publicly report against outcomes and targets in the Compliance Plan.

Inability to demonstrate harm minimisation

A further concern about the OLGR's present approach to regulation is the lack of objective data and analysis available to the OLGR to demonstrate that its approach to regulation leads to lower harm. There is presently no requirement that the OLGR monitor and report on harm minimisation, and in particular no examination of how the current strategy has been successful in minimising harm.

I note that a 2010 report titled *Liquor Licensing Legislation in Australia: Pt 3 – Police Expectations and Experiences: An examination of Liquor Licensing Legislation in Australia as at December 2010* also identified some of the above factors:

... respondents emphasised that the [Liquor Act] needed to change to empower OLGR to achieve the [Liquor] Act's harm minimisation focus. Interviewees noted the continuous threat from large companies who challenged the decision-making authority of OLGR and that OLGR lacked the resources and knowledge required to deal with legal challenges to their authority.

OLGR are accountable for actions because a licensee is displeased or there is something politically motivated.

... it was noted that while the legislation continued to focus on the development of tourist, liquor and hospitality industries, the administrative nature of the [Liquor] Act empowered licensees but rendered OLGR ill-equipped to deal with any resultant social harms and violence.⁴⁹

Many of the issues discussed in the previous chapters raised impediments to regulation which are directly tied with harm minimisation.

Chapter 4 discussed how the OLGR's investigative practices were lacking in planning and evidence gathering and analysis, with little emphasis placed on substantiating complaints or providing reasons for decisions. This affects the accurate recording of compliance history of premises. The chapter also indicated the OLGR does not effectively monitor remedial actions taken by licensees to ensure that regulatory compliance, and therefore harm minimisation, is being achieved and currently has limited ability to monitor patterns in enforcement action in order to measure the success of its regulatory approach.

This report also raised concerns about the lack of clarity and consistency in the proactive and reactive programs.

Similarly, Chapter 5 identified impediments associated with the inability to easily access information (such as compliance history) which would facilitate the carrying out of future enforcement action.

Chapter 6 noted the lack of coordination and information sharing between the OLGR and the QPS, which impedes the ability of either co-regulator to create a full picture of compliance history for a particular licensee in order to take appropriate action to minimise harm.

Chapter 7 identified the overall concerns raised by officers of both the OLGR and QPS regarding the current regulatory approach taken by the OLGR which has a significant emphasis on education rather than high-end enforcement. The low levels of high-end enforcement action taken by OLGR were also notable, particularly when compared with the number of infringement notices issued by the QPS, and with the number of infringement notices issued to patrons/minors.

The OLGR needs to ensure that its regulatory approach is achieving its primary statutory objective of harm minimisation. To do so, in addition to addressing the recommendations in this report, the OLGR should monitor and report on harm minimisation, and in particular how its current strategy has been successful in minimising harm.

At present, the strategic and operational plans of the OLGR and/or DJAG do not have clear statements of strategy to achieve harm minimisation. Nor does reporting on the progress for achieving harm minimisation occur through, for example, DJAG's annual report.

Such a step is not without precedent. I note that Workplace Health and Safety Queensland in DJAG reports publicly every six months on its progress towards minimising workplace harm, including workplace deaths.

In my view, the public reporting of the OLGR's progress in minimising harm would focus the OLGR's attention on

⁴⁹ Trifonoff et al, op. cit., p. 78.

its primary legislative goal and assist in ensuring that its business processes and operations were coordinated towards achieving this goal.

In the proposed report provided to DJAG for comment, I proposed to make a recommendation to improve monitoring and reporting against the harm minimisation objective.

DJAG response:

The Director-General advised that:

- it was 'not necessary or practical [to publicly report on harm minimisation] for a range of reasons, most notably the inherent difficulties associated with measuring levels of liquor related harm and the many factors that may contribute to any increase or decrease in liquor related harm'
- the Business Intelligence Project will be used to undertake analysis of the outcomes of programs of work but the findings will be internally reported due to confidentiality issues and the resources and costs associated with 'completing the analysis in a way that would withstand public scrutiny'
- 'To determine with any statistical relevant [sic] whether a particular action or initiative has resulted in a reduction in harm would also require control sites or groups. The size and difficulty of such an undertaking has been demonstrated by the interim 14 month evaluation lead by the Department of Premier and Cabinet for the [DrinkSafe Precinct] trial, which while comprehensive was strongly criticised by the Queensland Audit Office'
- addressing liquor-related harm is a joint responsibility of industry, community and governments at the local, state and federal levels and 'any analysis and reporting on such requires detailed baseline and reporting period data from numerous agencies'
- the OLGR publishes an annual liquor and gaming report on its public website and contributes to the DJAG annual report
- the OLGR is 'behind in its publication of the discretionary liquor and gaming report' and is 'currently in the process of addressing this' but the OLGR is 'happy to review what is being reported in the liquor and gaming report and consider enhancements for the [2013-14] report.'

I consider that, as the Liquor Act's primary purpose is harm minimisation, it is in the public interest for the OLGR to report on how its strategies are achieving this purpose. There are other regulatory agencies which also report on the effectiveness of strategies related to key statutory objectives, including the DJAG Workplace Health and Safety Queensland and the Department of Environment and Heritage Protection. As noted above, the OLGR has already undertaken a similar assessment of DrinkSafe Precincts and I believe this is also undertaken for Alcohol Management Plans.

I note that, in the Director-General's response to a part of Chapter 7, he stated 'the issue [about the approach to regulation] should be about the effectiveness of the enforcement approach, of which there is no comment.' It is true that I cannot comment on the effectiveness of the enforcement approach because there is no evidence of its effectiveness. This demonstrates my point in this chapter, that the OLGR needs to analyse and report on the effectiveness of its approach particularly in achieving its purpose of harm minimisation.

I consider that the Director-General's response about minimising liquor-related harm being a joint responsibility of industry, community and all levels of government is correct but that does not mean that the OLGR should not report on the contribution of its own regulatory strategies to that endeavour. I remain of the view that public reporting will assist the OLGR progress its efforts to minimise harm, will assist its internal focus on that purpose and contribute to the vital ongoing discussion about effective strategies to deal with the evident problems in the community arising from alcohol-related harms.

Recommendation 18

The Director-General ensure that the OLGR monitors and publicly reports on harm minimisation and, in particular, how its current regulatory strategy has been successful in minimising harm.

Part 5: Conclusion

This report is structured around three key themes regarding the OLGR's effectiveness in facilitating its regulatory role through:

- internal systems and processes (internal coordination)
- external communication and processes (external coordination)
- ensuring an appropriate balance between the OLGR's role in regulating licensed premises and facilitating the liquor industry.

The investigation found that the OLGR's current liquor compliance activities are hindered by insufficient internal and external coordination.

Part 2 of this report identified multiple issues with the OLGR's internal processes which have affected its ability to regulate licensed premises and to demonstrate the achievement of harm minimisation.

Part 3 further showed that the regulatory framework is impacted by insufficient coordination between OLGR and the QPS under the Liquor Act. In particular, there is no formal agreement facilitating coordination between the co-regulators, and the different approaches adopted by the co-regulators has led to confusion and frustration within the industry.

This inconsistent approach also impacts on resourcing of the co-regulators, through duplicative, inconsistent or conflicting compliance frameworks.

Part 4 of this report identified that the balancing of harm minimisation objectives with facilitating industry growth objectives poses significant difficulties and tensions, both for the OLGR and between the OLGR and the QPS in relation to their respective approaches to regulation. In particular:

- There is currently limited ability for the OLGR to demonstrate that its approach to compliance is successful in achieving harm minimisation.
- The environment in which the OLGR is operating means that it is at significant risk of regulatory capture.
- There is a greater need for OLGR to demonstrate transparent regulatory practices, including by publicly reporting how its strategies are successful in minimising harm.

At present, the strategic and operational plans of the OLGR and/or DJAG do not have clear statements of strategy to achieve harm minimisation. Nor does reporting on the progress for achieving harm minimisation occur through, for example, DJAG's annual report.

The recommendations in this report seek to assist the Director-General to address these issues and achieve harm minimisation objectives through improving the ability of the OLGR to regulate licensed premises in Queensland.



QUEENSLAND
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